

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

Form 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **December 16, 2020**

BurgerFi International, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or other jurisdiction
of incorporation)

001-38417

(Commission File Number)

82-2418815

(I.R.S. Employer
Identification No.)

**U.S. Highway 1
North Palm Beach, FL**

(Address of Principal Executive Offices)

33408

(Zip Code)

Registrant's telephone number, including area code: (305) 573-3900

**Opes Acquisition Corp.
4218 NE 2nd Avenue,
Miami, FL 33137**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---|-------------------|---|
| Common Stock, par value \$0.0001 per share | BFI | The Nasdaq Stock Market LLC |
| Redeemable warrants, each exercisable for one share of common stock at an exercise price of \$11.50 per share | BFIW | The Nasdaq Stock Market LLC |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (Sec.230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (Sec.240.12b-2 of this chapter).

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.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This current report on Form 8-K (this “Form 8-K”), including the documents incorporated herein by reference, contains forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, with respect to our disclosure concerning our operations, cash flows and financial position and all other statements that do not relate to historical facts.

Forward-looking statements appear in a number of places in Form 8-K including, without limitation, in the sections titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations of BurgerFi” and “Business of BurgerFi.” In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. Forward-looking statements are typically identified by words such as “plan,” “believe,” “expect,” “anticipate,” “intend,” “outlook,” “estimate,” “forecast,” “project,” “continue,” “could,” “may,” “might,” “possible,” “potential,” “predict,” “should,” “would” and other similar words and expressions, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements are based on the current expectations of the management of BurgerFi and are inherently subject to uncertainties and changes in circumstances and their potential effects and speak only as of the date of such statement. There can be no assurance that future developments will be those that have been anticipated. These forward-looking statements involve a number of risks, uncertainties or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described in “Risk Factors,” those discussed and identified in public filings made with the SEC by BurgerFi and the following:

- expectations regarding BurgerFi’s strategies and future financial performance, including its future business plans or objectives, prospective performance and opportunities and competitors, revenues, products and services, pricing, operating expenses, market trends, liquidity, cash flows and uses of cash, capital expenditures, and BurgerFi’s ability to invest in growth initiatives and pursue acquisition opportunities;
- the risk that the consummation of the transactions contemplated by the Acquisition Agreement, pursuant to which BurgerFi became a wholly-owned subsidiary of OPES (the “Business Combination”) disrupts the plans and operations of BurgerFi;
- the ability to recognize the anticipated benefits of the Business Combination;
- unexpected costs related to the Business Combination;
- the management and board composition of BurgerFi following the Business Combination;
- limited liquidity and trading of BurgerFi’s securities;
- geopolitical risk and changes in applicable laws or regulations;
- the possibility that BurgerFi may be adversely affected by other economic, business, and/or competitive factors;
- operational risk;
- risk that the COVID-19 pandemic, and local, state, and federal responses to addressing the pandemic may have an adverse effect on our business operations, as well as our financial condition and results of operations; and
- litigation and regulatory enforcement risks, including the diversion of management time and attention and the additional costs and demands on BurgerFi’s resources.

Should one or more of these risks or uncertainties materialize or should any of the assumptions made by the management of BurgerFi prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements.

The information contained in this Form 8-K and the documents incorporated herein by reference is current only as of the date of that information. All forward-looking statements included in such documents are based upon information available at the time such statements are made, and we assume no obligation to update any forward-looking statements.

INTRODUCTORY NOTE

On December 16, 2020 (the “Closing Date”), OPES Acquisition Corp., a Delaware corporation (“OPES”) consummated the previously announced business combination (the “Business Combination”) with BurgerFi International, LLC, a Delaware limited liability company (“BurgerFi LLC”), the members of BurgerFi LLC (the “Members”), and BurgerFi Holdings, LLC, a Delaware limited liability company (“BurgerFi Holdings”).

A special meeting was held on December 15, 2020, where the OPES stockholders considered and approved, among other matters, a proposal to adopt that certain membership interest purchase agreement, as amended (the “Acquisition Agreement”) among OPES, BurgerFi LLC, the Members and BurgerFi Holdings, Pursuant to the Acquisition Agreement OPES purchased 100% of the membership interests of BurgerFi LLC from the Members resulting in BurgerFi LLC becoming a wholly owned subsidiary of OPES.

Prior to the Business Combination, OPES was a “shell company” (as such term is defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended). As a result of the Business Combination, OPES ceased to be a “shell company” and will continue the existing business operations of BurgerFi LLC as a publicly traded company and changed its name to “BurgerFi International, Inc.”

BurgerFi is a fast-casual “better burger” concept with approximately 119 franchised and corporate-owned restaurants, renowned for delivering an exceptional, all-natural premium burger experience in a refined, contemporary environment. BurgerFi offers a classic American menu of premium burgers, hot dogs, crispy chicken, frozen custard, hand-cut fries, shakes, beer, wine and more. Originally founded in February 2011 by John Rosatti in sunny Lauderdale-by-the-Sea, Florida, the purpose was simple – redefining the way the world eats burgers by providing an upscale burger offering, at a fast-casual price point. BurgerFi has become the go-to burger restaurant for good times, and high-quality food across the United States and beyond. Known for delivering the all-natural burger experience in a fast-casual environment, BurgerFi is committed to an uncompromising and rewarding dining experience that promises fresh food of transparent quality.

The aggregate value of the consideration paid by OPES in the Business Combination (subject to reduction for indemnification claims and potential changes due to a working capital adjustment) was approximately \$100 million calculated as follows: (i) \$30,000,000 in cash paid to Members, (ii) \$20,000,000 paid in 1,886,792 shares of Common Stock to the Members based upon a pre-determined price of \$10.60 per share; and (iii) 4,716,981 shares of Common Stock issued to the Members. After the Business Combination, the Members may be entitled to an additional 9,356,459 shares of Common Stock if certain stock price targets are met by BurgerFi following the Business Combination. 943,396 shares of common stock were deposited into an escrow account to satisfy any potential indemnification claims against BurgerFi LLC and the Members brought pursuant to the Acquisition Agreement.

As used in this Form 8-K henceforward, unless otherwise stated or the context clearly indicates otherwise, the terms the “Registrant,” “Company,” “BurgerFi,” “we,” “us,” and “our” refer to BurgerFi International, Inc., and its subsidiaries at and after the closing of the transactions contemplated in the Acquisition Agreement (the “Closing”), giving effect to the Business Combination.

Item 1.01. Entry into a Material Definitive Agreement.

The information contained in Item 2.01 below is incorporated herein by reference.

Registration Rights Agreements

Pursuant to a registration rights agreement, dated as of March 15, 2018 (the “Original Registration Rights Agreement”), those Initial Stockholders who held the 2,875,000 shares of Common Stock issued prior to the IPO (“Founders’ Shares”) issued and outstanding prior to the IPO, as well as the holders of the Private Placement Units and any units Axis Capital Management (our “Initial Sponsor”), the Initial Stockholders, their affiliates, officers, directors or third parties may be issued in payment of working capital loans made to us, are entitled to registration rights. The holders of a majority of these securities are entitled to make up to two demands that we register such securities. The holders of the majority of the Founders’ Shares can elect to exercise these registration rights at any time commencing three months prior to the date on which their shares of Common Stock are to be released from escrow. The holders of a majority of the Private Placement Units and units issued to our Initial Sponsor, officers, directors or their affiliates in payment of working capital loans made to us (or underlying securities) can elect to exercise these registration rights at any time after we consummate a business combination. In addition, the holders have certain “piggy-back” registration rights with respect to registration statements filed subsequent to our consummation of a business combination. We bear the expenses incurred in connection with the filing of any such registration statements.

On December 16, 2020, all of the parties to the Original Registration Rights Agreement (and those parties who as a result of the transfer of Founders’ Shares became a party to the Original Registration Rights Agreement), the holders of Private Placement Units, the holders of our warrants, each entitling the holder thereof to purchase one share of Common Stock at an exercise price of \$11.50 per share (“Warrants”) pursuant to the warrant agreement entered into at the time of the IPO, as well as the Members, Lion Point Capital, LP (“Lion Point”) and Lionheart Equities, LLC, and LH Equities, LLC (“Sponsor”) entered into a new registration rights agreement covering the registration of 28,618,773 shares of Common Stock in the aggregate (the “New Registration Rights Agreement”). BurgerFi is obligated to file a registration statement with the SEC within thirty (30) days after the Closing of the Business Combination to register the shares for resale, which must be effective within 90 calendar days following the filing date, or in the event the registration statement receives a “full review” by the SEC, the 120th calendar date following the filing date. In the event the SEC requires a cutback in the number of shares being registered, the shares will be cut back on a pro rata basis, except that the 5,029,376 shares of Lion Point that are being registered will not be reduced. In addition, Lion Point is entitled to make up to two demands that we register the shares, and all holders have “piggy-back” registration rights with respect to registration statements filed subsequent to the consummation of the Business Combination. The form of the New Registration Rights Agreement is attached as Exhibit C to the Acquisition Agreement.

The New Registration Rights Agreement is filed with this Form 8-K as Exhibit 10.1 and is incorporated herein by reference. The foregoing description of the New Registration Rights Agreement does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the New Registration Rights Agreement.

Escrow Agreements

IPO Escrow Agreement

In connection with the IPO, our Initial Sponsor and those Initial Stockholders of OPES who held shares prior to the IPO, originally entered into a stock escrow agreement, dated as of March 13, 2018 with Continental Stock Transfer & Trust Company (“Continental”) serving as escrow agent (the “IPO Escrow Agreement”). Pursuant to the terms of the IPO Escrow Agreement, the Initial Stockholders who held shares prior to our initial public offering (the “IPO”) deposited 2,875,000 shares of Common Stock (the “IPO Escrow Shares”) with Continental. The IPO Escrow Shares shall remain in escrow until the earlier of (x) six months after the date of the consummation of the Business Combination and (y) the date on which the closing price of the Company’s Common Stock equals or exceeds \$12.50 per share (as adjusted for stock splits, stock dividends, reorganizations, and recapitalizations) for any 20 trading days within any 30-trading day period commencing after the Company’s initial Business Combination (collectively, the “Escrow Period”). Subsequent to the IPO, the Initial Stockholders transferred 2,847,596 of the IPO Escrow Shares, in the aggregate, to certain of their affiliates and designees. On June 30, 2020, 1,610,000 of the IPO Escrow Shares were transferred to our Sponsor and still remain in the escrow account. Pursuant to the terms of the IPO Escrow Agreement, as the transferee of the IPO Escrow Shares, our Sponsor is bound by the restrictions and other obligations set forth in the IPO Escrow Agreement and the letter agreement with respect to voting for the Business Combination

On December 16, 2020, the IPO Escrow Agreement was amended to remove the stock price condition for release of the IPO Escrow Shares during the Escrow Period (the “Amended IPO Escrow Agreement”). As a result, the IPO Escrow Agreement will terminate and the IPO Escrow Shares will be released upon the earlier of (i) six months after the Closing Date of the Business Combination, and (ii) if, subsequent to the Closing Date, the Company consummates a liquidation, merger, stock exchange or other similar transaction which results in all of the Company’s stockholders having the right to exchange their shares of common stock for cash, securities or other property, the date such transaction is consummated.

The Amended IPO Escrow Agreement is filed with this Form 8-K as Exhibit 10.2 and is incorporated herein by reference. The foregoing description of the IPO Escrow Agreement and the Amended IPO Agreement, as amended, does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the IPO Escrow Agreement, filed as Exhibit 10.2 to our Current Report on Form 8-K filed on March 15, 2018 in connection with our initial public offering, and the Amended IPO Escrow Agreement, filed with this Form 8-K as Exhibit 10.2.

Indemnification Escrow Agreement

On December 16, 2020, BurgerFi, the Members, and Continental, entered into a stock escrow agreement (the “Indemnification Escrow Agreement”) for the escrow of 943,396 shares of OPES Common Stock that will be deposited into an escrow account with Continental to satisfy indemnification claims under the Acquisition Agreement for a period of eighteen months after the Closing Date to satisfy any potential indemnification claims against BurgerFi and the Members brought pursuant to the Acquisition Agreement.

The Indemnification Escrow Agreement is filed with this Form 8-K as Exhibit 10.3 and is incorporated herein by reference. The foregoing description of the Indemnification Escrow Agreement does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Indemnification Escrow Agreement.

Director Voting Agreement

On December 16, 2020, we entered into voting agreements with our Sponsor, certain of the Initial Stockholders, the Members, and our officers and directors pursuant to which such stockholders agree to vote all securities of BurgerFi that such stockholder owns from time to time and may vote in the election of BurgerFi’s directors in favor of the BurgerFi Board of Directors for a period of three years after the Closing Date (the “Director Voting Agreement”). The Director Voting Agreement also provides that, if during the term of the agreement, any stockholder who is a party thereto is unable to attend a meeting of BurgerFi’s stockholders in person, at which directors shall be elected to the Board, and such stockholder fails to timely submit a proxy card indicating how such stockholder intends to vote for the directors who are standing for election, the stockholder appoints the Chairman of the Board of Directors as its true and lawful attorney and proxy with full power of substitution for and its name to act on behalf of the stockholder, for the limited purpose of voting in favor of the election of all of the BurgerFi Board of Directors. The Director Voting Agreement shall terminate three years after the Closing Date.

The Director Voting Agreement is filed with this Form 8-K as Exhibit 10.4 and is incorporated herein by reference. The foregoing description of the Director Voting Agreement does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Director Voting Agreement.

Lock-Ups

On December 16, 2020, the Members entered into lock-up agreements (the “Lock-Up Agreements”) with BurgerFi pursuant to which the (i) Closing Payment Shares shall be subject to a lock-up until the earlier of (x) six months after the Closing Date of the Business Combination, and (y) if, subsequent to the Closing Date, BurgerFi consummates a liquidation, merger, stock exchange or other similar transaction which results in all of BurgerFi’s stockholders having the right to exchange their shares of common stock for cash, securities or other property, the date such transaction is consummated; and (ii) up to 9,356,459 shares of Common Stock issued as an earnout in accordance with the Acquisition Agreement (the “Earnout Share Consideration”) shall be subject to a lock-up for a period of six months from the date the applicable Earnout Tranche is earned (provided that the Members shall be permitted to undertake block trades during each such lockup period).

The Lock-Up Agreements are filed with this Form 8-K as Exhibit 10.7 and Exhibit 10.8 and are incorporated herein by reference. The foregoing description of the Lock-Up Agreements does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Lock-Up Agreements.

Standstill Letter

On December 16, 2020, the Members and Mr. Sternberg shall each enter into a standstill letter (the “Standstill Letter”), whereby the Members as a group, and Mr. Sternberg individually, each agree to beneficially own no more than forty-nine percent (49%) of OPES Common Stock, at any time before or after the Closing.

The Standstill Letter is filed with this Form 8-K as Exhibit 10.6 and is incorporated herein by reference. The foregoing description of the Standstill Letter does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Standstill Letter.

Employment Agreements

The Company is party to employment agreements with Mr. Sternberg, its Executive Chairman, and Julio Ramirez, its Chief Executive Officer. The employment agreements are filed with this Form 8-K as Exhibit 10.11 and Exhibit 10.12 and are incorporated herein by reference. The Company will use commercially reasonable efforts to enter into an employment agreement with Mr. Sternberg to serve as Executive Chairman, and employment agreements with each of the following key employees: Julio Ramirez, Chief Executive Officer, Charles Guzzetta, President, Nick Raucci, Chief Operating Officer, Bryan McGuire, Chief Financial Officer, Ross Goldstein, Chief Legal Officer and Paul Griffin, Executive Vice President of Culinary & Procurement.

On December 16, 2020, the Company entered into a Consulting Agreement with Management Enterprises of Hollywood, Inc. (“Consultant”), an affiliate of BurgerFi LLC’s majority shareholder, pursuant to which Consultant will provide consulting services as requested by the Company from the date of the Agreement through December 31, 2020, in exchange for a retainer of \$500,000, payable upon execution of the Agreement. This summary is qualified by the consulting agreement, which is filed with this Form 8-K as Exhibit 10.13 and incorporated herein by reference. The services will include general business counsel and guidance, advice and consultation regarding the operations, real estate criteria and selection process of the BurgerFi business, franchising and prospects of the Company, information and guidance regarding the Company’s personnel, customers and customer opportunities and guidance regarding the transition of the business to the Company.

Item 2.01. Completion of Acquisition or Disposition of Assets.

THE BUSINESS COMBINATION AND RELATED TRANSACTIONS

The disclosure set forth under “Introductory Note” above is incorporated in this Item 2.01 by reference. The material terms and conditions of the Acquisition Agreement and its related agreements are described on pages 59 to 66 of OPEs’s Definitive Proxy Statement in the section entitled “*The Acquisition Agreement*,” which is incorporated herein by reference.

BUSINESS

The business of the Company after the Business Combination is described in the Definitive Proxy Statement in the section entitled “*Business of BurgerFi*” beginning on page 79, and that information is incorporated herein by reference.

RISK FACTORS

The risks associated with the Company’s business are described in the Definitive Proxy Statement in the section entitled “*Risk Factors*” beginning on page 17 and are incorporated herein by reference.

SELECTED FINANCIAL DATA

The disclosure contained in the Definitive Proxy Statement in the section entitled “*Selected Historical Consolidated Financial Statements of BurgerFi International, LLC*” beginning on page 97 is incorporated herein by reference.

MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The disclosure contained in the Definitive Proxy Statement in the section entitled “*Management’s Discussion And Analysis of Financial Condition And Results of Operations of BurgerFi International, LLC*” beginning on page 98 is incorporated herein by reference.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding the beneficial ownership of our Common Stock as of the Closing Date, based on information obtained from the persons named below, with respect to the beneficial ownership of our Common Stock, by:

- each person known by us to be the beneficial owner of more than 5% of our outstanding Common Stock;
- each of our executive officers and directors that beneficially owns our Common Stock; and
- all our executive officers and directors as a group.

Unless otherwise indicated, we believe that all persons named in the table have sole voting and investment power with respect to all Common Stock beneficially owned by them. As of the Closing, we had 17,441,864 shares of Common Stock issued and outstanding.

| Name and Address of Beneficial Owner | Amount and Nature of Beneficial Ownership | Percent of Class |
|--|--|-------------------------|
| Ophir Sternberg ⁽¹⁾ | 2,469,341 | 15.3% |
| Julio Ramirez | 0 | % |
| Charles Guzzetta | 0 | % |
| Ross Goldstein | 0 | % |
| Bryan McGuire | 0 | % |
| Nick Raucci | 0 | % |
| AJ Acker ⁽³⁾ | 650,377 | 3.7% |
| Steven Berrard | 0 | % |
| Gregory Mann | 0 | % |
| Allison Greenfield | 14,616 | *0% |
| All directors and executive officers as a group (10 individuals) | 3,506,993 | 18.9% |
| Greater than 5% Beneficial Owners | | |
| Lionheart Equities, LLC ⁽²⁾ | 1,000,000 | 5.4% |
| LH Equities, LLC ⁽⁵⁾ | 1,319,341 | 7.6% |
| The John Rosatti Revocable Trust Dated 8/27/2001 ⁽⁴⁾ | 5,853,396 | 33.6% |
| Lion Point Capital, LP ⁽⁶⁾ | 2,745,938 | 9.99% |

* Less than one percent.

- (1) Includes (i) 150,000 shares of common stock and 150,000 shares of common stock underlying warrants owned directly by Lionheart Equities, LLC, (ii) 1,000,000 shares of common stock underlying warrants owned by Lionheart Equities, LLC and (iii) 1,319,341 shares of common stock owned by LH Equities, LLC.
- (2) Represents 1,000,000 shares of common stock underlying warrants held by Lionheart Equities. Mr. Sternberg, as manager of Lionheart Equities, has sole voting and dispositive control over the shares. The business address for Lionheart Equities is 4218 NE 2nd Avenue, Miami, FL 33137.
- (3) Represents shares of Common Stock acquired in connection with the Business Combination. The business address for The Andrea Jane Acker Revocable Trust U/A dated April 25, 2008 is c/o 280 N. Compass Drive, Ft. Lauderdale, FL 33308. A.J. Acker, as the trustee, has voting and dispositive power over the shares.
- (4) Represents shares of Common Stock acquired in connection with the Business Combination. The business address for The John Rosatti Revocable Trust Dated 8/27/2001 is c/o 101 US Highway 1, North Palm Beach, FL 33408. John Rosatti, as the trustee, has voting and dispositive power over the shares.
- (5) Shares of common stock held by LH Equities, LLC. Lionheart Equities is the majority holder of the interests in LH Equities, LLC. Mr. Sternberg, as manager of Lionheart Equities, has sole voting control over the shares and shares dispositive control over the shares with the Domus Family Limited Liability Partnership, which owns interests in LH Equities, LLC. The business address for LH Equities, LLC is c/o Lionheart Equities, LLC, 4218 NE 2nd Avenue, Miami, FL 33137.
- (6) Shares of common stock held by Lion Point Capital, LP. The business address of Lion Point is 250 West 54th Street, 33rd Floor, New York, NY 10019. Lion Point is the investment manager to its investment fund client. Lion Point Holdings is the general partner of Lion Point. Mr. Cederholm is a Founding Partner and Chief Investment Officer of Lion Point. Mr. Cederholm is also a Member and a Manager of Lion Point Holdings. Mr. Freeman is a Founding Partner and Head of Research of Lion Point. Mr. Freeman is also a Member and a Manager of Lion Point Holdings. By virtue of these relationships, each of Lion Point, Lion Point Holdings, Mr. Cederholm and Mr. Freeman may be deemed to beneficially own the securities beneficially owned by its investment fund client. Information included in this footnote is derived from a Schedule 13G filed on August 13, 2020.

DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS

Following the Closing, the Board of Directors was reconstituted and is comprised of five members. We believe it is in the best interests of the Company and its stockholders for the Board of Directors to continue to be classified into three classes, each comprising as nearly as possible one-third of the directors to serve three-year terms.

Class A directors shall serve until 2023, Class B directors shall serve until 2021 and Class C directors shall serve until 2022.

The Company's directors and executive officers are:

| Name | Age | Class | Position |
|--------------------|-----|-------|---------------------------------|
| Ophir Sternberg | 50 | C | Executive Chairman of the Board |
| Julio Ramirez | 66 | N/A | Chief Executive Officer |
| Charles Guzzetta | 30 | N/A | President |
| Bryan McGuire | 55 | N/A | Chief Financial Officer |
| Ross Goldstein | 46 | N/A | Chief Legal Officer |
| Nick Raucci | 46 | N/A | Chief Operating Officer |
| AJ (Andrea) Acker | 77 | A | Director |
| Steven Berrard | 66 | B | Director |
| Gregory Mann | 49 | A | Director |
| Allison Greenfield | 48 | B | Director |

The following sets forth certain information with respect to our executive officers and directors.

Ophir Sternberg is the Company's Executive Chairman, having served as a member of our Board of Directors since October 2019, Chairman since April 2020, and Chief Executive Officer since June 2020. Mr. Sternberg has over 26 years of experience investing in all segments of the real estate industry, including land acquisitions, luxury residential, hospitality, commercial and retail. He is the Founder of Lionheart Capital, LLC, an investment firm, and has served as its Chief Executive Officer since its formation in 2009. From 1993 to 2009, Mr. Sternberg was the Founder and Managing Partner of Oz Holdings, LLC, a private real estate investment and management company. Once a member of an elite Israeli Defense Force unit, Mr. Sternberg studied finance at Sy Syms School of Business at Yeshiva University. We believe Mr. Sternberg is well-qualified to serve on our board of directors due to his business experience and contacts and relationships.

Julio Ramirez served as Chief Executive Officer of BurgerFi LLC and will continue to serve in that role in the Company. Mr. Ramirez was just recently hired on October 16, 2020. Mr. Ramirez has over 40 years of experience in the multi-unit restaurant industry. Mr. Ramirez founded JEM Global, Inc., ("JEM") a company specializing in assisting QSR and fast casual brands' with franchising and development efforts domestically and internationally. Though JEM, he consulted Dunkin Brands on its Brazil entry strategy and Buffalo Wings and Rings on its Mexico development strategy. He was also co-owner of Giordino Gourmet Salads, South Florida's premier fast-casual concept, helping to grow the brand in Miami, Fort Lauderdale and Naples, Florida. Prior to JEM, Mr. Ramirez was with Burger King Corporation for over 25 years. In his role at Burger King, he introduced the brand in over 10 countries throughout Latin America, effectively establishing the supply chain, selecting outstanding franchisees, and building successful teams in several Central and South American countries. Mr. Ramirez holds an MBA from the University of Georgia. He has also completed the Advanced Management Program from the Wharton School of Business at the University of Pennsylvania. He served as an Executive Board Member of the United Way of Miami-Dade County, was a founding member of the BurgerKing "Have it Your Way" Foundation and is currently a member of the prestigious Orange Bowl Committee. Mr. Ramirez was an external director at Grupo Intur – the largest franchisee of American QSR brands in Central America with over 200 locations of 8 different brands across several nations.

Charles Guzzetta served as President of BurgerFi LLC and will continue to serve in that role in the Company. Mr. Guzzetta has been with BurgerFi since 2013 and for the past seven years he has worked just about every role within the BurgerFi organization including operations, communications, marketing, new restaurant openings, and franchise development. Combining his experience in each aspect of BurgerFi's business, Mr. Guzzetta has been integral in growing the company from a 20-restaurant regional chain to a nearly 133-restaurant international brand. In his role as President, Mr. Guzzetta is responsible for the oversight of all brand and development activities as well as the strategic execution of the company's purpose of redefining the way the world eats burgers. Mr. Guzzetta graduated Hofstra University's Zarb School of Business, where he earned a Bachelor of Business Administration (BBA) in Management and Finance.

Bryan McGuire served as the Chief Financial Officer of BurgerFi LLC and will continue to serve in that role in the Company. He has over 25 years of experience in executive finance, specializing in growing restaurant companies. From 2006 to 2020, Mr. McGuire was a founder and partner in Quantum Peak Consulting LLC, a boutique business consulting firm based in Tampa, FL specializing in business planning for high growth multi-unit restaurant companies and SEC reporting for public entities. From 2000 to 2006, Mr. McGuire was the Chief Financial Officer for Ker's WingHouse where revenue grew from \$12,000,000 to \$50,000,000. From 1997 to 2000, he was Vice President of Finance & IT for Hops Restaurant Bar & Brewery, an 80-unit chain based in Tampa, FL. Prior to that, he was Controller with Cucina! Cucina! based in Seattle, a high-growth, multi-unit Italian restaurant chain. From 1991 to 1995, he was with Checker's Drive-in Restaurants. Experience at Checkers included an IPO, a secondary public offering, all SEC compliance and reporting, and growth from 103 restaurants to over 550. Mr. McGuire began his career in 1987 in public accounting with Concannon Miller &

Ross Goldstein served as the Chief Legal Officer of BurgerFi LLC since 2012 and will continue to serve in that role in the Company, assisting in the company's growth from approximately 10 units to over 120, in 20+ states and three countries. He has over 20 years of legal experience, specializing in franchising, real estate, general corporate and business transactions. At BurgerFi, Mr. Goldstein focuses on the negotiation, drafting and execution of all franchise agreements and real estate leases, drafting and filing the Franchise Disclosure Document and any amendments in all registration states, and mergers, acquisitions, joint ventures and other business combinations. Prior to that, from 2009 to 2012, Mr. Goldstein was the General Counsel for The Learning Experience, LLC, a fast-growing childcare franchise, and before that, from 2007 to 2009, he was the Associate General Counsel for Dycom Industries, Inc., a public telecommunications company. Prior to going in-house, from 2005 to 2007, Mr. Goldstein was a Senior Associate at the law firm of Nason Yeager Gerson Harris & Fumero P.A. Mr. Goldstein holds a J.D. from the Seton Hall University School of Law and a B.A. from Gettysburg College, where he played varsity baseball.

Nick Raucci served, since 2015, as the Executive Vice President of Operations and Chief Operating Officer of BurgerFi LLC and will continue to serve in that role in the Company. He has over 25 years' experience in restaurant operations specializing in growing restaurant companies. From 2002 to 2008, Mr. Raucci Served as General Manager and Regional Director of Operations for the Atlanta based casual dining restaurant, Ted's Montana Grill, founded by media mogul Ted Turner and restaurateur George McKerrow Jr. as a for-profit effort to stop the extinction of the American Bison. The restaurants are built with sustainable materials and feature Bison certified by the National Bison Association. From 2008 to 2015, Mr. Raucci was a part of Five Guys Burgers and Fries, founded by the Murrell family in 1986 in Arlington Virginia, national expansion on both the franchise and corporate side of the business as a multi-unit operations leader and regional vice president where the company reached a billion dollars in revenue. Mr. Raucci is a graduate of Johnson and Wales University, the world's largest food service educator known for its culinary arts program, but first founded as a business and hospitality school.

AJ (Andrea) Acker, a member of BurgerFi LLC until the Business Combination, Ms. Acker joined Sleepy's International in 1980 to help provide leadership and invaluable guidance in the business profession. Ms. Acker helped expand the business to over a thousand retail stores in several states along with multiple company distribution centers. She was also instrumental in improving the company's sales operations. Ms. Acker helped create advertising campaigns, along with buying and merchandising initiatives. As Co-Owner and President of Sleepy's, Ms. Acker helped grow the business organically making several acquisitions and improving annual sales, making it the leader in the industry for several years. This growth and success led to the business being sold to Mattress Firm in 2016.

Steven Berrard is a co-founder of e-commerce company RumbleOn Inc. and has served as its Chief Financial Officer since 2017 and has been a member of its Board of Directors since 2016. Mr. Berrard is the Managing Partner of New River Capital Partners, a private equity fund he co-founded in 1997. Mr. Berrard was the co-founder and Co-Chief Executive Officer of AutoNation from 1996 to 1999. Prior to joining AutoNation, Mr. Berrard served as President and Chief Executive Officer of the Blockbuster Entertainment Group, the world's largest video store operator at the time. Mr. Berrard served as Chairman of Board of Jamba, Inc. from 2005 to 2007 and as its Chief Executive Officer from 2005 to 2006. Mr. Berrard served as President of Huizenga Holdings, Inc., a real estate management and development company, and served in various positions with subsidiaries of Huizenga Holdings, Inc. from 1981 to 1987. Mr. Berrard currently serves on the Board of Directors of Pivotal Fitness, Inc., a chain of fitness centers operating in Charleston, SC. He has previously served on the Boards of Directors of Swisher Hygiene Inc., Walter Investment Management Corp., Jamba, Inc., Viacom, Inc., Birmingham Steel, HealthSouth and Boca Resorts, Inc. Mr. Berrard earned his B.S. in Accounting from Florida Atlantic University.

Gregory Mann has served Hydrus Technology as a Board Member and in a variety of advising, consulting, leadership, and managerial roles where he developed the firm's commercialization and go to market (GTM) strategy that led to the company's first long-term commercial contract from January 2019 to June 2020. Prior to Hydrus, from March 2017 to November 2018, Mr. Mann created a stand-alone P&L division at Catalina Marketing as President of Emerging Brands where he architected and implemented a new three-year business strategy that included the launch of new data and marketing services which significantly increased new client deal size and improved client retention. Mr. Mann also developed and drove the vision and general management for the newly founded Emerging Brands division focused on thousands of consumer-packaged goods (CPG) companies. Prior to Catalina, from May 2014 to October 2016, Mr. Mann worked as the Chief Marketing Officer for LoopPay where he was part of the founding team which was then acquired by Samsung in order to develop and launch Samsung Pay. Mr. Mann holds an MBA from the Wharton School of Business and a Master's Degree in International Studies from the University of Pennsylvania's Lauder Institute. We believe that Mr. Mann's experience as an entrepreneurial executive and corporate innovator that has built and led established startup, turnaround, and hyper-growth companies and divisions globally will be a valuable asset to the Post-Closing Company Board of Directors.

Allison Greenfield has served as a member of the Company's Board of Directors since August 2020. Ms. Greenfield has over two decades of experience in real estate development. Ms. Greenfield has been a partner of Lionheart Capital, LLC, since it was founded in 2009 and has over 25 years of experience in the entitlement, design, construction and management of projects in all segments of the real estate industry, including industrial, retail, hospitality, and ultra-luxury residential condominiums. At Lionheart Capital, LLC, she has been responsible for the successful acquisition, development, and repositioning of real estate assets around the world. Prior to her tenure at Lionheart Capital, LLC, Ms. Greenfield ran the development and construction arm of Oz Holdings, LLC as a partner from 2001-2010. Ms. Greenfield studied Architecture at The New School University, Parsons School of Design and holds a B.A. in History from Barnard College/Columbia University.

Director Independence

Three members of the Board of Directors, Steven Berrard, Gregory Mann, and Allison Greenfield qualify as "independent directors" within the meaning of the independent director guidelines of The Nasdaq Stock Market LLC and applicable SEC rules.

Committees of the Board of Directors

Audit Committee

Mr. Berrard, Mr. Mann, and Ms. Greenfield serve on the Audit Committee. Mr. Berrard qualifies as the Audit Committee financial expert as defined in Item 407(d)(5) of Regulation S-K promulgated under the Securities Act of 1933, as amended (the "Securities Act") and serves as Chairman of the Audit Committee. The OPES Audit Committee Charter, as amended, continues as the Audit Committee Charter for the Company.

Compensation Committee

Ms. Greenfield, Mr. Mann, and Mr. Berrard serve on the Compensation Committee. Ms. Greenfield serves as the Chairperson of the Compensation Committee. The OPES Compensation Committee Charter, as amended, continues as the Compensation Committee Charter for the Company.

Nominating Committee

EXECUTIVE COMPENSATION

The disclosure contained in the Definitive Proxy Statement in the section entitled “*Compensation of Executive Officers of BurgerFi*” beginning on page 136 is incorporated herein by reference.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Certain transactions of OPES and BurgerFi are described in the Definitive Proxy Statement in the section entitled “*Related Party Transactions*” beginning on page 139 and are incorporated herein by reference.

DESCRIPTION OF SECURITIES

The disclosure contained in the Definitive Proxy Statement in the section entitled “*Description of OPES’s Securities*” beginning on page 142 is incorporated herein by reference.

LEGAL PROCEEDINGS

From time to time, the Company may be involved in various claims and legal proceedings arising in the ordinary course of business. Neither the Company nor BurgerFi LLC is currently a party to any such claims or proceedings which, if decided adversely to the Company or BurgerFi LLC, would either, individually or in the aggregate, have a material adverse effect on the Company’s business, financial condition, results of operations or cash flows.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Our certificate of incorporation provides that all directors, officers, employees and agents of the registrant shall be entitled to be indemnified by us to the fullest extent permitted by Section 145 of the Delaware General Corporation Law.

Section 145 of the Delaware General Corporation Law concerning indemnification of officers, directors, employees and agents is set forth below.

“Section 145. Indemnification of officers, directors, employees and agents; insurance.

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person’s conduct was unlawful

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith.

(d) Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee, or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

(e) Expenses (including attorneys’ fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys’ fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

(h) For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this section with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

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(i) For purposes of this section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(k) The Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise. The Court of Chancery may summarily determine a corporation's obligation to advance expenses (including attorneys' fees)."

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers, and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment of expenses incurred or paid by a director, officer or controlling person in a successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to the court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Paragraph B of Article Eighth of our certificate of incorporation provides:

"Indemnification. The Corporation shall indemnify, to the fullest extent authorized or permitted by the DGCL, as now or hereafter in effect, any director or officer of the Corporation who was or is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, trustee or employee of another corporation, partnership, joint venture, trust or other enterprise, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of such person's heirs, executors and personal and legal representatives. The right to indemnification conferred by this Paragraph B shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition, provided that such director or officer presents to the Corporation a written undertaking to repay such amount if it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation under this Article EIGHTH or otherwise. Notwithstanding the foregoing, except for proceedings to enforce any director's or officer's rights to indemnification or to advancement of expenses, the Corporation shall not be obligated to indemnify or advance expenses to any director or officer (or such director's or officer's heirs, executors or personal or legal representatives) in connection with any proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized by the Board of Directors."

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Item 3.02. Unregistered Sales of Equity Securities.

The disclosure set forth under Item 2.01 above is incorporated in this Item 3.02 by reference. The [4,616,981] shares of Common Stock issued pursuant to the Acquisition Agreement were issued in reliance upon an exemption from the registration requirements pursuant to Section 4(a)(2) of the Securities Act. The Members of BurgerFi LLC receiving the shares of Common Stock represented their intentions to acquire the shares for investment only and not with a view to or for sale in connection with any distribution, and appropriate restrictive legends were affixed to the certificates representing the shares. The parties also had adequate access, through business or other relationships, to information about the Company and BurgerFi LLC.

In a private placement that occurred concurrently with Business Combination, we also issued 2,000,000 shares of Common Stock and 2,000,000 Warrants to Lion Point and 1,150,000 shares of Common Stock and 1,150,000 Warrants to Lionheart Equities, LLC ("Lionheart," and together with Lion Point, the "Lionheart Entities"). The Lionheart Entities receiving the shares of Common Stock represented their intentions to acquire the shares for investment only and not with a view to or for sale in connection with any distribution, and appropriate restrictive legends were affixed to the certificates representing the shares. The parties also had adequate access, through business or other relationships, to information about the Company and BurgerFi LLC.

Item 4.01. Changes in Registrant's Certifying Accountant.

On December 22, 2020, the audit committee of BurgerFi International, Inc.'s board of directors dismissed Marcum, LLP ("Marcum"), Opes Acquisition Corp.'s independent registered public accounting firm prior to the Business Combination, as BurgerFi International, Inc.'s Independent Registered public accounting firm.

The reports of Marcum on the financial statements of Opes Acquisition Corp. for the years ended December 31, 2019 and 2018 did not contain any adverse opinion or a disclaimer of opinion, and were not qualified or modified as to uncertainties, audit scope, or accounting principles, except for an explanatory paragraph in such reports regarding substantial doubt about Opes Acquisition Corp.'s ability to continue as a going concern.

During the fiscal years ended December 31, 2019 and 2018, and the subsequent interim period through December 22, 2020, there were no (i) disagreements with Marcum on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to their

satisfaction, would have caused them to make reference to the subject matter of the disagreements in connection with their report, or (ii) reportable events (as described in Item 304(a)(1)(v) of Regulation S-K).

The Company has provided Marcum with a copy of the above disclosures, and Marcum has furnished the Company with a letter addressed to the SEC stating that it agrees with the statements set forth above. A copy of Marcum's letter, dated December 22, 2020, is filed as Exhibit 16.1 to this Form 8-K.

On December 16, 2020, in connection with the consummation of the Business Combination, the Board of Directors approved the appointment of BDO USA, LLP, ("BDO") as the Company's independent registered accounting firm. BDO served as BurgerFi's independent registered public accounting firm prior to the Business Combination.

During the two most recent fiscal years ended December 31, 2019 and 2018 and during the subsequent interim period through December 16, 2020 neither the Company nor anyone on its behalf consulted BDO regarding either (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company's financial statements, and neither a written report nor oral advice was provided to the Company that BDO concluded was an important factor considered by the Company in reaching a decision as to any accounting, auditing or financial reporting issue, or (ii) any matter that was either the subject of a "disagreement" or a "reportable event", each as defined in Regulation S-K Item 304(a)(1)(iv) and 304(a)(1)(v), respectively.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Three incumbent directors of OPES, David Brain, James Anderson, and Martha (Stormy) L. Byorum, resigned from the Board of Directors upon closing of the Business Combination. Our Board of Directors currently consists of two existing OPES directors, Mr. Ophir Sternberg and Ms. Allison Greenfield and three newly appointed directors, AJ (Andrea) Acker, Steven Berrard and Gregory Mann. One incumbent officer of OPES, José Luis Córdova Vera, the Chief Financial Officer, resigned from the Company upon closing of the Business Combination.

On December 15, 2020, in connection with the Business Combination, the Company adopted the 2020 Omnibus Equity Incentive Plan. The disclosure contained in the Definitive Proxy Statement in the section entitled "*Proposal #3: Incentive Plan Proposal: Approval of the 2020 Omnibus Equity Incentive Plan*" beginning on page 69 is incorporated herein by reference.

The Company is not party to any employment agreements with its executive officers. The Company will use commercially reasonable efforts to enter into an employment agreement with Mr. Sternberg to serve as Executive Chairman, and employment agreements with each of the following key employees: Julio Ramirez, Chief Executive Officer, Charles Guzzetta, President, Nick Raucci, Chief Operating Officer, Bryan McGuire, Chief Financial Officer, Ross Goldstein, Chief Legal Officer and Paul Griffin, Executive Vice President of Culinary & Procurement.

The information contained in Item 2.01 to this Form 8-K is also incorporated herein by reference.

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

On December 16, 2020, in connection with the Business Combination, the Company amended and restated its Certificate of Incorporation to (i) change the name of the corporation from "OPES Acquisition Corp." to "BurgerFi International, Inc." in connection with the completion of the Business Combination, (ii) include the rights of the holders of OPES common stock to receive dividends, (iii) remove the provisions in Article SIXTH relating to consummation of a business combination, which is no longer relevant after the consummation of the Business Combination, (iv) clarify the Company's indemnification obligations to its officers, directors; (v) include a new provision with respect to stockholder meetings, the process for advance notice of proposals to be brought by stockholders, and to include that any court of equitable jurisdiction within the State of Delaware may order a meeting of the creditors or class of creditors, or stockholders or class of stockholders and the Company whenever a compromise or arrangement has been reached and such compromise, subject to approval by a majority in number representing 75% in value of the creditors or class of creditors, or stockholders or class of stockholders, shall be binding upon such creditors or class of creditors, or stockholders or class of stockholders and the Company, (vi) include a provision with respect to the vote required to amend the Amended and Restated Certificate of Incorporation, and (vii) include a provision with respect to the vote required to amend the Amended and Restated Bylaws.

The Company is not required to file a transition report on Form 10-KT and plans to report the financial results of the combined company for the fiscal year ended December 31, 2020 on an annual report on Form 10-K.

Item 5.06. Change in Shell Company Status.

On December 16, 2020, as a result of the consummation of the Business Combination, which fulfilled the "initial Business Combination" requirement of OPES's Certificate of Incorporation, as amended and restated, the Company ceased to be a shell company. The material terms of the Business Combination are described in the Definitive Proxy Statement in the section entitled "*Proposal 1: Business Combination Proposal: Approval of the Business Combination*" beginning on page 47, which is incorporated herein by reference.

Item 8.01 Other Events.

On December 17, 2020, the Company issued a press release announcing the consummation of the Business Combination. A copy of the press release is filed as Exhibit 99.1 to this Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

In accordance with Item 9.01(a), BurgerFi International LLC's audited financial statements for the years ended December 31, 2019 and 2018 and BurgerFi International LLC's unaudited interim financial statements for the periods ended September 30, 2020 and September 30, 2019 are attached to this Form 8-K as Exhibit 99.2.

(b) Pro Forma Financial Information.

In accordance with Item 9.01(b), Unaudited pro forma condensed combined financial information, Unaudited pro forma condensed combined balance sheet as at September 30, 2020, Unaudited pro forma condensed combined statement of operations for the year ended December 31, 2019, and Unaudited pro forma condensed combined

(c) Exhibits

| Exhibit | Description |
|----------------|--|
| 2.1 | Membership Interest Purchase Agreement (Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed by the registrant on June 30, 2020) |
| 2.2 | Amendment Agreement to the Membership Interest Purchase Agreement (Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed by the registrant on October 1, 2020) |
| 3.1 | Amended and Restated Certificate of Incorporation of the Company, effective on December 16, 2020 |
| 3.2 | Amended and Restated Bylaws of the Company, effective as of December 16, 2020 |
| 10.1 | Registration Rights Agreement dated December 16, 2020 |
| 10.2 | Amendment to IPO Escrow Agreement dated December 16, 2020 |
| 10.3 | Indemnification Escrow Agreement dated December 16, 2020 |
| 10.4 | Director Voting Agreement dated December 16, 2020 |
| 10.5** | 2020 Omnibus Equity Incentive Plan |
| 10.6 | Standstill Letter |
| 10.7 | Lock-up Agreement – Andrea Acker |
| 10.8 | Lock-up Agreement - BurgerFi |
| 10.9 | Loan Agreement dated July 13, 2018 between BurgerFi International, LLC and Bank of America, N.A., as amended by the Amendment No. 1 to Loan Agreement dated October 31, 2019 |
| 10.10 | Form of Franchise Agreement |
| 10.11 | Employment Agreement with Mr. Sternberg |
| 10.12 | Employment Agreement with Mr. Ramirez |
| 10.13 | Consulting Agreement |
| 16.1 | Letter from Marcum, LLP |
| 17.1 | Resignation of James Anderson |
| 17.2 | Resignation of David Brain |
| 17.3 | Resignation of Martha (Stormy) L. Byorum |
| 17.4 | Resignation of Jose Luis Cordova |
| 21.1 | Subsidiaries of Registrant |
| 99.1 | Press Release dated December 17, 2020 |
| 99.2 | Audited and Unaudited Interim Financial Statements of BurgerFi International, LLC |
| 99.3 | Pro forma financial information |

* Portions of this exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

** Indicates a management contract or a compensatory plan or agreement.

SIGNATURE

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

BURGERFI INTERNATIONAL, INC.

December 22, 2020

By: /s/ Ophir Sternberg
 Name: Ophir Sternberg
 Title: Executive Chairman of the Board

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BURGERFI INTERNATIONAL, INC.**

Form of Amended and Restated Certificate of Incorporation

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

BURGERFI INTERNATIONAL, INC.

**Pursuant to Section 245 of the
Delaware General Corporation Law**

OPES ACQUISITION CORP., a corporation existing under the laws of the State of Delaware (the "Corporation"), by its Chief Executive Officer, hereby certifies as follows:

FIRST: The name of the corporation is BurgerFi International, Inc. (hereinafter sometimes referred to as the "Corporation").

SECOND: The registered office of the Corporation is to be located at 1013 Centre Road, Suite 403-B, Wilmington, New Castle County, Delaware, 19805. The name of its registered agent at that address is VCorp Services, LLC.

THIRD: The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the GCL. In addition to the powers and privileges conferred upon the Corporation by law and those incidental thereto, the Corporation shall possess and may exercise all the powers and privileges that are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the Corporation.

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 110,000,000, of which 100,000,000 shares shall be common stock of the par value \$.0001 per share ("Common Stock") and 10,000,000 shares shall be preferred stock of the par value of \$.0001 per share ("Preferred Stock").

A. Preferred Stock. The Board of Directors is expressly granted authority to issue shares of the Preferred Stock, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series (a "Preferred Stock Designation") and as may be permitted by the GCL. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, without a separate vote of the holders of the Preferred Stock, or any series thereof, unless a vote of any such holders is required pursuant to any Preferred Stock Designation.

B. Common Stock. Except as otherwise required by law or as otherwise provided in any Preferred Stock Designation, the holders of the Common Stock shall exclusively possess all voting power and each share of Common Stock shall have one vote. Subject to the rights of holders of any series of outstanding Preferred Stock, holders of shares of Common Stock shall have equal rights of participation in the dividends and other distributions in cash, stock, or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor and shall have equal rights to receive the assets and funds of the Corporation available for distribution to stockholders in the event of any liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary.

FIFTH: The size of the Board as of the date hereof shall be fixed at five (5); provided that such number may be increased or decreased from time to time in such manner as prescribed by the By-laws of the Corporation. Directors need not be stockholders.

SIXTH: Classified Board. The Board of Directors shall be divided into three classes: Class A, Class B, and Class C. The number of directors in each class shall be as nearly equal as possible. At the first election of directors by the incorporator, the incorporator shall elect a Class C director for a term expiring at the Corporation's third Annual Meeting of Stockholders. The Class C director shall then appoint additional Class A, Class B, and Class C directors, as necessary. The directors in Class A shall be elected for a term expiring at the first Annual Meeting of Stockholders, the directors in Class B shall be elected for a term expiring at the second Annual Meeting of Stockholders and the directors in Class C shall be elected for a term expiring at the third Annual Meeting of Stockholders. Commencing at the first Annual Meeting of Stockholders, and at each annual meeting thereafter, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. Except as the GCL may otherwise require, in the interim between annual meetings of stockholders or special meetings of stockholders called for the election of directors and/or the removal of one or more directors and the filling of any vacancy in that connection, newly created directorships and any vacancies in the Board of Directors, including unfilled vacancies resulting from the removal of directors for cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum (as defined in the Corporation's Bylaws), or by the sole remaining director. All directors shall hold office until the expiration of their respective terms of office and until their successors shall have been elected and qualified. A director elected to fill a vacancy resulting from the death, resignation or removal of a director shall serve for the remainder of the full term of the director whose death, resignation or removal shall have created such vacancy and until his successor shall have been elected and qualified.

SEVENTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

B. Election of directors need not be by ballot unless the Bylaws of the Corporation so provide.

C. The Board of Directors shall have the power, without the assent or vote of the stockholders, to make, alter, amend, change, add to or repeal the Bylaws of the Corporation as provided in the Bylaws of the Corporation.

D. The directors in their discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders or at any meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the stock of the Corporation which is represented in person or by proxy at such meeting and entitled to vote thereat (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and binding upon the Corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the Corporation, whether or not the contract or act would otherwise be open to legal attack because of directors' interests, or for any other reason.

E. In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation; subject, nevertheless, to the provisions of the statutes of Delaware, of this Certificate of Incorporation, and to any Bylaws from time to time made by the stockholders; provided, however, that no Bylaw so made shall invalidate any prior act of the directors which would have been valid if such Bylaw had not been made.

EIGHTH: LIMITATION OF LIABILITY AND INDEMNIFICATION

A. Limitation of Personal Liability. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the GCL, or (4) for any transaction from which the director derived an improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. Any repeal or modification of this paragraph A by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation with respect to events occurring prior to the time of such repeal or modification.

B. Indemnification. The Corporation shall indemnify, to the fullest extent authorized or permitted by the DGCL, as now or hereafter in effect, any director or officer of the Corporation who was or is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, trustee or employee of another corporation, partnership, joint venture, trust or other enterprise, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of such person's heirs, executors and personal and legal representatives. The right to indemnification conferred by this Paragraph B shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition, provided that such director or officer presents to the Corporation a written undertaking to repay such amount if it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation under this Article EIGHTH or otherwise. Notwithstanding the foregoing, except for proceedings to enforce any director's or officer's rights to indemnification or to advancement of expenses, the Corporation shall not be obligated to indemnify or advance expenses to any director or officer (or such director's or officer's heirs, executors or personal or legal representatives) in connection with any proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized by the Board of Directors.

C. Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL.

D. Non-Exclusivity of Rights. The rights and authority conferred in this Article EIGHTH shall neither be exclusive of, nor be deemed in limitation of, any rights to which any person may otherwise be or become entitled or permitted under this Certificate of Incorporation, the Bylaws, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

E. Persons Other Than Directors and Officers. This Article EIGHTH shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to, or to purchase and maintain insurance on behalf of, persons other than those persons described in the first sentence of Paragraph B of Article EIGHTH or to advance expenses to persons other than directors and officers of the Corporation.

F. Effect of Modifications. Any amendment, repeal or modification of any provision contained in this Article EIGHTH shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors or officers) and shall not adversely affect any right or protection of any current or former director or officer of the Corporation existing at the time of such amendment, repeal or modification with respect to any acts or omissions occurring prior to such amendment, repeal or modification.

NINTH: STOCKHOLDERS

A. Special Meetings. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to call a special meeting of the holders of such series, special meetings of the stockholders of the Corporation may be called only by the Chairman of the Board of Directors, the Chief Executive Officer of the Corporation or the Board of Directors. The ability of the stockholders to call a special meeting of the stockholders is hereby specifically denied.

B. Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner and to the extent provided in the Bylaws.

C. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

TENTH: FORUM FOR CERTAIN ACTIONS

A. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the GCL, this Certificate of Incorporation or the Corporation's Bylaws, or (iv) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware (or if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware, or if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.

B. If any action the subject matter of which is within the scope of Section A immediately above is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce paragraph A immediately above (an "FSC Enforcement Action") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

C. Notwithstanding the foregoing, Section 27 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act") creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Section 22 of the Securities Act of 1933, as amended (the "Securities Act") creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. As a result, the exclusive forum provision set forth in this Article TENTH will not apply to suits brought to enforce any duty or liability created by the Exchange Act, the Securities Act, or any other claim for which the federal courts have exclusive jurisdiction. Stockholders cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

D. If any provision or provisions of this Article TENTH shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article TENTH (including, without limitation, each portion of any sentence of this Article TENTH containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article TENTH.

ELEVENTH: AMENDMENT

A. Amendment of Certificate of Incorporation. The Corporation reserves the right to amend, alter or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by this Certificate of Incorporation and the DGCL, and all rights, preferences and privileges herein conferred upon stockholders of the Corporation by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article ELEVENTH. In addition to any other vote that may be required by law, applicable stock exchange rule or the terms of any series of Preferred Stock, the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal or adopt any provision of this Certificate of Incorporation. Notwithstanding any other provision of this Certificate of Incorporation, and in addition to any other vote that may be required by law, applicable stock exchange rule or the terms of any series of Preferred Stock, the affirmative vote of the holders of at least 75% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal or adopt any provision of this Certificate of Incorporation inconsistent with the purpose and intent of Article FIFTH, Article SIXTH, Article SEVENTH, Article EIGHTH, Article NINTH, Article TENTH or this Article ELEVENTH (including, without limitation, any such Article as renumbered as a result of any amendment, alteration, repeal or adoption of any other Article).

B. Amendment of Bylaws. In furtherance and not in limitation of the powers conferred by the DGCL, the Board of Directors is expressly authorized to adopt, amend, alter or repeal the Bylaws. The Bylaws may also be adopted, amended, altered or repealed by the stockholders of the Corporation by the affirmative vote of the holders of at least 75% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

TWELFTH: Section 203. The Corporation will be governed by Section 203 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed as of the 16th day of December, 2020.

/s/ Ophir Sternberg

Ophir Sternberg, Chairman of the Board and
Chief Executive Officer

Attested to:

/s/ Ross Goldstein

Ross Goldstein, Secretary

AMENDED AND RESTATED BY LAWS**OF****BURGERFI INTERNATIONAL, INC. F/K/A OPES ACQUISITION CORP.****ARTICLE I**
OFFICES

1.1 Registered Office. The registered office of BurgerFi International, Inc. fka Opes Acquisition Corp. (the "Corporation") in the State of Delaware shall be established and maintained at 1013 Centre Road, Suite 403-B, Wilmington, Delaware 19805, County of New Castle and Vcorp Services, LLC shall be the registered agent of the corporation in charge thereof.

1.2 Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the board of directors of the Corporation (the "Board of Directors") may from time to time determine or the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

2.1 Place of Meetings. All meetings of the stockholders shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

2.2 Annual Meetings. The annual meeting of stockholders shall be held on such date and at such time as may be fixed by the Board of Directors and stated in the notice of the meeting, for the purpose of electing directors and for the transaction of only such other business as is properly brought before the meeting in accordance with these Bylaws (the "Bylaws").

Written notice of an annual meeting stating the place, date and hour of the meeting, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the annual meeting.

To be properly brought before the annual meeting, business must be either (i) specified in the notice of annual meeting (or any supplement or amendment thereto) given by or at the direction of the Board of Directors, (ii) otherwise brought before the annual meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the annual meeting by a stockholder. In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the meeting; provided, however, that in the event that less than seventy (70) days' notice or prior public disclosure of the date of the annual meeting is given or made to stockholders, notice by a stockholder, to be timely, must be received no later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made, whichever first occurs. A stockholder's notice to the Secretary shall set forth (a) as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, and (ii) any material interest of the stockholder in such business, and (b) as to the stockholder giving the notice (i) the name and record address of the stockholder and (ii) the class, series and number of shares of capital stock of the Corporation which are beneficially owned by the stockholder. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set forth in this Article II, Section 2. The officer of the Corporation presiding at an annual meeting shall, if the facts warrant, determine and declare to the annual meeting that business was not properly brought before the annual meeting in accordance with the provisions of this Article II, Section 2, and if such officer should so determine, such officer shall so declare to the annual meeting and any such business not properly brought before the meeting shall not be transacted.

2.3 Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), may only be called by a majority of the entire Board of Directors, or the President or the Chairman, and shall be called by the Secretary at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

Unless otherwise provided by law, written notice of a special meeting of stockholders, stating the time, place and purpose or purposes thereof, shall be given to each stockholder entitled to vote at such meeting, not less than ten (10) or more than sixty (60) days before the date fixed for the meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

2.4 Quorum. The holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the holders of a majority of the votes entitled to be cast by the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote at the meeting.

2.5 Organization. The Chairman of the Board of Directors shall act as chairman of meetings of the stockholders. The Board of Directors may designate any other officer or director of the Corporation to act as chairman of any meeting in the absence of the Chairman of the Board of Directors, and the Board of Directors may further provide for determining who shall act as chairman of any stockholders meeting in the absence of the Chairman of the Board of Directors and such designee.

The Secretary of the Corporation shall act as secretary of all meetings of the stockholders, but in the absence of the Secretary the presiding officer may appoint any other person to act as secretary of any meeting.

2.6 Voting. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, any question (other than the election of directors) brought before any meeting of stockholders shall be decided by the vote of the holders of a majority of the stock represented and entitled to vote thereat. At all meetings of stockholders for the election of directors, a plurality of the votes cast shall be sufficient to elect. Each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote thereat held by such stockholder, unless otherwise provided by the Certificate of Incorporation. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize any person or persons to act for him by proxy. All proxies shall be executed in writing and shall be filed with the Secretary of the Corporation not later than the day on which exercised. No proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in his or her discretion, may require that any votes cast at such meeting shall be cast by written ballot.

2.7 No Stockholder Action by Written Consent. No action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting.

2.8 Voting List. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the election, either at a place within the city, town or village where the election is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where said meeting is to be held. The list shall be produced and kept at the time and place of election during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present.

2.9 Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 8 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

2.10 Adjournment. Any meeting of the stockholders, including one at which directors are to be elected, may be adjourned for such periods as the presiding officer of the meeting or the stockholders present in person or by proxy and entitled to vote shall direct.

2.11 Ratification. Any transaction questioned in any stockholders' derivative suit, or any other suit to enforce alleged rights of the Corporation or any of its stockholders, on the ground of lack of authority, defective or irregular execution, adverse interest of any director, officer or stockholder, nondisclosure, miscomputation or the application of improper principles or practices of accounting may be approved, ratified and confirmed before or after judgment by the Board of Directors or by the holders of Common Stock and, if so approved, ratified or confirmed, shall have the same force and effect as if the questioned transaction had been originally duly authorized, and said approval, ratification or confirmation shall be binding upon the Corporation and all of its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

2.12 Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(a) participate in a meeting of stockholders; and

(b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication,

provided that

(i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder;

(ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

(iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

2.13 Inspectors. The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (b) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and (e) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

ARTICLE III
DIRECTORS

3.1 Powers; Number; Qualifications. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by the DGCL or the Certificate of Incorporation directed or required to be exercised or done by the stockholders. The number of directors which shall constitute the Board of Directors shall be not less than one (1) nor more than nine (9). The exact number of directors shall be fixed from time to time, within the limits specified in this Article III Section 1 or in the Certificate of Incorporation, by resolution of the Board of Directors. Directors need not be stockholders of the Corporation. The Board may be divided into Classes as more fully described in the Certificate of Incorporation.

3.2 Election; Term of Office; Resignation; Removal; Vacancies. Each director shall hold office until the next annual meeting of stockholders at which his or her Class stands for election or until such director's earlier resignation, removal from office, death or incapacity. Unless otherwise provided in the Certificate of Incorporation, vacancies and newly created directorships resulting from any increase in the authorized number of directors or from any other cause may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director and each director so chosen shall hold office until the next election of the class for which such director shall have been chosen, and until his or her successor shall be elected and qualified, or until such director's earlier resignation, removal from office, death or incapacity.

3.3 Nominations. Nominations of persons for election to the Board of Directors of the Corporation at a meeting of stockholders of the Corporation may be made at such meeting by or at the direction of the Board of Directors, by any committee or persons appointed by the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Article III, Section 3. Such nominations by any stockholder shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the meeting; provided however, that in the event that less than seventy (70) days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder, to be timely, must be received no later than the close of business on the tenth (10th) day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made, whichever first occurs. Such stockholder's notice to the Secretary shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (a) the name, age, business address and residence address of the person, (b) the principal occupation or employment of the person, (c) the class and number of shares of capital stock of the Corporation which are beneficially owned by the person, and (d) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to the Rules and Regulations of the Securities and Exchange Commission under Section 14 of the Securities Exchange Act of 1934, as amended, and (ii) as to the stockholder giving the notice (a) the name and record address of the stockholder and (b) the class and number of shares of capital stock of the Corporation which are beneficially owned by the stockholder. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth herein. The officer of the Corporation presiding at an annual meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

3.4 Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware. The first meeting of each newly elected Board of Directors shall be held immediately after and at the same place as the meeting of the stockholders at which it is elected and no notice of such meeting shall be necessary to the newly elected directors in order to legally constitute the meeting, provided a quorum shall be present. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the President or a majority of the entire Board of Directors. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone, facsimile, telegram or e-mail on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

3.5 Quorum. Except as may be otherwise specifically provided by law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board of Directors or any committee thereof, a majority of the entire Board of Directors or such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors or of any committee thereof, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

3.6 Organization of Meetings. The Board of Directors shall elect one of its members to be Chairman of the Board of Directors. The Chairman of the Board of Directors shall lead the Board of Directors in fulfilling its responsibilities as set forth in these By-Laws, including its responsibility to oversee the performance of the Corporation, and shall determine the agenda and perform all other duties and exercise all other powers which are or from time to time may be delegated to him or her by the Board of Directors.

Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors, or in his or her absence, by the President, or in the absence of the Chairman of the Board of Directors and the President by such other person as the Board of Directors may designate or the members present may select.

3.7 Actions of Board of Directors Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of the Board of Directors or such committee.

3.8 Removal of Directors by Stockholders. The entire Board of Directors or any individual Director may be removed from office with or without cause by a majority vote of the holders of the outstanding shares then entitled to vote at an election of directors. Notwithstanding the foregoing, if the Corporation's board is classified, stockholders may effect such removal only for cause. In case the Board of Directors or any one or more Directors be so removed, new Directors may be elected at the same time for the unexpired portion of the full term of the Director or Directors so removed.

3.9 Resignations. Any Director may resign at any time by submitting his or her written resignation to the Board of Directors or Secretary of the Corporation. Such resignation shall take effect at the time of its receipt by the Corporation unless another time be fixed in the resignation, in which case it shall become effective at the time so fixed. The acceptance of a resignation shall not be required to make it effective.

3.10 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided by law and in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution or amending the Bylaws of the Corporation; and, unless the resolution expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

3.11 Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed amount (in cash or other form of consideration) for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

3.12 Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if (i) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

3.13 Meetings by Means of Conference Telephone. Members of the Board of Directors or any committee designed by the Board of Directors may participate in a meeting of the Board of Directors or of a committee of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

ARTICLE IV **OFFICERS**

4.1 General. The officers of the Corporation shall be elected by the Board of Directors and may consist of: a Chairman of the Board, including an Executive Chairman of the Board when so designated, Vice Chairman of the Board, Chief Executive Officer, President, Chief Financial Officer, Chief Legal Officer or General Counsel, Secretary and Treasurer. The Board of Directors, in its discretion, may also elect one or more Vice Presidents (including Executive Vice Presidents and Senior Vice Presidents), Assistant Secretaries, Assistant Treasurers, a Controller and such other officers as in the judgment of the Board of Directors may be necessary or desirable. Any number of offices may be held by the same person and more than one person may hold the same office, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders of the Corporation, nor need such officers be directors of the Corporation.

4.2 Election. The Board of Directors at its first meeting held after each annual meeting of stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Except as otherwise provided in this Article IV, any officer elected by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers who are directors of the Corporation shall be fixed by the Board of Directors.

4.3 Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President, and any such officer may, in the name and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and powers incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

4.4 Executive Chairman of the Board. The Executive Chairman is appointed by the Board of Directors. The primary functions of the Executive Chairman are to provide leadership and direction to the Board, facilitate the operations and deliberations of the Board and the satisfaction of the Board's functions and responsibilities under its mandate, and assume responsibility for the strategic initiatives outlined below. In addition to the responsibilities applicable to all other directors, and subject to the authority and oversight of the Board, the Executive Chairman's responsibilities shall include:

(a) Strategic Initiatives, including (1) Working with the Board and the Corporation's Chief Executive Officer ("CEO") to develop the strategy for the Corporation's future growth; (2) Working with the CEO to identify opportunities for value-enhancing strategic initiatives including acquisitions, joint ventures, and strategically important relationships, as well as the disposition from time to time of non-core assets, and communicating regularly with the CEO regarding the pursuit of such strategic initiatives; (3) Developing and maintaining the Corporation's relationships with future strategic partners whose capital, influence and knowledge could add significantly to the Corporation's value and its share price; (4) Working with members of the Corporation's Advisory Board and the Corporation's CEO to expand and deepen the Corporation's relationships with political leaders, industry leaders, private equity funds, investors and analysts, and other senior officials and stakeholders in entities of critical importance to the Corporation; and (5) Working with the CEO on critical issues related to government relationships and strategic alliances.

(b) Meetings, including (1) Scheduling Board meetings and setting the agenda for Board meetings; (2) Presiding over meetings of the Board and assuming principal responsibility for the Board's operation and functioning; (3) Ensuring that sufficient time is allotted during Board meetings for effective discussion of agenda items and key issues and concerns and fostering an environment in which directors ask questions and express their viewpoints; and (4) Providing opportunities for independent directors to meet at each Board meeting in the absence of non-independent directors.

(c) Leadership, including (1) Ensuring that Board functions are effectively carried out and, where functions have been delegated to Board Committees, that the results are reported to the Board; (2) Ensuring that the interests of various stakeholders are considered by the Board; and (3) Taking all reasonable steps to ensure that Board decisions are implemented.

(d) Communication, including (1) Debriefing Board on decisions reached and suggestions made at meetings or in camera sessions of independent directors; and (2) Facilitating communication between management and the independent directors.

(e) Relationship with Management, including (1) Acting as principal liaison between the directors and the CEO and taking all reasonable steps to ensure that the expectations of the Board towards management are clearly expressed, understood and respected; (2) Working with the CEO to ensure the Corporation's operations are conducted in a best-in-class manner and that the Corporation has strong, productive relationships with shareholders, analysts, and other stakeholders; (3) Working with the CEO to ensure management strategies, plans and performance are appropriately represented to the Board; and (4) Conducting an annual performance evaluation of the CEO with input from the Board.

4.4 Chief Executive Officer. Subject to the provisions of these Bylaws and to the direction of the Executive Chairman and the Board of Directors, the Chief Executive Officer shall have ultimate authority for decisions relating to the general management and control of the affairs and business of the Corporation and shall perform such other duties and exercise such other powers which are or from time to time may be delegated to him or her by the Executive Chairman or the Board of Directors or these Bylaws, all in accordance with basic policies as established by and subject to the oversight of the Board of Directors.

4.5 President. At the request of the Executive Chairman, or in the absence of the Executive Chairman, the Chief Executive Officer, or in the absence of the Chief Executive Officer, or in the event of his or her inability or refusal to act, the President shall perform the duties of the Chief Executive Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon such office. The President shall perform such other duties and have such other powers as the Executive Chairman or the Board of Directors from time to time may prescribe.

4.6 Chief Financial Officer. The Chief Financial Officer shall have general supervision, direction and control of the financial affairs of the Corporation and shall perform such other duties and exercise such other powers which are or from time to time may be delegated to him or her by the Executive Chairman or the Board of Directors or these Bylaws, all in accordance with basic policies as established by and subject to the oversight of the Board of Directors. In the absence of a named Treasurer, the Chief Financial Officer shall also have the powers and duties of the Treasurer as hereinafter set forth and shall be authorized and empowered to sign as Treasurer in any case where such officer's signature is required.

4.7 Chief Legal Officer/General Counsel. The Chief Legal Officer or General Counsel shall have such powers and shall perform such duties as shall be assigned to him or her by the Executive Chairman, the Chief Executive Officer, or the Board of Directors.

4.8 Vice Presidents. At the request of the President or in the absence of the President, or in the event of his or her inability or refusal to act, the Vice President or the Vice Presidents if there is more than one (in the order designated by the Executive Chairman or the Board of Directors) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon such office. Each Vice President shall perform such other duties and have such other powers as the Executive Chairman or the Board of Directors from time to time may prescribe. If there be no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of such officer to act, shall perform the duties of such office, and when so acting, shall have all the powers of and be subject to all the restrictions upon such office.

4.9 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Executive Chairman or the Board of Directors or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, then any Assistant Secretary shall perform such actions. If there be no Assistant Secretary, then the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Executive Chairman or the Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

4.10 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Executive Chairman or the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Executive Chairman or the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Executive Chairman or the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Executive Chairman or the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

4.11 Assistant Secretaries. Except as may be otherwise provided in these Bylaws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Executive Chairman or the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of his or her disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

4.12 Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Executive Chairman or the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of his or her disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Executive Chairman or the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

4.13 Controller. The Controller shall establish and maintain the accounting records of the Corporation in accordance with generally accepted accounting principles applied on a consistent basis, maintain proper internal control of the assets of the Corporation and shall perform such other duties as the Executive Chairman or the Board of Directors, the President or any Vice President of the Corporation may prescribe.

4.14 Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Executive Chairman or the Board of Directors. The Executive Chairman or the Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

4.15 Vacancies. The Board of Directors shall have the power to fill any vacancies in any office occurring from whatever reason.

4.16 Resignations. Any officer may resign at any time by submitting his or her written resignation to the Corporation. Such resignation shall take effect at the time of its receipt by the Corporation, unless another time be fixed in the resignation, in which case it shall become effective at the time so fixed. The acceptance of a resignation shall not be required to make it effective.

4.17 Removal. Subject to the provisions of any employment agreement approved by the Board of Directors, any officer of the Corporation may be removed at any time, with or without cause, by the Board of Directors.

ARTICLE V CAPITAL STOCK

5.1 Form of Certificates. The shares of stock in the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be in uncertificated form. Stock certificates shall be in such forms as the Board of Directors may prescribe and signed by the Chairman of the Board, President or a Vice President and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation.

5.2 Signatures. Any or all of the signatures on a stock certificate may be a facsimile, including, but not limited to, signatures of officers of the Corporation and countersignatures of a transfer agent or registrar. In case an officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

5.3 Lost Certificates. The Board of Directors may direct a new stock certificate or certificates to be issued in place of any stock certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new stock certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

5.4 Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of certificated stock shall be made on the books of the Corporation only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be canceled before a new certificate shall be issued. Transfers of uncertificated stock shall be made on the books of the Corporation only by the person then registered on the books of the Corporation as the owner of such shares or by such person's attorney lawfully constituted in writing and written instruction to the Corporation containing such information as the Corporation or its agents may prescribe. No transfer of uncertificated stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred. The Corporation shall have no duty to inquire into adverse claims with respect to any stock transfer unless (a) the Corporation has received a written notification of an adverse claim at a time and in a manner which affords the Corporation a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered share certificate, in the case of certificated stock, or entry in the stock record books of the Corporation, in the case of uncertificated stock, and the notification identifies the claimant, the registered owner and the issue of which the share or shares is a part and provides an address for communications directed to the claimant; or (b) the Corporation has required and obtained, with respect to a fiduciary, a copy of a will, trust, indenture, articles of co-partnership, Bylaws or other controlling instruments, for a purpose other than to obtain appropriate evidence of the appointment or incumbency of the fiduciary, and such documents indicate, upon reasonable inspection, the existence of an adverse claim. The Corporation may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or, if there be no such address, at his or her residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either (a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or (b) an indemnity bond, sufficient in the Corporation's judgment to protect the Corporation and any transfer agent, registrar or other agent of the Corporation involved from any loss which it or they may suffer by complying with the adverse claim, is filed with the Corporation.

5.5 Fixing Record Date. In order that the Corporation may determine the stockholders entitled to notice or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than ten (10) days after the date upon which the resolution fixing the record date of action with a meeting is adopted by the Board of Directors, nor more than sixty (60) days prior to any other action. If no record date is fixed:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the first date on which a signed written consent is delivered to the Corporation.

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

5.6 Registered Stockholders. Prior to due presentment for transfer of any share or shares, the Corporation shall treat the registered owner thereof as the person exclusively entitled to vote, to receive notifications and to all other benefits of ownership with respect to such share or shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State Delaware.

5.7 List of Stockholders Entitled To Vote. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting, or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 5.7 or to vote in person or by proxy at any meeting of stockholders.

ARTICLE VI

NOTICES

6.1 Form of Notice. Notices to directors and stockholders other than notices to directors of special meetings of the board of Directors which may be given by any means stated in Article III, Section 4, shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the Corporation. Notice by mail shall be deemed to be given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL. Notice to directors may also be given by telegram or electronic transmission.

6.2 Waiver of Notice. Whenever any notice is required to be given under the provisions of law or the Certificate of Incorporation or by these Bylaws of the Corporation, a written waiver, signed by the person or persons entitled to notice, or waiver by electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular, or special meeting of the stockholders, Directors, or members of a committee of Directors need be specified in any written waiver of notice unless so required by the Certificate of Incorporation.

ARTICLE VII
INDEMNIFICATION OF DIRECTORS AND OFFICERS

7.1 The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

7.2 The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

7.3 To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 or 2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

7.4 Any indemnification under sections 1 or 2 of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in such section. Such determination shall be made:

- (a) By the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or
 - (b) If such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion,
- or
- (c) By the stockholders.

7.5 Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Section. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

7.6 Indemnification Not Exclusive.

(a) The provisions for indemnification to or the advancement of expenses and costs to any indemnitee under this Article VII, or the entitlement of any indemnitee to indemnification or advancement of expenses and costs under this Article VII, shall not limit or restrict in any way the power of the Corporation to indemnify or advance expenses and costs to such indemnitee in any other way permitted by law or be deemed exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any law, the Corporation's certificate of incorporation, other agreements or arrangements, vote of stockholders or disinterested directors or otherwise, both as to action in such indemnitee's capacity as an officer, director, employee or agent of the Corporation and as to action in any other capacity.

(b) Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnitee as a director and/or officer of the Corporation at the request of the indemnitee-related entities (as defined below), the Corporation shall be fully and primarily responsible for payments to the indemnitee in respect of indemnification or advancement of expenses in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article VII, irrespective of any right of recovery the indemnitee may have from the indemnitee-related entities. Under no circumstance shall the Corporation be entitled to any right of subrogation or contribution by the indemnitee-related entities, and no right of advancement or recovery the indemnitee may have from the indemnitee-related entities shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation hereunder. In the event that any of the indemnitee-related entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation, and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the indemnitee-related entities effectively to bring suit to enforce such rights. Each of the indemnitee-related entities shall be third-party beneficiaries with respect to this Section 7.6(b) and entitled to enforce this Section 7.6(b).

For purposes of this Section 7.6(b), the following terms shall have the following meanings:

(1) The term "indemnitee-related entities" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnitee has agreed, on behalf of the Corporation or at the Corporation's request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation (other than as a result of obligations under an insurance policy).

(2) The term "jointly indemnifiable claims" shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnitee shall be entitled to indemnification or advancement of expenses from both the Corporation and any indemnity-related entity pursuant to the DGCL, any agreement and any certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the indemnitee-related entities, as applicable.

7.7 The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article.

7.8 For purposes of this Article, references to “the Corporation” shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article with respect to the resulting or surviving Corporation as he would have with respect to such constituent Corporation of its separate existence had continued.

7.9 For purposes of this Article, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article.

7.10 The indemnification and advancement of expenses provided by, or granted pursuant to, this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

7.11 No director or officer of the Corporation shall be personally liable to the Corporation or to any stockholder of the Corporation for monetary damages for breach of fiduciary duty as a director or officer, provided that this provision shall not limit the liability of a director or officer (i) for any breach of the director’s or the officer’s duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of Delaware, or (iv) for any transaction from which the director or officer derived an improper personal benefit.

7.12 Right of Indemnitee to Bring Suit. If a claim for indemnification or advancement of expenses is not paid in full within ninety (90) days after receipt by the Corporation of a request therefor, the indemnitee shall be entitled to an adjudication in any court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses, as applicable. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense (including attorneys’ fees, costs and expenses) of prosecuting or defending such suit. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or the Corporation’s stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or the Corporation’s stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Further, the Corporation shall be entitled to recover advanced expenses upon a final adjudication that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the Corporation.

7.13 Nature of Rights. The rights conferred upon indemnitees in this Article VII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal. In addition, the rights conferred upon indemnitees in this Article VII shall extend to any broader indemnification rights permitted by any amendment to the DGCL.

ARTICLE VIII GENERAL PROVISIONS

8.1 Reliance on Books and Records. Each Director, each member of any committee designated by the Board of Directors, and each officer of the Corporation, shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, including reports made to the Corporation by an independent certified public accountant, or by an appraiser selected with reasonable care.

8.2 Maintenance and Inspection of Records. The Corporation shall, either at its principal executive office or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these by-laws, as may be amended to date, minute books, accounting books and other records.

Any such records maintained by the Corporation may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to the provisions of the Delaware General Corporation Law. When records are kept in such manner, a clearly legible paper form produced from or by means of the information storage device or method shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper form accurately portrays the record.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal executive office.

8.3 Inspection by Directors. Any director shall have the right to examine the Corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director.

8.4 Dividends. Subject to the provisions of the Certificate of Incorporation, if any, dividends upon the capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Directors shall think conducive to the interest of the Corporation, and the Directors may modify or abolish any such reserve in the manner in which it was created.

8.5 Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other persons as the Board of Directors may from time to time designate.

8.6 Fiscal Year. The fiscal year of the Corporation shall be as determined by the Board of Directors. If the Board of Directors shall fail to do so, the President shall fix the fiscal year.

8.7 Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

8.8 Amendments. The original or other Bylaws may be adopted, amended or repealed by the stockholders entitled to vote thereon at any regular or special meeting or, if the Certificate of Incorporation so provides, by the Board of Directors. The fact that such power has been so conferred upon the Board of Directors shall not divest the stockholders of the power nor limit their power to adopt, amend or repeal Bylaws. The Board of Directors is authorized to make, alter, amend, repeal and rescind, in whole or in part, these Bylaws without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or the Certificate of Incorporation. Notwithstanding any other provisions of these Bylaws or any provision of law that might otherwise permit a lesser vote of the stockholders, in addition to any vote of the holders of any class or series of capital stock of the Corporation required by the Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock (as defined in the Certificate of Incorporation), these Bylaws or applicable law, the affirmative vote of the holders of at least seventy-five percent (75%) in voting power of all the then outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to make, alter, amend, repeal or rescind, in whole or in part, any provision of these Bylaws (including this Section 8.8) or to adopt any provision inconsistent herewith.

8.9 Interpretation of Bylaws. All words, terms and provisions of these Bylaws shall be interpreted and defined by and in accordance with the General Corporation Law of the State of Delaware, as amended, and as amended from time to time hereafter. For purposes of these Bylaws, unless the context otherwise requires, (i) references to "Articles" and "Sections" refer to articles and sections of these Bylaws and (ii) the term "include" or "includes" means includes, without limitation, and "including" means including, without limitation. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

8.10 Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Amended and Restated Certificate of Incorporation, the DGCL or any other applicable law, such provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

8.11 Electronic Transmission. For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”) is entered into as of the 16 day of December, 2020, by and among the undersigned holders set forth on **Exhibit A** (each a “**Holder**,” collectively, the “**Holders**”) and BurgerFi International, Inc., a Delaware corporation (f/k/a Opes Acquisition Corp.) (the “**Company**”).

Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Membership Interest Purchase Agreement, dated as of June 29, 2020 (the “**Purchase Agreement**”), by and among the Company, Burger Fi International, LLC, a Delaware limited liability company (“**BurgerFi LLC**”), the members of BurgerFi LLC (the “**Members**”), and BurgerFi Holdings, LLC, a Delaware limited liability company (the “**Members’ Representative**”).

WHEREAS, the Holders and the Company desire to enter into this Agreement to provide the Holders with certain rights relating to the registration of the Registrable Securities (as defined below);

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS.** The following capitalized terms used herein have the following meanings:

“**Agreement**” means this Agreement, as amended, restated, supplemented, or otherwise modified from time to time.

“**Closing Date**” means, the Closing Date described in the Purchase Agreement.

“**Commission**” means the Securities and Exchange Commission, or any other Federal agency then administering the Securities Act or the Exchange Act.

“**Common Stock**” means common stock of the Company, par value \$0.0001 per share.

“**Demand Registration**” is defined in Section 2.2.1.

“**Demand Holder**” is defined in Section 2.2.1.

“**Effectiveness Date**” means, with respect to the Initial Registration Statement, the 90th calendar day following the Filing Date (or in the event the Registration Statement receives a “full review” by the Commission, the 120th day following the Filing Date) and with respect to any additional Registration Statements which may be required pursuant to Sections 2.2 and 2.3, the 90th calendar day following the date on which an additional Registration Statement is required to be filed hereunder; provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, or the Company is eligible to register the Registrable Securities on Form S-3, the Effectiveness Date as to such Registration Statement shall be the earlier of (i) the fifth Business Day following the date on which the Company is so notified if such date precedes the dates otherwise required above or (ii) the filing date if the Registration Statement is automatically effective; provided, further, that, if the Effectiveness Date falls on a Saturday, Sunday or any other day which shall be a legal holiday or a day on which the Commission is authorized or required by law or other government actions to close, the Effectiveness Date shall be the following Business Day.

“**Effectiveness Period**” is defined in Section 2.1.1.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

“**Filing Date**” means, with respect to the Initial Registration Statement, the 30th calendar day following the Closing Date and, with respect to any additional Registration Statements which may be required pursuant to 2.1.2 the earliest practical date on which the Company is permitted by Commission Guidance to file such additional Registration Statement related to the Registrable Securities; provided, however, that, if the Filing Date falls on a Saturday, Sunday or any other day which shall be a legal holiday or a day on which the Commission is authorized or required by law or other government actions to close, the Filing Date shall be the following Business Day.

“**Form S-3**” is defined in Section 2.4.

“**Forward Purchase Securities**” are the 3,000,000 shares of Common Stock and 3,000,000 shares of Common Stock underlying warrants that are part of the 3,000,000 units issued to Lion Point and Lionheart Equities, LLC, in the aggregate, under the forward purchase contracts

“**Holder**” is defined in the preamble to this Agreement.

“**Holder Indemnified Party**” is defined in Section 4.1.

“**Indemnified Party**” is defined in Section 4.3.

“**Indemnifying Party**” is defined in Section 4.3.

“**Initial Registration Statement**” means the Registration Statement required to be filed pursuant to Section 2.1.

“**IPO**” is defined as the initial public offering of the Company pursuant to a prospectus dated March 13, 2018.

“IPO Registrable Securities” is defined as shares identified as having registration rights in the Company’s registration statement on Form S-1 (File No. 333-223106) including, (i) 2,875,000 founder’s shares issued and outstanding on the date of the IPO, (ii) 445,000 shares of Common Stock and 445,000 shares of Common Stock underlying warrants that are part of the 445,000 units issued in the private placement consummated at the time of the IPO, (iii) Forward Purchase Securities, (iv) 750,000 shares of Common Stock and 750,000 shares of Common Stock underlying the Unit Purchase Option, and (vi) 11,500,000 shares of Common Stock underlying the warrants issued in the IPO.

“Lion Point” is defined as Lion Point Capital, LLC.

“Lion Point Securities” means (i) 662,500 founder’s shares held by Lion Point, (ii) 83,438 shares of Common Stock and 83,438 shares of Common Stock underlying warrants that are part of the 83,438 units held by Lion Point, and (iii) 2,000,000 shares of Common Stock and 2,000,000 shares of Common Stock underlying warrants that are part of the Forward Purchase Units are held by Lion Point.

“Maximum Number of Shares” is defined in Section 2.2.4.

“Notices” is defined in Section 6.3.

“Piggy-Back Registration” is defined in Section 2.3.1.

“Plan of Distribution” is defined in Section 2.1.1.

“Pro Rata” is defined in Section 2.1.2.

“Register,” “Registered” and **“Registration”** mean a registration effected by preparing and filing a registration statement or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

“Registrable Securities” means (i) 4,716,981 shares of Common Stock issued to the Members as the Closing Payment Shares, (ii) 1,886,792 shares of Common Stock issuable to the Members, as part of the Cash Merger Consideration, (iii) to the extent earned in accordance with the Purchase Agreement, up to 9,356,459 shares of Common Stock issuable in connection with the Earnout, (iv) the shares of Common Stock issuable to investors in the private placement offerings conducted by the Company prior to the closing of the business combination pursuant to the Purchase Agreement, and (v) the IPO Registrable Securities. Registrable Securities shall also include any securities of the Company issued as a dividend or other distribution with respect to, in exchange for or in replacement of each of the shares of Common Stock held by the Holder as set forth on **Exhibit A**. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when: (a) a Registration Statement with respect to the sale of all of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement; (b) such securities shall have been otherwise transferred, new certificates for them not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of them shall not require registration under the Securities Act; (c) such securities shall have ceased to be outstanding, or (d) the Registrable Securities are freely saleable under Rule 144 without volume limitations.

“**Registration Statement**” means a registration statement filed by the Company with the Commission in compliance with the Securities Act and the rules and regulations promulgated thereunder, for a public offering and sale of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities (other than a registration statement on Form S-4 or Form S-8, or their successors, or any registration statement covering only securities proposed to be issued in exchange for securities or assets of another entity).

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

“**Underwriter**” means, solely for the purposes of this Agreement, a securities dealer who purchases any Registrable Securities as principal in an underwritten offering and not as part of such dealer’s market-making activities.

“**Unit Purchase Option**” means the unit purchase option to purchase 750,000 units of the Company issued to EarlyBirdCapital, Inc. and its designees in connection with the IPO.

2. REGISTRATION RIGHTS.

2.1 Shelf Registration.

2.1.1 On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all or such maximum portion of the Registrable Securities as permitted by SEC Guidance (provided that, the Company shall use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, the Manual of Publicly Available Telephone Interpretations D.29) that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-1 (except if the Company is then eligible to register for resale the Registrable Securities on Form S-3, such registration shall be on Form S-3 in accordance herewith (or any successor form to Form S-3, or any similar short-form Registration Statement)) and shall contain the “**Plan of Distribution**” attached hereto as Annex A. Subject to the terms of this Agreement, the Company shall use its commercially reasonable efforts to cause a Registration Statement to be declared effective under the Securities Act as promptly as practicable after the filing thereof, but in any event prior to the applicable Effectiveness Date, and shall use its commercially reasonable efforts to keep such Registration Statement continuously effective under the Securities Act until all Registrable Securities covered by such Registration Statement have been sold, or may be sold without volume or manner-of-sale restrictions pursuant to Rule 144, without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the “**Effectiveness Period**”). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. New York City time on a Business Day. The Company shall promptly notify the Holders by e-mail of the effectiveness of a Registration Statement on the same Business Day that the Company telephonically confirms effectiveness with the Commission. The Company shall, no later than the second Business Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424.

2.1.2 Notwithstanding any other provision of this Agreement, if any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), the number of Registrable Securities to be registered shall include (i) first, all of the Lion Point Securities, and (ii) second, unless otherwise directed in writing by the Holders (other than Lion Point) as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced on a pro rata basis based on the total number of Registrable Securities held by such other Holders (such proportion is referred to herein as “**Pro Rata**”), except that with respect to this subsection 2.1.2(ii), the reduction in the number of Registrable Securities to be registered on behalf of the Members shall not be reduced below 1,886,792 shares of Common Stock unless SEC Guidance dictates or the Commission’s Staff requests such reduction to facilitate declaring the Registration Statement effective. In the event of any further reductions, the Lion Point Securities will have priority registration over the Registrable Securities held by the other Holders. In the event of a reduction hereunder, the Company shall give the Holder at least five (5) Business Days prior written notice along with the calculations as to such Holder’s allotment. Promptly after such SEC Guidance is no longer applicable with respect to some or all of the remaining unregistered Registrable Securities, the Company shall file an additional Registration Statement in accordance with this Section 2 with respect to such shares.

2.1.3 Each Holder agrees to furnish to the Company a completed Selling Stockholder Questionnaire within ten (10) Business Days following the date of this Agreement, a form of which will be provided by the Company together with this Agreement. Each Holder further acknowledges and agrees that it shall not be entitled to be named as a selling security holder in the Registration Statement or use the Prospectus for offers and resales of Registrable Securities at any time, unless such Holder has returned to the Company a completed and signed Selling Stockholder Questionnaire. If a Holder of Registrable Securities returns a Selling Stockholder Questionnaire after the deadline specified in the previous sentence, the Company shall use its commercially reasonable efforts to take such actions as are required to name such Holder as a selling security holder in the Registration Statement or any pre-effective or post-effective amendment thereto and to include (to the extent not theretofore included) in the Registration Statement the Registrable Securities identified in such late Selling Stockholder Questionnaire; provided that the Company shall not be required to file an additional Registration Statement solely for such shares. Each Holder acknowledges and agrees that the information in the Selling Stockholder Questionnaire will be used by the Company in the preparation of the Registration Statement and hereby consents to the inclusion of such information in the Registration Statement.

2.2 Demand Registration.

2.2.1 Request for Registration. At any time and from time to time on or after the date of this Agreement, Lion Point may make a written demand for registration under the Securities Act of all or part of the Lion Point Securities, as the case may be (a “**Demand Registration**”). Any Demand Registration shall specify the number of shares of Lion Point Securities proposed to be sold and the intended method(s) of distribution thereof. The Company will notify all holders of Lion Point Securities of the demand, and each holder of Lion Point Securities who wishes to include all or a portion of such holder’s Lion Point Securities in the Demand Registration (each such holder including shares of Lion Point Securities in such registration, a “**Demanding Holder**”) shall so notify the Company within fifteen (15) days after the receipt by the holder of the notice from the Company. Upon any such request, the Demanding Holders shall be entitled to have their Lion Point Securities included in the Demand Registration, subject to Section 2.2.4. The Company shall not be obligated to effect more than two (2) Demand Registrations under this Section 2.2.1 in respect of all Lion Point Securities.

2.2.2 Effective Registration. A registration will not count as a Demand Registration until the Registration Statement filed with the Commission with respect to such Demand Registration has been declared effective and the Company has complied with all of its obligations under this Agreement with respect thereto; provided, however, that if, after such Registration Statement has been declared effective, the offering of Lion Point Securities pursuant to a Demand Registration is interfered with by any stop order or injunction of the Commission or any other governmental agency or court, the Registration Statement with respect to such Demand Registration will be deemed not to have been declared effective, unless and until, (i) such stop order or injunction is removed, rescinded or otherwise terminated, and (ii) a majority-in-interest of the Demanding Holders thereafter elect to continue the offering; provided, further, that the Company shall not be obligated to file a second Registration Statement until a Registration Statement that has been filed is counted as a Demand Registration or is terminated.

2.2.3 Underwritten Offering. If a majority-in-interest of the Demanding Holders so elect and such holders so advise the Company as part of their written demand for a Demand Registration, the offering of such Lion Point Securities pursuant to such Demand Registration shall be in the form of an underwritten offering. In such event, the right of any holder to include its Lion Point Securities in such registration shall be conditioned upon such holder's participation in such underwriting and the inclusion of such holder's Lion Point Securities in the underwriting to the extent provided herein. All Demanding Holders proposing to distribute their Lion Point Securities through such underwriting shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters selected for such underwriting by a majority-in-interest of the holders initiating the Demand Registration.

2.2.4 Reduction of Offering. If the managing Underwriter or Underwriters for a Demand Registration that is to be an underwritten offering advises the Company and the Demanding Holders in writing that the dollar amount or number of shares of Registrable Securities which the Demanding Holders desire to sell, taken together with all other shares of Common Stock or other securities which the Company desires to sell and the shares of Common Stock, if any, as to which registration has been requested pursuant to written contractual piggy-back registration rights held by the other Holders who desire to sell, exceeds the maximum dollar amount or maximum number of shares that can be sold in such offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of shares, as applicable, the "**Maximum Number of Shares**"), then the Company shall include in such registration: (i) first, the Lion Point Securities as to which Demand Registration has been requested by the Demanding Holders (pro rata in accordance with the number of shares that each such Person has requested be included in such registration, regardless of the number of shares held by each such Person that can be sold without exceeding the Maximum Number of Shares); (ii) second, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i), the Registrable Securities as to which "piggy-back" registration under Section 2.3.1 has been requested by the Holders, Pro Rata, that can be sold without exceeding the Maximum Number of Shares; (iii) third, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i) and (ii), the shares of Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Shares; and (iv) fourth, to the extent that the Maximum Number of Shares have not been reached under the foregoing clauses (i), (ii) and (iii), the shares of Common Stock or other securities for the account of other persons that the Company is obligated to register pursuant to written contractual arrangements with such persons and that can be sold without exceeding the Maximum Number of Shares.

2.2.5 Withdrawal. If a majority-in-interest of the Demanding Holders disapprove of the terms of any underwriting or are not entitled to include all of their Lion Point Securities in any offering, such majority-in-interest of the Demanding Holders may elect to withdraw from such offering by giving written notice to the Company and the Underwriter or Underwriters of their request to withdraw prior to the effectiveness of the Registration Statement filed with the Commission with respect to such Demand Registration. If the majority-in-interest of the Demanding Holders withdraws from a proposed offering relating to a Demand Registration, then such registration shall not count as a Demand Registration provided for in Section 2.2.

2.3 Piggy-Back Registration.

2.3.1 Piggy-Back Rights. If at any time on or after the date hereof the Company proposes to file a Registration Statement under the Securities Act with respect to an offering of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities, by the Company for its own account or for shareholders of the Company for their account (or by the Company and by shareholders of the Company including, without limitation, pursuant to Section 2.2), other than a Registration Statement (i) filed in connection with any employee stock option or other benefit plan, (ii) for an exchange offer or offering of securities solely to the Company's existing shareholders, (iii) for an offering of debt that is convertible into equity securities of the Company, (iv) for a dividend reinvestment plan, or (v) securities proposed to be issued in exchange for securities or assets of another entity, then the Company shall (x) give written notice of such proposed filing to the holders of Registrable Securities as soon as practicable but in no event less than ten (10) days before the anticipated filing date, which notice shall describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, of the offering, and (y) offer to the holders of Registrable Securities in such notice the opportunity to register the sale of such number of shares of Registrable Securities as such holders may request in writing within five (5) days following receipt of such notice (a "**Piggy-Back Registration**"). The Company shall cause such Registrable Securities to be included in such registration and shall use its best efforts to cause the managing Underwriter or Underwriters of a proposed underwritten offering to permit the Registrable Securities requested to be included in a Piggy-Back Registration on the same terms and conditions as any similar securities of the Company and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. All holders of Registrable Securities proposing to distribute their securities through a Piggy-Back Registration that involves an Underwriter or Underwriters shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters selected for such Piggy-Back Registration. Notwithstanding the provisions set forth in the immediately preceding sentences, the right to a Piggy-Back Registration set forth under this Section 2.3.1 with respect to the Registrable Securities shall terminate on such date the Registrable Securities may be sold without volume or manner-of-sale restrictions pursuant to Rule 144, and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect. .

2.3.2 Reduction of Offering. If the managing Underwriter or Underwriters for a Piggy-Back Registration that is to be an underwritten offering advises the Company and the holders of Registrable Securities in writing that the dollar amount or number of Common Stock which the Company desires to sell, taken together with the Common Stock, if any, as to which registration has been demanded pursuant to written contractual arrangements with persons other than the holders of Registrable Securities hereunder, the Registrable Securities as to which registration has been requested under this Section 2.3, and the Common Stock, if any, as to which registration has been requested pursuant to the written contractual piggy-back registration rights of other shareholders of the Company, exceeds the Maximum Number of Shares then if the registration is undertaken for the Company's account: (i) first, the Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Shares; (ii) second, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i), all of the Lion Point Securities; (iii) to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (i) and (ii), the Registrable Securities held by Holders other than Lion Point, as to which registration has been requested pursuant to this Section 2.3, Pro Rata, except that with respect to this subsection 2.3.2(iii), the reduction in the number of Registrable Securities to be registered on behalf of the Members shall not be reduced below 1,886,792 shares of Common Stock; and (iv) fourth, to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (i),(ii) and (iii) , the Common Stock or other securities for the account of other persons that the Company is obligated to register pursuant to written contractual piggy-back registration rights with such persons..

2.3.3 Withdrawal. Any holder of Registrable Securities may elect to withdraw such holder's request for inclusion of Registrable Securities in any Piggy-Back Registration by giving written notice to the Company of such request to withdraw prior to the effectiveness of the Registration Statement. The Company (whether on its own determination or as the result of a withdrawal by persons making a demand pursuant to written contractual obligations) may withdraw a Registration Statement at any time prior to the effectiveness of such Registration Statement. Notwithstanding any such withdrawal, the Company shall pay all expenses incurred by the holders of Registrable Securities in connection with such Piggy-Back Registration as provided in Section 3.3.

2.4 Registrations on Form S-3. The holders of Registrable Securities may at any time and from time to time, request in writing that the Company register the resale of any or all of such Registrable Securities on Form S-3 or any similar short-form registration which may be available at such time ("**Form S-3**"); provided, however, that the Company shall not be obligated to effect such request through an underwritten offering. Upon receipt of such written request, the Company will promptly give written notice of the proposed registration to all other holders of Registrable Securities, and, as soon as practicable thereafter, effect the registration of all or such portion of such holder's or holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities or other securities of the Company, if any, of any other holder or holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company; provided, however, that the Company shall not be obligated to effect any such registration pursuant to this Section 2.4: (i) if Form S-3 is not available for such offering; or (ii) if the holders of the Registrable Securities, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at any aggregate price to the public of less than \$500,000.

3. REGISTRATION PROCEDURES.

3.1 Filings; Information. Whenever the Company is required to effect the registration of any Registrable Securities pursuant to Section 2, the Company shall use its best efforts to effect the registration and sale of such Registrable Securities in accordance with the intended method(s) of distribution thereof as expeditiously as practicable, and in connection with any such request:

3.1.2 Copies. The Company shall, prior to filing a Registration Statement or prospectus, or any amendment or supplement thereto, furnish without charge to the holders of Registrable Securities included in such registration, and such holders' legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such Registration Statement (including each preliminary prospectus), and such other documents as the holders of Registrable Securities included in such registration or legal counsel for any such holders may request in order to facilitate the disposition of the Registrable Securities owned by such holders.

3.1.3 Amendments and Supplements. The Company shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and in compliance with the provisions of the Securities Act until all Registrable Securities and other securities covered by such Registration Statement have been disposed of in accordance with the intended method(s) of distribution set forth in such Registration Statement or such securities have been withdrawn.

3.1.4 Notification. After the filing of a Registration Statement, the Company shall promptly, and in no event more than two (2) business days after such filing, notify the holders of Registrable Securities included in such Registration Statement of such filing, and shall further notify such holders promptly and confirm such advice in writing in all events within two (2) business days of the occurrence of any of the following: (i) when such Registration Statement becomes effective; (ii) when any post-effective amendment to such Registration Statement becomes effective; (iii) the issuance or threatened issuance by the Commission of any stop order (and the Company shall take all actions required to prevent the entry of such stop order or to remove it if entered); and (iv) any request by the Commission for any amendment or supplement to such Registration Statement or any prospectus relating thereto or for additional information or of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of the securities covered by such Registration Statement, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and promptly make available to the holders of Registrable Securities included in such Registration Statement any such supplement or amendment; except that before filing with the Commission a Registration Statement or prospectus or any amendment or supplement thereto, including documents incorporated by reference, the Company shall furnish to the holders of Registrable Securities included in such Registration Statement and to the legal counsel for any such holders, copies of all such documents proposed to be filed sufficiently in advance of filing to provide such holders and legal counsel with a reasonable opportunity to review such documents and comment thereon, and the Company shall not file any Registration Statement or prospectus or amendment or supplement thereto, including documents incorporated by reference, to which such holders or their legal counsel shall object.

3.1.5 State Securities Laws Compliance. The Company shall use its best efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or “blue sky” laws of such jurisdictions in the United States as the holders of Registrable Securities included in such Registration Statement (in light of their intended Plan of Distribution) may request and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be necessary or advisable to enable the holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph or subject itself to taxation in any such jurisdiction.

3.1.6 Agreements for Disposition. The Company shall enter into customary agreements (including, if applicable, an underwriting agreement in customary form) and take such other actions as are reasonably required in order to expedite or facilitate the registration of such Registrable Securities. The representations, warranties and covenants of the Company in any underwriting agreement which are made to or for the benefit of any Underwriters, to the extent applicable, shall also be made to and for the benefit of the holders of Registrable Securities included in such registration statement. No holder of Registrable Securities included in such registration statement shall be required to make any representations or warranties in the underwriting agreement except, if applicable, with respect to such holder’s organization, good standing, authority, title to Registrable Securities, lack of conflict of such sale with such holder’s material agreements and organizational documents, and with respect to written information relating to such holder that such holder has furnished in writing expressly for inclusion in such Registration Statement.

3.1.7 Cooperation. The principal executive officer of the Company, the principal financial officer of the Company and all other officers and members of the management of the Company shall cooperate fully in any offering of Registrable Securities hereunder, which cooperation shall include, without limitation, the preparation of the Registration Statement with respect to such offering and all other offering materials and related documents, and participation in meetings with Underwriters, attorneys, accountants and potential investors.

3.1.8 Records. The Company shall make available for inspection by the holders of Registrable Securities included in such Registration Statement, any Underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other professional retained by any holder of Registrable Securities included in such Registration Statement or any Underwriter, all financial and other records, pertinent corporate documents and properties of the Company, as shall be necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply all information requested by any of them in connection with such Registration Statement.

3.1.9 Opinions and Comfort Letters. If the registration involves the registration of Registrable Securities in an underwritten offering upon request, the Company shall furnish to each holder of Registrable Securities included in any Registration Statement a signed counterpart, addressed to such holder, of (i) any opinion of counsel to the Company delivered to any Underwriter and (ii) any comfort letter from the Company's independent public accountants delivered to any Underwriter. In the event no legal opinion is delivered to any Underwriter, the Company shall furnish to each holder of Registrable Securities included in such Registration Statement, at any time that such holder elects to use a prospectus, an opinion of counsel to the Company to the effect that the Registration Statement containing such prospectus has been declared effective and that no stop order is in effect.

3.1.10 Earnings Statement. The Company shall comply with all applicable rules and regulations of the Commission and the Securities Act, and make available to its shareholders, as soon as practicable, an earnings statement covering a period of twelve (12) months, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

3.1.11 Listing. The Company shall use its best efforts to cause all Registrable Securities included in any registration to be listed on such exchanges or otherwise designated for trading in the same manner as similar securities issued by the Company are then listed or designated or, if no such similar securities are then listed or designated, in a manner satisfactory to the holders of a majority of the Registrable Securities included in such registration.

3.1.12 Road Show. If the registration involves the registration of Registrable Securities in an underwritten offering involving gross proceeds in excess of \$25,000,000, the Company shall use its commercially reasonable efforts to make available senior executives of the Company to participate in customary road show presentations that may be reasonably requested by the Underwriter in any underwritten offering.

3.2 Obligation to Suspend Use of the Prospectus. Upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3.1.4(iv), each holder of Registrable Securities included in any registration shall immediately discontinue disposition of such Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such holder receives the supplemented or amended prospectus contemplated by Section 3.1.4(iv), and, if so directed by the Company, each such holder will deliver to the Company all copies, other than permanent file copies then in such holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice.

3.3 Registration Expenses. The Company shall bear all costs and expenses incurred in connection with the filing of the Registration Statement(s) pursuant to Section 2.1 and Section 2.2, any Piggy-Back Registration pursuant to Section 2.3, and any registration on Form S-3 effected pursuant to Section 2.4, and all expenses incurred in performing or complying with its other obligations under this Agreement, whether or not the Registration Statement becomes effective, including, without limitation: (i) all registration and filing fees; (ii) fees and expenses of compliance with securities or "blue sky" laws (including fees and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities); (iii) printing expenses; (iv) the Company's internal expenses (including, without limitation, all salaries and expenses of its officers and employees); (v) the fees and expenses incurred in connection with the listing of the Registrable Securities as required by Section 3.1.11; (vi) Financial Industry Regulatory Authority fees; (vii) fees and disbursements of counsel for the Company and fees and expenses for independent certified public accountants retained by the Company (including the expenses or costs associated with the delivery of any opinions or comfort letters requested pursuant to Section 3.1.9); (viii) the reasonable fees and expenses of any special experts retained by the Company in connection with such registration and (ix) the reasonable fees and expenses of one legal counsel selected by the holders of a majority-in-interest of the Registrable Securities included in such registration. The Company shall have no obligation to pay any underwriting discounts or selling commissions attributable to the Registrable Securities being sold by the holders thereof, which underwriting discounts or selling commissions shall be borne by such holders. Additionally, in an underwritten offering, all selling shareholders and the Company shall bear the expenses of the Underwriter pro rata in proportion to the respective amount of shares each is selling in such offering.

3.4 Information. The holders of Registrable Securities shall provide such information as may reasonably be requested by the Company, or the managing Underwriter, if any, in connection with the preparation of any Registration Statement, including amendments and supplements thereto, in order to effect the registration of any Registrable Securities under the Securities Act pursuant to Section 2 and in connection with the Company's obligation to comply with Federal and applicable state securities laws.

4. INDEMNIFICATION AND CONTRIBUTION.

4.1 Indemnification by the Company. The Company agrees to indemnify and hold harmless each Holder and each other holder of Registrable Securities, and each of their respective officers, employees, affiliates, directors, partners, members, attorneys and agents, and each person, if any, who controls a Holder and each other holder of Registrable Securities (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) (each, a “**Holder Indemnified Party**”), from and against any expenses, losses, judgments, claims, damages or liabilities, whether joint or several, arising out of or based upon any untrue statement (or allegedly untrue statement) of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to such Registration Statement, or arising out of or based upon any omission (or alleged omission) to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of the Securities Act or any rule or regulation promulgated thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any such registration; and the Company shall promptly reimburse the Holder Indemnified Party for any legal and any other expenses reasonably incurred by such Holder Indemnified Party in connection with investigating and defending any such expense, loss, judgment, claim, damage, liability or action whether or not any such person is a party to any such claim or action and including any and all legal and other expenses incurred in giving testimony or furnishing documents in response to a subpoena or otherwise; provided, however, that the Company will not be liable in any such case to the extent that any such expense, loss, claim, damage or liability arises out of or is based upon any untrue statement or allegedly untrue statement or omission or alleged omission made in such Registration Statement, preliminary prospectus, final prospectus, or summary prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to the Company, in writing, by such selling holder expressly for use therein. The Company also shall indemnify any Underwriter of the Registrable Securities, their officers, affiliates, directors, partners, members and agents and each person who controls such Underwriter on substantially the same basis as that of the indemnification provided above in this Section 4.1.

4.2 Indemnification by Holders of Registrable Securities. Subject to the limitations set forth in Section 4.4.3 hereof, each selling holder of Registrable Securities will, in the event that any registration is being effected under the Securities Act pursuant to this Agreement of any Registrable Securities held by such selling holder, indemnify and hold harmless the Company, each of its directors and officers and each Underwriter (if any), and each other selling holder and each other person, if any, who controls another selling holder or such Underwriter within the meaning of the Securities Act, against any losses, claims, judgments, damages or liabilities, whether joint or several, insofar as such losses, claims, judgments, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or allegedly untrue statement of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arise out of or are based upon any omission or the alleged omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading, if the statement or omission was made in reliance upon and in conformity with information furnished in writing to the Company by such selling holder expressly for use therein, and shall reimburse the Company, its directors and officers, and each other selling holder or controlling person for any legal or other expenses reasonably incurred by any of them in connection with investigation or defending any such loss, claim, damage, liability or action. Each selling holder’s indemnification obligations hereunder shall be several and not joint and shall be limited to the amount of any net proceeds actually received by such selling holder.

4.3 Conduct of Indemnification Proceedings. Promptly after receipt by any person of any notice of any loss, claim, damage or liability or any action in respect of which indemnity may be sought pursuant to Section 4.1 or 4.2, such person (the "**Indemnified Party**") shall, if a claim in respect thereof is to be made against any other person for indemnification hereunder, notify such other person (the "**Indemnifying Party**") in writing of the loss, claim, judgment, damage, liability or action; provided, however, that the failure by the Indemnified Party to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which the Indemnifying Party may have to such Indemnified Party hereunder, except and solely to the extent the Indemnifying Party is actually prejudiced by such failure. If the Indemnified Party is seeking indemnification with respect to any claim or action brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in such claim or action, and, to the extent that it wishes, jointly with all other Indemnifying Parties, to assume control of the defense thereof with counsel satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume control of the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that in any action in which both the Indemnified Party and the Indemnifying Party are named as defendants, the Indemnified Party shall have the right to employ separate counsel (but no more than one such separate counsel) to represent the Indemnified Party and its controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Indemnified Party against the Indemnifying Party, with the fees and expenses of such counsel to be paid by such Indemnifying Party if, based upon the written advice of counsel of such Indemnified Party, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, consent to entry of judgment or effect any settlement of any claim or pending or threatened proceeding in respect of which the Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such judgment or settlement includes an unconditional release of such Indemnified Party from all liability arising out of such claim or proceeding.

4.4 Contribution.

4.4.1 If the indemnification provided for in the foregoing Sections 4.1, 4.2 and 4.3 is unavailable to any Indemnified Party in respect of any loss, claim, damage, liability or action referred to herein, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties and the Indemnifying Parties in connection with the actions or omissions which resulted in such loss, claim, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of any Indemnified Party and any Indemnifying Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such Indemnified Party or such Indemnifying Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

4.4.2 The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding Section 4.4.1.

4.4.3 The amount paid or payable by an Indemnified Party as a result of any loss, claim, damage, liability or action referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 4.4, no holder of Registrable Securities shall be required to contribute any amount in excess of the dollar amount of the net proceeds (after payment of any underwriting fees, discounts, commissions or taxes) actually received by such holder from the sale of Registrable Securities which gave rise to such contribution obligation. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

5. RULE 144.

5.1 Rule 144. The Company covenants that it shall file any reports required to be filed by it under the Securities Act and the Exchange Act and shall take such further action as the holders of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 under the Securities Act, as such Rules may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission.

6. MISCELLANEOUS.

6.1 Other Registration Rights. The Company represents and warrants that (a), except for the IPO Registrable Securities disclosed in the Company's registration statement on Form S-1 (File No. 333-223106), no person, other than the holders of the Registrable Securities, has any right to require the Company to register any of the Company's equity securities, or securities exercisable for or exchangeable into Company equity securities in any registration filed by the Company for the sale of equity securities for its own account or for the account of any other person and (b) neither the execution, delivery or performance by the Company of this Agreement does or will constitute a default under or breach of (with or without the giving of notice or the passage of time or both) or violate or give rise to any breach of any contract or agreement to which the Company is a party. From and after the date hereof, other than the existing rights provided to the holders of the Registrable Securities and the IPO Registrable Securities, the Company shall not grant to any person or entity any right to require the Company to register any of the Company's equity securities, or securities exercisable for or exchangeable into Company equity securities in any registration filed by the Company for the sale of equity securities for its own account or for the account of any other person without the consent, in writing, of the holders of the majority Registrable Securities.

6.2 Assignment; No Third Party Beneficiaries. This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part. This Agreement and the rights, duties and obligations of the holders of Registrable Securities hereunder may be freely assigned or delegated by such holder of Registrable Securities in conjunction with and to the extent of any transfer of Registrable Securities by any such holder. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties, to the permitted assigns of the Holders or holder of Registrable Securities or of any assignee of the Holders or holder of Registrable Securities. This Agreement is not intended to confer any rights or benefits on any persons that are not party hereto other than as expressly set forth in Article 4 and this Section 6.2.

6.3 Notices. All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") required or permitted to be given hereunder or which are given with respect to this Agreement shall be in writing and shall be personally served, delivered by reputable air courier service with charges prepaid, or transmitted by hand delivery, telegram, telex or facsimile, addressed as set forth below, or to such other address as such party shall have specified most recently by written notice. Notice shall be deemed given on the date of service or transmission if personally served or transmitted by telegram, telex or facsimile; provided, that if such service or transmission is not on a business day or is after normal business hours, then such notice shall be deemed given on the next business day. Notice otherwise sent as provided herein shall be deemed given on the next business day following timely delivery of such notice to a reputable air courier service with an order for next-day delivery.

To the Company:

105 U.S. HIGHWAY ONE
NORTH PALM BEACH, FL 33408
Attn:
Email:
Fax:

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

Lionheart Equities, LLC
4218 NE 2nd Avenue
Miami, Florida 33137
Attention: General Counsel
Email: notices@lheartequities.com

To a Holder, to the address set forth below such Holder's name on Exhibit A hereto.

6.4 Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible that is valid and enforceable.

6.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. This Agreement shall become effective upon delivery to each party of an executed counterpart or the earlier delivery to each party of original, photocopied, or electronically transmitted signature pages that together (but need not individually) bear the signatures of all other parties.

6.6 Entire Agreement. This Agreement (including all agreements entered into pursuant hereto and all certificates and instruments delivered pursuant hereto and thereto) constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written. Furthermore, this Agreement supersedes any and all other registration rights agreements between the Company and any other Holder.

6.7 Modifications and Amendments. No amendment, modification or termination of this Agreement shall be binding upon the Company unless executed in writing by the Company. No amendment, modification or termination of this Agreement shall be binding upon the holders of the Registrable Securities unless executed in writing by the holders of the majority Registrable Securities.

6.8 Titles and Headings. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

6.9 Waivers and Extensions. Any party to this Agreement may waive any right, breach or default which such party has the right to waive, provided that such waiver will not be effective against the waiving party unless it is in writing, is signed by such party, and specifically refers to this Agreement. Waivers may be made in advance or after the right waived has arisen or the breach or default waived has occurred. Any waiver may be conditional. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof nor of any other agreement or provision herein contained. No waiver or extension of time for performance of any obligations or acts shall be deemed a waiver or extension of the time for performance of any other obligations or acts.

6.10 Remedies Cumulative. In the event that the Company fails to observe or perform any covenant or agreement to be observed or performed under this Agreement, the Holder or any other holder of Registrable Securities may proceed to protect and enforce its rights by suit in equity or action at law, whether for specific performance of any term contained in this Agreement or for an injunction against the breach of any such term or in aid of the exercise of any power granted in this Agreement or to enforce any other legal or equitable right, or to take any one or more of such actions, without being required to post a bond. None of the rights, powers or remedies conferred under this Agreement shall be mutually exclusive, and each such right, power or remedy shall be cumulative and in addition to any other right, power or remedy, whether conferred by this Agreement or now or hereafter available at law, in equity, by statute or otherwise.

6.11 Governing Law/Venue. This Agreement shall be governed by, interpreted under, and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed within the State of New York a, without giving effect to any choice-of-law provisions thereof that would compel the application of the substantive laws of any other jurisdiction. Any legal suit, action or proceeding arising out of or based upon this agreement, the other additional agreements or the transactions contemplated hereby or thereby may be instituted in the Federal courts of the United States of America or the courts of the State of New York , in each case located in the City of New York, New York County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. the parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

6.12 Waiver of Trial by Jury. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF, CONNECTED WITH OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE ACTIONS OF THE HOLDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be executed and delivered by their duly authorized representatives as of the date first written above.

COMPANY:

BURGERFI INTERNATIONAL, INC.
(F/K/A OPES ACQUISITION CORP.)

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Executive Chairman

HOLDER:

BURGERFI HOLDINGS, LLC
a Delaware limited liability company

By: /s/ Kevin Cooper
Name: Kevin Cooper
Title: Manager

ANDREA JANE ACKER REVOCABLE TRUST U/A DATED
APRIL 25, 2008

By: /s/ Andrea Acker
Name: Andrea Acker
Title: Trustee

LH EQUITIES, LLC
a Delaware limited liability company

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Manager

LION POINT CAPITAL, LP

By: /s/ Irshad Karim
Name: Irshad Karim
Title: General Counsel and CCO

LB&B S.A. DE C.V.

By: /s/ Rodrigo Lebois Mateos
Name: Rodrigo Lebois Mateos
Title: CEO

/s/ Gonzalo Gil White
Name: Gonzalo Gil White

/s/ Carlos E. Williamson
Name: Carlos E. Williamson

/s/ Jose Antonio Canedo White
Name: Jose Antonio Canedo White

/s/ Gustavo A. Mondrago Marquez
Name: Gustavo A. Mondrago Marquez

/s/ Jose Luis Cordova
Name: Jose Luis Cordova

/s/ Miguel Angel Villegas Vargas
Name: Miguel Angel Villegas Vargas

EXHIBIT A

Name and Address of Holders

| Holder | Address | Legal Counsel |
|-------------------------|---|--|
| Lion Point Capital, LLC | 250 West 55 th Street, 33 rd Floor New York, NY 10019 Attention: Irshad Karim, General Counsel Email: ikarim@lionpoint.com | Akin Gump Strauss Hauer & Feld LLP One Bryant Park New York, NY 10036 Attention: Alice Hsu Email: ahsu@akingump.com |

**AMENDMENT TO
STOCK ESCROW AGREEMENT**

This AMENDMENT TO THE STOCK ESCROW AGREEMENT (the “Amendment”), dated as of December 16, 2020, by and among AMONG BURGER KING INTERNATIONAL, INC. (F/K/A OPES ACQUISITION CORP.), a Delaware corporation (“Company”), each stockholder identified on the signature pages hereto and CONTINENTAL STOCK TRANSFER & TRUST COMPANY, a New York corporation (“Escrow Agent”). Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to them in the Stock Escrow Agreement, dated as of March 13, 2018 (the “Stock Escrow Agreement”), by and among the Company, the Initial Stockholders and the Escrow Agent.

WITNESSETH:

- A. The Company and the Initial Stockholders entered into the Stock Escrow Agreement.
- B. Subsequent to the date of the Stock Escrow Agreement, certain of the Initial Stockholders transferred their Escrow Shares to other Initial Stockholders and certain of such Initial Stockholders’ members, officers, directors, consultants or affiliates (the “Initial Transferees”), and thereafter certain of the Initial Stockholders and/or Initial Transferees transferred their Escrow Shares to certain third parties (the “Subsequent Transferees,” and together with the Initial Transferees, the “Transferees”).
- C. The Transferees agreed to be bound by the terms and conditions of the Stock Escrow Agreement, this Amendment and the Insider Letter signed by the Initial Stockholders transferring the shares.
- D. The Company, the Initial Stockholders and the Transferees desire to make an amendment to the Stock Escrow Agreement as set forth in this Amendment.

The parties hereto accordingly agree as follows:

1. Amendment.

a. Section 3 Disbursement of the Escrow Shares.

Section 3.2 of the Stock Escrow Agreement is hereby deleted and the following is inserted in its place:

“Except as otherwise set forth herein, the Escrow Agent shall hold the shares remaining after any cancellation required pursuant to Section 3.1 above (such remaining shares to be referred to herein as the “Escrow Shares”) until the earlier of (x) six months after the date of the consummation of the Company’s initial merger, share exchange, asset acquisition, stock purchase, recapitalization, reorganization, or other similar business combination with one or more businesses or entities (“Business Combination”), and (ii) if, subsequent to the closing date of the Business Combination, the post-closing Company (the “Post-Closing Entity”) consummates a liquidation, merger, stock exchange or other similar transaction which results in all of the Post-Closing Entity’s stockholders having the right to exchange their shares of Common Stock for cash, securities or other property (collectively, the “Escrow Period”). The Company shall promptly provide notice of the consummation of a Business Combination to the Escrow Agent. Upon completion of the Escrow Period, the Escrow Agent shall disburse such amount of each Initial Stockholder’s Escrow Shares (and any applicable stock power) to such Initial Stockholder; provided, however, that if the Escrow Agent is notified by the Company pursuant to Section 6.7 hereof that the Company is being liquidated because it failed to consummate a Business Combination within the time period specified in the Company’s amended and restated certificate of incorporation, as the same may be further amended from time to time, then the Escrow Agent shall promptly deliver the Escrow Shares to the Initial Stockholders and/or Transferees, as appropriate (i.e. the holder of such shares at that time); provided further, that if, within six months after the Company consummates a Business Combination, the Company (or the surviving entity) consummates a liquidation, merger, stock exchange, or other similar transaction which results in all of the stockholders of such entity having the right to exchange their shares of Common Stock for cash, securities, or other property, then upon receipt of a notice executed by the Chairman of the Board, in form reasonably acceptable to the Escrow Agent, certifying that such transaction is then being consummated or such conditions have been achieved, as applicable, the Escrow Agent will release the Escrow Shares to the Initial Stockholders and/or Transferees, as appropriate (i.e. the holder of such shares at that time). The Escrow Agent shall have no further duties hereunder after the disbursement of the Escrow Shares in accordance with this Section 3.”

2. No Other Amendments. Except for the amendments expressly set forth in this Amendment, the Stock Escrow Agreement shall remain unchanged and in full force and effect.

3. Entire Agreement. The Stock Escrow Agreement (as amended by this Amendment), sets forth the entire agreement of the parties hereto with respect to the subject matter hereof and thereof, and there are no restrictions, promises, representations, warranties, covenants or undertakings with respect to the subject matter hereof or thereof, other than those expressly set forth in the Stock Escrow Agreement (as amended by this Amendment). The Stock Escrow Agreement (as amended by this Amendment) supersedes all prior and contemporaneous understandings and agreements related thereto (whether written or oral), all of which are merged herein.

4. Governing Law. This Amendment shall for all purposes be deemed to be made under and shall be construed in accordance with the laws of the State of New York, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. Each of the parties hereby agrees that any action, proceeding, or claim against it arising out of or relating in any way to this Agreement shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and irrevocably submits to such personal jurisdiction, which jurisdiction shall be exclusive. Each of the parties hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum.

5. Severability. A determination by a court or other legal authority of competent jurisdiction that any provision of this Amendment is legally invalid shall not affect the validity or enforceability of any other provision hereof. The parties hereto shall cooperate in good faith to substitute (or cause such court or other legal authority to substitute) for any provision so held to be invalid a valid provision, as alike in substance to such invalid provision as is lawful.

6. Counterparts; Facsimile Signatures. This Amendment may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one agreement. This Amendment shall become effective upon delivery to each party hereto an executed counterpart or the earlier delivery to each party hereto an original, photocopied, or electronically transmitted signature pages that together (but need not individually) bear the signatures of all other parties.

7. Captions. Captions are not a part of this Amendment, but are included for convenience, only.

8. Further Assurances. Each party hereto shall execute and deliver such documents and take such action, as may reasonably be considered within the scope of such party's obligations hereunder, necessary to effectuate the transactions contemplated by this Amendment.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized signatories as of the date first indicated above.

Company:

BurgerFi International, Inc. (f/k/a OPES Acquisition Corp.)

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Chairman and Chief Executive Officer

INITIAL STOCKHOLDERS AND TRANSFEREES:

LH Equities, LLC.

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Manager

AXIS PUBLIC VENTURES S. DE R.L. DE C.V.

By: /s/ Gonzalo Gil White
Name: Gonzalo Gil White
Title: CEO

LION POINT CAPITAL

By: /s/ Irshad Karim
Name: Irshad Karim
Title: General Counsel and CCO

LB&B S.A. DE C.V.

By: /s/ Rodrigo Lebois Mateos
Name: Rodrigo Lebois Mateos
Title: CEO

/s/ Gonzalo Gil White
Name: Gonzalo Gil White

/s/ Carlos E. Williamson
Name: Carlos E. Williamson

/s/ Jose Antonio Canedo White
Name: Jose Antonio Canedo White

/s/ Gustavo A. Mondrago Marquez
Name: Gustavo A. Mondrago Marquez

/s/ Jose Luis Cordova
Name: Jose Luis Cordova

/s/ Miguel Angel Villegas Vargas
Name: Miguel Angel Villegas Vargas

CONTINENTAL STOCK TRANSFER & TRUST COMPANY

By: _____
Name:
Title:

SHARE ESCROW AGREEMENT

THIS SHARE ESCROW AGREEMENT (“Agreement”) is made and entered into as of December 16, 2020, by and among BurgerFi International, Inc. (f/k/a OPES Acquisition Corp.), a Delaware corporation (the “Purchaser”), BurgerFi Holdings, LLC, a Delaware limited liability company, as the representative of the Members (the “Members’ Representative”) and Continental Stock Transfer & Trust Company, a New York corporation (“Escrow Agent”).

RECITALS

A. The Purchaser, BurgerFi International LLC, a Delaware limited liability company (the “Company”), the members of the Company, being BurgerFi Holdings, LLC and Andrea Jane Acker Revocable Trust U/A dated April 25, 2008 (each, a “Member” and collectively the “Members”), and the Members’ Representative entered into a Membership Interest Purchase Agreement dated as of June 29, 2020 (the “Underlying Agreement”), which requires that the Purchaser deliver the Escrow Shares into the Escrow Fund to held and disbursed in accordance with this Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1) Appointment

- a) Purchaser and Members’ Representative, on behalf of the Members, hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.
- b) All capitalized terms with respect to the Escrow Agent shall be defined herein. The Escrow Agent shall act only in accordance with the terms and conditions contained in this Agreement and shall have no duties or obligations with respect to the Underlying Agreement.

2) Escrow Shares

- a) Purchaser agrees to deposit with the Escrow Agent 943,396 shares of common stock, par value \$0.0001 per share of Purchaser (“Escrow Shares”) on the date hereof. The Escrow Agent shall hold the Escrow Shares as a book-entry position registered in the name of “Continental Stock Transfer & Trust as Escrow Agent for the benefit of BurgerFi Holdings, LLC and Andrea Jane Acker Revocable Trust U/A dated April 25, 2008.
- b) During the term of this Agreement, the Members shall be entitled to vote the Escrow Shares on any matters to come before the stockholders of Purchaser.
- c) Any stock dividends paid with respect to the Escrow Shares shall be deemed part of the Escrow Shares and be delivered to the Escrow Agent to be held in a bank account and be deposited in a non-interest bearing account to be maintained by the Escrow Agent in the name of “Continental Stock Transfer & Trust as Escrow Agent for the benefit of BurgerFi Holdings, LLC and Andrea Jane Acker Revocable Trust U/A dated April 25, 2008.

- d) In the event of any stock split, reverse stock split, stock dividend, recapitalization, reorganization, merger, consolidation, combination, exchange of shares, liquidation, spin-off or other similar change in capitalization or event, or any distribution to holders of the common stock of Purchaser, other than a regular cash dividend, the Escrow Shares shall be appropriately adjusted on a pro rata basis and consistent with the terms of the Underlying Agreement.

3) Disposition and Termination

- a) At any time upon delivery (i) to the Escrow Agent of joint written instructions from Purchaser and Members' Representative for a release of all or a portion of the Escrow Shares or (ii) of a written notification from Purchaser or Members' Representative of a final non-appealable decision, order, judgment or decree of a court of competition jurisdiction or an arbitrator, which notification shall attach a copy of such final decision, order, judgment or decree (a "Final Order"), the Escrow Agent shall deliver such Escrow Shares, or the applicable portion thereof, in accordance with the directions set forth in such joint written instructions or Final Order. The Escrow Agent shall make distributions of the Escrow Shares only in accordance with such joint written instruction or Final Order.
- b) Upon the release and delivery of all the Escrow Shares by the Escrow Agent in accordance with the terms of this Agreement and such written instructions, this Agreement shall terminate, subject to the provisions of Section 6.

4) Escrow Agent

- a) The Escrow Agent shall have only those duties as are specifically and expressly provided herein, which shall be deemed purely ministerial in nature, and no other duties shall be implied. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement (other than this Agreement), instrument or document between Purchaser, Members and any other person or entity, in connection herewith, if any, including without limitation the Underlying Agreement nor shall the Escrow Agent be required to determine if any person or entity has complied with any such agreements, nor shall any additional obligation of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement.
- b) In the event of any conflict between the terms and provisions of this Agreement, those of the Underlying Agreement, any schedule or exhibit attached to this Agreement, or any other agreement between Purchaser and Members or any other person or entity, the terms and conditions of this Agreement shall control.
- c) The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by Purchaser and Members' Representative without inquiry and without requiring substantiating evidence of any kind. The Escrow Agent shall not be liable to any beneficiary or other person for refraining from acting upon any instruction setting forth, claiming, containing, objecting to, or related to the transfer or distribution of the Escrow Shares, or any portion thereof, unless such instruction shall have been delivered to the Escrow Agent in accordance with Section 9 below and the Escrow Agent has been able to satisfy any applicable security procedures as may be required hereunder and as set forth in Section 10. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall have no duty to solicit any payments which may be due nor shall the Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder.

- d) The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to either Purchaser or Members or their beneficiaries. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents.
- e) The Escrow Agent may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with, or in reliance upon, the advice or opinion of any such counsel, accountants or other skilled persons except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to either Purchaser or Members or their beneficiaries. In the event that the Escrow Agent shall be uncertain or believe there is some ambiguity as to its duties or rights hereunder or shall receive instructions, claims or demands which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all the property held in escrow until it shall be given a joint written direction from Purchaser and Members' Representative which eliminates such ambiguity or uncertainty to the satisfaction of the Escrow Agent or by a final and non-appealable order or judgement of a court of competent jurisdiction.

5) **Succession**

- a) The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving thirty (30) days' advance notice in writing of such resignation to Purchaser and Members' Representative specifying a date when such resignation shall take effect, *provided that* such resignation shall not take effect until a successor Escrow Agent has been appointed in accordance with this Section 5. If Purchaser and Members' Representative have failed to appoint a mutually acceptable successor Escrow Agent prior to the expiration of thirty (30) days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto. The Escrow Agent's sole responsibility after such thirty (30) day notice period expires shall be to hold the Escrow Shares (without any obligation to reinvest the same) and to deliver the same to a designated substitute Escrow Agent, if any, or in accordance with the directions of a final order or judgement of a court of competent jurisdiction, at which time of delivery the Escrow Agent's obligations hereunder shall ease and terminate, subject to the provisions of Section 7 below. In accordance with Section 7 below, the Escrow Agent shall have the right to withhold, as security, an amount of shares equal to any dollar amount due and owing to the Escrow Agent in connection with this Agreement, plus any costs and expenses the Escrow Agent shall reasonably believe may be incurred by the Escrow Agent in connection with the termination of this Agreement.

- b) Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be the Escrow Agent under this Agreement without further act.
- 6) **Compensation and Reimbursement.** The Escrow Agent shall be entitled to compensation for its services under this Agreement as Escrow Agent and for reimbursement for its reasonable out-of-pocket costs and expenses, in the amounts and payable by Purchaser as set forth on Schedule 2. The Escrow Agent shall also be entitled to payments of any amounts to which the Escrow Agent is entitled under the indemnification provisions contained herein as set forth in Section 7. The obligations of Purchaser set forth in this Section 6 shall survive the resignation, replacement or removal of the Escrow Agent or the termination of this Agreement.
- 7) **Indemnity**
- a) The Escrow Agent shall be indemnified and held harmless by Purchaser and Members from and against any expenses, including counsel fees and disbursements, or loss suffered by the Escrow Agent in connection with any action, suit or other proceeding involving any claim which in any way, directly or indirectly, arises out of or relates to this Agreement, the services of the Escrow Agent hereunder, other than expenses or losses arising from the gross negligence or willful misconduct of the Escrow Agent. Promptly after the receipt by the Escrow Agent of notice of any demand or claim or the commencement of any action, suit or proceeding, the Escrow Agent shall notify the other parties hereto in writing. In the event of the receipt of such notice, the Escrow Agent, in its sole discretion, may commence an action in the Nature of Interpleader in any state of federal court located in New York County, State of New York.
- b) The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and in the exercise of its own best judgement, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person or persons. The Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Agreement unless evidenced by a writing delivered to the Escrow Agent.
- c) The Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement, and may consult with counsel of its own choice and shall have full and complete authorization and indemnification, for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.
- d) This Section 7 shall survive termination of this Agreement or the resignation, replacement or removal of the Escrow Agent for any reason.
- 8) **Patriot Act Disclosure/Taxpayer Identification Numbers/Tax Reporting**
- a) Patriot Act Disclosure. Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”) requires the Escrow Agent to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, Purchaser and Members’ Representative acknowledge that Section 326 of the USA PATRIOT Act and the Escrow Agents’ identity verification procedures require the Escrow Agent to obtain information which may be used to confirm the identity of Purchaser or Members’ Representative including without limitation name, address and organizational documents (“identifying information”). Purchaser and Members’ Representative agrees to provide the Escrow Agent with and consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent.

b) Such underlying transaction does not constitute an installment sale requiring any tax reporting or withholding of imputed interest or original issue discount to the IRS or other taxing authority.

9) **Notices**

a) All communications hereunder shall be in writing and, except for communications setting forth, claiming, containing, objecting to, or in any way related to the full or partial transfer or distribution of the Escrow Shares, including but not limited to transfer instructions (all of which shall be specifically governed by Section 10 below), all notices and communications hereunder shall be deemed to have been duly given and made if in writing and if (i) served by personal delivery upon the party for whom it is intended, (ii) delivered by registered or certified mail, return receipt requested, or by Federal Express or similar overnight courier, or (iii) sent by facsimile or email, electronically or otherwise, to the party at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such party:

If to the Escrow Agent:

Continental Stock Transfer and Trust
One State Street — 30th Floor
New York, New York 10004
Facsimile No: (212) 616-7615
Attention: _____
Email: _____

If to Purchaser to:

BurgerFi International, Inc. (f/k/a OPES Acquisition Corp.)
4218 NE 2nd Avenue
2nd Floor
Miami, Florida 33137
Attention: Ophir Sternberg
Email: o@lheartcapital.com

if to the Members or Members' Representative:

BurgerFi International LLC
105 U.S. HIGHWAY ONE
NORTH PALM BEACH, FL 33408
Attn: General Counsel
Email: ross@burgerfi.com
Fax: (561) 844-5529

- b) Notwithstanding the above, in the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by an officer of the Escrow Agent or any employee of the Escrow Agent who reports directly to any such officer at the above-referenced office. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate. For purposes of this Agreement, "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth above is authorized or required by law or executive order to remain closed.

10) Security Procedures

- a) Notwithstanding anything to the contrary as set forth in Section 9, any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer distribution, including but not limited to any transfer instructions that may otherwise be set forth in a joint written instruction permitted pursuant to Section 3 of this Agreement, may be given to the Escrow Agent only by confirmed facsimile or other electronic transmission (including e-mail) and no instruction for or related to the transfer or distribution of the Escrow Shares, or any portion thereof, shall be deemed delivered and effective unless the Escrow Agent actually shall have received such instruction by facsimile or other electronic transmission (including e-mail) at the number or e-mail address for the Escrow Agent set forth in Section 9 and as further evidenced by a confirmed transmittal to that number.
- b) In the event transfer instructions are so received by the Escrow Agent by facsimile or other electronic transmission (including e-mail), the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule 1 hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by the Escrow Agent. If the Escrow Agent is unable to contact any of the authorized representatives identified in Schedule 1, the Escrow Agent is hereby authorized both to receive written instructions from and seek confirmation of such instructions by officers of Purchaser and Members' Representative (collectively, the "Senior Officers"), as the case may be, which shall include the titles of Chief Executive Officer, General Counsel, Chief Financial Officer, President of Executive Vice President, as the Escrow Agent may select. Such Senior Officer shall deliver to the Escrow Agent a fully executed incumbency certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer.
- c) Purchaser and Members' Representative acknowledge that the Escrow Agent is authorized to deliver the Escrow Shares to the custodian account of recipient designated by Members' Representative in writing.

11) **Compliance with Court Officers.** In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgement of decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or whether with or without jurisdiction, and in the event that the Escrow Agent reasonably obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

12) **Miscellaneous**

- a) Except for changes to transfer instructions as provided in Section 10, the provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by the Escrow Agent, Purchaser and Members' Representative. Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by the Escrow Agent, Purchaser or Members' Representative except as provided in Section 5, without the prior consent of the Escrow Agent, Purchaser and Members' Representative.
- b) This Agreement shall be governed by and construed under the laws of the State of New York. Each of and the Escrow Agent irrevocably waives any objection on the grounds of venue, forum non-convenience or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of any court of the State of New York or United States federal court, in each case, sitting in New York County, New York. To the extent that in any jurisdiction any party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution attachment (before or after judgement), or other legal process, such party shall not claim, and it hereby irrevocably waives, such immunity. The parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceedings arising or relating to this Agreement.
- c) No party to this Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.
- d) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Agreement may be transmitted by facsimile or other electronic transmission (including e-mail), and such facsimile or other electronic transmission (including e-mail) will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party.
- e) If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- f) A person who is not a party to this Agreement, other than the Members, shall have no right to enforce any term of this Agreement.
- g) The parties represent, warrant and covenant that each document, notice, instruction or request provided by such party to the other party shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written.
- h) Except as expressly provided in Section 7 above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent, Purchaser and Members any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or the Escrow Shares escrowed hereunder.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

Escrow Agent:

Continental Stock Transfer & Trust Company

By: _____
Name:
Title:

Purchaser:

BurgerFi International, Inc. (f/k/a OPES Acquisition Corp.)

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Executive Chairman

Members' Representative:

BurgerFi Holdings, LLC.

By: /s/ Kevin Cooper
Kevin Cooper, Manager

Signature Page to Escrow Agreement

Schedule 1

Telephone Number(s) and authorized signature(s)
for
Person(s) Designated to give Escrow Transfer Instructions

| Party | Representative | Telephone No. | Signature |
|-------------------------|-----------------------|----------------------|------------------|
| Purchaser | Ophir Sternberg | | |
| Members' Representative | Kevin Cooper | | |

Schedule 2

Compensation and Reimbursement

None.

VOTING AGREEMENT

This Voting Agreement (this “Agreement”) is made as of December 16, 2020, by and among BurgerFi International, Inc. (f/k/a OPES Acquisition Corp.), a Delaware corporation (the “Company”), and each of the individuals and entities set forth on the signature page hereto (each a “Voting Party” and collectively, the “Voting Parties”). For purposes of this Agreement, capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Member Interest Purchase Agreement (as defined below).

RECITALS

WHEREAS, the Company, BurgerFi International LLC, a Delaware limited liability company (“BurgerFi LLC”), the members of BurgerFi LLC (the “Members”), and BurgerFi Holdings, LLC, a Delaware limited liability company (the “Members’ Representative”) entered into a membership interest purchase agreement, dated June 29, 2020 (the “Member Interest Purchase Agreement”); and

WHEREAS, each of the Voting Parties, currently owns, or on closing of the transactions contemplated by the Member Interest Purchase Agreement, will own, shares of the Company’s common stock, and wishes to provide for orderly elections of the Company’s board of directors as described herein.

NOW THEREFORE, in consideration of the foregoing and of the promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Agreement to Vote. During the term of this Agreement, each Voting Party agrees to vote all securities of the Company that such Voting Party owns from time to time and may vote in the election of the Company’s directors (hereinafter referred to as the “Voting Shares”), in accordance with the provisions of this Agreement, whether at a regular or special meeting of stockholders or by written consent.

2. Election of Boards of Directors.

2.1. Voting; Initial Designees. During the term of this Agreement, each Voting Party agrees to vote all Voting Shares in such manner as may be necessary to elect (and maintain in office) the following five members of the Company’s Post-Closing Board of Directors, consisting of: Ophir Sternberg, as Chairman of the Board, A.J. Acker, Steven Berrard, Gregory Mann and Allison Greenfield.

2.2. Size of the Board. During the term of this Agreement, the parties hereto agree that they shall, and shall cause their respective successors to, maintain the size of the Company’s Post-Closing Board of Directors at five (5) persons for a period of two (2) years from the Closing Date.

2.3. Obligations; Removal of Directors; Vacancies. The obligations of the Voting Parties pursuant to this Section 2 shall include any stockholder vote to amend the Company’s Amended and Restated Certificate of Incorporation as required to effect the intent of this Agreement. Each of the Voting Parties and the Company agree not to take any actions that would contravene or materially and adversely affect the provisions of this Agreement and the intention of the parties with respect to the composition of the Company’s Post-Closing Board of Directors as herein stated. The parties acknowledge that the fiduciary duties of each member of the Company’s Post-Closing Board of Directors are to the Company’s stockholders as a whole. In the event any director elected pursuant to the terms hereof ceases to serve as a member of the Company’s Post-Closing Board of Directors, the Company and the Voting Parties agree to take all such action as is reasonable and necessary, including the voting of shares of capital stock of the Company by the Voting Parties as to which they have beneficial ownership, to cause the election or appointment of such other person designated by the Chairman, in consultation with the Members’ Representative (after Closing), or, as the case may be, to the Post-Closing Board of Directors as may be designated on the terms provided herein.

2.4. Power of Attorney. During the term of this Agreement, in the event a Voting Party is unable to attend in person a meeting of BurgerFi's stockholders at which directors shall be elected to the Board, and the Voting Party also fails to timely submit a proxy card indicating how such Voting Party intends to vote for the directors who are standing for election, the Voting Party hereby appoints the Chairman of the Board of Directors as its true and lawful attorney and proxy with full power of substitution for and its name to act on behalf of the Voting Party, for the limited purpose of voting in favor of the election of all of the directors set forth in Section 2. 1 hereof. The Voting Party understands and agrees that this limited proxy is irrevocable and coupled with an interest and, except as otherwise provided herein, shall terminate upon the termination of this Agreement.

3. Successors in Interest of the Voting Parties and the Company. The provisions of this Agreement shall be binding upon the successors in interest of any Voting Party with respect to any of such Voting Party's Voting Shares or any voting rights therein, unless the Voting Shares are sold into the Trading Market. Each Voting Party shall not, and the Company shall not, permit the transfer of any Voting Party's Voting Shares (except for sales of Voting Shares, including block trades, into the Trading Market), unless and until the person to whom such securities are to be transferred shall have executed a written agreement pursuant to which such person agrees to become a party to this Agreement and agrees to be bound by all the provisions hereof as if such person was a Voting Party hereunder.

4. Covenants. The Company and each Voting Party agrees to take all actions required to ensure that the rights given to each Voting Party hereunder are effective and that each Voting Party enjoys the benefits thereof. Such actions include, without limitation, the use of best efforts to cause the nomination of the designees, as provided herein, for election as directors of the Company. Neither the Company nor any Voting Party will, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be performed hereunder by the Company or any such Voting Party, as applicable, but will at all times in good faith assist in the carrying out of all of the provisions of this Agreement and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of each Voting Party hereunder against impairment.

5. Grant of Proxy. The parties agree that this Agreement does not constitute the granting of a proxy to any party or any other person; provided, however, that should the provisions of this Agreement be construed to constitute the granting of proxies, such proxies shall be deemed coupled with an interest and are irrevocable for the term of this Agreement.

6. Specific Enforcement. It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any party hereto, that this Agreement shall be specifically enforceable, and that any breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach and agrees that a party's rights would be materially and adversely affected if the obligations of the other parties under this Agreement were not carried out in accordance with the terms and conditions hereof.

7. Manner of Voting. The voting of the Voting Shares pursuant to this Agreement may be effected in person, by proxy, by written consent or in any other manner permitted by applicable law.

8. Termination. This Agreement shall terminate upon the first to occur of the following:

8.1 The date that is two (2) years from the Closing Date; or

8.2 immediately prior to a transaction pursuant to which a person or group other than current stockholders of the Company or the Voting Parties, or their respective affiliates, will control greater than 50% of the Company's voting power with respect to the election of directors of the Company.

9. Amendments and Waivers. Except as otherwise provided herein, any provision of this Agreement may be amended or the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the unanimous written consent of (a) the Company, and (b) the holders of a majority of Voting Shares then held by the Voting Parties, the Chairman, and the Members' Representative; *provided, however*, that the right of the Chairman, with the consent of the Member's Representative, to nominate members to the Post-Closing Board of Directors shall not be amended without the written consent of the Chairman.

10. Stock Splits, Stock Dividends, etc. In the event of any stock split, stock dividend, recapitalization, reorganization or the like, any securities issued with respect to Voting Shares held by Voting Parties shall become Voting Shares for purposes of this Agreement.

11. Severability. In the event that any provision of the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12. Governing Law. This Agreement and the legal relations between the parties arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida without reference to its conflicts of laws provisions, except that all matters relating to the fiduciary duties of the Company's Post-Closing Board of Directors shall be subject to the laws of Delaware. Any legal suit, action or proceeding arising out of or based upon this agreement, the other additional agreements or the transactions contemplated hereby or thereby may be instituted in the Federal courts of the United States of America or the courts of the State of Florida, in each case located in the City of Fort Lauderdale and County of Broward, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. the parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

14. Successors and Assigns. Except as otherwise expressly provided in this Agreement, the provisions hereof shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

15. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement among the parties, and supersedes any prior agreement or understanding among the parties, with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein.

[Remainder of page intentionally left blank; signature page follows]

This Voting Agreement is hereby executed effective as of the date first set forth above.

OPES ACQUISITION CORP.,
a Delaware corporation

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Chairman

VOTING PARTIES:

BurgerFi Holdings, LLC
a Delaware limited liability company

By: /s/ Kevin Cooper
Name: Kevin Cooper
Title: Manager

**Andrea Jane Acker Revocable Trust U/A
dated April 25, 2008**

By: /s/ Andrea Jane Acker
Name: Andrea Jane Acker
Title: Trustee

[The Sponsor and others now holding Sponsor shares must be listed on the signature block]

OPES ACQUISITION CORP.
2020 OMNIBUS EQUITY INCENTIVE PLAN

**OPES ACQUISITION CORP.
2020 OMNIBUS EQUITY INCENTIVE PLAN**

**ARTICLE I
PURPOSE**

The purpose of this OPES Acquisition Corp. 2020 Omnibus Equity Incentive Plan (the "Plan") is to benefit OPES Acquisition Corp., a Delaware corporation (the "Company") and its stockholders, by assisting the Company and its subsidiaries to attract, retain and provide incentives to key management employees, directors, and consultants of the Company and its Affiliates, and to align the interests of such service providers with those of the Company's stockholders. Accordingly, the Plan provides for the granting of Non-qualified Stock Options, Incentive Stock Options, Restricted Stock Awards, Restricted Stock Unit Awards, Stock Appreciation Rights, Performance Stock Awards, Performance Unit Awards, Unrestricted Stock Awards, Distribution Equivalent Rights or any combination of the foregoing.

**ARTICLE II
DEFINITIONS**

The following definitions shall be applicable throughout the Plan unless the context otherwise requires:

2.1 "Affiliate" shall mean any corporation which, with respect to the Company, is a "subsidiary corporation" within the meaning of Section 424(f) of the Code or other entity in which the Company has a controlling interest in such entity or another entity which is part of a chain of entities in which the Company or each entity has a controlling interest in another entity in the unbroken chain of entities ending with the applicable entity.

2.2 "Award" shall mean, individually or collectively, any Option, Restricted Stock Award, Restricted Stock Unit Award, Performance Stock Award, Performance Unit Award, Stock Appreciation Right, Distribution Equivalent Right or Unrestricted Stock Award.

2.3 "Award Agreement" shall mean a written agreement between the Company and the Holder with respect to an Award, setting forth the terms and conditions of the Award, as amended.

2.4 "Board" shall mean the Board of Directors of the Company.

2.5 "Base Value" shall have the meaning given to such term in Section 14.2.

2.6 “Cause” shall mean (i) if the Holder is a party to an employment or service agreement with the Company or an Affiliate which agreement defines “Cause” (or a similar term), “Cause” shall have the same meaning as provided for in such agreement, or (ii) for a Holder who is not a party to such an agreement, “Cause” shall mean termination by the Company or an Affiliate of the employment (or other service relationship) of the Holder by reason of the Holder’s (A) intentional failure to perform reasonably assigned duties, (B) dishonesty or willful misconduct in the performance of the Holder’s duties, (C) involvement in a transaction which is materially adverse to the Company or an Affiliate, (D) breach of fiduciary duty involving personal profit, (E) willful violation of any law, rule, regulation or court order (other than misdemeanor traffic violations and misdemeanors not involving misuse or misappropriation of money or property), (F) commission of an act of fraud or intentional misappropriation or conversion of any asset or opportunity of the Company or an Affiliate, or (G) material breach of any provision of the Plan or the Holder’s Award Agreement or any other written agreement between the Holder and the Company or an Affiliate, in each case as determined in good faith by the Board, the determination of which shall be final, conclusive and binding on all parties.

2.7 “Change of Control” shall mean: (i) for a Holder who is a party to an employment or consulting agreement with the Company or an Affiliate which agreement defines “Change of Control” (or a similar term), “Change of Control” shall have the same meaning as provided for in such agreement, or (ii) for a Holder who is not a party to such an agreement, “Change of Control” shall mean the satisfaction of any one or more of the following conditions (and the “Change of Control” shall be deemed to have occurred as of the first day that any one or more of the following conditions shall have been satisfied):

(a) Any person (as such term is used in paragraphs 13(d) and 14(d)(2) of the Exchange Act, hereinafter in this definition, “Person”), other than the Company or an Affiliate or an employee benefit plan of the Company or an Affiliate, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company’s then outstanding securities;

(b) The closing of a merger, consolidation or other business combination (a “Business Combination”) other than a Business Combination in which holders of the Shares immediately prior to the Business Combination have substantially the same proportionate ownership of the common stock or ordinary shares, as applicable, of the surviving corporation immediately after the Business Combination as immediately before;

(c) The closing of an agreement for the sale or disposition of all or substantially all of the Company’s assets to any entity that is not an Affiliate;

(d) The approval by the holders of shares of Shares of a plan of complete liquidation of the Company, other than a merger of the Company into any subsidiary or a liquidation as a result of which persons who were stockholders of the Company immediately prior to such liquidation have substantially the same proportionate ownership of shares of common stock or ordinary shares, as applicable, of the surviving corporation immediately after such liquidation as immediately before; or

Opes Acquisition Corp. 2020 Omnibus Equity Incentive Plan

(e) Within any twenty-four (24) month period, the Incumbent Directors shall cease to constitute at least a majority of the Board or the board of directors of any successor to the Company; provided, however, that any director elected to the Board, or nominated for election, by a majority of the Incumbent Directors then still in office, shall be deemed to be an Incumbent Director for purposes of this paragraph (e), but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of an individual, entity or "group" other than the Board (including, but not limited to, any such assumption that results from paragraphs (a), (b), (c), or (d) of this definition).

2.8 "Code" shall mean the United States of America Internal Revenue Code of 1986, as amended. Reference in the Plan to any section of the Code shall be deemed to include any amendments or successor provisions to any section and any regulation under such section.

2.9 "Committee" shall mean a committee comprised of two (2) or more members of the Board who are selected by the Board as provided in Section 4.1.

2.10 "Company" shall have the meaning given to such term in the introductory paragraph, including any successor thereto.

2.11 "Consultant" shall mean any non-Employee (individual or entity) advisor to the Company or an Affiliate who or which has contracted directly with the Company or an Affiliate to render bona fide consulting or advisory services thereto.

2.12 "Director" shall mean a member of the Board or a member of the board of directors of an Affiliate, in either case, who is not an Employee.

2.13 "Distribution Equivalent Right" shall mean an Award granted under Article XIII of the Plan which entitles the Holder to receive bookkeeping credits, cash payments and/or Share distributions equal in amount to the distributions that would have been made to the Holder had the Holder held a specified number of Shares during the period the Holder held the Distribution Equivalent Right.

2.14 "Distribution Equivalent Right Award Agreement" shall mean a written agreement between the Company and a Holder with respect to a Distribution Equivalent Right Award.

2.15 "Effective Date" shall mean [_____], 2020.

2.16 "Employee" shall mean any employee, including any officer, of the Company or an Affiliate.

2.17 "Exchange Act" shall mean the United States of America Securities Exchange Act of 1934, as amended.

Opes Acquisition Corp. 2020 Omnibus Equity Incentive Plan

2.18 “Fair Market Value” shall mean, as of any specified date, the closing sales price of the Shares for such date (or, in the event that the Shares are not traded on such date, on the immediately preceding trading date) on the NASDAQ Stock Market (“NASDAQ”), as reported by NASDAQ, or such other domestic or foreign national securities exchange on which the Shares may be listed. If the Shares are not listed on NASDAQ or on a national securities exchange, but are quoted on the OTC Bulletin Board or by the National Quotation Bureau, the Fair Market Value of the Shares shall be the mean of the highest bid and lowest asked prices per Share for such date. If the Shares are not quoted or listed as set forth above, Fair Market Value shall be determined by the Board in good faith by any fair and reasonable means (which means may be set forth with greater specificity in the applicable Award Agreement). The Fair Market Value of property other than Shares shall be determined by the Board in good faith by any fair and reasonable means consistent with the requirements of applicable law.

2.19 “Family Member” of an individual shall mean any child, stepchild, grandchild, parent, stepparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the Holder’s household (other than a tenant or employee of the Holder), a trust in which such persons have more than fifty percent (50%) of the beneficial interest, a foundation in which such persons (or the Holder) control the management of assets, and any other entity in which such persons (or the Holder) own more than fifty percent (50%) of the voting interests.

2.20 “Holder” shall mean an Employee, Director or Consultant who has been granted an Award or any such individual’s beneficiary, estate or representative, who has acquired such Award in accordance with the terms of the Plan, as applicable.

2.21 “Incentive Stock Option” shall mean an Option which is intended by the Committee to constitute an “incentive stock option” and conforms to the applicable provisions of Section 422 of the Code.

2.22 “Incumbent Director” shall mean, with respect to any period of time specified under the Plan for purposes of determining whether or not a Change of Control has occurred, the individuals who were members of the Board at the beginning of such period.

2.23 “Non-qualified Stock Option” shall mean an Option which is not an Incentive Stock Option or which is designated as an Incentive Stock Option but does not meet the applicable requirements of Section 422 of the Code.

2.24 “Option” shall mean an Award granted under Article VII of the Plan of an option to purchase Shares and shall include both Incentive Stock Options and Non-qualified Stock Options.

2.25 “Option Agreement” shall mean a written agreement between the Company and a Holder with respect to an Option.

Opes Acquisition Corp. 2020 Omnibus Equity Incentive Plan

2.26 “Performance Criteria” shall mean the criteria selected by the Committee for purposes of establishing the Performance Goal(s) for a Holder for a Performance Period.

2.27 “Performance Goals” shall mean, for a Performance Period, the written goal or goals established by the Committee for the Performance Period based upon the Performance Criteria, which may be related to the performance of the Holder, the Company or an Affiliate.

2.28 “Performance Period” shall mean one or more periods of time, which may be of varying and overlapping durations, selected by the Committee, over which the attainment of the Performance Goals shall be measured for purposes of determining a Holder’s right to, and the payment of, a Performance Stock Award or a Performance Unit Award.

2.29 “Performance Stock Award” or “Performance Stock” shall mean an Award granted under Article XII of the Plan under which, upon the satisfaction of predetermined Performance Goals, Shares are paid to the Holder.

2.30 “Performance Stock Agreement” shall mean a written agreement between the Company and a Holder with respect to a Performance Stock Award.

2.31 “Performance Unit” shall mean a Unit awarded to a Holder pursuant to a Performance Unit Award.

2.32 “Performance Unit Award” shall mean an Award granted under Article XI of the Plan under which, upon the satisfaction of predetermined Performance Goals, a cash payment shall be made to the Holder, based on the number of Units awarded to the Holder.

2.33 “Performance Unit Agreement” shall mean a written agreement between the Company and a Holder with respect to a Performance Unit Award.

2.34 “Plan” shall mean this Opes Acquisition Corp. 2020 Omnibus Equity Incentive Plan, as amended from time to time, together with each of the Award Agreements utilized hereunder.

2.35 “Restricted Stock Award” and “Restricted Stock” shall mean an Award granted under Article VIII of the Plan of Shares, the transferability of which by the Holder is subject to Restrictions.

2.36 “Restricted Stock Agreement” shall mean a written agreement between the Company and a Holder with respect to a Restricted Stock Award.

2.37 “Restricted Stock Unit Award” and “RSUs” shall refer to an Award granted under Article X of the Plan under which, upon the satisfaction of predetermined individual service-related vesting requirements, a cash payment shall be made to the Holder, based on the number of Units awarded to the Holder.

2.38 “Restricted Stock Unit Agreement” shall mean a written agreement between the Company and a Holder with respect to a Restricted Stock Unit Award.

2.39 “Restriction Period” shall mean the period of time for which Shares subject to a Restricted Stock Award shall be subject to Restrictions, as set forth in the applicable Restricted Stock Agreement.

2.40 “Restrictions” shall mean the forfeiture, transfer and/or other restrictions applicable to Shares awarded to an Employee, Director or Consultant under the Plan pursuant to a Restricted Stock Award and set forth in a Restricted Stock Agreement.

2.41 “Rule 16b-3” shall mean Rule 16b-3 promulgated by the Securities and Exchange Commission under the Exchange Act, as such may be amended from time to time, and any successor rule, regulation or statute fulfilling the same or a substantially similar function.

2.42 “Shares” or “Stock” shall mean the common stock of the Company, par value \$0.0001 per share.

2.43 “Stock Appreciation Right” or “SAR” shall mean an Award granted under Article XIV of the Plan of a right, granted alone or in connection with a related Option, to receive a payment equal to the increase in value of a specified number of Shares between the date of Award and the date of exercise.

2.44 “Stock Appreciation Right Agreement” shall mean a written agreement between the Company and a Holder with respect to a Stock Appreciation Right.

2.45 “Tandem Stock Appreciation Right” shall mean a Stock Appreciation Right granted in connection with a related Option, the exercise of some or all of which results in termination of the entitlement to purchase some or all of the Shares under the related Option, all as set forth in Article XIV.

2.46 “Ten Percent Stockholder” shall mean an Employee who, at the time an Option is granted to him or her, owns shares possessing more than ten percent (10%) of the total combined voting power of all classes of shares of the Company or of any parent corporation or subsidiary corporation thereof (both as defined in Section 424 of the Code), within the meaning of Section 422(b)(6) of the Code.

2.47 “Termination of Service” shall mean a termination of a Holder’s employment with, or status as a Director or Consultant of, the Company or an Affiliate, as applicable, for any reason, including, without limitation, Total and Permanent Disability or death, except as provided in Section 6.4. In the event Termination of Service shall constitute a payment event with respect to any Award subject to Code Section 409A, Termination of Service shall only be deemed to occur upon a “separation from service” as such term is defined under Code Section 409A and applicable authorities.

2.48 “Total and Permanent Disability” of an individual shall mean the inability of such individual to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, within the meaning of Section 22(e)(3) of the Code.

2.49 “Unit” shall mean a bookkeeping unit, which represents such monetary amount as shall be designated by the Committee in each Performance Unit Agreement, or represents one Share for purposes of each Restricted Stock Unit Award.

2.50 “Unrestricted Stock Award” shall mean an Award granted under Article IX of the Plan of Shares which are not subject to Restrictions.

2.51 “Unrestricted Stock Agreement” shall mean a written agreement between the Company and a Holder with respect to an Unrestricted Stock Award.

**ARTICLE III
EFFECTIVE DATE OF PLAN**

The Plan shall be effective as of the Effective Date.

**ARTICLE IV
ADMINISTRATION**

4.1 Composition of Committee. The Plan shall be administered by the Committee, which shall be appointed by the Board. If necessary, in the Board’s discretion, to comply with Rule 16b-3 under the Exchange Act or relevant securities exchange or inter-dealer quotation service, the Committee shall consist solely of two (2) or more Directors who are each (i) “non-employee directors” within the meaning of Rule 16b-3 and (ii) “independent” for purposes of any applicable listing requirements; If a member of the Committee shall be eligible to receive an Award under the Plan, such Committee member shall have no authority hereunder with respect to his or her own Award.

4.2 Powers. Subject to the other provisions of the Plan, the Committee shall have the sole authority, in its discretion, to make all determinations under the Plan, including but not limited to (i) determining which Employees, Directors or Consultants shall receive an Award, (ii) the time or times when an Award shall be made (the date of grant of an Award shall be the date on which the Award is awarded by the Committee), (iii) what type of Award shall be granted, (iv) the term of an Award, (v) the date or dates on which an Award vests, (vi) the form of any payment to be made pursuant to an Award, (vii) the terms and conditions of an Award (including the forfeiture of the Award, and/or any financial gain, if the Holder of the Award violates any applicable restrictive covenant thereof), (viii) the Restrictions under a Restricted Stock Award, (ix) the number of Shares which may be issued under an Award, (x) Performance Goals applicable to any Award and certification of the achievement of such goals, and (xi) the waiver of any Restrictions or Performance Goals, subject in all cases to compliance with applicable laws. In making such determinations the Committee may take into account the nature of the services rendered by the respective Employees, Directors and Consultants, their present and potential contribution to the Company’s (or the Affiliate’s) success and such other factors as the Committee in its discretion may deem relevant.

4.3 Additional Powers. The Committee shall have such additional powers as are delegated to it under the other provisions of the Plan. Subject to the express provisions of the Plan, the Committee is authorized to construe the Plan and the respective Award Agreements executed hereunder, to prescribe such rules and regulations relating to the Plan as it may deem advisable to carry out the intent of the Plan, to determine the terms, restrictions and provisions of each Award and to make all other determinations necessary or advisable for administering the Plan. The Committee may correct any defect or supply any omission or reconcile any inconsistency in any Award Agreement in the manner and to the extent the Committee shall deem necessary, appropriate or expedient to carry it into effect. The determinations of the Committee on the matters referred to in this Article IV shall be conclusive and binding on the Company and all Holders.

4.4 Committee Action. Subject to compliance with all applicable laws, action by the Committee shall require the consent of a majority of the members of the Committee, expressed either orally at a meeting of the Committee or in writing in the absence of a meeting. No member of the Committee shall have any liability for any good faith action, inaction or determination in connection with the Plan.

**ARTICLE V
SHARES SUBJECT TO PLAN AND LIMITATIONS THEREON**

5.1 Authorized Shares and Award Limits. The Committee may from time to time grant Awards to one or more Employees, Directors and/or Consultants determined by it to be eligible for participation in the Plan in accordance with the provisions of Article VI. Subject to Article XV, the aggregate number of Shares that may be issued under the Plan shall not exceed Two Million (2,000,000) Shares. Shares shall be deemed to have been issued under the Plan solely to the extent actually issued and delivered pursuant to an Award. To the extent that an Award lapses, expires, is canceled, is terminated unexercised or ceases to be exercisable for any reason, or the rights of its Holder terminate, any Shares subject to such Award shall again be available for the grant of a new Award. Notwithstanding any provision in the Plan to the contrary, the maximum number of Shares that may be subject to Awards of Options under Article VII and/or Stock Appreciation Rights under Article XIV, in either or both cases granted to any one person during any calendar year, shall be Two Hundred Thousand (200,000) Shares (subject to adjustment in the same manner as provided in Article XV with respect to Shares subject to Awards then outstanding). The aggregate number of Shares reserved for Awards under the Plan (other than Incentive Stock Options) shall automatically increase on January 1 of each year, for a period of not more than ten (10) years, commencing on January 1 of the year following the year after the Effective Date, in an amount equal to five percent (5%) of the total number of shares of Common Stock outstanding on December 31 of the preceding calendar year, provided that the Committee may determine prior to the first day of the applicable fiscal year to lower the amount of such annual increase. Notwithstanding the foregoing, the Board may act prior to January 1 of a given year to provide that there will be no January 1 increase for such year or that the increase for such year will be a lesser number of Shares than provided herein. The aggregate number of Shares reserved for Incentive Stock Option Awards shall remain the same for the term of the Plan.

5.2 Types of Shares. The Shares to be issued pursuant to the grant or exercise of an Award may consist of authorized but unissued Shares, Shares purchased on the open market or Shares previously issued and outstanding and reacquired by the Company.

**ARTICLE VI
ELIGIBILITY AND TERMINATION OF SERVICE**

6.1 Eligibility. Awards made under the Plan may be granted solely to individuals or entities who, at the time of grant, are Employees, Directors or Consultants. An Award may be granted on more than one occasion to the same Employee, Director or Consultant, and, subject to the limitations set forth in the Plan, such Award may include, a Non-qualified Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, an Unrestricted Stock Award, a Distribution Equivalent Right Award, a Performance Stock Award, a Performance Unit Award, a Stock Appreciation Right, a Tandem Stock Appreciation Right, or any combination thereof, and solely for Employees, an Incentive Stock Option.

6.2 Termination of Service. Except to the extent inconsistent with the terms of the applicable Award Agreement and/or the provisions of Section 6.3 or 6.4, the following terms and conditions shall apply with respect to a Holder's Termination of Service with the Company or an Affiliate, as applicable:

(a) The Holder's rights, if any, to exercise any then exercisable Options and/or Stock Appreciation Rights shall terminate:

(i) If such termination is for a reason other than the Holder's Total and Permanent Disability or death, ninety (90) days after the date of such Termination of Service;

(ii) If such termination is on account of the Holder's Total and Permanent Disability, one (1) year after the date of such Termination of Service; or

(iii) If such termination is on account of the Holder's death, one (1) year after the date of the Holder's death.

Upon such applicable date the Holder (and such Holder's estate, designated beneficiary or other legal representative) shall forfeit any rights or interests in or with respect to any such Options and Stock Appreciation Rights. Notwithstanding the foregoing, the Committee, in its sole discretion, may provide for a different time period in the Award Agreement, or may extend the time period, following a Termination of Service, during which the Holder has the right to exercise any vested Non-qualified Stock Option or Stock Appreciation Right, which time period may not extend beyond the expiration date of the Award term.

(b) In the event of a Holder's Termination of Service for any reason prior to the actual or deemed satisfaction and/or lapse of the Restrictions, vesting requirements, terms and conditions applicable to a Restricted Stock Award and/or Restricted Stock Unit Award, such Restricted Stock and/or RSUs shall immediately be canceled, and the Holder (and such Holder's estate, designated beneficiary or other legal representative) shall forfeit any rights or interests in and with respect to any such Restricted Stock and/or RSUs. Notwithstanding the immediately preceding sentence, the Committee, in its sole discretion, may determine, prior to or within thirty (30) days after the date of such Termination of Service that all or a portion of any such Holder's Restricted Stock and/or RSUs shall not be so canceled and forfeited.

6.3 Special Termination Rule. Except to the extent inconsistent with the terms of the applicable Award Agreement, and notwithstanding anything to the contrary contained in this Article VI, if a Holder's employment with, or status as a Director of, the Company or an Affiliate shall terminate, and if, within ninety (90) days of such termination, such Holder shall become a Consultant, such Holder's rights with respect to any Award or portion thereof granted thereto prior to the date of such termination may be preserved, if and to the extent determined by the Committee in its sole discretion, as if such Holder had been a Consultant for the entire period during which such Award or portion thereof had been outstanding. Should the Committee effect such determination with respect to such Holder, for all purposes of the Plan, such Holder shall not be treated as if his or her employment or Director status had terminated until such time as his or her Consultant status shall terminate, in which case his or her Award, as it may have been reduced in connection with the Holder's becoming a Consultant, shall be treated pursuant to the provisions of Section 6.2, provided, however, that any such Award which is intended to be an Incentive Stock Option shall, upon the Holder's no longer being an Employee, automatically convert to a Non-qualified Stock Option. Should a Holder's status as a Consultant terminate, and if, within ninety (90) days of such termination, such Holder shall become an Employee or a Director, such Holder's rights with respect to any Award or portion thereof granted thereto prior to the date of such termination may be preserved, if and to the extent determined by the Committee in its sole discretion, as if such Holder had been an Employee or a Director, as applicable, for the entire period during which such Award or portion thereof had been outstanding, and, should the Committee effect such determination with respect to such Holder, for all purposes of the Plan, such Holder shall not be treated as if his or her Consultant status had terminated until such time as his or her employment with the Company or an Affiliate, or his or her Director status, as applicable, shall terminate, in which case his or her Award shall be treated pursuant to the provisions of Section 6.2.

6.4 Termination of Service for Cause. Notwithstanding anything in this Article VI or elsewhere in the Plan to the contrary, and unless a Holder's Award Agreement specifically provides otherwise, in the event of a Holder's Termination of Service for Cause, all of such Holder's then outstanding Awards shall expire immediately and be forfeited in their entirety upon such Termination of Service.

ARTICLE VII OPTIONS

7.1 Option Period. The term of each Option shall be as specified in the Option Agreement; provided, however, that except as set forth in Section 7.3, no Option shall be exercisable after the expiration of ten (10) years from the date of its grant.

7.2 Limitations on Exercise of Option. An Option shall be exercisable in whole or in such installments and at such times as specified in the Option Agreement.

7.3 Special Limitations on Incentive Stock Options. To the extent that the aggregate Fair Market Value (determined at the time the respective Incentive Stock Option is granted) of Shares with respect to which Incentive Stock Options are exercisable for the first time by an individual during any calendar year under all plans of the Company and any parent corporation or subsidiary corporation thereof (both as defined in Section 424 of the Code) which provide for the grant of Incentive Stock Options exceeds One Hundred Thousand Dollars (\$100,000) (or such other individual limit as may be in effect under the Code on the date of grant), the portion of such Incentive Stock Options that exceeds such threshold shall be treated as Non-qualified Stock Options. The Committee shall determine, in accordance with applicable provisions of the Code, Treasury Regulations and other administrative pronouncements, which of a Holder's Options, which were intended by the Committee to be Incentive Stock Options when granted to the Holder, will not constitute Incentive Stock Options because of such limitation, and shall notify the Holder of such determination as soon as practicable after such determination. No Incentive Stock Option shall be granted to an Employee if, at the time the Incentive Stock Option is granted, such Employee is a Ten Percent Stockholder, unless (i) at the time such Incentive Stock Option is granted the Option price is at least one hundred ten percent (110%) of the Fair Market Value of the Shares subject to the Incentive Stock Option, and (ii) such Incentive Stock Option by its terms is not exercisable after the expiration of five (5) years from the date of grant. No Incentive Stock Option shall be granted more than ten (10) years from the earlier of the Effective Date or date on which the Plan is approved by the Company's stockholders. The designation by the Committee of an Option as an Incentive Stock Option shall not guarantee the Holder that the Option will satisfy the applicable requirements for "incentive stock option" status under Section 422 of the Code.

7.4 Option Agreement. Each Option shall be evidenced by an Option Agreement in such form and containing such provisions not inconsistent with the other provisions of the Plan as the Committee from time to time shall approve, including, but not limited to, provisions intended to qualify an Option as an Incentive Stock Option. An Option Agreement may provide for the payment of the Option price, in whole or in part, by the delivery of a number of Shares (plus cash if necessary) that have been owned by the Holder for at least six (6) months and having a Fair Market Value equal to such Option price, or such other forms or methods as the Committee may determine from time to time, in each case, subject to such rules and regulations as may be adopted by the Committee. Each Option Agreement shall, solely to the extent inconsistent with the provisions of Sections 6.2, 6.3, and 6.4, as applicable, specify the effect of Termination of Service on the exercisability of the Option. Moreover, without limiting the generality of the foregoing, a Non-qualified Stock Option Agreement may provide for a "cashless exercise" of the Option, in whole or in part, by (a) establishing procedures whereby the Holder, by a properly-executed written notice, directs (i) an immediate market sale or margin loan as to all or a part of Shares to which he is entitled to receive upon exercise of the Option, pursuant to an extension of credit by the Company to the Holder of the Option price, (ii) the delivery of the Shares from the Company directly to a brokerage firm and (iii) the delivery of the Option price from sale or margin loan proceeds from the brokerage firm directly to the Company, or (b) reducing the number of Shares to be issued upon exercise of the Option by the number of such Shares having an aggregate Fair Market Value equal to the Option price (or portion thereof to be so paid) as of the date of the Option's exercise. An Option Agreement may also include provisions relating to: (i) subject to the provisions hereof, accelerated vesting of Options, including but not limited to, upon the occurrence of a Change of Control, (ii) tax matters (including provisions covering any applicable Employee wage withholding requirements and requiring additional "gross-up" payments to Holders to meet any excise taxes or other additional income tax liability imposed as a result of a payment made upon a Change of Control resulting from the operation of the Plan or of such Option Agreement) and (iii) any other matters not inconsistent with the terms and provisions of the Plan that the Committee shall in its sole discretion determine. The terms and conditions of the respective Option Agreements need not be identical.

7.5 Option Price and Payment. The price at which an Share may be purchased upon exercise of an Option shall be determined by the Committee provided, however, that such Option price (i) shall not be less than the Fair Market Value of an Share on the date such Option is granted (or 110% of Fair Market Value for an Incentive Stock Option held by Ten Percent Stockholder, as provided in Section 7.3), and (ii) shall be subject to adjustment as provided in Article XV. The Option or portion thereof may be exercised by delivery of an irrevocable notice of exercise to the Company. The Option price for the Option or portion thereof shall be paid in full in the manner prescribed by the Committee as set forth in the Plan and the applicable Option Agreement, which manner, with the consent of the Committee, may include the withholding of Shares otherwise issuable in connection with the exercise of the Option. Separate share certificates shall be issued by the Company for those Shares acquired pursuant to the exercise of an Incentive Stock Option and for those Shares acquired pursuant to the exercise of a Non-qualified Stock Option.

7.6 Stockholder Rights and Privileges. The Holder of an Option shall be entitled to all the privileges and rights of a stockholder of the Company solely with respect to such Shares as have been purchased under the Option and for which share certificates have been registered in the Holder's name.

7.7 Options and Rights in Substitution for Stock or Options Granted by Other Corporations. Options may be granted under the Plan from time to time in substitution for stock options held by individuals employed by entities who become Employees, Directors or Consultants as a result of a merger or consolidation of the employing entity with the Company or any Affiliate, or the acquisition by the Company or an Affiliate of the assets of the employing entity, or the acquisition by the Company or an Affiliate of stock or shares of the employing entity with the result that such employing entity becomes an Affiliate.

7.8 Prohibition Against Re-Pricing. Except to the extent (i) approved in advance by holders of a majority of the shares of the Company entitled to vote generally in the election of directors, or (ii) as a result of any Change of Control or any adjustment as provided in Article XV, the Committee shall not have the power or authority to reduce, whether through amendment or otherwise, the exercise price under any outstanding Option or Stock Appreciation Right, or to grant any new Award or make any payment of cash in substitution for or upon the cancellation of Options and/or Stock Appreciation Rights previously granted.

**ARTICLE VIII
RESTRICTED STOCK AWARDS**

8.1 Award. A Restricted Stock Award shall constitute an Award of Shares to the Holder as of the date of the Award which are subject to a “substantial risk of forfeiture” as defined under Section 83 of the Code during the specified Restriction Period. At the time a Restricted Stock Award is made, the Committee shall establish the Restriction Period applicable to such Award. Each Restricted Stock Award may have a different Restriction Period, in the discretion of the Committee. The Restriction Period applicable to a particular Restricted Stock Award shall not be changed except as permitted by Section 8.2.

8.2 Terms and Conditions. At the time any Award is made under this Article VIII, the Company and the Holder shall enter into a Restricted Stock Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Company shall cause the Shares to be issued in the name of Holder, either by book-entry registration or issuance of one or more stock certificates evidencing the Shares, which Shares or certificates shall be held by the Company or the stock transfer agent or brokerage service selected by the Company to provide services for the Plan. The Shares shall be restricted from transfer and shall be subject to an appropriate stop-transfer order, and if any certificate is issued, such certificate shall bear an appropriate legend referring to the restrictions applicable to the Shares. After any Shares vest, the Company shall deliver the vested Shares, in book-entry or certificated form in the Company’s sole discretion, registered in the name of Holder or his or her legal representatives, beneficiaries or heirs, as the case may be, less any Shares withheld to pay withholding taxes. If provided for under the Restricted Stock Agreement, the Holder shall have the right to vote Shares subject thereto and to enjoy all other stockholder rights, including the entitlement to receive dividends on the Shares during the Restriction Period. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Restricted Stock Awards, including, but not limited to, rules pertaining to the effect of Termination of Service prior to expiration of the Restriction Period. Such additional terms, conditions or restrictions shall, to the extent inconsistent with the provisions of Sections 6.2, 6.3 and 6.4, as applicable, be set forth in a Restricted Stock Agreement made in conjunction with the Award. Such Restricted Stock Agreement may also include provisions relating to: (i) subject to the provisions hereof, accelerated vesting of Awards, including but not limited to accelerated vesting upon the occurrence of a Change of Control, (ii) tax matters (including provisions covering any applicable Employee wage withholding requirements and requiring additional “gross-up” payments to Holders to meet any excise taxes or other additional income tax liability imposed as a result of a payment made in connection with a Change of Control resulting from the operation of the Plan or of such Restricted Stock Agreement) and (iii) any other matters not inconsistent with the terms and provisions of the Plan that the Committee shall in its sole discretion determine. The terms and conditions of the respective Restricted Stock Agreements need not be identical. All Shares delivered to a Holder as part of a Restricted Stock Award shall be delivered and reported by the Company or the Affiliate, as applicable, to the Holder at the time of vesting.

8.3 Payment for Restricted Stock. The Committee shall determine the amount and form of any payment from a Holder for Shares received pursuant to a Restricted Stock Award, if any, provided that in the absence of such a determination, a Holder shall not be required to make any payment for Shares received pursuant to a Restricted Stock Award, except to the extent otherwise required by law.

**ARTICLE IX
UNRESTRICTED STOCK AWARDS**

9.1 Award. Shares may be awarded (or sold) to Employees, Directors or Consultants under the Plan which are not subject to Restrictions of any kind, in consideration for past services rendered thereby to the Company or an Affiliate or for other valid consideration.

9.2 Terms and Conditions. At the time any Award is made under this Article IX, the Company and the Holder shall enter into an Unrestricted Stock Agreement setting forth each of the matters contemplated hereby and such other matters as the Committee may determine to be appropriate.

9.3 Payment for Unrestricted Stock. The Committee shall determine the amount and form of any payment from a Holder for Shares received pursuant to an Unrestricted Stock Award, if any, provided that in the absence of such a determination, a Holder shall not be required to make any payment for Shares received pursuant to an Unrestricted Stock Award, except to the extent otherwise required by law.

**ARTICLE X
RESTRICTED STOCK UNIT AWARDS**

10.1 Award. A Restricted Stock Unit Award shall constitute a promise to grant Shares (or cash equal to the Fair Market Value of Shares) to the Holder at the end of a specified Restriction Period. At the time a Restricted Stock Unit Award is made, the Committee shall establish the Restriction Period applicable to such Award. Each Restricted Stock Unit Award may have a different Restriction Period, in the discretion of the Committee. A Restricted Stock Unit shall not constitute an equity interest in the Company and shall not entitle the Holder to voting rights, dividends or any other rights associated with ownership of Shares prior to the time the Holder shall receive a distribution of Shares pursuant to Section 10.3.

10.2 Terms and Conditions. At the time any Award is made under this Article X, the Company and the Holder shall enter into a Restricted Stock Unit Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Restricted Stock Unit Agreement shall set forth the individual service-based vesting requirement which the Holder would be required to satisfy before the Holder would become entitled to distribution pursuant to Section 10.3 and the number of Units awarded to the Holder. Such conditions shall be sufficient to constitute a “substantial risk of forfeiture” as such term is defined under Section 409A of the Code. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Restricted Stock Unit Awards in the Restricted Stock Unit Agreement, including, but not limited to, rules pertaining to the effect of Termination of Service prior to expiration of the applicable vesting period. The terms and conditions of the respective Restricted Stock Unit Agreements need not be identical.

10.3 Distributions of Shares. The Holder of a Restricted Stock Unit shall be entitled to receive a cash payment equal to the Fair Market Value of an Share, or one Share, as determined in the sole discretion of the Committee and as set forth in the Restricted Stock Unit Agreement, for each Restricted Stock Unit subject to such Restricted Stock Unit Award, if the Holder satisfies the applicable vesting requirement. Such distribution shall be made no later than by the fifteenth (15th) day of the third (3rd) calendar month next following the end of the calendar year in which the Restricted Stock Unit first becomes vested (i.e., no longer subject to a “substantial risk of forfeiture”).

ARTICLE XI PERFORMANCE UNIT AWARDS

11.1 Award. A Performance Unit Award shall constitute an Award under which, upon the satisfaction of predetermined individual and/or Company (and/or Affiliate) Performance Goals based on selected Performance Criteria, a cash payment shall be made to the Holder, based on the number of Units awarded to the Holder. At the time a Performance Unit Award is made, the Committee shall establish the Performance Period and applicable Performance Goals. Each Performance Unit Award may have different Performance Goals, in the discretion of the Committee. A Performance Unit Award shall not constitute an equity interest in the Company and shall not entitle the Holder to voting rights, dividends or any other rights associated with ownership of Shares.

11.2 Terms and Conditions. At the time any Award is made under this Article XI, the Company and the Holder shall enter into a Performance Unit Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Committee shall set forth in the applicable Performance Unit Agreement the Performance Period, Performance Criteria and Performance Goals which the Holder and/or the Company would be required to satisfy before the Holder would become entitled to payment pursuant to Section 11.3, the number of Units awarded to the Holder and the dollar value or formula assigned to each such Unit. Such payment shall be subject to a “substantial risk of forfeiture” under Section 409A of the Code. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Performance Unit Awards, including, but not limited to, rules pertaining to the effect of Termination of Service prior to expiration of the applicable performance period. The terms and conditions of the respective Performance Unit Agreements need not be identical.

11.3 Payments. The Holder of a Performance Unit shall be entitled to receive a cash payment equal to the dollar value assigned to such Unit under the applicable Performance Unit Agreement if the Holder and/or the Company satisfy (or partially satisfy, if applicable under the applicable Performance Unit Agreement) the Performance Goals set forth in such Performance Unit Agreement. All payments shall be made no later than by the fifteenth (15th) day of the third (3rd) calendar month next following the end of the Company's fiscal year to which such performance goals and objectives relate.

**ARTICLE XII
PERFORMANCE STOCK AWARDS**

12.1 Award. A Performance Stock Award shall constitute a promise to grant Shares (or cash equal to the Fair Market Value of Shares) to the Holder at the end of a specified Performance Period subject to achievement of specified Performance Goals. At the time a Performance Stock Award is made, the Committee shall establish the Performance Period and applicable Performance Goals based on selected Performance Criteria. Each Performance Stock Award may have different Performance Goals, in the discretion of the Committee. A Performance Stock Award shall not constitute an equity interest in the Company and shall not entitle the Holder to voting rights, dividends or any other rights associated with ownership of Shares unless and until the Holder shall receive a distribution of Shares pursuant to Section 11.3.

12.2 Terms and Conditions. At the time any Award is made under this Article XII, the Company and the Holder shall enter into a Performance Stock Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Committee shall set forth in the applicable Performance Stock Agreement the Performance Period, selected Performance Criteria and Performance Goals which the Holder and/or the Company would be required to satisfy before the Holder would become entitled to the receipt of Shares pursuant to such Holder's Performance Stock Award and the number of Shares subject to such Performance Stock Award. Such distribution shall be subject to a "substantial risk of forfeiture" under Section 409A of the Code. If such Performance Goals are achieved, the distribution of Shares (or the payment of cash, as determined in the sole discretion of the Committee), shall be made no later than by the fifteenth (15th) day of the third (3rd) calendar month next following the end of the Company's fiscal year to which such goals and objectives relate. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Performance Stock Awards, including, but not limited to, rules pertaining to the effect of the Holder's Termination of Service prior to the expiration of the applicable performance period. The terms and conditions of the respective Performance Stock Agreements need not be identical.

12.3 Distributions of Shares. The Holder of a Performance Stock Award shall be entitled to receive a cash payment equal to the Fair Market Value of a Share, or one Share, as determined in the sole discretion of the Committee, for each Performance Stock Award subject to such Performance Stock Agreement, if the Holder satisfies the applicable vesting requirement. Such distribution shall be made no later than by the fifteenth (15th) day of the third (3rd) calendar month next following the end of the Company's fiscal year to which such performance goals and objectives relate.

**ARTICLE XIII
DISTRIBUTION EQUIVALENT RIGHTS**

13.1 Award. A Distribution Equivalent Right shall entitle the Holder to receive bookkeeping credits, cash payments and/or Share distributions equal in amount to the distributions that would have been made to the Holder had the Holder held a specified number of Shares during the specified period of the Award.

13.2 Terms and Conditions. At the time any Award is made under this Article XIII, the Company and the Holder shall enter into a Distribution Equivalent Rights Award Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Committee shall set forth in the applicable Distribution Equivalent Rights Award Agreement the terms and conditions, if any, including whether the Holder is to receive credits currently in cash, is to have such credits reinvested (at Fair Market Value determined as of the date of reinvestment) in additional Shares or is to be entitled to choose among such alternatives. Such receipt shall be subject to a "substantial risk of forfeiture" under Section 409A of the Code and, if such Award becomes vested, the distribution of such cash or Shares shall be made no later than by the fifteenth (15th) day of the third (3rd) calendar month next following the end of the Company's fiscal year in which the Holder's interest in the Award vests. Distribution Equivalent Rights Awards may be settled in cash or in Shares, as set forth in the applicable Distribution Equivalent Rights Award Agreement. A Distribution Equivalent Rights Award may, but need not be, awarded in tandem with another Award (other than an Option or a SAR), whereby, if so awarded, such Distribution Equivalent Rights Award shall expire, terminate or be forfeited by the Holder, as applicable, under the same conditions as under such other Award.

13.3 Interest Equivalents. The Distribution Equivalent Rights Award Agreement for a Distribution Equivalent Rights Award may provide for the crediting of interest on a Distribution Rights Award to be settled in cash at a future date (but in no event later than by the fifteenth (15th) day of the third (3rd) calendar month next following the end of the Company's fiscal year in which such interest is credited and vested), at a rate set forth in the applicable Distribution Equivalent Rights Award Agreement, on the amount of cash payable thereunder.

**ARTICLE XIV
STOCK APPRECIATION RIGHTS**

14.1 Award. A Stock Appreciation Right shall constitute a right, granted alone or in connection with a related Option, to receive a payment equal to the increase in value of a specified number of Shares between the date of Award and the date of exercise.

14.2 Terms and Conditions. At the time any Award is made under this Article XIV, the Company and the Holder shall enter into a Stock Appreciation Right Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Committee shall set forth in the applicable Stock Appreciation Right Agreement the terms and conditions of the Stock Appreciation Right, including (i) the base value (the "Base Value") for the Stock Appreciation Right, which shall be not less than the Fair Market Value of an Share on the date of grant of the Stock Appreciation Right, (ii) the number of Shares subject to the Stock Appreciation Right, (iii) the period during which the Stock Appreciation Right may be exercised; provided, however, that no Stock Appreciation Right shall be exercisable after the expiration of ten (10) years from the date of its grant, and (iv) any other special rules and/or requirements which the Committee imposes upon the Stock Appreciation Right. Upon the exercise of some or all of the portion of a Stock Appreciation Right, the Holder shall receive a payment from the Company, in cash or in the form of Shares having an equivalent Fair Market Value or in a combination of both, as determined in the sole discretion of the Committee, equal to the product of:

- (a) The excess of (i) the Fair Market Value of an Share on the date of exercise, over (ii) the Base Value, multiplied by,
- (b) The number of Shares with respect to which the Stock Appreciation Right is exercised.

14.3 Tandem Stock Appreciation Rights. If the Committee grants a Stock Appreciation Right which is intended to be a Tandem Stock Appreciation Right, the Tandem Stock Appreciation Right shall be granted at the same time as the related Option, and the following special rules shall apply:

- (a) The Base Value shall be equal to or greater than the per Share exercise price under the related Option;
- (b) The Tandem Stock Appreciation Right may be exercised for all or part of the Shares which are subject to the related Option, but solely upon the surrender by the Holder of the Holder's right to exercise the equivalent portion of the related Option (and when a Share is purchased under the related Option, an equivalent portion of the related Tandem Stock Appreciation Right shall be canceled);
- (c) The Tandem Stock Appreciation Right shall expire no later than the date of the expiration of the related Option;
- (d) The value of the payment with respect to the Tandem Stock Appreciation Right may be no more than one hundred percent (100%) of the difference between the per Share exercise price under the related Option and the Fair Market Value of the Shares subject to the related Option at the time the Tandem Stock Appreciation Right is exercised, multiplied by the number of the Shares with respect to which the Tandem Stock Appreciation Right is exercised; and
- (e) The Tandem Stock Appreciation Right may be exercised solely when the Fair Market Value of the Shares subject to the related Option exceeds the per Share exercise price under the related Option.

**ARTICLE XV
RECAPITALIZATION OR REORGANIZATION**

15.1 Adjustments to Shares. The shares with respect to which Awards may be granted under the Plan are Shares as presently constituted; ~~provided, however,~~ that if, and whenever, prior to the expiration or distribution to the Holder of Shares underlying an Award theretofore granted, the Company shall effect a subdivision or consolidation of the Shares or the payment of an Share dividend on Shares without receipt of consideration by the Company, the number of Shares with respect to which such Award may thereafter be exercised or satisfied, as applicable, (i) in the event of an increase in the number of outstanding Shares, shall be proportionately increased, and the purchase price per Share shall be proportionately reduced, and (ii) in the event of a reduction in the number of outstanding Shares, shall be proportionately reduced, and the purchase price per Share shall be proportionately increased. Notwithstanding the foregoing or any other provision of this Article XV, any adjustment made with respect to an Award (x) which is an Incentive Stock Option, shall comply with the requirements of Section 424(a) of the Code, and in no event shall any adjustment be made which would render any Incentive Stock Option granted under the Plan to be other than an "incentive stock option" for purposes of Section 422 of the Code, and (y) which is a Non-qualified Stock Option, shall comply with the requirements of Section 409A of the Code, and in no event shall any adjustment be made which would render any Non-qualified Stock Option granted under the Plan to become subject to Section 409A of the Code.

15.2 Recapitalization. If the Company recapitalizes or otherwise changes its capital structure, thereafter upon any exercise or satisfaction, as applicable, of a previously granted Award, the Holder shall be entitled to receive (or entitled to purchase, if applicable) under such Award, in lieu of the number of Shares then covered by such Award, the number and class of shares and securities to which the Holder would have been entitled pursuant to the terms of the recapitalization if, immediately prior to such recapitalization, the Holder had been the holder of record of the number of Shares then covered by such Award.

15.3 Other Events. In the event of changes to the outstanding Shares by reason of an extraordinary cash dividend, reorganization, merger, consolidation, combination, split-up, spin-off, exchange or other relevant change in capitalization occurring after the date of the grant of any Award and not otherwise provided for under this Article XV, any outstanding Awards and any Award Agreements evidencing such Awards shall be adjusted by the Board in its discretion in such manner as the Board shall deem equitable or appropriate taking into consideration the applicable accounting and tax consequences, as to the number and price of Shares or other consideration subject to such Awards. In the event of any adjustment pursuant to Sections 15.1, 15.2 or this Section 15.3, the aggregate number of Shares available under the Plan pursuant to Section 5.1 may be appropriately adjusted by the Board, the determination of which shall be conclusive. In addition, the Committee may make provision for a cash payment to a Holder or a person who has an outstanding Award. In addition, the Committee may make provision for a cash payment to a Holder or a person who has an outstanding Award.

15.5 Change of Control. The Committee may, in its sole discretion, at the time an Award is made or at any time prior to, coincident with or after the time of a Change of Control, cause any Award either (i) to be canceled in consideration of a payment in cash or other consideration in amount per share equal to the excess, if any, of the price or implied price per Share in the Change of Control over the per Share exercise, base or purchase price of such Award, which may be paid immediately or over the vesting schedule of the Award; (ii) to be assumed, or new rights substituted therefore, by the surviving corporation or a parent or subsidiary of such surviving corporation following such Change of Control; (iii) accelerate any time periods, or waive any other conditions, relating to the vesting, exercise, payment or distribution of an Award so that any Award to a Holder whose employment has been terminated as a result of a Change of Control may be vested, exercised, paid or distributed in full on or before a date fixed by the Committee; (iv) to be purchased from a Holder whose employment has been terminated as a result of a Change of Control, upon the Holder's request, for an amount of cash equal to the amount that could have been obtained upon the exercise, payment or distribution of such rights had such Award been currently exercisable or payable; or (v) terminate any then outstanding Award or make any other adjustment to the Awards then outstanding as the Committee deems necessary or appropriate to reflect such transaction or change. The number of Shares subject to any Award shall be rounded to the nearest whole number.

15.6 Powers Not Affected. The existence of the Plan and the Awards granted hereunder shall not affect in any way the right or power of the Board or of the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change of the Company's capital structure or business, any merger or consolidation of the Company, any issue of debt or equity securities ahead of or affecting Shares or the rights thereof, the dissolution or liquidation of the Company or any sale, lease, exchange or other disposition of all or any part of its assets or business or any other corporate act or proceeding.

15.7 No Adjustment for Certain Awards. Except as hereinabove expressly provided, the issuance by the Company of shares of any class or securities convertible into shares of any class, for cash, property, labor or services, upon direct sale, upon the exercise of rights or warrants to subscribe therefor or upon conversion of shares or obligations of the Company convertible into such shares or other securities, and in any case whether or not for fair value, shall not affect previously granted Awards, and no adjustment by reason thereof shall be made with respect to the number of Shares subject to Awards theretofore granted or the purchase price per Share, if applicable.

**ARTICLE XVI
AMENDMENT AND TERMINATION OF PLAN**

The Plan shall continue in effect, unless sooner terminated pursuant to this Article XVI, until the tenth (10th) anniversary of the date on which it is adopted by the Board (except as to Awards outstanding on that date). The Board in its discretion may terminate the Plan at any time with respect to any shares for which Awards have not theretofore been granted; provided, however, that the Plan's termination shall not materially and adversely impair the rights of a Holder with respect to any Award theretofore granted without the consent of the Holder. The Board shall have the right to alter or amend the Plan or any part hereof from time to time; provided, however, that without the approval by a majority of the votes cast at a meeting of stockholders at which a quorum representing a majority of the shares of the Company entitled to vote generally in the election of directors is present in person or by proxy, no amendment or modification of the Plan may (i) materially increase the benefits accruing to Holders, (ii) except as otherwise expressly provided in Article XV, materially increase the number of Shares subject to the Plan or the individual Award Agreements specified in Article V, (iii) materially modify the requirements for participation in the Plan, or (iv) amend, modify or suspend Section 7.7 (re-pricing prohibitions) or this Article XVI. In addition, no change in any Award theretofore granted may be made which would materially and adversely impair the rights of a Holder with respect to such Award without the consent of the Holder (unless such change is required in order to exempt the Plan or any Award from Section 409A of the Code).

**ARTICLE XVII
MISCELLANEOUS**

17.1 No Right to Award. Neither the adoption of the Plan by the Company nor any action of the Board or the Committee shall be deemed to give an Employee, Director or Consultant any right to an Award except as may be evidenced by an Award Agreement duly executed on behalf of the Company, and then solely to the extent and on the terms and conditions expressly set forth therein.

17.2 No Rights Conferred. Nothing contained in the Plan shall (i) confer upon any Employee any right with respect to continuation of employment with the Company or any Affiliate, (ii) interfere in any way with any right of the Company or any Affiliate to terminate the employment of an Employee at any time, (iii) confer upon any Director any right with respect to continuation of such Director's membership on the Board, (iv) interfere in any way with any right of the Company or an Affiliate to terminate a Director's membership on the Board at any time, (v) confer upon any Consultant any right with respect to continuation of his or her consulting engagement with the Company or any Affiliate, or (vi) interfere in any way with any right of the Company or an Affiliate to terminate a Consultant's consulting engagement with the Company or an Affiliate at any time.

17.3 Other Laws; No Fractional Shares; Withholding. The Company shall not be obligated by virtue of any provision of the Plan to recognize the exercise of any Award or to otherwise sell or issue Shares in violation of any laws, rules or regulations, and any postponement of the exercise or settlement of any Award under this provision shall not extend the term of such Award. Neither the Company nor its directors or officers shall have any obligation or liability to a Holder with respect to any Award (or Shares issuable thereunder) (i) that shall lapse because of such postponement, or (ii) for any failure to comply with the requirements of any applicable law, rules or regulations, including but not limited to any failure to comply with the requirements of Section 409A of this Code. No fractional Shares shall be delivered, nor shall any cash in lieu of fractional Shares be paid. The Company shall have the right to deduct in cash (whether under this Plan or otherwise) in connection with all Awards any taxes required by law to be withheld and to require any payments required to enable it to satisfy its withholding obligations. In the case of any Award satisfied in the form of Shares, no Shares shall be issued unless and until arrangements satisfactory to the Company shall have been made to satisfy any tax withholding obligations applicable with respect to such Award. Subject to such terms and conditions as the Committee may impose, the Company shall have the right to retain, or the Committee may, subject to such terms and conditions as it may establish from time to time, permit Holders to elect to tender, Shares (including Shares issuable in respect of an Award) to satisfy, in whole or in part, the amount required to be withheld.

17.4 No Restriction on Corporate Action. Nothing contained in the Plan shall be construed to prevent the Company or any Affiliate from taking any corporate action which is deemed by the Company or such Affiliate to be appropriate or in its best interest, whether or not such action would have an adverse effect on the Plan or any Award made under the Plan. No Employee, Director, Consultant, beneficiary or other person shall have any claim against the Company or any Affiliate as a result of any such action.

17.5 Restrictions on Transfer. No Award under the Plan or any Award Agreement and no rights or interests herein or therein, shall or may be assigned, transferred, sold, exchanged, encumbered, pledged or otherwise hypothecated or disposed of by a Holder except (i) by will or by the laws of descent and distribution, or (ii) where permitted under applicable tax rules, by gift to any Family Member of the Holder, subject to compliance with applicable laws. An Award may be exercisable during the lifetime of the Holder only by such Holder or by the Holder's guardian or legal representative unless it has been transferred by gift to a Family Member of the Holder, in which case it shall be exercisable solely by such transferee. Notwithstanding any such transfer, the Holder shall continue to be subject to the withholding requirements provided for under Section 17.3 hereof.

17.6 Beneficiary Designations. Each Holder may, from time to time, name a beneficiary or beneficiaries (who may be contingent or successive beneficiaries) for purposes of receiving any amount which is payable in connection with an Award under the Plan upon or subsequent to the Holder's death. Each such beneficiary designation shall serve to revoke all prior beneficiary designations, be in a form prescribed by the Company and be effective solely when filed by the Holder in writing with the Company during the Holder's lifetime. In the absence of any such written beneficiary designation, for purposes of the Plan, a Holder's beneficiary shall be the Holder's estate.

17.7 Rule 16b-3. It is intended that the Plan and any Award made to a person subject to Section 16 of the Exchange Act shall meet all of the requirements of Rule 16b-3. If any provision of the Plan or of any such Award would disqualify the Plan or such Award under, or would otherwise not comply with the requirements of, Rule 16b-3, such provision or Award shall be construed or deemed to have been amended as necessary to conform to the requirements of Rule 16b-3.

17.8 Clawback Policy. Notwithstanding any contained herein or in any incentive “performance based” Awards under the Plan shall be subject to reduction, forfeiture or repayment by reason of a correction or restatement of the Company’s financial information if and to the extent such reduction or repayment is required by any applicable law.

17.9 Section 409A. Notwithstanding any other provision of the Plan, the Committee shall have no authority to issue an Award under the Plan with terms and/or conditions which would cause such Award to constitute non-qualified “deferred compensation” under Section 409A of the Code unless such Award shall be structured to be exempt from or comply with all requirements of Code Section 409A. The Plan and all Award Agreements are intended to comply with the requirements of Section 409A of the Code (or to be exempt therefrom) and shall be so interpreted and construed and no amount shall be paid or distributed from the Plan unless and until such payment complies with all requirements of Code Section 409A. It is the intent of the Company that the provisions of this Agreement and all other plans and programs sponsored by the Company be interpreted to comply in all respects with Code Section 409A, however, the Company shall have no liability to the Holder, or any successor or beneficiary thereof, in the event taxes, penalties or excise taxes may ultimately be determined to be applicable to any payment or benefit received by the Holder or any successor or beneficiary thereof.

17.10 Indemnification. Each person who is or shall have been a member of the Committee or of the Board shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred thereby in connection with or resulting from any claim, action, suit, or proceeding to which such person may be made a party or may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid thereby in settlement thereof, with the Company’s approval, or paid thereby in satisfaction of any judgment in any such action, suit, or proceeding against such person; provided, however, that such person shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive and shall be independent of any other rights of indemnification to which such persons may be entitled under the Company’s Articles of Incorporation or By-laws, by contract, as a matter of law, or otherwise.

17.11 Other Benefit Plans. No Award, payment or amount received hereunder shall be taken into account in computing an Employee’s salary or compensation for the purposes of determining any benefits under any pension, retirement, life insurance or other benefit plan of the Company or any Affiliate, unless such other plan specifically provides for the inclusion of such Award, payment or amount received. Nothing in the Plan shall be construed to limit the right of the Company to establish other plans or to pay compensation to its employees, in cash or property, in a manner which is not expressly authorized under the Plan.

17.12 Limits of Liability. Any liability of the Company with respect to an Award shall be based solely upon the contractual obligations created under the Plan and the Award Agreement. None of the Company, any member of the Board nor any member of the Committee shall have any liability to any party for any action taken or not taken, in good faith, in connection with or under the Plan.

Opes Acquisition Corp. 2020 Omnibus Equity Incentive Plan

17.13 Governing Law. Except as otherwise provided herein, the Plan shall be construed in accordance with the laws of the State of Florida, without regard to principles of conflicts of law.

17.14 Severability of Provisions. If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Plan, and the Plan shall be construed and enforced as if such invalid or unenforceable provision had not been included in the Plan.

17.15 No Funding. The Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of funds or assets to ensure the payment of any Award. Prior to receipt of Shares or a cash distribution pursuant to the terms of an Award, such Award shall represent an unfunded unsecured contractual obligation of the Company and the Holder shall have no greater claim to the Shares underlying such Award or any other assets of the Company or Affiliate than any other unsecured general creditor.

17.16 Headings. Headings used throughout the Plan are for convenience only and shall not be given legal significance.

STANDSTILL AGREEMENT

THIS STANDSTILL AGREEMENT (this “Agreement”), is dated as of December 16, 2020, by and among BurgerFi International, Inc. (f/k/a OPES Acquisition Corp.), a Delaware corporation (the “Purchaser”), Ophir Sternberg (the “Holder”), and BurgerFi Holdings, LLC and Andrea Jane Acker Revocable Trust U/A dated April 25, 2008 (together, the “Members”).

Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Member Interest Purchase Agreement, dated as of June 29, 2020 (the “Purchase Agreement”) by and among the Purchaser, Burger Fi International LLC, a Delaware limited liability company (the “Company”), the Members, and BurgerFi Holdings, LLC, a Delaware limited liability company (the “Members’ Representative”).

BACKGROUND

A. Pursuant to the Purchase Agreement, the Holder and the Members agreed to enter into this Agreement, whereby the Members as a group, and the Holder each agree to beneficially own no more than forty-nine percent (49%) of Purchaser Common Stock at any time before or after the Closing of the Business Combination.

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

AGREEMENT

1. Standstill.

(a) The Holder, on behalf of himself and his Affiliates, as a group, and the Members, as a group, irrevocably agree that they will not acquire through purchase in a private transaction or in the public market, by transfer or assignment, by gift or in any other manner, directly or indirectly (with or without consideration), shares of Purchaser Common Stock (each an “Acquisition”), to the extent that after giving effect to an Acquisition, the Holder or the Members (together with each of their respective Affiliates, and any other Persons acting as a group together with the Holder or the Members or any of their respective Affiliates (such Persons, “Attribution Parties”)), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below).

(b) For purposes of the foregoing sentence, the number of shares of Purchaser Common Stock beneficially owned by the Holder or the Members, their respective Affiliates and Attribution Parties shall include the number of shares of Purchaser Common Stock:

(i) issuable upon exercise or conversion of securities convertible into, or exchangeable for, or representing the rights to receive, Purchaser Common Stock;

(ii) owned directly or indirectly or attributable to, or rights to acquire by, any spouse, ex-spouse, child, step-child, parent or sibling of any such Person; and

(iii) owned by any Person that has an agreement, understanding or arrangement, oral or written, (other than those certain Voting Agreements entered into in connection with the Purchase Agreement) to vote their Purchaser Common Stock, including Purchaser Common Stock owned or controlled by others, as directed by any such Person.

(c) Beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. 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.

(d) The "Beneficial Ownership Limitation" shall be 49% of the number of shares of Purchaser Common Stock issued and outstanding at the time of any contemplated Acquisition. In determining the number of issued and outstanding shares of Purchaser Common Stock, the Holder and the Members must obtain from the Purchaser the most recent calculation of the issued and outstanding shares of Purchaser Common Stock.

2. Beneficial Ownership. Each of the Holder and the Members hereby represent and warrant that as of the date hereof, they do not beneficially own, directly or through their respective nominees, any shares of Purchaser Common Stock, or any economic interest in or derivative of such shares, other than the shares of Purchaser Common Stock specified on the signature page hereto.

3. Exception. Notwithstanding anything to the contrary contained herein, the parties hereto, in their sole discretion, may cooperate, coordinate, and collaborate with one another to vote their Purchaser Common Stock as they may mutually agree.

4. Representations and Warranties. Each of the parties hereto, by their respective execution and delivery of this Agreement, hereby represents and warrants to the other that (a) such party has the full right, capacity and authority to enter into, deliver and perform its respective obligations under this Agreement, (b) this Agreement has been duly executed and delivered by such party and is a binding and enforceable obligation of such party and, enforceable against such party in accordance with the terms of this Agreement, and (c) the execution, delivery and performance of such party's obligations under this Agreement will not conflict with or breach the terms of any other agreement, contract, commitment or understanding to which such party is a party or to which the assets or securities of such party are bound. Each of the Holder and the Members have independently evaluated the merits of its decision to enter into and deliver this Agreement, and the Holder and the Members each confirm that it has not relied on the advice of the Purchaser, Purchaser's legal counsel, BurgerFi, BurgerFi's legal counsel, or any other person.

5. Notices. Any notices required or permitted to be sent hereunder shall be sent in writing, addressed as specified below, and shall be deemed given: (a) if by hand or recognized courier service, by 4:00PM on a business day, addressee's day and time, on the date of delivery, and otherwise on the first business day after such delivery; (b) if by fax or email, on the date that transmission is confirmed electronically, if by 4:00PM on a business day, addressee's day and time, and otherwise on the first business day after the date of such confirmation; or (c) five days after mailing by certified or registered mail, return receipt requested. Notices shall be addressed to the respective parties as follows (excluding telephone numbers, which are for convenience only), or to such other address as a party shall specify to the others in accordance with these notice provisions:

(a) If to the Holder, to:

LionHeart Equities, LLC
4218 NE 2nd Avenue
Miami, Florida 33137
Attention: General Counsel
Email: notices@lheartcapital.com

(b) If to BurgerFi Holdings, LLC, to:

[•]
[•]
[•]
Attention: [•]
Phone: [•]
Email: [•]

(c) If to Andrea Jane Acker Revocable Trust U/A dated April 25, 2008, to:

[•]
[•]
[•]
Attention: [•]
Phone: [•]
Email: [•]

(b) If to the Purchaser, to:

BurgerFi International, Inc. (f/k/a OPES Acquisition Corp.)
4218 NE 2nd Ave.
Miami, FL 33137
Attention: General Counsel
Email: notices@lheartcapital.com

or to such other address as any party may have furnished to the others in writing in accordance herewith.

6. Enumeration and Headings. The enumeration and headings contained in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall together constitute one and the same agreement.

8. Successors and Assigns. This Agreement and the terms, covenants, provisions and conditions hereof shall be binding upon, and shall inure to the benefit of, the respective heirs, successors and assigns of the parties hereto. Each of the Holder and the Members hereby acknowledges and agrees that this Agreement is entered into for the benefit of and is enforceable by the other party and its successors and assigns.

9. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision will be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

10. Amendment. This Agreement may be amended or modified by written agreement executed by each of the parties hereto.

11. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

12. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

13. Dispute Resolution. Article XIII of the Purchase Agreement regarding mediation of disputes is incorporated by reference herein to apply with full force to any disputes arising under this Agreement.

14. Governing Law: Jurisdiction. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Florida. Any legal suit, action or proceeding arising out of or based upon this agreement, the other additional agreements or the transactions contemplated hereby or thereby may be instituted in the Federal courts of the United States of America or the courts of the State of Florida, in each case located in the City of Fort Lauderdale and County of Broward, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. the parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

15. Controlling Agreement. To the extent the terms of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) directly conflicts with provisions in the Purchase Agreement, the terms of this Agreement shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Standstill Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

PURCHASER:

BurgerFi International, Inc. (f/k/a OPES Acquisition Corp.), a
Delaware corporation

By: /s/ Ophir Sternberg

Name: Ophir Sternberg

Title: Executive Chairman

HOLDER:

LH Equities, LLC

/s/ Ophir Sternberg

Name: Ophir Sternberg

Title: Manager

NUMBER OF SHARES: 1,517,000

MEMBERS:

BurgerFi Holdings, LLC

By: /s/ Kevin Cooper

Name: Kevin Cooper

Title: Manager

NUMBER OF SHARES: 5,853,396

Andrea Jane Acker Revocable Trust U/A dated April 25, 2008

By: /s/ Andrea Acker

Name: Andrea Acker

Title: Trustee

NUMBER OF SHARES: 650,377

LOCK-UP AGREEMENT

THIS LOCK-UP AGREEMENT (this "Agreement") is dated as of December 16, 2020, by and between the undersigned (the "Holder") and BurgerFi International, Inc. (f/k/a Opes Acquisition Corp.), a Delaware corporation ("BurgerFi").

Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Member Interest Purchase Agreement, dated as of June 29, 2020 (the "Purchase Agreement") by and among BurgerFi, Burger Fi International LLC, a Delaware limited liability company (the "Company"), members of the Company (the "Members"), and BurgerFi Holdings, LLC, a Delaware limited liability company (the "Members' Representative").

BACKGROUND

A. Pursuant to the Purchase Agreement, the Members agreed to lock-up their Closing Payment Shares (the "Shares"), after the consummation of the Acquisition.

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

AGREEMENT**1. Lock-Up.**

(a) During the Lock-up Period (as defined below), the Holder irrevocably agrees that it, he or she will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any of the Shares, enter into a transaction that would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Shares, whether any of these transactions are to be settled by delivery of any Shares, or otherwise, publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, or engage in any Short Sales (as defined below) with respect to any securities of BurgerFi.

(b) In furtherance of the foregoing, during the Lock-up Period, BurgerFi will (i) place an irrevocable stop order on all the Shares, including those which may be covered by a registration statement, and (ii) notify BurgerFi's transfer agent in writing of the stop order and the restrictions on the Shares under this Agreement and direct BurgerFi's transfer agent not to process any attempts by the Holder to resell or transfer any Shares, except in compliance with this Agreement.

(c) For purposes hereof, "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis), and sales and other transactions through non-US broker dealers or foreign regulated brokers.

(d) The "Lock-up Period" means the earlier of (i) six months after the Closing Date and (ii) if, subsequent to the Closing Date, BurgerFi consummates a liquidation, merger, stock exchange or other similar transaction which results in all of BurgerFi's stockholders having the right to exchange their shares of common stock, par value \$0.001 per share of BurgerFi ("BurgerFi Common Stock") for cash, securities or other property.

2. Beneficial Ownership. The Holder hereby represents and warrants that it does not beneficially own, directly or through its nominees (as determined in accordance with Section 13(d) of the Exchange Act, and the rules and regulations promulgated thereunder), any shares of BurgerFi Common Stock, or any economic interest in or derivative of such shares, other than the Shares specified on the signature page hereto. For purposes of this Agreement, the Shares beneficially owned by the Holder as specified on the signature page hereto, together with any other shares of BurgerFi Common Stock, and including any securities convertible into, or exchangeable for, or representing the rights to receive BurgerFi Common Stock, if any, acquired during the Lock-up Period are collectively referred to as the "Lock-up Shares."

Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer Lock-Up Shares in connection (a) transfers or distributions to the Holder's current or former general or limited partners, managers or members, stockholders, other equityholders or direct or indirect affiliates (within the meaning of Rule 405 under the Securities Act of 1933, as amended) or to the estates of any of the foregoing; (b) transfers by bona fide gift to a member of the Holder's immediate family or to a trust, the beneficiary of which is the Holder or a member of the Holder's immediate family for estate planning purposes; (c) by virtue of the laws of descent and distribution upon death of the Holder; or (d) pursuant to a qualified domestic relations order, in each case where such transferee agrees to be bound by the terms of this Agreement, provided that in the case of any transfer pursuant to the foregoing clauses it shall be a condition to any such transfer that (i) the transferee/donee agrees to be bound by the terms of this Agreement (including, without limitation, the restrictions set forth in the preceding sentence) to the same extent as if the transferee/donee were a party hereto; and (ii) each party (donor, donee, transferor or transferee) shall not be required by law (including without limitation the disclosure requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act) to make, and shall agree to not voluntarily make, any filing or public announcement of the transfer or disposition prior to the expiration of the Lock-Up Period.

3. Representations and Warranties. Each of the parties hereto, by their respective execution and delivery of this Agreement, hereby represents and warrants to the other that (a) such party has the full right, capacity and authority to enter into, deliver and perform its respective obligations under this Agreement, (b) this Agreement has been duly executed and delivered by such party and is a binding and enforceable obligation of such party and, enforceable against such party in accordance with the terms of this Agreement, and (c) the execution, delivery and performance of such party's obligations under this Agreement will not conflict with or breach the terms of any other agreement, contract, commitment or understanding to which such party is a party or to which the assets or securities of such party are bound. The Holder has independently evaluated the merits of its decision to enter into and deliver this Agreement, and such Holder confirms that it has not relied on the advice of BurgerFi, BurgerFi's legal counsel, or any other person.

4. No Additional Fees/Payment. Other than the consideration specifically referenced herein, the parties hereto agree that no fee, payment or additional consideration in any form has been or will be paid to the Holder in connection with this Agreement.

5. Notices. Any notices required or permitted to be sent hereunder shall be sent in writing, addressed as specified below, and shall be deemed given: (a) if by hand or recognized courier service, by 4:00PM on a business day, addressee's day and time, on the date of delivery, and otherwise on the first business day after such delivery; (b) if by fax or email, on the date that transmission is confirmed electronically, if by 4:00PM on a business day, addressee's day and time, and otherwise on the first business day after the date of such confirmation; or (c) five days after mailing by certified or registered mail, return receipt requested. Notices shall be addressed to the respective parties as follows (excluding telephone numbers, which are for convenience only), or to such other address as a party shall specify to the others in accordance with these notice provisions:

(a) If to BurgerFi, to:

105 U.S. HIGHWAY ONE
NORTH PALM BEACH, FL 33408
Attn:
Email:
Fax:

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

LionHeart Capital.
4218 NE 2nd Avenue
2nd Floor
Miami, Florida 33137
Attention: General Counsel
Email: notices@lheartcapital.com

(b) If to the Holder, to the address set forth on the Holder's signature page hereto, with a copy, which shall not constitute notice, to:

280 N Compass Dr. Ft. Lauderdale, Fl. 33308

or to such other address as any party may have furnished to the others in writing in accordance herewith.

6. Enumeration and Headings. The enumeration and headings contained in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

7. Counterparts. This Agreement may be executed in facsimile and in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall together constitute one and the same agreement.

8. Successors and Assigns. This Agreement and the terms, covenants, provisions and conditions hereof shall be binding upon, and shall inure to the benefit of, the respective heirs, successors and assigns of the parties hereto. The Holder hereby acknowledges and agrees that this Agreement is entered into for the benefit of and is enforceable by BurgerFi and its successors and assigns.

9. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision will be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

10. Amendment. This Agreement may be amended or modified by written agreement executed by each of the parties hereto.

11. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

12. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

13. Dispute Resolution. Article XIII of the Purchase Agreement regarding arbitration of disputes is incorporated by reference herein to apply with full force to any disputes arising under this Agreement.

14. Governing Law: Jurisdiction. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Florida. Any legal suit, action or proceeding arising out of or based upon this agreement, the other additional agreements or the transactions contemplated hereby or thereby may be instituted in the Federal courts of the United States of America or the courts of the State of Florida, in each case located in the City of Fort Lauderdale and County of Broward, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. the parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

15. Controlling Agreement. To the extent the terms of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) directly conflicts with a provisions in the Purchase Agreement, the terms of this Agreement shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

BURGERFI INTERNATIONAL, INC.

(F/K/A OPES ACQUISITION CORP.)

By: /s/ Ophir Sternberg

Name: Ophir Sternberg

Title: Executive Chairman

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

HOLDER

ANDREA JANE ACKER REVOCABLE TRUST U/A DATED
APRIL 25, 2008

By: /s/ Andrea Acker

Name: Andrea Acker

Title: Trustee

Address:

280 N Compass Dr. Ft. Lauderdale, Fl. 33308

NUMBER OF LOCK-UP SHARES:

[•]

LOCK-UP AGREEMENT

THIS LOCK-UP AGREEMENT (this "Agreement") is dated as of December 16, 2020, by and between the undersigned (the "Holder") and BurgerFi International, Inc. (f/k/a Opes Acquisition Corp.), a Delaware corporation ("BurgerFi").

Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Member Interest Purchase Agreement, dated as of June 29, 2020 (the "Purchase Agreement") by and among BurgerFi, Burger Fi International LLC, a Delaware limited liability company (the "Company"), members of the Company (the "Members"), and BurgerFi Holdings, LLC, a Delaware limited liability company (the "Members' Representative").

BACKGROUND

A. Pursuant to the Purchase Agreement, the Members agreed to lock-up their Closing Payment Shares (the "Shares"), after the consummation of the Acquisition. NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

AGREEMENT**1. Lock-Up.**

(a) During the Lock-up Period (as defined below), the Holder irrevocably agrees that it, he or she will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any of the Shares, enter into a transaction that would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Shares, whether any of these transactions are to be settled by delivery of any Shares, or otherwise, publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, or engage in any Short Sales (as defined below) with respect to any securities of BurgerFi.

(b) In furtherance of the foregoing, during the Lock-up Period, BurgerFi will (i) place an irrevocable stop order on all the Shares, including those which may be covered by a registration statement, and (ii) notify BurgerFi's transfer agent in writing of the stop order and the restrictions on the Shares under this Agreement and direct BurgerFi's transfer agent not to process any attempts by the Holder to resell or transfer any Shares, except in compliance with this Agreement.

(c) For purposes hereof, "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis), and sales and other transactions through non-US broker dealers or foreign regulated brokers.

(d) The "Lock-up Period" means the earlier of (i) six months after the Closing Date and (ii) if, subsequent to the Closing Date, BurgerFi consummates a liquidation, merger, stock exchange or other similar transaction which results in all of BurgerFi's stockholders having the right to exchange their shares of common stock, par value \$0.001 per share of BurgerFi ("BurgerFi Common Stock") for cash, securities or other property.

2. Beneficial Ownership. The Holder hereby represents and warrants that it does not beneficially own, directly or through its nominees (as determined in accordance with Section 13(d) of the Exchange Act, and the rules and regulations promulgated thereunder), any shares of BurgerFi Common Stock, or any economic interest in or derivative of such shares, other than the Shares specified on the signature page hereto. For purposes of this Agreement, the Shares beneficially owned by the Holder as specified on the signature page hereto, together with any other shares of BurgerFi Common Stock, and including any securities convertible into, or exchangeable for, or representing the rights to receive BurgerFi Common Stock, if any, acquired during the Lock-up Period are collectively referred to as the "Lock-up Shares."

Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer Lock-Up Shares in connection (a) transfers or distributions to the Holder's current or former general or limited partners, managers or members, stockholders, other equityholders or direct or indirect affiliates (within the meaning of Rule 405 under the Securities Act of 1933, as amended) or to the estates of any of the foregoing; (b) transfers by bona fide gift to a member of the Holder's immediate family or to a trust, the beneficiary of which is the Holder or a member of the Holder's immediate family for estate planning purposes; (c) by virtue of the laws of descent and distribution upon death of the Holder; or (d) pursuant to a qualified domestic relations order, in each case where such transferee agrees to be bound by the terms of this Agreement, provided that in the case of any transfer pursuant to the foregoing clauses it shall be a condition to any such transfer that (i) the transferee/donee agrees to be bound by the terms of this Agreement (including, without limitation, the restrictions set forth in the preceding sentence) to the same extent as if the transferee/donee were a party hereto; and (ii) each party (donor, donee, transferor or transferee) shall not be required by law (including without limitation the disclosure requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act) to make, and shall agree to not voluntarily make, any filing or public announcement of the transfer or disposition prior to the expiration of the Lock-Up Period.

3. Representations and Warranties. Each of the parties hereto, by their respective execution and delivery of this Agreement, hereby represents and warrants to the other that (a) such party has the full right, capacity and authority to enter into, deliver and perform its respective obligations under this Agreement, (b) this Agreement has been duly executed and delivered by such party and is a binding and enforceable obligation of such party and, enforceable against such party in accordance with the terms of this Agreement, and (c) the execution, delivery and performance of such party's obligations under this Agreement will not conflict with or breach the terms of any other agreement, contract, commitment or understanding to which such party is a party or to which the assets or securities of such party are bound. The Holder has independently evaluated the merits of its decision to enter into and deliver this Agreement, and such Holder confirms that it has not relied on the advice of BurgerFi, BurgerFi's legal counsel, or any other person.

4. No Additional Fees/Payment. Other than the consideration specifically referenced herein, the parties hereto agree that no fee, payment or additional consideration in any form has been or will be paid to the Holder in connection with this Agreement.

5. Notices. Any notices required or permitted to be sent hereunder shall be sent in writing, addressed as specified below, and shall be deemed given: (a) if by hand or recognized courier service, by 4:00PM on a business day, addressee's day and time, on the date of delivery, and otherwise on the first business day after such delivery; (b) if by fax or email, on the date that transmission is confirmed electronically, if by 4:00PM on a business day, addressee's day and time, and otherwise on the first business day after the date of such confirmation; or (c) five days after mailing by certified or registered mail, return receipt requested. Notices shall be addressed to the respective parties as follows (excluding telephone numbers, which are for convenience only), or to such other address as a party shall specify to the others in accordance with these notice provisions:

(a) If to BurgerFi, to:

105 U.S. HIGHWAY ONE
NORTH PALM BEACH, FL 33408
Attn:
Email:
Fax:

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

LionHeart Capital.
4218 NE 2nd Avenue
2nd Floor
Miami, Florida 33137
Attention: General Counsel
Email: notices@lheartcapital.com

(b) If to the Holder, to the address set forth on the Holder's signature page hereto, with a copy, which shall not constitute notice, to:

BurgerFi Holdings, LLC
105 U.S. HIGHWAY ONE
NORTH PALM BEACH, FL 33408
Attn: General Counsel
Email: ross@burgerfi.com
Fax: (561) 844-5529

or to such other address as any party may have furnished to the others in writing in accordance herewith.

6. Enumeration and Headings. The enumeration and headings contained in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

7. Counterparts. This Agreement may be executed in facsimile and in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall together constitute one and the same agreement.

8. Successors and Assigns. This Agreement and the terms, covenants, provisions and conditions hereof shall be binding upon, and shall inure to the benefit of, the respective heirs, successors and assigns of the parties hereto. The Holder hereby acknowledges and agrees that this Agreement is entered into for the benefit of and is enforceable by BurgerFi and its successors and assigns.

9. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision will be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

10. Amendment. This Agreement may be amended or modified by written agreement executed by each of the parties hereto.

11. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

12. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

13. Dispute Resolution. Article XIII of the Purchase Agreement regarding arbitration of disputes is incorporated by reference herein to apply with full force to any disputes arising under this Agreement.

14. Governing Law: Jurisdiction. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Florida. Any legal suit, action or proceeding arising out of or based upon this agreement, the other additional agreements or the transactions contemplated hereby or thereby may be instituted in the Federal courts of the United States of America or the courts of the State of Florida, in each case located in the City of Fort Lauderdale and County of Broward, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. the parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

15. Controlling Agreement. To the extent the terms of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) directly conflicts with a provisions in the Purchase Agreement, the terms of this Agreement shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

BURGERFI INTERNATIONAL, INC.

(F/K/A OPES ACQUISITION CORP.)

By: /s/ Ophir Sternberg

Name: Ophir Sternberg

Title: Executive Chairman

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

HOLDER

BURGERFI HOLDINGS, LLC, a Delaware limited liability company

By: /s/ Kevin Cooper

Name: Kevin Cooper

Title: Manager

Address:

105 U.S. HIGHWAY ONE
NORTH PALM BEACH, FL 33408

NUMBER OF LOCK-UP SHARES:

[•]

BANK OF AMERICA 

August 14, 2020

Oralia Rojas

RE: BurgerFi International, LLC, Line of credit, FAC ID #904966

Enclosed are the documents necessary to finalize the loan request for the above Borrower. **The documents are time sensitive and therefore require your immediate attention.** Please review the documents carefully.

Your package includes the following documents:

1. Barcode cover sheet(s)
2. Amendment No. 2 to Loan Agreement including Consent and Reaffirmation of Guarantors and Pledgors
3. FL Note
4. FL Out of State Closing Affidavit
5. FL Tax Indemnity Agreement

Additional Comments:

1. This loan does not contain direct debit/ACH debit. Please contact me prior to having the client execute loan documents if you want to add debiting at loan booking. I will prepare and send the appropriate debiting documents to you.

Please review this information carefully and ensure that all items requested are met and included with your return package.

Immediately after execution of all documentation, please ensure that all signature blocks including bank signature block are complete. Return all pages (including exhibits and schedules) of the signed and dated documents to:

Document Retention
Bank of America
NC1-001-05-13
One Independence Center
101 North Tryon St
Charlotte, NC 28255-0001

Fax Number: 866-255-9922

Should you have any questions I can be reached at the phone number shown below.

Sincerely,

Audrey Walton
Loan Documentation Specialist
980-387-4471



PROMISSORY NOTE

\$5,000,000.00

Date: July 13, 2020

1. FOR VALUE RECEIVED the undersigned ("Borrower") unconditionally (and jointly and severally, if more than one) promise(s) to pay to the order of Bank of America, N.A. ("Bank") without setoff at Miami, Florida, the total unpaid principal amount advanced by Bank from time to time to or for the benefit of or at the request of Borrower together with interest thereon according to the terms and conditions as set forth in Facility No. 1 of that certain Loan Agreement dated July 13, 2018 together with all amendments, modifications and extensions thereof (collectively the "Loan Agreement"). This Note is subject to the terms and conditions of the Loan Agreement provided, however, the Loan Agreement is expressly NOT incorporated herein pursuant to Section 201.08(6), Florida Statutes and Rules 12B-4.052(6)(b) and (12)(h), Florida Administrative Code. Capitalized terms used but not defined in this Note shall have the meaning given to them in the Loan Agreement.
2. The obligations of the undersigned under this Note, if there is more than one signing this Note as Borrower, are joint and several.
3. Upon default under this Note or the Loan Agreement, Bank shall have the right to pursue all rights and remedies available to the Bank at law or in equity including, but not limited to, those set forth in this Note and the Loan Agreement.
4. Borrower agrees to promptly pay, indemnify and hold harmless Bank from all state and federal taxes of any kind and other liabilities with respect to or resulting from the execution or delivery of this Note or advances made pursuant to this Note and/or the Loan Agreement.
5. This Note shall be construed under the laws of the State of Florida and the laws of the United States as the same may be applicable.
6. (a) The Borrower will pay interest on August 13, 2020, and then on the same day of each month thereafter until payment in full of any principal outstanding under this Note.
(b) The Borrower will repay in full any principal, interest or other charges outstanding under this Note no later than the Facility No. 1 Expiration Date.
7. Notwithstanding any other provision contained in this Note, Bank does not intend to charge and Borrower shall not be required to pay any amount of interest or other fees or charges that is in excess of the maximum permitted by applicable law. Any payment in excess of such maximum shall be refunded to Borrower or credited against principal, at the option of Bank. It is the express intent hereof that Borrower not pay and Bank not receive, directly or indirectly, interest in excess of that which may be lawfully paid under applicable law including the usury laws in force in the state of Florida.

If this Note is secured by a mortgage on real property, documentary stamp taxes have been paid and affixed to the mortgage.

Ref #: 1003297576 : - BURGERI INTERNATIONAL, LLC
Florida Note: Related to Loan Agreement

8. This Note renews, extends or modifies the terms of that certain Promissory Note dated October 31, 2019 in the principal face amount of \$5,000,000.00 executed by Borrower in favor of Bank.

9. Amendments. This Note may be amended or modified only in writing signed by each party hereto.

BORROWER:

BurgerFi Interantional, LLC

By: 
~~Corey Winogred, Manager~~

Kevin Cooper



AMENDMENT NO. 2 LOAN AGREEMENT

This Amendment No. 2 (the "Amendment") dated as of August 14, 2020, is between Bank of America, N.A. (the "Bank") and BurgerFi International, LLC (the "Borrower").

RECITALS

A. The Bank and the Borrower entered into a certain Loan Agreement dated as of July 13, 2018 (together with any previous amendments, the "Agreement"). The current commitment amount of Facility No. 1 is \$5,000,000.00.

B. The Bank and the Borrower desire to amend the Agreement. This Amendment shall be effective on July 13, 2020, subject to any conditions stated in this Amendment.

AGREEMENT

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meaning given to them in the Agreement.

2. Amendments. The Agreement is hereby amended as follows:

2.1 In Paragraph 2.2 the date "July 13, 2020" is changed to "July 13, 2021".

3. Representations and Warranties. When the Borrower signs this Amendment, the Borrower represents and warrants to the Bank that: (a) there is no event which is, or with notice or lapse of time or both would be, a default under the Agreement except those events, if any, that have been disclosed in writing to the Bank or waived in writing by the Bank, (b) the representations and warranties in the Agreement are true as of the date of this Amendment as if made on the date of this Amendment, (c) this Amendment does not conflict with any law, agreement, or obligation by which the Borrower is bound, (d) if the Borrower is a business entity or a trust, this Amendment is within the Borrower's powers, has been duly authorized, and does not conflict with any of the Borrower's organizational papers, (e) the information included in the Beneficial Ownership Certification most recently provided to the Bank, if applicable, is true and correct in all respects, and (f) as of the date of this Amendment and throughout the term of the Agreement, no Borrower or Guarantor, if any, is (1) an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (2) a plan or account subject to Section 4975 of the Internal Revenue Code of 1986 (the "Code"); (3) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code; or (4) a "governmental plan" within the meaning of ERISA.

4. Conditions. The effectiveness of this Amendment is conditioned upon the Bank's receipt of the following items, in form and content acceptable to the Bank:

4.1 A fully executed counterpart of this Amendment from the Borrower and each guarantor and/or collateral pledgor (collectively, a "Credit Support Provider") in form satisfactory to the Bank.

4.2 KYC Information.

(a) Upon the request of the Bank, the Borrower shall have provided to the Bank, and the Bank shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act.

(b) If the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall have provided a Beneficial Ownership Certification to the Bank if so requested.

5. Effect of Amendment. Except as provided in this Amendment, all of the terms and conditions of the Agreement, including but not limited to any Waiver of Jury Trial or Dispute Resolution Provision contained therein, shall remain in full force and effect.

6. Counterparts. This Amendment may be executed in counterparts, each of which when so executed shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

7. FINAL AGREEMENT. BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS DOCUMENT REPRESENTS THE FINAL AGREEMENT BETWEEN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, (B) THIS DOCUMENT SUPERSEDES ANY COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS RELATING TO THE SUBJECT MATTER HEREOF, UNLESS SUCH COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS EXPRESSLY PROVIDES TO THE CONTRARY, (C) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (D) THIS DOCUMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

This Amendment is executed as of the date stated at the beginning of this Amendment.

Bank:

Bank of America, N.A.

By: _____
Oralia Rojas, Director

Borrower:

BurgerFi International, LLC

By: _____
Gorey Winograd, Manager

KEVIN COOPER

**CONSENT AND REAFFIRMATION
OF GUARANTORS AND PLEDGORS**

Each of the undersigned (collectively referred to as the "Credit Support Providers") is a guarantor of, and/or is a pledgor of collateral for, the Borrower's obligations to the Bank under the Agreement. Each Credit Support Provider hereby (i) acknowledges and consents to the foregoing Amendment, (ii) reaffirms its obligations under its respective guaranty in favor of the Bank and/or under any agreement under which it has granted to the Bank a lien or security interest in any of its real or personal property, and (iii) confirms that such guaranty and other agreements, including but not limited to any Waiver of Jury Trial or Dispute Resolution Provision contained therein, remain in full force and effect, without defense, offset, or counterclaim. (Capitalized terms used herein shall have the meanings specified in the foregoing Amendment.)

Although each of the undersigned has been informed of the terms of the Amendment, each understands and agrees that the Bank has no duty to so notify it or any other guarantor/pledgor or to seek this or any future acknowledgment, consent or reaffirmation, and nothing contained herein shall create or imply any such duty as to any transactions, past or future.

Dated as of August 14, 2020.

Credit Support Provider:



John A. Rosatti, individually



John A. Rosatti, Trustee of the Rosatti Family Trust dated August 27, 2001, as amended, established under the Revocable Trust Agreement of John A. Rosatti dated August 27, 2001, as amended and restated in its entirety on April 5, 2017

TAX INDEMNITY AGREEMENT

This Agreement is made the 13th day of July, 2020, by and between BurgerFi International, LLC ("Borrower", jointly and severally if more than one) and Bank of America, N. A. ("Bank").

WHEREAS, Bank is making, renewing, substituting, consolidating or modifying a \$5,000,000.00 loan dated July 13, 2020 ("Loan"), executed by Borrower, upon which State of Florida documentary stamp tax and/or non-recurring intangible taxes (jointly and severally, the "Taxes") may or may not be due, same dependent upon the structure of the Loan; and

WHEREAS, Borrower is of the opinion that the Loan may not be subject to the Taxes and has requested that Bank not collect, withhold nor pay the Taxes; and

WHEREAS, Borrower has been informed by Bank that non-payment of the Taxes may create a potential liability to Bank in the event that any claims are brought against Bank by reason of non-payment of Taxes;

— THEREFORE, Bank has requested, and Borrower has agreed to give, this Agreement with the Borrower indemnifying the Bank as follows:

1. Borrower assumes the risk of all damage, loss, cost and expense (including interest and penalties, if any), and agrees to indemnify and hold harmless Bank, its directors, officers, agents and employees from and against any and all liability, damage, loss, cost expense, or reasonable attorney fees which may accrue to or be sustained by Bank, its directors, officers, agents or employees on account of or arising from any claim or action raised by, filed or brought by or in the name of any State of Florida Governmental or Administrative Department with respect to non-payment of the Taxes against Bank, its directors, officers, agents or employees in connection with the Loan.
2. Borrower agrees to pay Bank against any claim brought or action filed against Bank with respect to the subject of this indemnity contained herein, whether such claim or action is rightfully or wrongfully brought or filed.
3. Bank shall use its best efforts to give written notice to Borrower of any claim or action which Bank is to be indemnified against herein in a timely manner after written notice of such claim or action is received by Bank, by sending notification via certified or registered mail, postage prepaid, return receipt requested or overnight courier to Borrower at its billing address shown on Bank's billing system. Bank shall also request from the entity making said demand or inquiry that the demand or inquiry be in writing and sent to Bank, but is not responsible for non-compliance with its request. Additionally, Borrower shall give immediate notice to Bank if Borrower receives any notice of any possible or actual claim or action.
4. In case a claim should be brought or action filed with respect to the subject of indemnity herein, Borrower agrees that Bank may employ attorneys of its own selection to appear and defend the claim or action on behalf of Bank, at the expense of Borrower. Bank, at its option, shall have authority for the direction of the defense, and shall be the judge of the acceptability of any compromise or settlement of any claims or actions against Bank; however, Borrower has the right to be advised of any compromises, or settlements and upon request to the Bank, to be joined in the lawsuit as a party defendant, therefore allowing the Borrower to assert its own defenses.

5. Indemnities and obligations provided for herein shall continue in full force and effect notwithstanding the expiration or termination of the Loan for any reason whatsoever. Nothing in this Agreement or otherwise shall authorize any of the parties hereto or any other person or entity to act so as to incur or impose any liability or obligation for or on behalf of the others.

6. It is further understood and agreed by the parties hereto that if any of the provisions hereof shall contravene, or be invalid under the laws of the State of Florida, or any county or jurisdiction where used, such contravention or invalidity shall not invalidate this Agreement but shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights of the obligations of the parties hereto shall be construed and enforced accordingly.

7. Each party agrees to execute and deliver, or cause to be executed and delivered, all such instruments, certificates and documents, and to take all such other actions, as the other party to this Agreement may reasonably request from time to time to effectuate the purpose and intent of this Agreement.

8. The failure of Bank to insist in any one or more instances upon performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, and the same shall continue and remain in full force and effect. No single or partial exercise by Bank of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. Waiver by Bank of any breach of any provision of this Agreement shall not constitute or be construed as a continuing waiver or as a waiver of any other breach of any other provision of this Agreement.

9. This Agreement contains the entire agreement between the parties with respect to the matters contemplated herein and supersedes and cancels all prior agreements between them whether oral, written or implied. No modifications, amendments or waivers of this Agreement, or any of its provisions, shall be binding on any party unless evidenced by a written instrument duly executed by the parties.

The undersigned have executed this Tax Indemnity Agreement on the day and year first appearing.

Bank:

Bank of America, N.A.

By: _____
Oralia Rojas, Director

Borrower:

BurgerFi International, LLC

By:  _____
Corey Winograd, Manager
Kevin Cooper

COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: BurgerFi International, LLC
Name of Foreign Limited Liability Company

Dear Sir or Madam:

The enclosed application, certificate and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Lori Smillie
Name of Person

BurgerFi
Firm/Company

105 US Highway 1
Address

North Palm Beach, FL 33408
City/State and Zip Code

lori@burgerfi.com
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Kristina Shockley at (561) 598-6417
Name of Person Area Code & Daytime Telephone Number

STREET/COURIER ADDRESS:
Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, Florida 32301

MAILING ADDRESS:
Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

Enclosed is a check for the following amount:

- \$25 Filing Fee
- \$30 Filing Fee & Certificate of Status
- \$55 Filing Fee & Certified Copy
- \$60 Filing Fee, Certificate of Status & Certified Copy

CR2E055 (9/15)

**APPLICATION BY FOREIGN LIMITED LIABILITY COMPANY TO FILE
AMENDMENT TO CERTIFICATE OF AUTHORITY TO TRANSACT
BUSINESS IN FLORIDA**

SECTION I (1-4 must be completed)

1. Name of limited liability Company as it appears on the records of the Florida Department of

State: BurgerFi International, LLC

Enter new principal office address, if applicable: _____

*(Principal office address
MUST BE A STREET ADDRESS)*

Enter new mailing address, if applicable: _____

*(Mailing address
MAY BE A POST OFFICE BOX)*

2019 OCT 14 PM 3:56

2. The Florida document number of this limited liability company is: M11000001912

3. Jurisdiction of its organization: Delaware

4. Date authorized to do business in Florida: 4/15/11

SECTION II (5-9 complete only the applicable changes)

5. New name of the limited liability company: _____
(must contain "Limited Liability Company," "L.L.C." or "LLC.")

(If name unavailable, enter alternate name adopted for the purpose of transacting business in Florida and attach a copy of the written consent of the managers or managing members adopting the alternate name. The alternate name must contain "Limited Liability Company," "L.L.C." or "LLC.")

6. If amending the registered agent and/or registered officer address on our records, enter the name of the new registered agent and/or the new registered office address here:

Name of New Registered Agent: _____

New Registered Office Address: _____

Enter Florida Street Address

_____, Florida _____
City Zip Code

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 605, F.S. Or, if this document is being filed to merely reflect a change in the registered office address, I hereby confirm that the limited liability company has been notified in writing of this change.

If Changing Registered Agent, Signature of New Registered Agent

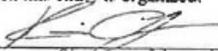
7. If the amendment changes the jurisdiction of organization, indicate new jurisdiction:

8. If the amendment changes person, title or capacity in accordance with 605.0902 (1)(e), indicate that change:

Change of manager

| <u>Title/Capacity</u> | <u>Name</u> | <u>Address</u> | <u>Type of Action</u> |
|-----------------------|-----------------------|---|--|
| <u>MGR</u> | <u>Corey Winograd</u> | _____ | <input type="checkbox"/> Add |
| | | 105 US Highway 1 North Palm Beach, FL 33408 | <input checked="" type="checkbox"/> Remove |
| <u>MGR</u> | <u>Kevin Cooper</u> | 105 US Highway 1 North Palm Beach, FL 33408 | <input checked="" type="checkbox"/> Add |
| | | _____ | <input type="checkbox"/> Remove |
| _____ | _____ | _____ | <input type="checkbox"/> Add |
| _____ | _____ | _____ | <input type="checkbox"/> Remove |
| _____ | _____ | _____ | <input type="checkbox"/> Add |
| _____ | _____ | _____ | <input type="checkbox"/> Remove |
| _____ | _____ | _____ | <input type="checkbox"/> Add |
| _____ | _____ | _____ | <input type="checkbox"/> Remove |

9. Attached is a certificate, if required: no more than 90 days old, evidencing the aforementioned amendment(s), duly authenticated by the official having custody of records in the jurisdiction under the law of which this entity is organized.



Signature of the authorized representative

Kevin Cooper

Typed or printed name of signee

Filing Fee: \$25.00



AMENDMENT NO. 1 TO PLEDGE AGREEMENT

THIS AMENDMENT NO. 1 TO PLEDGE AGREEMENT (the "Amendment") is entered into effective as of October 31, 2019 by and between John A. Rosatti, Trustee of the Rosatti Family Trust dated August 27, 2001, as amended ("Pledgor") and Bank of America, N.A., a national banking association ("Bank").

WITNESSETH:

WHEREAS, Bank and Pledgor heretofore entered into that certain Pledge Agreement, dated as of July 13, 2018 (as amended or modified, the "Pledge Agreement") pursuant to which Pledgor pledged to Bank certain collateral to secure indebtedness of Pledgor to Bank.

WHEREAS, the parties wish to amend the Pledge Agreement as more specifically set forth below.

NOW THEREFORE, in consideration of these premises, the promises, mutual covenants and agreements contained in this Amendment, and fully intending to be legally bound by this Amendment, the parties hereto agree as follows:

1. Definitions.

Unless otherwise specifically defined herein, all defined terms used in this Amendment shall have their respective meanings set forth in the Pledge Agreement.

2. Amendments to Pledge Agreement.

2.1 Exhibit A to Pledge Agreement, Description of Collateral, is hereby deleted and replaced with the attached "Exhibit A to Pledge Agreement, Description of Collateral", including the Schedule 1 thereto. For the avoidance of doubts, Pledgor hereby irrevocably and unconditionally grants a security interest in, a lien upon and a right of set-off against all Accounts and other collateral described in the attached Exhibit A to secure the indebtedness.

2.2 Subsection (a) of Section 3, LIMITATIONS ON EXTENSIONS OF CREDIT; COLLATERAL MAINTENANCE is hereby amended by modifying the Collateral Table of the Pledge Agreement by deleting the reference to Money Market funds and substituting the following:

| | | |
|---|------------------|-----|
| Money Market mutual funds, Preferred Deposits, Cash and similar Cash Equivalents ³ | 95% ³ | 97% |
|---|------------------|-----|

Except as specifically set forth above, the Collateral Chart and the remainder of subsection (a) of Section 3 shall remain unchanged.

3. Representations and Warranties.

By the execution of this Amendment, Pledgor represents and warrants that (i) the representations and warranties stated in the Pledge Agreement or any document executed in connection therewith ("the Related Documents") to which it is a party are true and correct as of the date

hereof; and (ii) no event which with the lapse of time or notice or both could become an Event of Default, has occurred as of the date hereof.

4. Effectiveness.

- (a) Except to the extent specifically amended and supplemented hereby, all of the terms, conditions and provisions of the Pledge Agreement and each of the Related Documents shall remain unmodified, and the Pledge Agreement, as amended and supplemented by this Amendment, is ratified and confirmed as being in full force and effect.
- (b) All references to the Pledge Agreement amended hereby in this Amendment or in any other document or instrument between the parties shall hereafter be construed to be references to the Pledge Agreement as modified by this Amendment.

5. Counterparts.

This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, but all of which constitute one instrument.

6. Notice of Final Agreement.

BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS DOCUMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, (B) THIS DOCUMENT SUPERSEDES ANY COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS RELATING TO THE SUBJECT MATTER HEREOF, UNLESS SUCH COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS EXPRESSLY PROVIDES TO THE CONTRARY, (C) THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES, AND (D) THIS DOCUMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

SIGNATURES SET FORTH ON NEXT PAGE

The parties have executed this Amendment as of October 31, 2019.

PLEDGOR:



Signature

John A. Rosatti, Trustee of the Rosatti Family Trust dated August 27, 2001, as amended, established under the Revocable Trust Agreement of John A. Rosatti, dated August 27, 2001, as amended and restated in its entirety on April 5, 2017

PLEDGOR:

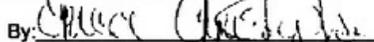


Signature

John A. Rosatti, individually

BANK:

BANK OF AMERICA, N.A.

By: 

Printed Name: ~~Oralia Rojas~~ Oralia Christopher

Title: Director 

Exhibit A to Pledge Agreement

Description of Collateral

1. All of the accounts specified below (the "Accounts"):

(a) The following listed account(s):

- (i) Account number(s) 737-35764, 737-35763, 737-35765 maintained by Merrill Lynch, Pierce, Fenner & Smith Incorporated in the name of Pledgor, for the benefit of Pledgor, or as a collateral account of Bank for Pledgor.

It is contemplated by the parties that Pledgor may, from time to time pledge additional account(s) maintained with Merrill Lynch, Pierce, Fenner & Smith Incorporated and all property and assets held, maintained or administered therein, or credited thereto, and all proceeds thereof as security for the Indebtedness and Bank may, in its sole discretion, agree to accept such additional account(s) as Collateral and assign maximum Advance Percentage(s) and Margin Call Percentage(s) to such accounts. In addition, Pledgor may from time to time in each case with the prior written consent of Bank and, subject to subsection(c) of the Section entitled "LIMITATION ON EXTENSIONS OF CREDIT; COLLATERAL MAINTENANCE" hereof, withdraw account(s) as Collateral; or substitute new account(s) for existing account(s) as Collateral. At the time of each addition, withdrawal or modification of any account(s) as Collateral, the account(s) added, withdrawn or modified as Collateral together, if applicable, with their maximum Advance Percentage(s) and Margin Call Percentage(s) shall be identified on a Pledge Certificate substantially in the form of the Pledge Certificate attached hereto as Schedule 1 (each a "Pledge Certificate"), signed by Pledgor and delivered to and accepted by Bank in writing. All such Additional Collateral Accounts shall be deemed to be "Accounts" and "Collateral" as defined in this Agreement. Bank shall have no obligation to obtain the consent, or give notice to, any Debtor (if different than Pledgor), of any addition, withdrawal or substitution of any account(s) as Collateral.

- (b) All successor and replacement accounts, regardless of the numbers of such accounts or the offices at which such accounts are maintained, including any linked or related deposit or securities accounts held by any affiliate of Bank of America Corporation receiving assets or proceeds of the accounts described above or any related account held by any entity as clearing broker for any of the accounts.
2. All rights of Pledgor in connection with the Accounts, including any rights against any securities intermediary, any such affiliate of Bank of America Corporation or any clearing broker in connection with the Accounts.
3. All investment property, security entitlements, financial assets, certificated securities, uncertificated securities, money, deposit accounts, instruments, certificates of deposit, general intangibles, puts, calls and options and all other investments or property of any sort now or hereafter held, maintained or administered in, or credited to, the Accounts; but excluding collective investment funds managed by Bank, including without limitation any interest in variable amount notes, commonly known as "master notes"; and excluding anything construed as real property under applicable state law.
4. All rights of Pledgor under any agreement between Pledgor and Bank or any of its affiliates, now existing or hereafter entered into, which provides for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, securities puts, calls, collars, options or forwards or any combination of, or option with respect to, these or similar transactions, including, without limitation, any right to payment thereunder.
5. All present and future income, proceeds (including identifiable cash proceeds), earnings, increases, and substitutions from or for the Collateral of every kind and nature, including without limitation all payments, interest, profits, distributions, benefits, rights, options, warrants, dividends, stock dividends, stock splits, stock rights, regulatory dividends, subscriptions, monies, claims for money due and to become due, proceeds of any insurance on the Collateral, shares of stock of different par value or no par value issued in substitution or

exchange for shares included in the Collateral, and all other property Pledgor is entitled to receive on account of such Collateral, including accounts, documents, instruments, chattel paper, and general intangibles.

6. For the purposes of this Exhibit, if there is more than one Pledgor, the term "Pledgor" shall include any one or more of the Pledgors.

SCHEDULE 1 to Exhibit A to PLEDGE AGREEMENT

FORM OF PLEDGE CERTIFICATE

Reference is hereby made to that certain Pledge Agreement dated as of October 31, 2019 (the "Pledge Agreement"), between the undersigned (Pledgor) and Bank. This Pledge Certificate is delivered pursuant to paragraph 1(a) of Exhibit A to Pledge Agreement (Description of Collateral). All capitalized terms used and not otherwise defined herein shall have their respective meanings as set forth in the Pledge Agreement.

Pledgor hereby certifies that concurrently with the delivery of this Pledge Certificate (check appropriate box(es)):

Pledgor is designating the following account(s) held by Merrill Lynch, Pierce, Fenner & Smith Incorporated (collectively, the "Additional Collateral Accounts") as an Account and Collateral with the corresponding maximum Advance Percentage(s) and Margin Call Percentage(s) applicable to all Eligible Collateral held in such Additional Collateral Accounts (if no specific Advance Percentage/Margin Call Percentage is set forth below, Eligible Collateral held in such Additional Collateral Accounts shall receive the corresponding maximum Advance Percentage(s) and Margin Call Percentage(s) specified in the Collateral Table in Section 3 of the Pledge Agreement for each category of Eligible Collateral held therein):

| | <u>Advance Percentage</u> | <u>Margin Call Percentage</u> |
|---|-------------------------------|-----------------------------------|
| Accounts with Merrill Lynch, Pierce, Fenner & Smith Incorporated with acct. nos. as follows: | | |
| a) _____ | _____ % | _____ % |
| b) _____ | _____ % | _____ % |
| c) _____ | _____ % | _____ % |

and/or

Pledgor is withdrawing the following account(s) held by Merrill Lynch, Pierce, Fenner & Smith Incorporated currently constituting Collateral:

Accounts with
Merrill Lynch, Pierce, Fenner &
Smith Incorporated,
with acct. nos. as follows:

a) _____
b) _____
c) _____

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

and/or

Pledgor is modifying the maximum Advance Percentage and Margin Call Percentage of the following account(s) held by Merrill Lynch, Pierce, Fenner & Smith Incorporated as follows applicable to all Eligible Collateral held in such Additional Collateral Accounts (if no specific Advance Percentage/Margin Call Percentage is set forth below, Eligible Collateral held in such Additional Collateral Accounts shall receive the corresponding maximum Advance Percentage(s) and Margin Call Percentage(s) specified in the Collateral Table in Section 3 of the Pledge Agreement for each category of Eligible Collateral held therein):

| | Advance Percentage | Margin Call <u>Percentage</u> |
|---|-----------------------|----------------------------------|
| Accounts with Merrill Lynch, Pierce, Fenner & Smith Incorporated with acct. nos. as follows: | | |
| a) _____ | _____ % | _____ % |
| b) _____ | _____ % | _____ % |
| c) _____ | _____ % | _____ % |

Pledgor hereby irrevocably and unconditionally grants a security interest in, a lien upon and the right of set-off against, and assigns and transfers to Bank the above listed Additional Collateral Accounts and all property and assets held, maintained or administered therein, or credited thereto, and all proceeds thereof to secure the Indebtedness. Pledgor acknowledges and agrees that the "Accounts" and "Collateral" covered by and further described in the Pledge Agreement includes, without limitation, such Additional Collateral Accounts. Pledgor hereby represents and warrants that all of the representations and warranties contained in the Pledge Agreement are true and correct in all material respects, including with respect to the Additional Collateral Accounts with respect to which the maximum Advance Percentage(s) and Margin Call Percentage(s) are modified above, on the date hereof as though made as of the date hereof. Pledgor acknowledges and agrees that each Additional Collateral Account listed above shall be covered by, and subject to, each letter of direction regarding any Account constituting Collateral and each Disclosure, Release and Indemnification and/or Waiver of Conflict of Interest, Acknowledgement and Release previously executed by Pledgor in favor of Bank with respect to each such Account. Except as expressly set forth above, the Pledge Agreement shall continue in full force and effect and is hereby ratified and affirmed.

Pledgor further acknowledges that this Pledge Certificate is not effective until countersigned by Bank below.

The parties have executed this Pledge Certificate as of _____.

PLEDGOR:



Signature

John A. Rosatti, Trustee of the Rosatti Family Trust dated August 27, 2001, as amended, established under the Revocable Trust Agreement of John A. Rosatti, dated August 27, 2001, as amended and restated in its entirety on April 5, 2017

PLEDGOR:

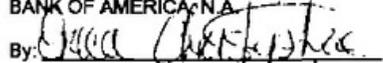


Signature

John A. Rosatti, individually

BANK:

BANK OF AMERICA, N.A.

By: 

Printed Name: Erica Christopher

Title: VP



DISCLOSURE OF RISKS AND ACKNOWLEDGEMENT AND CONSENT TO POTENTIAL CONFLICTS OF INTEREST

Re: Pledge of certain accounts with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill") to Bank of America, N.A. (the "Bank").

The undersigned (whether one or more, hereinafter referred to as "Pledgor" or the "undersigned") is pledging certain accounts held with Merrill to the Bank, as lender, to secure one or more financial accommodations made in the form of a loan, line of credit, letter of credit or other form of extension of credit or derivative exposure ("Credit," whether one or more and also includes any extension, renewal, increase, modification, amendment or restatement or additional credit added from time to time). The Credit may be made to Pledgor as borrower or to other credit parties where Pledgor may also be acting as a guarantor or pledgor. The Bank and Merrill are affiliates. In addition, Pledgor and the other credit parties may have relationships with other affiliates of the Bank (the Bank, Merrill and their other affiliates, collectively, "BAC").

It is important that Pledgor understand and carefully consider the risks involved in borrowing against and/or pledging marketable securities. Also, since BAC is providing brokerage, investment and other services (the "Brokerage Services") and its affiliate, the Bank is providing the Credit, it is important that the Pledgor understand that there may be a potential conflict between the Pledgor's interests and the interests of BAC as secured lender and otherwise. The Pledgor should carefully review the pledge agreement and other documents executed in connection with the Credit (the "Credit Documents") and carefully consider these risks and potential conflicts of interests in BAC's roles, including without limitation, the following:

Credit secured by marketable securities can increase your level of market risk. Borrowing against marketable securities may allow you to keep more dollars invested in marketable securities rather than liquidating your investments to meet your cash needs. Therefore, your exposure to market volatility increases – you may have greater upside potential in a rising market but a declining market may result in even greater losses. A decline in the value of your securities may require you to provide additional funds or eligible securities to the Bank in order to avoid the forced sale of those securities or other securities in your pledged account.

You should carefully consider, and discuss with your advisors where appropriate, strategies to address risks of collateral calls. Carefully considering the diversification, quality and type of assets pledged by you, as well as the amount that you borrow, might be a risk mitigation strategy for you. It is also important to maintain resources to address potential collateral calls and absorb losses from market declines.

The downside is not limited to the collateral value in your pledged account. If the securities in your pledged account(s) decline in value, so does the value of the collateral supporting the Credit. When the value of the collateral falls below the maintenance or other requirements established by the Bank in the Credit Documents, the Bank can take action to protect its position. In order to cover collateral deficiencies, the Bank may issue a collateral call – a request for additional cash or eligible securities – or sell securities from your pledged account(s). If a sale does not cover the deficiency, the borrower and any guarantor of the Credit will be responsible for any shortfall. The Bank may have various remedies available to it upon a collateral call or other default as provided in the Credit Documents and is not obligated to exercise its rights and remedies in any particular order except as may be required under the Credit Documents or by law.

Bank may initiate the sale of any securities in your account to meet a collateral call. The Credit Documents will set out the terms by which the Bank may attempt, or may be obligated, to contact you in the case of a collateral deficiency; however, market conditions may require the Bank to sell the collateral without prior notice to you to the extent permitted by the Credit Documents. Because the securities are collateral for the Credit, the Bank has the right to decide which security to sell in order to protect its interests. Even if the Bank has contacted you and provided a specific date by which you can meet a collateral call, the Bank may still be

Revised date: 2/26/2019

Page 1 of 4

DISCLOSURE OF RISKS AND ACKNOWLEDGEMENT AND CONSENT TO POTENTIAL CONFLICTS OF INTEREST

permitted under the Credit Documents to take necessary steps to protect its interests, including selling the pledged securities without prior notice to you. The investment assets in your account(s) pledged to the Bank may be liquidated in any order to satisfy a collateral deficiency.

Bank may be permitted to modify its collateral maintenance requirements. In certain circumstances, the Credit Documents may allow the Bank to reassess its collateral requirements or modify the collateral maintenance requirements. Such changes to the collateral requirements may take effect immediately and may result in the issuance of a collateral call or a liquidation of the securities as described in the prior paragraphs.

You are not entitled to an extension of time on a collateral call. While the Bank may make an extension of time to meet collateral requirements available to you under certain conditions, you do not have a right to the extension except to the extent expressly set forth in the Credit Documents. The Bank is entitled to initiate liquidation of assets in your account(s) in response to certain market conditions or upon default as specifically provided in your Credit Documents.

There may be adverse tax consequences if Collateral is sold or otherwise liquidated to address a collateral call or other default. You should consult with a tax or legal advisor to understand the potential tax consequences to you from a forced liquidation of the collateral.

Some assets held in your accounts may have no collateral value. BAC may recommend and/or make investments in your account(s) pledged to secure the Credit in furtherance of your investment strategy which are not given any collateral value by the Bank for purposes of the Credit. Certain investments may further your overall investment goals but may not meet the Bank's credit criteria for eligible collateral.

No guarantee of market for Collateral. Acceptance of assets held in the pledged account(s) as eligible collateral does not mean that there is a market for such assets or that any issuer or underwriter of such collateral, including without limitation, BAC, will purchase such asset. The Bank may determine in its sole discretion to give collateral value to certain securities or other investment property, which may be issued or underwritten by BAC but which is not traded on a recognized market. Involuntary sales or liquidations by the Bank in the exercise of its rights and remedies under the Credit Documents may be effected by the Bank at times and in manners designed to address the Bank's credit concerns, as determined by the Bank in its sole discretion, and may result in materially less proceeds than if such sales or liquidations had occurred at different times or by different methods. Without precluding any other methods of sale or liquidation, Bank may sell or liquidate any securities or other investment property not sold on a recognized market but credited to the account(s) in conformity with reasonable commercial practices of lenders disposing of similar property, which may include sales or dispositions to the issuers of such investment property or their agents, including affiliates of the Bank. Any liquidation of collateral may result in adverse consequences to you, including loss of future returns, dividends and appreciation and/or loss of receipt of par or similar guaranteed value due if such investments were held until maturity.

Use of deposits, money funds and similar investments as collateral for borrowing. There may be risks and benefits in holding cash, money market funds, and similar investments ("cash equivalents") as collateral to secure the Credit. Cash equivalents may produce less interest income or other yield than the interest rate paid by you or the borrower on the Credit and may not receive advance value in certain accounts. However, cash equivalents may also provide less volatility and more liquidity to help alleviate collateral call risks. You should carefully consider the return you are receiving on cash equivalents and the interest rate you are paying on the Credit and whether you should apply the cash equivalents to repay the outstanding amount of the Credit.

"Purpose Credit" may be subject to lower advance and call rates and other regulatory restrictions. If the Federal Reserve Form U-1 executed by the borrower and other credit parties in connection with the Credit indicates that loan proceeds will be used to purchase or carry Margin Stock (as defined therein), the Bank will generally impose lower advance rates and may impose lower call rates on the Credit. If the Credit has not been designated as a "purpose credit," on the Federal Reserve Form U-1, then the proceeds of the Credit may not be used to purchase or carry Margin Stock.

DISCLOSURE OF RISKS AND ACKNOWLEDGEMENT AND CONSENT TO POTENTIAL CONFLICTS OF INTEREST

Benefits to Bank. The Bank intends to derive a profit from the Credit. This profit is based, in whole or in part, upon the rate of interest and/or fees, if any, charged in connection with the Credit and will be in addition to any fees and charges received by BAC relating to the Brokerage Services or other banking or investment products.

Incentives to Merrill Financial Advisors. In some cases, such as where your Merrill financial advisor referred you to the Bank for the Credit, your Merrill financial advisor may be compensated by Merrill in connection with the Credit as well as in connection with the pledged account(s) and Brokerage Services. For example:

- Your financial advisor may be compensated based in part on (i) the aggregate amount outstanding under the Credit, (ii) the applicable interest rate on the Credit and (iii) other fees associated with the Credit. Accordingly, the Merrill financial advisors who referred you and/or the other parties to the Credit to the Bank may receive greater compensation for larger outstanding balances, and/or higher interest rate margins and fees.
- Your financial advisor may also be compensated for the sale, purchase, and/or management of securities that are pledged as collateral to the Credit, including securities that are issued by the Bank or its affiliates. Accordingly, Merrill financial advisors may have incentives to and/or may benefit from the sale, purchase, and/or management of securities that are eligible collateral for the Credit.
- Your financial advisor may be compensated based on the amount of assets held in the pledged account(s) securing the Credit. This means that your Merrill financial advisor can potentially benefit if you leverage your Merrill account(s) to borrow under the Credit rather than liquidating assets held in your Merrill account(s) for your cash requirements. In addition, your Merrill financial advisor can potentially receive a reduction in compensation if the outstanding amount of the Credit is repaid or reduced.
- The compensation received by your Merrill financial advisor with respect to the Credit arrangements may change over time. You can ask that your Merrill financial advisor advise you of how such advisor is compensated at any time.

Potential conflicts of interest; Bank will protect itself as lender. Since BAC is providing Brokerage Services to you in connection with the account(s) pledged to the Bank to secure the Credit, there can be a conflict between your interests with respect to your brokerage accounts and the interests of the Bank, as lender. If BAC has investment discretion with respect to your account, you understand and agree that the Credit may impact the investment objectives while the Credit is in effect.

The Bank, as lender, shall have and may exercise the same rights and powers as a lender that does not also have Brokerage Services with you. Such rights and powers, including the disposition and sale of any and all assets pledged as collateral, may be contrary to your interests and/or investment objectives. Therefore, the Bank's role as lender will take priority over any role of BAC in offering Brokerage Services.

Your ability to withdraw assets will be subject to the terms of your Credit Documents. As a result of the pledge of your account(s), you will not be able to withdraw assets from such pledged account(s) unless permitted pursuant to the Credit Documents.

Interest Rate Risk. Interest accruing on the Credit is secured by the account(s) and interest rate costs of variable rate loans can increase over time. In addition, if the Credit accrues interest based on a fixed rate, early repayment, whether due to forced liquidation of the collateral or otherwise, may result in breakage costs and other expenses which can increase the amount of the Credit secured by the account(s).

Alternative credit arrangements available. You are aware that there may be alternative credit arrangements available from BAC or from other financial institutions that provide for different credit terms and collateral requirements. You have determined that this Credit is best suited to your credit needs.

By your signature below, you also hereby acknowledge and agree as follows:

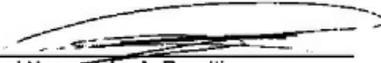
DISCLOSURE OF RISKS AND ACKNOWLEDGEMENT AND CONSENT TO POTENTIAL CONFLICTS OF INTEREST

- **YOU HAVE READ THE CREDIT DOCUMENTS, INCLUDING WITHOUT LIMITATION, THIS DISCLOSURE OF RISKS AND ACKNOWLEDGEMENT AND CONSENT TO POTENTIAL CONFLICTS OF INTEREST ("DISCLOSURE") CAREFULLY AND DISCUSSED THE SAME WITH SUCH ADVISORS, INCLUDING YOUR ATTORNEY, AS YOU DEEM APPROPRIATE. YOU UNDERSTAND THE TERMS AND CONDITIONS OF THE CREDIT AND THIS DISCLOSURE.**
- You have made an independent decision to pledge your Merrill account(s) to the Bank to secure the Credit.
- You have made an independent decision that the Credit and related risks and benefits are appropriate for your needs and/or for your account at Merrill.
- In the event of any conflict or inconsistency between the terms and provision of the agreement(s) governing the investment and/or trust services and the terms and provisions of the Credit Documents or this Disclosure, the terms and provisions of the Credit Documents and this Disclosure shall control.

Pledgor hereby acknowledges and consents to any conflict of interest that the Bank, Merrill or BAC may have with respect to all matters directly or indirectly arising from or relating to the Credit and this Disclosure, including the administration and/or enforcement of the terms of the Credit Documents in accordance with the terms thereof and applicable law. Pledgor agrees that this Disclosure shall be binding on its successors, assigns, heirs, executors and successor trustees, as applicable.

By: 

Printed Name: John A. Rosatti, Trustee of the Rosatti Family Trust dated August 27, 2001, as amended, established under the Revocable Trust Agreement of John A. Rosatti, dated August 27, 2001, as amended and restated in its entirety on April 5, 2017
Date: October 31, 2019

By: 

Printed Name: John A. Rosatti
Date: October 31, 2019



AMENDMENT NO. 1 LOAN AGREEMENT

This Amendment No. 1 (the "Amendment") dated as of October 31, 2019, is between Bank of America, N.A. (the "Bank") and Burgerfi International, LLC (the "Borrower").

RECITALS

A. The Bank and the Borrower entered into a certain Loan Agreement dated as of July 13, 2018 (together with any previous amendments, the "Agreement").

B. The Bank and the Borrower desire to amend the Agreement. This Amendment shall be effective on October 31, 2019, subject to any conditions stated in this Amendment.

AGREEMENT

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meaning given to them in the Agreement.

2. Amendments. The Agreement is hereby amended as follows:

2.1 In Paragraph 2.1(a), the amount "\$2,000,000.00" is changed to "\$5,000,000.00".

2.2 Paragraph 7.1(a) is hereby amended to read in its entirety as follows:

7.1(a) Use of Proceeds. To use the proceeds of Facility No. 1 only for non-purpose working capital and business expenses including the building of a commissary.

2.3 The parties agree that, with respect to the Borrower or any Obligor which is a business entity, not to, without the Bank's written consent, adopt a plan of division or divide itself into two or more business entities (pursuant to a "plan of division" under Section 18-217 of the Delaware Limited Liability Company Act or a similar arrangement under any other applicable state statute).

2.4 A new covenant is added to the Agreement to read as follows:

Patriot Act; Beneficial Ownership Regulation. Promptly following any request therefor, to provide information and documentation reasonably requested by the Bank for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Regulation. For purposes hereof, (a) "Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation and (b) "Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

3. Representations and Warranties. When the Borrower signs this Amendment, the Borrower represents and warrants to the Bank that: (a) there is no event which is, or with notice or lapse of time or both would be, a default under the Agreement except those events, if any, that have been disclosed in writing to the Bank or waived in writing by the Bank, (b) the representations and warranties in the Agreement are true as of the date of this Amendment as if made on the date of this Amendment, (c) this Amendment does not conflict with any law, agreement, or obligation by which the Borrower is bound, (d) if the Borrower is a business entity or a trust, this Amendment is within the Borrower's powers, has been duly authorized, and does not conflict with any of the

Borrower's organizational papers, (e) the information included in the Beneficial Ownership Certification most recently provided to the Bank, if applicable, is true and correct in all respects, and (f) as of the date of this Amendment and throughout the term of the Agreement, no Borrower or Guarantor, if any, is (1) an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (2) a plan or account subject to Section 4975 of the Internal Revenue Code of 1986 (the "Code"); (3) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code; or (4) a "governmental plan" within the meaning of ERISA.

4. Conditions. The effectiveness of this Amendment is conditioned upon the Bank's receipt of the following items, in form and content acceptable to the Bank:

4.1 A fully executed counterpart of this Amendment from the Borrower and each guarantor and/or collateral pledgor (collectively, a "Credit Support Provider") in form satisfactory to the Bank.

4.2 KYC Information.

(a) Upon the request of the Bank, the Borrower shall have provided to the Bank, and the Bank shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act.

(b) If the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall have provided a Beneficial Ownership Certification to the Bank if so requested.

4.3 Amendment 1 to Pledge Agreement signed by John A. Rosatti, Trustee of the Rosatti Family Trust Dated August 27, 2001, as amended.

5. Effect of Amendment. Except as provided in this Amendment, all of the terms and conditions of the Agreement, including but not limited to any Waiver of Jury Trial or Dispute Resolution Provision contained therein, shall remain in full force and effect.

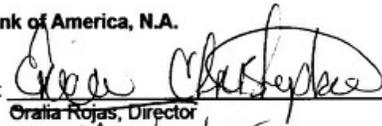
6. Counterparts. This Amendment may be executed in counterparts, each of which when so executed shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

7. FINAL AGREEMENT. BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS DOCUMENT REPRESENTS THE FINAL AGREEMENT BETWEEN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, (B) THIS DOCUMENT SUPERSEDES ANY COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS RELATING TO THE SUBJECT MATTER HEREOF, UNLESS SUCH COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS EXPRESSLY PROVIDES TO THE CONTRARY, (C) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (D) THIS DOCUMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

This Amendment is executed as of the date stated at the beginning of this Amendment.

Bank:

Bank of America, N.A.

By: 
Oralia Rojas, Director



Ref #: 1003139896 : - Burgerfi International LLC
Amendment to Loan Agreement

Borrower:

Burgerfi International, LLC

By: _____

[Handwritten Signature]
John Rosatti, Manager

CONSENT AND REAFFIRMATION
OF GUARANTORS AND PLEDGORS

Each of the undersigned (collectively referred to as the "Credit Support Providers") is a guarantor of, and/or is a pledgor of collateral for, the Borrower's obligations to the Bank under the Agreement. Each Credit Support Provider hereby (i) acknowledges and consents to the foregoing Amendment, (ii) reaffirms its obligations under its respective guaranty in favor of the Bank and/or under any agreement under which it has granted to the Bank a lien or security interest in any of its real or personal property, and (iii) confirms that such guaranty and other agreements, including but not limited to any Waiver of Jury Trial or Dispute Resolution Provision contained therein, remain in full force and effect, without defense, offset, or counterclaim. (Capitalized terms used herein shall have the meanings specified in the foregoing Amendment.)

Although each of the undersigned has been informed of the terms of the Amendment, each understands and agrees that the Bank has no duty to so notify it or any other guarantor/pledgor or to seek this or any future acknowledgment, consent or reaffirmation, and nothing contained herein shall create or imply any such duty as to any transactions, past or future.

Dated as of October 31, 2019.

Credit Support Provider:



John A. Rosatti, Individually

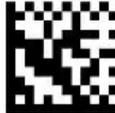


John A. Rosatti, Trustee of the Rosatti Family Trust dated August 27, 2001, as amended, established under the Revocable Trust Agreement of John A. Rosatti, dated August 27, 2001, as amended and restated in its entirety on April 5, 2017

COVERSHEET

Please keep this cover sheet with the document through all distribution and communication.

DO NOT DISCARD!



1002831641

Borrower Name: BurgerFi International, LLC
Document: Standard Credit Agreement
GFS Package: 3090161
GUS Deal ID: 1531037
GUS Facility ID: 3061124
Guarantor Name:
Document Type: Credit/Loan Agmts
Line of Business: PrivateBank
System of Record: AFS EAST DATA
Bank Number: 18
Obligor Number: 0000420976

**PLEASE RETURN THIS DOCUMENT TO BANK
OF AMERICA**



LOAN AGREEMENT

This Agreement dated as of July 13, 2018, is between Bank of America, N.A. (the "Bank") and BurgerFi International, LLC (the "Borrower").

The Borrower's obligation to repay any line of credit, loan and/or credit facility described in this Agreement is contained in that/those certain Promissory Note(s) in the original principal amount of Two Million and 00/100 Dollars (\$2,000,000.00) dated July 13, 2018 and any additional promissory notes now or hereafter executed and delivered by the Borrower to the Bank and any renewals, modifications, amendments and extensions thereof (collectively the "Note"), which is/are expressly NOT incorporated herein pursuant to Section 201.08(6), Florida Statutes and Rules 12B-4.052(6)(b) and (12)(g), Florida Administrative Code.

1. DEFINITIONS

In addition to the terms which are defined elsewhere in this Agreement, the following terms have the meanings indicated for the purposes of this Agreement:

- 1.1 "Guarantor" means any person, if any, providing a guaranty with respect to the obligations hereunder.
- 1.2 "Obligor" means any Borrower, Guarantor and/or Pledgor, or if the Borrower is comprised of the trustees of a trust, any trustor.
- 1.3 "Pledgor" means any person, if any, providing a pledge of collateral with respect to the obligations hereunder.

2. FACILITY NO. 1: LINE OF CREDIT AMOUNT AND TERMS

2.1 Line of Credit Amount.

- (a) During the availability period described below, the Bank will provide a line of credit to the Borrower (the "Line of Credit"). The amount of the Line of Credit (the "Facility No. 1 Commitment") is Two Million and 00/100 Dollars (\$2,000,000.00).
- (b) This is a revolving line of credit. During the availability period, the Borrower may repay principal amounts and reborrow them.
- (c) The Borrower agrees not to permit the principal balance outstanding to exceed the Facility No. 1 Commitment. If the Borrower exceeds this limit, the Borrower will immediately pay the excess to the Bank upon the Bank's demand.

2.2 Availability Period. The Line of Credit is available between the date of this Agreement and July 13, 2020, or such earlier date as the availability may terminate as provided in this Agreement (the "Facility No. 1 Expiration Date").

The availability period for this Line of Credit will be considered renewed if and only if the Bank has sent to the Borrower a written notice of renewal for the Line of Credit (the "Renewal Notice"). If this Line of Credit is renewed, it will continue to be subject to all the terms and conditions set forth in this Agreement except as modified by the Renewal Notice. If this Line of Credit is renewed, the term "Expiration Date" shall mean the date set forth in the Renewal Notice as the Expiration Date and all outstanding principal plus all accrued interest shall be paid on the Expiration Date. The same process for

renewal will apply to any subsequent renewal of this Line of Credit. A renewal fee may be charged at the Bank's option. The amount of the renewal fee will be specified in the Renewal Notice.

2.3 Borrowing Base. The Borrower acknowledges and agrees that this Facility No. 1 is subject to a borrowing base in accordance with the terms and conditions of a Pledge Agreement in favor of the Bank as required under this Agreement. The Borrower has been informed of the terms of such borrowing base, which include requirements to maintain collateral with an adequate loan value and grant to the Bank the right to issue a margin call in the event such requirements are not met. The collateral may also secure other indebtedness or obligations, now existing or hereafter arising, of the Borrower and/or any other third party to the Bank (collectively, the "Other Indebtedness"). The Other Indebtedness will be aggregated with this Facility for the purposes of any calculations made, from time to time, under the terms of the borrowing base agreement. The Borrower hereby waives notice of the incurrence of any such Other Indebtedness and notice of any additional lien or security interest in the collateral granted to the Bank by the owner thereof and notice of any change in the terms of the borrowing base. The Borrower further acknowledges that any failure to meet the requirements of any provisions of such borrowing base agreement shall permit the Bank to refuse to make advances or other financial accommodations and constitutes an event of default under this Agreement. Any proceeds of any sale of the collateral may be applied to this Facility or such Other Indebtedness as the Bank may determine in its sole discretion. The Borrower agrees that the Bank shall have no liability to the Borrower, and holds the Bank harmless, for any losses, damages, costs or claims that the Borrower may suffer as a result thereof.

2.4 Repayment Terms. The Borrower will pay interest and principal on this facility in accordance with the terms of the debt instrument evidencing this facility.

2.5 Interest Rate.

- (a) The interest rate is a rate per year equal to the LIBOR Daily Floating Rate plus 0.75 percentage point(s).
- (b) The LIBOR Daily Floating Rate is a fluctuating rate of interest which can change on each banking day. The rate will be adjusted on each banking day to equal the London Interbank Offered Rate (or a comparable or successor rate which is approved by the Bank) for U.S. Dollar deposits for delivery on the date in question for a one month term beginning on that date. The Bank will use the London Interbank Offered Rate as published by Bloomberg (or other commercially available source providing quotations of such rate as selected by the Bank from time to time) as determined at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, as adjusted from time to time in the Bank's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternate method as reasonably selected by the Bank. A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars. If at any time the LIBOR Daily Floating Rate is less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

3. COLLATERAL

3.1 Personal Property. The personal property listed below now owned or owned in the future by the parties listed below will secure one or more of the facilities under this Agreement. The collateral is further defined in security agreement(s) executed by the owners of the collateral.

- (a) Securities or other investment property owned by John A. Rosatti, Trustee of the Rosatti Family Trust dated August 27, 2001, as amended as described in the Pledge Agreement required by the Bank.

Regulation U of the Board of Governors of the Federal Reserve System places certain restrictions on loans secured by margin stock (as defined in the Regulation). The Bank and the Borrower shall comply with Regulation U. If any of the collateral is margin stock, the Borrower shall provide to the Bank a Form U-1 Purpose Statement.

4. LOAN ADMINISTRATION AND FEES

4.1 Fees.

- (a) The Borrower will pay to the Bank the fees set forth on Schedule A.

4.2 Collection of Payments; Payments Generally.

- (a) Payments will be made by debit to a deposit account, if direct debit is provided for in this Agreement or is otherwise authorized by the Borrower. For payments not made by direct debit, payments will be made by mail to the address shown on the Borrower's statement, or by such other method as may be permitted by the Bank.
- (b) Each disbursement by the Bank and each payment by the Borrower will be evidenced by records kept by the Bank which will, absent manifest error, be conclusively presumed to be correct and accurate and constitute an account stated between the Borrower and the Bank.
- (c) All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff.

4.3 Borrower's Instructions. Subject to the terms, conditions and procedures stated elsewhere in this Agreement, the Bank may honor instructions for advances or repayments and any other instructions under this Agreement given by the Borrower (if an individual), or by any one of the individuals the Bank reasonably believes is authorized to sign loan agreements on behalf of the Borrower, or any other individual(s) designated by any one of such authorized signers (each an "Authorized Individual"). The Bank may honor any such instructions made by any one of the Authorized Individuals, whether such instructions are given in writing or by telephone, telefax or Internet and intranet websites designated by the Bank with respect to separate products or services offered by the Bank.

4.4 Direct Debit with ACH Debit.

- (a) The Borrower agrees that on the due date of any amount due under this Agreement, the Bank will debit the amount due from the deposit account with the Depository listed below (the "Designated Account") owned by the Borrower. Should there be insufficient funds in the Designated Account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable by the Borrower. A voided copy of a check on the Designated Account has been, or will be, provided to the Bank.

DEPOSITORY NAME: _____

Address: _____

Routing Number: _____

Deposit Account Number: _____

- (b) Debits made by ACH shall be subject to the operating rules of the National Automated Clearing House Association, as in effect from time to time.
- (c) The Borrower may terminate this direct debit arrangement at any time by sending written notice to the Bank at the address specified at the end of this Agreement. If the Borrower terminates this arrangement, then the principal amount outstanding under this Agreement will at the option of the Bank bear interest at a rate per annum which is 0.5 percentage point(s) higher than the rate of interest otherwise provided under this Agreement.

4.5 Banking Days. Unless otherwise provided in this Agreement, a banking day is a day other than a Saturday, Sunday or other day on which commercial banks are authorized to close, or are in fact closed, in the state where the Bank's lending office is located, and, if such day relates to amounts bearing interest at an offshore rate (if any), means any such day on which dealings in dollar deposits are conducted among banks in the offshore dollar interbank market. All payments and disbursements which would be due or which are received on a day which is not a banking day will be due or applied, as applicable, on the next banking day.

4.6 Additional Costs. The Borrower will pay the Bank, on demand, for the Bank's costs or losses arising from any Change in Law which are allocated to this Agreement or any credit outstanding under this Agreement. The allocation will be made as determined by the Bank, using any reasonable method. The costs include, without limitation, the following:

- (a) any reserve or deposit requirements (excluding any reserve requirement already reflected in the calculation of the interest rate in this Agreement); and
- (b) any capital requirements relating to the Bank's assets and commitments for credit.

"Change in Law" means the occurrence, after the date of this Agreement, of the adoption or taking effect of any new or changed law, rule, regulation or treaty, or the issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives issued in connection with that Act, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

4.7 Interest Calculation. Except as otherwise stated in this Agreement, all interest and fees, if any, will be computed on the basis of a 360-day year and the actual number of days elapsed. This results in more interest or a higher fee than if a 365-day year is used. Installments of principal which are not paid when due under this Agreement shall continue to bear interest until paid. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

4.8 Default Rate. Upon the occurrence of any default or after maturity or after judgment has been rendered on any obligation under this Agreement, all amounts outstanding under this Agreement, including any unpaid interest, fees, or costs, will at the option of the Bank bear interest at a rate which is 6.0 percentage point(s) higher than the rate of interest otherwise provided under this Agreement. This may result in compounding of interest. This will not constitute a waiver of any default.

5. CONDITIONS

Before the Bank is required to extend any credit to the Borrower under this Agreement, it must receive any documents and other items it may reasonably require, in form and content acceptable to the Bank, including any items specifically listed below.

5.1 Authorizations. If the Borrower or any other Obligor is anything other than a natural person, evidence that the execution, delivery and performance by the Borrower and/or such Obligor of this Agreement and any instrument or agreement required under this Agreement have been duly authorized.

5.2 Governing Documents. If required by the Bank, a copy of the Borrower's organizational documents.

5.3 Guaranties. Guaranties signed by John A. Rosatti and John A. Rosatti, Trustee of the Rosatti Family Trust dated August 27, 2001, as amended.

5.4 Security Agreements. Signed original security agreements covering the personal property collateral which the Bank requires.

5.5 Perfection and Evidence of Priority. Evidence that the security interests and liens in favor of the Bank are valid, enforceable, properly perfected in a manner acceptable to the Bank and prior to all others' rights and interests, except those the Bank consents to in writing.

5.6 Payment of Fees. Payment of all fees, expenses and other amounts due and owing to the Bank. If any fee is not paid in cash, the Bank may, in its discretion, treat the fee as a principal advance under this Agreement or deduct the fee from the loan proceeds.

5.7 Good Standing. Certificates of good standing for the Borrower from its state of formation and from any other state in which the Borrower is required to qualify to conduct its business.

5.8 Insurance. Evidence of insurance coverage, as required in the "Covenants" section of this Agreement.

6. REPRESENTATIONS AND WARRANTIES

When the Borrower signs this Agreement, and until the Bank is repaid in full, the Borrower makes the following representations and warranties. Each request for an extension of credit constitutes a renewal of these representations and warranties as of the date of the request:

6.1 Formation. If the Borrower is anything other than a natural person, it is duly formed and existing under the laws of the state or other jurisdiction where organized.

6.2 Authorization. This Agreement, and any instrument or agreement required under this Agreement, are within the Borrower's powers, have been duly authorized, and do not conflict with any of its organizational papers.

6.3 Good Standing. In each state or other jurisdiction in which the Borrower does business, it is properly licensed, in good standing, and, where required, in compliance with fictitious name (e.g. trade name or d/b/a) statutes.

6.4 Government Sanctions.

(a) The Borrower represents that no Obligor, nor any affiliated entities of any Obligor, including in the case of any Obligor that is not a natural person, subsidiaries nor, to the knowledge of the Borrower, any owner, trustee, director, officer, employee, agent, affiliate or representative of the Borrower or any other Obligor is an individual or entity ("Person") currently the subject of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions"), nor is the Borrower or any other Obligor located, organized or resident in a country or territory that is the subject of Sanctions.

(b) The Borrower represents and covenants that it will not, directly or indirectly, use the proceeds of the credit provided under this Agreement, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

6.5 Financial Information. All financial and other information that has been or will be supplied to the Bank is sufficiently complete to give the Bank accurate knowledge of the Borrower's (and any other Obligor's) financial condition, including all material contingent liabilities. Since the date of the most recent financial statement provided to the Bank, there has been no material adverse change in the business condition (financial or otherwise), operations, properties or prospects of the Borrower (or any other Obligor). If the Borrower is comprised of the trustees of a trust, the above representations shall also pertain to the trustor(s) of the trust.

6.6 Lawsuits. There is no lawsuit, tax claim or other dispute pending or threatened against the Borrower or any other Obligor which, if lost, would impair the Borrower's or such Obligor's financial condition or ability to repay its obligations as contemplated by this Agreement or any other agreement contemplated hereby, except as have been disclosed in writing to the Bank prior to the date of this Agreement.

6.7 Other Obligations. The Borrower is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation, except as have been disclosed in writing to the Bank prior to the date of this Agreement.

6.8 Tax Matters. The Borrower has no knowledge of any pending assessments or adjustments of income tax for itself for any year and all taxes due have been paid, except as have been disclosed in writing to the Bank prior to the date of this Agreement.

6.9 Collateral. All collateral required in this Agreement is owned by the grantor of the security interest free of any title defects or any liens or interests of others, except those which have been approved by the Bank in writing.

6.10 No Event of Default. There is no event which is, or with notice or lapse of time or both would be, a default under this Agreement and/or the Note.

6.11 Location of Pledgor. The principal residence of John A. Rosatti, Trustee of the Rosatti Family Trust dated August 27, 2001, as amended is located at 2270 Wilsee Rd., North Palm Beach, FL, 33410-2016.

6.12 No Plan Assets. The Borrower represents that, as of the date hereof and throughout the term of this Agreement, no Borrower or Guarantor, if any, is (1) an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (2) a plan or account subject to Section 4975 of the Internal Revenue Code of 1986 (the "Code"); (3) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code; or (4) a "governmental plan" within the meaning of ERISA.

6.13 Enforceable Agreement. This Agreement is a legal, valid and binding agreement of the Borrower, enforceable against the Borrower in accordance with its terms, and any instrument or agreement required under this Agreement, when executed and delivered, will be similarly legal, valid, binding and enforceable.

6.14 No Conflicts. This Agreement does not conflict with any law, agreement, or obligation by which the Borrower or any other Obligor is bound.

6.15 Permits, Franchises. The Borrower possesses all permits, memberships, franchises, contracts and licenses required and all trademark rights, trade name rights, patent rights, copyrights, and fictitious name rights necessary to enable it to conduct the business in which it is now engaged.

6.16 Insurance. The Borrower has obtained, and maintained in effect, the insurance coverage required in the "Covenants" section of this Agreement.

7. COVENANTS

The Borrower agrees, so long as credit is available under this Agreement and until the Bank is repaid in full, the Borrower shall:

7.1 Use of Proceeds.

- (a) To use the proceeds of Facility No. 1 only for business expenses and working capital.
- (b) The proceeds of the credit extended under this Loan Agreement may not be used directly or indirectly to purchase or carry any "margin stock" as that term is defined in Regulation U of the Board of Governors of the Federal Reserve System, or extend credit to or invest in other parties for the purpose of purchasing or carrying any such "margin stock," or to reduce or retire any indebtedness incurred for such purpose.

7.2 Financial Information. To provide, or cause to be provided, promptly and in any event within 15 days after written request from the Bank, financial statements, tax returns, investment statements and other information in form and content acceptable to the Bank relating to the affairs of the Borrower or any other Obligor with respect to the loan as requested by the Bank in writing from time to time

7.3 Additional Negative Covenants. Not to, without the Bank's written consent:

- (a) Engage in any business activities substantially different from the Borrower's present business.
- (b) Liquidate or dissolve the Borrower's business.
- (c) Voluntarily suspend its business for more than zero (0) days in any three hundred sixty-five (365) day period.

7.4 Notices to Bank. To promptly notify the Bank in writing of:

- (a) Any event of default under this Agreement, or any event which, with notice or lapse of time or both, would constitute an event of default.
- (b) Any change in any Obligor's name, legal structure, principal residence, or name on any driver's license or special identification card issued by any state (for an individual), state of registration (for a registered entity), place of business, or chief executive office if the Obligor has more than one place of business.
- (c) Any lawsuit in which the claim for damages exceeds Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) against the Borrower or any other Obligor.
- (d) Any substantial dispute between any governmental authority and the Borrower or any other Obligor.

7.5 Insurance.

- (a) General Business Insurance. To maintain insurance satisfactory to the Bank as to amount, nature and carrier covering property damage (including loss of use and occupancy) to any of the Obligor's properties, business interruption insurance, public liability insurance including coverage for contractual liability, product liability and workers' compensation, and any other insurance which is usual for such Obligor's business. Each policy shall include a cancellation clause in favor of the Bank.
- (b) Evidence of Insurance. Upon the request of the Bank, to deliver to the Bank a copy of each insurance policy, or, if permitted by the Bank, a certificate of insurance listing all insurance in force.

7.6 Compliance with Laws. To comply with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to cause a material adverse change in any Obligor's business condition (financial or otherwise), operations or properties, or ability to repay the credit, or, in the case of the Controlled Substances Act, result in the forfeiture of any material property of any Obligor.

7.7 Books and Records. To maintain adequate books and records, including complete and accurate records regarding all Collateral.

7.8 Audits. To allow the Bank and its agents to inspect the Borrower's properties and examine, audit, and make copies of books and records at any time. If any of the Borrower's properties, books or records are in the possession of a third party, the Borrower authorizes that third party to permit the Bank or its agents to have access to perform inspections or audits and to respond to the Bank's requests for information concerning such properties, books and records.

7.9 Perfection of Liens. To help the Bank perfect and protect its security interests and liens, and reimburse it for related costs it incurs to protect its security interests and liens.

7.10 Cooperation. To take any action reasonably requested by the Bank to carry out the intent of this Agreement.

7.11 No Consumer Purpose. Not to use this loan for personal, family, or household purposes. The Bank may provide the Borrower (or any other Obligor) with certain disclosures intended for loans made for personal, family, or household purposes. The fact that the Bank elects to make such disclosures shall not be deemed a determination by the Bank that the loan will be used for such purposes.

8. **DEFAULT AND REMEDIES**

If any of the following events of default occurs, the Bank may do one or more of the following without prior notice except as required by law or expressly agreed in writing by Bank: declare the Borrower in default, stop making any additional credit available to the Borrower, and require the Borrower to repay its entire debt immediately. If an event which, with notice or the passage of time, will constitute an event of default has occurred and is continuing, the Bank has no obligation to make advances or extend additional credit under this Agreement. In addition, if any event of default occurs, the Bank shall have all rights, powers and remedies available under any instruments and agreements required by or

executed in connection with this Agreement, as well as all rights and remedies available at law or in equity. If an event of default occurs under the paragraph entitled "Bankruptcy/Receivers," below with respect to any Obligor, then the entire debt outstanding under this Agreement will automatically be due immediately.

8.1 Failure to Pay. The Borrower fails to make a payment under this Agreement and/or the Note when due.

8.2 Other Bank Agreements. Any default occurs under any Note, guaranty, subordination agreement, security agreement, deed of trust, mortgage, or other document required by or delivered in connection with this Agreement or any such document is no longer in effect, or any Obligor purports to revoke or disavow the guaranty or other collateral agreement; or any representation or warranty made by any Obligor is false when made or deemed to be made; or any default occurs under any other agreement any Obligor or any of the Borrower's related entities or affiliates has with the Bank or any affiliate of the Bank.

8.3 Cross-default. Any default occurs under any agreement in connection with any credit any Obligor has obtained from anyone else or which any Obligor has guaranteed.

8.4 False Information. The Borrower or any other Obligor has given the Bank false or misleading information or representations.

8.5 Bankruptcy/Receivers. Any Obligor or any general partner of any Obligor files a bankruptcy petition, a bankruptcy petition is filed against any of the foregoing parties, or any Obligor, or any general partner of any Obligor makes a general assignment for the benefit of creditors; or a receiver or similar official is appointed for a substantial portion of any Obligor's business; or the business is terminated, or such Obligor is liquidated or dissolved.

8.6 Lien Priority. The Bank fails to have an enforceable first lien (except for any prior liens to which the Bank has consented in writing) on or security interest in any property given as security for this Agreement (or any guaranty).

8.7 Judgments. Any judgments or arbitration awards are entered against any Obligor in an aggregate amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) or more. Materiality will be determined in the Bank's sole discretion.

8.8 Death. If any Obligor is a natural person, such Obligor dies or becomes legally incompetent; if any Obligor is a trust, a trustor dies or becomes legally incompetent; if any Obligor is a partnership, any general partner dies or becomes legally incompetent.

8.9 Material Adverse Change. A material adverse change occurs, or is reasonably likely to occur, in any Obligor's business condition (financial or otherwise), operations or properties, or ability to repay its obligations as contemplated hereunder or under any document executed in connection with this Agreement.

8.10 Government Action. Any government authority takes action that the Bank believes materially adversely affects any Obligor's financial condition or ability to repay.

8.11 Covenants. Any default in the performance of or compliance with any obligation, agreement or other provision contained in this Agreement (other than those specifically described as an event of default in this Article).

8.12 Forfeiture. A judicial or nonjudicial forfeiture or seizure proceeding is commenced by a government authority and remains pending with respect to any property of Borrower or any part thereof, on the grounds that the property or any part thereof had been used to commit or facilitate the commission of a criminal offense by any person, including any tenant, pursuant to any law, including under the Controlled Substances Act or the Civil Asset Forfeiture Reform Act, regardless of whether or not the property shall become subject to forfeiture or seizure in connection therewith.

8.13 Borrowing Base. If any of the credit covered by this Agreement is subject to an agreement to maintain a borrowing base, the terms of such agreement are breached and the Borrower fails to cure such breach by the expiration of any applicable cure period.

9. ENFORCING THIS AGREEMENT; MISCELLANEOUS

9.1 Accounting Principles and Financial Computations. Except as otherwise stated in this Agreement, all financial information provided to the Bank and computation of all financial covenants will be made in accordance with accounting principles applied consistently with those applied in the preparation of the financial statements provided to the Bank prior to the date of this Agreement.

9.2 Governing Law. Except to the extent that any law of the United States may apply, this Agreement shall be governed and interpreted according to the laws of Florida (the "Governing Law State"), without regard to any choice of law, rules or principles to the contrary. Nothing in this paragraph shall be construed to limit or otherwise affect any rights or remedies of the Bank under federal law.

9.3 Venue and Jurisdiction. The Borrower agrees that any action or suit against the Bank arising out of or relating to this Agreement shall be filed in federal court or state court located in the Governing Law State. The Borrower agrees that the Bank shall not be deemed to have waived its rights to enforce this section by filing an action or suit against the Borrower or any Obligor in a venue outside of the Governing Law State. If the Bank does commence an action or suit arising out of or relating to this Agreement, the Borrower agrees that the case may be filed in federal court or state court in the Governing Law State. The Bank reserves the right to commence an action or suit in any other jurisdiction where any Borrower, any other Obligor, or any Collateral has any presence or is located. The Borrower consents to personal jurisdiction and venue in such forum selected by the Bank and waives any right to contest jurisdiction and venue and the convenience of any such forum. The provisions of this section are material inducements to the Bank's acceptance of this Agreement.

9.4 Successors and Assigns. This Agreement is binding on the Borrower's and the Bank's successors and assignees. The Borrower agrees that it may not assign this Agreement without the Bank's prior consent. The Bank may sell participations in or assign this loan and the related loan documents, and may exchange information about the Borrower and any other Obligor (including, without limitation, any information regarding any hazardous substances) with actual or potential participants or assignees. If a participation is sold or the loan is assigned, the purchaser will have the right of set-off against the Borrower.

9.5 Waiver of Jury Trial. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER DOCUMENTS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION AND (c) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE.**

9.6 Waiver of Class Actions. The terms "Claim" or "Claims" refer to any disputes, controversies, claims, counterclaims, allegations of liability, theories of damage, or defenses between Bank of America, N.A., its subsidiaries and affiliates, on the one hand, and the other parties to this Agreement, on the other hand (all of the foregoing each being referred to as a "Party" and collectively as the "Parties"). Whether in state court, federal court, or any other venue, jurisdiction, or before any tribunal, the Parties agree that all aspects of litigation and trial of any Claim will take place without resort to any form of class or representative action. Thus the Parties may only bring Claims against each other in an individual capacity and waive any right they may have to do so as a class representative or a class member in a class or representative action. **THIS CLASS ACTION WAIVER PRECLUDES ANY PARTY FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS OR REPRESENTATIVE ACTION REGARDING A CLAIM.**

9.7 Severability; Waivers. If any part of this Agreement is not enforceable, the rest of the Agreement may be enforced. The Bank retains all rights, even if it makes a loan after default. If the Bank waives a default, it may enforce a later default. Any consent or waiver under this Agreement must be in writing.

9.8 Expenses.

- (a) The Borrower shall pay to the Bank immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees, expended or incurred by the Bank in connection with (i) the negotiation and preparation of this Agreement and any related agreements, the Bank's continued administration of this Agreement and such related agreements, and the preparation of any amendments and waivers related to this Agreement or such related agreements, (ii) filing, recording and search fees, appraisal fees, field examination fees, title report fees, and documentation fees with respect to any collateral and books and records of the Borrower or any other Obligor, (iii) the Bank's costs or losses arising from any changes in law which are allocated to this Agreement or any credit outstanding under this Agreement, and (iv) costs or expenses required to be paid by the Borrower or any other Obligor that are paid, incurred or advanced by the Bank.
- (b) The Borrower will indemnify and hold the Bank harmless from any loss, liability, damages, judgments, and costs of any kind relating to or arising directly or indirectly out of (i) this Agreement, the Note or any document required hereunder, (ii) any credit extended or committed by the Bank to the Borrower hereunder and under the Note, and (iii) any litigation or proceeding related to or arising out of this Agreement, the Note, any such document, or any such credit, including, without limitation, any act resulting from the Bank complying with instructions the Bank reasonably believes are made by any Authorized Individual. This paragraph will survive this Agreement's termination, and will benefit the Bank and its officers, employees, and agents.
- (c) The Borrower shall reimburse the Bank for any reasonable costs and attorneys' fees incurred by the Bank in connection with (a) the enforcement or preservation of the Bank's rights and remedies and/or the collection of any obligations of the Borrower which become due to the Bank and in connection with any "workout" or restructuring, and (b) the prosecution or defense of any action in any way related to this Agreement including but not limited to the Note, the credit provided hereunder or any related agreements, including without limitation, any action for declaratory relief, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by the Bank or any other person) relating to the Borrower or any other person or entity.

9.9 Individual Liability. If the Borrower is a natural person, the Bank may proceed against the Borrower's business and non-business property in enforcing this Agreement, the Note and other agreements relating to this loan. If the Borrower is a partnership, the Bank may proceed against the business and non-business property of each general partner of the Borrower in enforcing this Agreement, the Note and other agreements relating to this loan.

9.10 Set-Off. Upon and after the occurrence of an event of default under this Agreement, (a) the Borrower hereby authorizes the Bank at any time without notice and whether or not the Bank shall have declared any amount owing by the Borrower to be due and payable, to set off against, and to apply to the payment of, the Borrower's indebtedness and obligations to the Bank under this Agreement and all related agreements, whether matured or unmatured, fixed or contingent, liquidated or unliquidated, any and all amounts owing by the Bank to the Borrower, and in the case of deposits, whether general or special (except trust and escrow accounts), time or demand and however evidenced, and (b) pending any such action, to hold such amounts as collateral to secure such indebtedness and obligations of the Borrower to the Bank and to return as unpaid for insufficient funds any and all checks and other items drawn against any deposits so held as the Bank, in its sole discretion, may elect. The Borrower hereby grants to the Bank a security interest in all deposits and accounts maintained with the Bank to secure the payment of all such indebtedness and obligations of the Borrower to the Bank.

9.11 One Agreement. This Agreement, the Note and any related security or other agreements required by this Agreement constitute the entire agreement between the Borrower and the Bank with respect to each credit subject hereto and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. In the event of any conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail.

9.12 Notices. Unless otherwise provided in this Agreement or in another agreement between the Bank and the Borrower, all notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Agreement, or sent by facsimile to the fax

number(s) listed on the signature page, or to such other addresses as the Bank and the Borrower may specify from time to time in writing. Notices and other communications shall be effective (i) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (ii) if telecopied, when transmitted, or (iii) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered.

9.13 Headings. Article and paragraph headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Agreement.

9.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement (or of any agreement or document required by this Agreement and any amendment to this Agreement) by telecopy or other electronic imaging means shall be as effective as delivery of a manually executed counterpart of this Agreement; provided, however, that the telecopy or other electronic image shall be promptly followed by an original if required by the Bank.

9.15 Borrower Information; Reporting to Credit Bureaus; Relation to Merrill Lynch, Pierce, Fenner & Smith Incorporated. The Borrower authorizes the Bank at any time to verify or check any information given by the Borrower to the Bank, check the Borrower's credit references, verify employment, and obtain credit reports and other credit bureau information from time to time in connection with the administration, servicing and collection of the loans under this Agreement. The Borrower agrees that the Bank shall have the right at all times to disclose and report to credit reporting agencies and credit rating agencies such information pertaining to the Borrower and all other Obligor as is consistent with the Bank's policies and practices from time to time in effect. The Borrower further acknowledges that this transaction has been referred to the Bank by a financial advisor or other employee of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"). The Borrower and each other Obligor has consented to the sharing of information regarding such loan parties between the Bank and MLPF&S, as well as their respective subsidiaries and affiliates, for the purposes of underwriting, administering or collecting the loans hereunder and the ongoing credit relationship with such Obligor. The Borrower acknowledges that MLPF&S may provide compensation to MLPF&S financial advisors and employees in connection with this Agreement which may be based in part on the aggregate amount of the credit extended and the fees and interest rate spreads thereon.

9.16 Document Receipt Cut-Off Date. Unless this Agreement and any documents required by this Agreement have been signed and returned to the Bank within 60 days after the date of this Agreement (the "Document Receipt Cut-Off Date"), the Bank shall have the right to notify the Borrower in writing that the Bank's commitment to extend credit under this Agreement has expired. If the executed Agreement and accompanying loan documents are received after the Document Receipt Cut-Off Date, the Bank shall have a reasonable period of time after receipt of the executed Agreement and accompanying loan documents to provide such notice.

9.17 Amendments. This Agreement may be amended or modified only in writing signed by each party hereto.

9.18 Limitation of Interest and Other Charges. Notwithstanding any other provision contained in this Agreement, the Bank does not intend to charge and the Borrower shall not be required to pay any amount of interest or other fees or charges that is in excess of the maximum permitted by applicable law. Any payment in excess of such maximum shall be refunded to the Borrower or credited against principal, at the option of the Bank. It is the express intent hereof that the Borrower not pay and the Bank not receive, directly or indirectly, interest in excess of that which may be lawfully paid under applicable law including the usury laws in force in the state of Florida.

This Agreement is executed as of the date stated at the top of the first page.

Bank of America, N.A.

By: _____
Oralia Rojas, Director

Borrower:

BurgerFi International, LLC

By: _____
Corey Winograd, Manager

Address where notices to BurgerFi International, LLC are to be sent:

105 US Highway One
North Palm Beach, FL 33408-5401

Address where notices to the Bank are to be sent:

Doc Retention Center
NC1-001-05-13
One Independence Center
101 North Tryon St
Charlotte, NC 28255-0001

Federal law requires Bank of America, N.A. (the "Bank") to provide the following notice. The notice is not part of the foregoing agreement or instrument and may not be altered. Please read the notice carefully.

(1) USA PATRIOT ACT NOTICE

Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account or obtains a loan. The Bank will ask for the Borrower's legal name, address, tax ID number or social security number and other identifying information. The Bank may also ask for additional information or documentation or take other actions reasonably necessary to verify the identity of the Borrower, guarantors or other related persons.

SCHEDULE A

FEES

- (a) Waiver Fee. If the Bank, at its discretion, agrees to waive or amend any terms of this Agreement, the Borrower will, at the Bank's option, pay the Bank a fee for each waiver or amendment in an amount advised by the Bank at the time the Borrower requests the waiver or amendment. Nothing in this paragraph shall imply that the Bank is obligated to agree to any waiver or amendment requested by the Borrower. The Bank may impose additional requirements as a condition to any waiver or amendment.
- (b) Late Fee. To the extent permitted by law, the Borrower agrees to pay a late fee in an amount not to exceed four percent (4%) of any payment that is more than fifteen (15) days late. The imposition and payment of a late fee shall not constitute a waiver of the Bank's rights with respect to the default.
- (c) Returned Payment Fee. The Bank, in its discretion, may collect from the Borrower a returned payment fee each time a payment is returned or if there are insufficient funds in the designated account when a payment is attempted through automatic payment.



BURGERFI INTERNATIONAL, LLC

FRANCHISE AGREEMENT

FRANCHISEE

DATE

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ATTACHMENTS

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| E | Electronic Transfer Authorization |
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| G | Power of Attorney (Tax) |
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| I | Franchisee Disclosure Acknowledgment Statement |

BURGERFI INTERNATIONAL, LLC

FRANCHISE AGREEMENT

This Franchise Agreement (the "Agreement") is made and entered into by and between **BURGERFI INTERNATIONAL, LLC**, a Delaware limited liability company having its principal place of business at 105 US Highway 1, North Palm Beach, Florida 33408 ("we", "us" or "our") and _____, a _____ with an address at _____ ("you" or "your") on the date this Agreement is executed by us below (the "Effective Date").

WITNESSETH:

WHEREAS, as the result of the expenditure of time, skill, effort and money, we and our affiliates have developed and own a unique and distinctive system (hereinafter "System") relating to the establishment and operation of fast casual restaurants operating under the name "BurgerFi" featuring all-natural Angus burgers, fresh cut fries and onion rings, hot dogs, craft beers, wine and frozen custard products. BurgerFi restaurants offer dine-in and take-out services;

WHEREAS, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior design, décor, color scheme, and furnishings; proprietary products and ingredients; proprietary recipes and special menu items, uniform standards, specifications, and procedures for operations; quality and uniformity of products and services offered; procedures for inventory, management and financial control; training and assistance; and advertising and promotional programs; all of which may be changed, improved, and further developed by us from time to time;

WHEREAS, we identify the System by means of certain trade names, service marks, trademarks, logos, emblems and indicia of origin, including, but not limited to, the mark "BurgerFi" and such other trade names, service marks, and trademarks as are now designated (and may hereafter be designated by us in writing) for use in connection with the System (hereinafter referred to as "Marks");

WHEREAS, we and our affiliates continue to develop, use and control the use of such Marks in order to identify for the public the source of services and products marketed thereunder and under the System, and to represent the System's high standards of quality, appearance and service;

WHEREAS, you understand and acknowledge the importance of our high standards of quality, cleanliness, appearance and service and the necessity of operating the business franchised hereunder in conformity with our standards and specifications; and

WHEREAS, you desire to use the System in connection with the operation of a restaurant at the location accepted by us as herein provided, as well as to receive the training and other assistance provided by us in connection therewith.

NOW, THEREFORE, the parties, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

ARTICLE 1

GRANT

1.1 Grant of Franchise.

In reliance on the representations and warranties of you and your Controlling Principals (as defined in Section 20.14) hereunder, we hereby grant to you, upon the terms and conditions in this Agreement, the right and license, and you hereby accept the right and obligation, to operate one BurgerFi restaurant under the Marks and the System in accordance with this Agreement (“Restaurant” or “Franchised Business”). You and the Controlling Principals have represented to us that you have entered into this Agreement with the intention to comply fully with the obligations to construct a Restaurant hereunder and not for the purpose of reselling the rights to develop the Restaurant hereunder. You and the Controlling Principals understand and acknowledge that we have granted such rights in reliance on the business skill, financial capacity, personal character and expectations of performance hereunder by you and the Controlling Principals and that this Agreement and the rights and obligations hereunder may not be transferred until after the Restaurant is open for business to the public in accordance with Section 2.6, and then only in accordance with Article 14 hereof.

1.2 Accepted Location

After you have located a site for your Restaurant and received our approval pursuant to Section 2.2, the specific street address of the location shall be set forth in Attachment A (“Accepted Location”). You shall not relocate the Restaurant without our express prior written consent. This Agreement does not grant to you the right or license to operate the Restaurant or to offer or sell any products or services described under this Agreement at or from any other location. Unless otherwise agreed to in writing under a Multi-Unit Operator Agreement with us, you have no options, rights of first refusal, or similar rights to develop additional restaurants. Until a location has been approved by us in accordance with Section 2.2, Attachment A will describe the site as “TBD”.

1.3 Relocation

If you are unable to continue the operation of the Restaurant at the Accepted Location because of the occurrence of a force majeure event (as described in Section 17.1(d)), then you may request our approval to relocate the Restaurant to another location in the Protected Territory, as that term is defined below. Any other relocation outside the Protected Territory or a relocation of the Restaurant not caused by force majeure shall also be subject to our prior approval. If we elect to grant you the right to relocate the Restaurant, then you shall comply with the site selection and construction procedures set forth in Article 2.

1.4 Territory

Upon our approval of a site for your Restaurant in accordance with Section 2.2 and the execution of a lease or purchase agreement for the premises, you will be assigned a territory which will be a certain radius determined by us around your Restaurant (the “Protected Territory”), as described in Attachment A. Except as provided in this Agreement, and subject to your and the Controlling Principals’ material compliance with this Agreement, and any other agreement among you or any of your affiliates (defined for the purposes hereof as any entity that is controlled by, controlling or under common control with such other entity) and us, we shall not establish or authorize any other person or entity, other than you, to establish a Restaurant in the Protected Territory during the term of this Agreement and any extensions hereof. You acknowledge and understand that the rights granted hereunder pertain only to the establishment of a Restaurant. You acknowledge and agree that our affiliates currently operate, or may in the future operate, restaurants under different marks and with operating systems that are similar to the System, and that any such restaurants might compete with your Restaurant, however, the menu items will not be substantially similar to the menu items served at BurgerFi Restaurants. This does not preclude us from developing a restaurant concept that has individual items that are served at BurgerFi Restaurants. You further agree and acknowledge that the license granted hereby is only for the operation of one Restaurant and only at a location approved by us.

1.5 Our Reserved Rights

Except as expressly limited by Section 1.4, we and our affiliates retain all rights with respect to Restaurants, the Marks and the sale of any products and services and regardless of the proximity to or financial impact on your Restaurant, including, without limitation, the right:

(a) to produce, offer and sell and to grant others the right to produce, offer and sell the products offered at Restaurants and any other goods displaying the Marks or other trade and service marks through alternative distribution channels, as described below, both within and outside the Protected Territory, and under any terms and conditions we deem appropriate. "Alternative distribution channels" include, but are not limited to, the Internet, catalog sales, retail stores, club stores, telemarketing or other direct marketing sales;

(b) to operate and to grant others the right to operate Restaurants located outside the Protected Territory under any terms and conditions we deem appropriate;

(c) to operate and to grant others the right to operate Restaurants at non-traditional sites within and outside the Protected Territory under any terms and conditions we deem appropriate. "Non-traditional sites" include, without limitation, military bases, Indian reservations, casinos, shopping malls, hotels, educational institutions, airports, train and bus stations, travel plazas, toll roads, beaches, parks and other recreational facilities, government buildings and establishments, prisons, hospitals, convenience stores, cafeterias, snack bars, trucks, sports or entertainment venues or stadiums, and retail restaurant locations being sublet under a lease to a master concessionaire, whether currently existing or constructed or established subsequent to the date hereof; and

(d) the right to acquire and operate a business operating one or more restaurants or food service businesses located or operating in the Protected Territory.

(e) to own, acquire, establish and/or operate, and license others to establish and operate, businesses under other proprietary marks or other systems, whether such businesses are the same, similar, or different from the Restaurant, at any location within or outside the Protected Territory.

1.6 No Customer Exclusivity

You expressly acknowledge that all BurgerFi Restaurants (regardless of ownership) may solicit, sell, and/or deliver products to customers without regard to the customers' geographic location, and including customers located in the Territory. Without our express written approval, you may not (a) make any off-premises sales or deliver any products to customers, wherever located, or (b) sell any products to any business or other customer at wholesale.

ARTICLE 2

SITE SELECTION, PLANS AND CONSTRUCTION

2.1 Your Responsibility to Locate a Site

You assume all cost, liability, expense and responsibility for locating, and after our approval, obtaining and developing a site for the Restaurant within your approved development area, and for constructing, equipping and operating the Restaurant at the Accepted Location. You shall not make any binding commitment to a prospective vendor or lessor of real estate with respect to a site for the Restaurant unless the site is accepted by us as set forth below. You acknowledge that the location, selection, procurement and development of a site for the Restaurant is your responsibility; that in discharging such responsibility you shall consult with real estate and other professionals of your choosing; and that our acceptance of a prospective site and the rendering of assistance in the selection of a site does not constitute a representation, promise, warranty or guarantee, express or implied, by us that the Restaurant operated at that site will be profitable or otherwise successful.

2.2 Site Selection

(a) Prior to acquiring by lease or purchase a site for the Restaurant, within 60 days of the date of this agreement, you shall submit to us in the form specified by us a description of the site that satisfies the site selection guidelines provided to you by us pursuant to Section 5.1, together with such other information and materials as we may reasonably require, including, but not limited to, a letter of intent or other evidence satisfactory to us which confirms your favorable prospects for obtaining the site. If the site is for your second or later Restaurant pursuant to a Multi-Unit Operator Agreement (“MUOA”) between us and you (as the multi-unit operator), all such information must be submitted no later than 30 days after the scheduled Opening Date (as hereinafter defined) of the immediately preceding Restaurant thereunder. We shall have 30 days after receipt of this information and materials to accept or decline, in our sole discretion, the proposed site as the location for the Restaurant. No site may be used for the location of the Restaurant unless it is first accepted in writing by us. You acknowledge and agree that our acceptance of a location for the Restaurant is not a warranty or guaranty, express or implied, that you will achieve any particular level of success at the location or that your Restaurant will be profitable, and you hereby waive any such claim. Our acceptance of a location for the Restaurant only signifies that the location meets our then-current minimum criteria for a BurgerFi Restaurant. If the site has been declined we will grant you a one-time additional 30 day period from the date of rejection to submit an alternate location for acceptance.

(b) If you elect to purchase the premises for the Restaurant, after receiving our acceptance of the site, you shall submit a copy of the proposed contract of sale to us for our written acceptance prior to its execution and shall furnish to us a copy of the executed contract of sale promptly after execution.

(c) If you will occupy the premises of the Restaurant under a lease or sublease, after receiving our acceptance of the site, you shall submit a copy of the lease or sublease to us for written acceptance prior to its execution and shall furnish to us a copy of the executed lease or sublease promptly after execution. No lease or sublease for the Restaurant premises shall be accepted by us unless and until a Contingent Assignment of Lease executed by you and us and a Consent of Lessor to Contingent Assignment executed by your lessor in substantially the form attached as Attachment B is attached to the lease and incorporated therein. Our approval of any lease may be further conditioned upon the inclusion of any one or more of the following provisions, which may be incorporated into an addendum we provide to you for inclusion in the lease as a required exhibit: (i) authorizing the use of such Marks, trade dress, parking, and signage as we may prescribe for the Restaurant; (ii) restricting the use of the leased premises solely to the operation of the Restaurant; (iii) prohibiting you from subleasing or assigning all or any part of your occupancy rights or extending the term of or renewing the lease without our prior written consent; (iv) granting to us or our designee the option, but not the obligation, without the lessor’s further consent, to assume all of your rights under the lease, including the right to assign or sublease, upon your default or termination under such lease or under this Agreement; (v) requiring that the lessor provide us with any and all letters and notices of default under the lease concurrently with the providing of such notice to you, and with at least 30 days within which to cure such default; (vi) granting us the right to enter the leased premises to make any modification necessary to protect our Marks or to cure any default under this Agreement or the lease; (vii) prohibiting any amendment to the lease without our prior written consent; (viii) permitting the sale of liquor, wine, and beer from the premises; and (ix) such other provisions that may be set forth in the Manual. You must have an executed lease in place within 30 days of our formal acceptance of the site.

(d) After a location for the Restaurant is accepted by us and acquired by you pursuant to this Agreement the location shall be described in Attachment A.

2.3 Zoning Clearances, Permits and Licenses

You shall be responsible for obtaining any and all governmental approvals necessary to construct and operate a BurgerFi Restaurant, including without limitation a liquor license and any zoning classifications and clearances which may be required by state or local laws, ordinances or regulations or which may be necessary as a result of any restrictive covenants relating to the Restaurant premises. Prior to beginning the construction of the Restaurant, you shall (i) obtain all permits, licenses and certifications required for the lawful construction or remodeling and operation of the Restaurant, and (ii) certify in writing to us that the insurance coverage specified in Article 12 is in full force and effect and that all required approvals, clearances, permits and certifications have been obtained. Upon written request, you shall provide to us additional copies of your insurance policies or certificates of insurance and copies of all such approvals, clearances, permits and certifications.

2.4 Design of Restaurant

You must obtain any architectural, engineering and design services required for the construction of the Restaurant at your own expense from an architectural firm approved by us. You shall adapt the prototypical architectural and design plans and specifications for construction of the Restaurant provided to you by us in accordance with Section 5.3 as necessary for the construction of the Restaurant and shall submit such adapted plans to us for our review no later than 45 days from the execution of your lease or contract, as the case may be. You may not use any adapted plans or submit them to your landlord or any governmental authority without our prior written approval. If we determine that any such plans are not consistent with the best interests of the System, we may prohibit the implementation of such plans. In this event, we will notify you of any objections and provide you with a reasonably detailed list of changes necessary to make the plans acceptable. You must keep resubmitting the plans to us in this fashion until you have received our written approval. Any costs incurred due to plan changes shall be borne solely by you. You must submit the final plans to the appropriate governmental authorities within 2 business days of receiving our approval. You acknowledge that our review of such plans relates only to compliance with the System and that acceptance by us of such plans does not constitute a representation, warranty, or guarantee, express or implied, by us that such plans are accurate or free of error concerning their design or structural application, or comply with any federal, state or local rules, laws, regulations or codes, and you hereby waive any such claims to this effect. Further, pursuant to Article 15, you shall indemnify and hold us harmless from any liability resulting from any design flaws or construction issues with your Restaurant.

2.5 Build-Out of Restaurant

Immediately upon approval of the plans, you shall commence and diligently pursue construction or remodeling (as applicable) of the Restaurant. Commencement of construction shall be defined as the time at which any site work is initiated by you or on your behalf at the location accepted for the Restaurant. Site work includes, without limitation, paving of parking areas, installing outdoor lighting and sidewalks, extending utilities, demising of interior walls and demolishing of any existing premises. During the time of construction or remodeling, you shall provide us with such periodic reports regarding the progress of the construction or remodeling as may be reasonably requested by us. In addition, we may make such on-site inspections as we may deem reasonably necessary to evaluate such progress. You shall notify us of the scheduled date for completion of construction or remodeling no later than 30 days prior to such date. Within a reasonable time after the date of completion of construction or remodeling, we may, at our option, conduct an inspection of the completed Restaurant. You acknowledge and agree that you will not open the Restaurant for business without our written authorization and that authorization to open shall be conditioned upon your strict compliance with this Agreement.

2.6 Opening Date; Time is of the Essence

You acknowledge that time is of the essence for all dates and times set forth herein. Subject to your compliance with the conditions stated below, you shall open the Restaurant and commence business **within the timeframe set forth in the MUOA** unless you obtain an extension of such time period from us in writing. The date the Restaurant actually opens for business to the public is herein called the "Opening Date". You understand and acknowledge that the Opening Date provided for herein is specific to you and the development of your BurgerFi Restaurant at the accepted site. Nothing in this section requires us to grant you a later Opening Date or to provide you with any other similar accommodation.

Prior to opening, you shall complete all exterior and interior preparations for the Restaurant, including installation of equipment, fixtures, furnishings and signs, pursuant to the plans and specifications approved by us, and shall comply with all of your other pre-opening obligations, including, but not limited to, those obligations described in Sections 6.4. If you fail to comply with any of such obligations, except for delays caused by a force majeure act as described in Section 17.1(d), you may not commence business. Notwithstanding the foregoing, if you fail to open your Restaurant within the timeframe required herein, subject to a force majeure event, you agree to pay to us a delayed opening fee as follows: \$1,000 for the 1st month's delay; \$5,000 for the 2nd month's delay; and \$10,000 for the 3rd month's delay; and \$10,000 per month for each month thereafter; such amounts shall be pro-rated for any partial month and shall be paid within 10 days of our demand therefore. You understand and acknowledge that such fee shall be in addition to our other rights and remedies hereunder or at law. If your Restaurant is not opened and operating within 3 months of your Opening Date, we shall have the immediate right to terminate this Agreement without providing you a refund of any fees or costs paid or incurred by you.

ARTICLE 3

TERM AND RENEWAL

3.1 Term

Unless sooner terminated as provided in Article 17 hereof, the term of this Agreement shall commence on the Effective Date stated and expire 10 years thereafter.

3.2 Renewal

(a) You have the right to renew the franchise granted by this Agreement for one additional term of 10 years, as set forth in this Section 3.2, provided you have complied with the following, any of which may be waived by us in our sole discretion:

(i) You shall have been, throughout the initial Term of this Agreement, in substantial compliance with this Agreement, and at the expiration of such initial Term are in full compliance with this Agreement, your lease or sublease and all other agreements between you and us or companies associated or affiliated with us.

(ii) You have executed, at least 30 days before the expiration of the Initial Term, any documents that you are required to execute for the renewal term, which documents may include, but are not limited to, a general release, our then-current Franchise Agreement and all other ancillary agreements, instruments and documents then customarily used by us in the granting of Restaurant franchises (which then-current Franchise Agreement may materially differ from this Agreement and be less advantageous to you than the terms of this Agreement, provided, however, that (a) you will not be required to pay any initial franchise fee; and (b) the Protected Territory will remain the same.

(iii) You have paid to us our renewal fee, which is equal to 25% of our then current Franchise Fee.

(iv) You have given us written notice of your desire to obtain a renewal term not more than 12 months and not fewer than 9 months prior to the end of the initial term.

(b) If we do not receive the executed documents and renewal fee by such expiration date, and you have not otherwise complied with this Section 3.2, then this Agreement shall expire, you shall have no further rights under this Agreement, and you shall comply with the provisions of Article 18 and any other provisions that survive termination or expiration of this Agreement.

(c) After we have received from you all executed renewal documents and the renewal fee, we shall inspect your Business to determine the extent of any required updating, remodeling, redecorating or other refurbishment for the Business in order to bring the Business up to our then-current image and standards for new BurgerFi Restaurants. We will provide notice to you of the modifications you shall be required to make and you shall have 6 months from the date of such notice to effectuate such modifications. If you fail or refuse to make the required modifications, we shall have the right to terminate the renewed Franchise Agreement.

(d) You must ensure that your lease, sublease or other document by which you have the right to occupy the Restaurant premises is extended before your renewal term is to take effect to cover the period of the renewal.

(e) In the event the renewal of this Agreement is subject to a specific law, rule, regulation, statute, ordinance, or legal order that governs franchise agreement renewals, to the extent allowable by the concerned law, rule, regulation, statute, ordinance or order, your renewal term will be subject to the conditions of the Franchise Agreement we are using for new franchisees at the time the renewal period begins. If we are not then offering new franchises, your renewal period will be subject to the terms in the Franchise Agreement that we indicate. If for any reason that is not allowable by law, rule, regulation or otherwise, the renewal term will be governed by the terms of this Agreement.

(f) For the purposes hereof, you shall be deemed to have irrevocably elected not to renew your franchise and this Agreement (and the option to do so shall thereupon terminate) if you fail to execute and return to us our then-standard Franchise Agreement and other ancillary documents required by us for a renewal franchise, together with payment of our then-current renewal fee, or if you provide written notice to us within the final 60 days of the Initial Term indicating that you do not wish to renew this Agreement.

ARTICLE 4

FEES

4.1 Franchise Fee

(a) You shall pay to us a franchise fee of \$37,500 upon the execution of this Agreement. When paid, the franchise fee shall be deemed fully earned and non-refundable in consideration of the administrative and other expenses incurred by us in granting the franchise hereunder and for our lost or deferred opportunity to grant such franchise to any other party.

(b) Notwithstanding the foregoing, if this Agreement is being executed for a Restaurant that is being developed pursuant to the terms of a MUOA and is for the 1st Restaurant to be developed thereunder, then the franchise fee has heretofore been paid in full. If this Agreement is for the 2nd or later Restaurant to be developed under a MUOA, then the portion of the franchise fee paid for such Restaurant under the MUOA as a reservation fee shall be applied to the franchise fee and upon execution of a lease or purchase agreement for the Restaurant premises and this Agreement, you shall pay the balance of the franchise fee that remains unpaid.

4.2 Royalty Fee

(a) During the term of this Agreement, you shall pay to us, in partial consideration for the rights herein granted, a continuing weekly royalty fee ("Royalty Fee") of 5.5% of Net Sales. Such Royalty Fee shall be due and payable each week based on the Net Sales for the preceding week ending Sunday so that it is received by us by electronic funds transfer on or before the Wednesday following the end of each week, provided that such day is a business day. If the date on which such payments would otherwise be due is not a business day, then payment shall be due on the next business day.

(b) Each such Royalty Fee shall be preceded by a royalty report itemizing the Net Sales for the preceding week ending Sunday ("Royalty Report") and any other reports we may require. The Royalty Report and all other required information shall be transmitted to us in the form and manner specified in the Manual or otherwise in writing.

(c) If any state imposes a sales or other tax on the Royalty Fees, then we have the right to collect this tax from you.

(d) If a state or local law in which the Restaurant is located prohibits or restricts in any way your ability to pay and our ability to collect Royalty Fees or other amounts based on Net Sales derived from the sale of alcoholic beverages at the Restaurant, then we and you shall increase the percentage rate for calculating Royalty Fees, and change the definition of Net Sales to exclude sales of alcoholic beverages, in a manner such that the Royalty Fees to be paid by you, and received by us, shall be equal to such amounts as you would have been required to pay, and we would have received, if sales from alcoholic beverages were included from Net Sales.

4.3 Brand Development Fee

In addition to the Royalty Fee described in Section 4.2 above, you agree to pay to us a Brand Development Fee in an amount equal to 1.5% of the Restaurant's Net Sales. We shall allocate and use the Brand Development Fee in the manner described in Section 8 below. The Brand Development Fee is payable to us at the same time and in the same manner as the Royalty Fee.

4.4 Payments to Us

By executing this Agreement, you agree that we shall have the right to withdraw funds from your designated bank account each week by electronic funds transfer ("EFT") in the amount of the Royalty Fee, Brand Development Fee and any other payments due to us and/or our affiliates. If you do not accurately and timely report the Restaurant's Net Sales, we may debit your account for 120% of the last Royalty Fee and Brand Development Fee that we debited. If the Royalty Fee and Brand Development Fee we debit are less than the Royalty Fee and Brand Development Fee you actually owe to us, once we have been able to determine the Restaurant's true and correct Net Sales, we will debit your account for the balance on a day we specify. If the Royalty Fee and Brand Development Fee we debit are greater than the Royalty Fee and Brand Development Fee you actually owe, we will credit the excess against the amount we otherwise would debit from your account during the following week. You shall, upon execution of this Agreement or at any time thereafter at our request, execute such documents or forms as we or your bank determine are necessary for us to process EFTs from your designated bank account for the payments due hereunder. If payments are not received when due, interest may be charged by us in accordance with Section 4.5 below. Upon written notice, you may be required to pay such fees directly to us in lieu of EFT, at our sole discretion.

4.5 Interest on Overdue Amounts

You shall not be entitled to withhold payments due us under this Agreement on grounds of alleged non-performance by us hereunder. Any payment or report not actually received by us on or before its due date shall be deemed overdue and a default hereunder. Time is of the essence with respect to all payments to be made by you to us. All unpaid obligations under this Agreement shall bear interest from the date due until paid at the lesser of (i) 18% per annum; or (ii) the maximum rate (if any applies) under applicable law. Notwithstanding anything to the contrary contained herein, no provision of this Agreement shall require the payment or permit the collection of interest in excess of the maximum rate allowed by applicable law. If any excess of interest is provided for herein, or shall be adjudicated to be so provided in this Agreement, the provisions of this paragraph shall govern and prevail, and neither you nor your Controlling Principals shall be obligated to pay the excess amount of such interest. If for any reason interest in excess of the maximum rate allowed by applicable law shall be deemed charged, required or permitted, any such excess shall be applied as a payment and reduction of any other amounts which may be due and owing hereunder, and if no such amounts are due and owing hereunder then such excess shall be repaid to the party that paid such interest.

4.6 Definition of Net Sales

"Net Sales" shall mean the total selling price of all services and products and all income of every other kind and nature related to the Restaurant (including, without limitation, income related to sales or orders of food products or food preparation services provided from or related to the Restaurant), whether for cash or credit and regardless of collection in the case of credit. In the event of a cash shortage, the amount of Net Sales shall be determined based on the records of the electronic cash register system and any cash shortage shall not be considered in the determination. Net Sales expressly excludes taxes collected from your customers and paid to the appropriate taxing authority and customer credits and refunds or adjustments. "Net Sales" shall also not include sales applied towards gift cards, shipping and handling charges, customer credits and refunds or franchise and sales taxes.

4.7 Payment of Additional Fees

You shall pay such other fees or amounts described in this Agreement.

4.8 Reimbursement of Monies Paid on Your Behalf

You shall pay us within 15 days of any written request which is accompanied by reasonable substantiating material, any monies which we have paid, or have become obligated to pay, on your behalf, by consent or otherwise under this Agreement.

ARTICLE 5

OUR OBLIGATIONS

5.1 Site Selection Assistance

We will provide you with our written site selection guidelines and such site selection assistance as we may deem advisable. We will conduct, at our expense, an evaluation of the demographics of the market area for the location (which may include the population and income level of residents in the market area, aerial photography, size and other physical attributes of the location, proximity to residential neighborhoods and proximity to schools, shopping centers, entertainment facilities and other businesses that attract consumers and generate traffic). We may use these and other factors, including general location and neighborhood, traffic patterns, availability of parking, and ease of access to the location, in our review of your proposed site.

5.2 Construction Assistance

We may make on-site inspections to evaluate the progress of the construction of the Restaurant. Such on-site inspections, if provided, will be at our expense.

5.3 Prototype Design Plans

We will loan you one set of prototypical architectural and design plans and specifications for a Restaurant. You shall, at your expense, have such architectural and design plans and specifications adapted, with our approval, for construction of the Restaurant in accordance with Article 2. You agree that all such plans and specifications are confidential documents and are owned by us. You will not disclose these documents to anyone except those parties that need such documents in order to construct the Restaurant, and not until such parties have executed a non-disclosure agreement approved by us. Any adaptations or modifications made to these plans and specifications shall be deemed work made-for-hire and will be owned by us.

5.4 Confidential Operations Manual

We will loan you one set of confidential Operations Manuals and such other manuals and written materials as we shall have developed for use in the Franchised Business (as the same may be revised by us from time to time, the "Manuals"), as more fully described in Section 10.1. The Manuals may, in our discretion, be provided electronically or via an intranet website for all BurgerFi Restaurants in the System.

5.5 Visits and Evaluations

We will visit the Restaurant and evaluate the products sold and services rendered therein from time to time as reasonably determined by us, as more fully described in Section 7.5.

5.6 Advertising and Promotional Materials

We may, in our sole discretion, provide certain advertising and promotional materials and information developed by us and/or our affiliates from time to time for use by you in marketing and conducting local advertising for the Restaurant. We may require you to purchase and use some or all of such materials, as well as impose a reasonable charge for any required or optional materials for your purchase from us. We must review and approve or disapprove all advertising and promotional materials that you propose to use, pursuant to Article 8.

5.7 Management and Operations Advice

We will provide to you advice as needed in our discretion, and written materials concerning techniques of managing and operating the Restaurant from time to time developed by us, including new developments and improvements in Restaurant equipment, food products and the packaging and preparation thereof and menu items food safety and handling procedures.

5.8 Products for Resale

From time to time and at our reasonable discretion, at a reasonable cost, we may make available for resale to your customers certain merchandise identifying the System, such as logoed merchandise and memorabilia, in sufficient amounts to meet customer demand. We may specify that you must purchase such merchandise from us, our affiliate, or another designated supplier. Your requirement to purchase such merchandise is subject to customer demand and your inventory on hand.

5.9 Approved Suppliers

We will provide to you a list of approved suppliers as described in Section 7.4 from time to time as we deem appropriate.

5.10 Initial Training Program

We will conduct an initial training program for the General Manager and at least 3 additional employees, as well as other training programs in accordance with the provisions of Section 6.4.

5.11 Opening Assistance

We will provide on-site opening assistance at the Restaurant in accordance with the provisions of Section 6.4.

5.12 Brand Development Fund

We will establish and administer a brand development fund in accordance with Article 8.

5.13 Delegation of Obligations

You acknowledge and agree that any duty or obligation imposed on us by this Agreement may be performed by any of our designees, employees, or agents.

ARTICLE 6

YOUR AGREEMENTS, REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Representations of Controlling Principals

Each of the Controlling Principals, jointly and severally, represents, warrants and covenants that all of the representations and warranties contained in this Agreement including the following are complete, correct and accurate as of the date of execution of this Agreement and at all times during the term hereof, and will survive any termination or expiration of this Agreement:

(a) The Controlling Principals shall make all commercially reasonable efforts to timely open and operate the Restaurant so as to achieve optimum sales and will follow our business advice and instructions with respect to the Restaurant's operation.

(b) There are no material liabilities, adverse claims, commitments or obligations of any nature as of the date of execution of this Agreement, whether accrued, unliquidated, absolute, contingent or otherwise which would inhibit the transactions contemplated by this Agreement and the operation of the Restaurant.

(c) There are no actions, suits, proceedings or investigations pending or, to your knowledge or the knowledge of any of your officers, directors, principal shareholders, proprietors, partners or principals (as applicable) after due inquiry, threatened, in any court or arbitral forum, or before any governmental agency or instrumentality, nor to the best of your knowledge or the knowledge of any such persons or entities (after due inquiry) is there any basis for any claim, action, suit, proceeding or investigation which affects or could affect, directly or indirectly, any of your assets, properties, rights or business; your right to operate and use your assets, properties or rights to carry on your business; and/or which affects or could affect your right to assume and carry out in all respects the duties, obligations and responsibilities specified in this Agreement.

(d) None of the Controlling Principals is a party to any contract, agreement, covenant not to compete or other restriction of any type which may conflict with, or be breached by, the execution, delivery, consummation and/or performance of this Agreement.

(e) Each Controlling Principal will comply with all requirements of all federal, state and local laws, rules, regulations and orders, and shall timely obtain any and all permits, certificates or licenses necessary for the full and proper conduct of the Franchised Business, including without limitation, licenses to do business, fictitious name registrations, sales tax permits, fire clearances, health permits, certificates of occupancy, licenses required to sell wine and beer at your Restaurant, and any permits, certificates or licenses required by any environmental law, rule or regulation.

(f) The Principals will comply, and assist us to the fullest extent possible in our efforts to comply, with Anti-Terrorism Laws (defined below). In connection with that compliance, the Principals certify, represent, and warrant that none of your property or interests is subject to being blocked under, and that you and your Principals otherwise are not in violation of, any of the Anti-Terrorism Laws. "Anti-Terrorism Laws" mean Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future federal, state, and local laws, ordinances, regulations, policies, lists, and other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of the Anti-Terrorism Laws by a Principal, or any blocking of any Principals' assets under the Anti-Terrorism Laws, shall constitute good cause for immediate termination of this Agreement.

(g) You shall notify us in writing within 2 days of your receipt or knowledge of the commencement of any action, suit or proceeding or of the issuance of any order, writ, injunction, subpoena, request or demand for information, award or decree of any court, agency or other governmental instrumentality, which may affect the operation or financial condition of the Franchised Business, the System or any other BurgerFi Restaurant.

6.2 Representations of Corporate Entity

If you are a corporation, limited liability company, partnership or other legal entity, the Controlling Principals jointly and severally represent, warrant and covenant the following, all of which will survive any termination or expiration of this Agreement:

(a) You are duly organized and validly existing under the state law of your formation;

(b) You are in good standing, duly qualified and authorized to do business in each jurisdiction in which your business activities or the nature of the properties owned by you require such qualification;

(c) Your corporate charter and operating/partnership/shareholder agreement shall at all times provide that your activities are confined exclusively to the operation of the Restaurant;

(d) The execution of this Agreement and the consummation of the transactions contemplated hereby are within your corporate power have been duly authorized by you and are permitted under your operative documents;

(e) Copies of your articles of incorporation, certificate of organization, bylaws, operating/partnership/shareholder agreement, all other governing documents, any amendments thereto, resolutions authorizing entry into and performance of this Agreement, and any certificates, buy-sell agreements or other documents restricting the sale or transfer of stock/interest, and any other documents as may be reasonably required by us shall be furnished to us prior to the execution of this Agreement. If any amendment or changes to any of these documents will affect any of our rights, the Franchised business or any of the transactions contemplated by this Agreement, you will obtain our written consent and approval prior to making any such amendment or change;

(f) The ownership interests in you are accurately and completely described in Attachment C. Further, you shall maintain at all times a current list of all owners of record and all beneficial owners of any class of voting securities or membership interest, as applicable, and will furnish such list of owners to us upon request. No change of ownership shall be made except in compliance with this Agreement and the terms contained in Article 14;

(g) If you are a corporation, you shall maintain stop-transfer instructions against the transfer on your records of any of equity securities and each stock certificate representing stock of the corporation shall have conspicuously endorsed upon it a statement in a form satisfactory to us that it is held subject to all restrictions imposed upon assignments by this Agreement; provided, however, that the requirements of this Section shall not apply to the transfer of equity securities of a publicly held corporation (as defined in Section 20.14). If you are a partnership or limited liability company, your written agreement shall provide that ownership of an interest in the entity is held subject to all restrictions imposed upon assignments by this Agreement;

(h) You must have provided us with your most recent financial statements. Such financial statements present fairly your financial position, at the dates indicated therein and with respect to you, the results of your operations and your cash flow for the years then ended. You agree that you shall maintain at all times, during the term of this Agreement, sufficient working capital to fulfill your obligations under this Agreement. Each of the financial statements mentioned above shall be certified as true, complete and correct and shall have been prepared in conformity with generally accepted accounting principles applicable to the respective periods involved and, except as expressly described in the applicable notes, applied on a consistent basis. No material liabilities, adverse claims, commitments or obligations of any nature exist as of the date of this Agreement, whether accrued, unliquidated, absolute, contingent or otherwise, which are not reflected as liabilities on your financial statements;

(i) If, after the execution of this Agreement, any individual succeeds to or otherwise comes to occupy a position which would, upon designation by us, qualify him or her as one of your Principals, you shall notify us within 10 days after any such change and, upon designation of such person by us as one of your Principals or as a Controlling Principal, as the case may be, such person shall execute such documents and instruments (including, as applicable, this Agreement) as may be required by us to be executed by others in such positions. If we are not so notified and if this new Principal/Controlling Principal does not execute the documents we require, you shall immediately cause an assignment of and/or purchase any and all interest owned by this individual in the Franchised Business; and

(j) Your Principals shall each execute and bind themselves to the confidentiality and non-competition covenants set forth in the Confidentiality and Non-Competition Agreement, annexed hereto as Attachment D to this Agreement (see Sections 10.2(b) and 10.3(f)). The Controlling Principals shall, jointly and severally, guarantee your performance of all of your obligations, covenants and agreements hereunder pursuant to the terms and conditions of the guaranty contained herein, and shall otherwise bind themselves to the terms of this Agreement as stated herein, by signing the Guarantee, Indemnification, and Acknowledgment of Controlling Principals (in the form of Exhibit A-1 attached to this Agreement).

6.3 General Manager

You shall designate and retain at all times a general manager (“General Manager”), approved by us, to direct the operation and management of the Restaurant. The General Manager shall be responsible for the daily operation of the Restaurant and may be one of the Controlling Principals. The General Manager shall, during the entire period he or she serves as General Manager, meet the following qualifications:

- (a) Satisfy our educational and business experience criteria as set forth herein, the Manuals or otherwise in writing by us;
- (b) Devote full time and best efforts to the supervision and management of the Restaurant; and
- (c) Satisfy the training requirements set forth in Section 6.4.

If, during the term of this Agreement, the General Manager is not able to continue to serve in such capacity or no longer qualifies to act as such in accordance with this Section, you shall promptly notify us and designate a replacement within 60 days after the General Manager ceases to serve, such replacement being subject to the same qualifications listed above (including completing all training and obtaining all certifications required by us) . You shall provide for interim management of the Restaurant until such replacement is so designated, such interim management to be conducted in accordance with the terms of this Agreement.

6.4 Training

You agree that it is necessary to the continued operation of the System and the Restaurant that your personnel receive such training as we may reasonably require, and accordingly agree as follows:

(a) Not later than 30 days prior to the Opening Date, your General Manager and at least 3 additional employees (a minimum of 4 persons) shall attend and complete, to our reasonable satisfaction, our initial training program, including classroom training and training in an operating Restaurant at such location(s) as may be designated by us. At least one of the Controlling Principals must successfully complete either the initial training program or the abbreviated "owners" training program (the details of which are specified in the Manual). If, however, a Controlling Principal will be the General Manager, he/she must successfully complete the full initial training program. We will provide our initial training program at our expenses for 4 attendees; if you wish to send additional employees to our training program and we are able to accommodate your request, whether before the Restaurant opens or while the Restaurant is operating, or if your scheduled opening date is delayed and we require employees to be trained again, you shall pay to us our then-current training fee for each trainee (currently \$1,000 per trainee). In all cases, you are responsible for the travel and related costs incurred by all attendees.

(b) After the initial 4 employees have successfully completed our initial training program in Florida, we may offer a field certification program that allows employees who meet certain eligibility requirements to become a certified employee in an operating franchised restaurant. Other prerequisites and eligibility requirements will be set forth in our Manual. The cost of this in-store certification program will be our then-current training fee for each participant (currently \$1,000 per session, for up to 3 people), and may include online training and other components as specified by us.

(c) Prior to being accepted into the BurgerFi certified employee training program the prospective employee must meet the following minimum requirements: General Managers must have a minimum of 3 years of restaurant experience with at least 2 years in restaurant management; and Assistant Managers must have a minimum of 2 years of restaurant experience with at least one year in restaurant management. All other staff not meeting the above minimum requirements must be employed in a BurgerFi Restaurant for a minimum of 6 months, and 3 of those months must in a supervisory role, before they can be admitted into training. By recommending an employee to us for certification, you represent that the individual has the requisite experience provided above. Additional requirements, if any, will be set forth in the Manuals.

(d) We shall determine, in our reasonable discretion, whether the General Manager has satisfactorily completed initial training. If the initial training program is not satisfactorily completed within the required timeframe, you shall designate an approved replacement to satisfactorily complete such training. Any replacement or subsequent General Manager must complete such initial training. You shall be responsible for our training fees and for any and all expenses incurred by your employees in connection with any training program, including, without limitation, costs of travel, lodging, meals and wages.

(e) At all times, each Restaurant must have at least one General Manager plus at least an additional 3 employees that have been certified by us. Certification is obtained by successfully completing the corporate training program or field certification program. The certified General Manager must work a minimum of 5, 8-hour shifts each week. There must always be at least one certified employee present at your Restaurant during operating hours.

(f) In connection with the opening of the Restaurant, we shall provide you with up to 5 of our trained representatives. The trainers will provide on-site pre-opening and opening training, supervision, and assistance to you for a period of up to approximately 14 days around the Restaurant's opening. The number of trainers provided and the number of days shall be determined at our sole discretion. You agree to pay our current per diem rate for trainers, which is currently \$40 per trainer per day, plus reimburse the expenses incurred by our representatives in providing such opening assistance, including, but not limited to, travel, lodging and incidentals. A deposit of \$5,000 is required prior to the training team being scheduled. We will not book a training team until we have received the deposit. The final payment is due upon receipt of the final invoice.

(g) After your Restaurant has opened, from time to time as we deem appropriate, we shall, during the term hereof, subject to the availability of personnel, provide you with additional trained representatives who shall provide on-site training and assistance to your Restaurant personnel. For this additional training and assistance, you shall pay the current per diem fee then being charged to franchisees under the System for the services of such trained representatives, which as of the date of this Agreement is \$450 per day per trainer.

(h) We reserve the right to conduct additional or refresher training programs, seminars and other related activities regarding the operation of the Restaurant. Such training programs and seminars may be offered to the General Manager or other Restaurant personnel generally, and we may designate that such training programs and seminars are mandatory for your General Manager and other Restaurant personnel. We will present the training program at our cost, or we may use money from the Brand Development Fund to do this, but you must pay for your trainees' expenses, including travel, lodging, meals and applicable wages.

6.5 Hiring Practices

You and the Controlling Principals understand that compliance by all franchisees operating under the System with our training, development and operational requirements is an essential and material element of the System and that we and our franchisees operating under the System consequently expend substantial time, effort and expense in training management personnel for the development and operation of their respective Restaurants. Accordingly, you and the Controlling Principals agree that if you or any Controlling Principal shall, during the term of this Agreement, designate as General Manager or employ in a managerial position any individual who is at the time or was within the preceding 90 days employed in a managerial or supervisory position by us or any of our franchisees, including, but not limited to, individuals employed to work in Restaurants operated by us or by any other franchisee, then such former employer of such individual shall be entitled to be compensated for the reasonable costs and expenses, of whatever nature or kind, incurred by such employer in connection with the training of such employee. The parties hereto agree that such expenditures may be uncertain and difficult to ascertain and therefore agree that the compensation specified herein reasonably represents such expenditures and is not a penalty. An amount equal to the compensation of such employee for the 6 month period (or such shorter time, if applicable) immediately prior to the termination of his or her employment with such former employer shall be paid by you to the former employer prior to such individual assuming the position of General Manager or other managerial position unless otherwise agreed with the former employer. In seeking any individual to serve as General Manager or in such other managerial position, you and the Controlling Principals shall not discriminate in any manner whatsoever to whom the provisions of this Section apply, on the basis of the compensation required to be paid hereunder, if you or any Controlling Principal designate or employ such individual. The parties hereto expressly acknowledge and agree that no current or former employee of us, you, or of any other entity operating under the System shall be a third party beneficiary of this Agreement or any provision hereof. Notwithstanding the above, solely for purposes of bringing an action to collect payments due under this Section, such former employer shall be a third party beneficiary of this [Section 6.5](#). We hereby expressly disclaim any representations and warranties regarding the performance of any employee or former employee of ours or any franchisee under the System who is designated as your General Manager or employed by you or any of the Controlling Principals in any capacity, and we shall not be liable for any losses, of whatever nature or kind, incurred by you or any Controlling Principal in connection therewith. We acknowledge that the former employer will not be entitled to receive such costs if such General Manager or employee was released or terminated by such former employer.

6.6 Multi-Unit Operators

If you are a Multi-Unit Operator, and this Franchise Agreement governs the operation of your 3rd Restaurant, you agree to hire a full-time director of operations/district manager whose job it is to oversee the operations of up to 5 Restaurants. Each additional increment of 3 to 5 Restaurants will require one additional director of operations/district manager for those Restaurants.

6.7 Compliance with All Other Obligations

You shall comply with all other requirements provided hereunder and perform such other obligations as we may reasonably request from time to time.

ARTICLE 7

FRANCHISE OPERATIONS

7.1 Compliance with Standards

You understand and acknowledge the importance of maintaining uniformity among all of the Restaurants in the System and therefore you agree to comply with all of our standards and specifications relating to the operation of the Restaurant.

7.2 Maintenance of Restaurant

You shall maintain the Restaurant in a high degree of sanitation, repair and condition to our satisfaction, and in connection therewith shall make such additions, alterations, repairs and replacements thereto (none of which shall be made without our prior written consent) as may be required by us for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment, and décor as we may reasonably direct in order to maintain system-wide integrity and uniformity. Without limiting the foregoing, you shall also obtain, at your cost and expense, any new or additional equipment (including point of sale or computer hardware and software systems), fixtures, supplies and other products and materials which may be reasonably required by us for you to offer and sell new menu items from the Restaurant or to provide the Restaurant services by alternative means, such as through catering or delivery arrangements (which may not be done without our prior written consent). Except as may be expressly provided in the Manuals, no material alterations, improvements or changes of any kind in design, equipment, signs, interior or exterior décor items, fixtures or furnishings shall be made in or about the Restaurant or its premises without our prior written approval.

7.3 Remodeling and Redecorating

To assure the continued success of the Restaurant, you shall, upon our request, remodel and/or redecorate the Restaurant premises, equipment (including point of sale or computer hardware and software systems), signs, interior and exterior décor items, fixtures, furnishings, supplies and other products and materials required for the operation of the Restaurant to our then-current system-wide standards and specifications. We agree that we shall not request such remodeling and/or redecorating more frequently than every 3 years during the term of this Agreement, except that if the Restaurant franchise is transferred pursuant to [Article 14](#), we may require the transferee to remodel and/or redecorate the Restaurant premises as described herein.

7.4 Approved Suppliers

(a) You shall comply with all of our standards and specifications relating to the purchase of all food and beverage items, ingredients, supplies, materials, fixtures, furnishings, equipment (including electronic cash register and computer hardware and software systems) and other products used or offered for sale at the Restaurant (collectively, "Items"). Unless we specify certain suppliers as required in the Manuals or otherwise in writing, all suppliers must be pre-approved by us in writing prior to any purchases. All suppliers (including manufacturers, distributors and other sources) must continue to demonstrate the ability to meet our then-current standards and specifications for food and beverage items, ingredients, supplies, materials, fixtures, furnishings, equipment and other items used or offered for sale at Restaurants and must possess adequate quality controls and capacity to supply your needs promptly and reliably. You may not use any supplier who has been disapproved by us. If you desire to purchase, lease or use any products or other items from a supplier who has not yet been approved, you shall submit to us a written request for such approval, or shall request the supplier itself to do so. We reserve the right to require you to pay to us our then-current fee for evaluation and testing. You shall not purchase or lease from any supplier until and unless such supplier has been approved in writing by us. We shall have the right to require that our representatives be permitted to inspect the proposed supplier's facilities, and that samples from the supplier be delivered, either to us or to an independent laboratory designated by us, for testing. We reserve the right, at our option, to re-inspect from time to time the facilities and products of any such approved supplier and to revoke our approval upon the supplier's failure to continue to meet any of our then-current criteria. Nothing herein shall be construed to require us to approve any particular supplier. Regardless of our approval, we are not responsible for and provide no guarantees or warranties that the items you purchase from such suppliers conform to our standards or otherwise meet any applicable laws, and you hereby release us from and waive any claim to the contrary, your sole remedy being to pursue the supplier.

(b) You acknowledge and agree that we and our affiliates shall have the right to collect and retain any and all allowances, rebates, credits, incentives, or benefits (collectively, "Allowances") offered by manufacturers, suppliers, and distributors to you or to us or our affiliates based upon your purchases of products and services from manufacturers, suppliers, and distributors. You assign to us and/or our affiliates all of your right, title, and interest in and to any and all such Allowances, and authorize us or our affiliates to collect and retain any or all such Allowances without restriction (unless otherwise instructed by the manufacturer, supplier, or distributor).

(c) We may, in our sole discretion, establish one or more strategic alliances or preferred vendor programs with one or more suppliers who are willing to supply all or some Restaurants with some or all of the products and/or services that Restaurants are authorized to offer to customers. You recognize that any such program(s) may limit and/or require you to use suppliers other than those that you would otherwise use, and/or limit the number of approved suppliers with whom you may do business.

(d) We reserve the right to restrict your use of suppliers of Items to (i) us; (ii) entities affiliated with us; and/or (iii) third party suppliers designated by us.

7.5 Operation of Restaurant in Compliance with Our Standards

To ensure that the highest degree of quality and service is maintained, you shall operate the Restaurant in strict conformity with such of our methods, standards and specifications set forth hereunder and in the Manuals, and as may from time to time otherwise be prescribed in writing. In particular, you also agree:

(a) To sell or offer for sale all menu items, products and services required by us and in the method, manner and style of distribution prescribed by us, including, but not limited to, dine-in and take-out, only as expressly authorized by us in writing in the Manuals or otherwise in writing.

(b) To sell and offer for sale only the menu items, products and services that have been expressly approved for sale in writing by us; to refrain from deviating from our standards and specifications without our prior written consent; and to discontinue selling and offering for sale any menu items, products or services which we may, in our sole discretion, disapprove in writing at any time.

(c) To maintain in sufficient supply and to use and sell at all times only such food and beverage items, ingredients, products, materials, supplies and paper goods that conform to our standards and specifications; to prepare all menu items in accordance with our recipes and procedures for preparation contained in the Manuals or other written directives, including, but not limited to, the prescribed measurements of ingredients; and to refrain from deviating from our standards and specifications by the use or offer of non-conforming items or differing amounts of any items, without our prior written consent.

(d) To permit us or our agents, during normal business hours, to remove a reasonable number of samples of food or non-food items from your inventory or from the Restaurant, without payment therefor, in amounts reasonably necessary for testing by us or an independent laboratory to determine whether such samples meet our then-current standards and specifications. In addition to any other remedies we may have under this Agreement, we may require you to bear the cost of such testing if the supplier of the item has not previously been approved by us or if the sample fails to conform with our specifications. You will not be responsible for the costs of testing if such samples were from our approved suppliers and they prove to be in conformity with our specifications.

(e) To purchase or lease and install, at your expense, all fixtures, furnishings, equipment (including point of sale and computer hardware and software systems), décor items, signs, delivery vehicles, and related items as we may reasonably direct from time to time in the Manuals or otherwise in writing; and to refrain from installing or permitting to be installed on or about the Restaurant premises, without our prior written consent, any fixtures, furnishings, equipment, décor items, signs, games, vending machines or other items not previously approved as meeting our standards and specifications. If any of the property described above is leased by you from a third party, such lease shall be approved by us, in writing, prior to execution and must contain a provision which permits, at our option, an assignment of the lease upon the termination or expiration of this Agreement and which prohibits the lessor from imposing an assignment or related fee upon us in connection with such assignment.

(f) To grant us and our agents the right to enter upon the Restaurant premises, during normal business hours, for the purpose of conducting inspections; to cooperate with our representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from us or our agents and without limiting our other rights under this Agreement, to take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. Should you, for any reason, fail to correct such deficiencies within a reasonable time as determined by us, we shall have the right and authority (without, however, any obligation to do so) to correct such deficiencies and charge you a reasonable fee for our expenses in so acting, payable by you immediately upon demand.

(g) To maintain a competent, conscientious, trained staff and to take such steps as are necessary to ensure that your employees preserve good customer relations and comply with such dress code as we may reasonably prescribe from time to time, to ensure all of your employees pass background tests and drug screens as proscribed in the Manuals, and meet such other criteria as we may proscribe in writing or in the Manuals.

(h) To install and maintain equipment and a telecommunications line in accordance with our specifications to permit us to access and retrieve by telecommunication any information stored on a point of sale system (or other computer hardware and software) you are required to utilize at the Restaurant premises as specified in the Manuals, thereby permitting us to inspect and monitor electronically information concerning your Restaurant, Net Sales and such other information as may be contained or stored in such equipment and software. You shall obtain and maintain Internet access or other means of electronic communication, as specified by us from time to time.

(i) To honor all credit, charge, courtesy or cash cards or other credit devices required or approved by us. You must obtain our written approval prior to honoring any previously unapproved credit, charge, courtesy or cash cards or other credit devices.

(j) To sell or otherwise issue gift cards or certificates (together "Gift Cards") that have been prepared utilizing the standard form of Gift Card provided or designated by us, and only in the manner specified by us in the Manuals or otherwise in writing. You shall fully honor all Gift Cards that are in the form provided or approved by us regardless of whether a Gift Card was issued by you or another BurgerFi Restaurant. You shall sell, issue, and redeem (without any offset against any Royalty Fees) Gift Cards in accordance with procedures and policies specified by us in the Manuals or otherwise in writing, including those relating to procedures by which you shall request reimbursement for Gift Cards issued by other BurgerFi Restaurants and for making timely payment to us, other operators of BurgerFi Restaurants, or a third-party service provider for Gift Cards issued from the Restaurant that are honored by us or other BurgerFi Restaurant operators.

(k) To pay to us a fine equal to \$250 per each day you are not selling or offering all proscribed menu items, products and services or are not otherwise in compliance with this [Section 7.5](#), which fine shall be in addition to all other remedies available to us under this Agreement or at law.

7.6 Proprietary Products

You acknowledge and agree that we and our affiliates have developed, and may continue to develop, for use in the System certain products which are prepared from confidential proprietary recipes and which are trade secrets of us and our affiliates, and other proprietary products bearing the Marks. Because of the importance of quality and uniformity of production and the significance of such products in the System, it is to the mutual benefit of the parties that we closely control the production and distribution of such products. Accordingly, you agree that if such products become a part of the System, you shall use only our secret recipes and proprietary products and shall purchase all of your requirements for such products solely from us or from a source designated by us. You further agree to purchase from us or our designated supplier for resale to your customers certain merchandise identifying the System as we shall require, such as logoed merchandise, memorabilia and promotional products, in amounts sufficient to satisfy your customer demand.

7.7 Advertising and Promotional Materials

You shall ensure that all advertising and promotional materials, signs, decorations and paper goods (including menus and all forms and stationery) used in the Franchised Business, and other items which may be designated by us, bear the Marks in the form, color, location and manner prescribed by us, including, without limitation, notations about the ownership of the Marks, and your status as an independent contractor in accordance with Section 16.2.

7.8 Complaints

You shall process and handle all consumer complaints connected with or relating to the Restaurant, and shall promptly notify us by telephone and in writing of all of the following complaints: (i) food related illnesses, (ii) environmental, safety or health violations, (iii) claims exceeding \$500.00, (iv) threatened or filed lawsuits or other regulatory actions, court orders, subpoenas, notices to appear, formal investigations, and the like, and (v) any other material claims against or losses suffered by you. You shall maintain for our inspection any governmental or trade association inspection reports affecting the Restaurant or equipment located in the Restaurant during the term of this Agreement and for 30 days after the expiration or earlier termination hereof.

7.9 Power of Attorney

Upon the execution of this Agreement or at any time thereafter, you shall, at our option, execute such forms and documents as we deem necessary to appoint us as your true and lawful attorney-in-fact with full power and authority, including but not limited to:

(a) The Internet Website and Telephone Numbers Agreement attached hereto as Attachment F for the sole purpose of assigning to us only upon the termination or expiration of this Agreement, as required under Section 18.15: (i) all rights to the telephone numbers of the Restaurant and any related and other business listings; and (ii) Internet listings, domain names, Internet Accounts, advertising on the Internet or World Wide Web, websites, listings with search engines, e-mail addresses or any other similar listing or usages related to the Franchised Business. You agree that you have no authority to and shall not establish any website or listing on the Internet or World Wide Web without our express written consent, which consent may be withheld at our sole discretion.

(b) Power of Attorney for Taxes for the sole purpose of obtaining any and all returns and reports filed by you with any state or federal taxing authority relating to the Franchised Business.

7.10 Unapproved Products and Services

In the event you sell any food, beverage, products, novelty items, clothing, souvenirs or perform any services that we have not prescribed, approved or authorized, you shall, immediately upon notice from us: (i) cease and desist offering or providing the unauthorized or unapproved food, beverage, product, premium, novelty item, clothing, souvenir or from performing such services and (ii) pay to us, on demand, a prohibited product or service fine equal to \$250 per day for each day such unauthorized or unapproved food, beverage, product, premium, novelty item, clothing, souvenir or service is offered or provided by you after written notice from us. The prohibited product or service fine shall be in addition to all other remedies available to us under this Agreement or at law.

7.11 Customer Surveys

You shall participate in all customer surveys and satisfaction audits, which may require that you provide discounted or complimentary products, provided that such discounted or complimentary sales shall not be included in the Net Sales of the Restaurant. Additionally, you shall participate in any complaint resolution and other programs as we may reasonably establish for the System, which programs may include, without limitation, providing discounts or refunds to customers. You further acknowledge that we may directly contact such customers who have lodged complaints and provide certain discounts or refunds on your behalf, to be reimbursed by you upon demand therefor.

7.12 Restaurant Inspection Program

We currently utilize an independent, third-party to inspect all Restaurants for safety and proper food handling. You agree that the Restaurant will participate in such inspection program, as prescribed and required by us. All Restaurants whether owned by us, our affiliates or our franchisees will participate in such program to the extent we have the right to require such participation. Each scheduled inspection will be paid for by us. However, in the event an inspection reveals a failing score, we shall have the right to require you to pay the then-current charges imposed by such evaluation service to conduct subsequent inspection(s) of the Restaurant until the Restaurant receives passing scores for a period that we determine, and you agree that you shall promptly pay such charges plus reimburse us for our travel costs.

7.13 Pricing

Subject to applicable laws, your pricing for the products and services sold by your Restaurant must comply with any (a) maximum price caps that we set; and (b) minimum price thresholds that we set. You must participate in and comply with the terms of any special promotional activities that we may periodically establish. You acknowledge that we have make no guarantee or warranty that offering such products or merchandise at the recommended or required price will enhance your sales or profits.

7.14 On-Line Ordering

Unless we permit your Restaurant to opt- out, you must participate in an on- line ordering program, whereby your customers are able to place orders from your Restaurant through the internet. You agree to pay any then -current fees to our approved supplier for participation in the on-line ordering program, and to comply with all rules and procedures applicable to such program.

7.15 Franchisee Meetings

We reserve the right to hold meetings for all franchisees and other BurgerFi Restaurant operators, which meetings shall not occur more frequently than annually. We shall not be required to hold such meetings until we believe it is prudent to do so. These meetings may be used to provide additional training, introduce new products or changes to the System, or for other business reasons. We may require mandatory attendance at any franchisee meetings for you and/or your General Manager. We may charge you a reasonable fee to cover our costs and expenses associated with organizing and conducting these meetings and/or use monies from the Brand Development Fund to assist with these costs. You will be responsible for all expenses incurred by your attendees, including travel, lodging, meals and wages.

7.16 Technology

(a) The following terms and conditions shall apply with respect to your computer system:

(i) We shall have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware to be used by, between, or among BurgerFi Restaurants, including without limitation: (A) back office and point of sale systems, automated kiosks, data, audio, video, and voice storage, retrieval, and transmission systems for use at BurgerFi Restaurants, between or among Restaurants, and between and among your Franchised Restaurant and us and/or you; (B) Point of Sale Systems; (C) physical, electronic, and other security systems; (D) printers and other peripheral devices; (E) archival back-up systems; and (F) internet access mode and speed (collectively, the "Computer System").

(ii) We shall have the right, but not the obligation, to develop or have developed for us, or to designate: (A) computer software programs and accounting system software that you must use in connection with the Computer System ("Required Software"), which you shall install; (B) updates, supplements, modifications, or enhancements to the Required Software, which you shall install;

(C) the tangible media upon which you shall record data; and (D) the database file structure of your Computer System.

(iii) You shall record all sales on computer-based point of sale systems approved by us or on such other types of systems as may be designated by us in the Manual or otherwise in writing ("Point of Sale Systems"), which shall be deemed part of your Computer System.

(iv) You shall make, from time to time, such upgrades and other changes to the Computer System and Required Software as we may request in writing (collectively, "Computer Upgrades"). Such Computer Upgrades will not materially or unreasonably increase your obligations under this Agreement.

(v) You shall comply with all specifications issued by us with respect to the Computer System and the Required Software, and with respect to Computer Upgrades. You shall also afford us unimpeded access to your Computer System and Required Software as we may request, in the manner, form, and at the times requested by us.

(b) We may, from time-to-time, specify in the Manual or otherwise in writing the information that you shall collect and maintain on the Computer System installed at the Restaurant, and you shall provide to us such reports as we may reasonably request from the data so collected and maintained. All data pertaining to the Restaurant, and all data created or collected by you in connection with the System, or in connection with your operation of the Restaurant (including without limitation data pertaining to or otherwise concerning the Restaurant's customers) or otherwise provided by you (including, without limitation, data uploaded to, or downloaded from your Computer System) is and will be owned exclusively by us, and we will have the right to use such data in any manner that we deem appropriate without compensation to you. Copies and/or originals of such data must be provided to us upon our request. We hereby license use of such data back to you for the term of this Agreement, at no additional cost, solely for your use in connection with the business franchised under this Agreement.

(c) You shall abide by all applicable laws pertaining to privacy of information collected or maintained regarding customers or other individuals ("Privacy"), and shall comply with our standards and policies pertaining to Privacy. If there is a conflict between our standards and policies pertaining to Privacy and applicable law, you shall: (i) comply with the requirements of applicable law;

(ii) immediately give us written notice of said conflict; and (iii) promptly and fully cooperate with us and our counsel as we may request to assist us in our determination regarding the most effective way, if any, to meet our standards and policies pertaining to Privacy within the bounds of applicable law.

(d) You shall comply with our requirements (as set forth in the Manual or otherwise in writing) with respect to establishing and maintaining telecommunications connections between your Computer System and our Intranet (as defined below), if any, and/or such other computer systems as we may reasonably require.

(e) We may establish a website providing private and secure communications between us, you, franchisees, licensees and other persons and entities as determined by us, in our sole discretion (an "Intranet"). You shall comply with our requirements (as set forth in the Manuals or otherwise in writing) with respect to connecting to the Intranet, and utilizing the Intranet in connection with the operation of the Restaurant. The Intranet may include, without limitation, the Manuals, training other assistance materials, and management reporting solutions (both upstream and downstream, as we may direct). You shall purchase and maintain such computer software and hardware as may be required to connect to and utilize the Intranet.

(f) You shall not use the Marks or any abbreviation or other name associated with us and/or the System as part of any e-mail address, domain name, and/or other identification of you in any electronic medium. You agree not to transmit or cause any other party to transmit advertisements or solicitations by e-mail or other electronic media without our prior written consent as to your plan for transmitting such advertisements.

(g) You shall not hire third party or outside vendors to perform any services or obligations in connection with the Computer System, Required Software, or any other of your obligations without our prior written approval therefor, unless we have designated an approved supplier to provide such services. Our consideration of any proposed outsourcing vendor(s) may be conditioned upon, among other things, such third party or outside vendor's entry into a confidentiality agreement with us and you in a form that is reasonably provided by us.

(h) You and we acknowledge and agree that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, you agree that we shall have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and you agree that you shall abide by those reasonable new standards established by us as if this [Article 7](#) were periodically revised by us for that purpose. You acknowledge and understand that this Agreement does not place any limitations on either our right to require you to obtain Computer Upgrades or the cost of such Computer Upgrades.

ARTICLE 8

ADVERTISING AND RELATED FEES

Recognizing the value of marketing and promotion, and the importance of the standardization of marketing and promotional programs to the furtherance of the goodwill and public image of the System, the parties agree as follows:

8.1 Participation in Advertising

We may from time to time develop and create advertising and sales promotion programs designed to promote and enhance the collective success of all Restaurants operating under the System. You shall at your cost participate in all such advertising and sales promotion programs in accordance with the terms and conditions established by us for each program. In all aspects of these programs, including, without limitation, the type, quantity, timing, placement and choice of media, market areas and advertising agencies, the standards and specifications established by us shall be final and binding upon you.

8.2 Marketing Contribution

You shall contribute to the System-wide Brand Development Fund described below in Section 8.2(a) (“Brand Development Fund”) and the regional marketing fund described below in Section 8.2(b) (“Regional Fund”), and also shall make expenditures on local advertising as described below in Section 8.2(c). We shall determine the total marketing contributions and expenditures and also shall allocate expenditures and contributions among the Brand Development Fund, Regional Fund and local advertising and may, in our sole discretion, from time to time and at any time, modify both the allocation and amount of your expenditures among the Brand Development Fund, Regional Fund and local advertising, provided, however, that (i) we will not require the total aggregate amount of marketing contributions to the Brand Development Fund to exceed 1.5% of your Net Sales; and (ii) the required expenditures for local advertising shall never be less than 2% of your Net Sales. Any BurgerFi Franchisee who participates in a Regional Fund shall contribute the same percentage of Net Sales to such Regional Fund as all other participants in such Regional Fund. Regional Funds may vary, among themselves, in the required percentage of Net Sales contributed by their members. Each year, each Restaurant owned by us or our affiliates shall contribute to the Brand Development Fund and Regional Fund in which it participates an amount which is calculated on the same basis as contributions of BurgerFi Franchisees. Neither the Brand Development Fund nor the Regional Fund is a trust fund, and we shall not have any fiduciary duty to you, the Controlling Principals, or any BurgerFi Franchisees in connection with the collection or expenditures of Brand Development Fund or Regional Fund monies or any other aspect of their operations.

(a) **The Brand Development Fund.** We shall have the right, in our sole discretion, but not the obligation, to establish, maintain and administer the Brand Development Fund. The following provisions shall apply to the Brand Development Fund:

(i) The Brand Development Fund, all contributions thereto, including the Brand Development Fee, and any earnings thereon, shall be used exclusively to meet any and all costs of maintaining, administering, directing, conducting, preparing and developing advertising, marketing, public relations, and/or promotional programs and materials including website construction, content and maintenance, and any other activities which we believe will enhance the image of the System, including, among other things, the costs of preparing and conducting marketing campaigns in various media (i.e., television, radio, magazine, newspaper), preparation of direct mail marketing and outdoor billboard advertising; market research; employing advertising and/or public relations agencies to assist therein; purchasing promotional items; conducting and administering in-Restaurant promotions; internet marketing; all forms of social media; public relations activities; employing advertising agencies to assist therein; costs of our personnel and other departmental costs for advertising that is internally administered or prepared by us; and providing promotional and other marketing materials and services to BurgerFi Restaurants. No Brand Development Fund monies shall be used solely for the purpose of soliciting new franchisees;

(ii) The Brand Development Fund shall be administered by us or our designees. We shall direct all brand marketing and promotional programs, with sole discretion over the creative concepts, materials, and media used in such programs, and the placement and allocation thereof.

You agree and acknowledge that the Brand Development Fund is intended to maximize general public recognition and acceptance of the Marks for the benefit of the System and enhance the collective success of all Restaurants operating under the System; and that we are not obligated, in administering the Brand Development Fund, to make expenditures for you which are equivalent or proportionate to your contribution, or to ensure that any particular franchisee benefits directly or pro rata from the marketing or promotion conducted under the Brand Development Fund;

(iii) You shall contribute to the Brand Development Fund and, if applicable, a Regional Fund the amounts determined by us pursuant to this Section 8.2. Any contributions shall be maintained by us in a separate account and also may be used to defray our expenses, costs and overhead we may incur in activities reasonably related to the management, administration or direction of the Brand Development Fund and/or a Regional Fund, as well as for System marketing and advertising programs, including, among other things, research and development, product development, and the costs of personnel for creating and implementing all such activities; and

(iv) We shall annually prepare and furnish to you, at your request, an unaudited statement of the operations of the Brand Development Fund. Any monies remaining in the Brand Development Fund at the end of any year will carry over to the next year. You shall have the right to inspect the Brand Development Fund's books and records upon reasonable notice at the location where they are maintained. Although the Brand Development Fund is intended to be of perpetual duration, we retain the right to terminate the Brand Development Fund at any time, provided that the Brand Development Fund is not terminated until all money in the Brand Development Fund has been spent for the stated purposes of the Brand Development Fund or returned to the contributors. If we elect to terminate the Brand Development Fund, we may, in our sole discretion, reinstate the Brand Development Fund at any time thereafter. If we so choose to reinstate the Brand Development Fund, it will be operated as described herein.

(b) **Regional Fund.** We shall have the right, but not the obligation, to designate any geographical area for purposes of establishing a Regional Fund. You shall contribute to any Regional Fund which is or has been established in which your Protected Territory is located. If your Protected Territory is located within the geographical area of more than one Regional Fund, you shall be required to contribute to only one Regional Fund, to be designated by us. The Regional Fund shall operate in a similar manner as the Brand Development Fund including, but not limited to, activities set forth in Section 8.2(a).

(c) **Local Advertising.** You acknowledge the importance of your own local marketing and promotional efforts to the growth and viability of your Restaurant(s) and agree to make at least the minimum amount of expenditures for local marketing that is allocated by us pursuant to Section 8.2 above. Expenditures shall be made on a continuing and reasonably level basis throughout the year. All marketing and promotional activities shall be conducted in a dignified manner, and shall conform to such standards and requirements as set forth in the Manual or otherwise in writing. You shall not use any marketing or promotional plans or materials unless and until you have submitted them to us and received our approval in the manner set forth in Section 8.3 below. At our request, you shall furnish to us within 15 days of any request, such evidence as we may reasonably require concerning the nature and amount of your expenditures for local marketing, including verification copies of all advertising and any other information that we require. We shall have the right to periodically specify, in the Manual or otherwise in writing, the types of mandatory local marketing programs, including minimum required expenditures for such programs. We may determine, at our sole discretion, if any of your expenditures do not satisfy the Local Advertising requirements. If you fail to spend the required amount on Local Advertising, you authorize us to spend the deficient amount on your behalf on Local Advertising in your market in the manner we deem sufficient, and you will reimburse us for such spend to ensure the minimum required expenditure is met.

8.3 Conduct of Advertising; Our Approval

All advertising and promotion by you in any medium shall be conducted in a professional manner and shall conform to our standards and requirements as set forth in this Agreement, the Manuals or otherwise in writing. You shall obtain our written approval of all advertising and promotional plans and materials prior to use, except for any plans and materials prepared by us or previously approved by us during the 12 months prior to their proposed use. You shall submit such unapproved plans and materials to us, and we shall have 15 days to notify you of our approval or disapproval of such materials. If we do not provide our specific approval of the proposed materials within this 15 day period, the proposed materials are deemed to be not approved. We shall have the right at any time after you commence use of such materials to prohibit further use, effective upon your receipt of such written notice. Anything created by you or on your behalf which includes our Marks or any reference to our Restaurants or our System, including any plans and materials that you submit to us for our review will become our property and there will be no restriction on our use or dissemination of such materials. You shall not advertise or use the Marks in any fashion on the Internet, World Wide Web or via other means of advertising without our express written consent. We may require you to include certain language on all advertising to be used by you, including, but not limited to, "Franchises Available" and reference to our telephone number and/or website.

8.4 Grand Opening Advertising

In addition to the ongoing advertising contributions set forth herein, you shall be required to spend a minimum of \$15,000 on a grand opening advertising campaign to advertise the opening of the Restaurant. We shall designate the appropriate time for the grand opening following the Restaurant's opening, in our reasonable judgment. All advertisements proposed to be used in the grand opening advertising campaign are subject to our review and approval in the manner set forth in this [Article 8](#). You acknowledge that we will not schedule your Restaurant opening, and your opening may be delayed, until you have received our approval of your grand opening advertising campaign. We may, in our discretion, require that your grand opening advertising campaign include certain promotional give-aways.

8.5 Websites

As used in this Agreement, the term "Website" means an interactive electronic document, series of symbols, or otherwise, that is contained in a network of computers linked by communications software. The term Website includes, but is not limited to, Internet and World Wide Web home pages. In connection with any Website, you agree to the following:

(a) We shall have the right, but not the obligation, to establish and maintain a Website, which may, without limitation, promote the Marks, BurgerFi Restaurants and any or all of the products offered at Restaurants, the franchising of BurgerFi Restaurants, and/or the System. We shall have the sole right to control all aspects of the Website, including without limitation its design, content, functionality, links to the websites of third parties, legal notices, and policies and terms of usage; we shall also have the right to discontinue operation of the Website.

(b) We shall have the right, but not the obligation, to designate one or more web page(s) to describe you and/or the Franchised Business, with such web page(s) to be located within our Website. You shall comply with our policies with respect to the creation, maintenance and content of any such web pages; and we shall have the right to refuse to post and/or discontinue posting any content and/or the operation of any web page.

(c) You shall not establish a separate Website related to your Restaurant, the Marks or the System without our prior written approval (which we shall not be obligated to provide). If approved to establish such a Website, you shall comply with our policies, standards and specifications with respect to the creation, maintenance and content of any such Website. You specifically acknowledge and agree that any such Website owned or maintained by you or for your benefit shall be deemed "advertising" under this Agreement, and will be subject to (among other things) our approval under this [Article 8](#).

(d) You understand and agree that you may not promote your Restaurant or use any Mark in any manner on social and/or networking Websites, including, but not limited to, Facebook, LinkedIn, MySpace and Twitter, without our prior written consent.

(e) You understand and acknowledge that all domain names related to us shall be registered and owned by us or our affiliate. You may not register any domain names related to BurgerFi or the Franchised Business.

ARTICLE 9

MARKS

9.1 Use of Marks

Subject to this Agreement and your continued compliance with all of the terms contained herein, we grant you a non-exclusive, revocable license to use the Marks during the term of this Agreement in accordance with the System and related standards and specifications.

9.2 Ownership of Marks; Limited License

You expressly understand and acknowledge that:

(a) We are the owner or the licensee of the owner of all right, title and interest in and to the Marks and the goodwill associated with and symbolized by them.

(b) Neither you nor any Controlling Principal shall take any action that would prejudice or interfere with the validity of our rights with respect to the Marks. Nothing in this Agreement shall give the you any right, title, or interest in or to any of the Marks or any service marks, trademarks, trade names, trade dress, logos, copyrights or proprietary materials, except the right to use, with our approval, the Marks and the System in accordance with the terms and conditions of this Agreement for the operation of the Restaurant and only at or from its accepted location or in approved advertising related to the Restaurant.

(c) You understand and agree that the limited license to use the Marks granted hereby applies only to such Marks as are designated by us, and which are not subsequently designated by us as being withdrawn from use, together with those which may hereafter be designated by us in writing. You expressly understand and agree that you are not permitted to represent in any manner that you have acquired any ownership or equitable rights in any of the Marks by virtue of the limited license granted hereunder, or by virtue of your use of any of the Marks.

(d) You understand and agree that any and all goodwill arising from your use of the Marks and the System shall inure solely and exclusively to our benefit, and upon expiration or termination of this Agreement and the license herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with your use of the Marks.

(e) You shall not contest the validity of or our interest in the Marks or assist others to contest the validity of or our interest in the Marks.

(f) You acknowledge that any unauthorized use of the Marks shall constitute an infringement of our rights in the Marks and an event of default hereunder. You agree that you shall provide us with all assignments, affidavits, documents, information and assistance we reasonably request to fully vest in us all such rights, title and interest in and to the Marks, including all such items as are reasonably requested by us to register, maintain and enforce such rights in the Marks.

(g) If it becomes advisable at any time, in our discretion, to modify or discontinue use of any Mark and/or to adopt or use one or more additional or substitute proprietary marks, then you shall be obligated to comply with any such instruction by us. We shall not have any obligation in such event to reimburse you for your documented expenses of compliance. You waive any claim arising from or relating to any Mark change, modification or substitution. We will not be liable to you for any expenses, losses or damages sustained by you as a result of any Mark addition, modification, substitution or discontinuation. You covenant not to commence or join in any litigation or other proceeding against us for any of these expenses, losses or damages.

9.3 Limitation on Use of Marks

With respect to your licensed use of the Marks pursuant to this Agreement, you further agree that:

(a) Unless otherwise authorized or required by us, you shall operate and advertise the Restaurant only under the name "BurgerFi" without prefix or suffix. You shall not use the Marks as part of your corporate or other legal name, and shall obtain our approval of such corporate or other legal name prior to filing it with the applicable state authority.

(b) During the term of this Agreement and any renewal hereof, you shall identify yourself as the independent owner of the Restaurant in conjunction with any use of the Marks, including, but not limited to, uses on invoices, order forms, receipts and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the premises of the Restaurant or any delivery vehicle as we may designate in writing.

(c) You shall not use the Marks to incur any obligation or indebtedness on our behalf;

(d) You shall comply with our instructions in filing and maintaining the requisite trade name or fictitious name registrations, and shall execute any documents deemed necessary by us or our counsel to obtain protection of the Marks or to maintain their continued validity and enforceability.

(e) You will not use any of the Marks or distribute any materials that contain the Marks without our prior written approval. Any materials created by you or on your behalf which contain the Marks will be deemed to be owned by us.

(f) You will not file with the United States Patent and Trademark Office, or any other authority, any trademarks or copyrights that in any way relate to BurgerFi, our Marks, the Franchised Business, the System and the Restaurants.

9.4 Notification of Infringement or Claim

You shall notify us immediately by telephone and thereafter in writing of any apparent infringement of or challenge to your use of any Mark, or any claim by any person of any rights in any Mark. You and the Controlling Principals shall not communicate with any person other than us, our counsel and your counsel in connection with any such infringement, challenge or claim. We shall have complete discretion to take such action as we deem appropriate in connection with the foregoing, and the right to control exclusively, any settlement, litigation or Patent and Trademark Office or other proceeding arising out of any such alleged infringement, challenge or claim or otherwise relating to any Mark. You agree to execute any and all instruments and documents, render such assistance, and do such acts or things as we, in our opinion, reasonably believe necessary or advisable to protect and maintain our interests in any litigation or other proceeding or to otherwise protect and maintain the interests of us or any other interested party in the Marks. We will indemnify you and hold you harmless from and against any and all claims, liabilities, costs, damages and reasonable expenses for which you are held liable in any proceeding arising out of your use of any of the Marks (including settlement amounts), provided that the conduct of you and the Controlling Principals with respect to such proceeding and use of the Marks is in full compliance with the terms of this Agreement.

9.5 Retention of Rights by Us

The right and license of the Marks granted hereunder to you is non-exclusive and we thus have and retain the following rights, among others, subject only to the limitations of Article 1:

- (a) To grant other licenses for use of the Marks, in addition to those licenses already granted to existing franchisees;
- (b) To develop and establish other systems using the Marks or other names or marks and to grant licenses thereto without providing any rights to you; and
- (c) To engage, directly or indirectly, through our employees, representatives, licensees, assigns, agents and others, at wholesale, retail or otherwise, in (i) the production, distribution, license and sale of products and services containing the Marks, and (ii) the use in connection with such production, distribution and sale, of the Marks and any and all trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs and other identifying characteristics as may be developed or used from time to time by us.

ARTICLE 10

CONFIDENTIALITY AND NON-COMPETITION COVENANTS

10.1 Confidential Operations Manuals

(a) To protect our reputation and goodwill and to maintain high standards of operation under the Marks, you shall conduct your business in accordance with the Manuals, other written directives which we may reasonably issue to you from time to time whether or not such directives are included in the Manuals, and any other manuals and materials created or approved by us for use in the operation of the Franchised Business.

(b) You and the Controlling Principals shall at all times treat the Manuals, any of our written directives, and any other manuals and materials provided by us, and the information contained therein as confidential and shall maintain such information as trade secrets and confidential in accordance with this Article 10. You and the Controlling Principals shall divulge and make such materials available only to such of your employees as must have access to it in order to operate the Restaurant. You and the Controlling Principals shall not at any time change, amend, copy, duplicate, record or otherwise reproduce these materials, in whole or in part, or otherwise make the same available to any person other than those authorized above.

(c) The Manuals, written directives, other manuals and materials and any other confidential communications provided or approved by us shall at all times remain our sole property, shall at all times be kept in a secure place on the Restaurant premises, and shall be returned to us immediately upon request or upon termination or expiration of this Agreement.

(d) The Manuals, any written directives, and any other manuals and materials issued by us and any modifications to such materials shall supplement and be deemed part of this Agreement.

(e) We may from time to time revise the contents of the Manuals or any other manuals and materials created or approved by us for use in the operation of the Franchised Business. You shall remove and return to us or destroy all pages of the Manuals that have been replaced or updated by us. You expressly agree to comply with each new or changed standard.

(f) You shall at all times ensure that the Manuals are kept current and up to date. In the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by us at our headquarters shall control. You may request a fully updated Operation Manual upon paying a reasonable fee to cover our administrative costs.

10.2 Confidential Information

(a) Neither you nor any Controlling Principal shall, during the term of this Agreement or thereafter, communicate, divulge or use for the benefit of any other person, persons, partnership, association or corporation, use for their own benefit any confidential information, knowledge or know-how concerning the methods of operation of the Franchised Business which may be communicated to them or of which they may be apprised in connection with the operation of the Restaurant under the terms of this Agreement. You and the Controlling Principals shall divulge such confidential information only to such of your employees as must have access to it in order to operate the Restaurant. Any and all information, knowledge, know-how, techniques and any materials used in or related to the System which we provide to you in connection with this Agreement shall be deemed confidential for purposes of this Agreement. Neither you nor the Controlling Principals shall at any time, without our prior written consent, copy, duplicate, record or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person. The covenants in this Section shall survive the expiration, termination or transfer of this Agreement or any interest herein and shall be perpetually binding upon you and each of the Controlling Principals, unless and until you demonstrate conclusively that the information has become public knowledge and was not released by you or anyone under your control or anyone with a duty to keep the information confidential.

(b) You shall require and obtain the execution of covenants similar to those set forth in Section 10.2(a) from your General Manager and all other of your personnel who have received or will have access to confidential information, including any of your Principals even if such Principals were not required to sign this Agreement. Such covenants shall be substantially in the form set forth in Attachment D.

(c) If you, the Controlling Principals, the General Manager or any of your employees develop any new concept, process, product, recipe, or improvement in the operation or promotion of the Restaurant during the term of this Agreement, you are required to promptly notify us and provide us with all necessary related information, without compensation. You and the Controlling Principals acknowledge that any such concept, process product, recipe, or improvement will become our property, and we may use or disclose such information to other franchisees as we determine to be appropriate.

10.3 Non-Competition

(a) You acknowledge and agree that: (a) pursuant to this Agreement, you will have access to valuable trade secrets, specialized training and Confidential Information from us and our affiliates regarding the development, operation, management, purchasing, sales and marketing methods and techniques of the System; (b) the System and the opportunities, associations and experience we have established and that you will have access to under this Agreement are of substantial and material value; (c) in developing the System, we and our affiliates have made and continue to make substantial investments of time, technical and commercial research, and money; (d) we would be unable to adequately protect the System and its trade secrets and Confidential Information against unauthorized use or disclosure and would be unable to adequately encourage a free exchange of ideas and information among franchisees in our system if franchisees were permitted to hold interests in Competitive Businesses (as defined below); and (e) restrictions on your right to hold interests in, or perform services for, Competitive Businesses will not unreasonably or unnecessarily hinder your activities.

(b) As used in this Agreement, the term "Competitive Business" means a business that is of a character and concept similar to the Restaurant, including a food service business which offers and sells the same or similar food products. The term "Competitive Business" shall not pertain to businesses where less than twenty percent (20%) of their gross food sales are derived from similar food products that are served by the Restaurant, provided hamburgers are not the highlighted item of such Competitive Business.

(c) Accordingly, you covenant and agree that, during the term of this Agreement and for a continuous period of two (2) years after the expiration or termination of this Agreement, and/or a transfer as contemplated in Article 14 above, you shall not directly, indirectly, for yourself, or through, on behalf of, or in conjunction with any party, in any manner whatsoever, do any of the following:

(i) Divert or attempt to divert any actual or potential business or customer of any BurgerFi Restaurant to any competitor or otherwise take any action injurious or prejudicial to the goodwill associated with the Marks and the System.

(ii) Own, maintain, develop, operate, engage in, franchise or license, make loans to, lease real or personal property to, and/or have any whatsoever interest in, or render services or give advice to, any Competitive Business.

(iii) Sell or transfer any inventory, supplies, furniture, fixtures, and/or equipment of the Franchised Business (directly or indirectly) to any Competitive Business.

(d) During the term of this Agreement, there is no geographical limitation on the restrictions set forth in Section 10.3(c) above. During the two (2) year period following the expiration or earlier termination of this Agreement, or a transfer as contemplated under Section 16 above, these restrictions shall apply to any Competitive Business that is located at or within: (i) the Protected Territory; (ii) ten (10) miles of the Protected Territory; and/or (iii) ten (10) miles of any other "BurgerFi" restaurant under the System (regardless of whether that restaurant is opened and operating, under construction, or we or a franchisee has committed to develop a Restaurant in that location). These restrictions shall not apply to BurgerFi Restaurants that you operate that we (or our affiliates) have franchised to you pursuant to a then-valid franchise agreement.

(e) You further covenant and agree that, for a continuous period of two (2) years after the expiration or termination of this Agreement, and/or a transfer as contemplated in Section 16 above, you will not, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person, firm, partnership, corporation, or other entity, sell, assign, lease or transfer the Approved Location to any person, firm, partnership, corporation, or other entity that you know, or have reason to know, intends to operate a Competitive Business at the Approved Location. You, by the terms of any conveyance selling, assigning, leasing or transferring your interest in the Approved Location, shall include these restrictive covenants as are necessary to ensure that a Competitive Business that would violate this Section is not operated at the Approved Location for this two-year period, and you shall take all steps necessary to ensure that these restrictive covenants become a matter of public record.

(f) If, at any time during the two (2) year period following expiration or termination of this Agreement, and/or a transfer as contemplated in Section 16 above, you fail to comply with your obligations under this Section 10.3, then that period of noncompliance will not be credited toward your satisfaction of the two (2) year obligation specified above.

(g) Section 10.3(c) above shall not apply to ownership by you of less than a one percent (1%) beneficial interest in the outstanding equity securities of any publicly held corporation. As used in this Agreement, the term "publicly held corporation" shall be deemed to refer to a corporation which has securities that have been registered under the federal Securities Exchange Act of 1934.

(h) You agree to require and obtain execution of covenants similar to those set forth in this Section 10.3 (including covenants applicable upon the termination of a person's employment with you) from your General Manager and all other of your personnel who have received or will have access to training from us, including any of your Principals (even if such Principals were not required to sign this Agreement). Such covenants shall be substantially in the form set forth in Attachment D to this Agreement.

(i) The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 10.3 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which we are a party, you agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 10.3.

(k) You agree that the existence of any claims you may have against us, whether or not arising from this Agreement, shall not constitute a defense to our enforcement of the covenants in this Section 10.3. You agree to pay all damages, costs, and expenses (including but not limited to reasonable attorneys' fees) we incur in connection with the enforcement of this Section 10.3.

10.4 Failure to Comply

You and the Controlling Principals acknowledge that any failure to comply with the requirements of this Section shall constitute an event of default under Article 17 hereof. You and the Controlling Principals acknowledge that a violation of the terms of this Section would result in irreparable injury to us for which no adequate remedy at law may be available, and you and the Controlling Principals accordingly consent to the issuance of an injunction prohibiting any conduct by you or the Controlling Principals in violation of the terms of this Section. You and the Controlling Principals agree to pay all court costs and reasonable attorneys' fees incurred by us in connection with the enforcement of this Section, including payment of all costs and expenses for obtaining specific performance of, or an injunction against violation of, the requirements of such Section.

ARTICLE 11

BOOKS AND RECORDS

11.1 Books and Records

You shall maintain during the term of this Agreement, and shall preserve for at least 3 years from the dates of their preparation, full, complete and accurate books, records and accounts, including, but not limited to, sales slips, coupons, purchase orders, payroll records, check stubs, bank statements, sales tax records and returns, cash receipts and disbursements, journals and ledgers, records of EFT transactions, and backup or archived records of information maintained on any computer system in accordance with generally accepted accounting principles and in the form and manner prescribed by us from time to time in the Manuals or otherwise in writing.

11.2 Reports

In addition to the Royalty Report required by Article 4 hereof, you shall, at your expense, submit the following, in a form and manner proscribed by us:

(a) Monthly profit and loss statements of your Franchised Business (which may be unaudited) within 10 days after the end of each month during the term hereof (or other time period we establish). Each such statement shall be signed by your treasurer or chief financial officer or comparable officer attesting that it is true, complete and correct;

(b) Complete annual financial statement (which shall be reviewed) of the Franchised Business prepared by an independent certified public accountant, within 90 days after the end of each fiscal year during the term hereof, showing the results of operations of the Franchised Business during such fiscal year; we reserve the right to require such financial statements to be audited by an independent certified public accountant satisfactory to us at your cost and expense if an inspection discloses an understatement of payments due to us of 2% or more in any report, pursuant to Section 11.3; and

(c) Such other forms, reports, records, information and data as we may reasonably designate, and which pertain to the Franchised Business, in the form and at the times and places reasonably required by us, upon request and as specified from time to time in writing.

11.3 Inspections; Audits

We or our designees shall have the right, during normal business hours, to review, audit, examine and copy any or all of your books and records as we may require at the Restaurant. You shall make such books and records available to us or our designees immediately upon request. If any required Royalty Fee or other payments due to us are delinquent, or if an inspection should reveal that such payments have been understated in any report to us, then you shall immediately pay to us the amount overdue or understated upon demand with interest determined in accordance with the provisions of Section 4.5. If an inspection discloses an understatement in any report of 2% or more, you shall, in addition, reimburse us for all costs and expenses connected with the inspection (including, without limitation, reasonable accounting and attorneys' fees). These remedies shall be in addition to any other remedies we may have at law or in equity.

11.4 Correction of Errors

You understand and agree that our receipt or acceptance of any of the statements furnished or Royalty Fees paid to us (or the cashing of any royalty checks or processing of any EFTs) shall not preclude us from questioning the correctness thereof at any time and, in the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified by you and the appropriate payment shall be made by you.

11.5 Authorization of Us

You hereby authorize (and agree to execute any other documents deemed necessary to effect such authorization) all banks, financial institutions, businesses, suppliers, manufacturers, contractors, vendors and other persons or entities with which you do business to disclose to us any requested financial information in their possession relating to you or the Restaurant. You authorize us to disclose data from your reports, including Net Sales, if we determine, in our sole and absolute discretion, that such disclosure is necessary or advisable, which disclosure may include disclosure to prospective or existing franchisees, landlords, brokers, lenders and other third parties.

11.6 We are Attorney-in-Fact

Notwithstanding any forms and documents which may have been executed by you under Section 7.9, you hereby appoint us as your true and lawful attorney-in-fact with full power and authority, for the sole purpose of obtaining any and all returns and reports filed by you with any state and/or federal taxing authority pertaining to the Franchised Business. This power of attorney shall survive the expiration or termination of this Agreement.

ARTICLE 12

INSURANCE

12.1 You shall procure, upon execution of this Agreement, and shall maintain in full force and effect at all times during the term of this Agreement (and for such period thereafter as is necessary to provide the coverages required hereunder for events having occurred during the term of this Agreement) at your expense, an insurance policy or policies protecting you and us, our successors and assigns, our officers, directors, shareholders, partners, agents, representatives, independent contractors and employees of each of them against any demand or claim with respect to personal or bodily injury, death or property damage, or any loss, liability or expense whatsoever arising or occurring upon or in connection with the Restaurant.

12.2 Such policy or policies referred to above shall be written by a responsible, duly licensed carrier or carriers reasonably acceptable to us and shall include, at a minimum (except as additional coverages and higher policy limits may reasonably be specified by us from time to time), the following:

- (a) General liability in the amount of \$1,000,000 per occurrence, \$2,000,000 general aggregate limit, including products/completed operations liability.
- (b) "All Risks" coverage for the full cost of replacement of the Restaurant premises and all other property in which we may have an interest with no coinsurance clause applicable.
- (c) Business Interruption insurance in a sufficient amount to cover net profits, the cost of key personnel to be retained and continuing expenses for a period of at least 180 days.
- (d) Liquor liability coverage of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate (if liquor is sold, served or distributed).

(e) Workers' compensation insurance in amounts provided by applicable law (but not less than \$500,000 per occurrence for employer's liability) or, if permissible under applicable law, a legally appropriate alternative providing substantially similar compensation for injured workers reasonably satisfactory to us.

(f) Automobile Liability covering all owned and non-owned vehicles with limits of \$1,000,000 Combined Single Limit Bodily Injury/Property Damage.

(g) Umbrella/Excess Liability with limits of \$1,000,000 Bodily Injury/Property Damage, recognizing underlying coverage for General Liability, Automobile Liability and Employer's Liability for the required limits.

(h) In connection with any construction, renovation, refurbishment or remodeling of the Restaurant, Builder's Risks/installation insurance in forms and amounts satisfactory to us.

(i) Such other insurance as may be required by the state or locality in which the Restaurant is located and operated or as may be required by the terms of the lease for the Restaurant.

12.3 You may, with our prior written consent, elect to have reasonable deductibles in connection with the coverages required herein. Such policies shall also include a waiver of subrogation in favor of us, our affiliates, and our respective officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees.

12.4 Your obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by us, nor shall your performance of that obligation relieve you of liability under the indemnity provisions set forth in [Article 15](#) of this Agreement.

12.5 All general liability and property damage policies shall contain a provision that we, our affiliates and the officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them, although named as insureds, shall nevertheless be entitled to recover under such policies on any loss occasioned to us or our representatives, servants, agents or employees by reason of the negligence of you or your principals, partners, members, officers, directors, representatives, servants, agents or employees.

12.6 Not later than 30 days before the Restaurant initially opens for business, and thereafter 30 days prior to the expiration of any such policy, you shall deliver to us Certificates of Insurance evidencing the existence and continuation of proper coverage with limits not less than those required hereunder. You shall not open the Restaurant until you have delivered all such Certificates. In addition, if requested by us, you shall deliver to us a copy of the insurance policy or policies required hereunder. All insurance policies required hereunder, with the exception of workers' compensation, shall name us, our affiliates and the officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them, as additional named insureds, and shall expressly provide that any interest of same therein shall not be affected by any breach by you of any policy provisions. Further, all insurance policies required hereunder shall expressly provide that no less than 30 days' prior written notice shall be given to us in the event of a material alteration to or cancellation of the policies.

12.7 Should you, for any reason, fail to procure or maintain the insurance required by this Agreement, as such requirements may be revised from time to time by us in writing, we shall have the right and authority (without, however, any obligation to do so) immediately to procure such insurance and charge our costs to you, which charges shall be payable by you immediately upon notice. The foregoing remedies shall be in addition to any other remedies we may have at law or in equity.

12.8 Upon written request by us, you shall procure from your insurance carrier or carriers, and forward to us, a report of claims made and reserves set against your insurance policies.

12.9 We reserve the right to modify the types of insurance coverages and amounts of coverage that you are required to maintain for the Restaurant, and you agree to comply with any such changes, at your expense. We will not require any such modifications to your insurance coverages more frequently than once every 3 years during the term of the Agreement unless there is a change in the law, including, without limitation, statutory law, case law, governmental and administrative regulations, warranting a modification.

ARTICLE 13

DEBTS AND TAXES

13.1 Taxes

You shall promptly pay when due all Taxes (as defined below), levied or assessed, and all accounts and other indebtedness of every kind incurred by you in the conduct of the Franchised Business under this Agreement. Without limiting the provisions of Article 15, you shall be solely liable for the payment of all Taxes and shall indemnify us for the full amount of all such Taxes and for any liability (including penalties, interest and expenses) arising from or concerning the payment of Taxes, whether such Taxes were correctly or legally asserted or not. Upon our request, you shall submit to us within 2 days a copy of all tax filings sent to federal, state and local tax authorities for the Franchised Business. The term "Taxes" means any present or future taxes, levies, imposts, duties or other charges of whatever nature, including any interest or penalties thereon, imposed by any government or political subdivision of such government on or relating to the operation of the Franchised Business, the payment of monies, or the exercise of rights granted pursuant to this Agreement.

13.2 Payments to Us

Each payment to be made to us hereunder shall be made free and clear and without deduction for any Taxes.

13.3 Tax Disputes

In the event of any bona fide dispute as to your liability for Taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with the procedures of the taxing authority or applicable law. However, in no event shall you permit a tax sale or seizure by levy of execution or similar writ or warrant or attachment by a creditor to occur against the premises of the Franchised Business or any improvements thereon.

ARTICLE 14

TRANSFER OF INTEREST

14.1 Transfer by Us

We shall have the right to assign this Agreement and all of our attendant rights and privileges to any person, firm, corporation or other entity provided that, with respect to any assignment resulting in the subsequent performance by the assignee of our functions: (i) the assignee shall, at the time of such assignment, be financially responsible and economically capable of performing our obligations; and (ii) the assignee shall expressly assume and agree to perform such obligations.

You expressly affirm and agree that we may sell our assets, our rights to the Marks or to the System outright to a third party; may go public; may engage in a private placement of some or all of our securities; may merge, acquire other corporations, or be acquired by another corporation; may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of said Marks (or any variation thereof) and/or the loss of association with or identification of "BurgerFi International, LLC" as Franchisor. Nothing contained in this Agreement shall require us to remain in the restaurant business or to offer the same products and services, whether or not bearing the Marks, in the event that we exercise our right to assign our rights in this Agreement.

14.2 Transfer by You

(a) You understand and acknowledge that the rights and duties set forth in this Agreement are personal to you, and that we have granted rights under this Agreement in reliance on the business skill, financial capacity and personal character of you and the Controlling Principals. Accordingly, neither you nor any Controlling Principal, nor any successor or assignee of you or any Controlling Principal, shall sell, assign (including but not limited to by operation of law, such as an assignment under bankruptcy or insolvency laws, in connection with a merger, divorce or otherwise), transfer, convey, give away, pledge, mortgage or otherwise encumber any direct or indirect interest in this Agreement, in the Restaurant and/or any of the Restaurant's material assets (other than in connection with replacing, upgrading or otherwise dealing with such assets as required or permitted by this Agreement), in you or in any Controlling Principal that is an entity, in each case without our prior written consent. Any purported assignment or transfer, by operation of law or otherwise, made in violation of this Agreement shall be null and void and shall constitute an event of default under this Agreement.

(b) If you wish to transfer all or part of your interest in the Restaurant, any of the Restaurant's material assets (except as provided in [Section 14.2\(a\)](#) above) or this Agreement, or if you or a Controlling Principal wishes to transfer or permit a transfer of any ownership interest in you or in a Controlling Principal that is an entity, then in each such case (any or all of which are referred to in this [Article 14](#) as a "Restricted Transfer"), transferor and the proposed transferee shall apply to us for our approval and consent. We may, in our sole discretion, require any or all of the following as conditions of our approval:

(i) All of the accrued monetary obligations of you or any of your affiliates and all other outstanding obligations to us arising under this Agreement or any other agreement shall have been satisfied in a timely manner and you shall have satisfied all trade accounts and other debts, of whatever nature or kind, in a timely manner;

(ii) You and your affiliates shall not be in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between you or any of your affiliates and us or any of our affiliates at the time of transaction;

(iii) The transferor and its principals (if applicable) shall have executed a general release, in a form reasonably satisfactory to us, of any and all claims against us, our officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement and federal, state and local laws, rules and regulations;

(iv) The transferee shall demonstrate to our reasonable satisfaction that transferee meets the criteria considered by us when reviewing a prospective franchisee's application for a franchise, including, but not limited to, our educational, managerial and business standards; transferee's good moral character, business reputation and credit rating; transferee's aptitude and ability to conduct the business franchised herein (as may be evidenced by prior related business experience or otherwise); transferee's financial resources and capital for operation of the business; the geographic proximity and number of other Restaurants owned or operated by transferee and the absence of conflicting business interests and such other criteria as we may reasonably impose;

(v) At our election, the transferee shall either (1) enter into a written agreement, in a form reasonably satisfactory to us, assuming full, unconditional, joint and several liability for, and agreeing to perform from the date of the transfer, all obligations, covenants and agreements contained in this Agreement, and, if transferee is a corporation or a partnership, transferee's shareholders, partners or other investors, as applicable, shall execute such agreement as transferee's principals and guarantee the performance of all such obligations, covenants and agreements; or (2) execute, for a term ending on the expiration date of this Agreement and with such renewal term as may be provided by this Agreement, the standard form franchise agreement then being offered to new System franchisees and other ancillary agreements as we may require for the Restaurant, which agreements shall supersede this Agreement and its ancillary documents in all respects and the terms of which agreements may materially differ from the terms of this Agreement and be less advantageous to you than the terms of this Agreement, provided however that you will not be required to pay any initial franchise fee and the Protected Territory will remain the same;

(vi) The transferee, at its expense, shall renovate, modernize and otherwise upgrade the Restaurant to conform to the then-current standards and specifications of the System, and shall complete the upgrading and other requirements which conform to the System-wide standards within the time period reasonably specified by us;

(vii) The transferor shall remain liable for all of the obligations to us in connection with the Restaurant incurred prior to the effective date of the transfer and shall execute any and all instruments reasonably requested by us to evidence such liability;

(viii) At the transferee's expense, the transferee, the transferee's general manager and/or any other applicable Restaurant personnel shall complete any training programs and pay any attendance and per diem fees then in effect for franchisees of Restaurants upon such terms and conditions as we may reasonably require;

(ix) You shall pay to us a transfer fee equal to twenty-five percent (25%) of our then-current initial franchise fee to reimburse us for reviewing the application to transfer, including, without limitation, training expenses, legal and accounting fees; and

(x) If the transferee is a corporation, limited liability company, partnership or other legal entity, the transferee shall make and will be bound by any or all of the representations, warranties and covenants set forth at [Article 6](#) as we request. Transferee shall provide to us evidence satisfactory to us that the terms of such Section have been satisfied and are true and correct on the date of transfer.

(c) You acknowledge and agree that each condition which must be met by the transferee is reasonable and necessary to assure such transferee's full performance of the obligations hereunder.

14.3 Transfer to a Corporation or Limited Liability Company

In the event the proposed transfer is to a corporation or limited liability company formed solely for the convenience of ownership with the same Principals retaining the same respective ownership interests, our consent may be conditioned upon any of the requirements set forth at [Section 14.2\(b\)](#), except that the requirements set forth at [Sections 14.2\(b\)\(iii\)](#), [14.2\(b\)\(iv\)](#), [14.2\(b\)\(vi\)](#), [14.2\(b\)\(vii\)](#), [14.2\(b\)\(ix\)](#), and [14.2\(b\)\(x\)](#) shall not apply.

14.4 Our Right to Purchase

(a) In the case of a Restricted Transfer, or if you wish to transfer all or part of your interest in the Restaurant or this Agreement, or if you or a Controlling Principal wish to transfer any ownership interest in you, pursuant to any bona fide offer received from a third party to purchase such interest, then you and such proposed seller shall promptly notify us in writing of the offer, and shall provide such information and documentation relating to the offer as we may require, including name, address and business experience of the buyer. We shall have the right and option, exercisable within 30 days after receipt of such written notification and copies of all documentation required by us describing such offer, to send written notice to the seller that we intend to purchase the proposed interest on the same terms and conditions offered by the third party purchaser/transferee (the "Offer Terms"). In the event that we elect to purchase the interest, closing on such purchase must occur within the latest of (i) 60 days from the date of notice to the seller of the election to purchase by us, (ii) 60 days from the date we receive or obtain all necessary documentation, permits and approvals, or (iii) such other date as the parties agree upon in writing. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same right of first refusal by us as in the case of an initial offer. Our failure or refusal to exercise the option afforded by this [Section 14.4](#) shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this [Article 14](#), with respect to a proposed transfer.

(b) Notwithstanding the provisions of [Section 14.4\(a\)](#) above, where a Restricted Transfer (alone or together with any other Restricted Transfer or event effected within the prior 24 month period) results in a "Change of Control", we may elect, in our sole discretion, to treat the notice given pursuant to such [Section 14.4\(a\)](#) as an offer to assign to us all of the transferor's rights under this Agreement and to the Restaurant (including lease and contract rights and other assets used in connection with the Restaurant) (collectively, the "Restaurant Interests"). As used herein, Change of Control means any circumstance resulting in one or more Controlling Principals ceasing to be a Principal and/or the addition of any new Principal. In such case, we shall notify you of the special election provided for in this [Section 14.4\(b\)](#) at the time we exercise our option as provided in [Section 14.4\(a\)](#). The terms of such purchase shall be the same as the Offer Terms (subject to the other provisions of this [Section 14.4](#)), but the price shall be the lesser of (i) the Implied Market Price or (ii) the fair market value of the Restaurant Interests, determined in a manner consistent with [Section 18.12\(a\)](#). As used herein, "Implied Market Price" shall mean an amount equal to the total price to be paid by the transferee under the Offer Terms, divided by the percentage (expressed as a decimal) of ownership of you proposed to be acquired (directly or indirectly) by the transferee, less the fair market value (determined as provided in [Section 18.12\(a\)](#)) of any assets included in the Restricted Transfer that are not related to the Restaurant. If you have more than one Restaurant, then the Implied Market Price shall, unless otherwise agreed by us and you, be allocated among all Restaurants equally.

(c) We may assign our rights under this Section 14.4 to any other person or entity, subject to Section 14.1 above.

(d) In the event an offer from a third party provides for payment of consideration other than cash or involves certain intangible benefits, we may elect to purchase the interest proposed to be sold for the reasonable cash equivalent. If the parties cannot agree within a reasonable time on the reasonable cash equivalent of the non-cash part of the Offer Terms, then such amount shall be determined by 2 appraisers, with each party selecting one appraiser, and the average of their determinations shall be binding. In the event of such appraisal, each party shall bear its own legal and other costs and each shall pay one-half of the appraisal fees. In the event that we exercise our right of first refusal herein provided, we shall have the right to set off against any payment therefor (i) all fees for any such independent appraiser due from you hereunder and (ii) all amounts due from you to us.

14.5 Death or Disability

(a) Upon the death or permanent disability of any Controlling Principal, Principal or other person with an interest in this Agreement, the Restaurant or the Franchise, the executor, administrator, personal representative, or trustee of such person or entity shall transfer his, her or its interest to a third party approved by us within 6 months of such death or permanent disability. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any *inter vivos* transfer. However, in the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions in this Article, the executor, administrator, or personal representative of the decedent must dispose of the decedents' interest in the Franchise, which disposition shall be subject to all the terms and conditions for transfers contained in this Agreement, no later than 6 months from the date of death or permanent disability.

(b) "Permanent disability" shall mean any physical, emotional or mental injury, illness or incapacity which would prevent a person from performing the obligations set forth in this Agreement or in the guaranty made part of this Agreement for at least 90 consecutive days and from which condition recovery within 90 days from the date of determination of disability is unlikely. Permanent disability shall be determined by a licensed practicing physician selected by us, upon examination of the person; or if the person refuses to submit to an examination, then such person automatically shall be deemed permanently disabled as of the date of such refusal for the purpose of this Section 14.5. The costs of any examination required by this Section shall be paid by us.

14.6 No Waiver of Claims

Our consent to a transfer of any interest described herein shall not constitute a waiver of any claims which we may have against the transferring party, nor shall it be deemed a waiver of our right to demand material and full compliance with any of the terms of this Agreement by the transferee.

14.7 Transfer Among Owners

If any person holding an interest in you, this Agreement or the Restaurant (other than you or a Controlling Principal, which parties shall be subject to the provisions set forth above) transfers such interest, then you shall promptly notify us of such proposed transfer in writing and shall provide such information relative thereto as we may reasonably request prior to such transfer. Such transferee may not operate or own any interest in a Competitive Business. Such transferee will be designated as a Principal hereunder and as such will have to execute a Confidentiality and Non-Competition Agreement in the form then required by us, which form shall be in substantially the same form attached hereto as Attachment D (see Sections 10.2(b) and 10.3(f)). We also reserve the right to designate the transferee as one of the Controlling Principals. We will not withhold our consent to a proposed transfer among the Controlling Principals and/or to a trust established for the benefit of estate planning (nor will we require you to pay a transfer fee); provided that instead of a transfer fee, you agree to reimburse us for our costs (including legal fees) associated with documenting, negotiating, and finalizing the documents associated with that transaction, including an appropriate consent to transfer agreement with releases.

14.8 Security Interests

(a) You grant to us a security interest ("Security Interest") in all of the furniture, fixtures, equipment, signage, and realty (including your interests under all real property and personal property leases) of the Restaurant, together with all similar property now owned or hereafter acquired, additions, substitutions, replacements, proceeds, and products thereof, wherever located, used in connection with the Restaurant. All items in which a security interest is granted are referred to as the "Collateral".

(b) The Security Interest is to secure payment of the following (the "Indebtedness"):

(i) All amounts due under this Agreement or otherwise by you;

(ii) All sums which we may, at our option, expend or advance for the maintenance, preservation, and protection of the Collateral, including, without limitation, payment of rent, taxes, levies, assessments, insurance premiums, and discharge of liens, together with interest, or any other property given as security for payment of the Indebtedness;

(iii) All expenses, including reasonable attorneys' fees, which we incur in connection with collecting any or all Indebtedness secured hereby or in enforcing or protecting our rights under the Security Interest and this Agreement; and

(iv) All other present or future, direct or indirect, absolute or contingent, liabilities, obligations, and indebtedness of you to us or third parties under this Agreement, however created, and specifically including all or part of any renewal or extension of this Agreement, whether or not you execute any extension agreement or renewal instruments.

(c) You shall not grant a security interest in the Restaurant or in any of your assets without our prior written consent, including without limitation involuntary transfers by law. If we permit a security interest, the secured party will be required to agree that in the event of any default by you under any documents related to the security interest, we shall have the right and option to be substituted as obligor to the secured party and to cure any default of yours.

(d) You will from time to time as required by us join with us in executing any additional documents and one or more financing statements pursuant to the Uniform Commercial Code (and any assignments, extensions, or modifications thereof) in form satisfactory to us.

(e) Upon default and termination of your rights under this Agreement, we shall have the immediate right to possession and use of the Collateral.

(f) You agree that, upon the occurrence of any default, after you have been provided written notice and opportunity to cure, if applicable, in accordance with the terms of this Agreement, the full amount remaining unpaid on the Indebtedness secured shall, at our option and without notice, become due and payable immediately, and we shall then have the rights, options, duties, and remedies of a secured party under, and you shall have the rights and duties of a debtor under, the Uniform Commercial Code of Florida (or other applicable law), including, without limitation, our right to take possession of the Collateral and without legal process to enter any premises where the Collateral may be found. Any sale of the Collateral may be conducted by us in a commercially reasonable manner. Reasonable notification of the time and place of any sale shall be satisfied by mailing to you pursuant to the notice provisions set forth above.

(g) This Agreement shall be deemed a Security Agreement and a Financing Statement. A memorandum summarizing this [Section 14.8](#) may be filed for record in the real estate records of each county in which the Collateral, or any part thereof, is situated and may also be filed as a Financing Statement in the counties or in the office of the Secretary of State, as appropriate, in respect of those items of Collateral of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code as in effect in the appropriate jurisdiction.

14.9 Requirement to Comply

You are required to cause any transferor and transferee described in this [Article 14](#) to perform all of the obligations imposed on such persons under this [Article 14](#). Any failure by you or any transferor and transferee described in this [Article 14](#) to comply with the provisions of this Section prior to the transfer of any interest in you, the Restaurant or this Agreement shall constitute an event of default under this Agreement.

14.10 Transfer by Franchisee Bankruptcy - Right of First Refusal

If, for any reason, this Agreement is not terminated pursuant to [Section 17.1](#) and this Agreement is assumed, or assignment of the same to any person or entity who has made a bona fide offer to accept an assignment of this Agreement is contemplated, pursuant to the United States Bankruptcy Code, then notice of such proposed assignment or assumption, setting forth (a) the name and address of the proposed assignee, (b) all of the terms and conditions of the proposed assignment and assumption; and (c) the adequate assurance of the proposed assignee's future performance of this Agreement (which shall incorporate the relevant prerequisites applicable to any other proposed transferees as set forth in [Section 14.2](#) of this Agreement) referred to in Section 365(b)(3) of the U.S. Bankruptcy Code, shall be given to us within 20 days after receipt of such proposed assignee's offer to accept assignment of this Agreement, and, in any event, within 10 days prior to the date application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and we shall thereupon have the prior right and option, to be exercised by notice given at any time prior to the effective date of such proposed assignment and assumption, to accept an assignment of this Agreement to us upon the same terms and conditions and for the same consideration, if any, as in the bona fide offer made by the proposed assignee, less any brokerage commissions which may be payable by you out of the consideration to be paid by such assignee for the assignment of this Agreement.

ARTICLE 15

INDEMNIFICATION

15.1 Indemnification by You

You and each of the Controlling Principals shall, at all times, indemnify and hold harmless to the fullest extent permitted by law us, our successors and assigns, their respective partners and affiliates and the officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them ("Indemnitees") from all "losses and expenses" (as defined in [Section 15.4](#) below) incurred in connection with any action, suit, proceeding, claim, demand, investigation or inquiry (formal or informal), or any settlement thereof (whether or not a formal proceeding or action has been instituted) which arises out of or is based upon any of the following:

(a) The infringement, alleged infringement, or any other violation or alleged violation by you or any of the Controlling Principals of any of our Marks or any patent, trademark, copyright or other proprietary right owned or controlled by third parties;

(b) The violation, breach or asserted violation or breach by you or any of the Controlling Principals of any federal, state or local law, regulation, ruling, standard or directive or any industry standard, including without limitation any allegations by your employees or governmental agencies for harassment or discrimination, wage and hour violations or other employment or labor law claims;

(c) Libel, slander or any other form of defamation of us, the System or any multi-unit operator or franchisee operating under the System, by you, any Principal or Controlling Principal, or any of your employees, agents or representatives;

(d) The violation or breach by you or by any of the Controlling Principals of any warranty, representation, agreement or obligation in this Agreement or in any other agreement between you or any of your affiliates and us and our Indemnitees; and

(e) Acts, errors, or omissions of you, your affiliates, the Controlling Principals and any officers, directors, shareholders, partners, agents, representatives, independent contractors and employees of you and your affiliates in connection with the establishment and operation of the Restaurant.

15.2 Notification of Action or Claim

You and each of the Controlling Principals agree to give us prompt notice of any such action, suit, proceeding, claim, demand, inquiry, or investigation. At the expense and risk of you and each of the Controlling Principals, we may elect to assume (but under no circumstance are we obligated to undertake) or appoint associate counsel of our own choosing with respect to the defense and/or settlement of any such action, suit, proceeding, claim, demand, inquiry or investigation. Such an undertaking by us shall, in no manner or form, diminish the obligation of you and each of the Controlling Principals to indemnify the Indemnitees and to hold them harmless.

15.3 We May Settle

In order to protect persons or property, or our reputation or goodwill, or the reputation or goodwill of others, we may, at any time and without notice, as we in our reasonable judgment deem appropriate, consent or agree to settlements or take such other remedial or corrective action as we deem expedient with respect to the action, suit, proceeding, claim, demand, inquiry or investigation if, in our reasonable judgment, there are reasonable grounds to believe that any of the acts or circumstances enumerated in Section 15.1(a) through 15.1(e) above have occurred or may result directly or indirectly in damage, injury, or harm to the System, any person or any property.

15.4 Losses and Expenses

All losses and expenses incurred under this Article 15 shall be chargeable to and paid by you or any of the Controlling Principals pursuant to your obligations of indemnity under this Section, regardless of any actions, activity or defense undertaken by us or the subsequent success or failure of such actions, activity, or defense. As used in this Article 15, the phrase "losses and expenses" shall include, without limitation, all losses, compensatory, exemplary or punitive damages, fines, charges, costs, expenses, lost profits, reasonable attorneys' fees, court costs, settlement amounts, judgments, compensation for damages to our reputation and goodwill, costs of or resulting from delays, financing, costs of advertising material and media time/space, and costs of changing, substituting or replacing the same, and any and all expenses of recall, refunds, compensation, public notices and other such amounts incurred in connection with the matters described.

15.5 Indemnitees Do Not Assume Liability

The Indemnitees do not hereby assume any liability whatsoever for acts, errors, or omissions of any third party with whom you, any of the Controlling Principals, your affiliates or any of the officers, directors, shareholders, partners, agents, representatives, independent contractors and employees of you or your affiliates may contract, regardless of the purpose. You and each of the Controlling Principals shall hold harmless and indemnify the Indemnitees for all losses and expenses which may arise out of any acts, errors or omissions of you, the Controlling Principals, your affiliates, the officers, directors, shareholders, partners, agents, representatives, independent contractors and employees of you and your affiliates and any such other third parties without limitation and without regard to the cause or causes thereof.

15.6 Recovery from Third Parties

Under no circumstances shall the Indemnitees be required or obligated to seek recovery from third parties or otherwise mitigate their losses in order to maintain a claim against you or any of the Controlling Principals. You and each of the Controlling Principals agree that the failure to pursue such recovery or mitigate loss will in no way reduce the amounts recoverable from you or any of the Controlling Principals by the Indemnitees.

15.7 Survival of Terms

You and the Controlling Principals expressly agree that the terms of this Article 15 shall survive the termination, expiration or transfer of this Agreement or any interest herein.

ARTICLE 16

RELATIONSHIP OF THE PARTIES

16.1 No Relationship

The parties acknowledge and agree that this Agreement does not create a fiduciary relationship between them, that you shall be an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, joint employer or servant of the other for any purpose.

16.2 Independent Contractor

During the term of this Agreement, you shall hold yourself out to the public as an independent contractor conducting your Restaurant operations pursuant to the rights granted by us. In furtherance of the preceding, you agree to exhibit a notice in a conspicuous place on the Restaurant premises that your Restaurant is independently owned and operated, and will reproduce such notice on all of your letterhead, business cards, forms, advertisements and as further described in the Manuals, and to take such further action as we shall reasonably require. We reserve the right to specify in writing the content and form of such notice.

16.3 You are Not Authorized

You understand and agree that nothing in this Agreement authorizes you or any of the Controlling Principals to make any contract, agreement, warranty or representation on our behalf, or to incur any debt or other obligation in our name, and that we shall in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action, or for any act or omission of you or any of the Controlling Principals or any claim or judgment arising therefrom.

ARTICLE 17

TERMINATION

You acknowledge and agree that each of your obligations described in this Agreement is material and essential; that non-performance of such obligations will adversely and substantially affect us and the System; that any default described below constitutes “good cause” (as such term may be defined in any state statute or law) for us to exercise our remedies including termination of this Agreement; and that our exercise of the rights and remedies set forth herein is appropriate and reasonable.

17.1 Automatic Termination – No Right to Cure

You shall be in default under this Agreement, and we may at our option terminate this Agreement and all rights granted hereunder, without affording any opportunity to cure the default, effective immediately upon notice to you, upon the occurrence of any of the following events:

(a) if (i) you, or any Controlling Principal becomes insolvent or makes a general assignment for the benefit of creditors, is adjudicated insolvent; (ii) a bill in equity or other proceeding for the appointment of a receiver or other custodian for a Controlling Principal or its business or assets is filed and consented to; (iii) a receiver or other custodian (permanent or temporary) of a Controlling Principal’s assets or property, or any part thereof, is appointed by any court of competent jurisdiction; (iv) proceedings for a composition with creditors under any state or federal law should be instituted by or against a Controlling Principal; (v) a final judgment remains unsatisfied or of record for 30 days or longer; (vi) the Franchised Business is dissolved; (vii) execution is levied against the business or property; (viii) suit to foreclose any lien or mortgage against the Premises or equipment is instituted and not dismissed within 30 days; or (ix) the real or personal property of the Franchised Business shall be sold after levy thereupon by any sheriff, marshal, or constable.

(b) If you operate the Restaurant or sell any products or services authorized by us for sale at the Restaurant at a location which has not been approved by us;

(c) If you fail to construct or remodel the Restaurant in accordance with the plans and specifications provided to you under Section 5.3 as such plans may be adapted with our approval in accordance with Section 2.5;

(d) If you at any time cease to operate or otherwise abandon the Restaurant, or lose the right to possession of the premises, or otherwise forfeit the right to do or transact business in the jurisdiction where the Restaurant is located; provided, however, that this provision shall not apply in cases of Force Majeure (acts of God, strikes, lockouts or other industrial disturbances, war, riot, epidemic, acts of terrorism, fire or other catastrophe or other forces beyond your control), if through no fault of yours the premises are damaged or destroyed by an event as described above, provided that you apply within 30 days after such event, for our approval to relocate or reconstruct the premises (which approval shall not be unreasonably withheld) and you diligently pursue such reconstruction or relocation;

(e) If any Controlling Principal is convicted of, or has entered a plea *of nolo contendere* to, a felony, a crime involving moral turpitude, or other act or crime that we believe is reasonably likely to have an adverse effect on the System, the Marks, the goodwill associated therewith, or our interests therein, or engages in any other activity that in our reasonable judgment is offensive to community standards;

(f) If a threat or danger to public health or safety results from the construction, maintenance or operation of the Restaurant;

(g) If any Controlling Principal attempts to transfer any rights or obligations under this Agreement or any interest in the Franchised Business or the Restaurant to any third party without our prior written consent or without offering us a right of first refusal with respect to such transfer, contrary to the terms of Article 14 of this Agreement;

(h) If any Controlling Principal fails to comply with the in-term covenants in Section 10.3 hereof;

(i) If, contrary to the terms of Section 10.2 hereof, any Controlling Principal discloses or divulges any confidential information;

(j) If a transfer upon death or permanent disability is not transferred in accordance with Article 14 and within the time periods therein;

(k) If you knowingly maintain false books or records, or submit any false reports to us;

(l) If you misuse or make any unauthorized use of the Marks or otherwise materially impair the goodwill associated therewith or our rights therein;

(m) If your General Manager is not able to complete our initial training program to our satisfaction, after having given you the opportunity to designate a replacement General Manager;

(n) If you fail to comply with all applicable laws and ordinances relating to the Restaurant, including Anti-Terrorism Laws, or if any Controlling Principal's assets, property, or interests are blocked under any law, ordinance, or regulation relating to terrorist activities, or you or any of your owners otherwise violate any such law, ordinance, or regulation;

(o) If you breach any of the covenants set forth in Article 6 or have falsely made any of the representations or warranties set forth therein;

(p) If any license in connection with the Restaurant is suspended or terminated, including but not limited to, a wine, beer or liquor license; or

(q) If you commit 3 events of default under this Agreement, within any 12 month period, whether or not such defaults are of the same or different nature and whether or not such defaults have been cured by you after notice by us.

17.2 Notice of Termination – Opportunity to Cure

We may terminate this Agreement and all of your rights hereunder if we provide written notice to you stating any of the following defaults and the applicable time period set forth below expires prior to the cure of such default to our reasonable satisfaction. If we do not receive acceptable proof of cure within the specified time, this Agreement and all of your rights hereunder shall terminate without further notice to you effective immediately upon the expiration of the cure period:

- (a) If you fail to comply with any of the requirements imposed by this Agreement, as it may from time to time be amended or reasonably be supplemented by us, or fail to carry out the terms of this Agreement in good faith and do not cure such default within 30 days;
- (b) If you fail to maintain or observe any of the standards, specifications or procedures prescribed by us in this Agreement or otherwise in writing and do not cure such default within 30 days;
- (c) If you fail, refuse, or neglect to obtain our prior written approval or consent as required by this Agreement and do not cure such default within 30 days;
- (d) If you fail to acquire an accepted location for the Restaurant within the time and in the manner specified in Article 2 and do not cure such default within 15 days;
- (e) If you fail to open the Restaurant for business within the period specified in Section 2.6 hereof and do not cure such default within 15 days;
- (f) If you or any of your affiliates fail, refuse, or neglect promptly to pay any monies owing to us, or any of our affiliates or vendors, when due under this Agreement or any other agreement, or to submit the financial or other information required by us under this Agreement and do not cure such default within 5 days following notice from us (or such other cure period specified in such other agreement, unless no cure period is stated or such period is less than 5 days, in which case the 5 day cure period shall apply);
- (g) If you fail to obtain execution of the covenants and related agreements required under Section 10.2(b) or 10.3(f) hereof within 30 days following notice from us;
- (h) If you fail to propose a qualified replacement or successor General Manager within the time required under Section 6.3 following 10 days prior written notice;
- (i) If you fail to procure and maintain the insurance policies required by Article 12 and you fail to cure such default within 10 days following notice from us;
- (j) If, in accordance with Section 6.2(h), you fail to maintain sufficient working capital to fulfill your obligations under this Agreement; or
- (k) If your Restaurant repeatedly receives poor or negative reviews in the media, whether online, social media, the press or otherwise.

17.3 Cross-Defaults, Non-Exclusive Remedies, etc.

Any default under this Agreement or of any obligation owed to us or our affiliates, whether hereunder or under another agreement with us, such as a Multi-Unit Operator Agreement, or our affiliates, such as sublease, loan agreement or security interest, or any default under any agreement related to the Franchised Business, such as a lease, a vendor agreement or subcontract, will be regarded as a default under this Agreement. In each of the foregoing cases, we and our affiliates will have all remedies allowed hereunder and at law, including termination of your rights (and/or those of any person/company affiliated with you) and our (and/or our affiliates') obligations. No right or remedy which we may have (including termination) is exclusive of any other right or remedy provided under law or equity and we may pursue any rights and/or remedies available.

17.4 Our Right to Discontinue Services to You

If you are in breach of any obligation under this Agreement, and we deliver to you a notice of termination pursuant to this [Article 17](#), we have the right to suspend our performance of any of our obligations under this Agreement including, without limitation, the sale or supply of any services or products for which we are an approved supplier to you and/or suspension of your webpage on our Website, until such time as you correct the breach.

17.5 Amendment Pursuant to Applicable Law

Notwithstanding anything to the contrary contained in this Article, if any valid, applicable law or regulation of a competent governmental authority having jurisdiction over this franchise and the parties hereto shall limit our rights of termination under this Agreement or shall require longer notice periods than those set forth above, this Agreement is deemed amended to satisfy the minimum notice periods or restrictions upon such termination required by such laws and regulations; provided, however, that such constructive amendment shall not be deemed a concession by us that the grounds for termination set forth in this Agreement do not constitute "good cause" for termination within the meaning ascribed to that term by any applicable law or regulation. We shall not be precluded from contesting the validity, enforceability or application of such laws or regulations in any action, hearing or proceeding relating to this Agreement or the termination of this Agreement.

17.6 Step-In Rights

At any time after the occurrence of an incurable default or the expiration of a cure period for a curable default, or in the event we determine that significant operational problems exist, in order to prevent harm to the Franchised Business or damage to the System, you authorize us to operate your business for as long as we deem necessary and practical, and without waiver of any other rights or remedies which we may have under this Agreement. We have no obligation or requirement to exercise Step-In Rights, and any such election is at our option, in our sole discretion. In the event of our exercise of the Step-In Rights, you agree to hold us and our representatives harmless for all actions occurring during the course of such temporary operation. You further agree to pay us for any related business expenses, compensation for our representatives, a management fee equal to 5% of the Net Sales, and all reasonable attorneys' fees and costs incurred as a consequence of our exercise of the Step-In Rights. We shall keep in a separate account all monies generated by the operation of the Franchised Business, less the operating expenses, including all required fees hereunder, the management fee and reasonable expenses for our representatives. Nothing contained herein shall prevent us from exercising any other right which we may have under this Agreement, including, without limitation, termination of this Agreement.

ARTICLE 18

POST-TERMINATION

Upon termination or expiration of this Agreement, all rights granted hereunder to you shall forthwith terminate, and (in addition to other clauses of this Agreement that will apply):

18.1 Cease Operations

You shall immediately cease to operate the Restaurant under this Agreement, and shall not thereafter, directly or indirectly, represent to the public or hold yourself out as a present franchisee of ours.

18.2 Stop Using the System

You shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, computer software, procedures, and techniques associated with the System; the "BurgerFi" mark; and all other Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, you shall cease to use, without limitation, all signs, advertising materials, displays, stationery, forms and any other articles which display the Marks, and shall immediately change all paint colors, remove all of our proprietary or non-proprietary design items.

18.3 Cancellation of Assumed Names

You shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains the "BurgerFi" mark or any other service mark or trademark of ours, and furnish us with evidence satisfactory of compliance with this obligation within 5 days after termination or expiration of this Agreement.

18.4 No Use of Similar Marks

You agree, in the event that you have the right under this Agreement to continue to operate or subsequently begin to operate any other business and you choose to do so, not to use any reproduction, counterfeit, copy or colorable imitation of the Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake or deception, or which is likely to dilute our rights in and to the Marks, and further agree not to utilize any designation of origin or description or representation which falsely suggests or represents an association or connection with us constituting unfair competition.

18.5 Payment of Sums Owed

You shall promptly pay all sums owing to us. Such sums shall include all damages, costs and expenses, including reasonable attorneys' fees, incurred by us as a result of any default by you, which obligation shall give rise to and remain, until paid in full, a lien in our favor against any and all of the personal property, furnishings, equipment, fixtures, and inventory owned by you and on the premises operated hereunder at the time of default.

18.6 Payment of Damages, Costs and Expenses

You shall pay to us all damages, costs and expenses, including reasonable attorneys' fees, incurred by us in connection with obtaining any remedy available to us for any violation of this Agreement and, subsequent to the termination or expiration of this Agreement, in obtaining injunctive or other relief for the enforcement of any provisions of this [Article 18](#).

18.7 Delivery of Manuals and Materials

You shall immediately deliver to us all Manuals, software licensed by us, records, files, instructions, correspondence, all materials related to operating the Restaurant, including, without limitation, agreements, invoices, and any and all other materials relating to the operation of the Restaurant in your possession or control, and all copies thereof (all of which are acknowledged to be our property), and shall retain no copy or record of any of the foregoing, except your copy of this Agreement and of any correspondence between the parties and any other documents which you reasonably need for compliance with any provision of law.

18.8 Confidential Information

The Controlling Principals shall comply with the restrictions on confidential information and the non-competition covenants contained in Article 10 of this Agreement. You will also ensure that any other person required to have executed similar covenants pursuant to Article 10 shall also comply with such covenants.

18.9 Advertising and Promotional Materials

You shall immediately furnish us with an itemized list of all advertising and sales promotion materials bearing the Marks or any of our distinctive markings, designs, labels, or other marks thereon, whether located on your premises or under your control at any other location. We shall have the right to inspect these materials and the option to purchase any or all of the materials at your cost, or to require you to destroy and properly dispose of such materials. Materials not purchased by us shall not be utilized by you or any other party for any purpose.

18.10 Signage

Upon execution of this Agreement, in partial consideration of the rights granted hereunder, you acknowledge and agree that all right, title and interest in the signs used at the Restaurant are hereby assigned to us, and that upon termination or expiration of this Agreement, neither you nor any lien holder shall have any further interest therein.

18.11 Assignment

At our option, you shall assign to us all of your right, title and interest in and to any lease or sublease you may hold for the premises of the Restaurant or any equipment related thereto, and any business licenses, including the liquor license. In connection with such assignments, you hereby appoint us as your attorney-in-fact to execute any documentation necessary to effectuate such transfers. In the event we do not elect to exercise our option to acquire the lease or sublease for the Restaurant premises, you shall make such modifications or alterations to the Restaurant premises as are necessary to distinguish the appearance of the Restaurant from that of other Restaurants operating under the System and shall make such specific additional changes as we may reasonably request within 30 days. If you fail or refuse to comply with the requirements of this Section 18.11, we shall have the right to enter upon the premises of the Franchised Business, without being guilty of trespass or any other crime or tort, to make or cause to be made such changes as may be required, at your expense, which expense you agree to pay upon demand.

18.12 Our Right to Purchase

(a) Except as provided in Sections 18.9, 18.10 and 18.13, we shall have the option, to be exercised within 30 days after termination or expiration of this Agreement, to purchase from you at fair market value any or all of the furnishings, equipment (including any electronic cash register or computer hardware and software systems), signs, fixtures, motor vehicles, supplies, and inventory related to the operation of the Restaurant, including the liquor license if it is not assignable in accordance with Section 18.11 above. For any such assets we purchase, we will not assume any liabilities whatsoever, which will remain with you. If the parties cannot agree on the fair market value within 30 days of our exercise of this option, fair market value shall be determined by 2 appraisers, with each party selecting one appraiser, and the average of their determinations shall be binding. Each party shall bear its own legal and other costs in obtaining its appraisal. If we elect to exercise any option to purchase herein provided, we shall have the right to set off all amounts due from you to us.

(b) In addition to the options described above, if you (or any Controlling Principal or any affiliate thereof) own the Restaurant premises, then we shall have the option, to be exercised at or within 30 days after termination or expiration of this Agreement, to purchase the Restaurant premises including any building thereon, if applicable, for the fair market value of the land and building, and any or all of the furnishings, equipment, signs, fixtures, vehicles, supplies and inventory therein at fair market value. We shall purchase assets only and shall assume no liabilities whatsoever. If you do not own the land on which the Restaurant is operated and we exercise our option for an assignment of the lease, we may exercise this option for the purpose of purchasing the building if owned by you and related assets as described above. If the parties cannot agree on fair market value within 30 days of our exercise of this option, fair market value shall be determined in accordance with appraisal procedure described above.

(c) If we exercise any of the options described above, you shall deliver to us in a form satisfactory to us, such warranties, deeds, releases of lien, bills of sale, assignments and such other documents and instruments which we deem necessary in order to perfect our title and possession in and to the properties being purchased or assigned and to meet the requirements of all tax and government authorities. If, at the time of closing, you have not obtained all of these certificates and other documents, we may, in our sole discretion, place the purchase price in escrow pending issuance of any required certificates or documents.

(d) The time for closing of the purchase and sale of the properties described above shall be a date not later than 30 days after the purchase price is determined by the parties or the determination of the appraisers, or such date we receive and obtain all necessary permits and approvals, whichever is later, unless we agree otherwise. Closing shall take place at our corporate offices.

18.13 Restaurant Assets

Notwithstanding anything to the contrary contained in Sections 18.11 and 18.12, if you operate the Restaurant from a premises that is subleased to you by us or one of our affiliates, upon termination or expiration of this Agreement, we shall have the right to take immediate possession of the assets of the Restaurant, including, any or all of the furnishings, equipment (including any point of sale or computer hardware and software systems), signs, fixtures, supplies, and inventory related to the operation of the Restaurant. We shall have a lien against all such assets in the amount of any amounts due to us under this Agreement or any other agreement. We shall have the right to have such assets appraised at the lower of cost or fair market value of the used assets, and to acquire all right, title and interest to such assets, without conducting any public sale, by paying to you (or to any lender of yours who has a lienholder interest in the assets) the difference between the appraised value and the amounts owed to us by you at the time of termination. If the lien on the assets from your lender has priority over any lien of ours, and the amount of the lien is in excess of the appraised value of such assets, we shall have the right to deal directly with your lienholder, and to pay any amounts due to you directly to the lienholder. You agree to provide all further assurances, and to execute all documents required by us or by law to lawfully effect such transfer, and to perfect our security interest. We shall have the right to take such action without the execution of any further documents by you if you fail or refuse to comply with these further assurances.

18.14 Assignment of Options by Us

We shall be entitled to assign any and all of our options in this Section to any other party, without your consent.

18.15 Telephone Numbers, Yellow Pages Listings, etc.

You, at our option, shall assign to us all rights to the telephone numbers of the Restaurant and any related Yellow Pages trademark listing or other business listings and execute all forms and documents required by us and any telephone company at any time to transfer such service and numbers to us. Further, you shall assign to us all Internet listings, domain names, Internet Accounts, advertising on the Internet or World Wide Web, websites, listings with search engines, e-mail addresses or any other similar listing or usage related to the Franchised Business. Notwithstanding any forms and documents which may have been executed under Section 7.9, you hereby appoint us as your true and lawful agent and attorney-in-fact with full power and authority, for the sole purpose of taking such action as is necessary to complete such assignment. This power of attorney shall survive the expiration or termination of this Agreement. You shall thereafter use different telephone numbers, email addresses or other listings or usages at or in connection with any subsequent business conducted by you.

18.16 Liquidated Damages for Royalty Fees

(a) If we terminate this Agreement with cause, you must pay us liquidated damages attributable solely to our lost future Royalty Fees equal to the average value of the Royalty Fees you paid or owed (per month) to us during the 12 months before the termination (or the actual number of months opened if less than 12) multiplied by (i) 24, being the number of months in 2 full years, or (ii) the number of months remaining during the term of this Agreement, whichever is less.

(b) The parties hereto acknowledge and agree that it would be impracticable to determine precisely the damages that are attributable solely to lost Royalty Fees that we would incur from this Agreement's termination and the loss of cash flow from Royalty Fees due to, among other things, the complications of determining what costs, if any, we might have saved and how much the Royalty Fees would have grown over what would have been this Agreement's remaining term. The parties hereto consider this liquidated damages provision to be a reasonable, good faith pre-estimate of those damages.

(c) The liquidated damages provision only covers our damages from the loss of cash flow from the Royalty Fees. It does not cover any other damages, including damages to our reputation with the public and landlords and damages arising from a violation of any provision of this Agreement other than the Royalty Fee section. The Principals agree that the liquidated damages provision does not give us an adequate remedy at law for any default under, or for the enforcement of, any provision of this Agreement other than the Royalty Fee section.

ARTICLE 19

DISPUTE RESOLUTION

19.1 Choice of Law.

This Agreement will be interpreted and construed exclusively under the laws of the State of Florida, which laws will prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Florida choice-of-law rules); provided, however, that if the covenants in Section 10.3 of this Agreement would not be enforced as written under Florida law, then the parties agree that those covenants will instead be interpreted and construed under the laws of the state in which the Franchised Business is located. Nothing in this Section 19.1 is intended by the parties to invoke the application of any franchise, business opportunity, antitrust, implied covenant, unfair competition, fiduciary, and/or other doctrine of law of the State of Florida (or any other state) that would not otherwise apply if the words in this Section 19.1 were not included in this Agreement.

19.2 Choice of Venue.

Subject to Section 19.3 below, the parties agree that any action that you bring against us, in any court, whether federal or state, must be brought only within the courts that have jurisdiction over the place where we then-currently maintain our principal place of business (currently that is in North Palm Beach, Florida). Any action that we bring against you in any court, whether federal or state, may be brought within the state and judicial district in which we maintain our principal place of business.

(a) The parties agree that this Section 19.2 will not be construed as preventing either party from removing an action from state to federal court; provided, however, that venue will be as set forth above.

(b) The parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

(c) Any such action will be conducted on an individual basis, and not as part of a consolidated, common, or class action.

19.3 Mediation.

Before any party may bring an action in court against the other, the parties agree that they must first meet to mediate the dispute (except as otherwise provided in Section 19.5 below). Any such mediation will be non-binding and will be conducted in accordance with the then-current rules for mediation of commercial disputes of JAMS, Inc. (formerly, "Judicial Arbitration and Mediation Services, Inc.") at its location nearest to our then-current principal place of business.

19.4 Parties Rights Are Cumulative.

No right or remedy conferred upon or reserved to us or you by this Agreement is intended to be, nor will be deemed, exclusive of any other right or remedy in this Agreement or by law or equity provided or permitted, but each will be cumulative of every other right or remedy.

19.5 Injunctions.

Nothing contained in this Agreement will bar our right to obtain injunctive relief in a court of competent jurisdiction against threatened conduct that will cause us loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

19.6 WAIVER OF JURY TRIALS.

EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.

19.7 MUST BRING CLAIMS WITHIN ONE YEAR.

EACH PARTY TO THIS AGREEMENT AGREES THAT ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES' RELATIONSHIP, AND/OR YOUR OPERATION OF THE FRANCHISED BUSINESS, BROUGHT BY ANY PARTY HERETO AGAINST THE OTHER (EXCLUDING CLAIMS SEEKING INDEMNIFICATION UNDER THIS AGREEMENT), SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIM OR ACTION, OR, IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY ALL PARTIES, SUCH CLAIM OR ACTION SHALL BE IRREVOCABLY BARRED.

19.8 WAIVER OF PUNITIVE DAMAGES.

EACH PARTY TO THIS AGREEMENT HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES IT HAS SUSTAINED (INCLUDING LOST FUTURE ROYALTIES).

19.9 Payment of Legal Fees.

You agree to pay us all damages, costs and expenses (including reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) that we incur in: (a) obtaining injunctive or other relief for the enforcement of any provisions of this Agreement (including Sections 9, 10 and 14 above); and/or (b) successfully defending a claim from you that we misrepresented the terms of this Agreement, fraudulently induced you to sign this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement (as it may be amended by its terms) do not exclusively govern the parties' relationship.

ARTICLE 20

MISCELLANEOUS

20.1 Notices

(a) Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by expedited delivery service or certified or registered mail, return receipt requested, first class postage prepaid, or sent by overnight delivery service or facsimile to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:

BurgerFi International, LLC
105 US Highway 1
North Palm Beach, Florida 33408
Attention: Legal Department
Email: _____

Notices to Franchisee and Controlling Principals:

Attention: _____
Email: _____

(b) Any notice shall be deemed to have been given at the time of personal delivery or, in the case of facsimile, upon transmission (provided confirmation is sent as described above) or, in the case of expedited delivery service or registered or certified mail, three (3) business days after the date and time of mailing.

(c) We and you recognize that more than one individual may have a legal or equitable ownership interest in you. For this reason, and in order to (i) streamline communications between us; and (ii) protect and insulate us from potential claims from or liability to any owner or principal that may arise as a result of actions or inactions taken by us after having received conflicting advice and/or instructions from one or more owners or principals, the parties appoint _____ as the Designated Spokesperson pursuant to this Section 20.1. The spokesperson shall have full authority to speak on behalf of, as well as bind and commit, you and all Principals and Controlling Principals with respect to all rights, obligations and performance pursuant to this Agreement. The Designated Spokesperson shall not be changed without the prior written consent of both you and us.

(d) The Manuals, any revisions to the Manuals and/or written instructions that we furnish to you relating to operational matters shall not be deemed to be "Notices" for purposes of the delivery requirements of this Section 20.1.

20.2 Entire Agreement

This Agreement, the documents referred to herein, and the Attachments hereto, constitute the entire, full and complete agreement between us and you and the Controlling Principals concerning the subject matter hereof and shall supersede all prior related agreements between us and you and the Controlling Principals; provided, however, that nothing in this or any related agreement is intended to disclaim the representations made by us in the Disclosure Document that was furnished to you by us. Except for those permitted to be made unilaterally by us hereunder, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

20.3 No Waiver

No delay, waiver, omission or forbearance on our part to exercise any right, option, duty or power arising out of any breach or default by you or the Controlling Principals under this Agreement, or any similar agreement with another franchisee, or any breach or default by you, or by any other franchisee, of any of the terms, provisions, or covenants thereof, and no custom or practice by the parties at variance with the terms hereof, shall constitute a waiver by us to enforce any such right, option, duty or power against you or the Controlling Principals, or as to a subsequent breach or default by you or the Controlling Principals. Acceptance by us of any payments due to us hereunder subsequent to the time at which such payments are due shall not be deemed to be a waiver by us of any preceding breach by you or the Controlling Principals of any terms, provisions, covenants or conditions of this Agreement.

20.4 Our Prior Approval

Whenever this Agreement requires our prior approval or consent, you shall make a timely written request to us with all required documentation and information, and such approval or consent shall not be binding until it is obtained in writing.

20.5 No Warranty or Guaranty

We make no warranties or guarantees upon which you may rely and assume no liability or obligation to you or any third party to which we would not otherwise be subject, by providing any waiver, approval, advice, consent or suggestion to you in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefor.

20.6 Continued Obligation to Pay Sums

If a Force Majeure event shall occur, then, in addition to payments required under [Section 17.1\(d\)](#), you shall continue to be obligated to pay to us any and all amounts that you shall have duly become obligated to pay in accordance with the terms of this Agreement prior to the occurrence of any Force Majeure event and the Indemnitees shall continue to be indemnified and held harmless by you in accordance with [Article 15](#). Except as provided in [Section 17.1\(d\)](#) and the immediately preceding sentence herein, none of the parties hereto shall be held liable for a failure to comply with any terms and conditions of this Agreement when such failure is caused by an event of Force Majeure. Upon the occurrence of any event of the type referred to herein, the party affected thereby shall give prompt notice thereof to the other parties, together with a description of the event, the duration for which the party expects its ability to comply with the provisions of the Agreement to be affected thereby and a plan for resuming operation under the Agreement, which the party shall promptly undertake and maintain with due diligence. Such affected party shall be liable for failure to give timely notice only to the extent of damage actually caused.

20.7 Acceptance of Agreement

This Agreement takes effect only if and when we accept and sign this document.

20.8 Execution in Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which when so executed shall be an original, and all of which shall constitute one and the same instrument.

20.9 Captions

The captions used in connection with the sections and subsections of this Agreement are inserted only for purpose of reference. Such captions shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Agreement or any part thereof nor shall such captions otherwise be given any legal effect.

20.10 Survival of Terms

Any obligation of you or the Controlling Principals that contemplates performance of such obligation after termination or expiration of this Agreement or the transfer of any interest of you or the Controlling Principals therein, shall be deemed to survive such termination, expiration or transfer, regardless of whether it is expressly stated herein.

20.11 Severability of Provisions

Except as expressly provided to the contrary herein, each portion, section, part, term and provision of this Agreement shall be considered severable; and if, for any reason, any portion, section, part, term or provision is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, this shall not impair the operation of, or have any other effect upon, the other portions, sections, parts, terms or provisions of this Agreement that may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties; the invalid portions, sections, parts, terms or provisions shall be deemed not to be part of this Agreement; and there shall be automatically added such portion, section, part, term or provision as similar as possible to that which was severed which shall be valid and not contrary to or in conflict with any law or regulation.

20.12 Joint and Several Obligations

All references herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable. Without limiting the obligations individually undertaken by the Controlling Principals under this Agreement, all acknowledgments, promises, covenants, agreements and obligations made or undertaken by you in this Agreement shall be deemed, jointly and severally, undertaken by all of the Controlling Principals.

20.13 Rights and Remedies Cumulative

All rights and remedies of the parties to this Agreement shall be cumulative and not alternative, in addition to and not exclusive of any other rights or remedies which are provided for herein or which may be available at law or in equity in case of any breach, failure or default or threatened breach, failure or default of any term, provision or condition of this Agreement or any other agreement between you or any of your affiliates and us. The rights and remedies of the parties to this Agreement shall be continuing and shall not be exhausted by any one or more uses thereof, and may be exercised at any time or from time to time as often as may be expedient; and any option or election to enforce any such right or remedy may be exercised or taken at any time and from time to time. The expiration, earlier termination or exercise of our rights pursuant to [Article 17](#) of this Agreement shall not discharge or release you or any of the Controlling Principals from any liability or obligation then accrued, or any liability or obligation continuing beyond, or arising out of, the expiration, the earlier termination or the exercise of such rights under this Agreement.

20.14 Terminology

The term “your Principals” shall include, collectively and individually, (1) your spouse, if you are an individual, (2) all officers, directors, managers and general partners (or persons holding comparable positions in non-corporate entities) of you and (3) all officers, directors, managers and general partners (or persons holding comparable positions in non-corporate entities) of any Controlling Principal that itself is an entity, in each case whom we designate as your Principals and all holders of an ownership interest in you and of any entity directly or indirectly controlling you, and any other person or entity controlling, controlled by or under common control with you. As used in this [Section 20.14](#), the terms “control” and “controlling” shall mean the power to influence the management decisions of the specified person and shall in any case be deemed to exist where the second person holds 10% or more of the total ownership interest in the specified person, serves on any board of directors or comparable body of such specified person or acts as an officer, general partner or manager thereof (or holds a comparable position in a non-corporate entity). The initial Principals shall be listed on [Attachment C](#). The term “Controlling Principals” shall include, collectively and individually, any Principal who has been designated by us as a Controlling Principal hereunder. For purposes of this Agreement, a publicly held corporation is a corporation registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or a corporation subject to the requirements of Section 15(d) of such Act.

20.15 References

Each reference in this Agreement to a corporation or partnership shall be deemed to also refer to a limited liability company and any other entity or organization similar thereto. Each reference to the organizational documents, equity owners, directors, and officers of a corporation in this Agreement shall be deemed to refer to the functional equivalents of such organizational documents, equity owners, directors, and officers, as applicable, in the case of a limited liability company or any other entity or organization similar thereto. The parties also agree that unless otherwise indicated: (a) each reference in this Agreement to the term “includes” or “including” is agreed to mean “including but not limited to”; and (b) each reference in this Agreement to a section or article is to a provision of this Agreement.

20.16 No Rights or Remedies Except to the Parties

Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than you, us, our officers, directors, members and employees and such of your and our respective successors and assigns as may be contemplated (and, as to you, authorized by Article 14), any rights or remedies under or as a result of this Agreement.

20.17 Effectiveness of Agreement

This Agreement shall not become effective until signed by an authorized officer of ours.

20.18 Time is of the Essence.

You acknowledge that time is of the essence for all dates and times set forth herein and with respect to all payments to be made by you, and unless explicitly stated to the contrary hereunder, we are not required to send you any notice prior to or after the expiration of such time period and your failure to comply within such timeframes is a default under Section 17.1.

20.19 Modification of the System

(a) You understand and agree that the System must not remain static if it is to meet, without limitation, presently unforeseen changes in technology, competitive circumstances, demographics, populations, consumer trends, societal trends and other marketplace variables, and if it is to best serve the interests of us, you and all other franchisees.

(b) Accordingly, you expressly understand and agree that we may from time to time change the components of the System including, but not limited to, altering the products, programs, services, methods, standards, forms, policies and procedures of that System; abandoning the System altogether in favor of another system in connection with a merger, acquisition, other business combination or for other reasons; adding to, deleting from or modifying those products, programs and services which your Franchised Business is authorized and required to offer; modifying or substituting entirely the building, premises, equipment, signage, trade dress, décor, color schemes and uniform specifications and all other unit construction, design, appearance and operation attributes which you are required to observe hereunder; and changing, improving, modifying, or substituting other words or designs for, the Marks. You expressly agree to comply with any such modifications, changes, additions, deletions, substitutions and alterations; provided, however, that such changes shall not materially and unreasonably increase your obligations hereunder. You shall accept, use and effectuate any such changes or modifications to, or substitution of, the System as if they were part of the System at the time that this Agreement was executed.

(c) You further acknowledge and agree that we may modify the offer of our franchises to other franchisees or its ongoing relationship with other franchisees in any manner and at any time, which offers, agreements and/or modification have or may have terms, conditions, and obligations which may differ from the terms, conditions, and obligations in this Agreement. The existence of different forms of agreement and the fact that existing or future franchisees may have different rights and obligations shall not in any manner eliminate, modify, or affect the duties of the parties to the Agreement to comply with the terms of this Agreement.

(d) We shall not be liable to you for any expenses, losses or damages sustained by you as a result of any of the modifications contemplated hereby. You hereby covenant not to commence or join in any litigation or other proceeding against us or any third party complaining of any such modifications or seeking expenses, losses or damages caused thereby. You expressly waive any claims, demands or damages arising from or related to the foregoing activities including, without limitation, any claim of breach of contract, breach of fiduciary duty, fraud, and/or breach of the implied covenant of good faith and fair dealing.

20.20 Actions Prior to the Execution of this Agreement

You and we understand that it is in both of our interests to ensure that the activities relating to the solicitation, negotiation, and grant of a franchise for a Restaurant have complied with all applicable federal and state franchise pre-sale laws and regulations. To assist in doing so, you and each of your Controlling Principals shall, simultaneously with the execution of this Agreement, truthfully and thoroughly complete the Franchisee Disclosure Acknowledgment Statement ("Acknowledgement") attached as Attachment J to this Agreement. You understand and agree that we shall not execute this Agreement unless the Acknowledgement(s) does not contain responses that might suggest that a violation of any applicable franchise law or regulation has occurred.

IN WITNESS WHEREOF, each party to this Agreement, intending to be legally bound, has caused this Agreement to be executed by its duly authorized representative as of the date first above written.

ATTEST:

Witness

Witness

FRANCHISOR:
BURGERFI INTERNATIONAL, LLC

By: _____

Name: _____

Title: _____

Accepted On _____, 202__
(the "Effective Date")

FRANCHISEE:

By: _____

Name: _____

Title: _____

Date: _____, 202__

EXHIBIT A-1
GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT OF CONTROLLING
PRINCIPALS

(to be separately signed by each Controlling Principal)

In order to induce BurgerFi International LLC (“**Franchisor**”) to sign the _____ Franchise Agreement between Franchisor and _____ (“**Franchisee**”), dated _____, 202____ (the “**Agreement**”), each of the undersigned parties, jointly and severally, hereby unconditionally guarantee to Franchisor and its successors and assigns that all of Franchisee’s obligations (monetary and otherwise) under the Agreement as well as any other contract between Franchisee and Franchisor (and/or Franchisor’s affiliates) will be punctually paid and performed.

Each person signing this Personal Guarantee acknowledges and agrees, jointly and severally, that:

- Upon Franchisor’s demand, s/he will immediately make each payment required of Franchisee under the Agreement and/or any other contract (including another franchise agreement) with Franchisor and/or its affiliates.
- S/he waives any right to require Franchisor to: **(a)** proceed against Franchisee for any payment required under the Agreement (and/or any other contract with Franchisor and/or its affiliates); **(b)** proceed against or exhaust any security from Franchisee; **(c)** pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee; and/or **(d)** give notice of demand for payment by Franchisee.
- Without affecting the obligations of the undersigned persons under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee. Each of the undersigned persons waive notice of amendment of the Agreement (and any other contract with Franchisor and Franchisor’s affiliates) and notice of demand for payment by Franchisee, and agree to be bound by any and all such amendments and changes to the Agreement (and any other contract with Franchisor and Franchisor’s affiliates).
- S/he will defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including reasonable attorneys’ fees, court costs, discovery costs, and all other related expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement (and any other contract with Franchisor and Franchisor’s affiliates) and/or any amendment to the Agreement.
- S/he will be personally bound by all of Franchisee’s covenants, obligations, and promises in the Agreement.
- S/he agrees to be personally bound by all of Franchisee’s covenants, obligations, and promises in the Agreement, which include, but are not limited to, the covenants in the following Sections of the Agreement: **Section 9** (generally regarding trademarks), **Section 10** (generally regarding confidentiality and covenants against competition), **Section 14** (generally regarding Transfers), and **Section 18** (generally regarding obligations upon termination or expiration of this Agreement) of the Agreement.

- S/he understands that: **(a)** this Guarantee does not grant her/him any rights under the Agreement (including but not limited to the right to use any of Franchisor’s marks such as the “BurgerFi” marks) or the system licensed to Franchisee under the Agreement; **(b)** s/he have read, in full, and understands, all of the provisions of the Agreement that are referred to above in this paragraph, and that s/he intends to fully comply with those provisions of the Agreement as if they were printed here in full; and **(c)** s/he have had the opportunity to consult with a lawyer of her/his own choosing in deciding whether to sign this Guarantee.

This Guarantee will be interpreted and construed in accordance with **Section 19** of the Agreement (including but not limited to the waiver of punitive damages, waiver of jury trial, agreement to bring claims within one year and agreement not to engage in class or common actions). Among other things, that means that this Guarantee will be interpreted and construed exclusively under the laws of the State of Florida, and that in the event of any conflict of law, Florida law will prevail (without applying Florida conflict of law rules).

IN WITNESS WHEREOF, each of the undersigned persons has signed this Guarantee as of the date of the Agreement.

| | | |
|---------------------------------------|---------------------------------------|---------------------------------------|
| _____ | _____ | _____ |
| (signed in his/her personal capacity) | (signed in his/her personal capacity) | (signed in his/her personal capacity) |
| Printed | Printed | Printed |
| Name: _____ | Name: _____ | Name: _____ |
| Date: _____ | Date: _____ | Date: _____ |
| Home Address: | Home Address: | Home Address: |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

ATTACHMENT A-2 TO THE FRANCHISE AGREEMENT
ACCEPTED LOCATION AND PROTECTED TERRITORY

1. ACCEPTED LOCATION:

Pursuant to Section 1.2 of the Franchise Agreement, the Restaurant shall be located at the following Accepted Location:

2. PROTECTED TERRITORY:

Pursuant to Section 1.4 of the Franchise Agreement, the Protected Territory shall be:

Initials

_____ **Franchisor**

_____ **Franchisee**

**ATTACHMENT B TO THE FRANCHISE AGREEMENT
CONTINGENT ASSIGNMENT OF LEASE**

FOR VALUE RECEIVED, the undersigned (“Assignor”) assigns, transfers and sets over to BURGERFI International, LLC, a Delaware limited liability company (“Assignee”), all of Assignor’s right and title to and interest in that certain “Lease” a copy of which is attached as Exhibit A respecting premises in the shopping center commonly known as **TBD**. This assignment is for collateral purposes only and except as specified in this document Assignee will have no liability or obligation of any kind whatsoever arising from or in connection with this assignment or the Lease unless and until Assignee takes possession of the premises the Lease demises according to the terms of this document and agrees in writing to assume Assignor’s obligations under the Lease.

Assignor represents and warrants to Assignee that it has full power and authority to assign the Lease and that Assignor has not previously assigned or transferred and is not otherwise obligated to assign or transfer any of its interest in the Lease or the premises it demises.

Upon Assignor’s default under the Lease or under the “Franchise Agreement” for a Restaurant between Assignee and Assignor, or in the event Assignor defaults under any document or instrument securing the Franchise Agreement, Assignee has the right to take possession of the premises the Lease demises and expel Assignor from the premises. In that event, Assignor will have no further right and title to or interest in the Lease or the premises but will remain liable to Assignee for any past due rental payments or other charges Assignee is required to pay Lessor to effectuate the assignment this document contemplates.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without Assignee’s prior written consent. Throughout the term of the Franchise Agreement, Assignor agrees that it will elect and exercise all options to extend the term of or renew the Lease not less than 30 days before the last day upon which the option must be exercised unless Assignee agrees otherwise in writing. Upon Assignee’s failure to agree otherwise in writing and upon Assignor’s failure to elect to extend or renew the Lease as required, Assignor appoints Assignee as its true and lawful attorney-in-fact with the authority to exercise the extension or renewal options in the name, place and stead of Assignor for the sole purpose of effecting the extension or renewal.

ASSIGNEE:
BURGERFI INTERNATIONAL, LLC

ASSIGNOR:

By: _____
Name:
Title:

By: _____
Name:
Title:

CONSENT TO CONTINGENT ASSIGNMENT AND AGREEMENT OF LANDLORD

(a) Agrees to notify Assignee in writing of and upon Assignor's failure to cure any default by Assignor under the Lease via mail at BURGERFI International, LLC, 105 US Highway 1, North Palm Beach, Florida 33408, attention Legal Department, and email to _____;

(b) Agrees that Assignee will have the right, but not the obligation, to cure any default by Assignor under the Lease within thirty (30) days after Landlord's delivery of notice of the default under section (a) above;

(c) Consents to the Contingent Assignment and the terms therein and agrees that if Assignee takes possession of the Premises and confirms to Landlord that it has assumed the Lease as tenant, Landlord will recognize Assignee as Tenant under the Lease;

(d) Agrees that Landlord will not terminate the Lease or displace Tenant's possession of the Premises unless and until Assignee has received the notice provided in section (a) above and has failed to either cure the default or assume the Lease within the timeframe provided in section (b) above; and

(e) Agrees that if Assignee assumes the Lease, Assignee may further assign the Lease to a third party who agrees to assume the tenant's obligations under the Lease, is reasonably acceptable to Landlord, and that upon that assignment Assignee will have no further liability or obligation under the Lease as assignee, tenant or otherwise.

LANDLORD:

By: _____

Name:

Title:

Date: _____

Property Address: _____

ATTACHMENT C TO THE FRANCHISE AGREEMENT

STATEMENT OF OWNERSHIP INTERESTS AND FRANCHISEE'S PRINCIPALS

A. The following is a list of all shareholders, members, partners or other investors in Franchisee, including all investors who own or hold a direct or indirect interest in Franchisee, and a description of the nature of their interest:

| Name | Percentage of Ownership/Nature of Interest |
|------|--|
|------|--|

B. In addition to the persons listed in paragraph A, the following is a list of all of Franchisee's Principals described in and designated pursuant to Section 20.14 of the Franchise Agreement. Unless designated as a Controlling Principal, each of Franchisee's Principals shall execute the Confidentiality and Non-Competition Agreement substantially in the form set forth in Attachment D (see Sections 10.2(b) and 10.3(f) of the Franchise Agreement):

Initials

| Franchisor | Franchisee |
|------------|------------|
|------------|------------|

ATTACHMENT D TO THE FRANCHISE AGREEMENT

**CONFIDENTIALITY AND NON-COMPETITION AGREEMENT
(for trained managers, shareholders, officers, directors,
general partners, members and managers of Franchisee)**

In consideration of being (or working in a management position for) a BurgerFi Franchisee, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby acknowledge and agree that:

1. Pursuant to a Franchise Agreement dated _____, 2020 (the "Franchise Agreement"), Franchisee has acquired the right and franchise from BURGERFI International, LLC (the "Company") to establish and operate a BURGERFI Restaurant (the "Franchised Business") and the right to use in the operation of the Franchised Business the Company's trade names, service marks, trademarks, logos, emblems, and indicia of origin (the "Marks"), as they may be changed, improved and further developed from time to time in the Company's sole discretion, only at the following authorized and Accepted Location: _____ (the "Accepted Location").

2. The Company, as the result of the expenditure of time, skill, effort and resources has developed and owns a distinctive format and system (the "System") relating to the establishment and operation of Franchised Businesses featuring all-natural Angus burgers, craft beers, wine and frozen custard products. The Company possesses certain proprietary and confidential information relating to the operation of the System, which includes certain proprietary trade secrets, recipes, methods, techniques, formats, specifications, systems, procedures, methods of business practices and management, sales and promotional techniques and knowledge of, and experience in, the operation of the Franchised Business (the "Confidential Information").

3. Any and all information, knowledge, know-how, and techniques which the Company specifically designates as confidential shall be deemed to be Confidential Information for purposes of this Agreement.

4. As a BurgerFi Franchisee, the Company and Franchisee will disclose the Confidential Information to me in furnishing to me training programs, the Company's Confidential Operations Manuals (the "Manuals"), and other general assistance during the term of the Franchise Agreement.

5. I will not acquire any interest in the Confidential Information, other than the right to utilize it in the operation of the Franchised Business during the term of the Franchise Agreement, and acknowledge that the use or duplication of the Confidential Information for any use outside the System would constitute an unfair method of competition.

6. The Confidential Information is proprietary, involves trade secrets of the Company, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I shall hold in strict confidence all Confidential Information and all other information designated by the Company as confidential. Unless the Company otherwise agrees in writing, I will disclose and/or use the Confidential Information only in connection with my duties as a BurgerFi Franchisee, and will continue not to disclose any such information even after I cease to be in that position and will not use any such information even after I cease to be in that position unless I can demonstrate that such information has become generally known or easily accessible other than by the breach of an obligation of Franchisee under the Franchise Agreement.

7. Except as otherwise approved in writing by the Company, I shall not, while in my position with the Franchisee, either directly or indirectly for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, operate, engage in, act as a consultant for, perform services for, or have any interest in any food service business which: (a) is the same as, or substantially similar to, a Franchised Business; or (b) offers to sell or sells any products or services which are the same as, or substantially similar to, any of the products offered by a Franchised Business (a "Competitive Business"); and for a continuous uninterrupted period commencing upon the cessation or termination of my position with Franchisee, regardless of the cause for termination, or upon the expiration, termination, transfer, or assignment of the Franchise Agreement, whichever occurs first, and continuing for two (2) years thereafter, either directly or indirectly, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, operate, engage in, act as a consultant for, perform services for, or have any interest in any Competitive Business that is, or is intended to be, located at or within: (i) the Protected Territory; (ii) ten (10) miles of the Protected Territory; and/or (iii) ten (10) miles of any other "BurgerFi" restaurant under the System (regardless of whether that restaurant is opened and operating, under construction, or we or a franchisee has committed to develop a Restaurant in that location).

The prohibitions in this Paragraph 7 do not apply to my interests in or activities performed in connection with a Franchised Business. This restriction does not apply to my ownership of less than 5% beneficial interest in the outstanding securities of any publicly held corporation.

8. I agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which the Company is a party, I expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

9. I understand and acknowledge that the Company shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without my consent, effective immediately upon receipt by me of written notice thereof; and I agree to comply forthwith with any covenant as so modified.

10. The Company is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement will cause the Company and the Franchisee irreparable harm; therefore, I acknowledge and agree that the Franchisee and/or the Company may apply for the issuance of an injunction preventing me from violating this Agreement, and I agree to pay the Franchisee and the Company all the costs it/they incur(s), including, without limitation, legal fees and expenses, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisee and the Company, any claim I have against the Franchisee or the Company is a separate matter and does not entitle me to violate, or justify any violation of this Agreement.

10. I understand that I am employed by only the Franchisee, and that I do not work for (and that I am not employed by) BurgerFi International LLC.

11. This Agreement shall be construed under the laws of the State of Florida. The only way this Agreement can be changed is in writing signed by both the Franchisee and me.

Address _____

ATTACHMENT E TO THE FRANCHISE AGREEMENT

ELECTRONIC TRANSFER AUTHORIZATION

AUTHORIZATION TO HONOR CHARGES DRAWN BY AND
PAYABLE TO BURGERFI INTERNATIONAL, LLC ("COMPANY")

Depositor hereby authorizes and requests _____ (the "Depository") to initiate debit and credit entries to Depositor's checking or savings account (select one) indicated below drawn by and payable to the order of BurgerFi International, LLC by Electronic Funds Transfer, provided there are sufficient funds in said account to pay the amount upon presentation.

Depositor agrees that the Depository's rights with respect to each such charge shall be the same as if it were a check drawn by the Depository and signed by Depositor. Depositor further agrees that if any such charge is dishonored, whether with or without cause and whether intentionally or inadvertently, the Depository shall be under no liability whatsoever.

Depository Name: _____

City: _____ State: _____ Zip Code: _____

Transit/ABA Number: _____ Account Number: _____

This authority is to remain in full force and effect until Company has received written notification from me (or either of us) of its termination in such time and in such manner to afford Company and Depository a responsible opportunity to act on such request.

Depositor: (Please Print)

Date Signed

Signature(s) of Depositor, as Printed Above

Please attach a voided blank check, for purposes of setting up Bank and Transit Numbers.

ATTACHMENT F TO THE FRANCHISE AGREEMENT

INTERNET WEB SITES AND TELEPHONE NUMBERS AGREEMENT

This **INTERNET WEB SITES AND TELEPHONE NUMBERS AGREEMENT** (the "Agreement") is made and entered into as of the ___ day of _____, 2020 (the "Effective Date"), by and between **BURGERFI INTERNATIONAL, LLC**, a Delaware limited liability company (the "Franchisor") and _____, a _____ (the "Franchisee").

W I T N E S S E T H:

WHEREAS, Franchisee desires to enter into a Franchise Agreement with Franchisor for the operation of a "BURGERFI" Restaurant (the "Franchise Agreement"); and

WHEREAS, Franchisor would not enter into the Franchise Agreement without Franchisee's agreement to enter into, comply with, and be bound by all the terms and provisions of this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing and the mutual promises and covenants contained herein, and in further consideration of the Franchise Agreement and the mutual promises and covenants contained therein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS

All terms used but not otherwise defined in this Agreement shall have the meanings set forth in the Franchise Agreement. "Termination" of the Franchise Agreement shall include, but shall not be limited to, the voluntary termination, involuntary termination, or natural expiration thereof.

2. TRANSFER; APPOINTMENT

2.1 Interest in Telephone Numbers and Internet Web Sites. Franchisee may acquire during the term of the Franchise Agreement, certain right, title, and interest in and to certain telephone numbers, and regular, classified, yellow-page, and other telephone directory listings (collectively, the "Telephone Numbers and Listings") and certain domain names, hypertext markup language, uniform resource locator addresses, and access to corresponding Internet web sites, and the right to hyperlink to certain web sites and listings on various Internet search engines (collectively, the "Internet Web Sites and Listings") related to the Restaurant or the Marks (all of which right, title, and interest is referred to herein as "Franchisee's Interest").

2.2 Transfer. On Termination of the Franchise Agreement, or on periodic request of Franchisor, Franchisee will immediately direct all telephone companies, telephone directory publishers, and telephone directory listing agencies (collectively, the "Telephone Companies") and all Internet Service Providers, domain name registries, Internet search engines, and other listing agencies (collectively, the "Internet Companies") with which Franchisee has Telephone Numbers and Listings and Internet Web Sites and Listings: (i) to transfer all of Franchisee's Interest in such Telephone Numbers and Listings and Internet Web Sites and Listings to Franchisor; and (ii) to execute such documents and take such actions as may be necessary to effectuate such transfer. In the event Franchisor does not desire to accept any or all such Telephone Numbers and Listings and Internet Web Sites and Listings, Franchisee will immediately direct the Telephone Companies and Internet Companies to terminate such Telephone Numbers and Listings and Internet Web Sites and Listings or will take such other actions with respect to the Telephone Numbers and Listings and Internet Web Sites and Listings as Franchisor directs.

2.3 Appointment; Power of Attorney. Franchisee hereby constitutes and appoints Franchisor and any officer or agent of Franchisor, for Franchisor's benefit under the Franchise Agreement and this Agreement or otherwise, with full power of substitution, as Franchisee's true and lawful attorney-in-fact with full power and authority in Franchisee's place and stead, and in Franchisee's name or the name of any affiliated person or affiliated company of Franchisee, to take any and all appropriate action and to execute and deliver any and all documents that may be necessary or desirable to accomplish the purposes of this Agreement. Franchisee further agrees that this appointment constitutes a power coupled with an interest and is irrevocable until Franchisee has satisfied all of its obligations under the Franchise Agreement and any and all other agreements to which Franchisee and any of its affiliates on the one hand, and Franchisor and any of its affiliates on the other, are parties, including, without limitation this Agreement. Without limiting the generality of the foregoing, Franchisee hereby grants to Franchisor the power and right to do the following:

(i) Direct the Telephone Companies and Internet Companies to transfer all Franchisee's Interest in and to the Telephone Numbers and Listings and Internet Web Sites and Listings to Franchisor;

(ii) Direct the Telephone Companies and Internet Companies to terminate any or all of the Telephone Numbers and Listings and Internet Web Sites and Listings; and

(iii) Execute the Telephone Companies' and Internet Companies' standard assignment forms or other documents in order to affect such transfer or termination of Franchisee's Interest.

2.4 Certification of Termination. Franchisee hereby directs the Telephone Companies and Internet Companies to accept, as conclusive proof of Termination of the Franchise Agreement, Franchisor's written statement, signed by an officer or agent of Franchisor that the Franchise Agreement has terminated.

2.5 Cessation of Obligations. After the Telephone Companies and Internet Companies have duly transferred all Franchisee's Interest in such Telephone Numbers and Listings and Internet Web Sites and Listings to Franchisor, as between Franchisee and Franchisor, Franchisee will have no further interest in, or obligations under, such Telephone Numbers and Listings and Internet Web Sites and Listings. Notwithstanding the foregoing, Franchisee will remain liable to each and all of the Telephone Companies and Internet Companies for the sums Franchisee is obligated to pay such Telephone Companies and Internet Companies for obligations Franchisee incurred before the date Franchisor duly accepted the transfer of such interest, or for any other obligations not subject to the Franchise Agreement or this Agreement.

3. MISCELLANEOUS

3.1 Release. Franchisee hereby releases, remises, acquits, and forever discharges each and all of the Telephone and Internet Companies and each and all of their parent corporations, subsidiaries, affiliates, directors, officers, stockholders, employees, and agents, and the successors and assigns of any of them, from any and all rights, demands, claims, damage, losses, costs, expenses, actions, and causes of action whatsoever, whether in tort or in contract, at law or in equity, known or unknown, contingent or fixed, suspected or unsuspected, arising out of, asserted in, assertable in, or in any way related to this Agreement.

3.2 Indemnification. Franchisee is solely responsible for all costs and expenses related to its performance, nonperformance, and Franchisor's enforcement of this Agreement, which costs and expenses Franchisee will pay Franchisor in full, without defense or setoff, on demand. Franchisee will indemnify, defend, and hold harmless Franchisor and its affiliates, and its and their directors, officers, shareholders, partners, members, employees, agents, and attorneys, and the successors and assigns of any and all of them, from and against, and will reimburse Franchisor and any and all of them for, any and all loss, losses, damage, damages, claims, debts, claims, demands, or obligations that are related to or are based on this Agreement.

3.3 No Duty. The powers conferred on Franchisor hereunder are solely to protect Franchisor's interests and shall not impose any duty on Franchisor to exercise any such powers. Franchisee expressly agrees that in no event shall Franchisor be obligated to accept the transfer of any or all of Franchisee's Interest in any or all such Telephone Numbers and/or Internet Web Sites and Listings.

3.4 Further Assurances. Franchisee agrees that at any time after the date hereof, Franchisee will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the purposes of this Agreement.

3.5 Successors, Assigns, and Affiliates. All Franchisor's rights and powers, and all Franchisee's obligations, under this Agreement shall be binding on Franchisee's successors, assigns, and affiliated persons or entities as if they had duly executed this Agreement.

3.6 Effect on Other Agreements. Except as otherwise provided in this Agreement, all provisions of the Franchise Agreement and exhibits and schedules thereto shall remain in effect as set forth therein.

3.7 Survival. This Agreement shall survive the Termination of the Franchise Agreement.

3.8 Joint and Several Obligations. All Franchisee's obligations under this Agreement shall be joint and several.

3.9 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida, without regard to the application of Florida conflict of law rules.

IN WITNESS WHEREOF, the undersigned have executed or caused their duly authorized representatives to execute this Agreement as of the Effective Date.

FRANCHISOR
BURGERFI INTERNATIONAL, LLC

FRANCHISEE:

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTACHMENT G TO THE FRANCHISE AGREEMENT

POWER OF ATTORNEY (TAX)

IRREVOCABLE POWER OF ATTORNEY

STATE OF)
COUNTY OF)

KNOW ALL MEN BY THESE PRESENTS

That _____, a _____ ("Franchisee"), do hereby irrevocably constitute and appoint BURGERFI INTERNATIONAL, LLC, a Delaware limited liability company ("Franchisor"), true and lawful attorney-in-fact and agent for Franchisee and in Franchisee's name, place and stead to do or cause to be done all things and to sign, execute, acknowledge, certify, deliver, accept, record and file all such agreements, certificates, instruments and documents as, in the sole discretion of Franchisor, shall be necessary or advisable for the sole purpose of obtaining any and all returns, records, reports and other documentation relating to the payment of taxes filed by Franchisee with any state and/or federal taxing authority, including, but not limited to, the State Comptroller of the State of Florida, hereby granting unto Franchisor full power and authority to do and perform any and all acts and things which, in the sole discretion of Franchisor, are necessary or advisable to be done as fully to all intents and purposes as Franchisee might or could itself do, hereby ratifying and confirming all that Franchisor may lawfully do or cause to be done by virtue of this Power of Attorney and the powers herein granted.

During the term of this Power of Attorney, and regardless of whether Franchisee has designated any other person to act as its attorney-in-fact and agent, no governmental agency, person, firm or corporation dealing with Franchisor, if acting in good faith, shall be required to ascertain the authority of Franchisor, nor to see to the performance of the agency, nor be responsible in any way for the proper application of documents delivered or funds or property paid or delivered to Franchisor. Any governmental agency, person, firm or corporation dealing with Franchisor shall be fully protected in acting and relying on a certificate of Franchisor that this Power of Attorney on the date of such certificate has not been revoked and is in full force and effect, and Franchisee shall not take any action against any person, firm, corporation or agency acting in reliance on such a certificate or a copy of this Power of Attorney. Any instrument or document executed on behalf of Franchisee by Franchisor shall be deemed to include such a certificate on the part of Franchisor, whether or not expressed. This paragraph shall survive any termination of this Power of Attorney.

This Power of Attorney shall terminate 2 years following the expiration or termination of that certain Franchise Agreement dated as of _____, 2020 by and between Franchisor and Franchisee. Such termination, however, shall not affect the validity of any act or deed that Franchisor may have effected prior to such date pursuant to the powers herein granted.

This instrument is to be construed and interpreted as an irrevocable power of attorney coupled with an interest. It is executed and delivered in the State of Florida and the laws of the State of Florida shall govern all questions as to the validity of this Power of Attorney and the construction of its provisions.

ATTACHMENT H TO THE FRANCHISE AGREEMENT

TRANSFER OF A FRANCHISE TO A CORPORATION OR LIMITED LIABILITY COMPANY

This Transfer Agreement shall amend that certain Franchise Agreement between _____ (“Franchisee”), and BURGERFI International, LLC (“Franchisor”).

The undersigned, an Officer, Director and Owner of a majority of the issued and outstanding voting stock of the Corporation set forth below, or Members of the issued and outstanding Interests of the Limited Liability Company set forth below, and the Franchisee of the Restaurant under a Franchise Agreement executed on the date set forth below, between himself or herself and Franchisor, granting him/her a franchise to operate at the location set forth below, and the other undersigned Directors, Officers and Shareholders of the Corporation, or the Members of the Limited Liability Company, who together with Franchisee constitute all of the Shareholders of the Corporation, or the Members of the Limited Liability Company, in order to induce Franchisor to consent to the assignment of the Franchise Agreement to the Corporation or Limited Liability Company in accordance with the provisions of Article 14 of the Franchise Agreement, agree as follows:

1. The undersigned Franchisee shall remain personally liable in all respects under the Franchise Agreement and all the other undersigned Officers, Directors and Shareholders of the Corporation, or the Members of the Limited Liability Company, intending to be legally bound hereby, agree jointly and severally to be personally bound by the provisions of the Franchise Agreement including the restrictive covenants contained in Article 10 thereof, to the same extent as if each of them were the Franchisee set forth in the Franchise Agreement and they jointly and severally personally guarantee all of the Franchisee’s obligations set forth in said Agreement.

2. The undersigned agree not to transfer any stock in the Corporation, or any interest in the Limited Liability Company without the prior written approval of the Franchisor and agree that all stock certificates representing shares in the Corporation, or all certificates representing interests in the Limited Liability Company shall bear the following legend:

“The shares of stock represented by this certificate are subject to the terms and conditions set forth in a Franchise Agreement dated _____, 202____ between and BURGERFI International, LLC”

or

“The ownership interests represented by this certificate are subject to the terms and conditions set forth in a Franchise Agreement dated _____, 202____ between and BURGERFI International, LLC”

3. _____ or his designee shall devote his best efforts to the day-to-day operation and development of the Restaurant.

4. _____ hereby agrees to become a party to and to be bound by all of the provisions of the Franchise Agreement executed on the date set forth below between Franchisee and Franchisor, to the same extent as if it were named as the Franchisee therein.

Date of Franchise Agreement: _____

Location of Restaurant: _____

WITNESS:

ATTEST:

In consideration of the execution of the above Agreement, BURGERFI International, LLC hereby consents to the above referred to assignment on this ____ day of _____, 20__.

As to Paragraph 3:

[Name]

As to Paragraph 4:

[Name]

Name of Corp. or Limited Liability Company

By: _____

Title: _____

BURGERFI INTERNATIONAL, LLC

By: _____

Name: _____

Title: _____

ATTACHMENT I TO THE FRANCHISE AGREEMENT

**FRANCHISEE DISCLOSURE ACKNOWLEDGMENT STATEMENT
(to be separately completed by each Controlling Principal)**

As you know, BURGERFI INTERNATIONAL, LLC (the "Franchisor") and you are preparing to enter into a franchise agreement (the "Franchise Agreement") for the establishment and operation of a BURGERFI Restaurant Business (the "Franchised Business"). The purpose of this Acknowledgment is to determine whether any statements or promises were made to you by employees or authorized representatives of the Franchisor, or by employees or authorized representatives of a broker acting on behalf of the Franchisor ("Broker") that have not been authorized, or that were not disclosed in the Disclosure Document or that may be untrue, inaccurate or misleading. The Franchisor, through the use of this document, desires to ascertain (a) that the undersigned, individually and as a representative of any legal entity established to acquire the franchise rights, fully understands and comprehends that the purchase of a franchise is a business decision, complete with its associated risks, and (b) that you are not relying upon any oral statement, representations, promises or assurances during the negotiations for the purchase of the franchise which have not been authorized by Franchisor.

In the event that you are intending to purchase an existing Franchised Business from an existing Franchisee, you may have received information from the transferring Franchisee, who is not an employee or representative of the Franchisor. The questions below do not apply to any communications that you had with the transferring Franchisee. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. Are you seeking to enter into the Franchise Agreement in connection with a purchase or transfer of an existing Franchised Business from an existing Franchisee?

Yes _____ No _____

2. I had my first face-to-face meeting with a Franchisor representative on _____, 20__.

3. Have you received and personally reviewed the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes _____ No _____

4. Do you understand that you must obtain a license to sell beer and wine in order to open and operate a BURGERFI restaurant?

Yes _____ No _____

5. Do you understand all of the information contained in the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes _____ No _____

If no, what parts of the Franchise Agreement, any Addendum, and/or related agreement do you not understand? (Attach additional pages, if necessary.)

6. Have you received and personally reviewed the Franchisor's Disclosure Document that was provided to you?

Yes _____ No _____

7. Did you sign a receipt for the Disclosure Document indicating the date you received it?

Yes _____ No _____

8. Do you understand all of the information contained in the Disclosure Document and any state-specific Addendum to the Disclosure Document?

Yes _____ No _____

If No, what parts of the Disclosure Document and/or Addendum do you not understand? (Attach additional pages, if necessary.)

9. Have you discussed the benefits and risks of establishing and operating a Franchised Business with an attorney, accountant, or other professional advisor?

Yes _____ No _____

If No, do you wish to have more time to do so?

Yes _____ No _____

10. Do you understand that the success or failure of your Franchised Business will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, location, lease terms, your management capabilities and other economic, and business factors?

Yes _____ No _____

11. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the actual or potential revenues, profits or operating costs of any particular Franchised Business operated by the Franchisor or its franchisees (or of any group of such businesses), that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

12. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise regarding the amount of money you may earn in operating the franchised business that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

13. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the total amount of revenue the Franchised Business will generate, that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

14. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise regarding the costs you may incur in operating the Franchised Business that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

15. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Franchised Business?

Yes _____ No _____

16. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to you that is contrary to, or different from, the information contained in the Disclosure Document or franchise agreement?

Yes _____ No _____

17. Did you enter into this agreement in reliance upon anyone's statement or promise concerning the amount of money you may earn in operating the franchised business that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

18. Have you entered into any binding agreement with the Franchisor concerning the purchase of the specific franchise referenced in the Franchise Agreement prior to today?

Yes _____ No _____

19. Have you paid any money to the Franchisor concerning the purchase of the specific franchise referenced in the Franchise Agreement prior to the expiration of 14 calendar days since you received the Franchise Disclosure Document?

Yes _____ No _____

20. Have you spoken to any other franchisee(s) of this system before deciding to purchase this franchise? If so, who?

If you have answered No to question 10, or Yes to any one of questions 11-19, please provide a full explanation of each answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below.) If you have answered Yes to question 10, and No to each of questions 11-19, please leave the following lines blank.

I signed the Franchise Agreement and Addendum (if any) on _____, 2020, and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor.

Please understand that your responses to these questions are important to us and that we will rely on them. By signing this Acknowledgment, you are representing that you have responded truthfully to the above questions. In addition, by signing this Acknowledgment, you also acknowledge that:

A. You recognize and understand that business risks, which exist in connection with the purchase of any business, make the success or failure of the franchise subject to many variables, including among other things, your skills and abilities, the hours worked by you, competition, interest rates, the economy, inflation, franchise location, operation costs, lease terms and costs and the marketplace. You hereby acknowledge your awareness of and willingness to undertake these business risks.

B. You agree and state that the decision to enter into this business risk is in no manner predicated upon any oral representation, assurances, warranties, guarantees or promises made by Franchisor or any of its officers, employees or agents (including the Broker or any other broker) as to the likelihood of success of the franchise. Except as contained in the Disclosure Document, you acknowledge that you have not received any information from the Franchisor or any of its officers, employees or agents (including the Broker or any other broker) concerning actual, projected or forecasted franchise sales, profits or earnings. If you believe that you have received any information concerning actual, average, projected or forecasted franchise sales, profits or earnings other than those contained in the Disclosure Document, please describe those in the space provided below or write "None".

C. You further acknowledge that the President of the United States of America has issued Executive Order 13224 (the "Executive Order") prohibiting transactions with terrorists and terrorist organizations and that the United States government has adopted, and in the future may adopt, other anti-terrorism measures (the "Anti-Terrorism Measures"). The Franchisor therefore requires certain certifications that the parties with whom it deals are not directly involved in terrorism. For that reason, you hereby certify that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, is:

- (i) a person or entity listed in the Annex to the Executive Order;
- (ii) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism;
- (iii) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or
- (iv) owned or controlled by terrorists or sponsors of terrorism.

You further covenant that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, will during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

Acknowledged this ____ day of _____, 2020.

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this “**Agreement**”), dated as of December 16, 2020, between **BurgerFi International, Inc.** (the “**Company**”) and **Ophir Sternberg** (“**Executive**,” together with the Company, the “**Parties**” and, each, a “**Party**”).

WHEREAS, the Company desires to employ Executive, and Executive desires to accept such employment, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, on the basis of the foregoing premises and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Employment; Title; Duties and Location. The Company hereby agrees to employ Executive, and Executive hereby accepts employment with the Company, on the terms and subject to the conditions set forth herein. During the Employment Period (as defined in Section 2 below), Executive shall serve the Company as Executive Chairman of the Board of Directors and shall report exclusively and directly to the Board of Directors. Executive shall perform the duties consistent with Executive’s title and position and such other duties commensurate with such position and title as shall be specified or designated by the Company from time to time. Subject to Executive’s appointment thereto, and without additional compensation, Executive shall hold such other or additional titles and serve, during the Employment Period, in such other or additional capacities to which Executive may be appointed from time to time in the Company and its affiliated companies, provided such titles and additional capacities are consistent with Executive’s above-stated position and duties. Executive may be requested, at the Company’s expense, to reasonably travel in connection with the performance of Executive’s duties.

2. Term. Executive’s employment hereunder shall commence on the date hereof (the “**Commencement Date**”) and shall continue for a five-year period thereafter (the “**Initial Term**”), subject to earlier termination exclusively as provided for in Section 6 below, and subject to extension as provided in the following sentence. Following the Initial Term, provided Executive’s employment has not previously been terminated, Executive’s employment hereunder shall automatically be extended for successive, additional five-year periods (each a “**Renewal Term**”), subject to earlier termination exclusively as provided for in Section 6 below. For the purposes of this Agreement, the “**Term**” at any given time shall mean the Initial Term as it may have been extended by one or more Renewal Terms as of such time (without regard to whether Executive’s employment is terminated prior to the end of such Term), and the “**Employment Period**” means the period of Executive’s employment hereunder (regardless of whether such period ends prior to the end of the Term and regardless of the reason for Executive’s termination of employment hereunder).

3. Compensation. During the Employment Period only (unless otherwise expressly provided for herein), Executive shall be entitled to the following compensation and benefits.

3.1 Salary. Executive shall not receive a base salary.

3.2 Restricted Stock. Executive will have the ability to earn up to 250,000 shares of Company's common stock in restricted stock grants through the Company's Omnibus Incentive Plan (collectively, the "**Restricted Stock Grants**"), as adjusted to the extent the number of shares of the Company's common stock adjusts as a result of any splits, recapitalizations, combinations or other similar transactions affecting the Company's common stock prior to termination or exercise without a corresponding increase in the value of the Company (for the avoidance of doubt, adjustments are not meant to protect against anti-dilution that would occur upon the issuance of additional shares of Company capital stock whether by reason of grants of equity compensation to third parties or as a result of the sale of additional shares of capital stock). Such Restricted Stock Grants shall be earned by Executive in equal amounts (i.e., 20% or 50,000 Restricted Stock Grants) on January 1, 2021 and on January 1 for each of the ensuing four years of employment with the Company, subject to the terms and conditions of the Restricted Stock Grant Agreement annexed hereto as Exhibit A.

3.3 Incentive Restricted Stock. Executive shall be eligible to receive up to an additional 700,000 shares of Company common stock in restricted stock grants ("**Incentive Restricted Stock Grants**"), as adjusted to the extent the number of shares of the Company's common stock adjusts as a result of any splits, recapitalizations, combinations or other similar transactions affecting the Company's common stock prior to termination or exercise without a corresponding increase in the value of the Company (for the avoidance of doubt, adjustments are not meant to protect against anti-dilution that would occur upon the issuance of additional shares of Company capital stock whether by reason of grants of equity compensation to third parties or as a result of the sale of additional shares of capital stock), upon achievement by the Company of the following benchmarks: (i) 20%, or 140,000 Incentive Restricted Stock Grants, if Company Revenue for fiscal year 2021 is 10% or greater than Company Revenue for fiscal year 2020 (the "**Base Year Revenue**"); (ii) 20%, or 140,000 Incentive Restricted Stock Grants, if Company Revenue for fiscal year 2022 is 20% or greater than Base Year Revenue; (iii) 20%, or 140,000 Incentive Restricted Stock Grants, if Company Revenue for fiscal year 2023 is 30% or greater than Base Year Revenue; (iv) 20%, or 140,000 Incentive Restricted Stock Grants, if Company Revenue for fiscal year 2024 is 40% or greater than Base Year Revenue; (v) 20%, or 140,000 Incentive Restricted Stock Grants, if Company Revenue for fiscal year 2025 is 50% or greater than Base Year Revenue. These Incentive Restricted Stock Grants shall not be sold, transferred, or conveyed for a 12-month period following the date upon which they are earned (each, an "**Earning Date**"), subject to the terms and conditions of the Restricted Stock Purchase Agreement. If there is a Change of Control during the term of Employment all unearned Restricted Stock Grants and Incentive Restricted Stock Grants shall be deemed to have been earned immediately prior to the Change of Control. A "Change of Control" means the sale of all or substantially all the assets of Company; any merger, consolidation, or acquisition of Company with, by or into another corporation, entity, or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of Company in one or more related transactions.

3.4 Benefits. Executive shall not participate in any employee benefit plans, except as set forth in this Agreement.

3.5 Vacation and Other Paid Time Off. Executive shall not be entitled to paid vacation, or sick days or any other paid time off.

3.6 Appointment to the Board of Directors. The Company and the Board of Directors shall support, advocate and vote Executive to the Board of Directors during the Term.

4. Best Efforts. During the Employment Period, Executive shall (i) in all respects conform to and comply with the lawful directions and instructions given to Executive by the Board of Directors; (ii) devote such of Executive's business time, energy and skill to Executive's services under this Agreement as Executive deems necessary and reasonable; (iii) use Executive's best efforts to promote and serve the interests of the Company and to perform Executive's duties and obligations hereunder in a diligent, trustworthy, businesslike, efficient and lawful manner; (iv) comply with all applicable laws and regulations, as well as the policies and practices established by the Company from time to time and made applicable to its employees generally or senior executives; and (v) not engage in any activity that, directly or indirectly, impairs or conflicts with the performance of Executive's obligations and duties to the Company, or creates a potential business or fiduciary conflict with the Company, as reasonably determined by the Company.

5. Reimbursement for Expenses. Executive is authorized to incur reasonable expenses in the discharge of the services to be performed hereunder in accordance with the Company's expense reimbursement policies, as the same may be modified by the Company from time to time in its sole and complete discretion (the "**Reimbursement Policies**"). Subject to the provisions of Section 15.2 below (Section 409A Compliance), the Company shall reimburse Executive for all such proper expenses upon presentation by Executive of itemized accounts of such expenditures in accordance with the terms of the Reimbursement Policies.

6. Termination.

6.1 Death. Executive's employment shall immediately and automatically be terminated upon Executive's death.

6.2 Disability. The Company may, subject to applicable law, terminate Executive's employment due to a Disability by providing written notice of such termination and its effective date to Executive. For purposes of this Agreement, "**Disability**" means a "disability" that Executive shall have been unable, due to physical or mental incapacity, to substantially perform Executive's duties and responsibilities hereunder for 120 days out of any 365 day period or for 60 consecutive days. In the event of any question as to the existence, extent or potentiality of Executive's Disability upon which the Company and Executive cannot agree, such question shall be resolved by a qualified, independent physician mutually agreed to by the Company and Executive, the cost of such examination to be paid by the Company. If the Company and Executive are unable to agree on the selection of such an independent physician, each shall appoint a physician and those two physicians shall select a third physician who shall make the determination of whether Executive has a Disability. The written medical opinion of such physician shall be conclusive and binding upon each of the Parties as to whether a Disability exists and the date when such Disability arose. This section shall be interpreted and applied so as to comply with the provisions of the Americans with Disabilities Act (to the extent applicable) and any applicable state or local laws. Until such termination, Executive shall continue to receive his compensation and benefits hereunder, reduced by any benefits payable to him under any Company-provided disability insurance policy or plan applicable to him.

6.3 For Cause by the Company. The Company may terminate Executive's employment for Cause, at any time, upon written notice reasonably describing the nature of such Cause. For purposes of this Agreement, the term "**Cause**" means (i) a conviction of Executive, or a plea of nolo contendere, to a felony or any crime involving moral turpitude; (ii)(A) willful misconduct or (B) gross negligence by Executive resulting, in either case, in material economic harm to the Company or any Related Entity; (iii) a willful continued failure by Executive to carry out the reasonable and lawful directions of the Board of the Company; (iv) fraud, embezzlement or theft by Executive against the Company or any Related Entity; (v) a willful material violation by Executive of a written policy or procedure of the Company to which Executive was provided notice of, resulting, in any case, in material economic harm to the Company or any Related Entity; (vi) a willful material breach by Executive of this Agreement or a material misrepresentation made here-under; (vii) material violation of any federal securities law, rule or regulation or the rule of any securities self-regulatory organization; or (viii) becoming a statutorily disqualified person, as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended.

For purposes of this Agreement, Cause shall not be deemed to exist (1) unless, following the initial existence of one of the conditions specified in clauses (ii)(A), (iii), (v) or (vi) above, the Company provides Executive with written notice of the existence of such condition reasonably detailing such grounds giving rise to Cause, and Executive fails to cure such grounds for Cause or remedy the condition to the reasonable satisfaction of the Company within ten (10) days after Executive's receipt of such notice, if reasonably curable within ten (10) days, or, if not, then within such time as is reasonable under the circumstances, which in no event shall exceed thirty (30) calendar days and (2) pursuant to (iv) above in the event of theft of property of a nominal value so long as Executive remedies the condition, within ten (10) days after Executive's receipt of notice from the Company, by compensating the Company or any Related Entity for the loss incurred as a result of such theft. For purposes hereof, "**Related Entity**" means any parent, subsidiary, or affiliate of the Company or a Person or entity with common ownership as any such entity.

Notwithstanding the foregoing, notice and an opportunity to cure an event giving rise to Cause shall not be required for any event that is the same event that was the subject of a prior notice to cure. Executive's date of termination in the event Executive's employment is terminated for Cause shall be the date on which Executive is given notice of termination under this Section 6.3, except, if a notice period is required, Executive's date of termination shall be upon the expiration of said notice period if Executive fails to previously cure the grounds giving rise to Cause.

6.4 Without Cause or Executive Resignation without Good Reason. The Company may terminate Executive's employment without Cause, at any time, with 30 days' prior written notice, in its sole and complete discretion, by providing written notice of such termination and its effective date to Executive. Likewise, Executive may resign Executive's employment without Good Reason (as defined below) upon at least thirty (30) days prior written notice to the Company without any liability. The Company may waive any such notice period, and during any such notice period, Executive shall perform any duties and responsibilities the Board reasonably requests of Executive consistent with the provisions of Section 1 hereof. Termination of Executive's employment without Cause by the Company or a resignation by Executive without Good Reason shall not include termination of Executive's employment due to Executive's death or Disability or upon expiration of the Term as provided for in Section 6.6 below.

6.5 Termination by Executive for Good Reason. Executive may terminate the Term of Employment for Good Reason upon written notice to the Company. In the event that the Term of Employment is terminated by Executive for Good Reason, Executive shall be entitled to the same payments and benefits as provided in Section 6.4 above for a termination without Cause. “**Good Reason**” means the occurrence of any action or inaction that constitutes a material breach by the Company of this Agreement. For purposes of this Agreement, Good Reason shall not be deemed to exist unless following the initial existence of a material breach by the Company of this Agreement, Executive provides the Company with written notice of the basis of the claim for Good Reason within thirty (30) days after the initial existence of the claim for Good Reason, the Company fails to remedy the condition within thirty (30) days after its receipt of such notice, and Executive’s termination of employment for Good Reason occurs within thirty (30) days after the Company fails to so remedy the condition.

6.6 Expiration of the Term. Provided Executive’s employment has not been previously terminated pursuant to the terms hereof, Executive’s employment shall be terminated upon the expiration of the then current Term if one Party provides notice to the other of its decision not to renew this Agreement upon the expiration of the then current Term (“**Notice of Non-Renewal**”). A Notice of Non-Renewal by Executive shall be effective only if it is provided to the Company at least thirty (30) days prior to the end of the then current Term.

6.7 Resignation from Other Positions. Upon termination of Executive’s employment for any reason, Executive shall, upon request of the Company, immediately be deemed to have resigned from all boards, offices and appointments held by Executive in or on behalf of the Company. In furtherance hereof, upon Executive’s termination of employment, Executive, at the direction of the Board, shall immediately submit to the Company letter(s) of resignation for any such boards, offices, and appointments. If Executive fails to tender such letter(s) of resignation, then the governing body or person with respect to such boards, offices and appointments will be empowered to remove Executive from such boards, offices, and appointments.

7. Effect of Termination of Employment

7.1 Generally. In the event Executive’s employment with the Company terminates, Executive shall have no right to receive any compensation, benefits or any other payments or remuneration of any kind from the Company, except as otherwise provided by this Section 7, in Section 11 below, in any separate written agreement between Executive and the Company or as may be required by law. In the event Executive’s employment with the Company is terminated for any reason, Executive shall receive the following (collectively, the “**Accrued Obligations**”): (i) Executive’s earned restricted stock through and including the effective date of Executive’s termination of employment (the “**Termination Date**”); (ii) payment of any vested benefit due and owing under any employee benefit plan, policy or program pursuant to the terms of such plan, policy or program; and (iii) payment for unreimbursed business expenses subject to, and in accordance with, the terms of Section 5 above, which payment shall be made within 30 days after Executive submits the applicable supporting documentation to the Company, and in any event no later than on or before the last day of Executive’s taxable year following the year in which the expense was incurred.

7.2 Severance Benefits. In the event that Executive's employment is terminated by the Company (i) pursuant to Section 6.4 above (without Cause) or (ii) following a Change of Control, or if Executive terminates his employment pursuant to Section 6.5 (for Good Reason), in addition to the Accrued Obligations, Executive shall be entitled to receive severance benefits (the "**Severance Benefits**"), subject to and in accordance with the terms of this Section 7.2.

(a) Benefits. The Severance Benefits shall consist of the payments and benefits provided by this Section 7.2(a).

(i) Executive shall receive immediate vesting of unvested equity awards to the extent they would have become vested during the Term, and

(ii) Executive shall be deemed to have immediately earned all unearned restricted stock grant awards to the extent they would have become earned during the Term.

(b) Survival. This Section 7 shall survive the termination of this Agreement and Executive's engagement hereunder.

8. Confidentiality, Non-Solicitation and Non-Competition.

8.1 Representations and Acknowledgements. For purposes of Sections 8-11 and 13 hereof, the term "Company" shall refer to not only the Company, but also, jointly and severally, any entity, directly or indirectly, through one or more intermediaries, controlled by, in control of, or under common control with, the Company (collectively, "**Company Affiliates**"). Executive acknowledges and agrees that: (i) among the most valuable and indispensable assets of the Company are its Confidential Information (defined below) and close relationships with its Suppliers (defined below, which includes, without limitation, employees), which the Company has devoted and continues to devote a substantial amount of time, money and other resources to develop; (ii) in connection with Executive's employment with the Company, Executive will be exposed to and acquire the Company's Confidential Information and develop, at the Company's expense and support, special and close relationships with the Company's Suppliers; (iii) the Company's Confidential Information and close Supplier relationships must be protected; (iv) this Section 8 is a material provision of this Agreement and the Company would not engage Executive hereunder but for the promises and acknowledgements that Executive makes in this Section 8; (v) to the extent required by law, the covenants in this Agreement contain reasonable limitations as to time, geographical area and scope of activities to be restricted and that such covenants do not impose a greater restraint on Executive than is necessary to protect the Company's Confidential Information, close Supplier relationships and other legitimate business interests; (vi) Executive's compliance with such covenants will not inhibit Executive from earning a living or from working in Executive's chosen profession; and (vii) any breach of such covenants will result in the Company being placed at an unfair competitive disadvantage and cause the Company serious and irreparable harm to its business.

8.2 Confidential Information.

(a) Protection of Confidential Information. During the Employment Period and at all times thereafter, Executive will not, except to the extent necessary to perform Executive's duties hereunder or as required by law, directly or indirectly, use or disclose to any third person, without the prior written consent of the Company, any Confidential Information (de-fined 8.2(b) below) of the Company. If it is necessary for Executive to use or disclose Confidential Information so as to comply with any law, rule, regulations, court order, subpoena or other gov-ernmental mandate or investigation, Executive shall give prompt written notice to the Company of such requirement (to the extent legally permissible), disclose no more information than is so re-quired, and cooperate with any attempts by the Company to obtain a protective order or similar treatment. In the event that the Company is bound by a confidentiality agreement or understanding with a customer, vendor, supplier or other party regarding the confidential information of such customer, vendor, supplier or other party, which is more restrictive than specified above in this Section 8.2, and of which Executive has notice or is aware, Executive shall adhere to the provisions of such other confidentiality agreement, in addition to those of this Section 8.2. Executive shall exercise reasonable care to protect all Confidential Information. Executive will immediately give notice to the Company of any unauthorized use or disclosure of Confidential Information. Exec-utive hereby represents and warrants that it shall assist the Company in remedying any such unau-thorized use or disclosure of Confidential Information.

(b) Confidential Information Defined. For purposes of this Agreement, "**Confidential Information**" means all information of a confidential or proprietary nature regard-ing the Company, its business or properties that the Company has furnished or furnishes to Exec-utive, whether before or after the date of this Agreement, or is or becomes available to Executive by virtue of Executive's employment with the Company, whether tangible or intangible, and in whatever form or medium provided, as well as all such information generated by Executive that, in each case, has not been published or disclosed to, and is not otherwise known to, the public. Confidential Information includes, without limitation, customer lists, customer requirements and specifications, designs, financial data, sales figures, costs and pricing figures, marketing and other business plans, product development, marketing concepts, personnel matters (including employee skills and compensation), drawings, specifications, instructions, methods, processes, techniques, computer software or data of any sort developed or compiled by the Company, formulae or any other information relating to the Company's services, products, sales, technology, research data, software and all other know-how, trade secrets or proprietary information, or any copies, elabora-tions, modifications and adaptations thereof. For the avoidance of doubt, Executive acknowledges and agrees that Confidential Information protected under this Agreement includes information re-garding pay, bonuses, benefits and perquisites offered to or received by employees of the Com-pany, as well as non-public information regarding the unique and special skills of specific employ-ees and how such skills are valuable and integral to the Company's operations. Notwithstanding the foregoing, Confidential Information shall not include any information (i) that is generally known to the industry or the public other than as a result of Executive's breach of this covenant; (ii) that is made available to Executive by a third party without that party's breach of any confi-dentiality obligation; or (iii) which was developed by Executive outside or independent of Execu-tive's performance of Executive's obligation to render services on behalf of the Company.

(c) Immunity for Certain Limited Disclosures. Executive acknowl-edges that Executive has been notified in accordance with the federal Uniform Trade Secrets Act (18 U.S. Code § 1833(b)(1)) that an individual shall 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.

(d) Permitted Disclosures. Executive also acknowledges that nothing in this Agreement shall be construed to prohibit Executive from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body.

9. Intellectual Property. The Company's Proprietary Rights. Executive acknowledges and agrees that all Intellectual Property (defined below) created, made or conceived by Executive (solely or jointly) during Executive's employment by the Company (regardless of whether such Intellectual Property was created, conceived or produced during Executive's regular work hours or at any other time) that relates to the actual or anticipated businesses of the Company or results from or is suggested by any work performed by employees or independent contractors for or on behalf of the Company ("**Company Intellectual Property**") shall be deemed "work for hire" and shall be and remain the sole and exclusive property of the Company for any and all purposes and uses whatsoever as soon as Executive conceives or develops such Company Intellectual Property, and Executive hereby agrees that its assigns, executors, heirs, administrators or personal representatives shall have no right, title or interest of any kind or nature therein or thereto, or in or to any results and proceeds therefrom. If for any reason such Company Intellectual Property is not deemed to be "work-for-hire," then Executive hereby irrevocably and unconditionally assigns all rights, title, and interest in such Company Intellectual Property to the Company and agrees that the Company is under no further obligation, monetary or otherwise, to Executive for such assignment. Executive also hereby waives all claims to any moral rights or other special rights that Executive may have or may accrue in any Company Intellectual Property. To the extent that any such moral rights or other special rights cannot be assigned under applicable law, Executive hereby waives and agrees not to enforce any and all such rights, including, without limitation, any limitation on subsequent modification, to the extent permitted under applicable law. Executive shall promptly disclose in writing to the Company the existence of any and all Company Intellectual Property. As used in this Agreement, "**Intellectual Property**" shall mean and include any ideas, inventions (whether or not patentable), designs, improvements, discoveries, innovations, patents, patent applications, trademarks, service marks, trade dress, trade names, trade secrets, works of authorship, copyrights, copyrightable works, films, audio and video tapes, other audio and visual works of any kind, scripts, sketches, models, formulas, tests, analyses, software, firmware, computer processes, computer and other applications, creations and properties, Confidential Information and any other patents, inventions or works of creative authorship.

10. Non-Disparagement. Executive agrees not to, knowingly and intentionally, make any disparaging remark or send any disparaging communication on any date which is reasonably expected to result in, or does result in, damage to (i) the reputation of the Company on such date or (ii) the reputation of (A) the business, officers and directors of the Company on such date or (B) the employees of the Company on the date of this Agreement but only for so long as an employee remains an employee of the Company. The Company agrees not to, knowingly and intentionally, make any disparaging remarks or send any disparaging communications by press release or other formal communication or take any other action, directly or indirectly, with respect to Executive which is reasonably expected to result in, or does result in, damage to Executive's reputation (it being understood that comments or actions by an individual will not be treated as comments or actions by the Company unless such individual is an officer or director of the Company or otherwise has both the authority to act, and is acting, on behalf of the Company with respect to such comments or actions). This Section does not apply to (i) truthful statements made in connection with legal proceedings, governmental and regulatory investigations and actions; (ii) any other truthful statement or disclosure required by law; or (iii) business-related intra-Company communications or to the Company's communications with its shareholders, investors, auditors and/or legal advisors.

11. Cooperation. During and after the Employment Period, Executive shall assist and cooperate with the Company in connection with the defense or prosecution of any claim that may be made against or by the Company, or in connection with any ongoing or future investigation or dispute or claim of any kind involving the Company, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations or proceedings relate to services performed or required to be performed by Executive, pertinent knowledge possessed by Executive, or any act or omission by Executive. Executive will also perform all acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this paragraph. The Company will reimburse Executive for reasonable expenses Executive incurs in fulfilling Executive's obligations under this Section 11, and, to the extent legally permitted, shall compensate Executive for all non-*de minimis* time spent by Executive fulfilling his obligations under this Section 11, at the rate of \$500 per hour. Notwithstanding the foregoing, this Section shall not be applicable to any claim by the Company against Executive or by Executive against the Company.

12. Company Property. Executive agrees that all Confidential Information, trade secrets, drawings, designs, reports, computer programs or data, books, handbooks, manuals, files (electronic or otherwise), computerized storage media, papers, memoranda, letters, notes, photo-graphs, facsimile, software, computers, smart phones and other documents (electronic or otherwise), materials and equipment of any kind that Executive has acquired or will acquire during the course of Executive's employment with the Company are and remain the property of the Company. Upon termination of employment with the Company, or sooner if requested by the Company, Executive agrees to return all such documents, materials and records to the Company and not to make or take copies of the same without the prior written consent of the Company. With regard to such documents, materials and records in electronic form, Executive shall first provide a copy to Company, and then irretrievably delete such electronic information from her electronic devices and accounts, including but not limited to computers, phones, personal email accounts, cloud storage accounts, and removable storage media. Executive agrees to provide the Company access to Executive's system as reasonably requested to verify that the necessary copying and/or deletion is completed. Executive acknowledges and agrees that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets, and other work areas, is subject to inspection by personnel of the Company at any time with or without notice. Notwithstanding anything in this Agreement to the contrary, (x) Executive's personal property, general industry knowledge, awards, and personal memoirs do not constitute trade secrets or Confidential Information, and are and shall remain Executive's sole and exclusive property, and (y) Executive shall be entitled to retain, following Executive's termination of employment, information showing Executive's compensation or relating to reimbursement of business expenses incurred by Executive, and copies of this Agreement and any Company benefit programs in which Executive participated; provided, however, that Executive acknowledges and agrees that Executive shall not disclose the documents referenced in this clause (y) except to Executive's representatives who have a need to know such information.

13. Injunctive Relief and Other Remedies. Executive acknowledges that a breach of Sections 8 through 11 of this Agreement will result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary and/or permanent injunction, without the necessity of posting a bond or of proving irreparable harm or injury as a result of such breach or threatened breach of Sections 8 through 11, restraining Executive from engaging in activities prohibited by Sections 8 through 11 and such other relief as may be required specifically to enforce any of the provisions in Sections 8 through 11. Executive further agrees that, if Executive breaches any of the provisions in Sections 8 through 11 of this Agreement, to the extent permitted by law, Executive shall (i) forfeit Executive's right to receive the balance of any compensation and/or benefits due Executive under this Agreement; (ii) pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Executive as the result of any action or transaction constituting a breach of any provision thereof; and (iii) pay over to the Company all costs and expenses incurred by the Company resulting from Executive's breach (including, without limitation, reasonable attorneys' fees and expenses in dealing with Executive's breach or any suits or actions with regard thereto) and for all damages (compensatory, along with punitive) that may be awarded in connection therewith. The provisions of this section shall not limit any other remedies available to the Company as a result of a breach of the provisions of this Agreement or otherwise. Additionally, each of the covenants and restrictions to which Executive is subject under this Agreement, including, without limitation those in Section 8 above, shall each be construed as independent of any other provision in this Agreement, and the existence of any claim or cause of action by Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of such covenants and restrictions.

14. Indemnification and Liability Insurance.

14.1 The Company shall indemnify and hold harmless Executive to the fullest extent permitted by law from and against any and all claims, damages, expenses (including attorneys' fees), judgments, penalties, fines, settlements, and all other liabilities incurred or paid by him in connection with the investigation, defense, prosecution, settlement or appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") (other than a Proceeding by or in the right of the Company) and to which Executive was or is a party or is threatened to be made a party by reason of the fact that Executive is or was an officer, employee or agent of the Company or a Company Affiliate, or by reason of anything done or not done by Executive in any such capacity or capacities, provided that Executive acted in good faith, in a manner that was not grossly negligent or constituted willful misconduct and in a manner Executive reasonably believed to be in or not opposed to the best interests of the Company and the Company Affiliates, and, with respect to any criminal action or proceeding, had no reasonable cause to believe it or his conduct was unlawful. The Company also shall pay any and all expenses (including reasonable attorney's fees) incurred by Executive as a result of Executive being called as a witness in connection with any matter involving the Company, the Company Affiliates and/or any of their respective officers or directors, provided that the Company shall not be obligated to pay for any such attorney's fees if there is no appreciable risk of liability to Executive as a result of serving as such a witness, provided further that, in such event, the Company (at its expense) will provide Executive with reasonable access to the Company's legal counsel for the sole purpose of advising Executive in connection Executive's serving as such a witness.

14.2 The Company shall pay any expenses (including attorneys' fees), judgments, penalties, fines, settlements, and other liabilities incurred by Executive in investigating, defending, settling or appealing any action, suit or proceeding described in this Section in advance of the final disposition of such action, suit or proceeding, as such expenses (including attorneys' fees), judgments, penalties, fines, settlements, and other liabilities come due. The Company shall promptly pay the amount of such expenses to Executive, but in no event later than ten (10) days following Executive's delivery to the Company of a written request for an advance pursuant to this Section, together with a reasonable accounting of such expenses.

14.3 Executive hereby undertakes and agree to repay to the Company any advances made pursuant to this Section within ten (10) days after an ultimate finding that Executive is not entitled to be indemnified by the Company for such amounts.

14.4 The Company shall make the advances contemplated by this Section **Error! Reference source not found.** regardless of Executive's financial ability to make repayment, and regardless whether indemnification of Executive by the Company will ultimately be required. Any advances and undertakings to repay pursuant to this Section shall be unsecured and interest-free.

14.5 The Company covenants to maintain during Executive's employment for the benefit of Executive (in his capacity as an officer and/or director of the Company) Directors and Officers Insurance providing benefits to Executive no less favorable, taken as a whole, than the benefits provided to the other similarly situated employees of the Company by the Directors and Officers Insurance maintained by the Company on the date hereof.

14.6 The provisions of this Section 14 shall survive the termination of the Term or expiration of the term of this Agreement.

15. Miscellaneous Provisions.

15.1 IRCA Compliance. This Agreement, and Executive's employment with the Company, is conditioned on Executive's establishing Executive's identity and authorization to work as required by the Immigration Reform and Control Act of 1986 (IRCA).

15.2 Section 409A Compliance. Unless otherwise expressly provided, any payment of compensation by Company to Executive, whether pursuant to this Agreement or otherwise, shall be made no later than the 15th day of the third month (*i.e.*, 2½ months) after the later of the end of the calendar year or the Company's fiscal year in which Executive's right to such payment vests (*i.e.*, is not subject to a "substantial risk of forfeiture") for purposes of Section 409A of the Internal Revenue Code of 1986, as amended ("**Section 409A**"). For purposes of this Agreement, termination of employment shall be deemed to occur only upon "separation from service" as such term is defined under Section 409A. Each payment and each installment of any severance payments provided for under this Agreement shall be treated as a separate payment for purposes of application of Section 409A. To the extent any amounts payable by the Company to Executive constitute "nonqualified deferred compensation" (within the meaning of Section 409A) such payments are intended to comply with the requirements of Section 409A, and shall be interpreted in accordance therewith. Neither party individually or in combination may accelerate, offset or assign any such deferred payment, except in compliance with Section 409A. No amount shall be paid prior to the earliest date on which it is permitted to be paid under Section 409A, including a six (6) month delay of termination payments made to specified employees of a public company, to the extent then applicable. Executive shall have no discretion with respect to the timing of payments except as permitted under Section 409A. Any Section 409A payments which are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in such following calendar year as necessary to comply with Section 409A. All expense reimbursement or in-kind benefits subject to Section 409A provided under this Agreement or, unless otherwise specified in writing, under any Company program or policy, shall be subject to the following rules: (i) the amount of expenses eligible for reimbursement or in-kind benefits provided during one calendar year may not affect the benefits provided during any other year; (ii) reimbursements shall be paid no later than the end of the calendar year following the year in which Executive incurs such expenses, and Executive shall take all actions necessary to claim all such reimbursements on a timely basis to permit the Company to make all such reimbursement payments prior to the end of said period, and (iii) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit. Notwithstanding anything herein to the contrary, no amendment may be made to this Agreement if it would cause the Agreement or any payment hereunder not to be in compliance with Code Section 409A.

15.3 Assignability and Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, successors and legal representatives of Executive, and shall inure to the benefit of and be binding upon the Company, the Company Affiliates and their successors and assigns, but the obligations of Executive are personal services and may not be delegated or assigned. Executive shall not be entitled to assign, transfer, pledge, encumber, hypothecate or otherwise dispose of this Agreement, or any of Executive's rights and obligations hereunder, and any such attempted delegation or disposition shall be null and void and without effect. This Agreement may be assigned by the Company to a person or entity that is an affiliate or a successor in interest to substantially all of the business operations of the Company. Upon such assignment, the rights and obligations of the Company hereunder shall become the rights and obligations of such affiliate or successor person or entity. Further, in the event Executive becomes employed by a parent, subsidiary or other affiliate of the Company, this Agreement shall thereupon automatically be assigned to such parent, subsidiary or other affiliate and Executive consents to be bound by the provisions of this Agreement for the benefit of the Company and/or any such parent, subsidiary or other affiliate of the Company without the necessity that this Agreement be re-signed at the time of such transfer.

15.4 Right of Set-Off. To the extent permitted by applicable law, the Company may at any time offset against any amounts owed to Executive hereunder or otherwise due or to become due to Executive, or anyone claiming through or under Executive, any debt or debts due or to become due from Executive to the Company.

15.5 Severability and Blue Penciling. If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect. However, if any court determines that any covenant in this Agreement, is unenforceable because the duration, geographic scope or restricted activities thereof are overly broad, then such provision or part thereof shall be modified by reducing the overly broad duration, geographic scope or restricted activities by the minimum amount so as to make the covenant, in its modified form, enforceable.

15.6 Choice of Law and Forum; Attorneys' Fees. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida, without regard to its conflict-of-law principles. The Parties agree that any dispute concerning or arising out of this Agreement or Executive's employment hereunder (or termination thereof) shall be litigated exclusively in an appropriate state or federal court in or closest to Broward County, Florida and hereby consent, and waive any objection, to the jurisdiction of any such court. In the event a litigation or other legal proceeding is commenced to resolve any such dispute, the prevailing party in such litigation or proceeding shall be entitled to recover from the non-prevailing party all of its costs, charges, disbursements and fees (including reasonable attorneys' fees) incurred in connection with such litigation or proceeding and the underlying dispute.

15.7 Mutual Waiver of Jury Trial. To the extent that any dispute between Executive and the Company is not mediated and is, instead, heard in a court action or proceeding, Executive and the Company each hereby waive the right to trial by jury in any action or proceeding, regardless of the subject matter, between them, including, without limitation, any action or proceeding based upon, arising out of, or in any way relating to this Agreement and all matters concerning Executive's employment with the Company (or the termination thereof). Executive and the Company further agree that either of them may file a copy of this Agreement with any court as written evidence of the knowing, voluntary, and bargained agreement between Executive and the Company to irrevocably waive trial by jury, and that any dispute or controversy whatsoever between Executive and the Company shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury.

15.8 Mediation. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a mediation administered by a mutually agreed upon mediator. The cost of mediation shall be shared equally by both parties. Any judgment on the award rendered by the mediator(s) may be entered in any court having jurisdiction thereof. During any mediation related to the Agreement, the parties shall continue to perform their respective obligations under this Agreement.

15.9 Notices.

(a) Any notice or other communication under this Agreement shall be in writing and shall be delivered by hand, email, facsimile or mailed by overnight courier or by registered or certified mail, postage prepaid:

(i) If to Executive, to Executive's address on the books and records of the Company.

(ii) If to the Company, to 105 US Highway 1, North Palm Beach, FL 33408, or at such other mailing address, email address or facsimile number as it may have furnished in writing to Executive.

(b) Any notice so addressed shall be deemed to be given: if delivered by hand or email, on the date of such delivery; if by facsimile, on the date of such delivery if receipt on such day is confirmed and, if not so confirmed, on the next business day; if mailed by overnight courier, on the first business day following the date of such mailing; and if mailed by registered or certified mail, on the third business day after the date of such mailing.

15.10 Survival of Terms. All provisions of this Agreement that, either expressly or impliedly, contain obligations that extend beyond termination of Executive's employment here-under, including without limitation Sections 8-13 and 15 hereof, shall survive the termination of this Agreement and of Executive's employment hereunder for any reason.

15.11 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, and not strictly for or against any Party. The Parties acknowledge that both of them have participated in drafting this Agreement; therefore, any general rule of construction that any ambiguity shall be construed against the drafter shall not apply to this Agreement. In this Agreement, unless the context otherwise requires, the masculine, feminine and neuter genders and the singular and the plural include one another.

15.12 Further Assurances. The Parties will execute and deliver such further documents and instruments and will take all other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

15.13 Voluntary and Knowing Execution of Agreement. Executive acknowledges that (i) Executive has had the opportunity to consult an attorney regarding the terms and conditions of this Agreement before executing it, (ii) Executive fully understands the terms of this Agreement including, without limitation, the significance and consequences of the post-employment restrictive covenants in Section 8 above, and (iii) Executive is executing this Agreement voluntarily, knowingly, and willingly and without duress.

15.14 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof, and it supersedes all prior negotiations, discussions, correspondence, communications, understandings, and agreements regarding such subject matter. Each Party acknowledges and agrees that such Party is not relying on, and may not rely on, any oral or written representation of any kind that is not set forth in writing in this Agreement.

15.15 Waivers and Amendments. This Agreement may be altered, amended, modified, superseded or cancelled, and the terms hereof may be waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party alleged to have waived compliance. Any such signature of the Company must be by an authorized signatory for the Company. No delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

15.16 Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which when taken together shall constitute one and the same document. This Agreement may be executed by original signature, and/or signature originally signed by hand but transmitted via email (e.g., by scanned .PDF) or facsimile, and by electronic signature technology (e.g., DocuSign), which signature shall be considered as valid and binding as an original signature and delivery of such executed counterpart signature page by electronic signature technology, facsimile or email shall be as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. The parties hereby waive any defenses to the enforcement of the terms of this Agreement based on such electronic, faxed or emailed signatures.

[The remainder of this page is intentionally blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

/s/ Ophir Sternberg
Ophir Sternberg

BURGERFI INTERNATIONAL, INC.

By: /s/ Julio Ramirez
Julio Ramirez, Chief Executive Officer

[Signature page to Employment Agreement.]

EXHIBIT A

RESTRICTED STOCK GRANT AGREEMENT

BURGERFI INTERNATIONAL, INC.
EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“**Agreement**”) is made and entered into effective as of the 16th day of December, 2020, by and between BurgerFi International, Inc., a Delaware corporation (“**Company**”), and Julio Ramirez (“**Executive**”).

WITNESSETH:

WHEREAS, on the terms and subject to the conditions hereinafter set forth, Company desires to engage Executive as Chief Executive Officer, and Executive desires to work with Company, to render Executive’s duties described herein to Company.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Employment; Title; Duties and Location. Company hereby agrees to employ Executive on an exclusive basis, to render the duties set forth herein as an at-will employee of Company, and Executive hereby accepts such employment with Company, for the Compensation (as hereinafter defined) and on the terms and subject to the conditions set forth herein. During the Employment Period (as defined in Section 2 below), Executive shall serve the Company as Chief Executive Officer and shall report exclusively and directly to the Board of Directors and its Executive Chairman. Executive shall perform the duties consistent with Executive’s title and position and such other duties commensurate with such position and title as shall be specified or designated by Company from time to time. Subject to Executive’s appointment thereto, and without additional compensation, Executive shall hold such other or additional titles and serve, during the Employment Period, in such other or additional capacities to which Executive may be appointed from time to time in Company and its affiliated companies, provided such titles and additional capacities are consistent with Executive’s above-stated position and duties. The principal place of performance by Executive of Executive’s duties hereunder shall be the Company’s corporate offices in Palm Beach County, Florida, or such other location of the corporate offices from time to time, although Executive may be required to reasonably travel outside of such area in connection with the performance of Executive’s duties.

1.1 Executive agrees to conduct its business and activities so as to maintain and increase the goodwill and reputation of Company.

1.3 Executive acknowledges that Company’s interest in maintaining and promoting Company’s reputation for quality and service. From time to time, Company may establish reasonable policies, procedures and requirements that will be applicable and disseminated to its Executives. Executive hereby agrees to strictly comply with all such policies, procedures and requirements.

2. Term. Executive's employment hereunder shall commence on the date hereof (the "**Commencement Date**") and shall continue for a one-year period thereafter (the "**Initial Term**"), subject to earlier termination exclusively as provided for in Section 6 below, and subject to extension as provided in the following sentence. Following the Initial Term, provided Executive's employment has not previously been terminated, Executive's employment hereunder shall automatically be extended for successive, one-year periods (each a "**Renewal Term**"), subject to earlier termination exclusively as provided for in Section 6 below. For the purposes of this Agreement, the "**Term**" at any given time shall mean the Initial Term as it may have been extended by one or more Renewal Terms as of such time (without regard to whether Executive's employment is terminated prior to the end of such Term), and the "Employment Period" means the period of Executive's employment hereunder (regardless of whether such period ends prior to the end of the Term and regardless of the reason for Executive's termination of employment hereunder).

3. Compensation. As compensation in full for the performance of Executive's duties hereunder (the "**Compensation**"), Company shall pay Executive:

3.1 Salary. Executive shall receive a base salary (the "**Base Salary**") payable in substantially equal installments in accordance with Company's normal payroll practices and procedures in effect from time to time and subject to applicable withholdings and deductions. Executive's starting Base Salary shall be at the annual rate of \$275,000.00, subject to review at the end of each Term by the Compensation Committee of the Board of Directors in consultation with Executive Chairman. Executive acknowledges and agrees that Executive may be paid by a parent Company or other affiliate of Company ("**Paymaster**"). Notwithstanding payment by Paymaster or reimbursement by an affiliate, Executive acknowledges and agrees that his sole contractual arrangement is with Company, Executive is not an employee of Paymaster or any affiliate, and Executive shall not have any claims against Paymaster or any affiliate relating to or arising out of Executive's engagement by Company.

3.2 Incentive Bonus. Executive shall also be eligible for an annual incentive bonus of up to \$100,000.00, payable entirely in common stock of Company (the "**Incentive Bonus**"), based on the achievement of certain key performance indicators (the "**Key Performance Indicators**") set forth on Exhibit A hereto, at the sole and exclusive discretion of the Executive Chairman.

3.3 Restricted Stock. Executive will have the ability to earn up to 250,000 shares of Company's common stock in restricted stock grants through Company's Omnibus Incentive Plan (collectively, the "**Restricted Stock Grants**"). Such Restricted Stock Grants shall be earned by Executive in equal amounts (i.e., 50,000 each) at the yearly anniversary of the Commencement Date for each of the first five years of employment with Company, subject to Executive's achievement of the Key Performance Indicators set forth on Exhibit A hereto, so long as Executive is still an employee in good standing at the time of each such anniversary, subject to the terms and conditions of the Restricted Stock Purchase Agreement annexed hereto as Exhibit B. Shares issued upon each grant will be locked up for 24 months.

3.4 Benchmark Restricted Stock. Executive shall be eligible to receive up to an additional 100,000 shares of Company common stock in restricted stock grants (“**Benchmark Restricted Stock Grants**”) upon achievement by Company of the following benchmarks: (i) 25,000 shares, when the last reported closing price of Company’s common stock for any 20 trading days within any consecutive 30 trading day period is greater than or equal to \$19.00 per share; (ii) 25,000 shares, when the last reported closing price of the Company’s common stock for any 20 trading days within any consecutive 30 trading day period is greater than or equal to \$22.00 per share; and (iii) 50,000 shares, when the last reported closing price of the Company’s common stock for any 20 trading days within any consecutive 30 trading day period is greater than or equal to \$25.00 per share. These Benchmark Restricted Stock Grants may not be sold, transferred or conveyed for a twelve-month period following the date upon which they are earned (each, an “**Earning Date**”), provided that Executive is still an employee in good standing at the time of each such Earning Date, subject to the terms and conditions of the Restricted Stock Purchase Agreement. If there is a Change of Control during the term of Employment all unearned Restricted Stock Grants and Benchmark Restricted Stock Grants shall be deemed to have been earned and vested immediately prior to the Change of Control. A “**Change of Control**” means the sale of all or substantially all the assets of Company; any merger, consolidation or acquisition of Company with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of Company in one or more related transactions.

3.5 Benefits. Executive shall have the right to receive or participate in all employee benefit programs and perquisites generally established by Company from time to time for employees similarly situated to Executive, subject to the general eligibility requirements and other terms of such programs and perquisites, and subject to Company’s right to amend, terminate or take other similar action with respect to any such programs and perquisites.

3.6 Vacation and Other Paid Time Off. Executive shall be entitled to 4 weeks of paid vacation, as well as sick days and any other paid time off, each year in accordance with then current Company policy. Executive shall be entitled to an additional week of paid vacation following the first anniversary of the Commencement Date and another week after the third anniversary.

3.7 Automobile. The Company shall reimburse Executive for all reasonable and properly documented expenses associated with a Company automobile (including automobile insurance, repairs, and gas), up to \$1,200 per month.

4. Exclusivity and Best Efforts. During the Employment Period, Executive shall (i) in all respects conform to and comply with the lawful directions and instructions given to Executive by Company; (ii) subject to the proviso below, devote Executive’s entire business time, energy and skill to Executive’s services under this Agreement; (iii) use Executive’s best efforts to promote and serve the interests of Company and to perform Executive’s duties and obligations hereunder in a diligent, trustworthy, businesslike, efficient and lawful manner; (iv) comply with all applicable laws and regulations, as well as the policies and practices established by Company from time to time and made applicable to its employees generally or senior executives; (v) not engage in any other business, profession or occupation for compensation or otherwise; and (vi) not engage in any activity that, directly or indirectly, impairs or conflicts with the performance of Executive’s obligations and duties to Company, provided, however, that the foregoing shall not prevent Executive from managing Executive’s personal affairs and passive personal investments and participating in charitable, civic, educational, professional or community affairs, so long as, in the aggregate, any such activities do not unreasonably interfere or conflict with Executive’s duties hereunder or create a potential business or fiduciary conflict with Company, as reasonably determined by Company.

5. Reimbursement for Expenses. Executive is authorized to incur reasonable expenses in the discharge of the services to be performed hereunder in accordance with Company's expense reimbursement policies, as the same may be modified by Company from time to time in its sole and complete discretion (the "**Reimbursement Policies**"). Company shall reimburse Executive for all such proper expenses upon presentation by Executive of itemized accounts of such expenditures in accordance with the terms of the Reimbursement Policies.

6. Termination. This Agreement shall be for at-will employment and shall continue until one of the parties hereto notifies the other of its intent to terminate this Agreement at a date more than thirty days from the date of the notice. Upon the termination of Executive's engagement hereunder, Company shall have no further liability hereunder, except to pay Executive all Compensation earned by Executive as of the date of termination and as set forth in Section 6.3 below.

6.1 Executive's engagement and rights hereunder may be terminated by Company or Executive, as the case may be, immediately upon a breach of this Agreement that, if possible to be cured, has gone uncured for at least 30 days following written notice thereof.

6.2 Upon termination, Executive shall:

(i) Deliver to Company all documents, data, records, and all other materials which are provided by Company to Executive, including any Confidential Information;

(ii) Take all such reasonable actions as shall be requested in writing from time to time by Company consistent with the foregoing and for the orderly transition of the services provided by Executive to either Company or to a new employee, in the discretion of Company.

6.3. Upon termination by Company without cause the Incentive Bonus and all unearned Restricted Stock Grants for the year in which termination occurs shall be deemed to have been earned and vested immediately before such termination. This Section 6 shall survive the termination of this Agreement and Executive's engagement hereunder.

7. Confidential Information and Competition. Executive has entered into that certain Agreement Regarding Confidential Information and Prohibiting Competition attached hereto as Exhibit C, the terms and conditions of which are hereby incorporated by this reference, and agrees that nothing herein shall limit or restrict the obligations of Executive thereunder or enforcement of the terms thereof. As used herein, the term "**Confidential Information**" shall have the meaning set forth in the Agreement Regarding Confidential Information and Prohibiting Competition. This Section 7 shall survive the termination of this Agreement and Executive's engagement hereunder.

8. Trade Names and Trademarks. Executive agrees that he will use only such trade names, trademarks or other designations of Company or any simulations thereof as may be authorized in writing by Company. All such use shall be in accordance with Company's instructions and any such authorization may be withdrawn or modified at any time. Executive will, in the event this Agreement is terminated, cease all use of any of Company's trade names, trademarks or other designations or other simulations thereof. Executive will not register or attempt to register or assert any right of ownership in any of Company's trade names, trademarks or other designations or any simulations thereof. Executive shall immediately notify Company in writing upon learning of any potential or actual infringement of any trademark, patent, copyright or other proprietary right owned by or licensed to Company, or of any actual or potential infringement by Company of the rights of any third party.

9. Miscellaneous.

9.1 Notices. Any notice required or permitted to be delivered to any party under the provisions of this Agreement shall be deemed to have been duly given (a) upon hand delivery thereof, (b) upon telefax or email and written confirmation of transmission, (c) upon proof of delivery and receipt of any overnight deliveries, or (d) on the third (3rd) business day after mailing United States registered or certified mail, return receipt requested, postage prepaid, addressed to each party as follows:

| | |
|-----------------|---|
| To Company: | 105 U.S. Highway One North Palm Beach, FL 33408 |
| With a copy to: | 4218 NE 2nd Avenue Miami, FL 33137 Attention: General Counsel |
| To Executive: | to the address set forth on the signature page |

or to such other address or such other person as any party shall designate, in writing, to the others for such purposes and in the manner set forth in this Section.

9.2 Accuracy of Statements. No representation or warranty contained in this Agreement, and no statement delivered, or information supplied to any party pursuant hereto, contains an untrue statement of material fact or omits to state a material fact necessary to make the statements or information contained herein or therein not misleading. The representations and warranties made in this Agreement will be continued and will remain true and complete in all material respects and will survive the execution of the transactions contemplated hereby.

9.3 Entire Agreement. This Agreement sets forth all the promises, covenants, agreements, conditions and understandings between the parties hereto, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, expressed or implied, oral or written, except as herein contained.

9.4 Binding Effect: Assignment. This Agreement shall be binding upon the parties hereto, their heirs, administrators, successors and assigns. Except as otherwise provided in this Agreement, no party may assign or transfer its interests herein, or delegate its duties hereunder, without the written consent of the other party. Any assignment or delegation of duties in violation of this provision shall be null and void.

9.5 Amendment. The parties hereby irrevocably agree that no attempted amendment, modification, termination, discharge or change of this Agreement shall be valid and effective, unless the parties shall unanimously agree in writing to such amendment.

9.6 No Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

9.7 Gender and Use of Singular and Plural. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the party or parties, or their personal Executives, successors and assigns may require.

9.8 Headings. The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.

9.9 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida and any proceeding arising between the parties in any manner pertaining or related to this Agreement shall, to the extent permitted by law, be held in Palm Beach County, Florida.

9.10 Further Assurances. The parties hereto will execute and deliver such further instruments and do such further acts and things as may be reasonably required to carry out the intent and purposes of this Agreement.

9.11 Litigation. If any party hereto is required to take any action or engage in litigation against any other party hereto, either as plaintiff or as defendant, in order to enforce or defend any rights under this Agreement, and such litigation results in a final judgment in favor of such party, then the party or parties against whom said final judgment is obtained shall reimburse the prevailing party for all direct, indirect or incidental expenses incurred, including, but not limited to, all attorneys' fees, court costs and other expenses incurred throughout all negotiations, trials or appeals undertaken in order to enforce the prevailing party's rights hereunder.

9.12 Mediation. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a mediation administered by a mutually agreed upon mediator and, except as set forth below, the cost of any such mediation shall be shared equally by all parties thereto. Any judgment on the award rendered by the mediator(s) may be entered in any court having jurisdiction thereof. During any mediation related to the Agreement, the parties shall continue to perform their respective obligations under this Agreement. The prevailing party in any enforcement of this Agreement shall be entitled to recover all costs and expenses of such enforcement, including costs of litigation, and attorneys' fees, costs, and expenses, at trial through appeal.

9.13 Indemnification: D&O Insurance.

(i) Company hereby agrees to indemnify Executive and to defend and hold him harmless to the fullest extent permitted by law and under the by-laws of Company against and in respect to any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney's fees at all levels of proceedings), losses, and damages resulting from Executive's good faith performance of his duties and obligations hereunder. This Section 9.13(i) shall survive the termination of this Agreement and Executive's engagement hereunder.

(ii) Company shall purchase and maintain insurance, at its expense, to protect itself and Executive while serving in such capacity to Company or on behalf of Company as an officer or director or employee of any affiliate of Company.

9.14 Counterparts. This Agreement may be executed in counterparts and by facsimile and/or e-mail .pdf, each of which shall constitute originals and all of which, when taken together, shall constitute the same original instrument, legally binding all parties to this Agreement.

THIS SPACE INTENTIONALLY BLANK

SIGNATURES CONTINUED ON FOLLOWING PAGE

With full power and authority and intending to be legally bound, the parties hereto have executed this Agreement as of the date first above written.

COMPANY:

BurgerFi International, Inc.

By: /s/ Ophir Sternberg
Ophir Sternberg, Executive Chairman

EMPLOYEE:

/s/ Julio Ramirez
Julio Ramirez

Address:

EXHIBIT A

Key Performance Indicators (KPIs)

To be agreed upon by Executive and Company as soon as possible

EXHIBIT B

RESTRICTED STOCK GRANT AGREEMENT

To be provided by Company to Executive as soon as possible

EXHIBIT C
BURGERFI INTERNATIONAL, INC.
AGREEMENT REGARDING CONFIDENTIAL INFORMATION
AND
PROHIBITING COMPETITION

I, the undersigned employee of BurgerFi International, Inc., a Delaware corporation (the "**Company**"), am entering into this Agreement in consideration of my employment by the Company. The Company is in the business of operating gourmet fast food and quick service casual restaurants focused on all-natural hamburgers, vegetarian burgers, hormone-free chicken, and other complementary food offerings (the "**Company's Business**"). I hereby acknowledge that, in conjunction with the performance of my duties as an employee of the Company, I will be exposed to, making use of, acquiring and adding to confidential information of a special and unique nature and value affecting and relating to the Company and its financial operations, including, but not limited to: the Company's Business, the identity of the Company's clients, the prices being charged by the Company to such clients, the Company's contracts, business records and other records, the Company's trade secrets, customer lists, vendors and vendor lists, recipes, billing forms, methods, and procedures, trade names, manuals, photographs, samples, literature, sales aids of every kind, software, advertising methods and strategies, information regarding advertising locations, style and wording of all advertising, plans for expansion or marketing strategies, and other similar information relating to the Company and the Company's Business (all the foregoing being hereinafter referred to collectively as "**Confidential Information**"). I agree that the Confidential Information is a trade secret of, and is owned solely by, the Company.

I acknowledge that the disclosure of Confidential Information to competitors of the Company would cause the Company irreparable injury. Because I have been and will be exposed to Confidential Information, the Company requires, as a condition to my employment with the Company, that I, the undersigned, execute and deliver to the Company this legally binding agreement ("**Agreement**"), which is intended to protect the Company from my unauthorized use of the Confidential Information and to prohibit the Company's competitors from receiving the benefits of my knowledge of the Company's Business or the specialized training that the Company has provided or will provide to me. This Agreement does not obligate the Company to employ or retain me for any specific length of time. Although the Company seeks to retain valued employees and independent contractors, employment with the Company remains terminable by the Company "at will."

I agree that all Confidential Information is owned exclusively by the Company, that I may use the Confidential Information only when permitted by the Company and only for the benefit of the Company, that at all times during and subsequent to my employment with the Company, I will not disclose any Confidential Information to any other person or entity for any reason whatsoever, and that I will at all times take such actions as shall be necessary to maintain the confidentiality of the Confidential Information and to prevent its unauthorized disclosure.

I agree that, upon the Company's demand, whether verbal or written, I will promptly deliver as directed, without retaining copies, all materials and media in my possession that contain Confidential Information or that relate to the Company's Business. I agree that the fact that I had knowledge, or that others may have had knowledge, of Confidential Information prior to the execution of this Agreement shall not in any way limit or affect my obligations under this Agreement.

I agree that all copyrightable, patentable or unpatentable business information, and other proprietary information, inventions, techniques, know-how, materials and Confidential Information created by me during my employment with the Company, together with all rights relating to said property, are the exclusive property of the Company and its assigns. I further agree that this Agreement constitutes a "Work for Hire" with respect to any copyrightable works created by me during my employment with the Company. I agree to execute all documents, including, but not limited to, assignments of rights, that the Company may request to assist in establishing its ownership of such property.

During the term of my employment with the Company, I will not directly or indirectly, in any location, operate, organize, maintain, establish, manage, own, participate in, or in any manner whatsoever, individually or through any corporation, firm or organization of which I shall be affiliated in any manner whatsoever, have any interest in, whether as owner, investor, operator, partner, stockholder, director, trustee, officer, mortgagee, employee, independent contractor, principal, agent, consultant or otherwise, any other business or venture which engages in the Company's Business, or is otherwise in competition with Company or any assigns of the Company, unless such activity shall have been previously agreed to in writing by Company and its successors and assigns (I acknowledge that the Company's Business is advertised and conducted throughout the United States, and accordingly that this covenant against competition shall extend to the entire United States). Further, during the term of my employment with the Company and for a period of two (2) years thereafter (the "**Restricted Period**"), I will not: (i) directly or indirectly, divert from the Company or its successors or assigns any proprietary product or service of Company, or cause any client or account of Company to cease using or acquiring Company's products or services; or (ii) directly or indirectly, solicit for employment, employ or otherwise engage the services of, any employees, independent contractors, vendors, agents, or consultants of the Company or its successors or assigns, provided, however, that nothing set forth herein shall limit Executive's right to compete with Company and to work for any competitor of Company after termination of this Agreement.

I acknowledge that I may be performing services at one or more locations that are shared facilities with other entities that may be affiliates of the Company ("**Affiliated Entities**"). The Affiliated Entities each have their own respective confidential information like that described as the Company's Confidential Information, and that the Affiliated Entities intend that such confidential information remain confidential under agreements like this agreement. If I should be exposed to or learn of any such confidential information, I agree that it is protected information that shall be owned by the Affiliated Entities in the same manner as the Confidential Information is owned and protected by the Company. Further, I agree that in no event shall any such confidential information be used by me for the purpose of competing with, or to solicit customers, employees, agents or independent contractors of, the Company or any Affiliated Entity. The Affiliated Entities are intended third party beneficiaries for the purpose of enforcing the foregoing.

I agree that if I breach or threaten to breach this Agreement, the Company will be entitled to receive, in addition to all other remedies to which it may be entitled at law or in equity, temporary and permanent injunctions prohibiting any breach of this Agreement by me, or by my partners, agents, representatives, servants, employers, employees, independent contractors and all persons directly or indirectly acting for or with me. In the event the Company obtains a temporary or permanent injunction, I agree that any such injunction shall compute the two (2) year restriction from the date the injunction is entered. The Company shall also be entitled to receive from me reimbursement of all its reasonable attorneys' and other legal fees and costs that it incurs in enforcing this Agreement, inclusive of all such fees and costs incurred with respect to all negotiations, trial and appellate proceedings. This Agreement shall be interpreted under the laws of the State of Florida, and the venue for any proceedings under this Agreement shall be Palm Beach County, Florida. I hereby submit to the jurisdiction of any state or federal courts in Palm Beach County, Florida for purposes of the foregoing. The terms of this Agreement shall survive the termination of my employment by the Company.

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a mediation administered by a mutually agreed upon mediator and, except as set forth below, the cost of any such mediation shall be shared equally by all parties thereto. Any judgment on the award rendered by the mediator(s) may be entered in any court having jurisdiction thereof. During any mediation related to the Agreement, the parties shall continue to perform their respective obligations under this Agreement. The prevailing party in any enforcement of this Agreement shall be entitled to recover all costs and expenses of such enforcement, including costs of litigation, and attorneys' fees, costs, and expenses, at trial through appeal.

I agree that the restrictions contained in this Agreement are fair and reasonably necessary to protect the legitimate business interests of the Company, and will not unfairly restrict my ability to find gainful work in my field. I also agree that if a court determines that any of the restrictions in this Agreement are unenforceable, the court, in so establishing a substitute restriction, shall recognize that I agree that the restrictions described above be imposed and maintained to the maximum lawful extent. I hereby certify that no representative or agent of the Company has represented, expressly or otherwise, that the Company would not seek to enforce this Agreement. The provisions contained herein shall be binding upon me as an independent obligation and shall be enforceable even if there is or is claimed to be a breach of this Agreement or any other agreement, understanding, commitment or promise by the Company. The Company's failure or refusal to enforce any of the terms contained in this Agreement against any other employee or independent contractor or former employee or independent contractor for any reason, shall not constitute a defense to the enforcement of this Agreement against me.

I agree that I will not at any time (during or after my employment with the Company) disparage the reputation of the Company, or its customers, vendors, merchants, officers, members, manager, directors, agents, employees or independent contractors.

By executing this Agreement in the space provided below I confirm that I have read, understand and agree to all the provisions of this Agreement and that I agree to be legally bound by the terms of this Agreement. This Agreement is for the benefit of and may be enforced by the Company, its successors and assigns.

Agreed to this 16th Day of December, 2020

/s/ Julio Ramirez

SIGNATURE

Julio Ramirez

PRINT NAME

ADDRESS:

Phone: _____

Email: _____

CONSULTING AGREEMENT

This CONSULTING AGREEMENT (this "Agreement"), effective as of December 16, 2020, is made by and between **BurgerFi International, LLC**, a Delaware limited liability company (the "Company"), and **Management Enterprises of Hollywood, Inc.**, a Florida corporation ("Consultant").

BACKGROUND

WHEREAS, pursuant to that certain Membership Interest Purchase Agreement (the "Purchase Agreement"), dated as of June 29, 2020, by and among the Company, Opes Acquisition Corp., a Delaware corporation ("Purchaser"), the members of the Company (each, a "Member" and collectively the "Members"), and BurgerFi Holdings, LLC, a Delaware limited liability company, as the representative of the Members, Purchaser will acquire all of the ownership interest of the Company (the "Transaction"); and

WHEREAS, Company desires Consultant to provide consulting services in relation to Company's business under the terms of this Agreement and Consultant is willing to provide such services to Company and Company under the terms of this Agreement.

TERMS

NOW, THEREFORE, in consideration of the foregoing premises and the promises and covenants set forth in this Agreement and intending to be legally bound hereby, Company and Consultant agree as follows:

1. Consulting Services.

1.1. Services. During the Term (as defined in Section 3.1), Consultant shall provide such advice and consulting services regarding the business of the Company as Company may reasonably request from time to time (the "Consulting Services"). The Consulting Services will include, but not be limited to, general business counsel and guidance, advice and consultation regarding the operations, real estate site criteria and selection process, franchising and prospects of the business of Company, information and guidance regarding Company's personnel, customers and customer opportunities, and counsel and guidance regarding the transition associated with the acquisition of Company by Opes Acquisition Corp., a Delaware corporation. Consultant shall report to the Chief Executive Officer of Company in connection with the Consulting Services.

1.2. Performance of Services.

- (a) Consultant shall render the Consulting Services at such times and locations and using such methods and processes as Consultant shall deem appropriate to perform the Consulting Services contemplated by and consistent with the terms of this Agreement. In determining the time, location, methods and processes, Consultant shall take into consideration the Consulting Services to be provided, the availability and location of Company personnel with whom Consultant will primarily interact and the scope of the Services.
-

- (b) Consultant agrees to perform the Consultant Services in a timely and professional manner.
- (c) Company shall provide such access to its information and property as may be reasonably required in order to permit Consultant to perform the Consulting Services.
- (d) Consultant shall not use in the performance of the Consulting Service, or otherwise disclose to Company or Company, any trade secrets or proprietary information of any other person.

1.3. Independent Contractor. Consultant and Company intend for Consultant to be considered an independent contractor of Company and Company for all purposes and not an employee of Company or of Company. Neither Company nor Company shall have any obligation to provide any employment-related benefits to Consultant.

1.4. No Conflict. Consultant represents and warrants to Company and Company that he(i) is not, and will not become, a party to any non-competition covenant, non-disclosure agreement or other agreement, covenant, understanding or restriction that would prohibit Consultant from executing this Agreement or interfere with Consultant performing fully his duties and responsibilities under this Agreement, and (ii) can perform his obligations under this Agreement without disclosing or using any confidential or proprietary information of any third party.

2. Compensation.

2.1. In consideration for Consultant's performance of the Consulting Services, Company shall pay Consultant a retainer in the amount of \$500,000 (the "Retainer"). The Retainer shall be payable in one lump sum at the Closing of the Transaction.

2.2. Consultant shall be solely responsible for the payment of all taxes or contributions imposed or required by the tax laws of any jurisdiction that pertain to the amounts paid to Consultant under this Agreement.

3. Term and Termination.

3.1. The term ("Term") of this Agreement shall commence on December 16, 2020 and end on December 31, 2020.

3.2. Effect of Termination. Termination or expiration of this Agreement shall not be deemed to be a waiver of any claims arising from activities occurring prior to termination or expiration.

3.3. Non-Exclusive Engagement. The Company may from time to time (i) engage other persons and entities to act as consultants to Company and perform services for Company, including services that are similar to the Consulting Services, and (ii) enter into agreements similar to this Agreement with other persons or entities, in all cases without the necessity of obtaining approval from Consultant. Consultant may from time to time (i) perform services for other businesses that are similar to the Consulting Services, and (ii) enter into agreements similar to this Agreement with other persons or entities, in all cases without the necessity of obtaining approval from the Company.

4. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of Florida without reference to the conflicts of law principles of any jurisdiction.

5. Notices. All notices and other communications under this Agreement or in connection with this Agreement shall be in writing and shall be deemed to have been given and received upon the earliest of (a) actual receipt by the intended recipient, (b) one (1) business day after deposit of the notice with a nationally-recognized overnight delivery service, properly addressed and charges prepaid or (c) upon transmission if sent by electronic mail to the proper electronic mail address if to Company or the Company (following the Closing), to:

If the Company:
4218 NE 2nd Avenue
2nd Floor
Miami, Florida 33137

If to Consultant:
105 U.S. Highway One
North Palm Beach, FL 33408

or to such other names, addresses and/or email addresses as Company, Company or Consultant, as the case may be, shall designate by notice to the other person in the manner specified in this Section 5.

6. Severability. The provisions of this Agreement are severable, and if any provision or portion thereof is held to be invalid or unenforceable for any reason, such provision or portion thereof shall be modified or adjusted by a court or other tribunal exercising its equitable powers to the extent necessary to cure such invalidity or unenforceability, and all other covenants and provisions shall remain valid and enforceable.

7. Assignment; Benefit. This Agreement is for the personal services of Consultant. Neither party may assign this Agreement without the prior written consent of the other party.

8. Miscellaneous. This Agreement, including the Confidentiality Agreement (a) constitutes the final, exclusive and fully integrated agreement between the Company and Consultant with respect to its subject matter and supersedes any prior and contemporaneous agreements and understandings between the Company and Consultant relating to the subject matter of this Agreement; (b) may be modified only in a writing duly executed by the party against whom enforcement is sought; and (c) shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties to this Agreement. This Agreement may be executed in counterparts, each of which shall be an original and when taken together, shall be one and the same document. Execution of this Agreement by a party may be evidenced through delivery of such party's signature to the other party by facsimile or electronic transmission in addition to any method providing for the delivery of notice under Section 5. The headings of the Sections of this Agreement are for convenience of reference only.

IN WITNESS WHEREOF, the undersigned have executed this Consulting Agreement effective as of the date set forth above.

BurgerFi International, LLC

By: /s/ Bryan McGuire
Name: Bryan McGuire
Title: CFO

Management Enterprises of Hollywood, Inc.

By: /s/ John Rosatti
Name: John Rosatti
Title: President



December 22, 2020

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Commissioners:

We have read the statements made by BurgerFi International, Inc. under Item 4.01 of its Form 8-K filed December 22, 2020. We agree with the statements concerning our Firm under Item 4.01, in which we were informed of our dismissal on December 22, 2020, effective immediately. We are not in a position to agree or disagree with other statements of BurgerFi International, Inc. contained therein.

Very truly yours,

/s/ Marcum LLP

Marcum llp



Marcum LLP ■ 750 Third Avenue ■ 11th Floor ■ New York, New York 10017 ■ Phone 212.485.5500 ■ Fax 212.485.5501 ■ marcumllp.com

OPES ACQUISITION CORP.
4218 NE 2nd Avenue
Miami, FL 33137

December 16, 2020

Re: Resignation Letter

To the Board of Directors of Opes Acquisition Corp.

I, James Anderson, hereby resign from my position as Independent Director of Opes Acquisition Corp., effective immediately.

Very truly yours,

/s/ James Anderson
James Anderson

OPES ACQUISITION CORP.
4218 NE 2nd Avenue
Miami, FL 33137

December 16, 2020

Re: Resignation Letter

To the Board of Directors of Opes Acquisition Corp.

I, David Brain, hereby resign from my position as Director of Opes Acquisition Corp., effective immediately.

Very truly yours,

/s/ David Brain

David Brain

OPES ACQUISITION CORP.
4218 NE 2nd Avenue
Miami, FL 33137

December 16, 2020

Re: Resignation Letter

To the Board of Directors of Opes Acquisition Corp.

I, Martha (Stormy) L. Byorum, hereby resign from my position as Independent Director of Opes Acquisition Corp., effective immediately.

Very truly yours,

/s/ Martha (Stormy) L. Byorum
Martha (Stormy) L. Byorum

OPES ACQUISITIO CORP.
4218 NE 2nd Avenue
Miami, FL 33137

December 16, 2020

Re: Resignation Letter

To the Board of Directors of Opes Acquisition Corp.

I, Jose Luis Cordova Vera, hereby resign from my position as Chief Financial Officer of Opes Acquisition Corp., effective immediately.

Very truly yours,

A handwritten signature in black ink that reads "Jose Luis Cordova". The signature is written in a cursive, slightly slanted style.

Jose Luis Cordova Vera

BurgerFi International, LLC
BF LBTS, LLC
BurgerFi-Delray Beach, LLC
BF Coral Springs, LLC
BF City Place-West Palm, LLC
BF Philadelphia, LLC
BF Jupiter, LLC
BGM Pembroke Pines, LLC
BF West Delray, LLC
BF Commack, LLC
BF Delray-Linton, LLC
BF Jacksonville Town Center, LLC
BF Jacksonville Riverside, LLC
BF Pines City Center, LLC
BF Dania Beach, LLC
BF Fort Myers-Daniels, LLC
BF Boca Raton-Boca Pointe, LLC
BF Commissary, LLC
BF Boca Raton, LLC
BF PBG, LLC
BF Jupiter - Indiantown, LLC

BurgerFi IP, LLC
BF Food Truck, LLC
BF Odessa, LLC
BF Atlanta - Perimeter Marketplace, LLC
BF Miami Beach - Meridian, LLC
BF Neptune Beach, LLC
BF Orlando - Dr. Phillips, LLC
BF Wellington, LLC
BF Williamsburg, LLC
BF Boca Raton, LLC
BF Poughkeepsie, LLC



BurgerFi Goes Public Following Completion of Business Combination with OPES Acquisition Corp.

-The Better Burger Brand Commences Trading on Nasdaq Under “BFI” Ticker-

PALM BEACH, FL – December 17, 2020 – OPES Acquisition Corp. (Nasdaq: OPES, OPESW) (“OPES” or the “Company”) and BurgerFi International, LLC (BurgerFi), one of the nation’s fastest-growing better burger concepts, have completed their previously announced business combination. As a result of the business combination, OPES changed its name to BurgerFi International, Inc. and its common stock will commence trading this morning on the Nasdaq Capital Market under the ticker symbol “BFI” and the warrants will trade under the ticker symbol “BFIW.”

“We believe that combining OPES with BurgerFi will expand the better burger brand’s growth nationally and internationally to reach new heights and create significant stockholder value,” stated Ophir Sternberg, newly appointed Executive Chairman of BurgerFi. “As I step into my new role, there will be an important focus on taking advantage of the current real estate market to seek growth opportunities, as there is an abundance of prime retail locations with leases on very favorable terms. We will also continue our industry-leading technology development, enhancing user experience and increasing sales through our various online ordering channels.”

Established almost a decade ago, BurgerFi has nearly 125 restaurants domestically and internationally, with plans to continue expanding. The concept was chef-founded and is renowned for delivering an exceptional, all-natural premium burger experience in contemporary and sustainably designed restaurants. BurgerFi uses 100% all-natural American Angus beef with no steroids, antibiotics, growth hormones, chemicals or additives. The brand’s diverse menu offerings have broad appeal and emphasize the use of high quality, responsibly sourced ingredients in each recipe. In addition to Angus and Wagyu beef burgers and hot dogs, guest favorites include the award-winning VegeFi® burger, all-natural cage-free “Fi’ed” chicken sandwiches and tenders, and fresh-cut fries made with just potatoes and salt. BurgerFi placed in the top 10 on Fast Casual’s Top 100 Movers & Shakers list in 2020, was named “Best Burger Joint” by Consumer Reports and fellow public interest organizations in the 2019 Chain Reaction Study, listed as a “Top Restaurant Brand to Watch” by Nation’s Restaurant News in 2019, included in Inc. Magazine’s Fastest Growing Private Companies List, and ranked on Entrepreneur’s 2017 Franchise 500.

“Becoming a publicly traded company is the first of many important milestones we envision for BurgerFi, as our opportunities to evolve and develop are seemingly limitless,” says Julio Ramirez, CEO of BurgerFi. “With our leading position as the preferred better burger restaurant in four out of five southern states, we will continue working our way up the eastern seaboard to the Mid-Atlantic and Northeast regions. Our corporate and franchise restaurant growth strategy will cluster in markets we’ve identified as strategically important, such as Atlanta, Nashville and Richmond.”

“It’s extremely fitting that BurgerFi is going public on the cusp of our 10-year anniversary,” said Charlie Guzzetta, President of BurgerFi. “It’s a dream that has become reality thanks to the tireless dedication of the team members, franchise partners, and founders that make up the BurgerFi family. We are proud of the strong foundation we’ve built and look forward to the brand’s continued success and growth in this exciting new phase.”

BurgerFi will continue to be led by its existing management team: Julio Ramirez, Chief Executive Officer; Charlie Guzzetta, President; Bryan McGuire, Chief Financial Officer, Nick Raucci, Chief Operating Officer; Ross Goldstein, Chief Legal Officer; and Chef Paul Griffin, Chief Culinary Officer.

The board of directors for BurgerFi includes notable members such as Steve Berrard, Co-Founder of AutoNation, and is led by Executive Chairman Ophir Sternberg, Founder and CEO of Lionheart Capital and Chairman and CEO of Lionheart Acquisition Corp. II (Nasdaq: LCAP).

To celebrate the business combination completion, BurgerFi will be ringing the Nasdaq opening bell today, December 17th at 9:30 a.m. Eastern time.

EarlyBirdCapital, Inc. served as exclusive financial and capital market advisor to OPES. Loeb & Loeb LLP served as legal counsel to OPES. Shumaker, Loop & Kendrick LLP is acting as legal counsel to BurgerFi International.

About BurgerFi International

Established in 2011, BurgerFi is among the nation's fastest-growing better burger concepts with approximately 125 BurgerFi restaurants domestically and internationally. The concept was chef-founded and is committed to serving fresh food of transparent quality. BurgerFi uses 100% natural American Angus beef with no steroids, antibiotics, growth hormones, chemicals or additives. BurgerFi placed in the top 10 on Fast Casual's Top 100 Movers & Shakers list in 2020, was named "Best Burger Joint" by Consumer Reports and fellow public interest organizations in the 2019 Chain Reaction Study, listed as a "Top Restaurant Brand to Watch" by Nation's Restaurant News in 2019, included in Inc. Magazine's Fastest Growing Private Companies List, and ranked on Entrepreneur's 2017 Franchise 500. To learn more about BurgerFi or to find a full list of locations, please visit www.burgerfi.com, 'Like' BurgerFi on Facebook or follow @BurgerFi on Instagram and Twitter. BurgerFi® is a Registered Trademark of BurgerFi IP, LLC, a wholly-owned subsidiary of BurgerFi.

Forward-Looking Statements:

This press release includes forward-looking statements that involve risks and uncertainties. Forward-looking statements are statements that are not historical facts. Such forward-looking statements, including the identification of a target business and potential business combination or other such transaction, are subject to risks and uncertainties, which could cause actual results to differ from the forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described in the section entitled “Risk Factors” in the annual report on Form 10-K filed by OPES on March 30, 2020 and in the section entitled “Risk Factors” in the definitive proxy statement filed by OPES on December 1, 2020. Important factors, among others, that may affect actual results or outcomes include: the inability to complete the proposed transaction; the inability to recognize the anticipated benefits of the proposed transaction, which may be affected by, among other things, the ability to meet the listing standards of the securities exchange following the consummation of the proposed transaction; and costs related to the proposed transaction. Important factors that could cause the combined company’s actual results or outcomes to differ materially from those discussed in the forward-looking statements include: BurgerFi’s limited operating history; BurgerFi’s ability to

manage growth; BurgerFi's ability to execute its business plan; BurgerFi's estimates of the size of the markets for its products; the rate and degree of market acceptance of BurgerFi's products; BurgerFi's ability to identify and integrate acquisitions; potential litigation involving OPES or BurgerFi or the validity or enforceability of BurgerFi's intellectual property; general economic and market conditions impacting demand for BurgerFi's products and services; and such other risks and uncertainties relating to Burger Fi that were included in the definitive proxy statement filed by OPES on December 1, 2020.

OPES expressly disclaims any obligations or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in the Company's expectations with respect thereto or any change in events, conditions or circumstances on which any statement is based.

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BURGERFI INTERNATIONAL, LLC
CONSOLIDATED FINANCIAL STATEMENTS
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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Members of
BurgerFi International, LLC

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of BurgerFi International, LLC. and Subsidiaries (the “Company”) as of December 31, 2019 and 2018, the related consolidated statements of income, changes in members’ equity and cash flows for the years then ended, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Change in Accounting Method Related to Revenue

As discussed in Note 1 to the consolidated financial statements, the Company changed its method for recognizing revenue effective January 1, 2019 due to the adoption of Accounting Standards Codification Topic 606, Revenue from Contracts with Customers.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated 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 and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated 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 consolidated 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 consolidated 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 consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Emphasis of Matter – COVID-19

As more fully described in Notes 1 and 10 to the consolidated financial statements, the Company may be materially impacted by the outbreak of a novel coronavirus (COVID-19), which was declared a global pandemic by the World Health Organization (“WHO”) in March 2020. Our opinion is not modified with respect to this matter.

/s/ BDO USA, LLP

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

West Palm Beach, Florida
September 25, 2020

BurgerFi International, LLC and Subsidiaries
Consolidated Balance Sheets

| <i>December 31,</i> | 2019 | 2018 |
|--|----------------------|----------------------|
| ASSETS | | |
| CURRENT ASSETS | | |
| Cash, including Variable interest entities of \$3,585 and \$3,585, respectively | \$ 1,689,658 | \$ 1,700,497 |
| Cash - restricted - Note 2 | 727,005 | 551,246 |
| Accounts receivable, net - Note 1 | 517,133 | 476,358 |
| Inventory | 249,228 | 121,866 |
| Other current assets | 415,960 | 220,940 |
| TOTAL CURRENT ASSETS | 3,598,984 | 3,070,907 |
| PROPERTY & EQUIPMENT, net - Note 3 – including variable interest entities of \$853,343 and \$1,014,435, respectively | 6,300,618 | 4,658,441 |
| DUE FROM RELATED COMPANIES - Note 4 | 3,611,536 | 5,991,050 |
| GOODWILL – variable interest entities | 397,621 | 397,621 |
| OTHER ASSETS | 472,694 | 506,940 |
| TOTAL ASSETS | \$ 14,381,453 | \$ 14,624,959 |
| LIABILITIES AND MEMBERS' EQUITY | | |
| CURRENT LIABILITIES | | |
| Accounts payable - trade | \$ 1,264,852 | \$ 1,644,603 |
| Accrued expense | 544,734 | 840,793 |
| Gift card liability | 585,827 | 445,213 |
| Revolving line of credit | 2,317,000 | - |
| Notes payable - current – variable interest entities – no recourse to general credit of the Company | 1,207,072 | 180,026 |
| Current portion deferred initial franchise fees - Note 1 | 438,085 | 787,500 |
| TOTAL CURRENT LIABILITIES | 6,357,570 | 3,898,135 |
| NON-CURRENT LIABILITIES | | |
| Deferred initial franchise fees, net of current portion - Note 1 | 4,249,836 | 3,148,125 |
| Due to related companies - Note 4 | 271,448 | 923,561 |
| Deferred rent | 995,615 | 735,275 |
| Notes payable – variable interest entities – no recourse to general credit of the Company | - | 1,112,737 |
| TOTAL LIABILITIES | 11,874,469 | 9,817,833 |
| COMMITMENTS AND CONTINGENCIES - Note 6 | | |
| MEMBERS' EQUITY - Before non-controlling interest, including variable interest entities of \$47,277 and \$122,678, respectively | 2,492,129 | 4,827,713 |
| MEMBERS' EQUITY (Deficit) - Non-controlling interest | 14,855 | (20,587) |
| TOTAL LIABILITIES AND MEMBERS' EQUITY | \$ 14,381,453 | \$ 14,624,959 |

See accompanying notes to consolidated financial statements.

BurgerFi International, LLC and Subsidiaries
Consolidated Statements of Income

| <i>For the Years Ended December 31,</i> | 2019 | 2018 |
|--|---------------------|---------------------|
| REVENUES | | |
| Restaurant sales - Note 1 | \$ 23,855,005 | \$ 20,859,629 |
| Royalty and other fees - Note 1 | 7,369,413 | 7,105,506 |
| Terminated franchise fees - Note 1 | 824,938 | 300,000 |
| Royalty - brand development and co-op - Note 1 | 1,720,087 | - |
| Initial franchise fees - Note 1 | 457,937 | 493,125 |
| TOTAL REVENUES | 34,227,380 | 28,758,260 |
| Restaurant level operating expenses: | | |
| Food, beverage and paper costs | 6,315,828 | 5,370,090 |
| Labor and related expenses | 7,839,203 | 7,042,782 |
| Other operating expenses | 5,270,761 | 4,220,293 |
| Occupancy and related expenses | 2,148,955 | 1,876,490 |
| General and administrative expenses | 7,230,200 | 6,744,678 |
| Depreciation and amortization expense | 825,201 | 832,834 |
| Brand development and co-op advertising expense | 1,732,407 | 801,769 |
| Gain on disposal of property and equipment | (184,386) | - |
| TOTAL OPERATING EXPENSES | 31,178,169 | 26,888,936 |
| OPERATING INCOME | 3,049,211 | 1,869,324 |
| Interest expense | (78,987) | (44,768) |
| NET INCOME | 2,970,224 | 1,824,556 |
| Net Income (Loss) Attributable to Non-Controlling Interests | 35,442 | (21,868) |
| Net Income Attributable to Controlling Interests | \$ 2,934,782 | \$ 1,846,424 |

See accompanying notes to consolidated financial statements.

BurgerFi International, LLC and Subsidiaries
Consolidated Statements of Members' Equity

| | Controlling Interest | NonControlling Interest | Total Members' Equity |
|---|---------------------------------|------------------------------------|----------------------------------|
| Balance, December 31, 2017 | \$ 3,309,366 | \$ - | \$ 3,309,366 |
| Net Income | 1,846,424 | (21,868) | 1,824,556 |
| Contributions | 16,923 | 11,281 | 28,204 |
| Distributions | <u>(345,000)</u> | <u>(10,000)</u> | <u>(355,000)</u> |
| Balance, December 31, 2018 | <u>\$ 4,827,713</u> | <u>\$ (20,587)</u> | <u>\$ 4,807,126</u> |
| | Controlling Interest | NonControlling Interest | Total Members' Equity |
| Balance, December 31, 2018 | \$ 4,827,713 | \$ (20,587) | \$ 4,807,126 |
| Adjustment related to adoption of ASC 606 | <u>(1,201,546)</u> | <u>-</u> | <u>(1,201,546)</u> |
| Balance, January 1, 2019 as adjusted | 3,626,167 | (20,587) | 3,605,580 |
| Net Income | 2,934,782 | 35,442 | 2,970,224 |
| Contributions | 594,000 | - | 594,000 |
| Distributions | <u>(4,662,820)</u> | <u>-</u> | <u>(4,662,820)</u> |
| Balance, December 31, 2019 | <u>\$ 2,492,129</u> | <u>\$ 14,855</u> | <u>\$ 2,506,984</u> |

BurgerFi International, LLC and Subsidiaries
Consolidated Statements of Cash Flows

| <i>For the Years Ended December 31,</i> | 2019 | 2018 |
|--|---------------------|---------------------|
| CASH FLOWS PROVIDED BY OPERATING ACTIVITIES | | |
| Net income | \$ 2,970,224 | \$ 1,824,556 |
| Adjustments to reconcile net income to net cash provided by (used in) operating activities | | |
| Provision for bad debts | 86,888 | 50,000 |
| Depreciation and amortization | 825,201 | 832,834 |
| Forfeited franchise deposits | (824,938) | (300,000) |
| Gain on sale of franchise/corporate-owned store | (184,386) | - |
| Changes in operating assets and liabilities | | |
| Accounts receivable | (127,663) | (262,197) |
| Inventory | (127,362) | (20,866) |
| Other assets | (190,784) | 374,920 |
| Accounts payable - trade | (379,752) | 570,427 |
| Accrued expenses and gift card liability | (155,447) | 313,863 |
| Deferred franchise fees | 375,688 | 112,500 |
| Other liabilities | 260,340 | 212,460 |
| NET CASH PROVIDED BY OPERATING ACTIVITIES | 2,528,009 | 3,708,497 |
| NET CASH FLOWS FROM INVESTING ACTIVITIES | | |
| Net cash acquired in acquisition of stores | - | 39,096 |
| Proceeds from sale of franchise/corporate owned store | 937,500 | - |
| Purchase of property and equipment | (2,437,368) | (1,191,606) |
| Advances to related companies | (10,601,298) | (7,979,549) |
| Repayments from related companies | 11,575,586 | 6,496,558 |
| NET CASH USED IN INVESTING ACTIVITIES | (525,580) | (2,635,501) |
| NET CASH FLOWS FROM FINANCING ACTIVITIES | | |
| Proceeds on revolving line of credit | 2,317,000 | - |
| Payments on notes payable | (85,689) | (69,462) |
| Members' distributions | (4,662,820) | (355,000) |
| Members' contributions | 594,000 | 87,754 |
| NET CASH USED IN FINANCING ACTIVITIES | (1,837,509) | (336,708) |
| NET INCREASE IN CASH | 164,920 | 736,288 |
| CASH, beginning of year | 2,251,743 | 1,515,455 |
| CASH, end of year | \$ 2,416,663 | \$ 2,251,743 |

BurgerFi International, LLC and Subsidiaries
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018

1. Nature of Operations and Summary of Significant Accounting Policies

Nature of operations

BurgerFi International, LLC, (a Delaware limited liability company) and Subsidiaries (collectively, the “Company”) is the exclusive franchisor of the BurgerFi concept. The BurgerFi concept is a quick service restaurant offering handcrafted natural Angus gourmet burgers, hot dogs, chicken, fresh cut fries, craft beers, wine and freshly prepared custards in an urban environment. Franchises are sold in restricted geographical territories. The Company has prepared its Franchise Disclosure Document as required by the United States Federal Trade Commission and has registered or will register in those states where required in order to legally sell its franchises. It is currently the Company’s plan to offer franchises for sale in those states where demographics of the population represent a demand for the services. The Company grants franchises to independent operators who in turn pay an initial franchise fee, royalties and other fees as stated in the franchise agreement. The Company is 90% owned by BurgerFi Holdings, LLC, a Delaware limited liability company, and 10% by a trust.

Store activity for the years ended December 31, 2019 and 2018 is as follows:

| | 2019 | 2018 |
|---|-------------|-------------|
| Franchised stores, beginning of year | 109 | 101 |
| Stores opened during the year | 15 | 11 |
| Stores closed during the year | 7 | 3 |
| Franchised stores, end of year | 117 | 109 |
| | 2019 | 2018 |
| Company-owned stores, beginning of year | 11 | 8 |
| Stores opened during the year | 3 | 3 |
| Stores closed during the year | 1 | - |
| Company-owned stores, end of year | 13 | 11 |

End of year store totals included five international stores at December 31, 2019 and 2018.

In 2018, the Company’s members contributed their interests in one additional restaurant to BF Restaurant Management, LLC, which is 40% owned by an unrelated party, resulting in the presentation of a non-controlling interest beginning in the 2018 consolidated financial statements.

In 2019, the Company’s members did not contribute any interests to BF Restaurant Management, LLC.

Liquidity and COVID-19

On January 30, 2020, the World Health Organization (“WHO”) announced a global health emergency because of a new strain of coronavirus originating in Wuhan, China (the “COVID-19 outbreak”) and the risks to the international community as the virus spreads globally beyond its point of origin. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. On March 27, 2020, the “Coronavirus Aid, Relief and Economic Security (CARES) Act” was signed into law. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, and deferment of employer side social security payments. As a result of the COVID-19 outbreak, the Company is experiencing temporary closures of certain restaurants and reduced revenues at those restaurants which remain open, which may have a significant impact on the Company’s 2020 revenues and cash flows. However, the Company has taken steps to reduce operating costs through reductions in payroll expenses to conserve cash. Management continues to actively manage and monitor its cash flows and has the ability to further reduce certain expenses as necessary. From May 4, 2020 to May 11, 2020, the Company received approximately \$2.2 million from stimulus loans under the SBA Paycheck Protection Program of the CARES Act. As a result, management believes that the Company has sufficient resources to fund its operations through at least twelve months from the date of this report. Refer to Note 10 Subsequent Events for additional discussion about COVID-19 and the CARES Act. The stimulus loan bears interest at a fixed rate of 1% per annum, with the first six months of interest deferred, has a term of two years, and is unsecured and guaranteed by the SBA. The Company intends to apply to the lender for forgiveness of the stimulus loan, with the amount which may be forgiven equal to the sum of payroll costs, covered rent and other obligations, and covered utility payments incurred by the Company during the permitted period beginning on May 2020, calculated in accordance with the terms of the CARES Act. The Company’s eligibility for the stimulus loan, expenditures that qualify toward forgiveness, and the final balance of the stimulus loan that may be forgiven are subject to audit and final approval by the SBA. To the extent that all or part of the stimulus loan is not forgiven, the Company will be required to pay interest at 1% and, commencing in November 2020, interest payments will be required through the maturity date in May 2022. The terms of the stimulus loan provide for customary events of default including, among other things, payment defaults, breach of representations and warranties, and insolvency events. The stimulus loan may be accelerated upon the occurrence of an event of default, including if the SBA subsequently reaches an audit determination that the Company does not meet the eligibility criteria.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

The stimulus loan is being accounted for under ASC 470, *Debt*, whereby interest expense is being accrued at the contractual rate and future debt maturities are based on the assumptions that none of the principal balance will be forgiven. Forgiveness, if any, will be recognized as a gain on extinguishment if the lender legally releases the Company based on the criteria set forth in the debt agreement and the CARES Act.

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) and pursuant to the reporting and disclosure rules and regulations of the Securities Exchange Commission ("SEC") for all periods presented.

On June 29, 2020 the Company entered into a membership interest purchase agreement (the "MIP") with OPES Acquisition Corp. ("OPES") whereby the Company is expected to become a publicly held company. Therefore, these consolidated financial statements include the application of U.S. GAAP for public entities. Refer to Note 10 Subsequent Events for additional discussion on the MIP with OPES.

Principles of Consolidation

The consolidated financial statements present the consolidated financial position, results from operations and cash flows of BurgerFi International, LLC, a Delaware limited liability company, and its wholly owned subsidiaries, BF Restaurant Management LLC, a Florida limited liability company and BF Commissary, LLC ("BF Commissary"), a Florida limited liability company. BF Restaurant Management LLC, (BFRM), owns and/or operates fifteen restaurants across Florida, one in Philadelphia, and one in New York. BFRM is made up of the following owned subsidiaries:

- BurgerFi-Delray Beach, LLC, a Delaware limited liability company
- BF Coral Springs, LLC, a Florida limited liability company
- BF City Place-West Palm, LLC, a Florida limited liability company
- BF Commack, LLC, a Florida limited liability company
- BF Jupiter, LLC, a Florida limited liability company
- BF Philadelphia, LLC, a Florida limited liability company
- BF West Delray, LLC, a Florida limited liability company
- BF LBTS, LLC, a Florida limited liability company
- BGM Pembroke Pines, LLC, a Florida limited liability company
- BF Jacksonville Town Center, LLC, a Florida limited liability company
- BF Jacksonville Riverside, LLC, a Florida limited liability company
- BF Delray-Linton, LLC, a Florida limited liability company
- BF Pines City Center, LLC, a Florida limited liability company
- BF Boynton Beach, LLC, a Florida limited liability company
- BF Dania Beach, LLC, a Florida limited liability company
- BF Ft Myers-Daniels, LLC, a Florida limited liability company
- BF Boca Raton, LLC, a Florida limited liability company

All material balances and transactions between the entities have been eliminated in consolidation.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingencies at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting year. Actual results could differ from those estimates.

Segment Reporting

The Company owns and operates BurgerFi restaurants in the United States, and also have domestic and international franchisees. The chief operating decision makers (the “CODMs”) are the Company’s President, Chief Operating Officer and Chief Financial Officer. As the CODMs review financial performance and allocate resources at a consolidated level on a recurring basis, the Company has one operating reporting segment and one reportable segment.

Variable Interest Entities

For VIE(s), the Company assesses whether the Company is the primary beneficiary as prescribed by the accounting guidance on the consolidation of VIE. The primary beneficiary of a VIE is the party that has the power to direct the activities that most significantly impact the performance of the entity and the obligation to absorb the losses or the right to receive the benefits that could potentially be significant to the entity.

The Company has evaluated its business relationships with franchisees to identify potential VIEs. While the Company holds a variable interest in some of the franchised restaurants owned by an affiliated entity, the Company is not the primary beneficiary since it does not have the power to direct the activities of these franchised restaurants. As a result, the Company does not consolidate those VIEs. At December 31, 2019, the Company is a guarantor for seven operating leases for those entities, BF Secaucus, LLC; BF Tallahassee, LLC; BF Fort Myers, LLC; BF NY82, LLC; BF Naples Tamiami, LLC; and BF Naples Immokalee. Additionally, the Company is a guarantor for a lease for The Burger Bunch, LLC, an unrelated party. The Company may become responsible for the payments under its guarantee. The Company has determined that its maximum exposure to loss on the VIEs that it is not the primary beneficiary on results from the lease guarantees amounts to approximately \$7,200,000.

Additionally, on April 23, 2018 (the “Takeover Date”), the Company entered into an asset purchase and management agreement (the “APM”) with a multiple unit franchisee. The APM allowed the Company to acquire the assets of two of the franchisee’s restaurants for the consideration of the Company making the monthly principal and interest payments on the franchisee’s three bank loans through 2027. The closing on asset purchase would occur only when the debt was paid in full. The outstanding principal on the loans was approximately \$1,291,000 on the Takeover Date. The APM allowed the Company to take over the management and operation of the two restaurants with full control over all operational decision making. Under the APM, the Company provides all capital for all of the restaurants’ expenditures it deems appropriate, and pays all costs and expenses associated with the operations. All cash flow and profits or losses derived from the operations after the Takeover Date belong to the Company. The Company has evaluated the franchisee which is a party to the APM for VIE accounting under ASC 810 “Consolidation” and has determined that the franchisee under the APM is a VIE and that the Company is the primary beneficiary, effective on the Takeover Date. Therefore, the Company has consolidated the franchisee that owned two restaurants as a business combination under ASC 805 *Business Combinations*.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

The acquisition is accounted for as a business combination under the acquisition method as of the Takeover Date, and accordingly, the results of its operations are included in the Company's consolidated financial statements from that date. Net sales for the consolidated VIE were approximately \$2.4 million and net income was \$93,364 from the Takeover Date through December 31, 2018. The Company is unable to disclose the amount of sales and net income or loss from January 1, 2018 to the Takeover Date as they have been unable to obtain the information from the prior operator and we do not believe the information is material for the period from January 1, 2018 to the Takeover Date, April 23, 2018.

The consideration was the fair value of the three loans at the Takeover Date and the assets are recorded based on the fair values of the assets acquired, net of current liabilities as of the Takeover Date as follows:

| | | |
|--|----|------------------|
| Cash | \$ | 39,097 |
| Accounts Receivable | | 960 |
| Inventory | | 28,387 |
| Other current assets | | 24,070 |
| Property & equipment | | 1,126,000 |
| Other assets | | 4,390 |
| Current liabilities | | <u>(330,006)</u> |
| Net tangible and identifiable intangible assets acquired | | 892,898 |
| Goodwill | | <u>397,621</u> |
| Net assets acquired | \$ | <u>1,290,519</u> |

The Company incurred transaction costs of approximately \$10,000 which are included in general and administrative expenses in the accompanying consolidated statement of income for the year ended December 31, 2018.

Included in the consolidated financial statements are the following from variable interest entities for which the Company is the primary beneficiary:

| | December 31, 2019 | December 31, 2018 |
|--|------------------------------|------------------------------|
| Cash | \$ 3,385 | \$ 3,385 |
| Property and equipment | 853,343 | 1,014,435 |
| Goodwill | 397,621 | 397,621 |
| Total Assets | <u>\$ 1,254,349</u> | <u>\$ 1,415,441</u> |
| Current notes payable | \$ 1,207,072 | \$ 180,026 |
| Notes payable – net of current portion | - | 1,112,737 |
| Total liabilities | 1,207,072 | 1,292,763 |
| Total members' equity | 47,277 | 122,678 |
| Total Liabilities and Members' Equity | <u>\$ 1,254,349</u> | <u>\$ 1,415,441</u> |

The three loans are collateralized by the VIEs' assets and the creditors of the loans do not have recourse to the general credit of the Company. The carrying value of the VIEs assets which collateralize the loans are noted above.

BurgerFi International, LLC and Subsidiaries
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018

Cash and Cash Equivalents

The Company considers highly liquid investments with maturities of three months or less as cash equivalents. Cash and cash equivalents also include approximately \$339,000 and \$132,000 as of December 31, 2019 and 2018, respectively, of amounts due from commercial credit card companies, such as Visa, MasterCard, Discover, and American Express, which are generally received within a few days of the related transactions. At times, the balances in the cash and cash equivalents accounts may exceed federal insured limits.

Restricted Cash

Restricted cash consists of (i) cash collected (net of redemptions) from gift cards, (ii) cash balances for the advertising co-op, (iii) Level-up loyalty program cash collections, and (iii) initial franchise deposits in escrow. The Company is the custodian of these account balances, but these accounts are in place for specific, restricted purposes, which typically are resolved within twelve months. The Company classifies the restricted cash accounts as current assets.

Accounts receivable

Accounts receivable consist of amounts due from franchisees for training and royalties and are stated at the amount invoiced. Accounts receivable are stated at the amount management expects to collect from balances outstanding at year end. Management provides for probable uncollectible amounts through a charge to earnings and a credit to allowance for uncollectible accounts based on its assessment of the current status of individual accounts. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the allowance for uncollectible accounts and a credit to accounts receivable. The allowance for uncollectible accounts was approximately \$65,000 at December 31, 2019 and \$50,000 at December 31, 2018.

Inventories

Inventories primarily consist of food and beverages. Inventories are accounted for at lower of cost or net realizable value using the first-in, first-out (FIFO) method. Spoilage is expensed as incurred.

Property and Equipment

Property and equipment is carried at cost, net of accumulated depreciation. Depreciation is provided by the straight-line method over an estimated useful life. Leasehold improvements are amortized using the straight-line method over the lesser of the estimated useful life of the asset (generally up to ten years) or the term of the related lease. The estimated lives for machinery and equipment, computer equipment, furniture and fixtures, and vehicles range from five to seven years. Maintenance and repairs which are not considered to extend the useful lives of the assets are charged to operations as incurred. Expenditures for additions and improvements are capitalized. Expenditures for renewals and betterments, which materially extend the useful lives of assets or increase their productivity, are capitalized. The Company capitalizes construction costs during construction of the restaurant and will begin to depreciate them once the restaurant is placed in service. Wage costs directly related to and incurred during a restaurant's construction period are capitalized. Interest costs incurred during a restaurant's construction period are capitalized. Upon sale or retirement, the cost of assets and related accumulated depreciation and amortization are removed from the accounts and any resulting gains or losses are included in operating expense.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

Impairment of Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. There were no impairments recognized for the years ended December 31, 2019 and 2018.

Goodwill

As of December 31, 2019 and 2018, in connection with the APM described above, the Company has a balance of approximately \$398,000 of goodwill on its consolidated balance sheet. The Company accounts for goodwill in accordance with FASB ASC No. 350, Intangibles—Goodwill and Other (“ASC 350”). ASC 350 requires goodwill to be reviewed for impairment annually, or more frequently if circumstances indicate a possible impairment. The Company evaluates goodwill in the fourth quarter or more frequently if management believes indicators of impairment exist. Such indicators could include but are not limited to (1) a significant adverse change in legal factors or in business climate, (2) unanticipated competition, or (3) an adverse action or assessment by a regulator.

The Company first assesses qualitative factors to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying amount, including goodwill. If management concludes that it is more likely than not that the fair value of the reporting unit is less than its carrying amount, management conducts a quantitative goodwill impairment test. This impairment test involves comparing the fair value of the reporting unit with its carrying value (including goodwill). The Company estimates the fair values of its reporting unit using a combination of the income, or discounted cash flows approach and the market approach, which utilizes comparable companies’ data. If the estimated fair value of the reporting unit is less than its carrying value, a goodwill impairment exists for the reporting unit and an impairment loss is recorded. There were no impairments of goodwill recognized for the years ended December 31, 2019 and 2018.

Recently Adopted Accounting Pronouncements

In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers* (Topic 606) (“ASC 606”) that updated and replaced existing revenue recognition guidance. The guidance includes a five-step framework to determine the timing and amount of revenue to recognize related to contracts with customers. Additionally, the guidance requires new and significantly enhanced disclosures about the nature, amount, timing and uncertainty of revenue and cash flows from customer contracts as well as judgments made by a company when following the framework.

Revenue from Contracts with Customers

On January 1, 2019, the Company adopted ASC 606, using the modified retrospective method applied to those contracts which were not completed as of January 1, 2019. The Company elected a practical expedient to aggregate the effect of all contract modifications that occurred before the adoption date, which did not have a material impact to the consolidated financial statements. Results for reporting periods beginning on or after January 1, 2019 are presented under ASC 606. Prior period amounts were not revised and continue to be reported in accordance with ASC 605, the accounting standard then in effect.

Upon transition, on January 1, 2019, we recorded a decrease to opening members’ equity of \$1,201,546, with a corresponding decrease of \$348,730 in current deferred initial franchise fees liability, and an increase of \$1,550,276 in long-term deferred initial franchise fee liabilities.

Revenue Recognition Under ASC 606

Revenue consists of restaurant sales and franchise licensing revenue. Generally, revenue is recognized as performance obligations transfer to the customer in an amount that reflects the consideration we expect to be entitled in exchange for those goods or services.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

Restaurant Revenues

Revenue from restaurant sales is presented net of discounts and recognized when food, beverage and retail products are sold. Sales tax collected from customers is excluded from restaurant sales and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Sales from our gift cards are deferred and recognized upon redemption for goods or services. Revenues are reported gross on the accompanying consolidated statements of income and members' equity with employee complimentary meals recorded as a component of labor expenses. Revenue from restaurant sales are generally paid at the time of sale. Credit cards and delivery service partners sales are generally collected within 2-3 days.

The revenue from electronic gift cards is deferred when purchased by the customer and revenue is recognized when the gift cards are redeemed. The Company is a Delaware limited liability company and is subject to Delaware escheatment laws. Delaware escheatment laws state that gift cards are presumed to be abandoned after five years and the balance remitted should represent the maximum cost to the issuer of merchandise. The accounting for the restaurant revenues were not impacted by the adoption of ASC 606.

BFI contracts with delivery service partners for delivery of goods and services to customers. The Company has determined that the delivery service partners are agents, and the Company is the principal. Therefore, restaurant sales through delivery services are recognized at gross sales and delivery service revenue is recorded as expense.

Revenues from BF Commissary

BF Commissary, which commenced operations in 2019, produces and sells BurgerFi's vegetable burgers to a distributor based on agreed-upon cost plus freight cost. The Company recognizes revenue upon pick-up of orders at the designated pick up points or when the distributor obtains control of the products. For the year ended December 31, 2019, the Company recognized revenue of \$709,876 from BF Commissary and is presented as part of restaurant sales in the consolidated statements of income.

Franchise Revenues

The franchise agreements require the franchisee to pay an initial, non-refundable fee of \$37,500 and continuing fees based upon a percentage of sales. Owners can make a deposit equal to 50% of the total franchise fee to reserve the right to open additional locations. The remaining balance of the franchise fee is due upon signing by the franchisee of the applicable location's lease or mortgage. Franchise agreements and deposit agreements outline a schedule for store openings. Failure to meet the schedule can result in forfeiture of deposits made.

Franchise revenue is comprised of certain initial franchise fees and ongoing sales-based royalty fees from a franchised BurgerFi restaurant. Generally, the licenses granted to develop, open and operate each BurgerFi franchise in a specified territory are the predominant performance obligations transferred to the licensee in our contracts, and represent symbolic intellectual property. Ancillary promised services, such as training and assistance during the initial opening of a BurgerFi restaurant are typically combined with the licenses and considered as one performance obligation per BurgerFi franchise. Certain initial services such as site selection and lease review are considered distinct services that are recognized at a point in time when the performance obligations have been provided, generally when the BurgerFi has been opened. We determine the transaction price for each contract and allocate it to the distinct services based on their standalone selling price based on the costs to provide the service and a profit margin. The remainder of the transaction price is recognized over the remaining term of the franchise agreement once the BurgerFi restaurant has been opened. Because we are transferring licenses to access our intellectual property during a contractual term, revenue is recognized on a straight-line basis over the license term. Generally, payment for the initial franchise fee is received upon execution of the licensing agreement. These payments are initially deferred and recognized as revenue as the performance obligations are satisfied.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

Franchise deposits received in advance for locations not expected to open within one year are classified as long-term liabilities. Forfeiture of deposits is recognized as other revenue once contracts have been terminated for failure to comply. All terminations are communicated to the franchisee in writing using formal termination letters.

Revenue from sales-based royalties (i.e. royalty and other fees, brand development and advertising co-op royalties) is recognized as the related sales occur. The sales-based royalties are invoiced and collected from the franchisees on a weekly basis. Rebates from vendors received on franchisee's sales are also recognized as revenue from sales-based royalties.

Prior to the adoption of ASC 606, initial franchise fees were recorded as deferred revenue when received and proportionate amounts were recognized as revenue when a licensed BurgerFi opened and all material services and conditions related to the fee were substantially performed. Sales-based royalty fees were recorded as revenue when sales occurred.

Revenue recognized during the year ended December 31, 2019 under ASC 606 and revenue that would have been recognized during the year ended December 31, 2019 had ASC 605 been applied is as follows:

| | As reported under ASC 606 | If reported under ASC 605 | Increase (decrease) |
|---|--------------------------------------|--------------------------------------|--------------------------------|
| Restaurant sales | \$ 23,145,129 | \$ 23,145,129 | \$ - |
| BF Commissary sales | 709,876 | 709,876 | - |
| Franchise revenue | | | |
| Sales-based royalties | 6,804,720 | 6,804,720 | - |
| Brand development and advertising co-op royalties | 1,720,087 | - | 1,720,087 |
| Initial franchise fees | 254,094 | 1,239,875 | (985,781) |
| Initial distinct services | 203,843 | - | 203,843 |
| Rebates from vendors | 564,693 | - | 564,693 |
| Other revenue - terminations of franchises | 824,938 | - | 824,938 |
| Total revenue | \$ 34,227,380 | \$ 31,899,600 | \$ 2,327,780 |

BurgerFi International, LLC and Subsidiaries
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018

Revenue recognized during the year ended December 31, 2019 (under ASC 606) and the year ended December 31, 2018 (under ASC 605) disaggregated by type is as follows:

| | December 31 2019 | December 31 2018 |
|---|-----------------------------|-----------------------------|
| Restaurant sales | \$ 23,145,129 | \$ 20,859,629 |
| BF Commissary sales | 709,876 | - |
| Franchising revenue: | | |
| Sales-based royalties | 6,804,720 | 7,105,506 |
| Rebate royalties | 564,693 | - |
| Brand development and advertising co-op royalties | 1,720,087 | - |
| Initial franchise fees | 254,094 | 493,125 |
| Initial distinct services | 203,843 | - |
| Other revenue - terminations of franchises | 824,938 | 300,000 |
| Total revenue | \$ 34,227,380 | \$ 28,758,260 |

The following table shows the Company's revenues disaggregated according to the timing of transfer of goods or services:

| <i>Years ended December 31,</i> | 2019 |
|--|----------------------|
| Revenue recognized at a point in time | |
| Restaurant revenue | \$ 23,145,129 |
| BF Commissary sales | 709,876 |
| Royalty and other fees | 7,369,413 |
| Terminated franchise fees | 824,938 |
| Brand development and advertising co-op royalties | 1,720,087 |
| Franchising revenue – distinct initial services | 203,843 |
| Total revenue recognized at a point in time | \$ 33,973,286 |
| Revenue recognized over time | |
| Franchising fees | 254,094 |
| Total revenue recognized over time | 254,094 |
| Total Revenue | \$ 34,227,380 |

The aggregate amount of the transaction price allocated to performance obligations that are unsatisfied (or partially unsatisfied) as of December 31, 2019 is \$4,687,921. The Company expects to recognize this amount as revenue over a long-term period, as the license term for each BurgerFi franchise is 10 years. This amount excludes any variable consideration related to sales-based royalties.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

Contract Balances

Opening and closing balances of contract liabilities and receivables from contracts with customers for the years ended December 31, 2019 and 2018 are as follows:

| | December 31 | |
|-----------------------------|-------------|------------|
| | 2019 | 2018 |
| Franchising receivables | \$ 369,168 | \$ 278,189 |
| Advertising co-op funds | 158,581 | 68,538 |
| Gift card liability | 585,827 | 445,213 |
| Deferred revenue, current | 438,085 | 787,500 |
| Deferred revenue, long-term | 4,249,836 | 3,148,125 |

Revenue recognized during the year ended December 31, 2019, which was included in the balance of deferred franchise revenue at the beginning of the period is \$1,282,959.

Revenue Recognition under ASC 605

Restaurant Revenues

The Company recognizes revenue from sales of food and beverage when payment is tendered at the point of sale. Revenues are reported gross on the accompanying statements of income with employee complimentary meals recorded as a component of labor expenses and customer complimentary meals and sales incentives recorded as a component of operating expenses. The revenue from electronic gift cards is deferred when purchased by the customer and revenue is recognized when the gift cards are redeemed or at the time redemption of the gift cards is considered remote. The Company is a Delaware limited liability company and is subject to Delaware escheatment laws. Delaware escheatment laws state that gift cards are presumed to be abandoned after five years and the balance remitted should represent the maximum cost to the issuer of merchandise.

Franchise Revenues

The Company generates revenues from franchising through individual franchise agreements. Franchise revenues are recognized in accordance with FASB Accounting Standards Codification (ASC) 952, Franchisors, which requires deferral until substantial performance of franchisor obligations is complete. When an individual franchise is sold, the Company agrees to provide certain services to the franchisee including assistance in site selection and development, training personnel, opening assistance, and access to prototype plans and manuals.

The franchise agreements require the franchisee to pay an initial, non-refundable fee of \$37,500 and continuing fees based upon a percentage of sales. Owners can make a deposit equal to 50% of the total franchise fee to reserve the right to open additional locations. The remaining balance of the franchise fee is due upon signing by the franchisee of the applicable location's lease or mortgage. Franchise agreements and deposit agreements outline a schedule for store openings. Failure to meet the schedule can result in forfeiture of deposits made.

Revenues from initial franchise fees are recognized as income when all services related to the initial fee have been performed and the related restaurant is opened for business.

Franchise deposits received in advance for locations not expected to open within one year are classified as long-term liabilities. Forfeiture of deposits is recognized as revenue once contracts have been terminated for failure to comply. All terminations are communicated to the franchisee in writing using formal termination letters.

Initial franchise fees and the related direct costs are deferred until the franchisee begins operations. An analysis of deferred revenues is as follows:

| Years ended December 31, | 2018 |
|---|--------------|
| Balance, beginning of period | \$ 4,123,125 |
| Initial franchise fees received | 521,250 |
| Revenue recognized for stores opened during period | (408,750) |
| Revenue recognized related to franchise agreement default | (300,000) |
| Balance, end of period | \$ 3,935,625 |

Continuing royalty fees are generally provided for in the franchise agreements as a percent of franchise gross sales. Royalty revenues are recognized as income in the same period in which the franchisees' sales occur.

BurgerFi International, LLC and Subsidiaries
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018

Presentation of Sales Taxes

The Company collects sales tax from customers and remits the entire amount to the respective states. The Company's accounting policy is to exclude the tax collected and remitted from revenues and cost of sales. Sales tax payable amounted to approximately \$142,000 and \$131,000 at December 31, 2019, 2018, respectively, and is presented in accrued expenses and other current liabilities in the accompanying consolidated balance sheets.

On June 21, 2018, the U.S. Supreme Court issued a landmark decision in *South Dakota v. Wayfair*. The Company has assessed the current guidance surrounding the court case and does not believe the *Wayfair* decision materially impacts its sales and use tax process. The Company continues to monitor changes resulting from the *Wayfair* decision.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash. The Company places its temporary cash investments with financial institutions and during 2019 and 2018, there were amounts on deposit in excess of federal insurance limits.

Advertising Expenses

Advertising costs are expensed as incurred. Advertising expenses for the years ended December 31, 2019 and 2018 were approximately \$702,000 and \$941,000, respectively, including amounts paid to the brand development and advertising co-op fund, as described below.

Brand Development Fund

The Company's franchise agreements provide for franchisee contributions of a percentage of gross restaurant sales to a brand development fund administered by the Company. Amounts collected are required to be segregated and used for advertising and related costs, including reasonable costs of administering the fund. Contributed amounts are recognized as restricted cash. At December 31, 2019, the Company had revenue of approximately \$1,455,000 of contributions which are included in the brand development and advertising co-op royalties and approximately \$1,506,000 of expenses incurred which are included in the brand development and Co-op advertising expenses. At December 31, 2018, the Company had approximately \$521,000 of expenses incurred in excess of contributions received which is included as brand development and co-op advertising expenses in the consolidated statements of income.

Advertising Co-Op Fund

During 2017, the Company established an advertising Co-Op fund in which several of the South Florida franchises participate. The members of the Co-Op elect to contribute a percentage of gross restaurant sales to a fund administered by the Company. Amounts collected are required to be segregated and used for local advertising and related costs, including reasonable costs of administering the fund. Consequently, contributed amounts, net of expended funds are recognized as restricted cash. At December 31, 2019, the Company had revenue of approximately \$265,000 of contributions and approximately \$226,000 of expenses incurred which are included in the -brand development and co-op royalties and brand development and co-op advertising expenses, respectively. At December 31, 2018, the Company had approximately \$281,000 of expenses incurred in excess of contributions received which is presented as brand development and Co-op advertising expenses in the consolidated statements of income.

Pre-opening Costs

The Company follows ASC Topic 720-15, "Start-up Costs", which provides guidance on the financial reporting of start-up costs and organization costs. In accordance with this ASC Topic, costs of pre-opening activities and organization costs are expensed as incurred. Pre-opening costs expensed were approximately \$425,000 and \$24,000 for the years ended 2019 and 2018, respectively.

Deferred Rent

Rent expense on non-cancelable leases containing known future scheduled rent increases or free rent periods is recorded on a straight-line basis over the respective lease term. The lease term begins when the Company has the right to control the use of the leased property and includes the initial non-cancelable lease term plus any periods covered by renewal options that the Company is reasonably assured of exercising. The difference between rent expense and rent paid is accounted for as deferred rent and is amortized over the lease term.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

Operating Leases

The Company leases restaurant locations that have terms expiring between December 2020 and March 2035. The initial obligation period is generally 10 years. The restaurant facilities primarily have renewal clauses for two 5-year period or one 10-year period, exercisable at the option of the Company. The Company includes one 5-year renewal option in its lease term.

Certain lease agreements contain one or more of the following: tenant improvement allowances, rent holidays, rent escalation clauses and/or contingent rent provisions. The Company includes scheduled rent escalation clauses for the purpose of recognizing straight-line rent. Certain of these leases require the payment of contingent rentals based on a percentage of gross revenues, as defined, and certain other rent escalation clauses are based on the change in the Consumer Price Index. The Company received cash incentives from certain landlords for specified leasehold improvements which are deferred and accreted on a straight-line basis over the related lease term as a reduction of rent expense.

Income Taxes

The Company, with the consent of its members, has elected to be taxed as a partnership under the provisions of the Internal Revenue Code and similar state provisions. Partnerships generally are not subject to Federal and state income taxes. In lieu of corporation income taxes, the partners reflect their respective share of the Company's taxable income or loss on their individual income tax returns. Accordingly, no provision for income taxes has been included in the accompanying consolidated financial statements.

There were neither liabilities nor deferred tax assets relating to uncertain income tax positions taken or expected to be taken on the tax returns.

The Company utilizes a two-step approach for recognizing and measuring uncertain tax positions accounted for in accordance with the asset and liability method. The first step is to evaluate the tax position for recognition by determining whether evidence indicates that it is more likely than not that a position will be sustained if examined by a taxing authority.

The second step is to measure the tax benefit as the largest amount that is 50% likely of being realized upon settlement with a taxing authority. There were no amounts recorded at December 31, 2019 and 2018 related to uncertain tax positions, interest or penalties.

New Accounting Pronouncements

In February 2016, the FASB issued ASU 2016-02, which requires lessees to recognize lease assets and lease liabilities on the balance sheet for all leases with terms longer than 12 months and disclose certain information about the leasing arrangements. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. This guidance became effective for fiscal years beginning after December 15, 2018 for public entities, except for "emerging growth companies" (as defined in Section 2(a) of the Securities Act and as modified by the Jumpstart Our Business Startups Act of 2012) and for fiscal years beginning after December 15, 2019 for all other entities. However, in April 2020, the FASB voted to defer the effective date of ASC 842 for private companies and certain not-for-profit entities for one year. As such, this will be effective for fiscal years beginning after December 15, 2021. Since the Company will qualify as an "emerging growth company" after the closing of the MIP with OPES, it is exempted from being required to comply with new or revised financial accounting standards until private companies are required to comply with the new or revised financial accounting standards.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

The FASB issued ASU Update 2016-13, Financial Instruments - Credit Losses (“Topic 326”) in June 2016, subsequently amended by various standard updates. This guidance replaces the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information when determining credit loss estimates and requires financial assets to be measured net of expected credit losses at the time of initial recognition. This guidance is effective for annual and interim reporting periods beginning after December 15, 2019, for public entities and using a modified retrospective adoption method. ASU 2019-10 deferred the effective date for smaller reporting companies and all other entities until years beginning after December 15, 2022. Early adoption is permitted.

In December 2019, the FASB issued Update 2019-12, Income Taxes (“Topic 740”) as part of its Simplification Initiative. This guidance provides amendments to simplify the accounting for income taxes by removing certain exceptions to the general principles in Topic 740. The amendments also improve consistent application of and simplify GAAP for other areas of Topic 740 by clarifying and amending existing guidance. This guidance is effective for annual and interim reporting periods beginning after December 15, 2020, and early adoption is permitted. We are currently evaluating the full impact this guidance will have on our consolidated financial statements.

In March 2020, the FASB issued Topic 848 *Reference Rate Reform* to provide optional guidance for a limited period of time, from March 12, 2020 through December 31, 2022, to ease the burden of financial reporting due to reference rate reform. An entity can elect to utilize the guidance at any time during the period.

The Company is evaluating the effect this guidance will have on the consolidated financial statements and related disclosures.

2. Restricted Cash

Restricted cash consisted of the following as of:

| <i>December 31,</i> | 2019 | 2018 |
|--------------------------------------|--------------------------|-------------------|
| Gift cards purchased | \$ 504,682 | \$ 445,213 |
| Advertising co-op funds | 158,581 | 68,538 |
| LevelUp loyalty program | 63,742 | - |
| Initial franchise deposits in escrow | - | 37,495 |
| Total Restricted Cash | <u>\$ 727,005</u> | <u>\$ 551,246</u> |

BurgerFi International, LLC and Subsidiaries
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018

3. Property & Equipment

Property and equipment consisted of the following:

| <i>December 31,</i> | 2019 | 2018 |
|---|---------------------|---------------------|
| Leasehold improvements | \$ 5,723,684 | \$ 4,293,900 |
| Machinery & equipment | 2,821,136 | 1,898,000 |
| Computer equipment | 560,085 | 472,457 |
| Furniture & fixtures | 1,277,775 | 1,280,300 |
| Vehicles | 50,000 | 50,000 |
| | 10,432,680 | 7,994,657 |
| Less: Accumulated depreciation and amortization | 4,132,062 | 3,336,216 |
| Property and equipment – net | \$ 6,300,618 | \$ 4,658,441 |

4. Related Party Transactions

The Company is affiliated with various entities through common control and ownership. The accompanying consolidated balance sheets reflect amounts related to periodic advances between the Company and these entities for working capital and other needs as due from related companies or due to related companies, as appropriate. The amounts due from related companies are not expected to be repaid within one year and accordingly, are classified as non-current assets in the accompanying consolidated balance sheets. These advances are unsecured and non-interest bearing.

There were approximately \$3,612,000 and \$5,991,000 included as due from related companies, and \$271,000 and \$924,000 included as due to related companies in the consolidated balance sheets, as of December 31, 2019 and 2018, respectively

During 2019 and 2018, the Company received royalty revenues from franchisees related through common control and ownership totaling approximately \$1,182,000 and \$1,055,000, respectively.

The Company pays certain payroll and administrative fees on behalf of the entities under common ownership. A management fee is then billed to the respective entities to cover these costs. Management fees are included as reductions to the related operating expenses. During 2019, the Company billed approximately \$60,000 of management fees. During 2018, the Company billed approximately \$504,000 of management fees of which \$504,000 are included as due from related companies as of December 31, 2018.

The Company leases building space for its corporate office from an entity under common ownership with its member on a month-to-month basis starting in 2012. Rent expense for each of the years ended December 31, 2019 and 2018 was approximately \$160,000.

BurgerFi International, LLC and Subsidiaries
Notes to Consolidated Financial Statements
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5. Other Assets

Other assets consisted of the following:

| <i>December 31,</i> | 2019 | 2018 |
|--|-------------------|-------------------|
| Liquor license | \$ 210,000 | \$ 210,000 |
| Lease Acquisition Costs, net of accumulated amortization | 47,518 | 77,528 |
| Trademark | 25,000 | 25,000 |
| Deposits and other non-current assets | 190,176 | 194,412 |
| Other assets | <u>\$ 472,694</u> | <u>\$ 506,940</u> |

Liquor license is considered to have an indefinite life and is reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. No impairments were recognized for the years ended December 31, 2019 and 2018.

6. Commitments and Contingencies

Leases

The Company has entered into operating leases for each of the nine restaurants owned and operated by BF Restaurant Management, LLC. Rent expense for the restaurants during the years ended December 31, 2019 and 2018 was approximately \$2,013,000 and \$1,868,000, respectively. These lease agreements expire on various dates through 2026 and have renewal options. Approximate future minimum payments on these operating leases for the years ended December 31 are as follows:

| | |
|------------|--------------|
| 2020 | \$ 1,502,000 |
| 2021 | 1,960,000 |
| 2022 | 1,875,000 |
| 2023 | 1,897,000 |
| 2024 | 1,333,000 |
| Thereafter | 3,223,000 |

Contingencies

BurgerFi International, LLC filed a lawsuit against a franchisee and its principals seeking declaratory judgments and damages in an amount to be proven at trial for various breaches of the applicable franchise agreements resulting from the defendants' closure of a restaurant, their failure to open a second restaurant, and their operational defaults at the closed restaurant. In April 2016, the defendants filed a counterclaim, asserting that they had no responsibility for their losses, and instead, alleged that the Company engaged in breach of contract, fraud, misrepresentation, conversion in connection with the operation of the restaurant, and various other allegations, seeking damages of over \$5 million. The case is pending before the court. On December 30, 2016, the court stayed the case pending the resolution of bankruptcy filings made by some of the defendants. No further action has occurred.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

A franchisee filed a suit against BurgerFi International, LLC seeking unspecified damages in connection with plaintiff's execution of franchise agreements for the development of 11 BurgerFi restaurants in certain specified trade areas. The franchisee alleges that BurgerFi International, LLC fraudulently induced the franchisee to enter into these agreements, and claimed fraud in the inducement, negligent misrepresentation, breach of implied covenant of good faith and fair dealing, violation of FDUTPA and Florida's Franchise Misrepresentation Act by BurgerFi International, LLC. Management denies any wrongdoing and believes the claims to be baseless. The Company filed a counterclaim for breach of contract and intends to pursue its claim against the plaintiff. The plaintiff has moved to dismiss the Company's counterclaim, which remains pending. While management intends to vigorously dispute the claims if continued in the court system, the parties have reached a settlement in principal. No further action has occurred.

On December 1, 2019, a complaint was filed by a former officer of the Company ("Plaintiff") against BurgerFi International, LLC for certain alleged breaches of an employment agreement. BurgerFi International, LLC filed a motion to dismiss the complaint on February 13, 2020. On May 20, 2020, the motion to dismiss was heard being granted in part and denied in part. The portion of the complaint not dismissed was answered by BurgerFi International, LLC with affirmative defenses raised on July 7, 2020. The plaintiff served various discovery requests (including notices of non-party subpoenas) on July 9, 2020 as well as a motion to strike BurgerFi International, LLC's affirmative defenses on July 16, 2020. BurgerFi International, LLC filed objections to the non-party subpoenas on July 20, 2020.

On July 8, 2020, the Company received a letter from an attorney hired on behalf of a former employee of the Company. This former employee was terminated for cause on May 5, 2020. This letter claims that the former employee was terminated wrongfully by the Company. The Company is of the opinion that allegations in this letter lack merit. We have reported the claim to our insurance carrier and outside counsel has been retained. Our counsel sent a letter to this former employee's attorney lawyer denying all claims and the parties met for mediation on September 4, 2020, but were unable to resolve this matter. We feel that all claims are meritless, and we plan to vigorously defend these allegations.

Management is unable to determine the likelihood of a loss or range of loss, if any, which may result from the cases described above, therefore, no contingent liability has been recorded as of December 31, 2019.

The Company is subject to other legal proceedings and claims that arise during the normal course of business. Management believes that any liability, in excess of applicable insurance coverages or accruals, which may result from these claims, would not be significant to the Company's financial position or results of operations.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

7. Line of Credit

Line of Credit

Effective July 13, 2018, the Company entered into a \$2,000,000 revolving line of credit agreement (“LOC”) with a bank. The LOC’s original maturity date was July 13, 2020 and has been extended to July 13, 2021. On October 31, 2019, the LOC was amended to increase the amount available under the LOC from \$2,000,000 to \$5,000,000. The Company has an outstanding balance on the revolving line credit of \$2,317,000 as of December 31, 2019. The majority member of the Company and his Family Trust are guarantors of, and the Family Trust is a pledger of collateral, for the Company’s obligations to the bank under the line of credit agreement. The annual interest on advances under the LOC is equal to the LIBOR Daily Floating rate plus 0.75%.

8. Notes Payable

Notes Payable

| | <u>December 31, 2019</u> | <u>December 31, 2018</u> |
|---|------------------------------|------------------------------|
| Installment note payable to bank, monthly payments of \$8,638, including interest at 7.75%, principal and interest due at the earlier of, September 23, 2024 or the date of the Company’s termination of the APM (see Note 1). This note is secured by equipment, and is guaranteed by the franchisee under the APM, its members and their affiliates. As of December 31, 2019, this note is in default and classified as current. The Company elected not to continue payment while negotiating with the banks to release the lien on the restaurant assets which the Company is managing under the APM. No recourse to the general credit of the Company. | \$ 468,080 | \$ 511,698 |
| Installment note payable to bank, monthly payments of \$3,564, including interest at 5.3%, principal and interest due at the earlier of May 17, 2027 or the date of the Company’s termination of the APM (see Note 1). This note is secured by equipment, guaranteed by the franchisee under the APM, its members and their affiliates. As of December 31, 2019, this note is in default and classified as current. The Company elected not to continue payment while negotiating with the banks to release the lien on the restaurant assets which the Company is managing under the APM. No recourse to the general credit of the Company. | 258,109 | 286,304 |
| Installment note payable to bank, monthly payments of \$2,883, including interest at 5.0%, principal and interest due the earlier of August 4, 2026 or the date of the Company’s termination of the APM (see Note 1). This note is secured by equipment, guaranteed by the franchisee under the APM, its members and their affiliates. As of December 31, 2019, this note is in default and classified as current. No recourse to the general credit of the Company. | 409,177 | 423,055 |
| Other notes payable No recourse to the general credit of the Company. | <u>71,706</u> | <u>71,706</u> |
| Total notes payable | <u>\$ 1,207,072</u> | <u>\$ 1,292,763</u> |
| Less: current portion | <u>(1,207,072)</u> | <u>(180,026)</u> |
| Total notes payable - long-term portion | <u>\$ -</u> | <u>\$ 1,112,737</u> |

BurgerFi International, LLC and Subsidiaries
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018

9. Supplemental Disclosure of Noncash Activities

During 2018, one of the members contributed their interest in a franchise location to the Company. The total non-cash component of the transaction consisted of the following:

| | |
|--|-------------------------|
| Fixed assets | \$ 152,141 |
| Inventory and other assets | 145,349 |
| Amounts due to related companies | (277,301) |
| Accounts payable and other liabilities | (79,739) |
| Members equity | <u>(28,204)</u> |
| Total cash contributed | <u>\$ 87,754</u> |

As described in Note 1, on the Takeover Date, the Company entered into the APM resulting in the consolidation of the franchisee for debt totaling approximately \$1,291,000, non-cash tangible assets of approximately \$1,183,000, intangible assets of approximately \$398,000, and other liabilities of approximately \$330,000.

10. Subsequent Events

The Company has evaluated events and transactions that occurred between December 31, 2019 and September 25, 2020, which is the date that the consolidated financial statements were available to be issued for possible recognition or disclosure in the consolidated financial statements.

As discussed in Note 1, the WHO classified the COVID-19 outbreak as a pandemic in March 2020, based on the rapid increase in exposure globally.

The full impact of the COVID-19 outbreak continues to evolve as of the date of this report. The Company has experienced a significant decrease in revenue in March and April of 2020 as compared to the prior year due to temporary closures of certain restaurants and reduced revenues at those restaurants which remain open. Management is actively monitoring the situation and the potential impact on its financial condition, liquidity, operations, suppliers, industry, and workforce. Given the daily evolution of the COVID-19 outbreak and the global responses to curb its spread, the Company is not able to estimate the future effects of the COVID-19 outbreak on its results of operations, financial condition or liquidity, however, if the pandemic continues, it may have a significant adverse effect on the Company's results of future operations, financial position, and liquidity in fiscal year 2020.

BurgerFi International, LLC and Subsidiaries

**Notes to Consolidated Financial Statements
For the Years Ended December 31, 2019 and 2018**

On March 27, 2020, the CARES Act was signed into law. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations, increased limitations on qualified charitable contributions and technical corrections to tax depreciation methods for qualified improvement property.

It also appropriated funds for the SBA Paycheck Protection Program loans that are forgivable in certain situations to promote continued employment, as well as Economic Injury Disaster Loans to provide liquidity to small businesses harmed by COVID-19. From May 4, 2020 to May 11, 2020, the Company received funding of approximately \$2.2 million from loans under the SBA Paycheck Protection Program. The application for these funds requires the Company to, in good faith, certify that the current economic uncertainty made the loan request necessary to support the ongoing operations of the Company. This certification further requires the Company to take into account our current business activity and our ability to access other sources of liquidity sufficient to support ongoing operations in a manner that is not significantly detrimental to the business. The receipt of these funds, and the forgiveness of the loan attendant to these funds, is dependent on the Company having initially qualified for the loan and qualifying for the forgiveness of such loan based on our future adherence to the forgiveness criteria.

In February 2020, the Company entered into an asset purchase agreement with an unrelated third party for the sale of substantially all of the assets used in connection with the operation of BF Dania Beach, LLC for an aggregate purchase price of \$1,299,000. During January to March 2020, the Company received three cash deposits totaling \$906,500 in connection with this transaction. The closing of this transaction has been delayed due to the uncertainty of the COVID-19 outbreak. In the event the transaction is terminated, the Company will keep operating the restaurant, and return the \$906,500 to the unrelated third-party purchaser.

In April 2020, the Company entered into an asset purchase agreement with a franchisee to purchase substantially all of the assets of a franchised store for an aggregate purchase price of \$1,250,000. This purchase price consisted of: (a) \$650,000 cash paid at closing and (b) a \$600,000 promissory note to the franchisee.

On June 29, 2020, OPES entered into the MIP with the Company, members of the Company and BurgerFi Holdings, LLC wherein OPES will purchase 100% of the membership interests of the Company resulting in the Company becoming a wholly owned subsidiary of OPES with total acquisition consideration of \$100,000,000 payable as follows:

- (i) a cash payment in the aggregate amount of \$30,000,000 payable to the Members;
- (ii) \$20,000,000 payable either in cash or in shares of OPES common stock valued at \$10.60 per share, in the sole and absolute discretion of the OPES Board of Directors; and
- (iii) the issuance in the aggregate of 4,716,981 shares of OPES common stock to the Company's members.

The members of the Company will be entitled to receive additional acquisition consideration in the form of shares of OPES common stock on a pro-rata basis based on their ownership percentages in the Company, subject to OPES achieving certain share price targets post-closing.

The Company entered into a membership purchase agreement on August 17, 2020 to acquire the 40% non-controlling interest in BF Pembroke Pines, LLC. for a purchase price of \$175,000. The closing occurred on August 31, 2020.

Effective August 14, 2020, the Company extended the maturity date on its revolving line of credit until July 13, 2021.

BurgerFi International, LLC and Subsidiaries
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)

| | September 30, 2020 | December 31, 2019 |
|--|-----------------------|----------------------|
| ASSETS | | |
| CURRENT ASSETS | | |
| Cash -, including variable interest entities of \$3,385 and \$3,385, respectively | \$ 2,768,169 | \$ 1,689,658 |
| Cash - restricted - Note 2 | 474,886 | 727,005 |
| Accounts receivable, net - Note 1 | 495,990 | 517,133 |
| Inventory | 266,834 | 249,228 |
| Asset held for sale | 755,252 | - |
| Other current assets | 174,014 | 415,960 |
| TOTAL CURRENT ASSETS | 4,935,145 | 3,598,984 |
| PROPERTY & EQUIPMENT, net - Note 3 – including variable interest entities of \$727,933 and \$853,343, respectively | 6,935,589 | 6,300,618 |
| DUE FROM RELATED COMPANIES - Note 4 | 5,166,938 | 3,611,536 |
| GOODWILL – including variable interest entities of \$397,621 and \$397,621, respectively | 1,382,621 | 397,621 |
| OTHER ASSETS | 454,987 | 472,694 |
| TOTAL ASSETS | \$ 18,875,280 | \$ 14,381,453 |
| LIABILITIES AND MEMBERS' EQUITY | | |
| CURRENT LIABILITIES | | |
| Accounts payable - trade | \$ 1,959,552 | \$ 1,264,852 |
| Accrued expenses | 767,519 | 544,734 |
| Gift card liability | 406,619 | 585,827 |
| Revolving line of credit | 2,664,159 | 2,317,000 |
| Note payable - current including variable interest entities of \$1,207,072 and \$1,207,072, respectively which are non-recourse to the general credit of the Company | 1,277,542 | 1,207,072 |
| Current portion deferred initial franchise fees - Note 1 | 443,174 | 438,085 |
| Other deposit | 906,500 | - |
| TOTAL CURRENT LIABILITIES | 8,425,065 | 6,357,570 |
| NON-CURRENT LIABILITIES | | |
| Deferred initial franchise fees, net of current portion - Note 1 | 4,340,243 | 4,249,836 |
| Due to related companies - Note 4 | 26,000 | 271,448 |
| Notes payable | 2,913,606 | - |
| Deferred rent | 1,366,887 | 995,615 |
| TOTAL LIABILITIES | 17,071,801 | 11,874,469 |
| COMMITMENTS AND CONTINGENCIES - Note 6 | | |
| MEMBERS' EQUITY - Before non-controlling interest – including variable interest entities of \$(78,133) and \$47,277 | 1,803,479 | 2,492,129 |
| MEMBERS' EQUITY - Non-controlling interest | - | 14,855 |
| TOTAL LIABILITIES AND MEMBERS' EQUITY | 18,875,280 | \$ 14,381,453 |

See accompanying notes to consolidated financial statements.

BurgerFi International, LLC and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
Unaudited

| | Nine Months Ended September 30, | |
|--|------------------------------------|---------------------|
| | 2020 | 2019 |
| REVENUES | | |
| Restaurant Sales - Note 1 | \$ 18,892,131 | \$ 17,641,150 |
| Royalty and other fees - Note 1 | 4,686,706 | 5,373,046 |
| Terminated franchise fees - Note 1 | 42,620 | 693,158 |
| Royalties - brand development and co-op - Note 1 | 1,053,537 | 1,286,232 |
| Initial franchise fees - Note 1 | 264,393 | 342,248 |
| TOTAL REVENUES | 24,939,387 | 25,335,834 |
| Restaurant level operating expenses: | | |
| Food, beverage and paper costs | 5,046,925 | 4,669,474 |
| Labor and related expenses | 5,482,141 | 5,784,239 |
| Other operating expenses | 4,575,366 | 3,914,792 |
| Occupancy and related expenses | 2,107,795 | 1,573,992 |
| General and administrative expenses | 4,986,598 | 5,249,747 |
| Depreciation and amortization expense | 810,835 | 589,907 |
| Brand development and co-op advertising expense | 1,822,165 | 1,398,490 |
| TOTAL OPERATING EXPENSES | 24,831,825 | 23,180,641 |
| OPERATING INCOME | 107,562 | 2,155,193 |
| Interest expense | (97,252) | (62,019) |
| NET INCOME | 10,310 | 2,093,174 |
| Net Income Attributable to Non-Controlling Interests | 20,692 | 37,345 |
| Net Income (Loss) Attributable to Controlling Interests | \$ (10,382) | \$ 2,055,829 |

See accompanying notes to consolidated financial statements.

BurgerFi International, LLC and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN MEMBERS' EQUITY
(Unaudited)

| | <u>Controlling Interest</u> | <u>NonControlling Interest</u> | <u>Total Members' Equity</u> |
|-----------------------------|---------------------------------|------------------------------------|----------------------------------|
| Balance, December 31, 2018 | \$ 3,626,167 | \$ (20,587) | \$ 3,605,580 |
| Net income | 2,055,829 | 37,345 | 2,093,174 |
| Distributions | <u>(1,631,403)</u> | <u>-</u> | <u>(1,631,403)</u> |
| Balance, September 30, 2019 | <u>\$ 4,050,593</u> | <u>\$ 16,758</u> | <u>\$ 4,067,351</u> |
| | <u>Controlling Interest</u> | <u>NonControlling Interest</u> | <u>Total Members' Equity</u> |
| Balance, December 31, 2019 | \$ 2,492,129 | \$ 14,855 | \$ 2,506,984 |
| Net Income (Loss) | (10,382) | 20,692 | 10,310 |
| Distributions | <u>(678,268)</u> | <u>(35,547)</u> | <u>(713,815)</u> |
| Balance, September 30, 2020 | <u>\$ 1,803,479</u> | <u>\$ -</u> | <u>\$ 1,803,479</u> |

See accompanying notes to consolidated financial statements.

BurgerFi International, LLC and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

| | September 30, | |
|--|---------------------|---------------------|
| | 2020 | 2019 |
| CASH FLOWS PROVIDED BY (USED IN) OPERATING ACTIVITIES | | |
| Net Income | \$ 10,310 | \$ 2,093,174 |
| Adjustments to reconcile net income to net cash provided by operating activities | | |
| Depreciation and amortization | 810,835 | 589,907 |
| Changes in operating assets and liabilities | | |
| Accounts receivable | 21,143 | (127,410) |
| Inventory | (2,606) | (93,259) |
| Other assets | 237,144 | (16,643) |
| Accounts payable - trade | 694,700 | (291,125) |
| Accrued expenses and gift card liability | 43,579 | (96,682) |
| Deferred franchise fees and deposits | 95,496 | (315,438) |
| Other liabilities | 371,272 | 104,918 |
| NET CASH PROVIDED BY OPERATING ACTIVITIES | 2,281,873 | 1,847,442 |
| NET CASH FLOWS PROVIDED BY (USED IN) INVESTING ACTIVITIES | | |
| Purchase of store | (650,000) | - |
| Deposit on sale | 906,500 | - |
| Purchase of property and equipment | (1,928,549) | (1,359,748) |
| Advances to related companies | (6,873,967) | (8,543,033) |
| Repayments from related companies | 5,073,117 | 7,507,410 |
| NET CASH USED IN INVESTING ACTIVITIES | (3,472,899) | (2,395,371) |
| NET CASH FLOWS PROVIDED BY (USED IN) FINANCING ACTIVITIES | | |
| Proceeds from revolving line of credit | 1,648,000 | 1,879,000 |
| Payments on revolving line of credit | (1,300,841) | - |
| Notes payable proceeds | 2,406,492 | - |
| Payments on notes payable | (22,418) | (80,613) |
| Members' distributions | (713,815) | (1,631,403) |
| NET CASH PROVIDED BY FINANCING ACTIVITIES | 2,017,418 | 166,984 |
| NET INCREASE (DECREASE) IN CASH AND RESTRICTED CASH | 826,392 | (380,945) |
| CASH AND RESTRICTED CASH, beginning of period | 2,416,663 | 2,251,743 |
| CASH AND RESTRICTED CASH, end of period | \$ 3,243,055 | \$ 1,870,798 |

See accompanying notes to consolidated financial statements.

BurgerFi International, LLC and Subsidiaries
Notes to Condensed Consolidated Financial Statements
For the Nine Months Ended September 30, 2020 and 2019
(Unaudited)

1. Nature of Operations and Summary of Significant Accounting Policies

Nature of operations

BurgerFi International, LLC, (a Delaware limited liability company) and Subsidiaries (collectively, the “Company”) is the exclusive franchisor of the BurgerFi concept. The BurgerFi concept is a quick service restaurant offering handcrafted natural Angus gourmet burgers, hot dogs, chicken, fresh cut fries, craft beers, wine and freshly prepared custards in an urban environment. Franchises are sold in restricted geographical territories. The Company has prepared its Franchise Disclosure Document as required by the United States Federal Trade Commission and has registered or will register in those states where required in order to legally sell its franchises. It is currently the Company’s plan to offer franchises for sale in those states where demographics of the population represent a demand for the services. The Company grants franchises to independent operators who in turn pay an initial franchise fee, royalties and other fees as stated in the franchise agreement. The Company is 90% owned by BurgerFi Holdings, LLC, a Delaware limited liability company, and 10% by a trust.

Store activity for the nine months ended September 30, 2020 and the year ended December 31, 2019 is as follows:

| | September 30, 2020 | December 31, 2019 |
|---|-------------------------------|------------------------------|
| Franchised stores, beginning of period | 117 | 109 |
| Stores opened during the period | 5 | 15 |
| Stores closed during the period | 19 | 7 |
| Franchised stores, end of period | 103 | 117 |
| | September 30, 2020 | December 31, 2019 |
| Company-owned stores, beginning of year | 13 | 11 |
| Stores opened during the year | 3 | 3 |
| Stores closed during the year | 0 | 1 |
| Company-owned stores, end of year | 16 | 13 |

End of period franchised store totals included five international stores at September 30, 2020 and at December 31, 2019.

In 2018, the Company’s members contributed their interests in one additional restaurant to BF Restaurant Management, LLC, which is 40% owned by an unrelated party, resulting in the presentation of a non-controlling interest in the consolidated financial statements. On August 17, 2020, the Company purchased the membership interests of this 40% unrelated party in full for \$175,000. Through the closing date, the non controlling interest recognized net income of \$20,692 for the nine months ended September 30, 2020.

During the nine months ended September 30, 2020 and 2019, the Company’s members did not contribute any interests to BF Restaurant Management, LLC.

Liquidity and COVID-19

On January 30, 2020, the World Health Organization (“WHO”) announced a global health emergency because of a new strain of coronavirus originating in Wuhan, China (the “COVID-19 outbreak”) and the risks to the international community as the virus spreads globally beyond its point of origin. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. On March 27, 2020, the “Coronavirus Aid, Relief and Economic Security (CARES) Act” was signed into law. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, and deferment of employer side social security payments. As a result of the COVID-19 outbreak, the Company is experiencing temporary closures of certain restaurants and reduced revenues at those restaurants which remain open, which may have a significant impact on the Company’s 2020 revenues and cash flows. However, the Company has taken steps to reduce operating costs through reductions in payroll expenses to conserve cash. Management continues to actively manage and monitor its cash flows and has the ability to further reduce certain expenses as necessary. From May 4, 2020 to May 11, 2020, the Company received approximately \$2.2 million from stimulus loans under the SBA Paycheck Protection Program of the CARES Act. As a result, management believes that the Company has sufficient resources to fund its operations through at least twelve months from the date of this report. The stimulus loan bears interest at a fixed rate of 1% per annum, with the first six months of interest deferred, has a term of two years, and is unsecured and guaranteed by the SBA. The Company intends to apply to the lender for forgiveness of the stimulus loan, with the amount which may be forgiven equal to the sum of payroll costs, covered rent and other obligations, and covered utility payments incurred by the Company during the permitted period beginning on May 2020, calculated in accordance with the terms of the CARES Act. The Company’s eligibility for the stimulus loan, expenditures that qualify toward forgiveness, and the final balance of the stimulus loan that may be forgiven are subject to audit and final approval by the SBA. To the extent that all or part of the stimulus loan is not forgiven, the Company will be required to pay interest at 1% and, commencing in August 2021 (which is 10 months subsequent to the 24 month forgiveness period). Interest payments will be required through the maturity date in May 2022. The terms of the stimulus loan provide for customary events of default including, among other things, payment defaults, breach of representations and warranties, and insolvency events. The stimulus loan may be accelerated upon the occurrence of an event of default, including if the SBA subsequently reaches an audit determination that the Company does not meet the eligibility criteria.

The stimulus loan is being accounted for under ASC 470, *Debt*, whereby interest expense is being accrued at the contractual rate and future debt maturities are based on the assumptions that none of the principal balance will be forgiven. Forgiveness, if any, will be recognized as a gain on extinguishment if the lender legally releases the Company based on the criteria set forth in the debt agreement and the CARES Act.

BurgerFi International, LLC and Subsidiaries
Notes to Condensed Consolidated Financial Statements
(Unaudited)

The full impact of the COVID-19 outbreak continues to evolve as of the date of this report. The Company had experienced a significant decrease in revenue in March and April of 2020 as compared to the prior year due to temporary closures of certain restaurants and reduced revenues at those restaurants which remain open. Management is actively monitoring the situation and the potential impact on its financial condition, liquidity, operations, suppliers, industry, and workforce. Given the daily evolution of the COVID-19 outbreak and the global responses to curb its spread, the Company is not able to estimate the future effects of the COVID-19 outbreak on its results of operations, financial condition or liquidity, however, if the pandemic continues, it may have a significant adverse effect on the Company's results of future operations, financial position, and liquidity in fiscal year 2020.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") and in accordance with the instructions to Form 10-Q and Article 8 of Regulation S-X. Accordingly, they do not include all information and notes required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments (consisting only of normal recurring adjustments) considered necessary for fair financial statement presentation have been made. The condensed consolidated results of operations for the nine-month period ended September 30, 2020 are not necessarily indicative of the results that may be expected for the year ending December 31, 2020, or any other future or annual period.

On June 29, 2020, the Company entered into the MIP with OPES whereby the Company is expected to become a publicly held company. Therefore, these condensed consolidated financial statements include the application of U.S. GAAP for public entities. As put forth in the MIP OPES will purchase 100% of the membership interests of the Company resulting in the Company becoming a wholly owned subsidiary of OPES with total acquisition consideration of approximately \$100,000,000 payable as follows:

- (i) a cash payment in the aggregate amount of \$30,000,000 payable to the Members;
- (ii) \$20,000,000 payable either in cash or in shares of OPES common stock valued at \$10.60 per share, in the sole and absolute discretion of the OPES Board of Directors; and
- (iii) the issuance in the aggregate of 4,716,981 shares of OPES common stock to the Company's members.

The members of the Company will be entitled to receive additional acquisition consideration in the form of shares of OPES common stock on a pro-rata basis based on their ownership percentages in the Company, subject to OPES achieving certain share price targets post-closing.

Principles of Consolidation

The consolidated financial statements present the consolidated financial position, results from operations and cash flows of BurgerFi International, LLC, a Delaware limited liability company, and its wholly owned subsidiaries, BF Restaurant Management LLC, a Florida limited liability company and BF Commissary, LLC ("BF Commissary"), a Florida limited liability company. BF Restaurant Management LLC, (BFRM), owns and/or operates fifteen restaurants across Florida, one in Philadelphia, and one in New York. BFRM is made up of the following owned subsidiaries:

- BurgerFi-Delray Beach, LLC, a Delaware limited liability company
- BF Coral Springs, LLC, a Florida limited liability company
- BF City Place-West Palm, LLC, a Florida limited liability company
- BF Commack, LLC, a Florida limited liability company
- BF Jupiter, LLC, a Florida limited liability company
- BF Philadelphia, LLC, a Florida limited liability company
- BF West Delray, LLC, a Florida limited liability company
- BF LBTS, LLC, a Florida limited liability company
- BGM Pembroke Pines, LLC, a Florida limited liability company
- BF Jacksonville Town Center, LLC, a Florida limited liability company
- BF Jacksonville Riverside, LLC, a Florida limited liability company
- BF Delray-Linton, LLC, a Florida limited liability company
- BF Pines City Center, LLC, a Florida limited liability company
- BF Dania Beach, LLC, a Florida limited liability company
- BF Ft Myers-Daniels, LLC, a Florida limited liability company
- BF Boca Raton, LLC, a Florida limited liability company
- BF Boca Raton – Boca Pointe, LLC, a Florida limited liability company

All material balances and transactions between the entities 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 reported amounts of assets and liabilities and disclosures of contingencies at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Segment Reporting

The Company owns and operates BurgerFi restaurants in the United States, and also have domestic and international franchisees. The CODMs are the Company's President, Chief Operating Officer and Chief Financial Officer. As the CODMs review financial performance and allocate resources at a consolidated level on a recurring basis, the Company has one operating reporting segment and one reportable segment.

BurgerFi International, LLC and Subsidiaries
Notes to Condensed Consolidated Financial Statements
(Unaudited)

Variable Interest Entities

For VIE(s), the Company assesses whether the Company is the primary beneficiary as prescribed by the accounting guidance on the consolidation of VIE. The primary beneficiary of a VIE is the party that has the power to direct the activities that most significantly impact the performance of the entity and the obligation to absorb the losses or the right to receive the benefits that could potentially be significant to the entity.

The Company has evaluated its business relationships with franchisees and related parties to identify potential VIEs. While the Company holds a variable interest in some of the franchised restaurants owned by an affiliated entity, the Company is not the primary beneficiary since it does not have the power to direct the activities of these franchised restaurants. As a result, the Company does not consolidate these VIEs. At September 30, 2020, the Company is a guarantor for seven operating leases for BF Seacucus, LLC; BF Tallahassee, LLC; BF Fort Myers, LLC; BF NY82, LLC; BF Naples Tamiami, LLC; and BF Naples Immokalee. Additionally, the Company is a guarantor for a lease for The Burger Bunch, LLC, an unrelated party. The Company may become responsible for the payments under its guarantee. The Company has determined that its maximum exposure to loss results from these lease guarantees which amounts to approximately \$6,452,000.

On April 23, 2018 (the "Takeover Date"), the Company entered into an asset purchase and management agreement (the "APM") with a multiple unit franchisee. The APM allowed the Company to acquire the assets of two of the franchisee's restaurants for the consideration of the Company making the monthly principal and interest payments on the franchisee's three bank loans through 2027. The closing on asset purchase would occur only when the debt was paid in full. The outstanding principal on the loans was approximately \$1,291,000 on the Takeover Date. The APM allowed the Company to take over the management and operation of the two restaurants with full control over all operational decision making. Under the management agreement, the Company provides all capital for all of the restaurants' expenditures it deems appropriate, and pays all costs and expenses associated with the operations. All cash flow and profits or losses derived from the operations after the Takeover Date belong to the Company. The Company has evaluated the franchisee which is a party to the APM for VIE accounting under ASC 810 "Consolidation" and has determined that the franchisee under the APM is a VIE and that the Company is the primary beneficiary, effective on the Takeover Date. Therefore, the Company has consolidated the franchisee that owned two restaurants as a business combination under ASC 805 *Business Combinations*.

Included in the consolidated financial statements are the following from variable interest entities for which the Company is the primary beneficiary:

| | September 30, 2020 | December 31, 2019 |
|--|-------------------------------|------------------------------|
| Cash | \$ 3,385 | \$ 3,385 |
| Property and equipment | 727,933 | 853,343 |
| Goodwill | 397,621 | 397,621 |
| Total Assets | \$ 1,128,939 | \$ 1,254,349 |
| Current notes payable | \$ 1,207,072 | \$ 1,207,072 |
| Total liabilities | 1,207,072 | 1,207,072 |
| Total members' (deficit) equity | (78,133) | 47,277 |
| Total Liabilities and Members' Equity | \$ 1,128,939 | \$ 1,254,349 |

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The three loans are collateralized by the VIEs' assets and the creditors of the loans do not have recourse to the general credit of the Company. The carrying value of the VIEs' assets which collateralize the loans are noted above.

Acquisition

In April 2020, the Company entered into an asset purchase agreement with a franchisee to purchase substantially all of the assets of a franchised restaurant for an aggregate purchase price of \$1,250,000. This purchase price consisted of \$650,000 cash paid at closing and a \$600,000 promissory note to the franchisee. See Note 7 for the terms of the note. The acquisition of the franchise protects the Company's brand and expands the Company's corporate locations and creates synergies in the management.

The acquisition of this franchise location was accounted for as a business combination under ASC 805 *Business Combinations*. The purchase price of the acquired business was allocated based on the estimated fair value of the assets acquired. Liabilities of \$16,000 were assumed as part of the acquisition. The Company incurred transaction costs of \$45,000 which are included in general and administrative expenses in the accompanying consolidated statement of income for the nine months ended September 30, 2020.

The acquisition was recorded based on the fair values of the assets acquired as of April 30, 2020:

| | |
|--|---------------------|
| Inventory | \$ 15,000 |
| Property & equipment | <u>250,000</u> |
| Net tangible and identifiable intangible assets acquired | 265,000 |
| Goodwill | <u>985,000</u> |
| Net assets acquired | \$ <u>1,250,000</u> |

The acquisition is accounted for as a business combination under the acquisition method as of the date of acquisition, and accordingly, the results of its operations are included in the Company's consolidated financial statements from the acquisition date. Net sales were approximately \$720,000 and net income was approximately \$22,000 for this restaurant from the date of the acquisition through September 30, 2020.

Cash and Cash Equivalents

The Company considers highly liquid investments with maturities of three months or less as cash equivalents. Cash and cash equivalents also include approximately \$29,000 and \$339,000 as of September 30, 2020 and December 31, 2019, respectively, of amounts due from commercial credit card companies, such as Visa, MasterCard, Discover, and American Express, which are generally received within a few days of the related transactions. At times, the balances in the cash and cash equivalents accounts may exceed federal insured limits.

Restricted Cash

Restricted cash consists of (i) cash collected (net of redemptions) from gift cards, (ii) cash balances for the advertising co-op, (iii) Level-up loyalty program cash collections, and (iii) initial franchise deposits in escrow. The Company is the custodian of these account balances, but these accounts are in place for specific, restricted purposes, which typically are resolved within twelve months. The Company classifies the restricted cash accounts as current assets.

Accounts receivable

Accounts receivable consist of amounts due from franchisees for training and royalties and are stated at the amount invoiced. Accounts receivable are stated at the amount management expects to collect from balances outstanding at year end. Management provides for probable uncollectible amounts through a charge to earnings and a credit to allowance for uncollectible accounts based on its assessment of the current status of individual accounts. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the allowance for uncollectible accounts and a credit to accounts receivable. The allowance for uncollectible accounts was approximately \$73,000 and \$65,000, at September 30, 2020 and December 31, 2019, respectively.

Inventories

Inventories primarily consist of food and beverages. Inventories are accounted for at lower of cost or net realizable value using the first-in, first-out (FIFO) method. Spoilage is expensed as incurred.

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Property and Equipment

Property and equipment is carried at cost, net of accumulated depreciation. Depreciation is provided by the straight-line method over an estimated useful life. Leasehold improvements are amortized using the straight-line method over the lesser of the estimated useful life of the asset (generally up to ten years) or the term of the related lease. The estimated lives for machinery and equipment, computer equipment, furniture and fixtures, and vehicles range from five to seven years. Maintenance and repairs which are not considered to extend the useful lives of the assets are charged to operations as incurred. Expenditures for additions and improvements are capitalized. Expenditures for renewals and betterments, which materially extend the useful lives of assets or increase their productivity, are capitalized. The Company capitalizes construction costs during construction of the restaurant and will begin to depreciate them once the restaurant is placed in service. Wage costs directly related to and incurred during a restaurant's construction period are capitalized. Interest costs incurred during a restaurant's construction period are capitalized. Upon sale or retirement, the cost of assets and related accumulated depreciation and amortization are removed from the accounts and any resulting gains or losses are included in operating expense.

Impairment of Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. There were no impairments recognized for the nine-month periods ended September 30, 2020 and 2019.

Goodwill

As of September 30, 2020, in connection with the APM and April 2020 acquisition described above, the Company has a balance of approximately \$1,383,000 of goodwill on its condensed consolidated balance sheet. The Company accounts for goodwill in accordance with ASC 350. ASC 350 requires goodwill to be reviewed for impairment annually, or more frequently if circumstances indicate a possible impairment. The Company evaluates goodwill in the fourth quarter or more frequently if management believes indicators of impairment exist. Such indicators could include but are not limited to (1) a significant adverse change in legal factors or in business climate, (2) unanticipated competition, or (3) an adverse action or assessment by a regulator.

The Company first assesses qualitative factors to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying amount, including goodwill. If management concludes that it is more likely than not that the fair value of the reporting unit is less than its carrying amount, management conducts a quantitative goodwill impairment test. This impairment test involves comparing the fair value of the reporting unit with its carrying value (including goodwill). The Company estimates the fair values of its reporting unit using a combination of the income, or discounted cash flows approach and the market approach, which utilizes comparable companies' data. If the estimated fair value of the reporting unit is less than its carrying value, a goodwill impairment exists for the reporting unit and an impairment loss is recorded. There were no impairments of goodwill recognized for the nine-month periods ended September 30, 2020 and 2019.

Revenue Recognition

On January 1, 2019, the Company adopted ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*, using the modified retrospective method applied to those contracts which were not completed as of January 1, 2019. The Company elected a practical expedient to aggregate the effect of all contract modifications that occurred before the adoption date, which did not have a material impact to the consolidated financial statements. Results for reporting periods beginning on or after January 1, 2019 are presented under ASC 606. Prior period amounts were not revised and continue to be reported in accordance with ASC 605, the accounting standard then in effect.

Upon transition, on January 1, 2019, we recorded a decrease to opening members' equity of \$1,201,546, with a corresponding decrease of \$348,730 in current deferred initial franchise fees liability, and an increase of \$1,550,276 in long-term deferred initial franchise fee liabilities.

Revenue consists of restaurant sales and franchise licensing revenue. Generally, revenue is recognized as performance obligations transfer to the customer in an amount that reflects the consideration we expect to be entitled in exchange for those goods or services.

Restaurant Revenues

Revenue from restaurant sales is presented net of discounts and recognized when food, beverage and retail products are sold. Sales tax collected from customers is excluded from restaurant sales and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Sales from our gift cards are deferred and recognized upon redemption for goods or services. Revenues are reported gross on the accompanying consolidated statements of income and members' equity with employee complimentary meals recorded as a component of labor expenses. Revenue from restaurant sales are generally paid at the time of sale. Credit cards and delivery service partners sales are generally collected within 2-3 days.

The revenue from electronic gift cards is deferred when purchased by the customer and revenue is recognized when the gift cards are redeemed. The Company is a Delaware limited liability company and is subject to Delaware escheatment laws. Delaware escheatment laws state that gift cards are presumed to be abandoned after five years and the balance remitted should represent the maximum cost to the issuer of merchandise. The accounting for the restaurant revenues were not impacted by the adoption of ASC 606.

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BFI contracts with delivery service partners for delivery of goods and services to customers. The Company has determined that the delivery service partners are agents, and the Company is the principal. Therefore, restaurant sales through delivery services are recognized at gross sales and delivery service revenue is recorded as expense.

Revenues from BF Commissary

BF Commissary, which commenced operations in 2019, produces and sells BurgerFi's vegetable burgers to a distributor based on agreed-upon cost plus freight cost. The Company recognizes revenue upon pick-up of orders at the designated pick up points or when the distributor obtains control of the products. For the nine months ended September 30, 2020 and 2019, the Company recognized revenue of \$657,839 and \$374,926, respectively, from BF Commissary and is presented as part of restaurant sales in the consolidated statements of income.

Franchise Revenues

The franchise agreements require the franchisee to pay an initial, non-refundable fee of \$37,500 and continuing fees based upon a percentage of sales. Owners can make a deposit equal to 50% of the total franchise fee to reserve the right to open additional locations. The remaining balance of the franchise fee is due upon signing by the franchisee of the applicable location's lease or mortgage. Franchise agreements and deposit agreements outline a schedule for store openings. Failure to meet the schedule can result in forfeiture of deposits made.

Franchise revenue is comprised of certain initial franchise fees and ongoing sales-based royalty fees from a franchised BurgerFi restaurant. Generally, the licenses granted to develop, open and operate each BurgerFi franchise in a specified territory are the performance obligations transferred to the licensee in our contracts, and represent symbolic intellectual property. Ancillary promised services, such as training and assistance during the initial opening of a BurgerFi restaurant are typically combined with the licenses and considered as one performance obligation per BurgerFi franchise. Certain initial services such as site selection and lease review are considered distinct services that are recognized at a point in time when the performance obligations have been provided, generally when the BurgerFi has been opened. We determine the transaction price for each contract and allocate it to the distinct services based on their standalone selling price based on the costs to provide the service and a profit margin. The remainder of the transaction price is recognized over the remaining term of the franchise agreement once the BurgerFi restaurant has been opened. Because we are transferring licenses to access our intellectual property during a contractual term, revenue is recognized on a straight-line basis over the license term. Generally, payment for the initial franchise fee is received upon execution of the licensing agreement. These payments are initially deferred and recognized as revenue as the performance obligations are satisfied.

Franchise deposits received in advance for locations not expected to open within one year are classified as long-term liabilities. Forfeiture of deposits is recognized as other revenue once contracts have been terminated for failure to comply. All terminations are communicated to the franchisee in writing using formal termination letters.

Revenue from sales-based royalties (i.e. royalty and other fees, brand development and advertising co-op royalties) is recognized as the related sales occur. The sales-based royalties are invoiced and collected from the franchisees on a weekly basis. Rebates from vendors received on franchisee's sales are also recognized as revenue from sales-based royalties.

The Company's contract liabilities consist of initial franchise fees and the related direct costs, which we refer to as deferred initial franchise fees, are deferred until the franchisee begins operations.

The aggregate amount of the transaction price allocated to performance obligations that are unsatisfied (or partially unsatisfied) as of September 30, 2020 and December 31, 2019 was \$4,783,417 and \$4,687,921, respectively. The Company expects to recognize this amount as revenue over a long-term period, as the license term for each BurgerFi franchise is 10 years. This amount excludes any variable consideration related to sales-based royalties.

Contract Balances

Opening and closing balances of contract liabilities and receivables from contracts with customers as of September 30, 2020 and December 31, 2019 are as follows:

| | September 30, 2020 | December 31, 2019 |
|-----------------------------|-------------------------------|------------------------------|
| Franchising receivables | \$ 319,391 | \$ 369,168 |
| Advertising co-op funds | 68,267 | 158,581 |
| Gift card liability | 406,619 | 585,827 |
| Deferred revenue, current | 443,174 | 438,085 |
| Deferred revenue, long-term | 4,340,243 | 4,249,836 |

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Revenue recognized during the nine-month periods ended September 30, 2020 and 2019, which was included in the balance deferred revenue, current, at the beginning of each period was \$307,013 and \$1,035,406, respectively.

Presentation of Sales Taxes

The Company collects sales tax from customers and remits the entire amount to the respective states. The Company's accounting policy is to exclude the tax collected and remitted from revenues and cost of sales. Sales tax payable amounted to approximately \$142,000 and \$142,000 at September 30, 2020 and at December 31, 2019, respectively, and is presented in accrued expenses and other current liabilities in the accompanying consolidated balance sheets.

On June 21, 2018, the U.S. Supreme Court issued a landmark decision in *South Dakota v. Wayfair*. The Company has assessed the current guidance surrounding the court case and does not believe the *Wayfair* decision materially impacts its sales and use tax process. The Company continues to monitor changes resulting from the *Wayfair* decision.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash. The Company places its temporary cash investments with financial institutions and during 2020 and 2019 there were amounts on deposit in excess of federal insurance limits.

Advertising Expenses

Advertising costs are expensed as incurred. Advertising expenses for the nine months ended September 30, 2020 and 2019 were approximately \$353,000 and \$478,000, respectively, including amounts paid to the brand development fund and co-op advertising expenses, as described below.

Brand Development Fund

The Company's franchise agreements provide for franchisee contributions of a percentage of gross restaurant sales to a brand development fund administered by the Company. Amounts collected are required to be segregated and used for advertising and related costs, including reasonable costs of administering the fund. Contributed amounts are recognized as restricted cash. At September 30, 2020 and 2019, the Company had revenue of approximately \$838,000 and \$1,085,000, respectively, of contributions which are included in the brand development and advertising co-op royalties and approximately \$1,403,000 and \$1,239,000 of expenses incurred for the nine months ended September 30, 2020 and 2019, respectively, which are included in the royalty-brand development and Co-op revenues and brand development and Co-op advertising expenses in the consolidated statements of income.

Advertising Co-Op Fund

During 2017, the Company established an advertising Co-Op fund in which several of the South Florida franchises elected to participate. The members of the Co-Op elected to contribute a percentage of gross restaurant sales to a fund administered by the Company. Amounts collected are required to be segregated and used for local advertising and related costs, including reasonable costs of administering the fund. Consequently, contributed amounts, net of expensed funds are recognized as restricted cash. At September 30, 2020 and 2019, the Company had revenue of approximately \$215,000 and \$201,000, respectively, of contributions received, which are included in the brand development and co-op royalties. In addition, the Company had incurred approximately \$419,000 and \$160,000 of expenses for the nine months ended September 30, 2020 and 2019, respectively, which are included in the brand development and Co-op advertising expenses.

Pre-opening Costs

The Company follows ASC Topic 720-15, "Start-up Costs", which provides guidance on the financial reporting of start-up costs and organization costs. In accordance with this ASC Topic, costs of pre-opening activities and organization costs are expensed as incurred. Pre-opening expenses for the nine months ended September 30, 2020 and 2019 were approximately \$18,000 and \$111,000, respectively.

Deferred Rent

Rent expense on non-cancelable leases containing known future scheduled rent increases or free rent periods is recorded on a straight-line basis over the respective lease term. The lease term begins when the Company has the right to control the use of the leased property and includes the initial non-cancelable lease term plus any periods covered by renewal options that the Company is reasonably assured of exercising. The difference between rent expense and rent paid is accounted for as deferred rent and is amortized over the lease term.

Operating Leases

The Company leases restaurant locations that have terms expiring between December 2020 and March 2035. The initial obligation period is generally 10 years. The restaurant facilities primarily have renewal clauses of two 5-year periods or one 10-year period, exercisable at the option of the Company. The Company generally include one 5-year renewal option in its lease term.

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Certain lease agreements contain one or more of the following: tenant improvement allowances, rent holidays, rent escalation clauses and/or contingent rent provisions. The Company includes scheduled rent escalation clauses for the purpose of recognizing straight-line rent. Certain of these leases require the payment of contingent rentals based on a percentage of gross revenues, as defined, and certain other rent escalation clauses are based on the change in the Consumer Price Index. The Company received cash incentives from certain landlords for specified leasehold improvements which are deferred and accreted on a straight-line basis over the related lease term as a reduction of rent expense.

Income Taxes

The Company, with the consent of its members, has elected to be taxed as a partnership under the provisions of the Internal Revenue Code and similar state provisions. Partnerships generally are not subject to Federal and state income taxes. In lieu of corporation income taxes, the partners reflect their respective share of the Company's taxable income or loss on their individual income tax returns. Accordingly, no provision for income taxes has been included in the consolidated financial statements.

There were neither liabilities nor deferred tax assets relating to uncertain income tax positions taken or expected to be taken on the tax returns.

The Company utilizes a two-step approach for recognizing and measuring uncertain tax positions accounted for in accordance with the asset and liability method. The first step is to evaluate the tax position for recognition by determining whether evidence indicates that it is more likely than not that a position will be sustained if examined by a taxing authority.

The second step is to measure the tax benefit as the largest amount that is 50% likely of being realized upon settlement with a taxing authority. There were no amounts recorded at September 30, 2020 and December 31, 2019 related to uncertain tax positions, interest or penalties.

New Accounting Pronouncements

In February 2016, the FASB issued ASU 2016-02, which requires lessees to recognize lease assets and lease liabilities on the balance sheet for all leases with terms longer than 12 months and disclose certain information about the leasing arrangements. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. This guidance became effective for fiscal years beginning after December 15, 2018 for public entities, except for "emerging growth companies" (as defined in Section 2(a) of the Securities Act and as modified by the Jumpstart Our Business Startups Act of 2012) and for fiscal years beginning after December 15, 2019 for all other entities. However, in April 2020, the FASB voted to defer the effective date of ASC 842 for private companies and certain not-for-profit entities for one year. As such, this will be effective for fiscal years beginning after December 15, 2021. Since the Company will qualify as an "emerging growth company" after the closing of the MIP with OPES, it is exempted from being required to comply with new or revised financial accounting standards until private companies are required to comply with the new or revised financial accounting standards.

The FASB issued Topic 326 in June 2016, subsequently amended by various standard updates. This guidance replaces the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information when determining credit loss estimates and requires financial assets to be measured net of expected credit losses at the time of initial recognition. This guidance was to be effective for annual and interim reporting periods beginning after December 15, 2019, for public entities other than smaller reporting companies. ASU 2019-10 deferred the effective date for smaller reporting companies and all other entities until years beginning after December 15, 2022. Early adoption is permitted.

In December 2019, the FASB issued Update 2019-12, Income Taxes ("Topic 740") as part of its Simplification Initiative. This guidance provides amendments to simplify the accounting for income taxes by removing certain exceptions to the general principles in Topic 740. The amendments also improve consistent application of and simplify GAAP for other areas of Topic 740 by clarifying and amending existing guidance. This guidance is effective for annual and interim reporting periods beginning after December 15, 2020, and early adoption is permitted. We are currently evaluating the full impact this guidance will have on our consolidated financial statements.

In March 2020, the FASB issued Topic 848 *Reference Rate Reform* to provide optional guidance for a limited period of time, from March 12, 2020 through December 31, 2022, to ease the burden of financial reporting due to reference rate reform. An entity can elect to utilize the guidance at any time during the period.

The Company is currently evaluating the effect this guidance will have on the consolidated financial statements and related disclosures.

Sale of Dania Beach Restaurant to Franchisee

In February 2020, the Company entered into an asset purchase agreement with an unrelated third party ("Purchaser") for the sale of substantially all of the assets used in connection with the operation of BF Dania Beach, LLC for an aggregate purchase price of \$1,299,000. The closing of this transaction was delayed due to the COVID-19 outbreak, until at least the fourth quarter of 2020. The Company received advances on this purchase totaling \$906,500 from the Purchaser from January 2020 to March 2020, which is classified as "Other Deposit", and the property and equipment, net of accumulated depreciation for this location in the amount of \$755,252 has been classified as "Asset Held for Sale" on the condensed consolidated balance sheet as of September 30, 2020.

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2. Restricted Cash

Restricted cash consisted of the following as of:

| | September 30, 2020 | December 31, 2019 |
|------------------------------|-----------------------|----------------------|
| Gift cards purchased | \$ 376,030 | \$ 504,682 |
| Advertising co-op funds | 68,267 | 158,581 |
| LevelUp loyalty program | 30,589 | 63,742 |
| Total Restricted Cash | \$ 474,886 | \$ 727,005 |

3. Property & Equipment

Property and equipment consisted of the following:

| | September 30, 2020 | December 31, 2019 |
|---|-----------------------|----------------------|
| Leasehold improvements | \$ 6,055,411 | \$ 5,723,684 |
| Machinery & equipment | 3,013,056 | 2,821,136 |
| Computer equipment | 667,069 | 560,085 |
| Furniture & fixtures | 1,891,325 | 1,277,775 |
| Vehicles | 50,000 | 50,000 |
| | 11,676,861 | 10,432,680 |
| Less: Accumulated depreciation and amortization | 4,741,272 | 4,132,062 |
| Property and equipment – net | \$ 6,935,589 | \$ 6,300,618 |

4. Related Party Transactions

The Company is affiliated with various entities through common control and ownership. The accompanying consolidated balance sheets reflect amounts related to periodic advances between the Company and these entities for working capital and other needs as due from related companies or due to related companies, as appropriate. The amounts due from related companies are not expected to be repaid within one year and accordingly, are classified as non-current assets in the accompanying consolidated balance sheets. These advances are unsecured and non-interest bearing.

There were approximately \$5,167,000 and \$3,612,000 included as due from related companies, and approximately \$26,000 and \$271,000 included as due to related companies in the condensed consolidated balance sheets as of September 30, 2020 and December 31, 2019, respectively.

For the nine months ended September 30, 2020 and 2019, the Company received royalty revenues from franchisees related through common control and ownership totaling approximately \$913,000 and \$872,000, respectively.

The Company pays certain payroll and administrative fees on behalf of the entities under common ownership. A management fee was billed to the respective entities to cover these costs through the end of 2019. No amounts were billed in 2020. Management fees are included as reductions to the related operating expenses. For the nine months ended September 30, 2019, the Company billed approximately \$60,000 of management fees. These amounts are included as due from related companies when billed.

The Company leases building space for its corporate office from an entity under common ownership with its member on a month-to-month basis starting in 2012. Rent expense for each of the nine months ended September 30, 2020 and 2019 was approximately \$12,000.

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5. Other Assets

Other assets consisted of the following:

| | September 30, 2020 | December 31, 2019 |
|--|-----------------------|----------------------|
| Liquor license | \$ 210,000 | \$ 210,000 |
| Lease Acquisition Costs, net of accumulated amortization | 32,514 | 47,518 |
| Trademark | 25,000 | 25,000 |
| Deposits, trademark and other non-current assets | 187,473 | 190,176 |
| Other assets | <u>\$ 454,987</u> | <u>\$ 472,694</u> |

Liquor license is considered to have an indefinite life and is reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. No impairments were recognized for the nine-month periods ended September 30, 2020 and 2019.

6. Commitments and Contingencies

Leases

The Company has entered into operating leases for each of the restaurants owned and operated by BF Restaurant Management, LLC. Rent expense for the restaurants during the nine months ended September 30, 2020 and 2019 was approximately \$1,953,000 and \$1,300,000, respectively. These lease agreements expire on various dates through 2026 and have renewal options. Approximate future minimum payments on these operating leases as of September 30, 2020 are as follows:

| | |
|------------|--------------|
| 2020 | \$ 1,950,000 |
| 2021 | 1,898,000 |
| 2022 | 1,892,000 |
| 2023 | 1,508,000 |
| 2024 | 1,114,000 |
| Thereafter | 2,419,000 |

Contingencies

BurgerFi International, LLC filed a lawsuit against a franchisee and its principals seeking declaratory judgments and damages in an amount to be proven at trial for various breaches of the applicable franchise agreements resulting from the defendants' closure of a restaurant, their failure to open a second restaurant, and their operational defaults at the closed restaurant. In April 2016, the defendants filed a counterclaim, asserting that they had no responsibility for their losses, and instead, alleged that the Company engaged in breach of contract, fraud, misrepresentation, conversion in connection with the operation of the restaurant, and various other allegations, seeking damages of over \$5 million. The case is pending before the court. On December 30, 2016, the court stayed the case pending the resolution of bankruptcy filings made by some of the defendants. No further action has occurred.

A franchisee filed a suit against BurgerFi International, LLC seeking unspecified damages in connection with plaintiff's execution of franchise agreements for the development of 11 BurgerFi restaurants in certain specified trade areas. The franchisee alleged that BurgerFi International, LLC fraudulently induced the franchisee to enter into these agreements, and claimed fraud in the inducement, negligent misrepresentation, breach of implied covenant of good faith and fair dealing, violation of FDUTPA and Florida's Franchise Misrepresentation Act by BurgerFi International, LLC. Management denied any wrongdoing and believed the claims to be baseless. The Company filed a counterclaim for breach of contract and pursued its claim against the plaintiff. The plaintiff moved to dismiss the Company's counterclaim. The parties reached a settlement on November 17, 2020. This settlement resulted in (i) the termination of the franchise agreement and (ii) the Company will take ownership of the restaurant which this franchisee operated.

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On December 1, 2019, a complaint was filed by a former officer of the Company (“Plaintiff”) against BurgerFi International, LLC for certain alleged breaches of an employment agreement. BurgerFi International, LLC filed a motion to dismiss the complaint on February 13, 2020. On May 20, 2020, the motion to dismiss was heard being granted in part and denied in part. The portion of the complaint not dismissed was answered by BurgerFi International, LLC with affirmative defenses raised on July 7, 2020. The plaintiff served various discovery requests (including notices of non-party subpoenas) on July 9, 2020 as well as a motion to strike BurgerFi International, LLC’s affirmative defenses on July 16, 2020. BurgerFi International, LLC filed objections to the non-party subpoenas on July 20, 2020.

On July 8, 2020, the Company received a letter from an attorney hired on behalf of a former employee of the Company. This former employee was terminated for cause on May 5, 2020. This letter claims that the former employee was terminated wrongfully by the Company. The Company is of the opinion that allegations in this letter lack merit. We have reported the claim to our insurance carrier and outside counsel has been retained. Our counsel sent a letter to this former employee’s attorney lawyer denying all claims and the parties met for mediation on September 4, 2020 but were unable to resolve this matter. We feel that all claims are meritless, and we plan to vigorously defend these allegations.

Management is unable to determine the likelihood of a loss or range of loss, if any, which may result from the cases described above, therefore, no contingent liability has been recorded as of September 30, 2020 and December 31, 2019.

The Company is subject to other legal proceedings and claims that arise during the normal course of business. Management believes that any liability, in excess of applicable insurance coverages or accruals, which may result from these claims, would not be significant to the Company’s financial position or results of operations.

7. Line of Credit

Effective July 13, 2018, the Company entered into a \$2,000,000 revolving line of credit agreement (“LOC”) with a bank. The majority member of the Company and his Family Trust are guarantors of, and the Family Trust is a pledger of collateral, for the Company’s obligations to the bank under the line of credit agreement. The LOC initially had a maturity date of July 13, 2020 and has been extended to July 13, 2021. The annual interest on advances under the LOC is equal to the LIBOR Daily Floating rate plus 0.75%, which at September 30, 2020 was 0.89%. On October 31, 2019, the LOC was amended to increase the amount available under the LOC from \$2,000,000 to \$5,000,000. Effective August 14, 2020, the Company extended the maturity date on its revolving line of credit until July 13, 2021. The Company has an outstanding balance on the revolving line credit of \$2,664,159 and \$2,317,000 as of September 30, 2020 and December 31, 2019, respectively.

BurgerFi International, LLC and Subsidiaries
Notes to Condensed Consolidated Financial Statements
(Unaudited)

8. Notes Payable

Notes Payable

| | September 30, 2020 | December 31, 2019 |
|--|-------------------------------|------------------------------|
| On May 11, 2020 the Company received loan proceeds in the amount of \$2,236,593 under the Paycheck Protection Program (“PPP”). The loans and accrued interest are forgivable after eight weeks, as long as, the Company uses the loan proceeds for eligible purposes, including payroll, benefits, rent and utilities, and maintain its payroll levels. The amount of loan forgiveness will be reduced if the Company terminates employees or reduces salaries during the eight-week period. The unforgiven portion of the PPP loans are payable over two years at an interest rate of 1%, with a deferral of payments for the first nine months. | \$ 2,236,593 | \$ - |
| Installment note payable to an individual, issued in connection with the Company’s April 2020 acquisition, monthly payments of \$9,056, over a seven-year amortization including 7% interest, with a maturity date of June 1, 2024. | 577,582 | - |
| Installment note payable to bank, monthly payments of \$8,638, including interest at 7.75%, principal and interest due at the earlier of, September 23, 2024 or the date of the Company’s termination of the APM (see Note 1). This note is secured by equipment, guaranteed the franchisee under the APM, its members and their affiliates. This note has been in default since December 2019 and classified as current. The Company elected not to continue payment while negotiating with the banks to release the lien on the restaurant assets which the Company is managing under the APM. No recourse to the general credit of the Company. | 468,080 | 468,080 |
| Installment note payable to bank, monthly payments of \$3,564, including interest at 5.3%, principal and interest due at the earlier of May 17, 2027 or the date of the Company’s termination of the APM (see Note 1). This note is secured by equipment, guaranteed by the franchisee under the APM, its members and their affiliates. This note has been in default since December 2019 and is classified as current. The Company elected not to continue payment while negotiating with the banks to release the lien on the restaurant assets which the Company is managing under the APM. No recourse to the general credit of the Company. | 258,109 | 258,109 |
| Installment note payable to bank, monthly payments of \$2,883, including interest at 5.0%, principal and interest due the earlier of August 4, 2026 or the date of the Company’s termination of the APM (see Note 1). This note is secured by equipment, guaranteed by the franchisee under the APM, its members and their affiliates. This note has been in default since December 2019 and classified as current. The Company elected not to continue payment while negotiating with the banks to release the lien on the restaurant assets which the Company is managing under the APM. No recourse to the general credit of the Company. | 409,177 | 409,177 |
| Other notes payable No recourse to the general credit of the Company. | 241,607 | 71,706 |
| Total notes payable | \$ 4,191,148 | \$ 1,207,072 |
| Less: current portion | (1,277,542) | (1,207,072) |
| Total notes payable - long-term portion | \$ 2,913,606 | \$ - |

BurgerFi International, LLC and Subsidiaries
Notes to Condensed Consolidated Financial Statements
(Unaudited)

9. Subsequent Events

The Company has evaluated events and transactions that occurred between September 30, 2020 and November 20, 2020, which is the date that the consolidated financial statements were available to be issued for possible recognition or disclosure in the consolidated financial statements.

10. Supplemental Disclosure of Noncash Activities

Financing Activity

As described in Note 1, in April 2020, the Company acquired a restaurant from a franchisee, with financing on a note payable for \$600,000.

**UNAUDITED PRO FORMA
CONDENSED COMBINED FINANCIAL INFORMATION**

The following unaudited pro forma condensed combined financial statements of OPES Acquisitions Corp. (“OPES”) present the combination of the financial information of OPES and BurgerFi International, LLC (“BurgerFi”), adjusted to give effect to the Business Combination. The following unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X. The transaction is being accounted for as a business combination using the acquisition method with OPES as the accounting acquirer in accordance with ASC 805, Business Combinations. Under this method of accounting the purchase price will be allocated to BurgerFi’s assets acquired and liabilities assumed based upon their estimated fair values at the date of consummation of the transaction.

The unaudited pro forma condensed combined balance sheet as of September 30, 2020 combines the historical balance sheet of OPES and the historical balance sheet of BurgerFi, on a pro forma basis as if the Business Combination and related transactions, summarized below, had been consummated on September 30, 2020. The unaudited pro forma condensed combined statements of operations for the year ended December 31, 2019 and the nine months ended September 30, 2020, combine the historical statements of operations of OPES and BurgerFi on a pro forma basis as if the Business Combination and related transactions, summarized below, had been consummated on January 1, 2019, the beginning of the earliest period presented:

On June 29, 2020, OPES entered into a membership interest purchase agreement (the “Acquisition Agreement”), with BurgerFi, the members of BurgerFi (the “Members”), and BurgerFi Holdings, LLC, a Delaware limited liability company (the “Members’ Representative”). OPES’s acquisition of the membership interests of BurgerFi owned by the Members (the “Interests”) is referred to herein as the Business Combination. On December 16, 2020, OPES consummated the Business Combination contemplated in the Acquisition Agreement (the “Closing”), OPES purchased 100% of the membership interests of BurgerFi from the Members resulting in BurgerFi becoming a wholly owned subsidiary of OPES. In connection with the Business Combination, OPES changed its name to “BurgerFi International, Inc.” References to the “Post-Combination Company” shall refer to BurgerFi International, Inc. after the consummation of the Business Combination. Holders of the Common Stock of OPES will be asked to approve the Acquisition Agreement, and the other related proposals.

The aggregate value of the consideration paid by OPES in the Business Combination (subject to reduction for indemnification claims and potential changes due to a working capital adjustment) is approximately \$241 million calculated as follows: (i) \$30,000,000 in cash payable to Members, (ii) \$20,000,000 payable either in cash or in shares of OPES Common Stock valued at \$10.60 (contractual value used to determine the quantity of shares only) per share (the “Stock Portion”), in the sole and absolute discretion of the OPES board of directors (the “OPES Board of Directors” or “OPES’s Board of Directors”); and (iii) 4,716,981 shares of OPES Common Stock to be issued to the Members. The total consideration also includes the assumption of approximately \$4.2 million in debt. After the Business Combination, the Members may be entitled to an additional 9,356,459 shares of OPES Common Stock if certain stock price targets are met by the Post-Combination Company following the Business Combination.

The historical financial statements have been adjusted in the unaudited pro forma condensed combined financial statements to give pro forma effect to events that are: (i) directly attributable to the Business Combination; (ii) factually supportable; and (iii) with respect to the statement of operations, expected to have a continuing impact on OPES results following the completion of the Business Combination.

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The unaudited pro forma condensed combined financial statements have been developed from and should be read in conjunction with:

- the accompanying notes to the unaudited pro forma condensed combined financial statements;
- the historical audited financial statements of OPES for the year ended December 31, 2019 and the related notes, each of which is incorporated by reference;
- the historical audited financial statements of BurgerFi as of and for the year ended December 31, 2019 and the related notes, each of which is incorporated by reference;
- the historical unaudited financial statements of OPES as of and for the nine months ended September 30, 2020 and the related notes, each of which is incorporated by reference;
- the historical unaudited financial statements of BurgerFi as of and for the nine months ended September 30, 2020 and the related notes, each of which is incorporated by reference;
- other information relating to OPES and BurgerFi contained in the Proxy Statement, including the Business Combination Agreement and the description of certain terms thereof set forth in the section entitled “*The Business Combination*.”

Pursuant to OPES’ existing amended and restated certificate of incorporation, Public Stockholders (as defined in the Proxy Statement) were offered the opportunity to redeem, upon the closing of the Business Combination, all or a portion of the shares of OPES Common Stock then held by them for cash equal to their pro rata share of the aggregate amount on deposit (as of two business days prior to the Closing) in the Trust Account (as defined in the Proxy Statement).

Assumptions and estimates underlying the unaudited pro forma adjustments set forth in the unaudited pro forma condensed combined financial statements are described in the accompanying notes. The unaudited pro forma condensed combined financial statements have been presented for illustrative purposes only and are not necessarily indicative of the operating results and financial position that would have been achieved had the Business Combination occurred on the dates indicated. Further, the unaudited pro forma condensed combined financial statements do not purport to project the future operating results or financial position of OPES following the completion of the Business Combination. The unaudited pro forma adjustments represent management’s estimates based on information available as of the date of these unaudited pro forma condensed combined financial statements and are subject to change as additional information becomes available and analyses are performed.

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**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET
AS OF SEPTEMBER 30, 2020**

| | Pro Forma Combined | | | |
|-----------------|---------------------------|-----------------|----------------------------------|------------------------------------|
| | OPES | BurgerFi | Pro Forma Adjustments | Pro Forma Balance Sheet |
| Assets | | | | |
| Current assets: | | | | |
| Cash | \$ 10,962 | \$ 2,768,169 | \$ 48,401,503 | (1) |

| | | | | |
|---|----------------------|----------------------|-----------------------|-----------------------|
| | | | 30,000,000 (2) | |
| | | | (1,123,131) (3) | |
| | | | (9,058,702) (8) | |
| | | | (1,857,216) (6) | |
| | | | (30,000,000) (7) | \$ 39,141,585 |
| Restricted cash | - | 474,886 | - | 474,886 |
| Accounts receivable, net | - | 495,990 | - | 495,990 |
| Inventory | - | 266,834 | - | 266,834 |
| Prepaid expenses and other current assets | 234,198 | 174,014 | - | 408,212 |
| Total Current Assets | 245,160 | 4,179,893 | 36,362,454 | 40,787,507 |
| Marketable securities held in Trust Account | 48,401,503 | - | (48,401,503) (1) | - |
| Property and equipment | - | 7,690,841 | 673,159 (7) | 8,364,000 |
| Due from related companies | - | 5,166,938 | (5,166,938) (5) | - |
| Goodwill | - | 1,382,621 | 166,844,896 (7) | 168,227,517 |
| Intangible assets | - | - | 96,404,000 (7) | 96,404,000 |
| Other assets | - | 454,987 | - | 454,987 |
| Deferred tax assets | 77,423 | - | - | 77,423 |
| Total Assets | \$ 48,724,086 | \$ 18,875,280 | \$ 246,716,068 | \$ 314,315,434 |

Liabilities and Shareholders' Equity

Current liabilities:

| | | | | |
|---|------------------|-------------------|-------------------|-------------------|
| Accounts payable - trade | \$ 725,718 | \$ 1,959,552 | \$ - | \$ 2,685,270 |
| Accrued expenses | - | 767,519 | 1,570,000 (9) | 2,337,519 |
| Gift card liability | - | 406,619 | - | 406,619 |
| Revolving line of credit | - | 2,664,159 | - | 2,664,159 |
| Notes payable - current | - | 1,277,542 | - | 1,277,542 |
| Current portion of deferred initial franchise fees | - | 443,174 | - | 443,174 |
| Other deposit | - | 906,500 | - | 906,500 |
| Total Current Liabilities | 725,718 | 8,425,065 | 1,570,000 | 10,720,783 |
| Promissory notes - related parties | 1,642,599 | - | (1,642,599) (4) | - |
| Convertible promissory notes | 1,123,131 | - | (1,123,131) (3) | - |
| Deferred initial franchise fees, net of current portion | - | 4,340,243 | - | 4,340,243 |
| Due to related companies | - | 26,000 | (26,000) (8) | - |
| Notes payable | - | 2,913,606 | - | 2,913,606 |
| Deferred rent | - | 1,366,887 | (1,366,887) (7) | - |
| Deferred income taxes payable | - | - | 25,065,040 (7) | 25,065,040 |
| Total Liabilities | 3,491,448 | 17,071,801 | 22,476,423 | 43,039,672 |

Commitments and Contingencies

| | | | | |
|---|----------------------|----------------------|-----------------------|-----------------------|
| Common stock subject to redemption | 40,232,637 | - | (40,232,637) (6) | - |
| Stockholders' Equity | | | | |
| Common stock | 410 | - | 300 (2) | 15 (4) |
| | | | 17 (6) | 660 (7) |
| | | | | 1,402 |
| Additional paid-in capital | 3,368,432 | - | 29,999,700 (2) | 1,642,584 (4) |
| | | | | 38,375,404 (6) |
| | | | | 206,885,783 (7) |
| | | | | 278,701,903 |
| Members' equity | - | 1,803,479 | (1,570,000) (9) | 3,337,459 (7) |
| | | | | (5,140,938) (5) |
| Retained earnings (accumulated deficit) | 1,631,159 | - | (9,058,702) (8) | (7,427,543) |
| Total Stockholders' Equity | 5,000,001 | 1,803,479 | 264,472,282 | 271,275,762 |
| Noncontrolling interest | - | - | - | - |
| Total Liabilities and Stockholders' Equity | \$ 48,724,086 | \$ 18,875,280 | \$ 246,716,068 | \$ 314,315,434 |

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 2019

| | Pro forma Combined | | | |
|---|--------------------|------------------|-----------------------|----------------------------|
| | OPES | BurgerFi | Pro Forma Adjustments | Pro Forma Income Statement |
| Total revenues | \$ - | \$ 34,227,380 | \$ - | \$ 34,227,380 |
| Operating expenses: | | | | |
| Restaurant level operating expenses | - | 21,574,747 | - | 21,574,747 |
| General and administrative expenses | 840,321 | 7,230,200 | - | 8,070,521 |
| Amortization of intangible assets | - | - | 3,640,221 (3) | 3,640,221 |
| Depreciation and amortization expense | - | 825,201 | - | 825,201 |
| Brand development and co-op advertising expense | - | 1,732,407 | - | 1,732,407 |
| Gain on disposal of property and equipment | - | (184,386) | - | (184,386) |
| Total operating expenses | 840,321 | 31,178,169 | 3,640,221 | 35,658,711 |
| Operating income | (840,321) | 3,049,211 | (3,640,221) | (1,431,331) |

| | | | | |
|---|---------------------|---------------------|-----------------------|---------------------|
| Other income (expense): | | | | |
| Interest income | 2,409,408 | - | (2,409,408) (1) | - |
| Unrealized gain on marketable securities | 8,776 | - | (8,776) (1) | - |
| Interest expense | - | (78,987) | - | (78,987) |
| Income before income taxes | 1,577,863 | 2,970,224 | (6,058,405) | (1,510,318) |
| Provision for income taxes | 416,099 | - | (416,099) (2) | (946,458) |
| | | | (946,458) (3) | |
| Net income (loss) | 1,161,764 | 2,970,224 | (4,695,848) | (563,860) |
| Net income attributable to non-controlling interest | - | 35,442 | - | 35,442 |
| Net income (loss) attributable to controlling interest | \$ 1,161,764 | \$ 2,934,782 | \$ (4,695,848) | \$ (599,302) |
| Weighted average shares outstanding, basic and diluted | 3,808,719 | | 13,583,144 (4) | 17,441,864 |
| Basic and diluted net (loss) income per share | \$ (0.13) | | | \$ (0.03) |

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**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2020**

| | Pro Forma Combined | | | |
|---|---------------------|--------------------|--------------------------|----------------------------------|
| | OPES | BurgerFi | Pro Forma Adjustments | Pro Forma Income Statement |
| Total revenues | \$ - | \$ 24,939,387 | \$ - | \$ 24,939,387 |
| Operating expenses: | | | | |
| Restaurant level operating expenses | - | 17,212,228 | - | 17,212,228 |
| General and administrative expenses | 922,544 | 4,986,598 | - | 5,909,142 |
| Amortization of intangible assets | - | - | 2,730,166 (3) | 2,730,166 |
| Depreciation and amortization expense | - | 810,835 | - | 810,835 |
| Brand development and co-op advertising expense | - | 1,822,165 | - | 1,822,165 |
| Total operating expenses | 922,544 | 24,831,826 | 2,730,166 | 28,484,536 |
| Operating income | (922,544) | 107,561 | (2,730,166) | (3,545,149) |
| Other income (expense): | | | | |
| Interest income | 346,727 | - | (346,727) (1) | - |
| Unrealized gain (loss) on marketable securities | (478) | - | 478 (1) | - |
| Interest expense | - | (97,252) | - | (97,252) |
| Income (loss) before income taxes | (576,295) | (10,309) | (3,076,415) | (3,642,401) |
| Benefit for income taxes | (25,155) | - | 25,155 (2) | (709,843) |
| | | | (709,843) (3) | |
| Net income (loss) | (551,140) | 10,309 | (2,391,727) | (2,932,558) |
| Net income attributable to non-controlling interest | - | 20,692 | - | 20,692 |
| Net income (loss) attributable to controlling interest | \$ (551,140) | \$ (10,383) | \$ (2,391,727) | \$ (2,953,250) |
| Weighted average shares outstanding, basic and diluted | 4,016,420 | | 13,375,443 (4) | 17,441,864 |
| Basic and diluted net (loss) income per share | \$ (0.18) | | | \$ (0.17) |

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Notes to Unaudited Pro Forma Condensed Combined Financial Statements

1. Basis of Presentation

OPES has concluded that the transaction represents a business combination pursuant to ASC 805, Business Combinations. OPES has not yet completed a final valuation analysis of the fair market value of BurgerFi's assets to be acquired and liabilities to be assumed. Using the estimated total consideration for the transaction, OPES has estimated the allocations to such assets and liabilities. This preliminary purchase price allocation has been used to prepare pro forma adjustments in the unaudited pro forma condensed combined balance sheet. The final purchase price allocation will be determined when OPES has determined the final consideration and completed the detailed valuations and other studies and necessary calculations. The final purchase price allocation could differ materially from the preliminary purchase price allocation used to prepare the pro forma adjustments. The final purchase price allocation may include (1) changes in allocations to intangible assets goodwill based on the results of certain valuations and other studies that have yet to be completed, other changes to assets and liabilities and (2) changes to the ultimate purchase consideration. For the purposes of the unaudited pro forma condensed combined financial information, the accounting policies of BurgerFi and OPES are aligned giving effect to certain pro forma adjustments, if any.

The unaudited pro forma condensed combined balance sheet as of September 30, 2020 gives pro forma effect to the Business Combination as if it had been consummated on September 30, 2020. The unaudited pro forma condensed combined statement of operations for the year ended December 31, 2019 and the nine months ended September 30, 2020, give pro forma effect to the Business Combination as if it had been consummated on January 1, 2019.

The unaudited pro forma condensed combined balance sheet as of September 30, 2020 has been prepared using, and should be read in conjunction with, the following:

- OPES's unaudited balance sheet as of September 30, 2020 and the related notes, which is incorporated by reference; and

- BurgerFi's unaudited balance sheet as of September 30, 2020 and the related notes, which is attached as an exhibit to this filing and incorporated by reference.

The unaudited pro forma condensed combined statement of operations for the year ended December 31, 2019 has been prepared using, and should be read in conjunction with, the following:

- OPES' audited statement of operations for the year ended December 31, 2019 and the related notes, which is incorporated by reference; and
- BurgerFi's audited statement of operations for the year ended December 31, 2019 and the related notes, which is incorporated by reference.

The unaudited pro forma condensed combined statement of operations for the nine months ended September 30, 2020 has been prepared using, and should be read in conjunction with, the following:

- OPES' unaudited statement of operations for the nine months ended September 30, 2020 and the related notes, which is incorporated by reference; and
- BurgerFi's unaudited statement of operations for the nine months ended September 30, 2020 and the related notes, which is incorporated by reference.

Management has made significant estimates and assumptions in its determination of the pro forma adjustments. As the unaudited pro forma condensed combined financial information has been prepared based on these preliminary estimates, the final amounts recorded may differ materially from the information presented.

The unaudited pro forma condensed combined financial information does not give effect to any anticipated synergies, operating efficiencies, tax savings or cost savings that may be associated with the Business Combination. The pro forma adjustments reflecting the consummation of the Business Combination are based on certain currently available information and certain assumptions and methodologies that management believes are reasonable under the circumstances. The unaudited condensed pro forma adjustments, which are described in the accompanying notes, may be revised as additional information becomes available and is evaluated. Therefore, it is likely that the actual adjustments will differ from the pro forma adjustments and it is possible the difference may be material. Management believes that its assumptions and methodologies provide a reasonable basis for presenting all of the significant effects of the Business Combination based on information available to management at the time and that the pro forma adjustments give appropriate effect to those assumptions and are properly applied in the unaudited pro forma condensed combined financial information.

The unaudited pro forma condensed combined financial information is not necessarily indicative of what the actual results of operations and financial position would have been had the Business Combination taken place on the dates indicated, nor are they indicative of the future consolidated results of operations or financial position of the post-combination company. They should be read in conjunction with the historical financial statements and notes thereto of OPES and BurgerFi.

2. Adjustments to Unaudited Pro Forma Condensed Combined Financial Information

The unaudited pro forma condensed combined financial information has been prepared to illustrate the effect of the Business Combination and has been prepared for informational purposes only. The historical financial statements have been adjusted in the unaudited pro forma condensed combined financial information to give pro forma effect to events that are (1) directly attributable to the Business Combination, (2) factually supportable, and (3) with respect to the statements of operations, expected to have a continuing impact on the results of the post-combination company. OPES and BurgerFi have not had any historical relationship prior to the Business Combination. Accordingly, no pro forma adjustments were required to eliminate activities between the companies.

Adjustments to Unaudited Pro Forma Condensed Combined Balance Sheet

The adjustments included in the unaudited pro forma condensed combined balance sheet as of September 30, 2020 are as follows:

- (1) Reflects the reclassification of cash and investments held in the Trust Account that becomes available following the Business Combination.
- (2) Reflects the PIPE issuance of 3,000,000 common stock shares at \$10.00 per share.
- (3) Reflects the repayment of convertible promissory note in cash.
- (4) Reflects the conversion of promissory note - related parties into 150,000 common stock shares.
- (5) Reflects the reclassification of the Due from Related Companies of \$5,166,938 and Due to Related Companies of \$26,000 to Distributions (net \$5,140,938). This results in the elimination of the Due to Related Companies and Due From Related Companies at closing.
- (6) Reflects the transfer of approximately \$38.4 million in shares subject to redemption to permanent equity and the redemption of more than \$1.8 million in shares (174,482 shares at \$10.64 per share) totaling the \$40.2 million balance of shares subject to redemption as of September 30, 2020.
- (7) Reflects the approximately \$241.1 million in total consideration for the acquisition of BurgerFi. The approximately \$241.1 million total consideration includes a) a cash payment of \$30.0 million, b) the issuance of 6,603,773 common stock shares valued at approximately \$103.7 million (based on December 16, 2020 OPES common stock closing price of \$15.70 per share), c) contingent earnout consideration valued at approximately \$103.2 million and d) assumed debt of approximately \$4.2 million.

Based on the features of the earnout, a Monte-Carlo Simulation was used to value the contingent consideration. The traded price of OPES was simulated in each trial using Geometric Brownian Motion, and the simulated path was then analyzed to determine which, if any, earnout tranches would be payable within the given trial. The estimated payments were calculated by multiplying the shares earned for a given tranche by the simulated price as of the date that the earnout tranche was earned. The result was present valued using the risk-free rate. The average of all trials resulted in the valuation conclusion, which was determined to be approximately \$103.2 million.

- (8) Represents transaction costs of approximately \$9.0 million incurred in consummating the Business Combination. Includes legal, financial advisory and other professional fees related to the Business Combination. These costs are not included in the unaudited pro forma condensed combined statement of operations as they are deemed to not have a continuing impact on the results of the post-combination company.
- (9) Represents consulting fee and payable in connection with the Business Combination, payable at closing in 100,000 in OPES Shares to be issued.

Management has made significant estimates and assumptions in its determination of the pro forma adjustments. As the unaudited pro forma condensed combined financial information has been prepared based on these preliminary estimates, the final amounts recorded may differ materially from the information presented.

| | |
|---|-----------------------|
| Cash | \$ 2,768,169 |
| Restricted cash | 474,886 |
| Accounts receivable, net | 495,990 |
| Inventory | 266,834 |
| Prepaid expenses and other current assets | 174,014 |
| Property and equipment | 8,364,000 |
| Other assets | 454,987 |
| Goodwill | 168,227,517 |
| Intangible assets | 96,404,000 |
| Accounts payable - trade | (1,959,552) |
| Accrued expenses | (767,519) |
| Gift card liability | (406,619) |
| Revolving line of credit | (2,664,159) |
| Current portion of deferred initial franchise fees | (443,174) |
| Other deposit | (906,500) |
| Deferred initial franchise fees, net of current portion | (4,340,243) |
| Deferred income taxes payable (**) | (25,065,040) |
| Consideration | <u>\$ 241,077,591</u> |

** Deferred income taxes payable relates to the \$96.4 million of intangible assets related to the acquisition of BurgerFi and assumes a blended federal and state tax rate of 26%.

Adjustments to Unaudited Pro Forma Condensed Combined Statements of Operations

The pro forma adjustments included in the unaudited pro forma condensed combined statements of operations for the year ended December 31, 2019 and for the nine months ended September 30, 2020 are as follows:

- (1) Represents pro forma adjustment to eliminate interest income and unrealized gain on marketable securities related to the Trust Account.
- (2) We have incurred income tax expense primarily related to interest income and unrealized gain on marketable securities related to the Trust account. We are eliminating this income tax expense because this income tax expense will not be incurred if the Merger was consummated on January 1, 2019.
- (3) Represents the amortization of intangible assets related to the acquisition of BurgerFi and the related effect on deferred income taxes (assuming a blended federal and state tax rate of 26%) over the period shown below as if the acquisition had occurred on January 1, 2019. The estimated useful lives were determined based on a review of the time period over which economic benefit is estimated to be generated as well as other factors. Factors considered include contractual life, the period of which a majority of cash flow is expected and/or management's view based on historical experience with similar assets.

| Intangible assets | Amount | Estimated Lives (in years) | 2019 Amortization | YTD September 2020 Amortization |
|---------------------------------|----------------------|---------------------------------------|------------------------------|--|
| Franchise agreements | \$ 20,591,000 | 7 | \$ 2,941,571 | \$ 2,206,179 |
| Trade names / trademarks | 61,795,000 | Indefinite | - | - |
| Liquor license | 210,000 | Indefinite | - | - |
| Reef Kitchens license agreement | 13,643,000 | 20 | 682,150 | 511,613 |
| VegeFi product | 165,000 | 10 | 16,500 | 12,375 |
| | <u>\$ 96,404,000</u> | | <u>\$ 3,640,221</u> | <u>\$ 2,730,166</u> |

- (4) Represents the increase in the weighted average shares outstanding due to the issuance of common stock in connection with the Business Combination.

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Represents the net income per share calculated using the historical weighted average shares outstanding, and the issuance of additional shares in connection with the Business Combination, assuming the shares were outstanding since January 1, 2019. As the Business Combination is being reflected as if it had occurred at the beginning of the periods presented, the calculation of weighted average shares outstanding for basic and diluted net loss per share assumes that the shares issuable relating to the Business Combination have been outstanding for the entire periods presented. Also, assumes that all stock options, warrants and rights are not dilutive.

| | Pro Forma Combined |
|---|-------------------------------|
| OPES public shares electing cash conversion | (174,482) |
| OPES public shares outstanding | 8,012,573 |
| OPES shares issued to PIPE investors | 3,000,000 |
| | 6,603,773 |
| OPES shares issued in merger to BurgerFi | |
| Shares outstanding | <u>17,441,864</u> |

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