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As filed with the Securities and Exchange Commission on September 22, 2021

Registration No. 333-259360

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

## Amendment No. 1
## to
## FORM S-1
## REGISTRATION STATEMENT
***UNDER***
***THE SECURITIES ACT OF 1933***

# First Watch Restaurant Group, Inc.
**(Exact name of registrant as specified in its charter)**

| Delaware | 5812 | 82-4271369 |
|---|---|---|
| (State or Other Jurisdiction of Incorporation or Organization) | (Primary Standard Industrial Classification Code Number) | (I.R.S. Employer Identification Number) |

**8725 Pendery Place, Suite 201, Bradenton, FL 34201**
**(941) 907-9800**
**(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)**

**Christopher A. Tomasso**
**President, Chief Executive Officer and Director**
**8725 Pendery Place, Suite 201, Bradenton, FL 34201**
**(941) 907-9800**
**(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)**

| Alexander D. Lynch, Esq.<br>Weil, Gotshal & Manges LLP<br>767 Fifth Avenue<br>New York, New York 10153<br>(212) 310-8000 (Phone)<br>(212) 310-8007 (Fax) | *Copies to:*<br>Jay Wolszczak, Esq.<br>General Counsel and Secretary<br>8725 Pendery Place, Suite 201,<br>Bradenton, FL 34201<br>(941) 907-9800 | Marc D. Jaffe, Esq.<br>Ian D. Schuman, Esq.<br>Peter J. Sluka, Esq.<br>Latham & Watkins LLP<br>1271 Avenue of the Americas<br>New York, New York 10020<br>(212) 906-1894 |
|---|---|---|

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

| | | | |
|---|---|---|---|
| Large accelerated filer | ☐ | Accelerated filer | ☐ |
| Non-accelerated filer | ☒ | Smaller reporting company | ☐ |
| | | Emerging growth company | ☒ |

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided to Section 7(a)(2)(B) of the Securities Act. ☒

**CALCULATION OF REGISTRATION FEE**

| Title of Each Class of Securities to be Registered | Amount to be Registered(1)(2) | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price(1)(2) | Amount of Registration Fee |
|---|---|---|---|---|
| Common stock, $0.01 par value per share | 10,877,850 | $20.00 | $217,557,000 | $23,735.47(3) |

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(a) promulgated under the Securities Act of 1933, as amended.
(2) Includes shares of common stock that may be issuable upon exercise of an option to purchase additional shares granted to the underwriters.
(3) Of this amount, $10,910.00 was previously paid.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to Completion, Dated September 22, 2021**

**PRELIMINARY PROSPECTUS**

FIRST WATCH
THE DAYTIME CAFE

# 9,459,000 Shares

# First Watch Restaurant Group, Inc.

## Common Stock

This is an initial public offering of common stock by First Watch Restaurant Group, Inc. (the "Company"). We are offering 9,459,000 shares of our common stock.

Prior to this offering, there has been no public market for our common stock. It is currently estimated that the initial public offering price per share will be between $17.00 and $20.00. We intend to apply to have our common stock listed on the Nasdaq Global Select Market ("Nasdaq") under the symbol "FWRG."

We are an "emerging growth company" as defined under the federal securities laws and, as such, will be subject to reduced public company reporting requirements. See "Prospectus Summary – Implications of Being an Emerging Growth Company."

Following the closing of this offering, Advent (as defined on page 5 of this prospectus) will indirectly beneficially own approximately 81% of our outstanding common stock, or approximately 79% if the underwriters' option to purchase additional shares is fully exercised. As a result, Advent will beneficially own shares sufficient for majority votes over all matters requiring stockholder votes and will be able to exercise significant voting influence over fundamental and significant corporate matters and transactions. Therefore, after the completion of this offering, we expect to be a "controlled company" within the meaning of the corporate governance standards of Nasdaq. See "Risk Factors—Risks Related to this Offering and Ownership of Our Common Stock," "Management—Director Independence and Controlled Company Exemption" and "Principal Stockholders."

**See "Risk Factors" on page 30 to read about factors you should consider before buying shares of our common stock.**

**Neither the Securities and Exchange Commission (the "SEC") nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

| | Per Share | Total |
|---|---|---|
| Initial public offering price | $ | $ |
| Underwriting discount(1) | $ | $ |
| Proceeds, before expenses, to us | $ | $ |

(1) We refer you to "Underwriting," beginning on page 160 of this prospectus, for additional information regarding total underwriter compensation.

To the extent that the underwriters sell more than 9,459,000 shares of common stock, the underwriters have an option to purchase up to an additional 1,418,850 shares from us at the initial public offering price less the underwriting discount.

**BofA Securities** **Goldman Sachs & Co. LLC** **Jefferies**

**Barclays** **Citigroup** **Piper Sandler** **Cowen** **Guggenheim Securities** **Stifel**

**Telsey Advisory Group**

**The underwriters expect to deliver the shares against payment in New York, New York on , 2021.**

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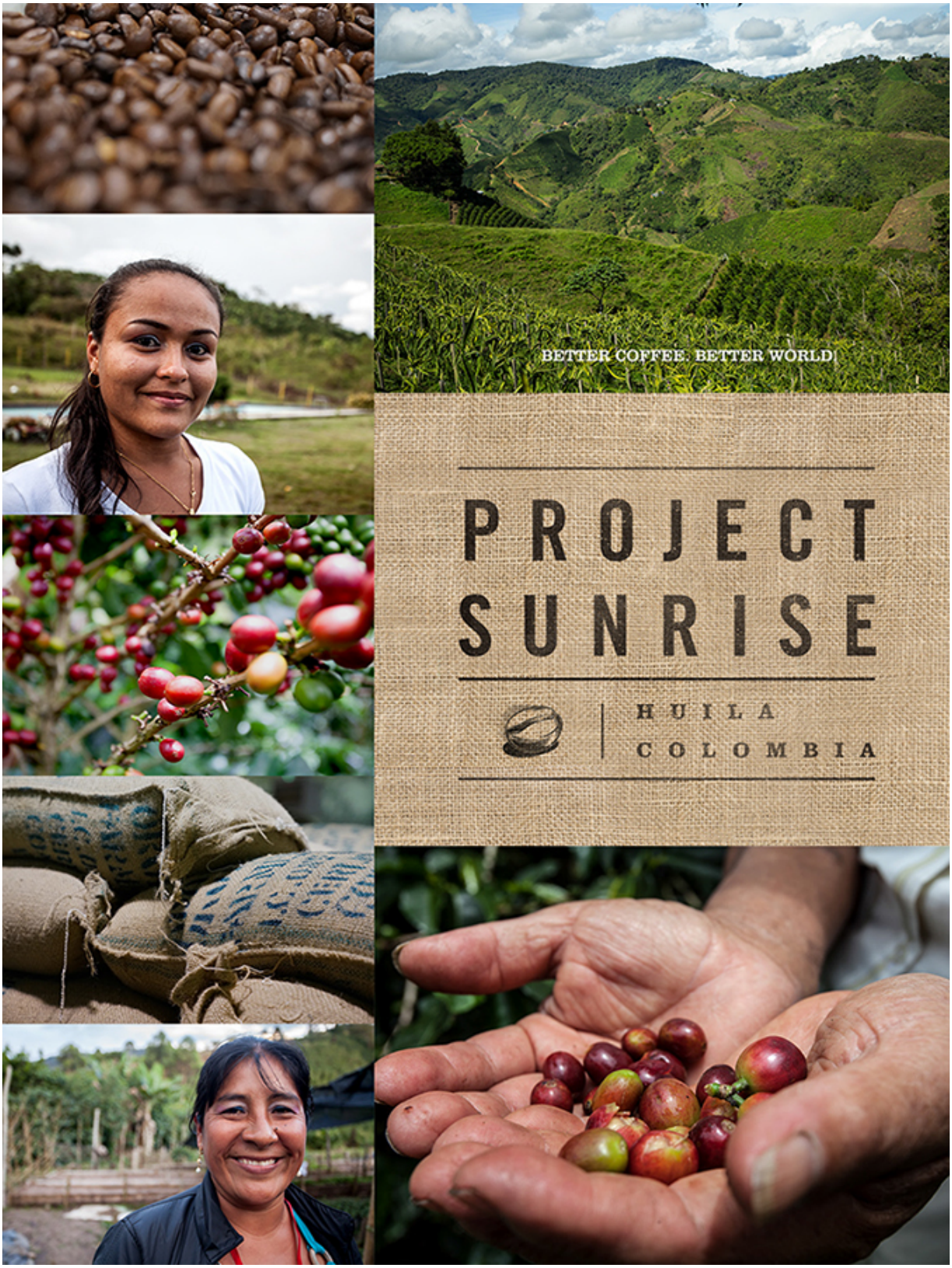

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You should rely only on the information contained in this prospectus or in any free writing prospectus we may specifically authorize to be delivered or made available to you. Neither we nor the underwriters (or any of our or their respective affiliates) have authorized anyone to provide any information other than that contained in this prospectus or in any free writing prospectus prepared by or on behalf of us or to which we have referred you. Neither we nor the underwriters (or any of our or their respective affiliates) take any responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We and the underwriters (or any of our or their respective affiliates) are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus or any free writing prospectus is accurate only as of its date, regardless of its time of delivery or the time of any sale of shares of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

### Trademarks and Trade Names

We and our subsidiaries own or have the rights to various trademarks, trade names, service marks and copyrights, including the following: "First Watch," "You First," "Yeah, It's Fresh!" and various logos used in association with these terms. Solely for convenience, the trademarks, trade names, service marks and copyrights referred to herein are listed without the ©, ® and ™ symbols, but such references are not intended to indicate, in any way, that we, or the applicable owner, will not assert, to the fullest extent under applicable law, our or their, as applicable, rights to these trademarks, trade names, service marks and copyrights. Other trademarks, trade names, service marks or copyrights appearing in this prospectus are the property of their respective owners.

**Market and Industry Information**

Unless otherwise indicated, market data and industry for information used throughout this prospectus is based on management's knowledge of the industry and the good faith estimates of management. We also relied, to the extent available, upon independent industry surveys and publications and other publicly available information prepared by a number of sources, including third-party industry sources, such as a market report titled "Restaurant, Food & Beverage Market Research Handbook 2020-2021" published in September 2019 by Richard K. Miller & Associates ("RKMA"), information published by the NPD Group and a five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair. All of the market data and industry information used in this prospectus involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. Although we believe that these sources are reliable, neither we nor the underwriters can guarantee the accuracy or completeness of this information and neither we nor the underwriters have independently verified this information. While we believe the estimated market position, market opportunity and market size information included in this prospectus is generally reliable, such information, which is derived in part from management's estimates and beliefs, is inherently uncertain and imprecise. Projections, assumptions and estimates of our future performance and the future performance of the industry in which we operate are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors," "Cautionary Note Regarding Forward-Looking Statements" and elsewhere in this prospectus. These and other factors could cause results to differ materially from those expressed in our estimates and beliefs and in the estimates prepared by independent parties.

**Basis of Financial Presentation**

We use a 52- or 53-week fiscal year ending on the last Sunday of each calendar year. All references to fiscal 2020 and fiscal 2019 reflect the results of the 52-week fiscal year ended December 27, 2020 and the 52-week fiscal year ended December 29, 2019, respectively. Our fiscal quarters are comprised of 13 weeks each, except for fiscal years consisting of 53 weeks for which the fourth quarter will consist of 14 weeks, and end on the 13th Sunday of each quarter (14th Sunday of the fourth quarter, when applicable). All consolidated financial statements presented in this prospectus have been prepared in U.S. dollars and in accordance with generally accepted accounting principles in the United States of America ("GAAP"). We report financial and operating information in one segment.

**Key Metrics**

*Average Unit Volume ("AUV")*

AUV is the total restaurant sales (excluding gift card breakage) recognized in the comparable restaurant base, which we define as the number of company-owned First Watch branded restaurants open for 18 months or longer as of the beginning of the fiscal year ("Comparable Restaurant Base"), divided by the number of restaurants in the Comparable Restaurant Base during the period.

*Cash-on-Cash Return*

Cash-on-Cash Return is defined as restaurant level operating profit (excluding gift card breakage and deferred rent (income) expense) in the third year of operation (months 25-36 of operation) for our company-owned restaurants divided by their cash build-out expenses, net of landlord incentives. Restaurant level operating profit is defined as restaurant sales, less restaurant operating expenses, which include food and beverage costs, labor and other related expenses, other restaurant operating expenses and occupancy expenses. Restaurant level operating profit excludes corporate level expenses and other items that we do not consider in our evaluation of ongoing core operating performance of our restaurants as identified in the reconciliation of Net income (loss) from operations, the most directly comparable GAAP measure, to restaurant level operating profit, included in "Prospectus Summary – Summary Historical Consolidated Financial and Other Data."

*Franchise-owned New Restaurant Openings ("Franchise-owned NROs")*

Franchise-owned NROs are the number of new franchise-owned First Watch restaurants commencing operations during the period.

*New Restaurant Openings ("NROs")*

NROs are the number of new company-owned First Watch restaurants commencing operations during the period.

*Same-Restaurant Sales Growth*

Same-restaurant sales growth is the percentage change in year-over-year restaurant sales (excluding gift card breakage) for the Comparable Restaurant Base. For fiscal 2020 and fiscal 2019, there were 212 restaurants and 168 restaurants, respectively, in our Comparable Restaurant Base. For the twenty-six weeks ended June 27, 2021 and the twenty-six weeks ended June 28, 2020, there were 270 restaurants and 212 restaurants, respectively, in our Comparable Restaurant Base.

We gather daily sales data and regularly analyze the customer traffic counts and the mix of menu items sold to aid in developing menu pricing, product offerings and promotional strategies designed to produce sustainable same-restaurant sales growth.

*Same-Restaurant Traffic Growth*

Same-restaurant traffic growth is the percentage change in traffic counts as compared to the same period in the prior year using the Comparable Restaurant Base. For fiscal 2020 and fiscal 2019, there were 212 restaurants and 168 restaurants, respectively, in our Comparable Restaurant Base. For the twenty-six weeks ended June 27, 2021 and the twenty-six weeks ended June 28, 2020, there were 270 restaurants and 212 restaurants, respectively, in our Comparable Restaurant Base. We gather daily traffic data and regularly analyze customer traffic to aid in developing menu pricing, product offerings and promotional strategies.

*System-wide New Restaurant Openings ("System-wide NROs")*

System-wide NROs are the number of NROs and Franchise-owned NROs commencing operations during the period.

*System-wide restaurants*

System-wide restaurants is the total number of restaurants, including all company-owned and franchised restaurants.

*System-wide sales*

System-wide sales consist of restaurant sales from our company-owned restaurants and franchised restaurants. We do not recognize the restaurant sales from our franchised restaurants as revenue. See Note 2, *Summary of Significant Accounting Policies*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for a description of our revenue recognition policy.

## PROSPECTUS SUMMARY

*This summary highlights information appearing elsewhere in this prospectus. This summary is not complete and does not contain all of the information that you should consider before making a decision to participate in the offering. You should carefully read the entire prospectus, including the information presented under "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," the consolidated financial statements as of and for the fiscal years ended December 27, 2020 and December 29, 2019 and the interim unaudited consolidated financial statements for the twenty-six weeks ended June 27, 2021 and June 28, 2020 and notes related thereto included elsewhere in this prospectus, before making an investment decision. Unless the context requires otherwise, references to "our company," "the Company," "we," "us," "our" and "First Watch" refer to First Watch Restaurant Group, Inc. and its direct and indirect subsidiaries on a consolidated basis.*


**We Are First Watch**

We are First Watch – an award-winning daytime restaurant concept serving made-to-order breakfast, brunch and lunch using fresh ingredients. Since our founding in 1983, we have built our brand on our commitment to operational excellence, our "You First" culture and our culinary mission centered around a fresh, innovative menu that is continuously evolving. These foundational brand pillars have established First Watch as the largest and fastest growing concept in daytime dining ("Daytime Dining") - an emerging restaurant segment that is differentiated from legacy segments by operating exclusively during daytime hours with a progressive on-trend chef-driven menu. Our one shift, from 7:00 a.m. to 2:30 p.m., and one main menu enable us to optimize restaurant operations and attract and retain employees who are passionate about hospitality and drawn to our "No Night Shifts Ever" approach. This differentiation has driven high employee satisfaction and retention, and strong consumer demand and operating performance as evidenced by our 28 consecutive quarters of same-restaurant sales growth from fiscal 2013 to fiscal 2019 and positive annual same-restaurant traffic growth from fiscal 2014 to fiscal 2019, prior to the emergence of the COVID-19 pandemic. In January 2020, we were recognized as "America's Favorite Restaurant Brand" in *Market Force's* annual consumer study and as one of three industry finalists for Black Box Intelligence's 2020 Best Practices award.

Our unique one-shift and one-menu approach, coupled with our commitment to our employees and customers throughout the COVID-19 pandemic allowed us to retain and attract employees and reopen our restaurants with accelerating operating momentum in the second half of 2020 and into 2021, recording same-restaurant sales growth of 16.3% in the second fiscal quarter ended June 27, 2021 ("second fiscal quarter of 2021") relative to the fiscal quarter ended June 30, 2019 ("second fiscal quarter of 2019"). Importantly, our same-restaurant traffic growth in the second fiscal quarter of 2021 was ahead of the comparable quarter in 2019 by 1.0%. Throughout the COVID-19 pandemic, we invested in supplemental compensation and expanded health benefits for our people while at the same time we accelerated strategic investments in our business and continued to expand our footprint, opening 42 and 18 System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively. As of June 27, 2021, we had 423 System-wide restaurants across 28 states, 335 of our restaurants were company-owned and 88 were operated by our franchisees.

**Our Promise: Yeah, It's Fresh!**


At First Watch, we take a creative approach to Daytime Dining led by a focus on and commitment to freshness. Each item is made-to-order and prepared with care – you will not find microwave ovens, heat lamps or deep fryers in our kitchens. Every morning, we arrive at the crack of dawn to slice and juice fresh fruits and vegetables, bake muffins, brew our fresh coffee and whip up our French Toast batter from scratch. Our award-winning chef-driven menu includes elevated executions of classic favorites for breakfast, lunch and brunch, along with First Watch-specific specialties such as our protein-packed Quinoa Power Bowl®, Farmstand Breakfast Tacos, Avocado Toast, Morning Meditation (juiced in-house daily), our new Vodka Kale Tonic, Chickichangas and our famous Million Dollar Bacon. While our menu constantly evolves, our focus on – and commitment to – freshness never wavers.

**Our Mission: You First**

For more than 38 years, we have cultivated an organizational culture built on our mission of "You First," which puts serving others above all else. As a company, we put our employees first and empower them to do whatever it takes to put our customers first. We give back in meaningful ways to the local communities in which we operate and also support national and international causes we care about, such as our Project Sunrise partnership that supports women-owned coffee farms in Colombia, which in turn empowers them to reinvest in their communities. Our "You First" mission, in addition to our quality of life advantage inherent in our single-shift operating model, has led us to be recognized as an employer of choice in our industry, according to a five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair. We believe that our approach to our employees not only long before but also during the COVID-19 pandemic has enabled us to retain and attract employees to get our restaurants staffed up to meet the current consumer demand better than our peers.

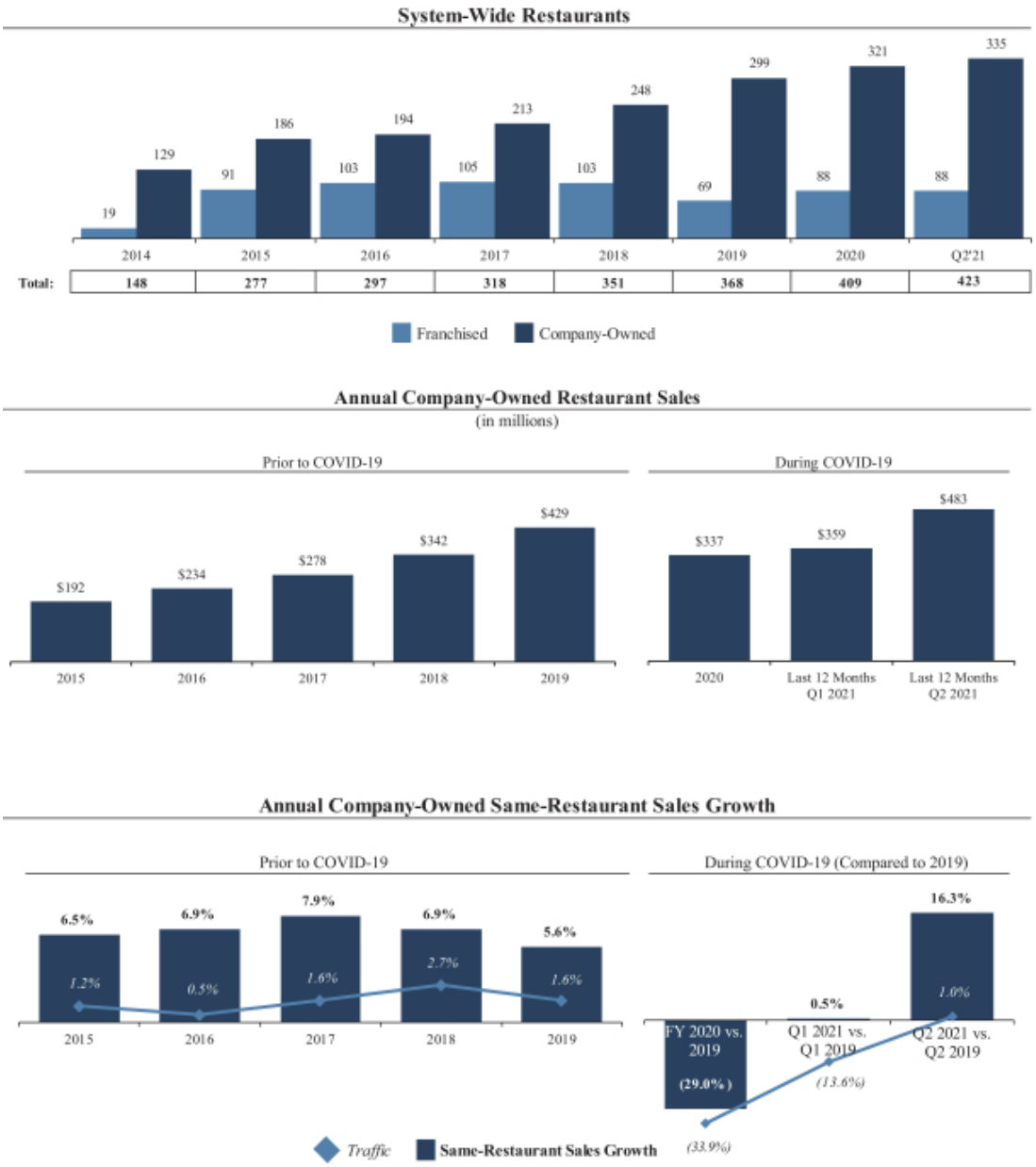
**Proven Record of Sustained Growth**

We have delivered almost four decades of sales and unit growth as a result of our broad brand appeal, compelling economic proposition and difficult-to-replicate business model. We have achieved consistent growth in total System-wide restaurants to 423 as of June 27, 2021, from 277 restaurants in fiscal 2015. Over the six-year period ended December 29, 2019 (prior to the emergence of the COVID-19 pandemic), we:

- Consistently delivered same-restaurant sales growth, averaging 6.3% annually
- Consistently achieved positive annual same-restaurant traffic growth, averaging 1.4% annually

Over the five-year period ended December 29, 2019 (prior to the emergence of the COVID-19 pandemic), we:

- Consistently increased AUVs by 25.7%, from $1.3 million in fiscal 2015 to $1.6 million in fiscal 2019
- Consistently opened new company-owned restaurants with an average Cash-on-Cash Return of 50.8%




**Our COVID-19 Response and How We Emerged as a Stronger Company**

Our strong momentum in fiscal 2019 continued into January 2020 and February 2020 with same-restaurant sales growth of 7.4% and 4.7%, respectively. However, as the COVID-19 pandemic emerged in March 2020, our management team devised a strategy not only to prioritize the health and safety of our employees and customers in keeping with our “You First” culture, but also to accelerate planned strategic initiatives that would position us

to be more nimble in capturing sales. The following are some of the actions we took that enabled us to persevere during the pandemic and emerge as a stronger company in 2021:

- Aligned with our sponsor, Advent International Corporation ("Advent"), to commit capital both to our people as well as to our continued new restaurant development and real estate pipeline;
- Began closing all dining rooms during the week of March 15, 2020 (regardless of state and local orders), transitioning to off-premises sales only and rapidly deploying our first phase of new hardware and software enhancements to enable this critical sales channel;
- Furloughed most of our employees, but provided relief payments to help with immediate needs for those hourly employees with more than three years of service, while committing to make managers and corporate employees "whole" upon return for any financial shortfall between the state and federal benefits they received and their base salaries;
- Paid both employer and employee portion of healthcare premiums for furloughed employees enrolled in our healthcare plans, covered 100% of out-of-pocket costs for insured employees and their families for medical visits related to the COVID-19 pandemic and secured telemedicine services for employees;
- Temporarily suspended all operations at our company-owned restaurants on April 13, 2020 to prioritize the health and safety of our team members;
- Established the "You First Fund," which provides tax-free grants to in-need employees and which had distributed approximately $800,000 in such grants through June 2021;
- Deployed new safety protocols and procedures as well as an employee wellness screening tool with COVID-19 contact tracing. Our efforts were recognized in a Technomic survey in the third quarter of 2020 that rated First Watch as best in its peer group with regard to customer safety and sanitation; and
- Offered employees a payment in consideration for the time taken to receive their full schedule of immunization, once COVID-19 vaccines were available.

With respect to our operations, we rapidly addressed new consumer behaviors by accelerating previously planned initiatives to position ourselves for short-term recovery and long-term growth such as online ordering to enable third-party delivery services, the expansion of our carefully curated alcohol program and touchless payment technology:

- Developed and launched a new mobile app to allow customers to order takeout and delivery and to join our dining room waitlist remotely;
- Integrated technology into our waitlist management solution to gather customer data on consumer preferences;
- Accelerated the rollout of our alcohol program, which has proven to be an incremental occasion for consumers, increasing overall beverage incidence by 230 basis points;
- Maintained the entirety of our menu throughout the COVID-19 pandemic while also prioritizing culinary innovation through our seasonal menu program;
- Expanded our patio and outdoor service areas and reduced and distanced our freestanding tables;
- Proactively contacted our landlords to negotiate rent deferrals or abatements, postpone turnover dates for certain restaurants, secure waivers of alcohol sales restrictions and obtain dedicated curbside parking for off-premises order pick up; and
- Continued to invest in new company-owned restaurants and develop our future NRO pipeline, leading to a 7.4% increase in our company-owned restaurants from 299 in fiscal 2019 to 321 in fiscal 2020.

A total of approximately $4.8 million of costs were incurred in fiscal 2020 in connection with the COVID-19 pandemic, and were comprised of the following: (i) inventory obsolescence and spoilage of approximately $0.6 million, (ii) compensation paid to employees upon furlough and return from furlough of $1.4 million, (iii) $0.7 million for health insurance costs paid for furloughed employees, net of employee retention credits and (iv) supplies, such as personal protection equipment, of approximately $2.1 million.

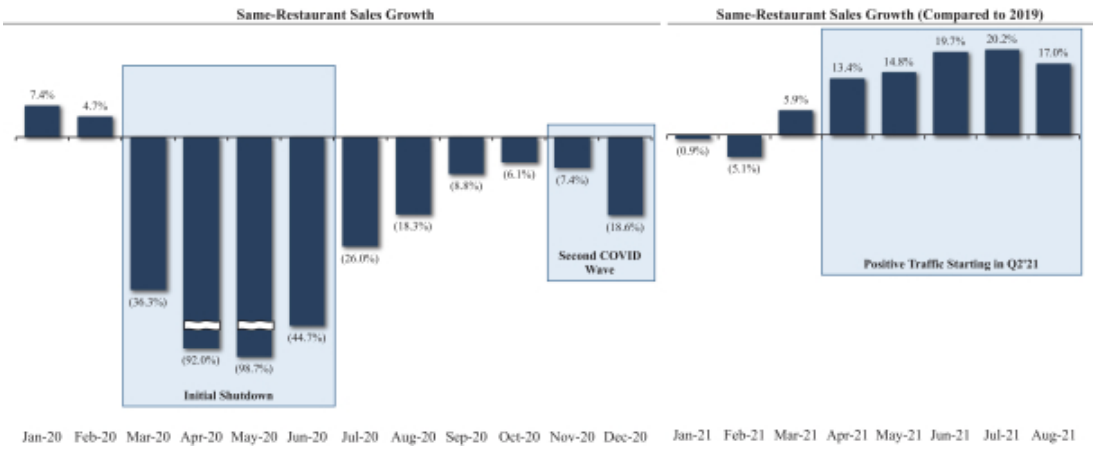
Since beginning our phased reopening in May 2020, our restaurants have steadily grown sales and transactions despite the seating capacity of restaurant dining rooms remaining constrained by state and local government mandates as well as our own internal standards taken to protect employees and customers. In Florida, for example, where approximately 30% of our company-owned restaurants are located, despite the state lifting indoor dining distancing restrictions on September 25, 2020, we maintained six-foot distances between tables through the first fiscal quarter ended March 28, 2021 (“first fiscal quarter of 2021”) for the safety of our customers and employees.

As a result of the new initiatives that we put in place, when our company-owned restaurants reopened, we were able to meet the new customer demand for off-premises dining while also serving the in-restaurant customer traffic as it continued to increase. Our off-premises sales channel had been a relatively small portion of our sales pre-pandemic; in the fiscal quarter ended December 29, 2019 (“fourth fiscal quarter of 2019”) our average weekly off-premises sales were $1,897 per restaurant. In fiscal 2020, our off-premises sales benefited significantly from our technology investments and initiatives to reduce customer friction when ordering off-premises as well as changes in consumer behavior; this resulted in average weekly off-premises sales increasing to $8,082 per restaurant during the fiscal quarter ended December 27, 2020 (“fourth fiscal quarter of 2020”). Moreover, even as we saw our dine-in traffic grow steadily in 2021, our off-premises business remained relatively consistent with average weekly sales of $8,079 per restaurant in the second fiscal quarter of 2021. To ensure that our third-party delivery business was positioned for long-term success, we introduced a surcharge for third-party orders. We believe that off-premises sales will remain an incremental channel for us that serves an additional use occasion for our customers and that it will be an important part of growing average unit volumes to higher than pre-pandemic levels.

According to Nation’s Restaurant News, in 2019, First Watch was the fastest-growing full-service restaurant concept in the United States, based on year-over-year System-wide sales growth metrics, and in 2020, FSR Magazine identified First Watch as the fastest-growing full-service restaurant chain based on unit growth. Despite the COVID-19 pandemic, we continued to build and open new restaurants in 2020 with 23 company-owned restaurants in fiscal 2020 and continued to develop our pipeline for fiscal 2021 and the fiscal year ended December 25, 2022 (“fiscal 2022”) new restaurant growth. During the twenty-six weeks ended June 27, 2021, our NROs have performed exceptionally well, even when compared to the strong performance of our existing restaurants, and generated annualized average sales of $2.0 million, relative to our existing restaurants that generated annualized average sales of $1.7 million.

Starting in March 2021, we began to consistently report positive same-restaurant sales growth measured against pre-COVID results, including 5.9%, 13.4%, 14.8% and 19.7% same-restaurant sales growth in March, April, May and June of 2021, respectively, relative to March, April, May and June of 2019, respectively. Our momentum has continued into the third quarter of fiscal 2021 with same-restaurant sales for the month of July up 64.9% over 2020 and up 20.2% over 2019 and the month of August was up 45.2% over 2020 and up 17.0% over 2019. Similarly, our traffic in those months was up 5.1% and up 2.0% in July and August over 2019, respectively.

**Monthly Same-Restaurant Sales Growth Since January 2020**




**Long-Term Consumer Trends in Our Favor**

We believe that we are well-positioned to continue to benefit from the confluence of a number of long-term multi-generational consumer trends:

***Increasing Morning Meal Occasions.***

The morning meal (Breakfast and morning Snack) has been the only foodservice daypart with consistent year-over-year growth for the last several years, according to RKMA. The restaurant industry captured two additional breakfast visits per capita, from 2015 to 2018, and with 78% of breakfasts still being prepared at home during 2019 according to the NPD Group. With 102 billion breakfast occasions and 50 billion morning snack occasions in 2019, per a January 2020 NPD Breakfast Insights report, morning restaurant traffic provides a compelling long-term opportunity for future growth. We believe that the broad appeal of our menu and the quality of our ingredients gives us a competitive advantage over many alternatives that offer breakfast and lunch. We believe that migration from dense urban to suburban areas, where most of our restaurants are located, will result in increased traffic and brand awareness. Increased work-from-home routines have kept people in suburban areas for larger portions of the day, increasing First Watch exposure to an incremental customer base.

***Demand for Fresh, Healthy Food.***

According to RKMA, almost two thirds of consumers consider a healthy menu an important factor in their restaurant choice and according to the NPD Group, 60% of consumers say they want more protein in their diet. The COVID-19 pandemic has progressed trends globally towards wellness with consumers becoming more focused than ever on living and eating healthier. Our freshly made food, with simple, high-quality, protein-rich ingredients, such as cage-free eggs and quinoa, aligns well with these consumer trends. According to Market Force data in January 2020, First Watch scored 36 and 23 points higher than the second place breakfast brand in categories of healthy choices and food quality, respectively.

***Consumers Want "On-Demand" Dining.***

Consumers want the ability to order what they want and when they want it without regard to traditional daypart conventions. Increasingly busy schedules, the rise of the "gig" economy, flexible job hours and growth of remote workers, trends magnified by the COVID-19 pandemic, are powering demand for convenient, fast and flexible Daytime Dining offerings from our all-day menu, for which traditional rigid breakfast and lunch dayparts were not designed. In the second fiscal quarter of 2021, our average weekly off-premises sales per restaurant were $8,079 compared to $1,897 in the fourth fiscal quarter of 2019 and $8,082 in the fourth fiscal quarter of 2020.

**We Are Disrupting a Massive Category**

As consumer needs have evolved, so have we. Our "Urban Farm" positioning provides a creative, farm-fresh breakfast, brunch and lunch menu in a warm and rustic yet contemporary atmosphere – creating an energizing Daytime Dining experience that resonates with consumers. We enjoy broad appeal to a customer base that includes the morning traditionalists as well as a growing segment of younger, healthier and more affluent customers. These digital-centric consumers care about food and quality, are willing to pay more, and report higher advocacy for and share of visits to First Watch. There is no other concept with an offering similar to ours at a comparable scale. Our operating hours encompass breakfast, brunch and lunch, which represent 63% of all restaurant sales in the U.S., according to RKMA. Our business model and our scale position us for continued growth within this massive category.

***Unrelenting Commitment to Fresh Ingredients and Culinary Innovation***

Our creative, on-trend menu and seasonal offerings define the culinary voice of our brand and highlight our commitment to quality and freshness. We believe this commitment is a key differentiator between First Watch and larger restaurant concepts that have failed to evolve. When we say, "Yeah, It's Fresh," we mean it. While many established restaurant concepts are outsourcing a large part of the preparation of their food, we still do much of it in-house in each restaurant every day.


That commitment to quality and freshness is further evidenced throughout our award-winning menu with ingredients such as cage-free eggs, organic mixed greens and all-natural chicken, just to name a few. Our highly-curated menu of approximately 60 entrée items – small relative to most in our industry – features a thoughtful balance of classic favorites prepared and presented in an elevated way using high-quality ingredients, along with innovative and interesting specialty dishes that take the consumer on a culinary exploration.

Our creativity and innovation extend beyond today's offerings and into our overall menu strategy. Successful platform introductions such as our Fresh Juice program and Shareables, which include menu items such as Million Dollar Bacon and Holey Donuts, were added in the past few years, adding incremental revenue opportunities while enhancing our culinary credibility. We have seen our Fresh Juice and Shareables platforms rise from 9.6% and 3.4% of customers purchasing in the fourth fiscal quarter ended December 30, 2018, respectively, to 15.6% and 5.7% in the second fiscal quarter of 2021 and our gross per person average over that same period rose from $12.29 to $14.69.

***One Shift, One Menu, One Focus***

We believe that our compelling business model, built around "One Shift, One Menu, One Focus" affords us competitive advantages. Our single-shift restaurant hours, by design, result in "No Night Shifts Ever." This helps make us an employer of choice in the foodservice industry, which we believe allows us to attract superior talent, retain employees longer and create a unifying organizational culture. Our single menu, throughout the day and across all restaurants in our system, streamlines our supply chain and restaurant operations, simplifies our employee training and provides for a consistent customer experience. Our singular emphasis on Daytime Dining gives us the clarity of purpose to relentlessly focus on delivering a superior experience.

***"You First" Culture Elevates Employee and Customer Satisfaction***

Our "You First" culture is palpable at every level of our organization. Our hiring, training and retention strategies empower our more than 9,000 employees, united by our culture, to deliver superior customer experiences. We invest heavily in our leaders by conducting 11 weeks of training for all managers, including a one-week F.A.R.M. (First Watch Academy of Restaurant Management) program traditionally held at our corporate headquarters ("Home Office") in Florida, where each of our managers-in-training is immersed in our culture, vision and mission. Our restaurant-level manager turnover was 29% during the last twelve months ending March 2020, which is meaningfully lower than our peer average of 41% as reported by Black Box.

During the COVID-19 pandemic, we continued to invest in our employee relationships through a high touch program of outreach, communication and, where possible, assistance. As a result of our proactive approach, 75% of the hourly employees who had been working for us for over three years and approximately 90% of general managers returned to work with us when our restaurants reopened.

We have always believed our employees are our greatest asset, and the initiatives we had in place prior to the COVID-19 pandemic and the additional steps we subsequently took further enhanced our culture and elevated our employee, and ultimately customer, satisfaction. First Watch ranked first in Market Force's Composite Loyalty Index metric as of January 2020, evidencing the compelling level of satisfaction amongst our customers. We believe that the incredible culture at First Watch became even stronger as a result of the pandemic, evidenced by our overall score in the Glassdoor survey having increased relative to the pre-pandemic period. A five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair ranked us #1 for work/life balance and for overall employee satisfaction in the restaurant industry.

***Track Record of Resilience and Exceptional Same-Restaurant Traffic and Sales Growth***

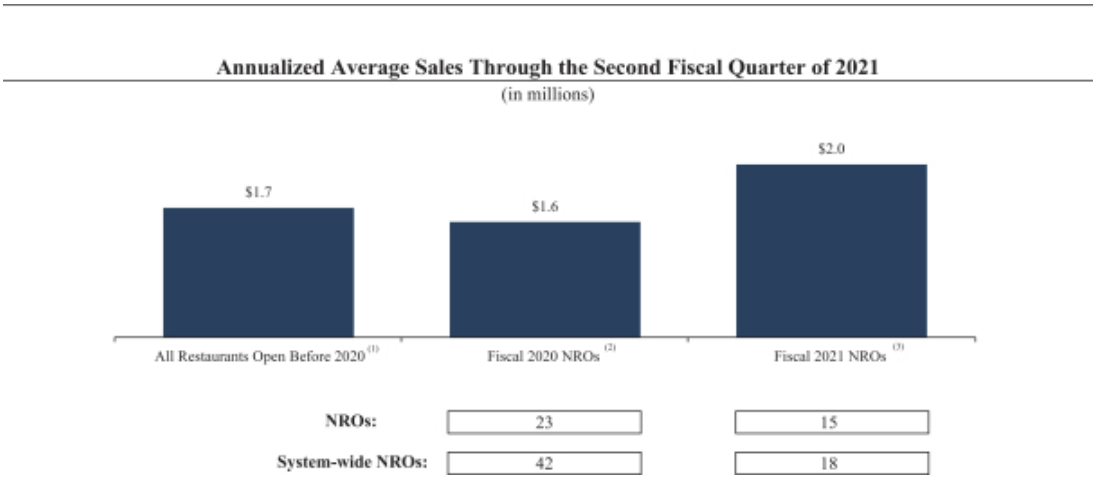
Our strong brand with growing awareness, broad consumer appeal and excellence in execution have created outstanding and consistent performance over time. Over the five-year fiscal period ended December 29, 2019, our same-restaurant sales growth was positive every year, averaging 6.8% annually, and our same-restaurant traffic growth was 1.5%. This positive momentum has continued in the second fiscal quarter of 2021 performance with same-restaurant sales growth of 16.3% and same-restaurant traffic growth of 1.0% compared to the same fiscal period in 2019.

In addition to exemplary historical performance, our concept has proven to be highly adaptable and resilient during adverse market conditions. During the unprecedented COVID-19 restrictions, we temporarily closed all our company-owned restaurants and navigated significant capacity restrictions in the months following. In response, we rapidly enhanced our off-premises technological and operational capabilities to meet the change in consumer demand through those channels.

We have also seen rapid sales recovery as many geographies reduced on-premises dining restrictions that were imposed after the onset of the COVID-19 pandemic. For example, by March 2021, nearly all our restaurants had reopened to full dining-room capacity and we began to consistently achieve highly positive same-restaurant sales growth, including 5.9% 13.4%, 14.8% and 19.7% same-restaurant sales growth in March, April, May and June of 2021, respectively, relative to March, April, May and June of 2019, respectively. Our momentum has continued into the third quarter of fiscal 2021 with same-restaurant sales for the month of July up 64.9% over 2020 and up 20.2% over 2019 and the month of August was up 45.2% over 2020 and up 17.0% over 2019. Similarly, our traffic in those months was up 5.1% and up 2.0% in July and August over 2019, respectively.

***Strong Restaurant Productivity and Proven Portability***

The success of our brand is reflected in our restaurant-level performance and Cash-on-Cash Return. In fiscal 2019, prior to the pandemic, we generated an AUV of $1.6 million in a single shift (seven and a half hours daily), comparable to many restaurants open for several shifts or in some cases around the clock. We have demonstrated the portability of our model by successfully operating restaurants in 28 states. Restaurants in our top decile, by fiscal 2019 sales, span nine different states and 14 different DMAs. DMAs are geographic areas in the United States in which local television viewing is measured by The Nielsen Company. Despite the challenges of the COVID-19 pandemic and its impact on our sales, we have seen a broad and rapid sales recovery and opened 42 and 18 System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively. Our NROs have displayed exemplary performance evidenced by the current momentum in our business. Our fiscal 2020 NROs have generated annualized average sales of $1.6 million and our NROs opened during the twenty-six weeks ended June 27, 2021 have generated annualized average sales of $2.0 million.




(1) Represents annualized average sales of all company-owned restaurants opened through fiscal 2019.
(2) Represents annualized average sales of all company-owned restaurants opened during fiscal 2020.
(3) Represents annualized average sales of all company-owned restaurants opened during the twenty-six weeks ended June 27, 2021.

***Experienced, Passionate Leadership Team and Deep Bench of Talent***

Our team is led by passionate executives who have an extensive mix of experience in our brand and with other leading consumer facing businesses. Christopher A. Tomasso, our President, Chief Executive Officer and Director, has more than 24 years of industry experience and joined First Watch in 2006. Mr. Tomasso sets the strategic vision and brand positioning for the company, while enhancing its organizational culture. Mr. Tomasso was recognized with FSR Reader's Choice Award as one of two top C-Suite Executives in 2021. Mel Hope, our Chief Financial Officer and Treasurer, has more than 36 years of public accounting and industry experience including serving as Chief Financial Officer of large, successful public and private companies. We have a deep bench of talent throughout the organization. Our executives and key employees average more than 15 years of industry experience and our restaurant general managers have an average tenure at First Watch of five years. In addition, we have dozens of fully-trained, tested, high-performing managers positioned throughout our system who are poised to step into the general manager role as we execute our growth strategy and open new restaurants.

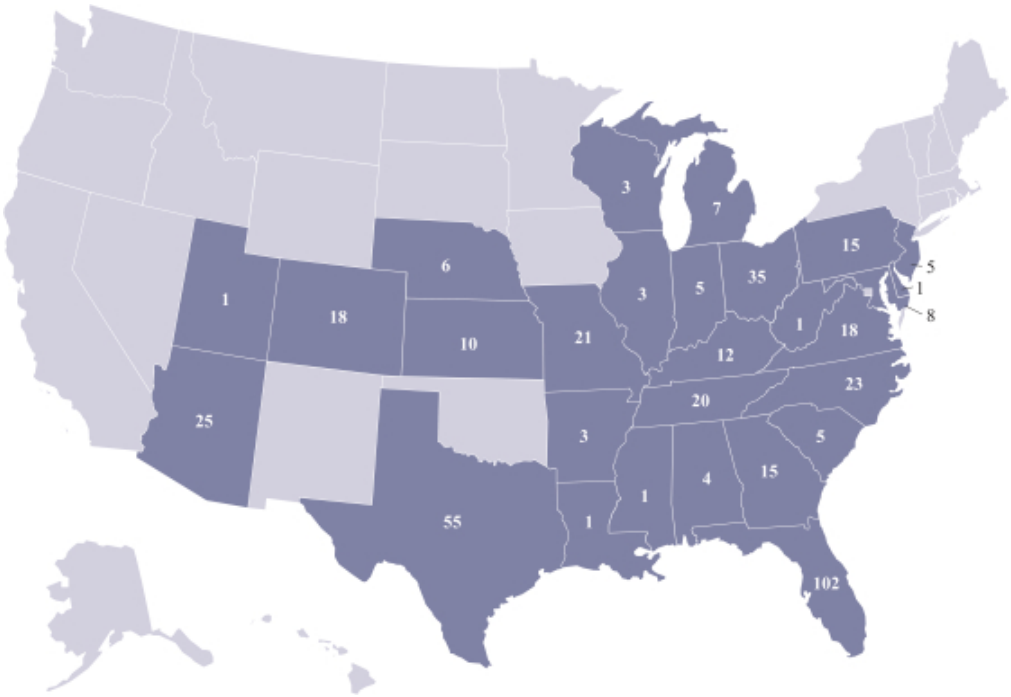
**How We Will Continue to Grow Sales and Profits**

While we are proud of our success in having grown sales and restaurant level operating profit consistently for many years prior to the pandemic, our focus is on the future. We believe our continued growth will come from opening new restaurants in existing and new geographies and driving traffic and building sales at our existing restaurants as new customers discover First Watch and regulars come and enjoy us more frequently. While 2020 was a challenging year given the COVID-19 pandemic, the investment in our employees and operational capabilities have enabled us to emerge as an even stronger company with greater abilities to leverage multiple channels for growth. We are even more confident in our growth strategies based on the consumer reaction to our brand and strong resurgence we have seen throughout 2021 since reopening our restaurants and since capacity restrictions have been reduced.

***Grow Our Brand Footprint by Consistently Opening New Restaurants***

First Watch has grown from 277 restaurants in fiscal 2015 to 423 System-wide restaurants as of June 27, 2021 while increasing annual AUV from $1.3 million in fiscal 2015 to $1.6 million in fiscal 2019 and achieving positive same-restaurant sales growth and traffic except for fiscal 2020. In Florida, our most mature market with the greatest number of company-owned restaurants, we have grown from 54 to 99 restaurants over the last six years, while generating average annual same-restaurant sales growth of 6.8% from fiscal 2015 to fiscal 2019. We believe we have significant potential to expand our presence within all the states in which we currently operate as well as new ones. We have a significant opportunity to grow density both in existing and new markets. Our deeply experienced restaurant development team in partnership with a third-party real estate analytics firm conducted an in-depth study that concludes we have the potential for more than 2,200 locations in the United States.

**Restaurant Count by State as of June 27, 2021**



Despite the challenges of the COVID-19 pandemic, First Watch remained committed to invest in growth throughout 2020 and 2021 and continued to open new restaurants. We opened 42 and 18 System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively, representing growth rates of 11.1% and 9.3%, respectively, over the prior periods. Furthermore, those NROs have performed exceptionally well, evidencing our compelling business momentum and ability to successfully grow our footprint. Our NROs during the twenty-six weeks ended June 27, 2021, have generated annualized average sales of $2.0 million relative to our existing restaurants' annualized average sales of $1.7 million. Our pipeline for the full fiscal year of 2021 remains robust and we expect a total of 32 System-wide NROs.

We employ a comprehensive, data-driven real estate approval process to select and develop every new site. In selecting new locations, we combine rigorous data on specific market characteristics, demographics, and growth, with a human element that takes into account brand impact and opportunity of individual market and sites. Every new restaurant further drives brand awareness and creates meaningful marketing buzz when we open in new markets. We intend to leverage our rigorous real estate site selection process to open more than 130 company-owned restaurants from 2022 through 2024. While our existing franchisees are committed to developing restaurants in the future, we expect company-owned restaurants will be the primary growth driver of our footprint over the long term.

***Drive Restaurant Traffic and Build Sales***

We have a significant runway to continue to grow traffic and restaurant sales by executing against a defined set of strategies.

- ***Continue Menu Innovation.*** We continuously evolve our offering to keep our menu fresh and exciting yet operationally efficient. Our chef-led culinary innovation team maintains a keen awareness of emerging culinary trends and immerses themselves in the marketplace through frequent culinary inspiration tours using experiences to develop a robust pipeline of exciting new recipes and menu offerings. We intend to drive continued incremental customer spending through our five highly-anticipated seasonal menus and the introduction of new menu platforms similar to our introductions of Fresh Juices and Shareables. For fiscal 2019, 8.5% of customers purchased items from our seasonal menu, 12.0% purchased Fresh Juices and 4.5% purchased Shareables. We expect menu innovation to continue to provide incremental growth opportunities in the future.
- ***Offer Alcohol as Only First Watch Can.*** The alcoholic beverage offerings at First Watch are unique and reflect our culinary innovation in combining fresh juices and ingredients with a variety of liquors. At the end of fiscal 2019, early tests showed that offering alcoholic beverages where practical throughout our system was a highly-incremental new sales growth platform, opening up new occasions for our consumers to enjoy dining out and allowing us to reach new demographics. During the COVID-19 pandemic, we accelerated this initiative to better position the First Watch brand upon recovery as we learned that customers joining us for breakfast or lunch were interested in making the meal more of a celebration at times. As of June 27, 2021, our alcohol menu is offered in 244 System-wide restaurants with clear plans to continue the expansion to all restaurants where feasible. Since the rollout in fiscal 2020, the presence of alcohol on our menu has lifted overall dine-in beverage attachment by 230 basis points in restaurants where it is served, indicating the incrementality of the offering. Further, for the second fiscal quarter of 2021, alcohol accounted for 3.6% of in-restaurant sales at company-owned restaurants and increased the average in-restaurant customer spend by $0.30 as compared to our restaurants that do not offer alcohol. These incremental alcohol sales are highly profitable. More importantly, we remain confident in the long-term opportunity to innovate within this platform to further elevate the social occasion of breakfast, brunch and lunch. Similar to the establishment of our Fresh Juice and Shareables platforms, we remain optimistic that further consumer awareness and excitement (through new items and promotion) around alcohol will drive new, additional occasions and broaden our appeal to a new demographic seeking an experiential occasion over a meal.

- ***Convenience and Increased Accessibility through Our Off-Premises Offering.*** During the COVID-19 pandemic, we integrated technology into our business to enhance customer access and enable off-premises consumption. In fiscal 2019, off-premises sales accounted for $1,971 in average weekly sales. We have now built the foundation to optimize the off-premises opportunity through our digital channels (both through direct ordering as well as third-party delivery). These off-premises platforms, now available in all restaurants, contributed $8,079 of average weekly sales per restaurant during the second fiscal quarter of 2021, compared to $1,897 in the fourth fiscal quarter of 2019. Even as our dining room sales recovered during the twenty-six weeks ended June 27, 2021, off-premises sales remained strong, indicating continued customer demand. We see future opportunity to refine and grow this demand largely by focusing on in-restaurant infrastructure, especially in our new restaurant prototypes. We have seen encouraging results in 2021 NROs from innovations such as dedicated make lines and to-go rooms, separate entrances and dedicated parking spots to enhance the experience of both our off-premises and dine-in customers.
- ***Increase Our Brand Awareness.*** We believe First Watch is still in the early stages of our life cycle, as consumers in our existing and new markets continue to discover the First Watch brand. Over 38 years, First Watch has grown primarily through word-of-mouth as our service, menu and environment created ardent fans as evident in our numerous local awards and customer satisfaction scores. In January 2020, First Watch was named “America’s Favorite Restaurant Brand” by Market Force. This study evaluated restaurants across multiple sectors and based its ranking on customer recommendations and brand satisfaction. This strong customer affinity was also highlighted in a recent 2021 national study where First Watch ranked 10$^{th}$ in net promoter score among the country’s 74 largest restaurant brands and comparable to the industry’s most highly regarded names. Despite this, brand awareness remains low as indicated by a 2021 nationally represented survey where only 11% were aware of First Watch. The combination of both high customer satisfaction and opportunity for growing awareness highlights strong potential for the brand.

  As our development of new restaurants continues, we believe the increased penetration in new and existing markets will contribute to higher brand awareness. While we believe that organic growth of awareness contributes more to our local feel, we also recognize the future potential of strategically

applying advertising dollars in appropriate channels to accelerate this opportunity. Our advertising costs represented approximately 1% of total revenues in fiscal 2019 and in fiscal 2020. We intend to grow our brand awareness primarily through increased investment in cost-efficient digital channels in order to further leverage our first party, owned, customer data to target and reach the right audiences that will lead to higher conversion and higher return on investment. We have successfully piloted these approaches to-date and remain confident that this approach provides further growth opportunity to build traffic and sales.

***Deliver an Excellent On-Premise Dining Experience.*** Excellence in restaurant-level execution, recognized by customers and reinforced by the hundreds of accolades we have received, increases the visit frequency of our customer, promotes trial by new consumers and ultimately encourages loyalty. We have received hundreds of awards from local and national media outlets that we believe matter to consumers – including being named one of TripAdvisor's Best Restaurant Chains in 2019. While off-premises dining during the COVID-19 pandemic has emerged as a sizeable use occasion for many customers cautious to eat outside their homes, we believe that our unwavering focus will remain on delivering an amazing dining experience in our restaurants to every customer in every visit. We aim to continue to leverage our "One Shift, One Menu, One Focus" model to stay distinguishably different from our competitors by executing on delivering a superior dining experience every day to further drive traffic and build sales.

***Additional Platforms and Initiatives.*** We have seen the opportunity, over time, to selectively evolve our concept and offerings via the implementation of key strategies and initiatives. Future initiatives include:

- ***Weekday Lunch***: We believe that we have the opportunity to significantly increase market share by driving incremental customer visits during the weekday lunch daypart through the evolution of our menu with fresh, convenient and differentiated lunch-oriented offerings. In fiscal 2019, only 6.0% of our weekday customers purchased lunch entrées. As a result of the evolving consumer landscape driven by the COVID-19 pandemic, there has been a significant migration of people from urban to suburban areas, where a meaningful portion of our restaurants exist. This migration, coupled with an increasing work-from-home trend, presents First Watch with an incremental customer opportunity during the weekday business hours which we believe will further propel growth in our lunch daypart. With the evolution of a new optimized core menu, the presence of our off-premises channels and the opportunity to apply targeted marketing, we believe the weekday lunch occasion holds future opportunity to build sales and traffic.

- ***Customer Technology & Customer Data:*** As we fast-tracked the implementation of our off-premises platforms in fiscal 2020, we also took the opportunity to accelerate the implementation of customer data acquisition systems in order to better inform the habits and behaviors of our customers. With the large increase in remote digital orders, we also sought to digitize in-restaurant orders for the purpose of creating an omnichannel view of the First Watch customer. By integrating remote waitlist, remote orders, tokenized credit card transactions and WiFi into one system, we now have the ability to better

understand trial, frequency and customer lifetime value. Since the establishment of these systems, we have gathered 2.9 million unique customer profiles. The advancements in these foundational systems provide future opportunity for targeted communication and the development of more advanced customer relationship management systems aimed at growing customer frequency.

- ***Restaurant Technology Unlocking Throughput & Capacity:*** For 38 years, we grew organically from an intense focus on people and service, delivering a unique restaurant experience that has been difficult for competitors to duplicate at scale. The introduction of our off-premises platform laid a strong foundation for certain technologies that will now unlock further in-restaurant innovation, enabling greater peak hour throughput and capacity, thus the ability to serve more demand. In many of our restaurants, we experience more weekend demand than we are currently able to serve, indicated by extended wait times during peak hours. Through new technological tools to enable optimal seating configurations, lower table turn times and more efficient kitchen order routing, we believe that we have the opportunity to achieve higher peak hour sales. Most key among these opportunities is the installation of kitchen display screens, a core technology system in the industry, to our back-of-house to automate our order routing. We remain confident that the addition of this technology will unlock greater efficiency within our kitchens and raise our ability to serve more of our unfulfilled demand.

**Our Sponsor**

In August 2017, we entered into a merger transaction through which we were acquired by funds affiliated with or managed by Advent (the "Advent Acquisition"). Founded in 1984, Advent has invested in more than 375 private equity transactions in 42 countries and, as of March 31, 2021, had $74.6 billion in assets under management. Advent's current portfolio comprises investments across five sectors – Retail, Consumer & Leisure; Business and Financial Services; Healthcare; Industrial and Technology. The Advent team includes more than 240 investment professionals across Europe, North America, Latin America and Asia.

Following the closing of this offering, funds managed by Advent are expected to own approximately 81% of our outstanding common stock, or approximately 79% if the underwriters' option to purchase additional shares is fully exercised. As a result, Advent will be able to exercise significant voting influence over fundamental and significant corporate matters and transactions. See "Risk Factors – Risks Related to this Offering and Ownership of Our Common Stock" and "Principal Stockholders."

**Debt Refinancing**

Following this offering and the repayment of a portion of the outstanding debt under our Senior Credit Facilities (as defined in "Description of Material Indebtedness") using the net proceeds from this offering, we intend to refinance the remaining indebtedness under such facilities with new senior credit facilities. Assuming the application of the net proceeds to be received by us as described in "Use of Proceeds," we expect that the new senior credit facilities will consist of a revolving credit facility and a term loan debt facility. We refer to these proposed transactions as the "debt refinancing." We expect to incur a penalty of approximately $3.0 million related to the repayment of certain of our indebtedness in connection with the debt refinancing. We also expect our interest expense for the new senior credit facilities to be lower than the interest expense under our Senior Credit Facilities in future periods as a result of the reduction in the principal amount of our indebtedness and our ability to obtain more favorable terms, including lower interest rates, under the new senior credit facilities. See "Description of Material Indebtedness – Senior Credit Facilities," "Management's Discussion and Analysis of Financial Condition and Results of Operations – Interest Expense" and "Management's Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources – Senior Credit Facilities and Unused Borrowing Capacity." No assurance can be given that we will be able to complete the debt refinancing on these terms or at all. For an additional description of our Senior Credit Facilities, please see "Description of Material Indebtedness."

**Corporate Information**

First Watch Restaurant Group, Inc. was incorporated in Delaware on August 10, 2017, under the name AI Fresh Super Holdco, Inc. We changed our name on December 20, 2019 to First Watch Restaurant Group, Inc. Our principal executive offices are located at 8725 Pendery Place, Suite 201, Bradenton, FL 34201, and our telephone number is (941) 907-9800. Our corporate website address is www.firstwatch.com. Our corporate website and the information contained on, or that can be accessed through, the website is not deemed to be incorporated by reference in, and is not considered part of, this prospectus. You should not rely on any such information in making your decision whether to purchase our common stock.

**Risks Associated With Our Business**

Investing in our common stock involves a number of risks. These risks represent challenges to the successful implementation of our strategy and the growth of our business. Some of these risks are:

- continued adverse effects of the COVID-19 pandemic, including the potential impact of the emergence of COVID-19 variants, or other infectious disease on our financial condition, results of operations, and supply chain;
- our vulnerability to changes in consumer preferences and economic conditions;
- our inability to open new restaurants in new and existing markets;
- the number of visitors to areas where our restaurants are located may decline;
- our inability to generate same-restaurant sales growth;
- our marketing programs and limited-time menu offerings may fail to generate profits;
- shortages or disruptions in the supply or delivery of frequently used food items or increases in the cost of our frequently used food items;
- our inability to prevent instances of food-borne illness in our restaurants;
- our inability to compete successfully with other breakfast and lunch restaurants;
- issues with our existing franchisees, including their financial performance, our lack of control over their operations and conflicting business interests;
- our vulnerability to adverse demographic, unemployment, economic, regulatory and weather conditions;
- damage to our reputation and negative publicity, even if unwarranted;
- our reliance on a small number of suppliers for a substantial amount of our food and coffee;
- our inability to effectively manage our internal controls over financial reporting;
- our failure to adequately protect our network security;
- compliance with federal and local environmental, labor, employment and food safety laws and regulations;
- our level of indebtedness and our duty to comply with covenants under our Credit Agreement; and
- the interests of Advent may differ from those of our public stockholders.

For a discussion of these and other risks you should consider before making an investment in our common stock, see the section entitled “Risk Factors.”

**Implications of Being an Emerging Growth Company**

As a company with less than $1.07 billion in gross revenue during our last fiscal year, we qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act (the "JOBS Act"). An emerging growth company may take advantage of specified reduced reporting and other regulatory requirements for up to five years that are otherwise applicable generally to public companies. These provisions include, among other matters:

- requirement to present only two years of audited financial statements and only two years of related Management's Discussion and Analysis of Financial Condition and Results of Operations;
- exemption from the auditor attestation requirement on the effectiveness of our system of internal controls over financial reporting pursuant to the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act");
- exemption from the adoption of new or revised financial accounting standards until they would apply to private companies;
- exemption from compliance with any new requirements adopted by the Public Company Accounting Oversight Board ("PCAOB") requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer;
- an exemption from the requirement to seek non-binding advisory votes on executive compensation and golden parachute arrangements; and
- reduced disclosure about executive compensation arrangements.

We will remain an emerging growth company until the last day of the fiscal year following the fifth anniversary of the completion of our initial public offering unless, prior to that time, we have more than $1.07 billion in annual gross revenue, have a market value for our common stock held by non-affiliates of more than $700 million as of the last day of our second fiscal quarter of the fiscal year and a determination is made that we are deemed to be a "large accelerated filer," as defined in Rule 12b-2 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or issue more than $1.0 billion of non-convertible debt over a three-year period, whether or not issued in a registered offering. We have availed ourselves of the reduced reporting obligations with respect to audited financial statements and related Management's Discussion and Analysis of Financial Condition and Results of Operations and executive compensation disclosure in this prospectus and expect to continue to avail ourselves of the reduced reporting obligations available to emerging growth companies in future filings.

In addition, Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933 (the "Securities Act") for complying with new or revised accounting standards. An emerging growth company can, therefore, delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to "opt out" of that extended transition period and, as a result, we plan to comply with new and revised accounting standards on the relevant dates on which adoption of those standards is required for non-emerging growth companies. Section 107 of the JOBS Act provides that our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

As a result of our decision to avail ourselves of certain provisions of the JOBS Act, the information that we provide may be different from what you may receive from other public companies in which you hold an equity interest. In addition, it is possible that some investors will find our common stock less attractive as a result of our elections, which may cause a less active trading market for our common stock and more volatility in our stock price.

**THE OFFERING**

| | |
|---|---|
| Issuer | First Watch Restaurant Group, Inc. |
| Common stock offered by us | 9,459,000 shares of common stock (10,877,850 shares if the underwriters exercise their option to purchase additional shares in full). |
| Common stock to be outstanding after this offering | 57,629,596 shares of common stock (59,048,446 shares if the underwriters exercise their option to purchase additional shares in full). |
| Option to purchase additional shares of common stock | The underwriters have an option to purchase an additional 1,418,850 shares of common stock from us. The underwriters can exercise this option at any time within 30 days from the date of this prospectus. |
| Use of proceeds | We estimate that the net proceeds from the sale of our common stock in this offering, after deducting the underwriting discount and estimated offering expenses payable by us, will be approximately $158.6 million ($183.2 million if the underwriters exercise their option to purchase additional shares in full) based on an assumed initial public offering price of $18.50 per share (the midpoint of the price range set forth on the cover of this prospectus).<br><br>We intend to use the net proceeds from this offering to repay borrowings outstanding under our Senior Credit Facilities (as defined herein). See "Use of Proceeds." |
| Dividend policy | We do not anticipate paying any dividends on our common stock for the foreseeable future; however, we may change this policy in the future. See "Dividend Policy." |
| Risk Factors | Investing in our common stock involves a high degree of risk. See the "Risk Factors" section of this prospectus beginning on page 30 for a discussion of factors you should carefully consider before investing in our common stock. |
| Listing | We intend to apply to have our common stock listed on Nasdaq under the symbol "FWRG." |

Except as otherwise indicated, the number of shares of our common stock outstanding after this offering:

- gives effect to a 11.838-for-1 stock split of our common stock effected on September 20, 2021;
- gives effect to the automatic conversion of our preferred stock into 3,156,812 shares of common stock immediately prior to and in connection with the consummation of this offering;
- excludes 4,409,331 shares of our common stock issuable upon the exercise of outstanding stock options at a weighted average exercise price of $9.48 per share, which stock options were granted under our 2017 Omnibus Equity Incentive Plan (the "2017 Plan");
- excludes an aggregate of 4,034,072 shares of our common stock that will be available for future equity awards under the First Watch Restaurant Group, Inc. 2021 Equity Incentive Plan (the "2021 Plan");

- gives effect to our amended and restated certificate of incorporation and our amended and restated bylaws, which will be in effect prior to the consummation of this offering; and
- assumes no exercise of the underwriters' option to purchase additional shares.

Unless otherwise indicated, this prospectus assumes an initial public offering price of $18.50 per share (the midpoint of the price range set forth on the cover of this prospectus).

## SUMMARY HISTORICAL CONSOLIDATED FINANCIAL AND OTHER DATA

The following tables set forth our summary historical consolidated financial and other data for the periods as of the dates indicated. We derived the historical summary consolidated statements of operations data and consolidated statements of cash flows data for the twenty-six weeks ended June 27, 2021 and June 28, 2020 and the consolidated balance sheet data as of June 27, 2021 from the interim unaudited consolidated financial statements and related notes thereto included elsewhere in this prospectus. We derived the historical summary consolidated statements of operations data and consolidated statements of cash flows data for fiscal 2020 and fiscal 2019 and the consolidated balance sheet data as of December 27, 2020 from the audited consolidated financial statements and related notes thereto included elsewhere in this prospectus. We have prepared the interim unaudited consolidated financial statements on the same basis as the audited consolidated financial statements and have included all adjustments necessary for the fair statement of the consolidated financial statements for the interim periods presented.

Our historical results are not necessarily indicative of future results of operations. You should read the information set forth below together with "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Capitalization" and the interim unaudited and audited consolidated financial statements and the related notes thereto included elsewhere in this prospectus.

| | Twenty-Six Weeks Ended | | Fiscal | |
|---|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | 2020 | 2019 |
| | (in thousands, except share and per share data) | | | |
| **Consolidated Statements of Operations Data:** | | | | |
| **Revenues:** | | | | |
| Restaurant sales | $ 277,054 | $ 131,193 | $337,433 | $429,309 |
| Franchise revenues | 4,078 | 2,053 | 4,955 | 7,064 |
| Total revenues | 281,132 | 133,246 | 342,388 | 436,373 |
| **Operating costs and expenses:** | | | | |
| Restaurant operating expenses (exclusive of depreciation and amortization shown below): | | | | |
| Food and beverage costs | 60,512 | 30,987 | 76,975 | 100,689 |
| Labor and other related expenses | 85,999 | 50,012 | 120,380 | 148,537 |
| Other restaurant operating expenses | 46,815 | 23,282 | 63,776 | 59,402 |
| Occupancy expenses | 27,757 | 25,182 | 51,375 | 46,151 |
| General and administrative expenses | 27,341 | 22,278 | 46,322 | 55,818 |
| Depreciation and amortization | 15,762 | 15,028 | 30,725 | 28,027 |
| Impairments and loss on disposal of assets | 163 | 255 | 315 | 33,596 |
| Transaction expenses (income), net | 626 | 99 | (258) | 1,709 |
| Total operating costs and expenses | 264,975 | 167,123 | 389,610 | 473,929 |
| Income (Loss) from operations | 16,157 | (33,877) | (47,222) | (37,556) |
| Interest expense | (12,605) | (10,667) | (22,815) | (20,080) |
| Other income (expense), net | 321 | 360 | 483 | (255) |
| **Income (Loss) before income tax expense (benefit)** | 3,873 | (44,184) | (69,554) | (57,891) |
| Income tax expense (benefit) | 2,110 | (12,762) | (19,873) | (12,419) |
| **Net income (loss) and total comprehensive income (loss)** | $ 1,763 | $ (31,422) | (49,681) | (45,472) |
| Less: Net loss attributable to non-controlling interest | — | — | — | (33) |

| | Twenty-Six Weeks Ended | | Fiscal | |
|---|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | 2020 | 2019 |
| | (in thousands, except share and per share data) | | | |
| **Net income (loss) and comprehensive income (loss) attributable to First Watch Restaurant Group, Inc.** | $ 1,763 | $ (31,422) | $ (49,681) | $ (45,439) |
| Net income (loss) per common share attributable to First Watch Restaurant Group, Inc. – basic | $ 0.04 | $ (0.70) | $ (1.10) | $ (1.01) |
| Net income (loss) per common share attributable to First Watch Restaurant Group, Inc. – diluted | $ 0.04 | $ (0.70) | $ (1.10) | $ (1.01) |
| Weighted average number of common shares outstanding – basic | 45,013,784 | 45,013,784 | 45,013,784 | 45,013,784 |
| Weighted average number of common shares outstanding – diluted | 45,560,575 | 45,013,784 | 45,013,784 | 45,013,784 |
| Unaudited pro forma net income (loss) per common share attributable to First Watch Restaurant Group, Inc. – basic(a) | $ 0.09 | | $ (0.93) | |
| Unaudited pro forma net income (loss) per common share attributable to First Watch Restaurant Group, Inc. – diluted(a) | $ 0.09 | | $ (0.93) | |
| Unaudited pro forma weighted average common stock outstanding – basic(a) | 57,629,596 | | 57,629,596 | |
| Unaudited pro forma weighted average common stock outstanding – diluted(a) | 58,539,400 | | 57,629,596 | |
| **Consolidated Statements of Cash Flows Data** (in thousands)**:** | | | | |
| Net cash provided by (used in): | | | | |
| Operating activities | $ 30,428 | $ (19,908) | $ (18,364) | $ 21,465 |
| Investing activities | $ (19,524) | $ (19,352) | $ (26,974) | $ (82,389) |
| Financing activities | $ (1,717) | $ 40,474 | $ 73,314 | $ 55,761 |
| **Other Data:** | | | | |
| Restaurant sales (in thousands) | $ 277,054 | $ 131,193 | $ 337,433 | $ 429,309 |
| System-wide sales (in thousands) | $ 350,596 | $ 166,290 | $ 426,303 | $ 558,397 |
| Same-restaurant sales growth | 95.9% | (43.4)% | (29.0)% | 5.6% |
| AUV (in thousands) | $ 829 | $ 430 | $ 1,119 | $ 1,594 |
| System-wide restaurants at period end | 423 | 387 | 409 | 368 |
| Company-owned | 335 | 309 | 321 | 299 |
| Franchise operated | 88 | 78 | 88 | 69 |
| Income (loss) from operations margin | 5.8% | (25.8)% | (14.0)% | (8.7)% |
| Net income (loss) and total comprehensive income (loss) margin | 0.6% | (23.6)% | (14.5)% | (10.4)% |
| Adjusted EBITDA (in thousands)(b) | $ 35,182 | $ (11,803) | $ (5,744) | $ 38,099 |
| Adjusted EBITDA Margin(b) | 12.5% | (8.9)% | (1.7)% | 8.7% |
| Restaurant level operating profit (in thousands)(c) | $ 55,990 | $ 4,440 | $ 28,236 | $ 74,530 |
| Restaurant level operating profit margin(c) | 20.2% | 3.4% | 8.4% | 17.4% |
| Pre-opening expenses(1) | $ 2,063 | $ 2,076 | $ 3,880 | $ 5,815 |
| Deferred rent (income) expense(2) | $ (1,807) | $ 8,752 | $ 10,087 | $ 4,272 |

(1) Represents expenses directly incurred to open new restaurants, including pre-opening rent, manager salaries, recruiting expenses, employee payroll, training and marketing costs. These expenses are recorded in other restaurant operating expenses and occupancy expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

(2) Consists of the non-cash portion of straight-line rent expense primarily included in occupancy expenses and general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss). This amount represents the extent to which our straight-line rent expense exceeds or is less than our cash rent payments and varies depending on the average age of our lease portfolio. For newer leases, straight-line rent expense typically exceeds cash rent payments. For more mature leases, straight-line rent expense is typically less than cash rent payments.

| | As of June 27, 2021 | |
|---|---|---|
| | Actual | Pro Forma As Adjusted(d) |
| | (in thousands) | |
| **Consolidated Balance Sheet Data:** | | |
| Cash and cash equivalents | $ 48,033 | $ 48,033 |
| Total assets | $1,033,695 | $ 1,032,646 |
| Total debt(e) | $ 294,012 | $ 135,501 |
| Total liabilities | $ 710,750 | $ 552,596 |
| Working capital(f) | $ (22,707) | $ (20,968) |
| Total equity | $ 322,945 | $ 480,050 |

(a) Unaudited pro forma net income (loss) per common share attributable to First Watch Restaurant Group, Inc. – basic and – diluted for the twenty-six weeks ended June 27, 2021 and fiscal 2020 is computed by dividing the unaudited pro forma net income (loss) by the unaudited pro forma weighted-average number of common shares outstanding – basic and – diluted. For both the twenty-six weeks ended June 27, 2021 and for fiscal 2020, unaudited pro forma net income (loss) gives effect to (i) the reduction of $6.4 million and $10.2 million, respectively, of interest expense resulting from the application of $158.6 million of net proceeds to repay $158.6 million in borrowings under our Senior Credit Facilities as set forth under “Use of Proceeds,” (ii) the recognition of $2.0 million and $15.7 million, respectively, of stock-based compensation expense related to performance-based stock options (a) for which the performance condition and market condition are satisfied or will convert to time-based options in connection with this offering, both of which convert to time-based options that vest generally one-third (1/3rd) on each of the first two anniversaries of an initial public offering and one-third (1/3rd) on the 273rd day following the second anniversary of an initial public offering upon the completion of this offering, and (b) for which the market condition is not met in connection with this offering resulting in an immediate charge upon the completion of this offering and (iii) the recognition of $1.1 million income tax expense and $1.4 million income tax benefit, respectively, related to the interest expense and stock-based compensation expense adjustments described above. All pro forma adjustments are calculated as if the offering had occurred on December 30, 2019, the first day of fiscal 2020.

Unaudited pro forma weighted-average common shares outstanding – basic gives effect to (i) the conversion of all outstanding shares of preferred stock into common stock immediately prior to the completion of this offering and (ii) the issuance of 9,459,000 shares of common stock, which is the number of shares that would be attributable to the proceeds used to repay $158.6 million of the Senior Credit Facilities as described in “Use of Proceeds.” As we are in an unaudited pro forma net income position for the twenty-six weeks ended June 27, 2021, unaudited pro forma weighted-average common shares outstanding – diluted gives effect to (i) the issuance of 9,459,000 shares of common stock, which is the number of shares that would be attributable to the proceeds used to repay $158.6 million of the Senior Credit Facilities as described in “Use of Proceeds,” (ii) the incremental dilutive common shares outstanding after giving effect to the conversion of the preferred stock and the 11.838-for-1 stock split, which proportionally adjusted the preferred stock conversion ratio and (iii) to the performance-based option awards for which the performance condition and market condition have been met or convert to time-based options, upon completion of this offering, which have a dilutive effect and are therefore included in the computation of unaudited pro forma

diluted net income (loss) per common share attributable to First Watch Restaurant Group, Inc. For fiscal 2020, as we are in a pro forma net loss position, our pro forma net income (loss) per common share basic and diluted would be equal as outstanding options would be antidilutive. This unaudited pro forma per common share information is presented for informational purposes only and does not purport to represent what our net income (loss) or net income (loss) per common share would have actually been had the offering and use of proceeds occurred on December 30, 2019, or to project our net income (loss) or net income (loss) per common share for any future period.

The following table sets forth the computation of unaudited pro forma net income (loss) per common share – basic and – diluted after giving effect to the pro forma adjustments described above:

| | Twenty-Six Weeks Ended June 27, 2021 | Fiscal 2020 |
|---|---|---|
| | (in thousands, except share and per share data) | |
| Numerator: | | |
| Net income (loss) | $ 1,763 | $ (49,681) |
| Plus: Stock-based compensation expense related to performance-based stock options | (2,015) | (15,682) |
| Minus: Reduced interest expense related to the repayment of certain Senior Credit Facilities | 6,399 | 10,176 |
| Plus: Income tax (expense) benefit related to adjustments above | (1,096) | 1,376 |
| Pro forma net income (loss) | $ 5,051 | $ (53,811) |
| Denominator: | | |
| Weighted average number of common shares outstanding – basic | 45,013,784 | 45,013,784 |
| Pro forma adjustment to reflect the conversion of preferred stock to common stock upon the completion of this offering | 3,156,812 | 3,156,812 |
| Pro forma adjustment to reflect the issuance of common stock in this offering attributable to the use of proceeds | 9,459,000 | 9,459,000 |
| Pro forma weighted average number of common shares outstanding – basic | 57,629,596 | 57,629,596 |
| Pro forma net income (loss) per common share – basic | $ 0.09 | $ (0.93) |
| | | |
| Weighted average number of common shares outstanding – diluted | 45,560,575 | 57,629,596 |
| Pro forma adjustment to reflect the incremental shares due to the conversion of preferred stock to common stock upon the completion of this offering | 2,890,145 | N/A |
| Pro forma adjustment to reflect the issuance of common stock in this offering attributable to the use of proceeds | 9,459,000 | N/A |
| Pro forma adjustment to incorporate performance-based option awards for which the performance condition and market condition have been met or convert to time-based options upon the completion of this offering | 629,680 | N/A |
| Pro forma weighted average number of common shares outstanding – diluted | 58,539,400 | 57,629,596 |
| Pro forma net income (loss) per common share – diluted | $ 0.09 | $ (0.93) |

(b) Adjusted EBITDA and Adjusted EBITDA Margin as presented in this prospectus are supplemental measures of our performance that are neither required by, nor presented in accordance with GAAP. Adjusted EBITDA and Adjusted EBITDA Margin are not measurements of our financial performance under GAAP and should not be considered as an alternative to net income (loss), income (loss) from operations, or

any other performance measures derived in accordance with GAAP, or as alternatives to cash flow from operating activities as a measure of our liquidity. Adjusted EBITDA represents net income (loss) before depreciation and amortization, interest expense, income taxes and items that we do not consider in our evaluation of ongoing core operating performance as identified in the reconciliation of net income (loss) and comprehensive income (loss), the most directly comparable measure under GAAP, to Adjusted EBITDA. Adjusted EBITDA as shown is not adjusted to reflect the impact of pre-opening expenses or deferred rent (income) expense. See "Prospectus Summary – Historical Consolidated Financial and Other Data." Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of total revenues.

Management uses Adjusted EBITDA and Adjusted EBITDA Margin (i) as factors in evaluating management's performance when determining incentive compensation, (ii) to evaluate our operating results and the effectiveness of our business strategies and (iii) internally as benchmarks to compare our performance to that of our competitors. The use of Adjusted EBITDA and Adjusted EBITDA Margin as performance measures permit a comparative assessment of our operating performance relative to our performance based on our GAAP results, while isolating the effects of some items that are either non-recurring in nature or vary from period to period without any correlation to our ongoing core operating performance.

Adjusted EBITDA and Adjusted EBITDA Margin or similar non-GAAP measures are frequently used by securities analysts, investors and other interested parties as supplemental measures of financial performance within our industry. Management believes that Adjusted EBITDA and Adjusted EBITDA Margin provide investors with additional transparency of our operations.

Our presentation of Adjusted EBITDA and Adjusted EBITDA Margin should not be construed to imply that our future results will be unaffected by these items. Adjusted EBITDA and Adjusted EBITDA Margin have important limitations as analytical tools, and you should not consider them in isolation or as substitutes for analysis of our results as reported under GAAP. Some of these limitations are:

- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect changes in, or cash requirements for our working capital needs;
- Adjusted EBITDA and Adjusted EBITDA Margin do not adjust for all non-cash income or expense items that are reflected in our Consolidated Statements of Cash Flows;
- although depreciation is a non-cash charge, the assets being depreciated will often have to be replaced in the future, Adjusted EBITDA and Adjusted EBITDA Margin do not reflect any cash requirements for such replacements;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect the impact of stock-based compensation on our results of operations;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect the interest expense, or the cash requirements necessary to service interest or principal payments on our debt;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect our income tax expense (benefit) or the cash requirements to pay our income taxes; and
- other companies in our industry may calculate Adjusted EBITDA and Adjusted EBITDA Margin differently than we do, limiting their usefulness as comparative measures.

We compensate for these limitations by providing specific information regarding the GAAP amounts excluded from such non-GAAP financial measures. We further compensate for the limitations in our use of

non-GAAP financial measures by presenting comparable GAAP measures more prominently. In addition, our Credit Agreement allows us to exclude those amounts when calculating Adjusted EBITDA under the Credit Agreement.

In evaluating Adjusted EBITDA and Adjusted EBITDA Margin, you should be aware that in the future we may incur expenses similar to those adjusted for in the reconciliation of Net income (loss) and total comprehensive income (loss) and margin, the most directly comparable GAAP measures, to Adjusted EBITDA and margin as follows:

| | Twenty-Six Weeks Ended | | Fiscal | |
|---|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | 2020 | 2019 |
| | (in thousands) | | | |
| Net income (loss) and total comprehensive income (loss) | $ 1,763 | $ (31,422) | $ (49,681) | $ (45,472) |
| Depreciation and amortization | 15,762 | 15,028 | 30,725 | 28,027 |
| Interest expense | 12,605 | 10,667 | 22,815 | 20,080 |
| Income tax expense (benefit) | 2,110 | (12,762) | (19,873) | (12,419) |
| EBITDA | 32,240 | (18,489) | (16,014) | (9,784) |
| Initial public offering (“IPO”)-readiness and strategic transition costs (1) | 1,179 | 1,655 | 4,247 | 10,012 |
| COVID-19 – related charges (2) | 211 | 3,882 | 4,749 | — |
| Impairments and loss on disposal of assets (3) | 163 | 255 | 315 | 33,596 |
| Transaction expenses (income), net (4) | 626 | 99 | (258) | 1,709 |
| Stock-based compensation (5) | 316 | 379 | 750 | 1,160 |
| Recruiting and relocation costs (6) | 182 | 172 | 228 | 1,081 |
| Severance costs (7) | 265 | 244 | 239 | 325 |
| Adjusted EBITDA | $ 35,182 | $ (11,803) | $ (5,744) | $ 38,099 |
| Total revenues | $ 281,132 | $ 133,246 | $ 342,388 | $ 436,373 |
| Net income (loss) and comprehensive income (loss) margin | 0.6% | (23.6)% | (14.5%) | (10.4%) |
| Adjusted EBITDA margin | 12.5% | (8.9)% | (1.7)% | 8.7% |

(1) Represents costs related to information technology support and external professional service costs incurred in connection with IPO-readiness efforts as well as the assessment and redesign of our systems and processes. These costs are recorded within general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(2) Consists of costs incurred in connection with the economic impact of the COVID-19 pandemic, which primarily includes inventory obsolescence and spoilage, compensation for employees upon furlough and return from furlough, health insurance costs paid for furloughed employees, net of employee retention credit and costs incurred to amend certain financial commitments. See Note 4, *COVID-19 Charges*, in the notes to the audited consolidated financial statements and Note 4, *COVID-19 Charges* in the notes to the interim unaudited consolidated financial statements included elsewhere in this prospectus for additional information.

(3) Includes impairments recognized on intangible assets and fixed assets as well as costs related to the disposal of assets due to retirements, replacements or certain restaurant closures.

(4) Primarily represents costs incurred in connection with the acquisition of certain franchised restaurants, costs incurred in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name and costs related to restaurant closures. In addition, the amount also includes costs associated with the revaluation of the contingent consideration payable to

previous stockholders for tax savings generated through use of federal and state loss carryforwards. See Note 14, *Income Taxes*, in the notes to the audited consolidated financial statements and Note 9, *Income Taxes*, in the notes to the interim unaudited consolidated financial statements included elsewhere in this prospectus for additional information.

(5) Represents non-cash, stock-based compensation expense which is recorded in general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(6) Represents costs incurred for hiring qualified individuals as we assessed the redesign of our systems and processes. These costs are recorded within general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(7) Severance costs are recorded in general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(c) Restaurant level operating profit and restaurant level operating profit margin are non-GAAP supplemental measures of operating performance of our restaurants that are neither required by, nor presented in accordance with GAAP, and should not be considered as a substitute for analysis of our results as reported under GAAP. Restaurant level operating profit represents restaurant sales less restaurant operating expenses, which include food and beverage costs, labor and other related expenses, other restaurant operating expenses and occupancy expenses. In addition, restaurant level operating profit excludes corporate-level expenses and items that we do not consider in our evaluation of ongoing core operating performance. Restaurant level operating profit and restaurant level operating profit margin are not indicative of our overall results, and because they exclude corporate-level expenses, do not accrue directly to the benefit of our stockholders. We will continue to incur such expenses in the future. Restaurant level operating profit margin represents restaurant level operating profit as a percentage of restaurant sales.

Restaurant level operating profit and restaurant level operating profit margin are important measures we use to evaluate the performance and profitability of each operating restaurant, individually and in the aggregate. Additionally, restaurant level operating profit and restaurant level operating profit margin or similar non-GAAP financial measures are frequently used by analysts, investors and other interested parties to evaluate companies in our industry. We believe that restaurant level operating profit and restaurant level operating profit margin, when used in conjunction with GAAP financial measures, provide useful information about our operating results, identify operational trends and allow for greater transparency with respect to key metrics used by us in our financial and operational decision making. We use restaurant level operating profit and restaurant level operating profit margin to make decisions regarding future spending and other operational decisions. Our calculations of restaurant level operating profit and restaurant level operating profit margin may not be comparable to similar measures reported by other companies, have limitations as analytical tools and should not be considered as a substitute for the analysis of our results as a whole as reported under GAAP.

A reconciliation of Income (Loss) from operations and margin, the most directly comparable GAAP financial measure, to restaurant level operating profit and margin is as follows:

| | Twenty-Six Weeks Ended | | Fiscal | |
|---|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | 2020 | 2019 |
| | (in thousands) | | | |
| Income (Loss) from operations | $16,157 | $(33,877) | $ (47,222) | $ (37,556) |
| Less: Franchise revenues | (4,078) | (2,053) | (4,955) | (7,064) |
| Add: | | | | |
| General and administrative expenses | 27,341 | 22,278 | 46,322 | 55,818 |
| Depreciation and amortization | 15,762 | 15,028 | 30,725 | 28,027 |
| COVID-19 – related charges (1) | 19 | 2,710 | 3,309 | — |
| Impairments and loss on disposal of assets (2) | 163 | 255 | 315 | 33,596 |
| Transaction expenses (income), net (3) | 626 | 99 | (258) | 1,709 |
| Restaurant level operating profit | $55,990 | $4,440 | $ 28,236 | $ 74,530 |
| Restaurant sales | $277,054 | $131,193 | $ 337,433 | $ 429,309 |
| Income (Loss) from operations margin | 5.8% | (25.8)% | (14.0%) | (8.7%) |
| Restaurant level operating profit margin | 20.2% | 3.4% | 8.4% | 17.4% |

(1) Consists of costs incurred in connection with the economic impact of the COVID-19 pandemic, which primarily includes inventory obsolescence and spoilage, compensation for employees upon furlough and return from furlough, and health insurance costs paid for furloughed employees, net of employee retention credit. See Note 4, *COVID-19 Charges*, in the notes to the audited consolidated financial statements and Note 4, *COVID-19 Charges*, in the notes to the interim unaudited consolidated financial statements included elsewhere in this prospectus for additional information.

(2) Includes impairments recognized on intangible assets and fixed assets as well as costs related to the disposal of assets due to retirements, replacements or certain restaurant closures.

(3) In the twenty-six weeks ended June 27, 2021 and in fiscal 2020, amount primarily represents the revaluation of the contingent consideration payable to previous stockholders for tax savings generated through use of federal and state loss carryforwards. See Note 14, *Income Taxes*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information and Note 9, *Income Taxes*, in the notes to the interim unaudited consolidated financial statements included elsewhere in this prospectus for additional information. In fiscal 2019, primarily represents costs incurred in connection with the acquisition of certain franchised restaurants, costs incurred in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name and costs related to restaurant closures.

(d) The unaudited pro forma as adjusted consolidated balance sheet data gives effect to (i) the automatic conversion of all outstanding shares of preferred stock into shares of our common stock, (ii) the filing and effectiveness of our restated certificate of incorporation in Delaware that will become effective immediately prior to the completion of this offering, (iii) the sale by us of 9,459,000 shares of our common stock in this offering, assuming no exercise of the underwriters' option to purchase additional shares, at an assumed initial public offering price of $18.50 per share (the midpoint of the estimated public offering price range set forth on the cover page of this prospectus), less estimated underwriting discounts and commissions and estimated expenses, and (iv) the application of the net proceeds to be received by us from this offering as described in "Use of Proceeds."

A $1.00 increase (decrease) in the assumed initial public offering price of $18.50 per share, which is the midpoint of the price range set forth on the front cover of this prospectus, would increase (decrease) the net

proceeds to us from this offering by $8.8 million, assuming the number of shares offered by us, as set forth on the front cover of this prospectus, remains the same and after deducting the assumed underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1.0 million shares from the expected number of shares to be sold by us in this offering, assuming no change in the assumed initial public offering price per share, which is the midpoint of the price range set forth on the front cover of this prospectus, would increase (decrease) our net proceeds from this offering by $17.3 million.

(e) Total debt includes the current and long-term debt, excluding unamortized debt discount and deferred issuance costs. See Note 10, *Debt*, in the notes to the audited consolidated financial statements and Note 7, *Debt*, in the notes to the interim unaudited consolidated financial statements included in this prospectus for additional information. Also, see “Description of Material Indebtedness.”

(f) We define working capital as current assets less current liabilities.

## RISK FACTORS

*An investment in our common stock involves a high degree of risk. You should carefully consider each of the following risk factors, as well as other information contained in this prospectus, including "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our audited consolidated financial statements and related notes, before investing in our common stock. The occurrence of any of the risks described below could materially and adversely affect our business, prospects, financial condition, results of operations and cash flow, in which case the trading price of our common stock could decline and you could lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business, prospects, financial condition, results of operations and cash flow. See "Cautionary Note Regarding Forward-Looking Statements."*

### Risks Related to Our Business and Industry

***Our financial condition, results of operations, and supply chain have been and may continue to be adversely affected for an extended period of time by the COVID-19 pandemic or other infectious diseases.***

The COVID-19 pandemic throughout the United States and internationally has caused businesses, including ours, as well as federal, state and local governments to implement significant actions to attempt to reduce exposure to the COVID-19 pandemic and control its negative effects on public health and the U.S. economy. Such governmental measures remain ongoing and the ultimate duration and severity of the COVID-19 pandemic, including the emergence of COVID-19 variants, remain uncertain. Our operations have thus been and may continue to be impacted by the COVID-19 pandemic.

During 2020, individuals in many areas where we operate our restaurants were required to practice social distancing, restricted from gathering in groups and/or mandated to "stay home" except for "essential" purposes. In response to the COVID-19 pandemic and government restrictions, we temporarily closed our dining rooms and moved to exclusively off-premises sales by April 2020 to comply with government restrictions and, on April 13, 2020, temporarily suspended all operations at company-owned restaurants. The mobility restrictions, fear of contracting COVID-19 and the sharp increase in unemployment caused by the closure of businesses in response to the COVID-19 pandemic, have adversely affected and may continue to adversely affect our customer traffic, which in turn adversely impacts our business, liquidity, financial condition and results of operations. Even as the mobility restrictions were loosened or lifted, some customers remained reluctant to return to in-restaurant dining and the impact of lost wages due to COVID-19 related unemployment has dampened consumer spending. Our restaurant operations have been and could continue to be adversely affected by employees who are unable or unwilling to work, whether because of illness, quarantine, fear of contracting COVID-19 or caring for family members due to COVID-19 disruptions or illness. Restaurant closures, limited service options or modified hours of operation due to staffing shortages could materially adversely affect our business, liquidity, financial condition and results of operations. To protect the health and safety of our employees and customers, we have implemented a wide range of COVID-19 safety measures, including employee screening and safety distancing protocols. In addition, we deployed personal protection equipment and introduced COVID-19 tracing for all employees. Additionally, we increased spending on healthcare benefits, employee assistance measures and employee bonuses as a result of the COVID-19 pandemic. These measures have increased our operating costs and adversely affected our liquidity.

A total of approximately $4.8 million of costs were incurred in fiscal 2020 in connection with the COVID-19 pandemic, and were comprised of the following: (i) inventory obsolescence and spoilage of approximately $0.6 million, (ii) compensation paid to employees upon furlough and return from furlough of $1.4 million, (iii) $0.7 million for health insurance costs paid for furloughed employees, net of employee retention credits and (iv) supplies, such as personal protection equipment, of approximately $2.1 million.

We also modified our capital spending plans for opening new restaurants and remodeling existing restaurants due to the COVID-19 pandemic, in addition to negotiating extensively with our landlords primarily

for rent abatements and rent deferrals and certain modified obligations under our leases. These changes have impacted and could continue to impact our ability to grow our business.

The COVID-19 pandemic also has affected and may continue to adversely affect the ability of certain of our suppliers, from whom we purchase domestic and international commodities, to fulfill their obligations to us, which may negatively affect our restaurant operations. These suppliers include third parties that supply and/or prepare our ingredients, packaging, paper and cleaning products and other necessary operating materials, distribution centers, and logistics and transportation services providers, including those in the trucking industry. If our suppliers are unable to fulfill their obligations to us, we could face shortages of food items or other supplies at our restaurants, which could have a material adverse effect on our business, financial condition and results of operations.

The further spread of COVID-19, including the emergence of COVID-19 variants, or other infectious diseases, and the requirements or measures imposed or taken by federal, state and local governments and businesses to mitigate the spread of such diseases, could disrupt our business or impact our ability to carry out our business as usual, which could have a material adverse impact on our business, liquidity, financial condition and results of operations. Even in regions where we have reopened, our restaurants may be subject to modified hours and operations and/or reduced customer traffic. Moreover, certain of those regions may suffer a COVID-19 relapse after reopening resulting in closing those restaurants again. If any regions fail to fully contain the COVID-19 pandemic, or if additional regions suffer multiple COVID-19 relapses, any of those markets may not recover quickly or at all, which could have a material adverse effect on our business and results of operations. As a result, we may incur material impairment losses to our inventory, goodwill, intangibles and long-lived assets, and our ability to realize the benefits from deferred tax assets may become limited, any of which may have a significant or material impact on our financial results. Increased volatility or significant disruption of global financial markets due in part to the COVID-19 pandemic or other infectious diseases could have a negative impact on our ability to access capital markets and other funding sources on acceptable terms or at all and impede our ability to comply with debt covenants.

In July 2021, new cases of COVID-19 in our markets began to rise substantially, connected to the spread of the Delta variant, which is currently the predominant strain of the virus in the United States and appears to be the most contagious variant to date. On July 27, 2021, the U.S. Centers for Disease Control and Prevention (the “CDC”) changed its mask guidance to, among other things, recommend that fully vaccinated individuals wear masks indoors in areas of “substantial” or “high transmission,” which, according to the CDC, include all of our markets. Additionally, on September 9, 2021, President Biden announced that the Department of Labor’s Occupational Safety and Health Administration (“OSHA”) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated, including by providing any necessary paid time off for such vaccinations, or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. Businesses that fail to comply will be subject to fines of up to $13,600 per violation. Though it is anticipated that OSHA will issue an Emergency Temporary Standard to implement this requirement, the rules related to this federal mandate are still evolving and remain unclear, and the mandate is likely to be challenged in court by various states. Furthermore, the Transportation Security Administration has extended its implementing orders for mask-wearing requirements on air and ground travel through January 18, 2022 and has doubled its civil penalty fines imposed on violators. It is unclear how long the resurgence will last, how severe it will be, what additional safety measures governments will impose in response to it and what types of challenges we or our employees may face in complying with such measures. As cases rise, mask mandates, social-distancing, travel restrictions and stay-at-home orders could be reinstated. The restrictions may necessitate restaurant closures or other measures to comply with federal and state law or to ensure the safety of our employees and our customers. The extent to which our operations and financial performance will be impacted by the COVID-19 pandemic during the remainder of 2021 and beyond will depend in part on future developments, including the growth trajectory of the Delta variant or other variants, the long-term efficacy, global availability and acceptance of the vaccines, as well as the effects of governmental stimulus legislation and other actions taken in response to the COVID-19 pandemic. We continue to actively monitor the evolving

situation and may take further actions that alter our business operations as may be required by federal, state or local authorities or that we determine are in the best interests of our employees and our customers; however, any failure to comply with the recently announced federal mandate or any other governmental rules or regulations may have a material adverse impact on our business, financial condition and results of operations.

***We are vulnerable to changes in economic conditions and consumer preferences that could have a material adverse effect on our business, financial condition and results of operations.***

Food service businesses depend on consumer discretionary spending and are often affected by changes in consumer tastes, national, regional and local economic conditions and demographic trends. The COVID-19 pandemic has led to changes in consumer spending behaviors as customers choose to avoid public gathering places, which may continue to impact traffic in our restaurants for an extended period of time particularly if trends related to work from home continue. For example, we experienced and continue to experience changes in our breakfast and lunch business as it relates to customers who visit us before starting the workday, on their way to work or during corporate lunch breaks. In addition to the COVID-19 pandemic, factors such as traffic patterns, weather, fuel prices, local demographics and the type, number and locations of competing restaurants may adversely affect the performances of individual locations. In addition, economic downturns, inflation or increased food or energy costs could harm the restaurant industry in general and our restaurants in particular. Adverse changes in any of these factors could reduce consumer traffic or impose practical limits on pricing that could have a material adverse effect on our business, financial condition and results of operations. Further, a new presidential and legislative administration recently took office, and it is not yet known what changes the new administration will make to economic or tax policies and how those policies will impact the economy or consumer discretionary spending. There can also be no assurance that consumers will continue to regard our menu offerings favorably, that we will be able to develop new menu items that appeal to consumer preferences or that there will not be a drop in consumer demands for restaurant dining during breakfast and lunch dayparts. Restaurant traffic and our resulting sales depend in part on our ability to anticipate, identify and respond to changing consumer preferences and economic conditions. In addition, the restaurant industry is subject to scrutiny due to the perception that restaurant company practices have contributed to poor nutrition, high caloric intake, obesity or other health concerns of their customers. If we are unable to adapt to changes in consumer preferences and trends, we may lose customers, which could have a material adverse effect on our business, financial condition and results of operations.

Additionally, government regulation may impact our business as a result of changes in attitudes regarding diet and health or new information regarding the adverse health effects of consuming certain menu offerings. These changes have resulted in, and may continue to result in, laws and regulations requiring us to disclose the nutritional content of our food offerings and laws and regulations affecting permissible ingredients and menu items. A number of counties, cities and states have enacted menu labeling laws requiring multi-unit restaurant operators to disclose to consumers certain nutritional information, or have enacted legislation restricting the use of certain types of ingredients in restaurants. An unfavorable report on, or reaction to, our menu ingredients, the size of our portions or the nutritional content of our menu items could negatively influence the demand for our menu offerings.

Compliance with current and future laws and regulations regarding the ingredients and nutritional content of our menu items may be costly and time-consuming. If we fail to comply with existing or future laws and regulations, we may be subject to governmental or judicial fines or sanctions. The risks and costs associated with nutritional disclosures on our menus could also impact our operations, particularly given differences among applicable legal requirements and practices within the restaurant industry with respect to testing and disclosure, ordinary variations in food preparation among our own restaurants and the need to rely on the accuracy and completeness of nutritional information obtained from third-party suppliers. We may not be able to effectively respond to changes in consumer health perceptions, comply with further nutrient content disclosure requirements or adapt our menu offerings to trends in eating habits, which could have a material adverse effect on our business, financial condition and results of operations.

***An important aspect of our growth strategy involves opening new restaurants in existing and new markets. We may be unsuccessful in opening new restaurants or establishing new markets and our new restaurants may not perform as well as anticipated which could have a material adverse effect on our business, financial condition and results of operations.***

A key part of our growth strategy includes opening new restaurants in existing and new markets and operating those restaurants on a profitable basis. We opened 23 company-owned restaurants in fiscal 2020. Our franchisees opened 19 Franchise-owned NROs in fiscal 2020. We expect a total of 32 System-wide NROs in fiscal 2021. We must identify target markets where we can enter or expand, and we may not be able to open our planned new restaurants within budget or on a timely basis, and our new restaurants may not perform as well as anticipated. Our and our franchisees' ability to successfully open new restaurants is affected by a number of factors, many of which are beyond our control, including our and our franchisees' ability to:

- identify available and suitable restaurant sites;
- compete for restaurant sites;
- reach acceptable agreements regarding the lease or purchase of restaurant sites;
- obtain or have available the financing required to develop and operate new restaurants, including construction and opening costs, which includes access to leases and equipment leases at favorable interest and capitalization rates;
- respond to unforeseen engineering or environmental problems with our selected restaurant sites;
- mitigate the impact of inclement weather, natural disasters and other calamities on the development of restaurant sites;
- hire, train and retain the skilled management and other employees necessary to meet staffing needs of new restaurants;
- obtain, in a timely manner and for an acceptable cost, required licenses, permits and regulatory approvals and respond effectively to any changes in local, state or federal law and regulations that adversely affect our and our franchisees' costs or ability to open new restaurants; and
- respond to construction and equipment cost increases for new restaurants.

There is no guarantee that a sufficient number of suitable restaurant sites will be available in desirable areas or on terms that are acceptable to us in order to achieve our growth plan. If we are unable to open new restaurants, or if planned restaurant openings are significantly delayed, it could have a material adverse effect on our business, financial condition and results of operations.

As part of our long-term growth strategy, we may open restaurants in geographic markets in which we have little or no prior operating experience. Our system-wide restaurant base is geographically concentrated in the southeast portion of the United States, and we may encounter new challenges as we enter new markets. The challenges of entering new markets include: difficulties in hiring experienced personnel; increased labor costs; unfamiliarity with local real estate markets and demographics; consumer unfamiliarity with our brand; and different competitive and economic conditions, consumer tastes and discretionary spending patterns that are more difficult to predict or satisfy than in our existing markets. Consumer recognition of our brand has been important in the success of company-owned and franchised restaurants in our existing markets, and we may find that our concept has limited appeal in new markets. Restaurants we open in new markets may take longer to reach expected sales and profit levels on a consistent basis and may have higher construction, occupancy and operating costs than existing restaurants. Any failure on our part to recognize or respond to these challenges may adversely affect the success of any new restaurants and could have a material adverse effect on our business, financial condition and results of operations.

***Our failure to manage our growth effectively could harm our business and results of operations.***

Our growth plan includes opening new restaurants. Our existing restaurant management systems, financial and management controls and information systems may be inadequate to support our planned expansion. Managing our growth effectively will require us to continue to enhance these systems, procedures and controls and to hire, train and retain managers and team members. We may not respond quickly enough to the changing demands that our expansion will impose on our management, restaurant teams and existing infrastructure which could have a material adverse effect on our business, financial condition and results of operations.

***Opening new restaurants in existing markets may negatively impact sales at our and our franchisees' existing restaurants.***

The consumer target area of our and our franchisees' restaurants varies by location, depending on a number of factors, including population density, other local retail and business attractions, area demographics and geography. As a result, if we open new restaurants in or near markets in which we or our franchisees' already have restaurants, it could have a material adverse effect on sales at these existing restaurants. Existing restaurants could also make it more difficult to build our and our franchisees' consumer base for a new restaurant in the same market. Our core business strategy does not entail opening new restaurants that we believe will materially affect sales at our or our franchisees' existing restaurants over the long term. However, due to brand recognition and logistical synergies, as part of our growth strategy, we also intend to open new restaurants in areas where we have existing restaurants. This could have a material adverse effect on the results of operations and same-restaurant sales growth for our restaurants in such markets due to the close proximity with our other restaurants and market saturation. Sales cannibalization between our restaurants may become significant in the future as we continue to open new restaurants and could affect our sales growth, which could, in turn, have a material adverse effect on our business, financial condition and results of operations.

***A decline in visitors to any of the retail centers, lifestyle centers, or entertainment centers where our restaurants are located could negatively affect our restaurant sales.***

Our restaurants are primarily located in high-activity trade areas that often contain retail centers, lifestyle centers, and entertainment centers. We depend on high visitor rates in these trade areas to attract customers to our restaurants. Factors that may result in declining visitor rates at these locations include economic or political conditions, anchor tenants closing in retail centers in which we operate, changes in consumer preferences or shopping patterns, changes in discretionary consumer spending, increasing petroleum prices, mobility restrictions, fear of contracting COVID-19 or other infectious diseases and the sharp increase in unemployment caused by the closure of businesses in response to the COVID-19 pandemic, or other factors. A decline in traffic at these locations for a sustained period could have a material adverse effect on our business, financial condition and results of operations.

The COVID-19 pandemic and related government restrictions imposed by federal, state and local governments have and may continue to impact customer traffic at our restaurants, possibly for prolonged periods of time. We temporarily closed our dining rooms and moved to exclusively off-premises sales by April 2020 to comply with government restrictions and, on April 13, 2020, to help ensure the safety of our employees, temporarily suspended all operations at the company-owned restaurants. The COVID-19 pandemic has also adversely affected our ability to implement our business strategy, including our ability to build in both new and existing markets and increase brand awareness. These changes and any additional changes could continue to have a material adverse effect on our business, liquidity, financial condition and results of operations, particularly if these changes remain in place for a significant amount of time. If business interruptions caused by the COVID-19 pandemic last longer than we expect or are aggravated due to the emergence of variants, we or our franchisees may need to seek additional sources of liquidity. There can be no guarantee that additional liquidity, whether through the credit markets or government programs, will be readily available or available on favorable terms to our franchisees or us.

***Our same-restaurant sales growth may be lower than we expect in future periods.***

Same-restaurant sales growth will continue to be a critical factor affecting our ability to generate profits because the profit margin on same-restaurant sales growth is generally higher than the profit margin on new restaurant sales. Our ability to increase same-restaurant sales growth depends in part on our ability to successfully implement our initiatives to build sales. It is possible such initiatives will not be successful, that we will not achieve our target same-restaurant sales growth or that the change in same-restaurant sales growth could be negative, which may cause a decrease in sales growth and ability to achieve profitability. This could have a material adverse effect on our business, financial condition and results of operations. The rise of COVID-19 variants and any associated government-imposed restrictions may frustrate our ability to implement our initiatives to increase our same-restaurant sales growth.

***Our marketing programs and our limited time new offerings may not be successful and could fail to meet expectations, and our new menu items, advertising campaigns and restaurant designs and remodels may not generate increased sales or profits.***

We incur costs and expend other resources in our marketing efforts on new and seasonal menu items, advertising campaigns and restaurant designs and remodels to raise brand awareness and attract and retain customers. In addition, as the number of our restaurants increases, and as we expand into new markets, we expect to increase our investment in advertising and consider additional promotional activities. Accordingly, in the future, we will incur greater marketing expenditures, resulting in greater financial risk. Additionally, our limited time menu offerings, which we offer as a key part of our promotional activities from time to time, may not perform as anticipated, which could have an adverse impact on our results of operations for the related period. If these initiatives are not successful, it could result in us incurring expenses without the benefit of higher revenues, which could have a material adverse effect on our business, financial condition and results of operations.

***Changes in the cost of food could have a material adverse effect on our business, financial condition and results of operations.***

Our profitability depends in part on our ability to anticipate and react to changes in the food and beverage costs, including, among other things, pork, coffee, eggs, avocados, potatoes, bread, cheese, fresh fruit and produce items. We are susceptible to increases in the cost of food due to factors beyond our control, such as freight and delivery charges, general economic conditions, seasonal economic fluctuations, weather conditions, global demand, food safety concerns, infectious diseases, fluctuations in the U.S. dollar, tariffs and import taxes, product recalls and government regulations. Dependence on frequent deliveries of fresh produce and other food products subjects our business to the risk that shortages or interruptions in supply could adversely affect the availability, quality or cost of ingredients or require us to incur additional costs to obtain adequate supplies. Deliveries of supplies may be affected by adverse weather conditions, natural disasters, labor shortages, or financial or solvency issues of our distributors or suppliers, product recalls or other issues. Further, increases in fuel prices could result in increased distribution costs. In addition, a material adverse effect on our business, financial condition and results of operations could occur if any of our distributors, suppliers, vendors, or other contractors fail to meet our quality or safety standards or otherwise do not perform adequately, or if any one or more of them seeks to terminate its agreement or fails to perform as anticipated, or if there is any disruption in any of our distribution or supply relationships or operations for any reason.

Changes in the price or availability of certain food products, including as a result of the COVID-19 pandemic, could affect our profitability and reputation. While other commodities we purchase are subject to contract pricing and therefore have not been impacted by price inflation as a result of the COVID-19 pandemic thus far, as our contracts expire, we may not be able to successfully re-negotiate terms that protect us from price inflation in the future. International commodities we purchase are also subject to supply shortages or interruptions due to the COVID-19 pandemic.

Changes in the cost of ingredients can result from a number of factors, including seasonality, increases in the cost of grain, disease and viruses and other factors that affect availability and greater international demand for

domestic pork products. In the event of cost increases with respect to one or more of our raw ingredients, we may choose to temporarily suspend or permanently discontinue serving menu items rather than paying the increased cost for the ingredients. Any such changes to our available menu could negatively impact our restaurant traffic, business and same-restaurant sales growth during the shortage and thereafter. While future cost increases can be partially offset by increasing menu prices, there can be no assurance that we will be able to offset future cost increases by increasing menu prices. If we or our franchisees implement menu prices increases, there can be no assurance that increased menu prices will be fully absorbed by our customers without any resulting change to their visit frequencies or purchasing patterns. Competitive conditions may limit our menu pricing flexibility and if we or our franchisees implement menu price increases to protect our margins, restaurant traffic could be materially adversely affected, at both company-owned and franchised restaurants.

Food safety and quality concerns may negatively impact our business and profitability, our internal operational controls and standards may not always be met and our employees may not always act professionally, responsibly and in our and our customers' best interests. Any possible instances of food-borne illness could reduce our restaurant sales.

Food safety is a top priority, and we dedicate substantial resources to help ensure that our customers enjoy safe, quality food products. However, food-borne illnesses and other food safety issues have occurred in the food industry in the past, and could occur in the future. Incidents or reports of food-borne or water-borne illness or other food safety issues, food contamination or tampering, employee hygiene and cleanliness failures or improper employee conduct, customers entering our restaurants while ill and contaminating food ingredients or surfaces at our restaurants could lead to product liability or other claims. Such incidents or reports could negatively affect our brand and reputation and could have a material adverse effect on our business, financial condition and results of operations. Similar incidents or reports occurring at competitors in our industry unrelated to us could likewise create negative publicity, which could negatively impact consumer behavior towards us.

We cannot guarantee to consumers that our food safety controls, procedures and training will be fully effective in preventing all food safety and public health issues at our restaurants, including any occurrences of pathogens (i.e., Ebola, "mad cow disease," "SARS," "swine flu," Zika virus, avian influenza, hepatitis A, porcine epidemic diarrhea virus, norovirus or other virus), bacteria (i.e., salmonella, listeria or E.coli), parasites or other toxins infecting our food supply. These potential public health issues, in addition to food tampering, could adversely affect food prices and availability of certain food products, generate negative publicity, and lead to closure of restaurants resulting in a decline in our sales or profitability. In addition, there is no guarantee that our restaurant locations will maintain the high levels of internal controls and training we require at our restaurants. Furthermore, our reliance on third-party food processors makes it difficult to monitor food safety compliance and may increase the risk that food-borne illness would affect multiple locations rather than single restaurants. Some food-borne illness incidents could be caused by third-party food suppliers and transporters outside of our control, and may affect multiple restaurant locations as a result. We cannot assure that all food items will be properly maintained during transport throughout the supply chain and that our employees will identify all products that may be spoiled and should not be used in our restaurants. The risk of food-borne illness may also increase whenever our menu items are served outside of our control, such as by third-party food delivery services companies, customer take out or at catered events. We do not have direct control over our third-party suppliers, transporters or delivery services, including in their adherence to additional sanitation protocols and guidelines as a result of the COVID-19 pandemic or other infectious diseases, and may not have visibility into their practices. New illnesses resistant to our current precautions may develop in the future, or diseases with long incubation periods could arise, that could give rise to claims or allegations on a retroactive basis. One or more instances of food-borne illness in one of our company-owned or franchised restaurants could negatively affect sales at all our restaurants if highly publicized, such as on national media outlets or through social media, especially due to the geographic concentration of many of our restaurants. This risk exists even if it were later determined that the illness was wrongly attributed to one of our restaurants. Furthermore, due to the COVID-19 pandemic, we must comply with stricter health regulations and guidelines and increased public concern and expectations over food safety standards and controls. Potential food safety incidents, whether at our restaurants or involving our business

partners, could lead to wide public exposure and negative publicity, which could materially harm our business. A number of other restaurant chains have experienced incidents related to food-borne illnesses that have had material adverse impacts on their operations, and we cannot assure you that we could avoid a similar impact upon the occurrence of a similar incident at one of our restaurants. Additionally, even if food-borne illnesses were not identified at our restaurants, our restaurant sales could be adversely affected if instances of food-borne illnesses at other restaurant chains were highly publicized.

Finally, although we have followed industry standard food safety protocols in the past and have endeavored to continually enhance our food safety procedures to ensure that our food is as safe as it can possibly be, we may still be at a higher risk for food-borne illness occurrences than some competitors due to our greater use of fresh, unprocessed produce and meats, our reliance on employees cooking with traditional methods rather than automation, and our avoidance of frozen ingredients.

***New restaurants may not be profitable or may close, and the performance of our restaurants that we have experienced in the past may not be indicative of future results.***

Some of our restaurants open with an initial start-up period of higher or lower than normal sales volumes. Our restaurant level operating profit margins are generally lower through the first 12 months of operation. In new markets, the length of time before average sales for new restaurants stabilize is less predictable as a result of our limited knowledge of these markets and consumers' limited awareness of our brand. In addition, our AUV and same-restaurant sales growth may not increase at the rates our existing restaurants have achieved over the past several years. Our ability to operate new restaurants profitably and increase AUV and same-restaurant sales growth will depend on many factors, some of which are beyond our control, including:

- consumer awareness and understanding of our brand;
- general economic conditions, which can affect restaurant traffic, local labor costs and prices we pay for the food products and other supplies we use;
- consumption patterns and food preferences that may differ from region to region;
- changes in consumer preferences and discretionary spending;
- difficulties obtaining or maintaining adequate relationships with distributors or suppliers in new markets;
- increases in prices for commodities;
- inefficiency in our labor costs as the staff gains experience;
- competition, either from our competitors in the restaurant industry or our own restaurants;
- temporary and permanent site characteristics of new restaurants;
- changes in government regulation; and
- other unanticipated increases in costs, any of which could give rise to delays or cost overruns.

Although we target specified operating and financial metrics, new restaurants may not meet these targets or may take longer than anticipated to do so. If our new restaurants do not perform as planned or close, or if we are unable to achieve our expected restaurant sales, it could have a material adverse effect on our business, financial condition and results of operations.

***We face significant competition for customers, and our inability to compete effectively may affect our traffic, our sales and our operating profit margins, which could have a material adverse effect on our business, financial condition and results of operations.***

The restaurant industry is intensely competitive with many companies that compete directly and indirectly with us with respect to food quality, brand recognition, service, price and value, convenience, design and

location. We compete in the restaurant industry with national, regional and locally-owned and/or operated limited-service restaurants and full-service restaurants. We compete with fast casual restaurants, quick service restaurants and casual dining restaurants. Some of our competitors have significantly greater financial, marketing, personnel and other resources than we do, and many of our competitors are well-established in markets in which we have existing restaurants or intend to locate new restaurants. In addition, many of our competitors have greater name recognition nationally or in some of the local markets in which we have or plan to have restaurants. We also compete with a number of non-traditional market participants, such as convenience stores, grocery stores, coffee shops, meal kit delivery services, and "ghost" or dark kitchens, where meals are prepared at separate takeaway premises rather than a restaurant. Competition from food delivery services companies has also increased in recent years, particularly during the COVID-19 pandemic, and is expected to continue to increase. Any inability to successfully compete with the restaurants in our existing or new markets will place downward pressure on our customer traffic and could have a material adverse effect on our business, financial condition and results of operations. Additionally, all delivery from our restaurants is through third-party delivery companies. If these third-party delivery companies cease doing business with us, cannot make their scheduled deliveries, do not continue their relationship with us on favorable terms or fail to effectively compete with other third-party delivery providers in the sector, it may have a negative impact on sales or result in increased third-party delivery fees. If any third-party delivery provider we partner with experiences damage to their brand image, we may also see ramifications due to our partnership with them. As delivery, as well as the partnerships we have made in connection with delivery, is still a growing business for us, it may be difficult for us to anticipate its impact to our sales as well as the challenges we may face in the future.

Our continued success also depends in part on the continued popularity of our menu and the experience we offer customers at our restaurants. Consumer tastes, nutritional and dietary trends, traffic patterns and the type, number, and location of competing restaurants often affect the restaurant business, and our competitors may react more efficiently and effectively to changes in those conditions. In addition, some of our competitors in the past have implemented promotional programs that provide price discounts on certain menu offerings, and they may continue to do so in the future. If we are unable to continue to compete effectively, our traffic, restaurant sales and restaurant operating profit margins could decline, which could have a material adverse effect on our business, financial condition and results of operations.

Additionally, our competitors with greater financial resources are able to spend significantly more on marketing and advertising and other initiatives than we are able to. Should our competitors increase spending on marketing and advertising and other initiatives or our marketing expenditures decrease for any reason, or should our advertising, promotions, new menu items and restaurant designs and locations be less effective than our competitors', it could have a material adverse effect on our business, financial condition and results of operations.

***The financial performance of our franchisees can have a material adverse effect on our business, financial condition and results of operations.***

As 21% and 22% of our System-wide restaurants were franchised as of June 27, 2021 and December 27, 2020, respectively, our results of operations are dependent in part upon the operational and financial success of our franchisees. We receive royalties, franchise fees and contributions to a system fund used for advertising from our franchisees. We have limited control over how our franchisees' businesses are run, and our franchisees may not comply with our established operational standards and guidelines. While we are responsible for ensuring the success of our System-wide restaurants and for taking a long-term view with respect to system-wide improvements, our franchisees have individual business strategies and objectives, which may conflict with our interests. Our franchisees may not be able to secure adequate financing to open or continue operating their restaurants. If they incur too much debt or if economic or sales trends deteriorate such that they are unable to repay existing debt, our franchisees could experience financial distress or even bankruptcy. If a significant number of franchisees become financially distressed or close their restaurants, it could result in reduced franchise revenues, which could have a material adverse effect on our business, financial condition and results of operations.

***We have limited control with respect to the operations of our franchisees, which could have a material adverse effect on our business, financial condition and results of operations.***

Franchisees are independent business operators and are not our employees, and we do not exercise control over the day-to-day operations of the franchised restaurants. We provide training and support to franchisees, and set and monitor operational standards and guidelines, however, because we do not have day-to-day control over the franchisees, we cannot give assurance that the franchisees operate restaurants in a manner consistent with our standards, guidelines and requirements, or hire and train qualified managers and other restaurant personnel. If franchisees do not operate to our expectations, our image and reputation, and the image and reputation of other franchisees, may suffer, which could have a material adverse effect on our business, financial condition and results of operations.

***If we are unable to maintain good relationships with our franchisees, revenues could decrease and we may be unable to expand our presence in certain markets***.

Our franchisees pay us fees pursuant to our franchise agreements. The viability of our franchise business depends on our ability to maintain good relationships with our franchisees. If we are unable to maintain good relationships with our franchisees, we may be unable to renew franchise agreements, which would result in a decrease in our franchise revenues and our presence in certain markets, which could have a material adverse effect on our business, financial condition and results of operations.

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

Franchisees, as independent business operators, may from time to time disagree with us on our strategies regarding the business or our interpretation of our respective rights and obligations under the franchise agreement and the terms and conditions of the franchisee/franchisor relationship. In addition, franchise agreements require us and our franchisees to comply with operational and performance conditions that are subject to interpretation and could result in disagreements. As a result, at any given time, we may be in disputes with one or more of our franchisees. Such disputes may result in legal action against us. To the extent we have such disputes, the attention, time and financial resources of our management and our franchisees will be diverted from our restaurants, which could, even if we prevail, have a material adverse effect on our business, financial condition and results of operations.

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

***Our system-wide restaurant base is geographically concentrated in the southeast portion of the United States, and we could be negatively affected by conditions specific to that region.***

Our restaurants in the southeast portion of the United States represented approximately 41% of our System-wide restaurants as of December 27, 2020. Our restaurants in Florida represented approximately 24% of our System-wide restaurants as of December 27, 2020. Adverse changes in demographic, unemployment, economic, regulatory or weather conditions in the southeast portion of the United States have had, and may continue to have, material adverse effects on our business, financial condition and results of operations. As a result of our concentration in this market, we have been, and in the future may be, disproportionately affected by conditions in this geographic area compared to other chain restaurants with a national footprint.

In addition, our competitors could open additional restaurants in the southeast portion of the United States, which could result in reduced market share for us in this key geographic region, which could have a material adverse effect on our business, financial condition and results of operations.

***Damage to our reputation and negative publicity could have a material adverse effect on our business, financial condition and results of operations.***

Our reputation and the quality of our brand are critical to our business and success in existing markets, and will be critical to our success as we enter into new markets. Any incident that erodes consumer loyalty for our brand could significantly reduce its value and damage our business. We may be adversely affected by negative publicity relating to food quality, the safety, sanitation and welfare of our restaurant facilities, customer complaints or litigation alleging illness or injury, health inspection scores, integrity of our or our suppliers' food processing and other policies, practices and procedures, employee relationships and welfare or other matters at one or more of our restaurants. Any publicity relating to health concerns, perceived or specific outbreaks of the COVID-19 pandemic or other infectious diseases attributed to one or more of our restaurants, or non-compliance with COVID-19 related government restrictions imposed by federal, state and local governments could result in a significant decrease in customer traffic in all of our restaurants and could have a material adverse effect on our results of operations. Furthermore, similar negative publicity or occurrences with respect to other restaurants or other restaurant chains could also decrease our customer traffic and have a similar material adverse effect on our business. In addition, incidents of restaurant commentary have increased dramatically with the proliferation of social media platforms. Negative publicity may adversely affect us, regardless of whether the allegations are valid or whether we are held responsible. In addition, the negative impact of adverse publicity may extend far beyond the restaurant involved, especially due to the high geographic concentration of many of our restaurants, and affect some or all our other restaurants, including our franchised restaurants. For example, we, or other restaurant companies generally, could come under criticism from animal rights and welfare activists for our business practices or those of our suppliers. Such criticisms could impair our brand, our restaurant sales, our hiring, our expansion plans, and the performance of our franchisees. If we changed our practices because of concerns about animal welfare, or in response to such criticisms, our costs might increase, or we may have to change our suppliers or our menu. The risk of negative publicity is particularly great with respect to our franchised restaurants because we are limited in the manner in which we can regulate them, especially on a real-time basis and negative publicity from our franchised restaurants may also significantly impact company-owned restaurants. A similar risk exists with respect to food service businesses unrelated to us, if customers mistakenly associate such unrelated businesses with our operations. Employee claims against us based on, among other things, wage and hour violations, discrimination, harassment or wrongful termination may also create not only legal and financial liability but negative publicity that could adversely affect us and divert our financial and management resources that would otherwise be used to benefit the future performance of our operations. These types of employee claims could also be asserted against us, on a co-employer theory, by employees of our franchisees. A significant increase in the number of these claims or an increase in the number of successful claims could have a material adverse effect on our business, financial condition and results of operations.

***Our inability or failure to recognize, respond to and effectively manage the accelerated impact of social media could have a material adverse effect on our business, financial condition and results of operations.***

Our marketing efforts rely heavily on the use of social media. In recent years, there has been a marked increase in the use of social media platforms, including weblogs (blogs), mini-blogs, chat platforms, social media websites, and other forms of Internet-based communications, which allow individuals access to a broad audience of consumers and other interested persons. Many of our competitors are expanding their use of social media, especially since the beginning of the COVID-19 pandemic, and new social media platforms are rapidly being developed, potentially making more traditional social media platforms obsolete. As a result, we need to continuously innovate and develop our social media strategies in order to maintain broad appeal with customers and brand relevance, particularly given the rise in digital orders by customers at home due to the COVID-19 pandemic. We also continue to invest in other digital marketing initiatives that allow us to reach our customers across multiple digital channels and build their awareness of, engagement with, and loyalty to our brand. These initiatives may not be successful, resulting in expenses incurred without the benefit of higher sales or increased brand recognition. Additionally, negative commentary regarding our restaurants, our food or our service may be posted on our website or social media platforms and may be adverse to our reputation or business. This harm may be immediate, without affording us an opportunity for redress or correction.

As laws and regulations rapidly evolve to govern the use of these platforms and devices, the failure by us or third parties acting at our direction to abide by applicable laws and regulations in the use of these platforms and devices could subject us to regulatory investigations, class action lawsuits, liability, fines or other penalties and have a material adverse effect on our business, financial condition and results of operations. In addition, an increase in the use of social media for product promotion and marketing may cause an increase in the burden on us to monitor compliance of such materials and increase the risk that such materials could contain problematic product or marketing claims in violation of applicable regulations.

***We have a limited number of suppliers and distributors for several of our frequently used ingredients. If our suppliers or distributors are unable to fulfill their obligations under our arrangements with them, we could encounter supply shortages and incur higher costs.***

We contract with one distributor, which we refer to as our "broadline" distributor, to provide virtually all of our food distribution services in the United States. As of December 27, 2020, approximately 80% of certain food and beverage ingredients, including pork and eggs were processed through our broadline distributor for distribution and delivery to each of our restaurants.

As of December 27, 2020, we utilized 15 affiliated distribution centers and each distribution center carries two to three weeks of inventory for our core ingredients. In the event of a catastrophe, such as a fire, our broadline distributor can supply the restaurants affected by their respective distribution center from another affiliated distribution center. If a catastrophe, such as a fire or extreme adverse weather conditions such as storms, floods, severe thunderstorms and hurricanes, were to occur at the distribution center that services the concentration of our restaurants located in Florida, we would be at immediate risk of product shortages because that distribution center supplies 30% of our company-owned restaurants as of December 27, 2020, which collectively represented 32% of our restaurant sales for fiscal 2020. The other 14 distribution centers collectively supply the other 70% of our company-owned restaurants, which represented the remaining 68% of our sales.

As of December 27, 2020, we purchased 100% of our pork from two suppliers, 100% of our eggs from two suppliers and 80% of our avocados from one supplier. We purchase these ingredients pursuant to purchase orders at prevailing market or negotiated contract prices and are not limited by minimum purchase requirements. We also purchased 100% of our coffee from one supplier. The cancellation of our supply arrangements with any one of these suppliers or the disruption, delay or inability of these suppliers to deliver these major products to our restaurants or distribution centers due to problems in production or distribution, inclement weather, unanticipated demand or other conditions may materially and adversely affect our results of operations while we establish alternative supplier and distribution channels, all of which may materially and adversely affect our results of operations while we establish these alternate supplier and distribution channels. Accordingly, although we believe that alternative supply and distribution sources are available, there can be no assurance that we will continue to be able to identify or negotiate with such sources on terms that are commercially reasonable to us. If our existing suppliers or distributors are unable to fulfill their obligations under their contracts or we are unable to identify alternative sources, we could encounter supply shortages and incur higher costs, each of which could have a material adverse effect on our results of operations.

In addition, if our suppliers or distributors fail to comply with food safety or other laws and regulations, or face allegations of non-compliance, their operations may be disrupted. We also could experience shortages of key ingredients if our suppliers need to close or restrict operations due to the impact of the COVID-19 pandemic or other infectious diseases. If our suppliers' employees are unable to work or our suppliers' operations are disrupted due to the COVID-19 pandemic, we and our franchisees could face shortages of food items or other supplies, and our and our franchisees' operations and sales could be materially adversely impacted by such supply interruptions. If that were to occur, we may not be able to find replacement suppliers on commercially reasonable terms or a timely basis, if at all.

**Risks Related to Information Technology and Intellectual Property**

***Information technology system failures or breaches of our network security could interrupt our operations and have a material adverse effect on our business, financial condition and results of operations.***

We and our franchisees rely heavily on our computer systems and network infrastructure across our operations, including point-of-sale processing at our restaurants, for management of our supply chain, accounting, payment of obligations, collection of cash, credit and debit card transactions and other processes and procedures. Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of these systems. Our and our franchisees' operations depend upon our and our franchisees' ability to protect our computer equipment and systems against damage from physical theft, fire, power loss, telecommunications failure or other catastrophic events, as well as from internal and external security breaches, viruses and other disruptive problems. Any actual or perceived breach in the security of our information technology systems or those of our franchisees and third-party service providers could lead to damage or failure of our computer systems or network infrastructure that causes an interruption in our operations could have a material adverse effect on our business and a significant theft, loss, disclosure, modification or misappropriation of, or access to, guests', employees', third parties' or other proprietary data or other breach of our information technology systems could subject us or our franchisees to litigation or to actions by regulatory authorities. Furthermore, before and during the COVID-19 pandemic, at various times we have allowed certain of our team members in our corporate headquarters to work from home. The significant increase in remote working, particularly for an extended period of time, could increase certain risks to our business, including an increased risk of cybersecurity events, vulnerability of our systems and improper dissemination of confidential or personal information, if our physical and cybersecurity measures or our corporate policies are not effective. The costs to us to eliminate any of the foregoing cybersecurity vulnerabilities or to address a cyber-incident could be significant and have a material adverse impact on our business, financial condition and results of operations.

The techniques and sophistication used to conduct cyber-attacks and breaches of information technology systems, as well as the sources and targets of these attacks, may take many forms (including phishing, social engineering, denial or degradation of service attacks, malware or ransomware), change frequently and are often not recognized until such attacks are launched or have been in place for a period of time. In addition, our employees, franchisees, contractors, or third parties with whom we do business or to whom we outsource business operations may attempt to circumvent our security measures in order to misappropriate regulated, protected, or personally identifiable information, and may purposefully or inadvertently cause a breach involving or compromise of such information. Third parties may have the technology or know-how to breach the security of the information collected, stored, or transmitted by us or our franchisees, and our respective security measures, as well as those of our technology vendors, may not effectively prohibit others from obtaining improper access to this information. Advances in computer and software capabilities and encryption technology, new tools, and other developments may increase the risk of such a breach or compromise. There is no assurance that any security procedures or controls that we or our third-party providers have implemented will be sufficient to prevent data-security related incidents from occurring.

We may be required to expend significant capital and other resources to protect against, respond to, and recover from any potential, attempted or existing security breaches or failures and their consequences. As data security-related threats continue to evolve, we may be required to expend significant additional resources to continue to modify or enhance our protective measures or to investigate and remediate any information security vulnerabilities. We could be forced to expend significant financial and operational resources in responding to a security breach, including investigating and remediating any information security vulnerabilities, defending against and resolving legal and regulatory claims and complying with notification obligations, all of which could divert resources and the attention of our management and key personnel away from our business operations and adversely affect our business, financial condition and results of operations. In addition, our remediation efforts may not be successful and we could be unable to implement, maintain and upgrade adequate safeguards.

We are continuing to expand, upgrade and develop our information technology capabilities, including implementing a new credit card processing system in all of our company-owned locations in 2020, and we plan

to work with our franchisees to have their restaurants upgrade to the same system. If we are unable to successfully upgrade or expand our technological capabilities, we may not be able to take advantage of market opportunities, manage our costs and transactional data effectively, satisfy customer requirements, execute our business plan or respond to competitive pressures. Additionally, unforeseen problems with our point-of-sale system or our credit card processing system may affect our operational abilities and internal controls and we may incur additional costs in connection with such upgrades and expansion.

***Failure to comply with federal and state laws and regulations relating to privacy, data protection, advertising and consumer protection, or the expansion of current or the enactment of new laws or regulations relating to privacy, data protection, advertising and consumer protection, could have a material adverse effect on our business, financial condition and results of operations.***

Our business requires the collection, transmission and retention of large volumes of customer and employee data, including credit and debit card numbers and other personally identifiable information, in various information technology systems that we and our franchisees maintain, and in those maintained by our third parties with whom we contract to provide services. The integrity and protection of that customer and employee data is critical to us. Further, our customers and employees have a high expectation that we and our service providers will adequately protect their personal information.

Further, the standards for systems currently used for transmission and approval of electronic payment transactions, and the technology utilized in electronic payment themselves, all of which can put electronic payment data at risk, are determined and controlled by the payment card industry, not by us. For example, we are subject to industry requirements such as the Payment Card Industry Data Security Standard, or PCI-DSS, as well as certain other industry standards. Any failure to comply with these rules and/or requirements could significantly harm our brand, reputation, business and results of operations, and in the case of PCI-DSS, could result in monetary penalties and/or the exclusion from applicable card brands. We also rely on independent service providers for payment processing, including payments made using credit and debit cards. If these independent service providers become unwilling or unable to provide these services to us or if the cost of using these providers increases, our business could be harmed.

We rely on a variety of marketing and advertising techniques, including email communications, affiliate partnerships, social media interactions, digital marketing, direct mailers, public relations initiatives and local community sponsorships, promotions and partnerships, and we are subject to various laws and regulations that govern such marketing and advertising practices. A variety of federal and state laws and regulations govern the collection, use, retention, sharing and security of consumer data, particularly in the context of digital marketing, which we rely upon to attract new customers. We are, and may increasingly become, subject to other various laws, directives, industry standards and regulations, as well as contractual obligations, relating to data privacy and security in the jurisdictions in which we operate. The information, security and privacy requirements imposed by governmental regulation are increasingly demanding and are subject to potentially differing interpretations. In the United States, various federal and state regulators, including governmental agencies like the Consumer Financial Protection Bureau and the Federal Trade Commission (the “FTC”), have adopted, or are considering adopting, laws and regulations concerning personal information and data security and have prioritized privacy and information security violations for enforcement actions.

Laws and expectations relating to privacy continue to evolve, and we continue to adapt to changing needs. For example, the definition of “personal information” or “personal data” under newer privacy laws is much broader than the definition of “personally identifiable information” that appears in older privacy laws, and many jurisdictions have or will soon enact new privacy laws. Specifically, certain states in which we operate or may operate in the future have enacted or may soon enact comprehensive privacy laws that may be more stringent or broader in scope, or offer greater individual rights, with respect to personal information than current federal, international or other state laws, and such laws may differ from each other, all of which may complicate compliance efforts. For example, the California Consumer Privacy Act (“CCPA”), which went into effect on

January 1, 2020, imposes new and enhanced data privacy obligations and creates new privacy rights for California residents, including the right to access and delete their personal information and to opt-out of certain sharing and sales of their personal information. The CCPA allows for significant civil penalties and statutory damages for violations and contains a private right of action for certain data breach incidents. Similarly, on March 2, 2021, the Virginia Consumer Data Protection Act ("CDPA") was signed into law. The CDPA becomes effective beginning January 1, 2023, and contains provisions that require businesses to conduct data protection assessments in certain circumstances and obtain opt-in consent from consumers to process certain sensitive personal information, among other requirements. Efforts are underway in numerous other states to pass data privacy laws that are similar to the CCPA and/or the CDPA, further complicating the legal landscape. In addition, laws in all 50 states require businesses to provide notice to consumers whose personal information has been accessed or acquired as a result of a data breach (and, in some cases, to regulators and/or the media). There is also the possibility that Congress could strengthen federal privacy laws and/or enact a new comprehensive federal privacy law that would apply to us, which may add additional complexity, variation in requirements, restrictions and potential legal risks, require additional investment of resources in compliance programs, impact strategies and the availability of previously useful data and could result in increased compliance costs or changes in business practices and policies. Our failure to adhere to or successfully implement appropriate processes to adhere to the requirements of evolving laws and regulations in this area could expose us and our franchisees to financial penalties and legal liability. Our and our franchisees' systems may not be able to satisfy these changing requirements and customer and employee expectations, or may require significant additional investments or time in order to do so.

Any failure, or perceived failure, by us to comply with our posted privacy policies or with any federal or state privacy or consumer protection-related laws, regulations, industry self-regulatory principles, industry standards or codes of conduct, regulatory guidance, orders to which we may be subject or other legal obligations relating to privacy or consumer protection could adversely affect our reputation, brand and business, and may result in claims, proceedings or actions against us by governmental entities, customers, suppliers or others or other liabilities or may require us to change our operations and/or cease using certain data sets. Any such claims, proceedings or actions could hurt our reputation, brand and business, force us to incur significant expenses in defense of such proceedings or actions, distract our management, increase our costs of doing business, result in a loss of customers, suppliers or vendors and result in the imposition of monetary penalties. We may also be contractually required to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any laws, regulations or other legal obligations relating to privacy or consumer protection or any inadvertent or unauthorized use or disclosure of data that we store or handle as part of operating our business. Although we endeavor to comply with our public statements and documentation, we may at times fail to do so or be alleged to have failed to do so. The publication of our privacy policies and other statements that provide promises and assurances about data privacy and security can subject us to potential government or legal action if they are found to be deceptive, unfair or misrepresentative of our actual practices. Any concerns about our data privacy and security practices, even if unfounded, could damage the reputation of our businesses and discourage potential users from our products and services. Any of the foregoing could have an adverse effect on our business, financial condition and results of operations.

Federal and state governmental authorities continue to evaluate the privacy implications inherent in the use of third-party "cookies" and other methods of online tracking for behavioral advertising and other purposes. The U.S. government has enacted, has considered or is considering legislation or regulations that could significantly restrict the ability of companies and individuals to engage in these activities, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools or the use of data gathered with such tools. Additionally, some providers of consumer devices and web browsers have implemented, or announced plans to implement, means to make it easier for Internet users to prevent the placement of cookies or to block other tracking technologies, which could if widely adopted result in the use of third-party cookies and other methods of online tracking becoming significantly less effective. For example, Apple recently moved to "opt-in" privacy models, requiring users to voluntarily choose to receive targeted ads, which may reduce the value of ad impressions on its iOS mobile application platform. Many applications and

other devices allow consumers to avoid receiving advertisements by paying for subscriptions or other downloads. The regulation of the use of these cookies and other current online tracking and advertising practices or a loss in our ability to make effective use of services that employ such technologies could increase our costs of operations and limit our ability to acquire new customers on cost-effective terms and, consequently, have a material adverse effect on our business, financial condition and results of operations.

***We face potential liability with our gift cards under the property laws of some states.***

Our gift cards, which may be used to purchase food and beverages in our restaurants, may be considered stored value cards by certain states in accordance with their abandoned and unclaimed property laws. These laws could require a company to remit to the state cash in an amount equal to all or a designated portion of the unredeemed balance on the gift cards based on certain card attributes and the length of time that the cards are inactive; however, we are not required to remit any amounts relating to unredeemed gift cards to states as that obligation has been assumed by the third-party issuer of the gift cards. We recognize income from unredeemed cards when we determine that the likelihood of the cards being redeemed is remote and that recognition is appropriate based on governing state statutes.

The analysis of the potential application of the abandoned and unclaimed property laws to our gift cards is complex, involving an analysis of constitutional, statutory provisions and factual issues. In the event that one or more states change their existing abandoned and unclaimed property laws or successfully challenge our position on the application of its abandoned and unclaimed property laws to our gift cards, or if the estimates that we use in projecting the likelihood of the cards being redeemed prove to be inaccurate, our liabilities with respect to unredeemed gift cards may be materially higher than the amounts shown in our consolidated financial statements. If we are required to materially increase the estimated liability recorded in our consolidated financial statements with respect to unredeemed gift cards, our financial condition and results of operations could be adversely affected.

Additionally, we rely on third-party service providers to administer aspects of our gift cards. Any failure on the part of this service provider to fulfill their contract in a way that adversely effects the use or purchase of our gift cards could result in a material adverse effect on our business, financial condition and results of operations.

***The failure to enforce and maintain our trademarks and protect our other intellectual property could have a material adverse effect on our business, including our ability to establish and maintain brand awareness.***

We have registered First Watch® and certain other names, logos and slogans used by our restaurants as trademarks or service marks with the United States Patent and Trademark Office (“USPTO”). The First Watch® trademark is also registered in Canada. In addition, the First Watch logo, website domain name and Facebook, Instagram and Twitter accounts are our intellectual property. The success of our business strategy depends on our continued ability to use our existing trademarks and service marks in order to increase brand awareness and develop our branded products. If our efforts to protect our intellectual property are not adequate, or if any third-party misappropriates or infringes on our intellectual property, whether in print, on the Internet or through other media, the value of our brands may be negatively affected, which could have a material adverse effect on our business, including the failure of our brands and branded products to achieve and maintain market acceptance. There can be no assurance that all the steps we have taken to protect our intellectual property in the United States will be adequate.

We or our suppliers maintain the seasonings and additives for our menu items, as well as certain standards, specifications and operating procedures, as trade secrets or confidential information. We may not be able to prevent the unauthorized disclosure or use of our trade secrets or confidential information, despite the existence of confidentiality agreements and other measures. While we try to ensure that the quality of our brand and branded products is maintained by all our franchisees, we cannot be certain that these franchisees will not take actions that adversely affect the value of our intellectual property or reputation. If any of our trade secrets or

information were to be disclosed to or independently developed by a competitor, it could have a material adverse effect on our business, financial condition and results of operations.

***Litigation with respect to intellectual property assets, if decided against us, may result in competing uses or require adoption of new, non-infringing intellectual property, which may in turn adversely affect sales and revenues.***

There can be no assurance that third parties will not assert infringement or misappropriation claims against us, or assert claims that our rights in our trademarks, service marks, trade names and other intellectual property assets are invalid or unenforceable. Any such claims could have a material adverse effect on us or our franchisees if such claims were to be decided against us. If our rights in our intellectual property were invalidated or deemed unenforceable, we may not be able to prevent third parties from using such intellectual property or similar intellectual property to compete with us, which, in turn, could lead to a decline in our brand and the goodwill associated therewith and the results of operations. If our intellectual property became subject to third-party infringement, misappropriation or other claims, and such claims were decided against us, we may be forced to pay damages, be required to develop or adopt non-infringing intellectual property or be obligated to acquire a license to the intellectual property that is the subject of the asserted claim. There could be significant expenses associated with the defense of any infringement, misappropriation, or other third-party claims. We may also from time to time be required to institute litigation to enforce our trademarks, service marks and other intellectual property. Any such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on our business, financial condition and results of operations regardless of whether we are able to successfully enforce our rights.

**Risks Related to Employees and the Workforce**

***We depend on our executive officers and certain other key employees, the loss of whom could have a material adverse effect on our business, financial condition and results of operations.***

We rely upon the accumulated knowledge, skills and experience of our executive officers and certain other key employees. Our chief executive officer has been with us for more than 14 years and our executive officers have a combined total of 78 years of experience in the food service industry. The loss of the services of any of our executive officers could have a material adverse effect on our business, financial condition and results of operations, as we may not be able to find suitable individuals to replace such personnel on a timely basis or without incurring increased costs, or at all. If our executive officers were to leave us or become incapacitated, it might negatively impact our planning and execution of business strategy and operations. We believe that our future success will depend on our continued ability to attract and retain highly skilled and qualified executive personnel. There is a high level of competition for experienced, successful executive personnel in our industry. Our inability to meet our executive staffing requirements in the future could have a material adverse effect on our business, financial condition and results of operations.

***Our inability to identify qualified individuals for our workforce could slow our growth and adversely impact our ability to operate our restaurants.***

We believe that the “You First” culture of our employee workforce is a key factor to our success. Accordingly, our success depends in part upon our ability to attract, motivate and retain a sufficient number of qualified managers and employees to meet the needs of our existing restaurants and to staff new restaurants. A sufficient number of qualified individuals to fill these positions may be in short supply in some communities. Competition in these communities for qualified staff could require us to pay higher wages and provide greater benefits. We place a heavy emphasis on the qualification and training of our personnel and spend a significant amount of time and money on training our employees. Any inability to recruit and retain qualified individuals may result in higher turnover and increased labor costs, and could compromise the quality of our service, could have a material adverse effect on our business, financial condition and results of operations. Any such inability

could also delay the planned openings of new restaurants and could adversely impact our existing restaurants. The inability to retain or recruit qualified employees, increased costs of attracting qualified employees or delays in restaurant openings could have a material adverse effect on our business, financial condition and results of operations. The COVID-19 pandemic has created staffing complexities for us and other restaurant operators and, on April 13, 2020, to help ensure the safety of our employees, we temporarily suspended all operations at the company-owned restaurants. On May 18, 2020, in conjunction with municipal health and safety mandates, we began to reopen our company-owned restaurants in four phases, and substantially all our restaurants were open by the end of June 2020. We reopened all of our restaurants in a new environment, filled with increased complexity for our employees and managers, a decreased applicant pool for all positions, safety concerns, and ongoing staff call-outs and exclusions due to illness. The COVID-19 pandemic has also resulted in aggressive competition for talent, wage inflation and pressure to improve benefits and workplace conditions to remain competitive. Furthermore, due to the COVID-19 pandemic, we could experience a shortage of labor for restaurant positions as concern over exposure to COVID-19, any shortage of either fully vaccinated workers or those who are able to produce a negative test result on a weekly basis and other factors could decrease the pool of available qualified talent for key functions. In addition, our existing wages and benefits programs, combined with the challenging conditions due to the COVID-19 pandemic and the highly competitive wage pressure resulting from the labor shortage, may be insufficient to attract and retain the best talent. Our failure to recruit and retain new restaurant employees in a timely manner or higher employee turnover levels all could affect our ability to open new restaurants and grow sales at existing restaurants, and we may experience higher than projected labor costs.

***The failure to obtain or to properly verify the employment eligibility of our employees could have a material adverse effect on our business, financial condition and results of operations.***

Although we require all workers to provide us with government-specified documentation evidencing their employment eligibility, some of our employees may, without our knowledge, be unauthorized workers. We currently participate in the “E-Verify” program, an Internet-based, free program run by the U.S. government to verify employment eligibility, in states in which participation is required. However, use of the “E-Verify” program does not guarantee that we will properly identify all applicants who are ineligible for employment. Unauthorized workers are subject to deportation and may subject us to fines or penalties, and if any of our workers are found to be unauthorized, we could experience adverse publicity that may negatively impact our brand and may make it more difficult to hire and keep qualified employees. Termination of a significant number of employees who are unauthorized employees may disrupt our operations, cause temporary increases in our labor costs as we train new employees and result in adverse publicity. We could also become subject to fines, penalties and other costs related to claims that we did not fully comply with all recordkeeping obligations of federal and state immigration compliance laws. Failure by our franchisees to comply with employment eligibility or immigration laws may also result in adverse publicity and reputational harm to our brand and could subject them to fines, penalties and other costs. These factors could materially adversely affect our business, financial condition and results of operations.

***Failure to maintain our corporate culture as we grow could have a material adverse effect on our business, financial condition and results of operations.***

We believe that a critical component to our success has been our corporate culture. We have invested substantial time and resources in building our team. As we continue to grow, we may find it difficult to maintain the innovation, teamwork, passion and focus on execution that we believe are important aspects of our corporate culture. Any failure to preserve our culture could negatively impact our operations, including our ability to retain and recruit personnel and to effectively focus on and pursue our corporate objectives. If we cannot maintain our corporate culture as we grow, it could have a material adverse effect on our business, financial condition and results of operations.

***Unionization activities may disrupt our operations and increase our costs.***

Although none of our employees are currently covered under collective bargaining agreements, our employees may elect to be represented by labor unions in the future. If a significant number of our employees were to become unionized and collective bargaining agreement terms were significantly different from our current compensation arrangements, it could have a material adverse effect on our business, financial condition and results of operations. In addition, a labor dispute involving some or all our employees may harm our reputation, disrupt our operations and reduce our revenues, and resolution of disputes could increase our costs. Further, if we enter into a new market with unionized construction companies, or the construction companies in our current markets become unionized, construction and build-out costs for new restaurants in such markets could materially increase.

**Legal and Regulatory Risks**

***Matters relating to employment and labor law could have a material adverse effect on our business, financial condition and results of operations and restaurant companies have been the target of class action lawsuits and other proceedings alleging violations of workplace and employment laws. Proceedings of this nature are costly, divert management attention and, if successful could result in our payment of substantial damages or settlement costs.***

Various federal and state labor laws govern our relationships with our employees. Our operations are subject to the U.S. Occupational Safety and Health Act, which governs worker health and safety, the U.S. Fair Labor Standards Act, which governs such matters as minimum wages and overtime, and a variety of similar federal, state and local laws that govern these and other employment law matters. These laws include employee classifications as exempt or non-exempt, minimum wage requirements, workers' compensation rates, overtime, family leave, working conditions, safety standards, immigration status, unemployment tax rates, state and local payroll taxes, federal and state laws which prohibit discrimination, citizenship requirements and other wage and benefit requirements for employees classified as non-exempt. Significant additional government regulations and new laws, including mandated increases in minimum wages, changes in exempt and non-exempt status, or mandated benefits such as health insurance could have a material adverse effect on our business, financial condition and results of operations.

Our business is subject to the risk of litigation by employees, consumers, suppliers, franchisees, stockholders or others through private actions, class actions, administrative proceedings, regulatory actions or other litigation. Moreover, claims asserted against franchisees may at times be made against us as a franchisor. The outcome of litigation, particularly class action and regulatory actions, is difficult to assess or quantify. In recent years, restaurant companies, including us, have been subject to lawsuits, including class action lawsuits, alleging violations of federal and state laws regarding workplace and employment conditions, discrimination and similar matters. A number of these lawsuits have resulted in the payment of substantial damages by the defendants. Similar lawsuits have been instituted from time to time alleging violations of various federal and state wage and hour laws regarding, among other things, employee meal deductions, overtime eligibility of managers and failure to pay for all hours worked. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations and result in increases in our insurance premiums. In addition, they may generate negative publicity, which could reduce customer traffic and sales. Although we maintain what we believe to be adequate levels of insurance, insurance may not be available at all or in sufficient amounts to cover any liabilities with respect to these or other matters. A judgment or other liability in excess of our insurance coverage for any claims or any adverse publicity resulting from claims could have a material adverse effect on our business, financial condition and results of operations.

***We could be party to litigation that could distract management, increase our expenses or subject us to material monetary damages or other remedies.***

Our customers occasionally file complaints or lawsuits against us alleging we caused an illness or injury they suffered at or after a visit to our restaurants, or that we have problems with food quality or operations. We may also be subject to a variety of other claims arising in the ordinary course of our business, including personal injury claims, contract claims and claims alleging violations of federal and state law regarding workplace and employment matters, equal opportunity, harassment, discrimination and similar matters, and we could become subject to class action or other lawsuits related to these or different matters in the future. In recent years, a number of restaurant companies have been subject to such claims, and some of these lawsuits have resulted in the payment of substantial damages by the defendants. Regardless of whether any claims against us are valid, or whether we are ultimately held liable, claims may be expensive to defend and may divert time and money away from our operations and hurt our performance. A judgment in excess of our insurance coverage for any claims could have a material adverse effect on our business, financial condition and results of operations. In addition, such allegations could result in adverse publicity and negatively impact our reputation, which could have a material adverse effect on our business, financial condition and results of operations.

In addition, the restaurant industry has been subject to a growing number of claims based on the nutritional content of food products sold and disclosure and advertising practices. We may also be subject to this type of proceeding in the future and, even if we are not, publicity about these matters (particularly directed at the fast casual or traditional fast food segments of the industry) may harm our reputation and could have a material adverse effect on our business, financial condition and results of operations.

***If we and our franchisees face labor shortages or increased labor costs or health care costs, it could have a material adverse effect on our business, financial condition and results of operations.***

Labor is a primary component in the cost of operating our restaurants. If we or our franchisees face labor shortages or increased labor costs because of increased competition for employees, higher employee-turnover rates, unionization of restaurant workers, or increases in the federally-mandated or state-mandated minimum wage, change in exempt and non-exempt status, unemployment tax rates, workers' compensation rates, overtime, family leave, safety standards, payroll taxes, citizenship requirements or other employee benefits costs (including costs associated with health insurance coverage or workers' compensation insurance), our operating expenses could increase and our growth could be adversely affected.

We have a substantial number of hourly employees who are paid wage rates at or based on the applicable federal or state minimum wage and increases in the minimum wage will increase our labor costs and the labor costs of our franchisees. Additionally, we operate in states and localities where the minimum wage is significantly higher than the federal minimum wage and in such areas our staff members receive minimum compensation equal to the state's or locality's minimum wage. In other geographic areas, some of our staff members may be paid a tip credit wage that is supplemented by gratuities received from our customers. We rely on our employees to accurately disclose the full amount of their tip income, and we base our Federal Insurance Contributions Act tax reporting on the disclosures provided to us by such employees. Increases in the tip credit minimum wage in these states or localities, or under federal law, may have a material adverse effect on our labor costs, and our financial performance. Increases in federal or state minimum wage may also result in increases in the wage rates paid for non-minimum wage positions. We may be unable to increase our menu prices in order to pass future increased labor costs on to our customers, in which case our operating margins would be negatively affected. If menu prices are increased by us or our franchisees to cover increased labor costs, the higher prices could adversely affect demand for our menu items, resulting in lower sales and decreased franchise revenues.

In addition, our success depends in part upon our and our franchisees' ability to attract, motivate and retain a sufficient number of well-qualified restaurant operators, management personnel and other employees. Qualified individuals needed to fill these positions can be in short supply in some geographic areas. Competition for these

employees could require us or our franchisees to pay higher wages, which could also result in higher labor costs. In addition, limited service restaurants have traditionally experienced relatively high employee turnover rates. Although we have not yet experienced any significant problems in recruiting employees, our and our franchisees' ability to recruit and retain such individuals may delay the planned openings of new restaurants or result in higher employee turnover in existing restaurants, which could increase our and our franchisees' labor costs and have a material adverse effect on our business, financial condition and results of operations.

We are also subject in the ordinary course of business to employee claims against us based, among other things, on discrimination, harassment, wrongful termination, or violation of wage and labor laws. Such claims could also be asserted against us by employees of our franchisees. These claims may divert our financial and management resources that would otherwise be used to benefit our operations. The ongoing expense of any resulting lawsuits, and any substantial settlement payment or damage award against us, could have a material adverse effect on our business, financial condition and results of operations.

With the passage in 2010 of the U.S. Patient Protection and Affordable Care Act (the "ACA"), we are required to provide affordable coverage, as defined in the ACA, to all employees, or otherwise be subject to a payment per employee based on the affordability criteria in the ACA. Additionally, some states and localities have passed state and local laws mandating the provision of certain levels of health benefits by some employers. Increased health care and insurance costs could have a material adverse effect on our business, financial condition and results of operations. In addition, changes in federal or state workplace regulations could adversely affect our ability to meet our financial targets.

***We are exposed to risks associated with leasing property subject to long-term and non-cancelable leases and may be unable to renew leases at the end of their terms.***

Many of our restaurant leases are non-cancelable and typically have initial terms of 10 years, providing for two to four renewal options of five years each as well as rent escalations. Generally, our leases are triple-net leases that require us to pay our share of the costs of real estate taxes, utilities, building operating expenses, insurance and other charges in addition to rent. We generally cannot cancel these leases, and additional sites that we lease are likely to be subject to similar long-term non-cancelable leases. Even if we close a restaurant, we are required to perform our obligations under the applicable lease, which could include, among other things, a payment of the base rent, property taxes, insurance and common area maintenance costs for the balance of the lease term, which would impact our profitability. Due to the COVID-19 pandemic, on April 13, 2020, to help ensure the safety of our employees, we temporarily suspended all operations at the company-owned restaurants and negotiated extensively with our landlords primarily for rent abatements and rent deferrals and certain modified obligations under our leases, but we still may not be able to recover our investment in these properties. In addition, as leases expire for restaurants that we will continue to operate, we may, at the end of the lease term and any renewal period for a restaurant, be unable to negotiate renewals, either on commercially acceptable terms or at all. As a result, we may close or relocate the restaurant, which could subject us to construction costs related to leasehold improvements and other costs and risks. Additionally, the revenues and profit, if any, generated at a relocated restaurant may not equal the revenues and profit generated at the existing restaurant.

***Our business is subject to risks related to our sale of alcoholic beverages.***

We serve alcoholic beverages at our restaurants. Alcoholic beverage control regulations generally require our restaurants to apply to a state authority and, in certain locations, county or municipal authorities for a license that must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of daily operations of our restaurants, including minimum age of patrons and employees, hours of operation, advertising, trade practices, wholesale purchasing, other relationships with alcoholic beverages manufacturers, wholesalers and distributors, inventory control and handling, storage and dispensing of alcoholic beverages. Any future failure to comply with these regulations and obtain or retain licenses could have a material adverse effect on our business, financial condition and results of operations.

We are also subject in certain states to “dram shop” statutes, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. We carry liquor liability coverage as part of our existing comprehensive general liability insurance. Recent litigation against restaurant chains has resulted in significant judgments and settlements under dram shop statutes. Because these cases often seek punitive damages, which may not be covered by insurance, such litigation could have a material effect on our business, financial condition and results of operations. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from operations and hurt our financial performance. A judgment significantly in excess of our insurance coverage or not covered by insurance could have a material adverse effect on our business, financial condition and results of operations.

***We are subject to many federal, state and local laws with which compliance is both costly and complex.***

The restaurant industry is subject to extensive federal, state and local laws and regulations, including the recently enacted comprehensive health care reform legislation discussed above, those relating to building and zoning requirements and those relating to the preparation and sale of food. Such laws and regulations are subject to change from time to time. The failure to comply with these laws and regulations could adversely affect our results of operations. Typically, licenses, permits and approvals under such laws and regulations must be renewed annually and may be revoked, suspended or denied renewal for cause at any time if governmental authorities determine that our conduct violates applicable regulations. Difficulties or failure to maintain or obtain the required licenses, permits and approvals could adversely affect our existing restaurants and delay or result in our decision to cancel the opening of new restaurants, which could have a material adverse effect on our business, financial condition and results of operations.

The development and operation of our restaurants depend, to a significant extent, on the selection of suitable sites, which are subject to zoning, land use, environmental, traffic and other regulations and requirements. We are also subject to licensing and regulation by state and local authorities relating to health, sanitation, safety and fire standards.

There is also a potential for increased regulation of certain food establishments in the United States, where compliance with a Hazard Analysis and Critical Control Points (“HACCP”) approach would be required. HACCP refers to a management system in which food safety is addressed through the analysis and control of potential hazards from production, procurement and handling, to manufacturing, distribution and consumption of the finished product. Many states have required restaurants to develop and implement HACCP Systems, and the United States government continues to expand the sectors of the food industry that must adopt and implement HACCP programs. For example, the Food Safety Modernization Act (“FSMA”), signed into law in January 2011, granted the U.S. Food and Drug Administration new authority regarding the safety of the entire food system, including through increased inspections and mandatory food recalls. Although restaurants are specifically exempted from or not directly implicated by some of these requirements, we anticipate that the requirements may impact our industry. Additionally, our suppliers may initiate or otherwise be subject to food recalls that may impact the availability of certain products, result in adverse publicity or require us to take actions that could be costly for us or otherwise impact our business. We may be required to incur additional time and resources to comply with new food safety requirements made under FSMA or other federal or state food safety regulations. Failure to comply with the laws and regulatory requirements of federal, state and local authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, many applicable laws could require us to expend significant funds to make modifications to our restaurants or operations to comply with such laws. Compliance with these laws can be costly and may increase our exposure to litigation or governmental investigations or proceedings.

We are subject to the Americans with Disabilities Act (the “ADA”), which, among other things, requires our restaurants to meet federally mandated requirements for the disabled. The ADA prohibits discrimination in employment and public accommodations on the basis of disability. Under the ADA, we could be required to

expend funds to modify our restaurants to provide service to, or make reasonable accommodations for the employment of, disabled persons. In addition, our employment practices are subject to the requirements of the Immigration and Naturalization Service relating to citizenship and residency.

In addition, our franchising activities are subject to laws enacted by a number of states, rules and regulations promulgated by the FTC and certain rules and requirements regulating licensing activities in foreign countries. Failure to comply with new or existing licensing laws, rules and regulations in any jurisdiction or to obtain required government approvals could negatively affect our licensing sales and our relationships with our franchisees.

The impact of current laws and regulations, the effect of future changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, or our inability to respond effectively to significant regulatory or public policy issues, could increase our compliance and other costs of doing business and could have a material adverse effect on our business, financial condition and results of operations. Failure to comply with the laws and regulatory requirements of federal, state and local authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, certain laws, including the ADA, could require us to expend significant funds to make modifications to our restaurants if we failed to comply with applicable standards. Compliance with all these laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings.

**Risks Related to Accounting and Financial Reporting Matters**

***Changes in accounting principles applicable to us could have a material adverse effect on our financial condition and results of operations.***

Generally accepted accounting principles in the U.S. are subject to interpretation by the Financial Accounting Standards Board (“FASB”), the American Institute of Certified Public Accountants, the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our financial condition and results of operations, and could affect the reporting of transactions completed before the announcement of a change.

***An impairment in the carrying value of our goodwill or indefinite-lived intangible assets could have a material adverse effect on our financial condition and results of operations.***

As of June 27, 2021, we had $345.2 million of goodwill and $137.8 million of indefinite-lived intangible assets. We test goodwill and indefinite-lived intangible assets for impairment annually on the first day of the fourth quarter of each fiscal year and whenever events or changes in circumstances indicate that impairment may have occurred. We performed a quantitative annual impairment assessment of goodwill and indefinite-lived intangible assets in April 2020 as the effect of the COVID-19 pandemic was considered a triggering event indicating that the carrying value of goodwill and indefinite-lived intangible assets may not be recoverable. We also performed an annual impairment test for both goodwill and indefinite-lived intangible assets on the first day of the fourth quarter of fiscal 2020. We did not recognize any impairment losses in fiscal 2020. Following our strategic review of our restaurant operations and our assessment of The Egg & I tradename in the second quarter of fiscal 2019, we recognized a non-cash impairment charge of $29.0 million related to the indefinite-lived intangible asset and the remaining net book value of $0.3 million was amortized through the end of fiscal 2019. We performed a qualitative annual impairment test for both goodwill and indefinite-lived intangible assets on the first day of the fourth quarter of fiscal 2019 and we did not recognize any additional impairment losses in fiscal 2019 as a result of this assessment.

We cannot accurately predict the amount and timing of any impairment of assets and an impairment test in the future may indicate that an impairment has occurred. In the event that the book value of goodwill or other

indefinite-lived intangible assets is impaired, any such impairment would be charged to earnings in the period of impairment and could have a material adverse effect on our financial condition and results of operations. See Note 6, *Goodwill* and Note 7, *Intangible Assets, Net* in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

***Changes to estimates related to our long-lived assets and definite-lived intangible assets or operating results that are lower than our current estimates at certain restaurant locations may cause us to incur impairment losses on certain long-lived assets, which may adversely affect our results of operations.***

Changes to estimates related to our property, fixtures and equipment and definite-lived intangible assets or operating results that are lower than our current estimates at certain restaurant locations may cause us to incur impairment losses or accelerate the amortization on certain long-lived assets, which may adversely affect our results of operations. We evaluated our long-lived assets at company-owned restaurants for impairment in April 2020 as the effect of the COVID-19 pandemic was considered a triggering event indicating that the carrying values of our property, fixtures and equipment and definite-lived intangible assets may not be recoverable and we did not recognize any impairment losses. Following our strategic review of our restaurant operations and our assessment of The Egg & I franchise rights in the second quarter of fiscal 2019, we recognized a non-cash impairment charge of $3.2 million related to the definite-lived intangible assets and accelerated the amortization of the remaining net book value through the end of fiscal 2019. The remaining net book value of the definite-lived intangible assets were amortized through the end of fiscal 2019. See Note 7, *Intangible Assets, Net* in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

***Compliance with environmental laws or liabilities arising from environmental laws could increase our operating expenses and could have a material adverse effect on our business, financial condition and results of operations.***

We are subject to federal, state and local laws, regulations and ordinances that:

- govern activities or operations that may have adverse environmental effects, such as discharges to air and water, as well as waste handling and disposal practices for solid and hazardous wastes; and
- impose liability for the costs of cleaning up, and damage resulting from, sites of past spills, disposals or other releases of hazardous materials.

In particular, under applicable environmental laws, we may be responsible for remediation of environmental conditions and may be subject to associated liabilities, including liabilities for clean-up costs and personal injury or property damage, relating to our restaurants and the land on which our restaurants are located, regardless of whether such environmental conditions were created by us or by a prior owner or tenant. These environmental laws provide for significant fines and penalties for non-compliance and liabilities for remediation, sometimes without regard to whether the owner or operator of the property knew of, or was responsible for, the release or presence of hazardous toxic substances. Third parties may also make claims against owners or operators of properties for personal injuries and property damage associated with releases of, or actual or alleged exposure to, such hazardous or toxic substances at, on or from our restaurants. If we are found liable for the costs of remediating contamination at any of our properties, our operating expenses would likely increase and such finding could have a material adverse effect on our business, financial condition and results of operations. Some of our leases provide for indemnification of our landlords for environmental contamination, clean-up or owner liability. See “Business – Environmental Matters.”

Further, environmental laws and regulations, and the administration, interpretation and enforcement thereof, are subject to change and may become more stringent in the future, which could have a material adverse effect on our business, financial condition and results of operations.

***Our insurance may not provide adequate levels of coverage against claims.***

We believe that we maintain insurance customary for businesses of our size and type. However, there are types of losses we may incur that cannot be insured against or that we believe are not economically reasonable to insure. Such losses could have a material adverse effect on our business, financial condition and results of operations.

***Natural disasters, unusual weather conditions, pandemic outbreaks, political events, war and terrorism could disrupt our business and result in lower sales, increased operating costs and capital expenditures.***

Our Home Office, company-owned and franchised restaurant locations, third-party sole distributor and its facilities, as well as certain of our vendors and customers, are located in areas that have been and could be subject to natural disasters such as floods, hurricanes, tornadoes, fires or earthquakes. As a result of the concentration of our restaurants in the southeast portion of the United States, adverse weather conditions or other extreme changes in the weather, including those that may result in electrical and technological failures, may disrupt our and our franchisees' business and may adversely affect our and our franchisees' ability to obtain food and supplies and sell menu items. Our business may be harmed if our or our franchisees' ability to obtain food and supplies and sell menu items is impacted by any such events, any of which could influence customer trends and purchases and may negatively impact our and our franchisees' revenues, properties or operations. Such events could result in physical damage to one or more of our or our franchisees' properties, the temporary closure of some or all of our company-owned restaurants, franchised restaurants and third-party sole distributor, the temporary lack of an adequate work force in a market, temporary or long-term disruption in the transport of goods, delay in the delivery of goods and supplies to our company-owned and franchised restaurants and third-party sole distributor, disruption of our technology support or information systems, or fuel shortages or dramatic increases in fuel prices, all of which would increase the cost of doing business. These events also could have indirect consequences such as increases in the costs of insurance if they result in significant loss of property or other insurable damage. Any of these factors, or any combination thereof, could have a material adverse effect on our business, financial condition and results of operations.

***We have identified material weaknesses in our internal control over financial reporting, which could result in us failing to detect material misstatements of our consolidated financial statements or failing to prevent fraud. If our remediation of the material weaknesses is not effective, or if we otherwise fail to maintain effective internal control over financial reporting in the future, we may not be able to accurately or timely report our financial condition or results of operations, which, in turn, could negatively impact the market value of our common stock.***

Upon becoming a public company, we will be required to comply with Section 404 of the Sarbanes-Oxley Act ("Section 404"), which will require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of our internal control over financial reporting commencing with our second annual report after this offering. In addition, under Section 404 our independent registered public accounting firm will also need to attest to the effectiveness of our internal control over financial reporting in the future to the extent that we are no longer an emerging growth company. To achieve compliance with Section 404 within the prescribed period, we will need to continue to dedicate internal resources, engage outside consultants and continue to execute on a detailed work plan to assess and document the adequacy of our internal control over financial reporting, continue taking steps to improve control processes, as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. Despite our efforts, there is a risk that we will not be able to conclude, within the prescribed timeframe or at all, that our internal control over financial reporting is effective.

In connection with the preparation of our consolidated financial statements, we identified material weaknesses in our internal control over financial reporting. The material weaknesses we identified were as follows:

We did not design and maintain an effective internal control environment commensurate with the financial reporting requirements of a public company. Specifically, we lacked a sufficient complement of personnel with an appropriate level of knowledge, experience and training in internal control over financial reporting and the reporting requirements of a public company. Additionally, we did not formally delegate authority or establish appropriate segregation of duties in our finance and accounting functions. As a result, we did not perform an effective risk assessment nor did we design and maintain internal controls in response to the risks of material misstatement. These material weaknesses contributed to the following material weaknesses:

- We did not design and maintain effective controls over the period-end financial reporting process, including controls over the preparation and review of account reconciliations and journal entries, and the appropriate classification and presentation of accounts and disclosures in the consolidated financial statements. This material weakness resulted in adjustments to accruals and within the statement of cash flows in our fiscal 2018 consolidated financial statements, which were recorded prior to the issuance of our fiscal 2018 consolidated financial statements.
- We did not design and maintain effective controls over the accounting for income taxes over the recording of deferred income taxes and the assessment of the realization of deferred tax assets. This material weakness resulted in adjustments to the income tax benefit, deferred taxes, goodwill, and liabilities in our fiscal 2018 consolidated financial statements, which were recorded prior to the issuance of our fiscal 2018 consolidated financial statements. This material weakness also resulted in immaterial adjustments to the income tax benefit and deferred taxes and related disclosures in the fiscal 2017 and 2019 consolidated financial statements, which were corrected in the fiscal 2019 and 2020 consolidated financial statements, respectively.
- We did not design and maintain effective controls over information technology general controls for information systems and applications that are relevant to the preparation of the consolidated financial statements. Specifically, we did not design and maintain: sufficient user access controls to ensure appropriate segregation of duties and adequately restrict user and privileged access to financial applications, programs and data to appropriate Company personnel; program change management controls to ensure that information technology program and data changes affecting financial information technology applications and underlying accounting records are identified, tested, authorized and implemented appropriately; computer operations controls to ensure that critical batch jobs are monitored, privileges are appropriately granted, and data backups are authorized and monitored; and testing and approval controls for program development to ensure that new software development is aligned with business and information technology requirements. The deficiencies, when aggregated, could impact our ability to maintain effective segregation of duties, as well as the effectiveness of information technology-dependent controls (such as automated controls that address the risk of material misstatement to one or more assertions, along with the information technology controls and underlying data that support the effectiveness of system-generated data and reports) that could result in misstatements potentially impacting all financial statement accounts and disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected. Therefore, we concluded the information technology deficiencies resulted in a material weakness. However, these information technology deficiencies did not result in any misstatements to the consolidated financial statements.

Additionally, each of the aforementioned material weaknesses could result in a misstatement of the consolidated financial statements that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected.

We have taken certain measures to remediate the material weaknesses described above, including hiring additional personnel, designing and implementing formal procedures and controls supporting the Company's period-end financial reporting process, such as controls over the preparation and review of account reconciliations and disclosures in the consolidated financial statements and designing certain information technology general controls. We are in the process of implementing additional measures designed to enable us to meet the requirements of being a public company, improve our internal control over financial reporting and remediate the control deficiencies that led to the material weaknesses, including hiring additional information technology, finance and accounting personnel, evaluating our financial and information technology control environment and augmenting our internal controls with new accounting policies and procedures, and designing and implementing financial reporting controls, income tax controls, and information technology general controls.

While we believe that these measures will improve our internal control over financial reporting, the implementation of these measures is ongoing, and we cannot assure you that we will be successful in doing so or that these measures will significantly improve or remediate the material weaknesses described above. We cannot assure you that the measures we have taken to date, and are continuing to implement, will be sufficient to remediate the material weaknesses we have identified or avoid potential future material weaknesses. If the steps we take do not correct the material weaknesses in a timely manner, we will be unable to conclude that we maintain effective internal control over financial reporting. We also cannot assure you that there will not be any additional material weaknesses in our internal control over financial reporting in the future.

We are working to remediate the material weaknesses. At this time, we cannot provide an estimate of costs expected to be incurred in connection with implementing a remediation plan; however, these remediation measures will be time consuming and will place significant demands on our financial and operational resources.

We may not be able to remediate any material weaknesses prior to the deadline imposed by Section 404(a) of the Sarbanes-Oxley Act for management's assessment of internal control over financial reporting. The failure to achieve and maintain effective internal control over financial reporting could have a material adverse effect on our business, financial condition and results of operations. In the event that we are not able to successfully remediate the existing material weaknesses in our internal control over financial reporting or identify additional material weaknesses, or if our internal control over financial reporting is perceived as inadequate or it is perceived that we are unable to produce timely or accurate consolidated financial statements, investors may lose confidence in our results of operations, the price of our common stock could decline, we could become subject to investigations by the stock exchange on which our common stock is listed, the SEC or other regulatory agencies, which could require additional financial and management resources, or our common stock may not be able to remain listed on such exchange.

**Risks Related to Our Indebtedness**

***We might require additional capital to support business growth and this capital might not be available.***

We intend to continue to make investments to support our business growth and may require additional funds to respond to business challenges or opportunities, including the need to open additional restaurants, develop new menu items or enhance our existing menu items, and enhance our operating infrastructure. Accordingly, we may need to engage in equity or debt financings to secure additional funds. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, which could have a material adverse effect on our business, financial condition and results of operations.

***Our level of indebtedness could have a material adverse effect on our business, financial condition and results of operations.***

The total principal amount of debt outstanding under our Senior Credit Facilities, excluding finance lease liabilities, financing obligations and unamortized debt discount and deferred issuance costs as of June 27, 2021 was $288.8 million. Our indebtedness could have significant effects on our business, such as:

- limiting our ability to borrow additional amounts to fund capital expenditures, acquisitions, debt service requirements, execution of our growth strategy and other purposes;
- limiting our ability to make investments, including acquisitions, loans and advances, and to sell, transfer or otherwise dispose of assets;
- requiring us to dedicate a substantial portion of our cash flow from operations to pay principal and interest on our borrowings, which would reduce availability of our cash flow to fund working capital, capital expenditures, acquisitions, execution of our growth strategy and other general corporate purposes;
- making us more vulnerable to adverse changes in general economic, industry and competitive conditions, in government regulation and in our business by limiting our ability to plan for and react to changing conditions;
- placing us at a competitive disadvantage compared with our competitors that have less debt; and
- exposing us to risks inherent in interest rate fluctuations because our borrowings are at variable rates of interest, which could result in higher interest expense in the event of increases in interest rates.

In addition, we may not be able to generate sufficient cash flow from our operations to repay our indebtedness when it becomes due and to meet our other cash needs. If we are not able to pay our borrowings as they become due, we will be required to pursue one or more alternative strategies, such as selling assets, refinancing or restructuring our indebtedness or selling additional debt or equity securities. We may not be able to refinance our debt or sell additional debt or equity securities or our assets on favorable terms, if at all, and if we must sell our assets, it may negatively affect our financial condition and results of operations.

Pursuant to the Credit Agreement (as defined in “Description of Material Indebtedness”), we are required to maintain, on a consolidated basis, a maximum ratio of consolidated total net debt to consolidated EBITDA (with certain adjustments as set forth in the Senior Credit Facilities), tested as of the last day of each fiscal quarter (the “Leverage Financial Covenant”). Our ability to borrow under our Senior Credit Facilities depends on our compliance with this financial covenant. Events beyond our control, including changes in general economic and business conditions, may affect our ability to satisfy the financial covenant. We cannot assure you that we will satisfy the financial covenant in the future, or that our lenders will waive any failure to satisfy the financial covenant.

***The failure to comply with the covenants under our Credit Agreement or the volatile credit and capital markets could have a material adverse effect on our financial condition.***

Our ability to manage our debt is dependent on our level of positive cash flow from company-owned and franchised restaurants. An economic downturn may negatively impact our cash flows. Credit and capital markets can be volatile, which could make it more difficult for us to refinance our existing debt or to obtain additional debt or equity financings in the future. Such constraints could increase our costs of borrowing and could restrict our access to other potential sources of future liquidity. Our failure to comply with the covenants under the Credit Agreement or to have sufficient liquidity to make interest and other payments required by our debt could result in a default of such debt and acceleration of our borrowings, which could have a material adverse effect on our business, financial condition and results of operations.

***The interest rates of loans under our Credit Agreement are priced using a spread over LIBOR.***

LIBOR, the London interbank offered rate, is the basic rate of interest used in lending between banks on the London interbank market and is widely used as a reference for setting the interest rate on loans globally. We typically use LIBOR as a reference rate for the Senior Credit Facilities under our Credit Agreement such that the interest due to the applicable lenders with respect to a term loan or revolving loan under our Senior Credit Facilities is calculated using LIBOR plus an applicable spread above LIBOR. On July 27, 2017, the United Kingdom's Financial Conduct Authority (the "FCA"), which regulates LIBOR, announced that it intends to phase out LIBOR by the end of 2021. On March 5, 2021 the ICE Benchmark Administration, which administers LIBOR, and the FCA announced that all LIBOR settings will either cease to be provided by any administrator, or no longer be representative, immediately after December 31, 2021 for all 1-week and 2-month U.S. dollar LIBOR settings and, immediately after June 30, 2023, for the remaining U.S. dollar LIBOR settings. The Alternative Reference Rates Committee, a steering committee convened by the U.S. Federal Reserve Board and comprised of large U.S. financial institutions, recommended the Secured Overnight Financing Rate as an alternative to LIBOR. If LIBOR ceases to be available, we may seek to amend the Credit Agreement to replace LIBOR with a new standard to the extent one is established. At this time, due to a lack of consensus as to what rate or rates may become accepted alternatives to LIBOR, it is impossible to predict the effect of any such alternatives on our liquidity, interest expense, or the value of the Senior Credit Facilities.

**Risks Related to Our Company and Organizational Structure**

***The interests of Advent may conflict with our interests or the interests of the holders of our common stock in the future.***

Advent engages in a range of investing activities, including investments in restaurants and other consumer-related companies in particular. In the ordinary course of its business activities, Advent may engage in activities where its interests conflict with our interests or those of our stockholders. Our amended and restated certificate of incorporation will contain provisions renouncing any interest or expectancy held by our directors affiliated with Advent in certain corporate opportunities. Accordingly, the interests of Advent may supersede ours, causing them or their affiliates to compete against us or to pursue opportunities instead of us, for which we have no recourse. Such actions on the part of Advent and inaction on our part could have a material adverse effect on our business, financial condition and results of operations. In addition, Advent may have an interest in pursuing acquisitions, divestitures and other transactions that, in its judgment, could enhance its investment in us, even though such transactions might involve risks to you, such as debt-financed acquisitions.

***First Watch Restaurant Group, Inc. is a holding company with no operations and relies on its operating subsidiaries to provide it with funds necessary to meet its financial obligations and to pay dividends.***

First Watch Restaurant Group, Inc. is a holding company with no material direct operations. First Watch Restaurant Group, Inc.'s principal assets are the equity interests it indirectly holds in its operating subsidiaries which own our operating assets. As a result, First Watch Restaurant Group, Inc. is dependent on loans, dividends and other payments from its operating subsidiaries to generate the funds necessary to meet its financial obligations and to pay dividends on its common stock. Its subsidiaries are legally distinct from First Watch Restaurant Group, Inc. and may be prohibited or restricted from paying dividends, including pursuant to the restrictions contained in our Senior Credit Facilities described below, or otherwise making funds available to us under certain conditions. Although First Watch Restaurant Group, Inc. does not expect to pay dividends on its common stock for the foreseeable future, if it is unable to obtain funds from its subsidiaries, it may be unable to, or its board of directors (the "Board") may exercise its discretion not to, pay dividends.

***Our management does not have experience managing a public company and our current resources may not be sufficient to fulfill our public company obligations.***

Following the closing of this offering, we will be subject to various regulatory requirements, including those of the SEC and Nasdaq. These requirements include record keeping, financial reporting and corporate

governance rules and regulations. Our management team does not have experience in managing a public company and, historically, has not had the resources typically found in a public company. Our internal infrastructure may not be adequate to support our increased reporting obligations and we may be unable to hire, train or retain necessary staff and may be reliant on engaging outside consultants or professionals to overcome our lack of experience or employees. If our internal infrastructure is inadequate, we are unable to engage outside consultants at a reasonable rate or attract talented employees to perform these functions or are otherwise unable to fulfill our public company obligations, it could have a material adverse effect on our business, financial condition and results of operations.

***For as long as we are an emerging growth company, we will not be required to comply with certain reporting requirements, including those relating to accounting standards and disclosure about our executive compensation, that apply to other public companies.***

We are an emerging growth company, as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act. As such, we are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a non-binding advisory vote on executive compensation and of stockholder approval of any golden parachute payments not previously approved. We may take advantage of some of these exemptions. If we do, we do not know if some investors will find our common stock less attractive as a result. The result may be a less-active trading market for our common stock and our stock price may be more volatile.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this exemption and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

We could remain an emerging growth company for up to five years or until the earliest of (a) the last day of the first fiscal year in which our annual gross revenues exceed $1.07 billion, (b) the date that we become a large accelerated filer as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock that is held by non-affiliates exceeds $700 million as of the last business day of our most recently completed second fiscal quarter, or (c) the date on which we have issued more than $1 billion in non-convertible debt securities in the preceding three-year period.

***Delaware law and our organizational documents, as well as our existing and future debt agreements, may impede or discourage a takeover, which could deprive our investors of the opportunity to receive a premium for their shares.***

We are a Delaware corporation, and the anti-takeover provisions of Delaware law impose various impediments to the ability of a third party to acquire control of us, even if a change of control would be beneficial to our existing stockholders. In addition, provisions of our amended and restated certificate of incorporation and bylaws that will be effective upon closing of this offering may make it more difficult for, or prevent a third party from, acquiring control of us without the approval of our Board. Among other things, these provisions:

- provide for a classified Board with staggered three-year terms;
- do not permit cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;

- delegate the sole power of a majority of the Board to fix the number of directors;
- provide the power of our Board to fill any vacancy on our Board, whether such vacancy occurs as a result of an increase in the number of directors or otherwise;
- authorize the issuance of "blank check" preferred stock without any need for action by stockholders;
- eliminate the ability of stockholders to call special meetings of stockholders; and
- establish advance notice requirements for nominations for election to our Board or for proposing matters that can be acted on by stockholders at stockholder meetings.

In addition, our Senior Credit Facilities impose, and we anticipate that documents governing our future indebtedness may impose, limitations on our ability to enter into change of control transactions. Thereunder, the occurrence of a change of control transaction could constitute an event of default permitting acceleration of the indebtedness, thereby impeding our ability to enter into certain transactions.

The foregoing factors, as well as the significant common stock ownership by Advent could impede a merger, takeover, or other business combination, or discourage a potential investor from making a tender offer for our common stock, which, under certain circumstances, could reduce the market value of our common stock. See "Description of Capital Stock."

***Our amended and restated certificate of incorporation will designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders and will designate the federal district courts of the United States of America as the sole and exclusive forum for claims arising under the Securities Act of 1933, as amended, which, in each case, could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees, agents or other stockholders.***

Our amended and restated certificate of incorporation provides that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware or, if the Court of Chancery lacks jurisdiction, a state court located within the State of Delaware or the federal district court for the District of Delaware, shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (a) derivative action or proceeding brought on behalf of the Corporation; (b) action asserting a claim of breach of a fiduciary duty owed by or other wrongdoing by any current or former director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders; (c) action asserting a claim arising under any provision of the Delaware General Corporation Law (the "DGCL") or this Certificate or the Bylaws (as either may be amended from time to time), or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; or (d) action asserting a claim governed by the internal affairs doctrine. For the avoidance of doubt, our amended and restated certificate of incorporation also provides that the foregoing exclusive forum provision does not apply to actions brought to enforce any liability or duty created by the Securities Act or the Exchange Act, or any other claim or cause of action for which the federal courts have exclusive jurisdiction.

Our amended and restated certificate of incorporation also provides that, unless we consent in writing to an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any action asserting a claim arising under the Securities Act or the rules and regulations promulgated thereunder. Pursuant to the Exchange Act, claims arising thereunder must be brought in federal district courts of the United States of America.

To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in any shares of our capital stock shall be deemed to have notice of and consented to the forum provision in our amended and restated certificate of incorporation. This choice of forum provision may limit a stockholder's ability to bring a claim in a different judicial forum, including one that it may find favorable or convenient for a specified class of disputes with us or our directors, officers, other stockholders, or employees, which may

discourage such lawsuits, make them more difficult or expensive to pursue, and result in outcomes that are less favorable to such stockholders than outcomes that may have been attainable in other jurisdictions. By agreeing to this provision, however, stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. If a court were to find the choice of forum provisions in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could have a material adverse effect on our business, financial condition and results of operations.

**Risks Related to this Offering and Ownership of Our Common Stock**

***Future offerings of debt or equity securities by us may have a material adverse effect on the market price of our common stock***

In the future, we may attempt to obtain financing or to further increase our capital resources by issuing additional shares of our common stock or by offering debt or other equity securities, including senior or subordinated notes, debt securities convertible into equity or shares of preferred stock.

Any future debt financing could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, which might make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. Moreover, if we issue debt securities, the debt holders would have rights to make claims on our assets senior to the rights of our holders of our common stock. The issuance of additional shares of our common stock or other equity securities or securities convertible into equity may dilute the economic and voting rights of our existing stockholders or reduce the market price of our common stock or both. Debt securities convertible into equity could be subject to adjustments in the conversion ratio pursuant to which certain events may increase the number of equity securities issuable upon conversion. Preferred shares could have a preference with respect to liquidating distributions or a preference with respect to dividend payments that could limit our ability to pay dividends to the holders of our common stock. Our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, which may have a material adverse effect on the amount, timing, or nature of our future offerings. Thus, holders of our common stock bear the risk that our future offerings may reduce the market price of our common stock and dilute their stockholdings in us.

***If the ownership of our common stock continues to be highly concentrated, it may prevent you and other minority stockholders from influencing significant corporate decisions and may result in conflicts of interest.***

Following the closing of this offering, Advent will indirectly beneficially own approximately 81% of our outstanding common stock, or approximately 79% if the underwriters' option to purchase additional shares is fully exercised. As a result, Advent will beneficially own shares sufficient for majority votes over all matters requiring stockholder votes, including: the election of directors; mergers, consolidations and acquisitions; the sale of all or substantially all of our assets and other decisions affecting our capital structure; amendments to our certificate of incorporation or our bylaws; and our winding up and dissolution.

This concentration of ownership may delay, deter or prevent acts that would be favored by our other stockholders. The interests of Advent may not always coincide with our interests or the interests of our other stockholders. This concentration of ownership may also have the effect of delaying, preventing or deterring a change in control of us. Also, Advent may seek to cause us to take courses of action that, in its judgment, could enhance its investment in us, but which might involve risks to our other stockholders or adversely affect us or our other stockholders, including investors in this offering. As a result, the market price of our common stock could decline or stockholders might not receive a premium over the then-current market price of our common stock upon a change in control. In addition, this concentration of share ownership may adversely affect the trading

price of our common stock because investors may perceive disadvantages in owning shares in a company with significant stockholders. See “Principal Stockholders” and “Description of Capital Stock – Anti-takeover Provisions.”

***As a controlled company, we will not be subject to all of the corporate governance rules of Nasdaq.***

Upon the listing of our common stock on Nasdaq in connection with this offering, we will be considered a “controlled company” under the rules of Nasdaq. Controlled companies are exempt from the corporate governance rules requiring that listed companies have (i) a majority of the board of directors consist of “independent” directors under the listing standards of Nasdaq, (ii) independent director oversight of director nominations and (iii) a compensation committee composed entirely of independent directors. Following this offering, although we are eligible to use some or all of these exemptions, we expect that our board of directors will be comprised of a majority of independent directors, and that our nominating and corporate governance committee and compensation committee will consist entirely of independent directors. However, if we are to use some or all of these exemptions in the future, you may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq. See “Management.”

***We do not anticipate paying any dividends on our common stock in the foreseeable future.***

We do not expect to declare or pay any cash or other dividends in the foreseeable future on our common stock because we intend to use cash flow generated by operations to grow our business. Our Senior Credit Facilities restrict our ability to pay cash dividends on our common stock. We may also enter into other credit agreements or other borrowing arrangements in the future that restrict or limit our ability to pay cash dividends on our common stock. As a result, you may not receive any return on an investment in our common stock unless you sell our common stock for a price greater than that which you paid for it. See “Dividend Policy.”

***Our quarterly results of operations may fluctuate significantly and could fall below the expectations of securities analysts and investors due to seasonality and other factors, some of which are beyond our control, resulting in a decline in our stock price.***

Our quarterly results of operations may fluctuate due principally to seasonal factors and the timing of holidays. Accordingly, results for any one quarter are not necessarily indicative of results to be expected for any other quarter or for any year and same-restaurant sales growth for any particular future period may decrease. In addition, as we expand our number of restaurants in cold weather climates, the seasonality of our business may be amplified. In the future, results of operations may fall below the expectations of securities analysts and investors. In that event, the price of our common stock could be adversely impacted.

***If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. We do not currently have and may never obtain research coverage by securities and industry analysts. If no securities or industry analysts commence coverage of us, the trading price for our common stock would be negatively impacted. If we obtain securities or industry analyst coverage and if one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline. Moreover, if our results of operations do not meet the expectations of the investor community, or one or more of the analysts who cover our company downgrade our stock, our stock price could decline. As a result, you may not be able to sell shares of our common stock at prices equal to or greater than the initial public offering price.

***No market currently exists for our common stock and we cannot assure you that an active market will develop for such stock.***

Prior to this offering, there has been no public market for our common stock. The initial public offering price for our common stock has been determined through negotiations among us and the representatives of the underwriters and may not be indicative of the market price of our common stock after this offering or to any other established criteria of the value of our business. If you purchase shares of our common stock, you may not be able to resell those shares at or above the initial public offering price. We cannot predict the extent to which investor interest in us will lead to the development of an active trading market on Nasdaq or otherwise or how liquid that market might become. An active public market for our common stock may not develop or be sustained after this offering. If an active public market does not develop or is not sustained, it may be difficult for you to sell your shares of common stock at a price that is attractive to you or at all.

***The market price and trading volume of our common stock may be volatile, which could result in rapid and substantial losses for our stockholders, and you may lose all or part of your investment.***

Shares of our common stock sold in this offering may experience significant volatility on Nasdaq. An active, liquid and orderly market for our common stock may not be sustained, which could depress the trading price of our common stock or cause it to be highly volatile or subject to wide fluctuations. The market price of our common stock may fluctuate or may decline significantly in the future and you could lose all or part of your investment. Some of the factors that could negatively affect our share price or result in fluctuations in the price or trading volume of our common stock include:

- variations in our quarterly or annual results of operations;
- changes in our earnings estimates (if provided) or differences between our actual results of operations and those expected by investors and analysts;
- restaurant closures or modified operating hours due to the COVID-19 pandemic;
- reduced customer traffic due to illness, quarantine or government or self-imposed restrictions placed on our restaurants' operations;
- changes in consumer spending behaviors (e.g. continued practice of social distancing, decrease in consumer confidence in general macroeconomic conditions and a decrease in consumer discretionary spending);
- the contents of published research reports about us or our industry or the failure of securities analysts to cover our common stock;
- additions or departures of key management personnel;
- any increased indebtedness we may incur in the future;
- announcements by us or others and developments affecting us;
- actions by institutional stockholders;
- litigation and governmental investigations;
- legislative or regulatory changes;
- judicial pronouncements interpreting laws and regulations;
- changes in government programs;
- changes in market valuations of similar companies;
- speculation or reports by the press or investment community with respect to us or our industry in general;

- announcements by us or our competitors of significant contracts, acquisitions, dispositions, strategic relationships, joint ventures or capital commitments; and
- general market, political and economic conditions, including local conditions in the markets in which we operate.

These broad market and industry factors may decrease the market price of our common stock, regardless of our actual financial performance. The stock market in general has from time to time experienced extreme price and volume fluctuations, including recently. In addition, in the past, following periods of volatility in the overall market and decreases in the market price of a company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources, which could have a material adverse effect on our business, financial condition and results of operations.

***The market price of our common stock could be negatively affected by sales of substantial amounts of our common stock in the public markets.***

After this offering, we will have 57,629,596 shares of common stock outstanding. Of our issued and outstanding shares, all the common stock sold in this offering will be freely transferable, except for any shares held by our "affiliates," as that term is defined in Rule 144 under the Securities Act. Following closing of this offering, approximately 81% of our outstanding common stock, or approximately 79% if the underwriters exercise their option to purchase additional shares in full, will be indirectly beneficially owned by Advent, and can be resold into the public markets in the future in accordance with the requirements of Rule 144. See "Shares Eligible For Future Sale."

We and our officers, directors and holders of substantially all of our outstanding capital stock and other securities have agreed, subject to specified exceptions, not to directly or indirectly:

- sell, offer, contract or grant any option to sell (including any short sale), pledge, transfer, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or
- otherwise dispose of any shares of common stock, options or warrants to acquire shares of common stock, or securities exchangeable or exercisable for or convertible into shares of common stock currently or hereafter owned either of record or beneficially, or
- publicly announce an intention to do any of the foregoing for a period of 180 days after the date of this prospectus without the prior written consent of the representatives of the underwriters.

This restriction terminates after the close of trading of the common stock on and including the 180th day after the date of this prospectus. The representatives of the underwriters may, in their sole discretion and at any time or from time to time before the termination of the 180-day period release all or any portion of the securities subject to lock-up agreements. See "Underwriting – No Sales of Similar Securities."

The market price of our common stock may decline significantly when the restrictions on resale by our existing stockholders lapse. A decline in the price of our common stock might impede our ability to raise capital through the issuance of additional common stock or other equity securities.

***The future issuance of additional common stock in connection with the 2021 Plan will dilute all other stockholdings.***

After this offering, we will have an aggregate of 238,336,332 shares of common stock authorized but unissued and not reserved for issuance under the 2021 Plan. We may issue all these shares of common stock without any action or approval by our stockholders, subject to certain exceptions. Any common stock issued in connection with the 2021 Plan would dilute the percentage ownership held by the investors who purchase common stock in this offering.

***You will incur immediate dilution as a result of this offering.***

If you purchase common stock in this offering, you will pay more for your shares than the amounts paid by existing stockholders for their shares. As a result, you will incur immediate dilution of $18.65 per share, representing the difference between the assumed initial public offering price of $18.50 per share (the midpoint of the estimated initial public offering price range set forth on the cover of this prospectus) and our pro forma as adjusted net tangible book deficit per share after giving effect to this offering. See "Dilution."

***As a public company, we incur significant costs to comply with the laws and regulations affecting public companies, which could harm our business and results of operations.***

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, and the listing requirements of Nasdaq, and other applicable securities rules and regulations. These rules and regulations have increased and will continue to increase our legal, accounting and financial compliance costs and have made and will continue to make some activities more time-consuming and costly, particularly after we cease to be an emerging growth company as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act. For example, these rules and regulations could make it more difficult and more costly for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or to incur substantial costs to maintain the same or similar coverage. These rules and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our Board or our board committees or as executive officers. Our management and other personnel will devote a substantial amount of time to these compliance initiatives. As a result, management's attention may be diverted from other business concerns, which could harm our business and results of operations. We will need to hire more employees in the future to comply with these requirements, which will increase our costs and expenses.

Our management team and other personnel devote a substantial amount of time to new compliance initiatives and we may not successfully or efficiently manage our transition to a public company. To comply with the requirements of being a public company, including the Sarbanes-Oxley Act, we will need to undertake various actions, such as implementing new internal controls and procedures and hiring accounting or internal audit staff or outsourcing certain functions to third parties, which could have a material adverse effect on our business, financial condition and results of operations.

***Fluctuations in our tax obligations and effective tax rate and realization of our deferred tax assets may result in volatility of our results of operations.***

We are subject to income taxes in various U.S. jurisdictions. We record tax expense based on our estimates of future payments, which may in the future include reserves for uncertain tax positions in multiple tax jurisdictions, and valuation allowances related to certain net deferred tax assets. At any one time, many tax years may be subject to audit by various taxing jurisdictions. The results of these audits and negotiations with taxing authorities may affect the ultimate settlement of these issues. We expect that throughout the year there could be ongoing variability in our quarterly tax rates as events occur and exposures are evaluated.

In addition, our effective tax rate in a given financial reporting period may be materially impacted by a variety of factors including, but not limited to, changes in the mix and level of earnings, varying tax rates in the different jurisdictions in which we operate, fluctuations in the valuation allowance or by changes to existing accounting rules or regulations. Further, tax legislation may be enacted in the future, which could negatively impact our current or future tax structure and effective tax rates.

The U.S. government may enact significant changes to the taxation of business entities including, among others, an increase in the corporate income tax rate and the imposition of minimum taxes or surtaxes on certain types of income. No specific United States tax legislation has been proposed at this time and the likelihood of these changes being enacted or implemented is unclear. We are currently unable to predict whether such changes will occur. If such changes are enacted or implemented, we are currently unable to predict the ultimate impact on our business.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. Forward-looking statements can be identified by words such as “anticipates,” “intends,” “plans,” “seeks,” “believes,” “estimates,” “expects” and similar references to future periods, or by the inclusion of forecasts or projections. Examples of forward-looking statements include, but are not limited to, statements we make regarding the outlook for our future business and financial performance, such as those contained in “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

Forward-looking statements are based on our current expectations and assumptions regarding our business, the economy and other future conditions. Because forward-looking statements relate to the future, by their nature, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict. As a result, our actual results may differ materially from those contemplated by the forward-looking statements. Important factors that could cause actual results to differ materially from those in the forward-looking statements include regional, national or global political, economic, business, competitive, market and regulatory conditions and the following:

- continued adverse effects of the COVID-19 pandemic, including the emergence of COVID-19 variants, or other infectious disease on our financial condition, results of operations, and supply chain;
- our vulnerability to changes in consumer preferences and economic conditions;
- our inability to open new restaurants in new and existing markets;
- the number of visitors to areas where our restaurants are located may decline;
- our inability to generate same-restaurant sales growth;
- our marketing programs and limited-time menu offerings may fail to generate profits;
- shortages or disruptions in the supply or delivery of frequently used food items or increases in the cost of our frequently used food items;
- our inability to prevent instances of food-borne illness in our restaurants;
- our inability to compete successfully with other breakfast and lunch restaurants;
- issues with our existing franchisees, including their financial performance, our lack of control over their operations, and conflicting business interests;
- our vulnerability to adverse demographic, unemployment, economic, regulatory and weather conditions;
- damage to our reputation and negative publicity, even if unwarranted;
- our reliance on a small number of suppliers for a substantial amount of our food and coffee;
- our inability to effectively manage our internal controls over financial reporting;
- our failure to adequately protect our network security;
- compliance with federal and local environmental, labor, employment and food safety laws and regulations;
- our level of indebtedness and our duty to comply with covenants under our Credit Agreement; and
- the interests of Advent may differ from those of our public stockholders.

See “Risk Factors” for a further description of these and other factors. For the reasons described above, we caution you against relying on any forward-looking statements, which should also be read in conjunction with the other cautionary statements that are included elsewhere in this prospectus. Any forward-looking statement made by us in this prospectus speaks only as of the date on which we make it. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

## USE OF PROCEEDS

We estimate that the net proceeds to us from our sale of 9,459,000 shares of common stock in this offering will be approximately $158.6 million, after deducting underwriting discounts and commissions and estimated expenses payable by us in connection with this offering. The underwriters also have an option to purchase up to an additional 1,418,850 shares of common stock from us. We estimate that the net proceeds to us, if the underwriters exercise their right to purchase the maximum of 1,418,850 additional shares of common stock from us, will be approximately $183.2 million, after deducting underwriting discounts and commissions and estimated expenses payable by us in connection with this offering. This assumes a public offering price of $18.50 per share, which is the midpoint of the price range set forth on the cover of this prospectus.

We intend to use the net proceeds from this offering to repay borrowings outstanding under our Senior Credit Facilities. Our Senior Credit Facilities are comprised of our Initial Term Loan Facility, our Initial Delayed Draw Term Facility, our First Amendment Delayed Draw Term Facility, our Second Amendment Delayed Draw Term Facility and our Revolving Facility. Loans under the Senior Credit Facilities mature on August 21, 2023. As of June 27, 2021, our Initial Term Loan Facility bore interest at a rate of 8.0%, our Initial Delayed Draw Term Facility bore interest at a rate of 8.0%, our First Amendment Delayed Draw Term Facility bore interest at a rate of 8.0% and our Second Amendment Delayed Draw Term Facility bore interest at a rate of 8.0%. See “Description of Material Indebtedness.”

Assuming no exercise of the underwriters’ option to purchase additional shares, a $1.00 increase (decrease) in the assumed initial public offering price of $18.50 per share (the midpoint of the price range set forth on the cover of this prospectus) would increase (decrease) the net proceeds to us from this offering by $8.8 million, assuming the number of shares offered by us, as set forth on the cover of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated expenses payable by us.

Each increase of 1.0 million shares in the number of shares of common stock offered by us would increase our pro forma as adjusted net tangible book value deficit per share after giving effect to this offering by approximately $0.30 per share and decrease the dilution to investors participating in this offering by approximately $0.30 per share, in each case assuming that the assumed initial public offering price remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1.0 million shares from the expected number of shares to be sold by us in this offering, assuming no change in the assumed initial public offering price per share, which is the midpoint of the price range set forth on the front cover of this prospectus, would increase (decrease) our net proceeds from this offering by $17.3 million.

## DIVIDEND POLICY

We do not currently intend to pay cash dividends on our common stock in the foreseeable future. However, in the future, subject to the factors described below and our future liquidity and capitalization, we may change this policy and choose to pay dividends.

Our ability to pay dividends is currently restricted by the terms of our Senior Credit Facilities and may be further restricted by any future indebtedness we incur.

We are a holding company that does not conduct any business operations of our own. As a result, our ability to pay cash dividends on our common stock is dependent upon cash dividends and distributions and other transfers from our subsidiaries.

In addition, under Delaware law, our Board may declare dividends only to the extent of our surplus (which is defined as total assets at fair market value minus total liabilities, minus statutory capital) or, if there is no surplus, out of our net profits for the then current and/or immediately preceding fiscal year.

Any future determination to pay dividends will be at the discretion of our Board and will take into account:

- restrictions in our debt instruments, including our Senior Credit Facilities;
- general economic business conditions;
- our earnings, financial condition, and results of operations;
- our capital requirements;
- our prospects;
- legal restrictions; and
- such other factors as our Board may deem relevant.

See “Risk Factors – Risks Related to this Offering and Ownership of Our Common Stock – We do not anticipate paying any dividends on our common stock in the foreseeable future,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Results of Operations – Liquidity and Capital Resources,” “Description of Material Indebtedness,” and “Description of Capital Stock.”

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of June 27, 2021:

- on an actual basis;
- on a pro-forma basis to give effect to (i) the automatic conversion of all outstanding shares of preferred stock into 3,156,812 shares of our common stock and (ii) the filing and effectiveness of our restated certificate of incorporation in Delaware that will become effective immediately prior to the completion of this offering; and
- on a pro forma as adjusted basis to give further effect to the sale of 9,459,000 shares of our common stock in this offering, assuming no exercise of the underwriters' option to purchase additional shares, at an assumed public offering price of $18.50 per share, which is the midpoint of the estimated public offering price range set forth on the cover of this prospectus, less estimated underwriting discounts and commissions and estimated expenses, and the application of the net proceeds received by us from this offering as described under "Use of Proceeds."

This table should be read in conjunction with "Use of Proceeds," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Description of Capital Stock" and the unaudited consolidated financial statements and notes thereto appearing elsewhere in this prospectus.

| | As of June 27, 2021 | | |
|---|---|---|---|
| | Actual | Pro Forma | Pro Forma As Adjusted(2) |
| | (in thousands, except share and per share data) | | |
| Cash and cash equivalents | $ 48,033 | $ 48,033 | $ 48,033 |
| Debt: | | | |
| Total debt(1) | $ 294,012 | $ 294,012 | $ 135,501 |
| Equity: | | | |
| Preferred stock, $0.01 par value per share, 266,667 shares authorized, actual, 10,000,000 shares authorized, pro forma and pro forma as adjusted, 266,667 shares issued and outstanding, actual, and no shares issued and outstanding, pro forma and pro forma as adjusted | 3 | — | — |
| Common stock, $0.01 par value per share, 300,000,000 shares authorized, actual, 300,000,000 shares authorized, pro forma and pro forma as adjusted, 45,013,784 shares issued and outstanding, actual, 48,170,596 shares issued and outstanding, pro forma, and 57,629,596 shares issued and outstanding pro forma as adjusted | 450 | 482 | 577 |
| Additional paid-in capital | 423,661 | 423,632 | 582,154 |
| Accumulated deficit | (101,169) | (101,169) | (102,681) |
| Total equity | 322,945 | 322,945 | 480,050 |
| Total capitalization | $ 616,957 | $ 616,957 | $ 615,551 |

(1) Total debt includes the current and long-term debt, excluding unamortized debt discount and deferred issuance costs. See Note 7, *Debt* in the notes to the interim unaudited consolidated financial statements included in this prospectus for additional information. Also, see "Description of Material Indebtedness."

(2) A $1.00 increase (decrease) in the assumed initial public offering price of $18.50 per share, which is the midpoint of the price range set forth on the front cover of this prospectus, would increase (decrease) the net proceeds to us from this offering by $8.8 million, assuming the number of shares offered by us, as set forth

on the front cover of this prospectus, remains the same and after deducting the assumed underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1.0 million shares from the expected number of shares to be sold by us in this offering, assuming no change in the assumed initial public offering price per share, which is the midpoint of the price range set forth on the front cover of this prospectus, would increase (decrease) our net proceeds from this offering by $17.3 million.

## DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book deficit per share of our common stock upon the consummation of this offering. Dilution results from the fact that the per share offering price of our common stock is in excess of the book deficit per share attributable to new investors.

As of June 27, 2021, our historical net tangible book deficit was $(166.8) million, or $(3.71) per share of common stock. Our historical net tangible book deficit per share represents the amount of our total tangible assets reduced by the amount of our total liabilities and divided by the total number of shares of our common stock outstanding as of June 27, 2021.

As of June 27, 2021, our pro forma net tangible book deficit was $(166.8) million, or $(3.46) per share of common stock. Our pro forma net tangible book deficit per share represents the amount of our total tangible assets reduced by the amount of our total liabilities and divided by the total number of shares of our common stock outstanding as of June 27, 2021 after giving effect to the automatic conversion of all outstanding shares of our preferred stock into 3,156,812 shares of our common stock and the filing and effectiveness of our restated certificate of incorporation that will become effective immediately prior to the completion of this offering.

After giving effect to (i) the pro forma adjustments set forth above, (ii) the sale of 9,459,000 shares of common stock in this offering at the assumed initial public offering price of $18.50 per share (the midpoint of the price range set forth on the cover of this prospectus after deducting estimated underwriting discounts and commissions and estimated offering expenses) and (iii) the application of the net proceeds from this offering, our pro forma as adjusted net tangible book deficit as of June 27, 2021 would have been $(8.7) million, or $(0.15) per share. This represents an immediate decrease in pro forma as adjusted net tangible book deficit of $3.31 per share to our existing investors and an immediate dilution in pro forma as adjusted net tangible book deficit of $18.65 per share to new investors.

The following table illustrates this dilution on a per share of common stock basis:

| | | |
|---|---|---|
| Assumed initial public offering price per share | | $18.50 |
| Historical net tangible book deficit per share | $ (3.71) | |
| Increase per share attributable to the pro forma adjustments described above | 0.25 | |
| Pro forma net tangible book deficit per share as of June 27, 2021 before giving effect to this offering | (3.46) | |
| Decrease in pro forma net tangible book deficit per share attributable to new investors in this offering | 3.31 | |
| Pro forma as adjusted net tangible book deficit per share after giving effect to this offering | | (0.15) |
| Dilution per share to new investors purchasing common stock in this offering | | $18.65 |

The following table summarizes, on an as adjusted basis as of June 27, 2021 after giving effect to this offering, the total number of shares of common stock purchased from us, the total cash consideration paid to us, or to be paid, and the average price per share paid, or to be paid, by new investors purchasing shares in this offering, at an assumed initial public offering price of $18.50 per share, which is the midpoint of the range set forth on the cover of this prospectus, before deducting the estimated underwriting discounts and commissions:

| | Shares Purchased | | Total Consideration | | Average Price Per Share |
|---|---|---|---|---|---|
| | Number | Percent | Amount | Percent | |
| Existing stockholders | 48,170,596 | 83.6% | $424,114,571 | 70.8% | $ 8.80 |
| New investors | 9,459,000 | 16.4 | 174,991,500 | 29.2 | $ 18.50 |
| Total | 57,629,596 | 100.0% | $599,106,071 | 100.0% | |

A $1.00 increase (decrease) in the assumed initial public offering price of $18.50 per share would increase (decrease) our pro forma as adjusted net tangible book deficit by $8.8 million, the pro forma as adjusted net tangible book deficit per share after this offering by $0.15 and the dilution per share to new investors by $0.85 assuming the number of shares offered by us, as set forth on the cover of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Each increase of 1.0 million shares in the number of shares of common stock offered by us would increase our pro forma as adjusted net tangible book deficit per share after giving effect to this offering by approximately $0.30 per share and decrease the dilution to investors participating in this offering by approximately $0.30 per share, in each case assuming that the assumed initial public offering price remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. Each decrease of 1.0 million shares in the number of shares of common stock offered by us would decrease our pro forma as adjusted net tangible book deficit per share after giving effect to this offering by approximately $0.31 per share and increase the dilution to investors participating in this offering by approximately $0.31 per share, in each case assuming that the assumed initial public offering price remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters were to fully exercise their option to purchase 1,418,850 additional shares of our common stock, the percentage of shares of our common stock held by existing investors would be 81.6%, and the percentage of shares of our common stock held by new investors would be 18.4%.

The above discussion and tables are based on the number of shares and options to purchase shares outstanding as of June 27, 2021. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities could result in further dilution to our stockholders.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following is a discussion and analysis of our financial condition and results of operations as of, and for, the periods presented. You should read the following discussion and analysis of our financial condition and results of operations together with the sections entitled "Prospectus Summary – Summary Historical Consolidated Financial and Other Data," "Risk Factors," "Cautionary Note Regarding Forward-Looking Statements" and our audited and unaudited interim consolidated financial statements and the related notes thereto included elsewhere in this prospectus. This discussion and analysis contains forward-looking statements, including statements regarding industry outlook, our expectations for the future of our business and our liquidity and capital resources as well as other non-historical statements. These statements are based on current expectations and are subject to numerous risks and uncertainties, including but not limited to the risks and uncertainties described in "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements." Our actual results may differ materially from those contained in or implied by these forward-looking statements.*

*We use a 52- or 53-week fiscal year ending on the last Sunday of each calendar year. All references to fiscal 2020 and fiscal 2019 reflect the results of the 52-week fiscal year ended December 27, 2020 and the 52-week fiscal year ended December 29, 2019, respectively. Our fiscal quarters are comprised of 13 weeks each, except for fiscal years consisting of 53 weeks for which the fourth quarter will consist of 14 weeks, and end on the 13th Sunday of each quarter (14th Sunday of the fourth quarter, when applicable).*

### Overview

First Watch is a daytime restaurant concept serving made-to-order breakfast, brunch and lunch using fresh ingredients. The original First Watch opened in 1983 in Pacific Grove, California. Founder John Sullivan and his colleague Kenneth L. Pendery, Jr. set out to create a place of their own based upon their shared vision of what a neighborhood cafe should be. Long before "farm to table" became a culinary mantra, First Watch incorporated fresh, quality ingredients into elevated executions of classic dishes. In addition, the new concept was established as a "daytime café" with limited hours of 7:00 a.m. until 2:30 p.m., which allowed for specialization in breakfast, brunch and lunch. Over the course of the next several decades. First Watch's passion for people, culture and service drove expansion through acquisition and new restaurant development across 28 states as of June 27, 2021.

### Growth Strategies and Outlook

We believe our continued growth will come from: (i) opening new restaurants in existing and new geographies and (ii) driving traffic and building sales at our restaurants.

#### *Grow Our Brand Footprint by Consistently Opening New Restaurants*

Opening new company-owned restaurants in new and existing markets is central to our growth strategy.

#### *Drive Restaurant Traffic and Build Sales*

We intend to grow same-restaurant sales by continuing to offer innovative menu items, increase awareness of our brand, deliver excellent customer service and launch relevant sales platforms and initiatives.

***Continue Menu Innovation:*** The ongoing evolution of our menu keeps First Watch relevant for our customers. The development of award-winning menu items and the training and experience of our staff enable us to replicate complex preparations across all our restaurants.

***Offer Alcohol as Only First Watch Can:*** We recently extended our successful fresh juice program with innovative, craft alcohol cocktails in many of our restaurants which provides a new platform for growth.

***Convenience and Increased Accessibility through Our Off-Premises Offering:*** In fiscal 2020, we integrated new technology and processes which enable our restaurants to better meet our customers' demand for convenient, off-premises dining through take-out and delivery.

***Increase Our Brand Awareness***: The continued evolution of our marketing and advertising strategy to focus on building our brand awareness principally through digital marketing that emphasizes connection with First Watch customers.

***Deliver an Excellent On-Premise Dining Experience:*** We will continue to prioritize service and delivering a memorable dining experience in our restaurants to every customer and in every visit.

***Additional Platforms and Initiatives:*** We believe we can expand our appeal and market share of weekday lunch occasions with evolved menu offerings and promotional support. In addition, we will add tools to capture, interpret and communicate actionable data to improve our abilities to understand customer behaviors and to efficiently serve customer needs.

Changes in general economic conditions can affect our traffic and sales. Our results of operations are impacted by prices of a broad range of ingredients used in our menu, labor costs, costs of occupancy and other restaurant industry expenses. Our results are also impacted by the timing and pace of new restaurant openings. Results for any one quarter are not necessarily indicative of results to be expected for any other quarter, and same-restaurant sales growth for any future period may decrease.

**Recent Trends**

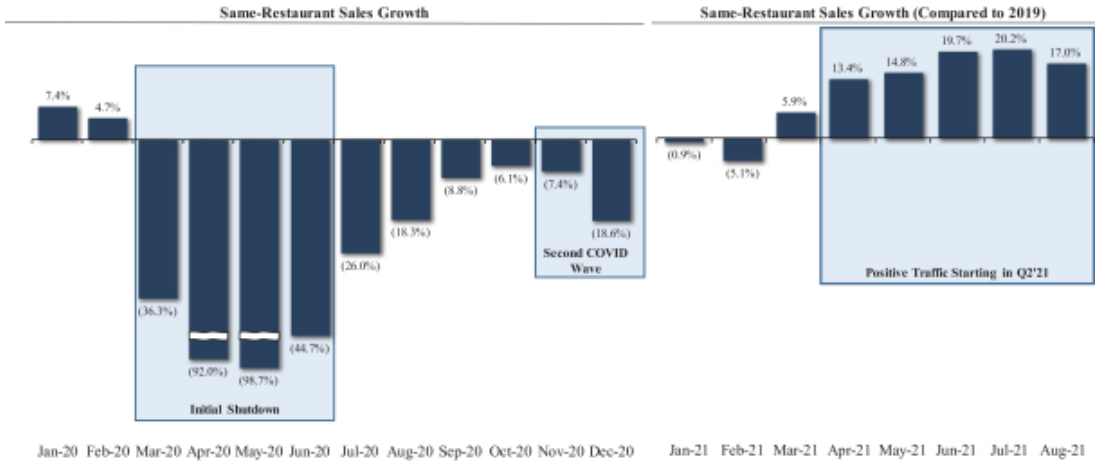
Our streak of 28 consecutive quarters of positive same-restaurant sales growth from fiscal 2013 to fiscal 2019 ended in the first fiscal quarter of 2020, with the World Health Organization's declaration of COVID-19 as a global pandemic and recommendation of containment and mitigation measures worldwide. As the severity of the COVID-19 pandemic grew increasingly acute, customer behaviors shifted rapidly, and municipalities mandated public dining room occupancy restrictions.

At a cost of $4.7 million in fiscal 2020, management implemented a series of measures primarily to (i) protect the health and safety of our employees and customers, (ii) provide aid to employees whose financial means were diminished as result of dining closures and furloughs and (iii) amend certain financial commitments.

With respect to our restaurant operations, during the week of March 15, 2020, we began closing our dining rooms and deployed new hardware and software to enable integrated off-premises capability for the first time across all company-owned restaurants. On April 13, 2020, prioritizing the safety of our employees and their families, we suspended all operations in our company-owned restaurants. During the period of suspended operations, we developed and provided for new safety protocols and procedures as well as an employee wellness screening tool with COVID-19 contact tracing. We also rapidly addressed new consumer behaviors by accelerating previously planned initiatives to position ourselves for short-term recovery and long-term growth such as online ordering to enable third-party delivery services, the expansion of our carefully curated alcohol program and touchless payment technology. We also expanded our patio and outdoor service areas while reducing and distancing in our in-dining room seating.

On May 18, 2020, in conjunction with municipal health and safety mandates we began reopening our company-owned restaurants in four phases. Our new tools and training allowed our restaurant staff to meet the customer demand for off-premises dining and as a result, we generally saw our average weekly sales grow after reopening.

**Monthly Same-Restaurant Sales Growth Since January 2020**




During the twenty-six weeks ended June 27, 2021, we generally experienced a steady recovery of restaurant sales, which had declined in 2020 as a result of the COVID-19 pandemic, while off-premises sales have been sustained.

Financial highlights for the twenty-six weeks ended June 27, 2021 include the following:

- 423 System-wide restaurants comprised of 335 company-owned restaurants and 88 franchise restaurants; 15 new company-owned restaurant openings and three franchise-operated restaurant openings; one company-owned restaurant was relocated and three franchise-owned restaurants were disenfranchised.
- Same-restaurant sales growth of 95.9% compared to (43.4)% in the twenty-six weeks ended June 28, 2020 and 8.4% when compared to the twenty-six weeks ended June 30, 2019.
- Income from operations of $16.2 million and margin of 5.8% compared to Loss from operations of $33.9 million and margin of (25.8)% in the twenty-six weeks ended June 28, 2020 and Loss from operations of $31.4 million and margin of (15.0)% in the twenty-six weeks ended June 30, 2019.
- Restaurant level operating profit and margin of $56.0 million and 20.2% compared to restaurant level operating profit and margin of $4.4 million and 3.4% in the twenty-six weeks ended June 28, 2020 and restaurant level operating profit of $37.9 million and margin of 18.1% in the twenty-six weeks ended June 30, 2019.
- Net income and total comprehensive income of $1.8 million and margin of 0.6% compared to Net loss and total comprehensive loss of $31.4 million and margin of (23.6)% in the twenty-six weeks ended June 28, 2020 and Net loss and total comprehensive loss of $32.7 million and margin of (15.4)% in the twenty-six weeks ended June 30, 2019.
- Adjusted EBITDA of $35.2 million and margin of 12.5% compared to Adjusted EBITDA of $(11.8) million and margin of (8.9)% in the twenty-six weeks ended June 28, 2020 and Adjusted EBITDA of $20.7 million and margin of 9.8% in the twenty-six weeks ended June 30, 2019.

During the balance of 2020, we continued to invest in and open new restaurants, even as management worked with its landlords to modify leases and rent payments. During fiscal 2020, we opened 23 company-owned restaurants of which 10 restaurants were opened in the last two quarters of fiscal 2020.

Financial highlights for fiscal 2020 as compared to fiscal 2019 were severely impacted by the COVID-19 pandemic and are as follows:

- Reduction in same-restaurant sales growth from 5.6% in fiscal 2019 to (29.0)% in fiscal 2020.
- Total restaurant sales declined 21.4% from $429.3 million in fiscal 2019 to $337.4 million in fiscal 2020.
- Loss from operations was $47.2 million in fiscal 2020, as compared to $37.6 million in fiscal 2019. Restaurant level operating profit and restaurant level operating profit margin were $28.2 million and 8.4%, respectively in fiscal 2020 as compared to $74.5 million and 17.4% respectively, in fiscal 2019.
- Net loss and comprehensive loss attributable to First Watch Restaurant Group was $49.7 million in fiscal 2020 as compared to $45.4 million in fiscal 2019. Adjusted EBITDA and Adjusted EBITDA Margin were $(5.7) million and (1.7)%, respectively in fiscal 2020 as compared to $38.1 million and 8.7% in fiscal 2019.

The volume of off-premises sales, which includes both third-party delivery and take-out sales, increased as a result of customers' growing preference for at-home dining due to the COVID-19 pandemic. In fiscal 2020, total off-premises sales were 23.8% as compared to 6.7% in fiscal 2019. We continued to see the trend of average weekly off-premises sales of approximately $8,000 per restaurant in the second fiscal quarter of 2021, which were consistent with average weekly off-premises sales during the fourth fiscal quarter of 2020, but we cannot predict the extent to which our restaurant sales will be comprised of off-premises sales in future periods, including after the end of the COVID-19 pandemic. Furthermore, although we continue to incur third-party delivery fees in connection with off-premises sales, we have increased our third-party delivery menu prices to compensate for such fees resulting in a relatively neutral margin on off-premises sales as compared to in-restaurant dining sales.

**Key Performance Indicators**

To evaluate the performance of our business, we utilize a variety of financial and performance measures. These key measures include Cash-on-Cash Return, restaurant sales, same-restaurant sales growth, same-restaurant traffic growth, new restaurant development, AUV, Adjusted EBITDA, Adjusted EBITDA Margin, restaurant level operating profit and restaurant level operating profit margin.

***Cash-on-Cash Return***

Cash-on-Cash Return is defined as restaurant level operating profit (excluding gift card breakage and deferred rent (income) expense) in the third year of operation (months 25-36 of operation) for our company-owned restaurants divided by their cash build-out expenses, net of landlord incentives.

***NROs***

NROs are the number of new company-owned First Watch restaurants commencing operations during the period. Management reviews the number of new restaurants to assess net new restaurant growth and company-owned restaurant sales.

***Same-Restaurant Sales Growth***

Same-restaurant sales growth is the percentage change in year-over-year restaurant sales (excluding gift card breakage) for the Comparable Restaurant Base. For fiscal 2020 and fiscal 2019, there were 212 restaurants and 168 restaurants in our Comparable Restaurant Base, respectively. For the twenty-six weeks ended June 27, 2021, and the twenty-six weeks ended June 28, 2020, there were 270 restaurants and 212 restaurants, respectively, in our Comparable Restaurant Base.

An increase in same-restaurant sales growth is the result of increased restaurant traffic, increased average customer check or a combination of the two. We gather daily sales data and regularly analyze the customer traffic counts and the mix of menu items sold to aid in developing menu pricing, product offerings and promotional strategies designed to produce sustainable same-restaurant sales growth. Measuring our same-restaurant sales growth allows management to evaluate the performance of our existing restaurant base. We believe this measure is useful for investors to provide a consistent comparison of restaurant sales results and trends across periods within our core, established restaurant base, unaffected by results of store openings, closings, and other transitional changes.

***Same-Restaurant Traffic Growth***

Same-restaurant traffic growth is the percentage change in traffic counts as compared to the same period in the prior year using the Comparable Restaurant Base. For fiscal 2020 and fiscal 2019, there were 212 restaurants and 168 restaurants in our Comparable Restaurant Base, respectively. For the twenty-six weeks ended June 27, 2021, and the twenty-six weeks ended June 28, 2020, there were 270 restaurants and 212 restaurants, respectively, in our Comparable Restaurant Base. Measuring our same-restaurant traffic growth allows management to evaluate the performance of our existing restaurant base. We believe this measure is useful for investors because an increase in same-restaurant traffic provides an indicator as to the development of our brand and the effectiveness of our marketing strategy.

***New Restaurant Development***

New restaurant development is central to growing our footprint and executing our growth strategy. New restaurant development has historically included both new restaurant openings and conversion of acquired restaurants.

Potential new restaurant sites are typically identified and evaluated at least 18 months prior to opening. New restaurant opening dates trigger advance staff recruiting and training, in addition to the relocation of experienced general managers from existing restaurants and other pre-opening expenses.

We intend to open more than 130 company-owned restaurants from 2022 through 2024, which is expected to be the primary driver of our expected restaurant sales growth, but which may impact operating profit margins in the interim, as our restaurant level operating profit margins are generally lower through the first 12 months of operation.

The total number of new restaurants per year and the timing of new restaurant openings has, and will continue to have, an impact on our results of operations.

***AUV***

AUV is the total restaurant sales (excluding gift card breakage) recognized in the Comparable Restaurant Base, divided by the number of restaurants in the Comparable Restaurant Base during the period. This measurement allows management to assess changes in consumer spending patterns at our restaurants and the overall performance of our restaurant base.

***Adjusted EBITDA and Adjusted EBITDA Margin***

Adjusted EBITDA represents net income (loss) before depreciation and amortization, interest expense and income taxes, and items that we do not consider in our evaluation of ongoing core operating performance as identified in the reconciliation of Net income (loss) and total comprehensive income (loss), the most directly comparable GAAP measure, to Adjusted EBITDA, included in “Prospectus Summary – Summary Historical Consolidated Financial and Other Data.” Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of total revenues. We use Adjusted EBITDA and Adjusted EBITDA Margin (i) as factors in evaluating management’s performance when determining incentive compensation, (ii) to evaluate our operating results and the effectiveness of our business strategies and (iii) internally as benchmarks to compare our performance to that of our competitors.

We believe that Adjusted EBITDA and Adjusted EBITDA Margin are important measures of operating performance because they eliminate the impact of expenses that do not relate to our core operating performance. Adjusted EBITDA and Adjusted EBITDA Margin have important limitations as analytical tools and should not be considered in isolation as substitutes for analysis of our results as reported under GAAP. Such non-GAAP measures may not provide a complete understanding of the results of operations of the Company as a whole and should be reviewed in conjunction with its GAAP financial results.

***Restaurant Level Operating Profit and Restaurant Level Operating Profit Margin***

Restaurant level operating profit margin represents restaurant level operating profit as a percentage of restaurant sales. Restaurant level operating profit and restaurant level operating profit margin are not required by, nor presented in accordance with GAAP. Rather, restaurant level operating profit and restaurant level operating profit margin are supplemental measures of operating performance of our restaurants and our calculations thereof may not be comparable to similar measures reported by other companies. We believe that restaurant level operating profit and restaurant level operating profit margin are important measures to evaluate the performance and profitability of each restaurant, individually and in the aggregate. Restaurant level operating profit and restaurant level operating profit margin are not indicative of our overall results, and because they exclude corporate-level expenses, do not accrue directly to the benefit of our stockholders. Restaurant level operating profit and restaurant level operating profit margin have limitations as analytical tools and should not be considered as a substitute for analysis of our results as reported under GAAP. Such non-GAAP measures may not provide a complete understanding of the results of operations of the Company as a whole and should be reviewed in conjunction with its GAAP financial results.

**Revenues and Expenses**

***Restaurant Sales***

Restaurant sales represent the aggregate sales of food and beverages, net of discounts, at company-owned restaurants. Restaurant sales in any period are directly influenced by the number of operating weeks in the period, the number of open restaurants, customer traffic and average check. Average check growth is driven by our menu price increases and changes to our menu mix.

***Franchise Revenues***

Franchise revenues are comprised of sales-based royalty fees, system fund contributions and the amortization of upfront initial franchise fees, which are recognized as revenue on a straight-line basis over the term of the franchise agreement. Franchise revenues in any period are directly influenced by the number of open franchised restaurants.

***Food and Beverage Costs***

The components of food and beverage costs at company-owned restaurants are variable by nature, change with sales volume, are impacted by product mix and are subject to increases or decreases in commodity costs.

***Labor and Other Related Expenses***

Labor and other related expenses include hourly and management wages, bonuses, payroll taxes, workers' compensation expense and employee benefits. Factors that influence labor costs include minimum wage and payroll tax legislation, health care costs, the performance of our company-owned restaurants and increased competition for qualified staff.

***Other Restaurant Operating Expenses***

Other restaurant operating expenses consist of marketing and advertising expenses, utilities and other operating expenses incidental to operating company-owned restaurants, such as operating supplies (including paper products, menus and to-go supplies), credit card fees, repairs and maintenance, third party delivery services fees and certain pre-opening expenses for new company-owned restaurants.

Pre-opening expenses primarily consist of manager salaries, recruiting expenses, employee payroll and training costs. Pre-opening expenses are recognized in the period in which the expense was incurred, and can fluctuate from period to period, based on the number and timing of new restaurant openings. Additionally, new restaurant openings in new geographic market areas may initially experience higher pre-opening expenses than our established geographic market areas where we have greater economies of scale and incur lower travel costs for our training team.

***Occupancy Expenses***

Occupancy expenses primarily consist of rent, property insurance, common area expenses and property taxes. Rent expense also includes pre-opening rent expense recognized during the period between the date of possession of the restaurant facility and the restaurant opening date.

***General and Administrative Expenses***

General and administrative expenses primarily consist of costs associated with our Home Office and administrative functions that support restaurant development and operations including marketing and advertising costs incurred as well as legal fees, professional fees and stock-based compensation expense. General and administrative expenses are impacted by changes in our employee count and costs related to strategic and growth initiatives. In preparation for and after the consummation of this offering, we have incurred and we expect to incur in the future significant additional legal, accounting and other expenses associated with being a public company, including costs associated with our compliance with the Sarbanes-Oxley Act.

Certain employees, officers and non-employee directors have been granted performance-based stock options, for which we have not recognized any compensation expense to date, as the performance condition has not been deemed probable of being achieved. Certain of these awards may convert, if certain market conditions are met at the time of the offering, from performance-based options to service-based options that would vest equally over a three-year period. We will recognize compensation expense on the date of the offering for services provided prior to the offering and recognize the remaining compensation expense for services to be provided over a three year period commencing on the date of the offering.

On August 31, 2021, the Company's Board amended the 2017 Omnibus Equity Incentive Plan such that the performance-based options that convert into time-based options upon an initial public offering no longer vest over a period of three years, but instead shall vest one-third (1/3rd) on each of the first two anniversaries of an initial public offering and one-third (1/3rd) on the 273rd day following the second anniversary of an initial public offering. This was accounted for as a modification for accounting purposes, resulting in a new fair value for all the performance-based options as of the modification date. On September 19, 2021, the Company modified performance-based awards that contained a market condition granted under the 2017 Omnibus Equity Incentive Plan, such that the vesting terms for one such tranche of its performance-based option awards that contain a market condition were amended to waive the market condition. On September 19, 2021, the Company modified the terms of its performance-based option awards granted under the 2017 Omnibus Equity Incentive Plan to its Chairman Emeritus to provide that all of the options that convert to time-based options upon an initial public offering will vest on August 1, 2022. After consideration of all of the above modifications to the performance-based awards, the unrecognized compensation expense of all outstanding performance-based options was $20.9 million. See Note 12, *Subsequent Events* in the notes to the interim unaudited consolidated financial statements included elsewhere in this prospectus for a more detailed description of the Company's modifications to performance-based awards. Following consummation of this offering, if certain performance-based options to

purchase shares of our common stock would have vested based on certain multiples of invested capital, then those options will convert to time-based awards and we will record a portion of the compensation expense on the date of the IPO and the remainder over the remaining service period. All other performance-based options that would not have converted into time-based options upon the consummation of the offering would be forfeited. If any performance-based options are forfeited, the unrecognized compensation expense for those awards will be recorded on the date of an initial public offering.

***Depreciation and Amortization***

Depreciation and amortization consists of the depreciation of fixed assets, including leasehold improvements, fixtures and equipment and the amortization of definite-lived intangible assets, which are primarily comprised of franchise rights. Franchise rights includes rights which arose from the purchase price allocation in connection with the Advent Acquisition as well as reacquired rights from our acquisitions of franchised restaurants.

***Impairments and Loss on Disposal of Assets***

Impairments and loss on disposal of assets include (i) the impairment of long-lived assets and intangible assets where the carrying amount of the asset is not recoverable and exceeds the fair value of the asset, (ii) the write-off of the net book value of assets that have been retired or replaced in the normal course of business and (iii) the write-off of the net book value of assets in connection with restaurant closures.

***Transaction (Income) Expenses, Net***

Transaction (income) expenses, net primarily include (i) costs incurred in connection with the acquisition of franchised restaurants, (ii) costs incurred in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name, (iii) costs related to restaurant closures and (iv) revaluations of contingent consideration.

***Interest Expense***

Interest expense primarily consists of interest and fees on our Senior Credit Facilities and the amortization expense for debt discount and deferred issuance costs. We expect to pay down a portion of our outstanding debt using the proceeds of this offering. We expect our interest expense for the new senior credit facilities that we may enter into in connection with any debt refinancing to be lower than the interest expense under our Senior Credit Facilities in future periods as a result of the reduction in the principal amount of our indebtedness and our ability to obtain more favorable terms, including lower interest rates, under the new senior credit facilities. See “Prospectus Summary - Debt Refinancing,” “Use of Proceeds” and “Description of Material Indebtedness.”

***Other Income (Expense), Net***

Other income (expense), net includes items deemed to be non-operating based on management’s assessment of the nature of the item in relation to our core operations.

***Income Tax Expense (Benefit)***

Income tax expense (benefit) primarily consists of various federal and state taxes.

## Fiscal 2020 Compared to Fiscal 2019

### Results of Operations

The following table summarizes our results of operations and the percentages of certain items in relation to total revenues or restaurant sales for fiscal 2020 and fiscal 2019:

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | | 2019 | |
| | (in thousands) | | | |
| **Revenues:** | | | | |
| Restaurant sales | $337,433 | 98.6% | $429,309 | 98.4% |
| Franchise revenues | 4,955 | 1.4% | 7,064 | 1.6% |
| Total revenues | 342,388 | 100.0% | 436,373 | 100.0% |
| **Operating costs and expenses:** | | | | |
| Restaurant operating expenses:[1](exclusive of depreciation and amortization shown below) | | | | |
| Food and beverage costs | 76,975 | 22.8% | 100,689 | 23.5% |
| Labor and other related expenses | 120,380 | 35.7% | 148,537 | 34.6% |
| Other restaurant operating expenses | 63,776 | 18.9% | 59,402 | 13.8% |
| Occupancy expenses | 51,375 | 15.2% | 46,151 | 10.8% |
| General and administrative expenses | 46,322 | 13.5% | 55,818 | 12.8% |
| Depreciation and amortization | 30,725 | 9.0% | 28,027 | 6.4% |
| Impairments and loss on disposal of assets | 315 | 0.1% | 33,596 | 7.7% |
| Transaction (income) expenses, net | (258) | (0.1)% | 1,709 | 0.4% |
| Total operating costs and expenses | 389,610 | 113.8% | 473,929 | 108.6% |
| Loss from operations | $ (47,222) | (13.8)% | $ (37,556) | (8.6)% |
| Interest expense | (22,815) | (6.7)% | (20,080) | (4.6)% |
| Other income (expense), net | 483 | 0.1% | (255) | (0.1)% |
| **Loss before income tax benefit** | (69,554) | (20.3)% | (57,891) | (13.3)% |
| Income tax benefit | 19,873 | 5.8% | 12,419 | 2.8% |
| **Net loss and total comprehensive loss** | (49,681) | (14.5)% | (45,472) | (10.4)% |
| Less: Net loss attributable to non-controlling interest | — | — % | (33) | n/m[2] |
| **Net loss and comprehensive loss attributable to First Watch Restaurant Group, Inc.** | $ (49,681) | (14.5)% | $ (45,439) | (10.4)% |

(1) As a percentage of restaurant sales.
(2) Not meaningful.

**Selected Operating Data**

| | Fiscal | |
|---|---|---|
| | 2020 | 2019 |
| System-wide sales (in thousands) | $ 426,303 | $ 558,397 |
| Same-restaurant sales growth | (29.0)% | 5.6% |
| Same-restaurant traffic growth | (33.9)% | 1.6% |
| AUV (in thousands) | $ 1,119 | $ 1,594 |
| System-wide restaurants | 409 | 368 |
| Company-owned | 321 | 299 |
| Franchise operated | 88 | 69 |
| Loss from operations | $ (47,222) | $ (37,556) |
| Loss from operations margin | (14.0)% | (8.7)% |
| Net loss and total comprehensive loss | $ (49,681) | $ (45,472) |
| Net loss and total comprehensive loss margin | (14.5)% | (10.4)% |
| Adjusted EBITDA (in thousands)(1) | $ (5,744) | $ 38,099 |
| Adjusted EBITDA margin(1) | (1.7)% | 8.7% |
| Restaurant level operating profit (in thousands)(2) | $ 28,236 | $ 74,530 |
| Restaurant level operating profit margin(2) | 8.4% | 17.4% |
| Pre-opening expenses(3) | $ 3,880 | $ 5,815 |
| Deferred rent expense(4) | $ 10,087 | $ 4,272 |

(1) For a discussion of Adjusted EBITDA and Adjusted EBITDA Margin and a reconciliation from Net loss and total comprehensive loss and margin, the most comparable GAAP measure to Adjusted EBITDA and margin, see “Prospectus Summary – Summary Historical Consolidated Financial and Other Data.”

(2) For a discussion of restaurant level operating profit and restaurant level operating profit margin and a reconciliation from Loss from operations and margin, the most comparable GAAP measure to restaurant level operating profit and margin, see “Prospectus Summary – Summary Historical Consolidated Financial and Other Data.”

(3) Represents expenses directly incurred to open new restaurants, including pre-opening rent, manager salaries, recruiting expenses, employee payroll, training and marketing costs. These expenses are recorded in other restaurant operating expenses and occupancy expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(4) Consists of the non-cash portion of straight-line rent expense primarily included in occupancy expenses and general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss. This amount represents the extent to which our straight-line rent expense exceeds or is less than our cash rent payments and varies depending on the average age of our lease portfolio. For newer leases, straight-line rent expense typically exceeds cash rent payments. For more mature leases, straight-line rent expense is typically less than cash rent payments.

***Restaurant Sales***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Restaurant sales: | | | | |
| In-restaurant dining sales | $ 257,029 | $ 400,345 | $ (143,316) | (35.8)% |
| Third-party delivery sales | 38,524 | 2,648 | 35,876 | n/m(1) |
| Take-out sales | 41,880 | 26,316 | 15,564 | 59.1% |
| Total Restaurant sales | $ 337,433 | $ 429,309 | $ (91,876) | (21.4)% |

(1) Not meaningful.

Our restaurant dining sales in 2020 were negatively impacted by government mandated restrictions, customer caution and our decision to protect employees and customers from the spread of the COVID-19

pandemic by temporarily closing our restaurants. Our closures took effect on April 13, 2020, with reopenings occurring throughout May and June of 2020. Upon reopening our restaurants, the volume of third-party delivery sales and take-out sales increased as a result of customers' growing preference for at-home dining. The decline in total restaurant sales was partially offset by $15.5 million in sales recognized in 23 new company-owned restaurants as well as menu price increases.

***Franchise Revenues***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Franchise revenues: | | | | |
| Royalty and system fund contributions | $ 4,615 | $ 6,628 | $(2,013) | (30.4)% |
| Initial fees | 340 | 436 | (96) | (22.0)% |
| Total Franchise revenues | $ 4,955 | $ 7,064 | $(2,109) | (29.9)% |

The decrease in franchise revenues during fiscal 2020 as compared to fiscal 2019 was primarily due to the COVID-19 pandemic and dining room restrictions imposed pursuant to state and local goverment mandates, partially offset by the opening of 19 Franchise-owned NROs.

***Food and Beverage Costs***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Food and beverage costs | $76,975 | $100,689 | $(23,714) | (23.6)% |
| As a percentage of restaurant sales | 22.8% | 23.5% | (0.7)% | |

Food and beverage costs decreased in fiscal 2020 as compared to fiscal 2019 primarily due to the decline in same-restaurant sales of (29.0%) and traffic of (33.9%) as a result of the COVID-19 pandemic, partially offset by (i) $3.8 million of costs incurred from the 23 new company-owned restaurants in fiscal 2020 and (ii) inventory obsolescence and spoilage due to the COVID-19 pandemic of approximately $0.6 million.

As a percentage of sales, food and beverage costs decreased from 23.5% in fiscal 2019 to 22.8% in fiscal 2020 primarily due to the impact of menu price increases, including a surcharge on third-party delivery sales.

***Labor and Other Related Expenses***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Labor and other related expenses | $120,380 | $148,537 | $(28,157) | (19.0)% |
| As a percentage of restaurant sales | 35.7% | 34.6% | 1.1% | |

The decrease in labor and other related expenses in fiscal 2020 as compared to fiscal 2019 was primarily due to (i) the reduction in labor hours as a result of lower same-restaurant sales and traffic due to the COVID-19 pandemic, partially offset by (ii) $5.8 million of costs incurred from the 23 new company-owned restaurants in fiscal 2020, (iii) compensation paid to employees upon furlough and return from furlough of $1.1 million and (iv) $0.7 million for health insurance costs paid for furloughed employees, net of employee retention credits.

As a percentage of restaurant sales, the increase in labor and related expenses of 35.7% for fiscal 2020 as compared to 34.6% for fiscal 2019 was primarily due to (i) sales deleveraging related to the impact of the COVID-19 pandemic and (ii) increases in wage rates, partially offset by (iii) the reduction of labor hours.

***Other Restaurant Operating Expenses***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Other restaurant operating expenses | $63,776 | $59,402 | $4,374 | 7.4% |

The increase in other restaurant operating expenses for fiscal 2020 as compared to fiscal 2019 was primarily due to (i) third-party delivery services fees as a result of the expansion of our off-premises sales of approximately $8.7 million and (ii) an increase in supplies, such as personal protection equipment, in response to the COVID-19 pandemic of approximately $2.1 million, partially offset by (iii) the reduction in pre-opening expenses recorded in other restaurant opening expenses of $1.9 million due to the curtailment of new restaurant construction as a result of the COVID-19 pandemic, (iv) reduced advertising, marketing, utilities, and repairs and maintenance totaling approximately $2.8 million and (v) reduced credit card fees of approximately $2.5 million due to reduced restaurant sales as a result of the COVID-19 pandemic.

***Occupancy Expenses***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Occupancy expenses | $51,375 | $46,151 | $5,224 | 11.3% |

The increase in occupancy expenses for fiscal 2020 as compared to fiscal 2019 was primarily due to the opening of 23 new company-owned restaurants as well as new company-owned restaurants opened during fiscal 2019 that had a full year of expense in fiscal 2020. Pre-opening rent expense recorded within occupancy expenses was $1.9 million and $2.0 million for fiscal 2020 and fiscal 2019, respectively.

***General and Administrative Expenses***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| General and administrative expenses | $46,322 | $55,818 | $(9,496) | (17.0)% |

The decrease in general and administrative expenses in fiscal 2020 as compared to fiscal 2019 was principally the result of (i) $6.0 million of consulting, accounting and other expenses incurred in connection with our public-company readiness and other strategic efforts incurred in fiscal 2019, (ii) a $4.4 million decline in discretionary costs including recruiting, travel and bonuses and (iii) a $0.6 million pre-litigation settlement recognized in fiscal 2019. These reduced expenses from fiscal 2019 were partially offset in fiscal 2020 by (i) the $2.0 million write-off of deferred offering costs as a result of halting our public registration of equity, (ii) $1.1 million of costs incurred in connection with the COVID-19 pandemic and (iii) compensation totaling $0.4 million paid to corporate employees upon furlough and return from furlough.

***Depreciation and Amortization***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Depreciation and amortization | $30,725 | $28,027 | $2,698 | 9.6% |

The increase in depreciation and amortization for fiscal 2020 as compared to fiscal 2019 was primarily due to (i) incremental depreciation expense related to new company-owned restaurant openings, partially offset by (ii) the reduction in amortization expense of $0.7 million related to The Egg and I tradename and franchise rights resulting from the impairment recognized in fiscal 2019 (See Note 7, *Intangible Assets, Net*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information).

***Impairments and Loss on Disposal of Assets***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Impairments and loss on disposal of assets | $315 | $33,596 | $(33,281) | n/m(1) |

(1) Not meaningful.

The decrease in impairments and loss on disposal of assets in fiscal 2020 as compared to fiscal 2019 primarily related to the impairment of The Egg & I tradename and franchise rights totaling $32.2 million resulting from the Company's strategic review of its operations in fiscal 2019. The remaining net book value for The Egg & I trade name and franchise rights, respectively, were amortized through the end of fiscal 2019. For additional information, see Note 7, *Intangible Assets, Net*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

***Transaction (Income) Expenses, Net***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Transaction (income) expenses, net | $(258) | $1,709 | $(1,967) | n/m(1) |

(1) Not meaningful.

In fiscal 2020, transaction income, net primarily related to the revaluation of the contingent consideration payable to previous stockholders for tax savings generated through use of federal and state loss carryforwards. See Note 14, *Income Taxes*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

In fiscal 2019, transaction expenses, net primarily related to (i) costs incurred in connection with acquisitions of franchised restaurants, (ii) costs incurred associated with conversions of restaurants to the First Watch trade name and (iii) lease termination and other related costs for closures of restaurants operating under The Egg & I trade name, partially offset by (iv) the gain, net of closure costs, recognized for terminating the lease for one restaurant facility.

***Loss from Operations***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Loss from operations | $(47,222) | $(37,556) | $(9,666) | n/m(1) |

(1) Not meaningful.

The increase in loss from operations in fiscal 2020 as compared to fiscal 2019 was primarily due to lower restaurant sales, traffic and additional costs as a result of the COVID-19 pandemic, including incremental delivery-related costs and compensation and benefits paid for furloughed employees (net of tax credits). These losses were partially offset by reduced food and beverage costs, labor expenses, IPO-readiness expenses and impairment expenses.

***Interest Expense***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Interest expense | $22,815 | $20,080 | $2,735 | 13.6% |

The increase in interest expense in fiscal 2020 as compared to fiscal 2019 was primarily due to $1.6 million of additional interest incurred pursuant to the fourth amendment of our credit agreement. See Note 10, *Debt*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

***Other Income (Expense), Net***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Other income (expense), net | $483 | $(255) | $738 | n/m(1) |

(1) Not meaningful.

In fiscal 2020, other income, net primarily related to the receipt of an insurance claim related to one restaurant facility. In fiscal 2019, other expense, net primarily related to (i) $0.6 million of costs incurred in connection with the two amendments of our Senior Credit Facilities (See Note 10, *Debt*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information), partially offset by (ii) $0.2 million of gains on settlements of pre-existing agreements recognized in connection with acquisitions of franchised restaurants.

***Income Tax Benefit***

| | Fiscal | | | |
|---|---|---|---|---|
| | 2020 | 2019 | Change | |
| | (in thousands) | | | |
| Income tax benefit | $19,873 | $12,419 | $7,454 | 60.0% |

The effective income tax rates for fiscal 2020 and fiscal 2019 were 28.6% and 21.5%, respectively. The change in the effective income tax rate in fiscal 2020 as compared to fiscal 2019 was primarily due to the change in the valuation allowance for federal and state deferred tax assets and the benefit of tax credits for FICA taxes on certain employees' tips.

The Company has a blended federal and state statutory rate of approximately 25.0%. The effective income tax rate for fiscal 2020 and fiscal 2019 was different from the blended federal and state statutory rate primarily due to the change in the valuation allowance and the benefit of the tax credits for FICA taxes on certain employee tips.

## Twenty-Six Weeks Ended June 27, 2021 Compared to Twenty-Six Weeks Ended June 28, 2020

### Results of Operations

The following table summarizes our results of operations and the percentages of certain items in relation to total revenues or restaurant sales for the twenty-six weeks ended June 27, 2021 and June 28, 2020:

| | Twenty-Six Weeks Ended | | | |
|---|---|---|---|---|
| | June 27, 2021 | | June 28, 2020 | |
| | (in thousands) | | | |
| **Revenues:** | | | | |
| Restaurant sales | $277,054 | 98.5% | $131,193 | 98.5% |
| Franchise revenues | 4,078 | 1.5% | 2,053 | 1.5% |
| Total revenues | 281,132 | 100.0% | 133,246 | 100.0% |
| **Operating costs and expenses:** | | | | |
| Restaurant operating expenses:(1) (exclusive of depreciation and amortization shown below) | | | | |
| Food and beverage costs | 60,512 | 21.8% | 30,987 | 23.6% |
| Labor and other related expenses | 85,999 | 31.0% | 50,012 | 38.1% |
| Other restaurant operating expenses | 46,815 | 16.9% | 23,282 | 17.7% |
| Occupancy expenses | 27,757 | 10.0% | 25,182 | 19.2% |
| General and administrative expenses | 27,341 | 9.7% | 22,278 | 16.7% |
| Depreciation and amortization | 15,762 | 5.6% | 15,028 | 11.3% |
| Impairments and loss on disposal of assets | 163 | 0.1% | 255 | 0.2% |
| Transaction expenses, net | 626 | 0.2% | 99 | 0.1% |
| Total operating costs and expenses | 264,975 | 94.3% | 167,123 | 125.4% |
| Income (Loss) from operations | 16,157 | 5.7% | (33,877) | (25.4)% |
| Interest expense | (12,605) | (4.5)% | (10,667) | (8.0)% |
| Other income, net | 321 | 0.1% | 360 | 0.3% |
| **Income (Loss) before income tax expense (benefit)** | 3,873 | 1.4% | (44,184) | (33.2)% |
| Income tax expense (benefit) | 2,110 | 0.8% | (12,762) | (9.6)% |
| **Net income (loss) and total comprehensive income (loss)** | $ 1,763 | 0.6% | $ (31,422) | (23.6)% |

(1) As a percentage of restaurant sales.

**Selected Operating Data**

| | Twenty-Six Weeks Ended | |
|---|---|---|
| | June 27, 2021 | June 28, 2020 |
| System-wide sales (in thousands) | $ 350,596 | $ 166,290 |
| Same-restaurant sales growth | 95.9% | (43.4)% |
| Same-restaurant traffic growth | 76.3% | (45.7)% |
| AUV (in thousands) | $ 829 | $ 430 |
| System-wide restaurants | 423 | 387 |
| Company-owned | 335 | 309 |
| Franchise operated | 88 | 78 |
| Income (Loss) from operations | $ 16,157 | $ (33,877) |
| Income (Loss) from operations margin | 5.8% | (25.8)% |
| Net income (loss) and total comprehensive income (loss) | $ 1,763 | $ (31,422) |
| Net income (loss) and total comprehensive income (loss) margin | 0.6% | (23.6)% |
| Adjusted EBITDA (in thousands) (1) | $ 35,182 | $ (11,803) |
| Adjusted EBITDA margin (1) | 12.5% | (8.9)% |
| Restaurant level operating profit (in thousands) (2) | $ 55,990 | $ 4,440 |
| Restaurant level operating profit margin (2) | 20.2% | 3.4% |
| Pre-opening expenses(3) | $ 2,063 | $ 2,076 |
| Deferred rent (income) expense(4) | $ (1,807) | $ 8,752 |

(1) For a discussion of Adjusted EBITDA and Adjusted EBITDA Margin and a reconciliation from Net income (loss) and total comprehensive income (loss) and margin, the most comparable GAAP measure to Adjusted EBITDA and margin, see "Prospectus Summary – Summary Historical Consolidated Financial and Other Data."

(2) For a discussion of restaurant level operating profit and restaurant level operating profit margin and a reconciliation from Income (Loss) from operations and margin, the most comparable GAAP measure to restaurant level operating profit and margin, see "Prospectus Summary – Summary Historical Consolidated Financial and Other Data."

(3) Represents expenses directly incurred to open new restaurants, including pre-opening rent, manager salaries, recruiting expenses, employee payroll, training and marketing costs. These expenses are recorded in other restaurant operating expenses and occupancy expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

(4) Consists of the non-cash portion of straight-line rent expense primarily included in occupancy expenses and general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss). This amount represents the extent to which our straight-line rent expense exceeds or is less than our cash rent payments and varies depending on the average age of our lease portfolio. For newer leases, straight-line rent expense typically exceeds cash rent payments. For more mature leases, straight-line rent expense is typically less than cash rent payments.

***Restaurant Sales***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Restaurant sales: | | | |
| In-restaurant dining sales | $ 203,836 | $ 113,961 | 78.9% |
| Third-party delivery sales | 37,352 | 4,806 | n/m(1) |
| Take-out sales | 35,866 | 12,426 | n/m(1) |
| Total Restaurant sales | $ 277,054 | $ 131,193 | n/m(1) |

(1) Not meaningful.

Comparison of the twenty-six weeks ended June 27, 2021 to the twenty-six weeks ended June 28, 2020 is impacted by government-mandated dining room restrictions during 2020 and the temporary suspension of all company-owned restaurant operations starting April 13, 2020 as result of the COVID-19 pandemic. We reopened substantially all our company-owned restaurants in four phases by the end of June 2020. The increase in total restaurant sales during the twenty-six weeks ended June 27, 2021 as compared to the twenty-six weeks ended June 28, 2020 was also driven by $17.3 million of sales recognized from 27 NROs in the third fiscal quarter of 2020 through June 27, 2021.

For improved comparability due to the impact of the COVID-19 pandemic on fiscal 2020, same-restaurant sales growth during the twenty-six weeks ended June 27, 2021 was 8.4% when compared to the twenty-six weeks ended June 30, 2019.

The volume of off-premises sales, which includes both third-party delivery and take-out sales, increased as a result of customers' growing preference for at-home dining due to the COVID-19 pandemic. During the twenty-six weeks ended June 28, 2020, off-premises sales were 13.1% of $131.2 million of total restaurant sales. Even as total restaurant sales have increased to $277.1 million for the twenty-six weeks ended June 27, 2021, the percentage of off-premises sales has also increased to 26.4%. Menu price increases were implemented to compensate for third-party delivery fees in connection with the off-premises sales resulting in a relatively neutral margin on off-premises sales as compared to in-restaurant dining sales. Given that this sales volume of off-premises business emerged as a result of the COVID-19 pandemic, we cannot be certain a similar sales volume will continue in the future.

***Franchise Revenues***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Franchise revenues: | | | |
| Royalty and system fund contributions | $ 3,954 | $ 1,825 | 116.7% |
| Initial fees | 124 | 228 | (45.6)% |
| Total Franchise revenues | $ 4,078 | $ 2,053 | 98.6% |

The increase in franchise revenues during the twenty-six weeks ended June 27, 2021 as compared to the same period in the prior year was primarily driven by significantly lower sales during fiscal 2020 due to the COVID-19 pandemic, partially offset by $0.4 million of franchise revenues recognized during the twenty-six weeks ended June 27, 2021 for 13 franchise-owned NROs, net of franchise-owned restaurant closures, in the third fiscal quarter of 2020 through June 27, 2021.

***Food and Beverage Costs***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Food and beverage costs | $ 60,512 | $ 30,987 | 95.3% |
| As a percentage of restaurant sales | 21.8% | 23.6% | (1.8)% |

As a percentage of restaurant sales, food and beverage costs decreased from 23.6% during the twenty-six weeks ended June 28, 2020 to 21.8% during the twenty-six weeks ended June 27, 2021 primarily due to (i) inventory obsolescence and spoilage totaling $0.4 million resulting from the COVID-19 pandemic during the twenty-six weeks ended June 28, 2020 and (ii) the surcharge on third-party delivery sales. For improved comparability due to the impact of the COVID-19 pandemic on fiscal 2020, food and beverage costs as a percentage of restaurant sales was approximately 23.5% during the twenty-six weeks ended June 30, 2019.

Food and beverage costs increased during the twenty-six weeks ended June 27, 2021 as compared to the twenty-six weeks ended June 28, 2020 primarily as a result of (i) reduced restaurant sales in fiscal 2020 due to the COVID-19 pandemic, partially offset by (ii) $4.0 million of food and beverage costs from the 27 NROs in the third fiscal quarter of 2020 through June 27, 2021.

***Labor and Other Related Expenses***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Labor and other related expenses | $ 85,999 | $ 50,012 | 72.0% |
| As a percentage of restaurant sales | 31.0% | 38.1% | (7.1)% |

As a percentage of restaurant sales, the decrease in labor and other related expenses from 38.1% during the twenty-six weeks ended June 28, 2020 to 31.0% during the twenty-six weeks ended June 27, 2021 was primarily due to leveraging of labor and other related expenses as restaurants sales have grown rapidly combined with limited availability of in-restaurant labor and staff shortages resulting from the COVID-19 pandemic.

As a percentage of restaurant sales, labor and other related expenses during the twenty-six weeks ended June 27, 2021 was 31.0% as compared to approximately 34.5% during the twenty-six weeks ended June 30, 2019, for improved comparability due to the impact of the COVID-19 pandemic on fiscal 2020. The decrease was due to limited availability of hourly labor and staff shortages resulting from the COVID-19 pandemic.

The increase in labor and other related expenses during the twenty-six weeks ended June 27, 2021 as compared to the twenty-six weeks ended June 28, 2020 is primarily due to (i) government-mandated dining room restrictions during 2020, the temporary suspension of all company-owned restaurant operations and other effects resulting from the COVD-19 pandemic, (ii) $5.9 million due to the additional costs incurred in 27 NROs in the third fiscal quarter of 2020 through June 27, 2021 and (iii) normal performance-related bonuses, partially offset by (iv) $1.8 million in compensation expense and health insurance costs for furloughed employees, net of employee retention credits, incurred during the twenty-six weeks ended June 28, 2020.

***Other Restaurant Operating Expenses***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Other restaurant operating expenses . . . . . | $ 46,815 | $ 23,282 | 101.1% |
| As a percentage of restaurant sales | 16.9% | 17.7% | (0.8)% |

As a percentage of restaurant sales, the decrease in other restaurant operating expenses from 17.7% during the twenty-six weeks ended June 28, 2020 to 16.9% during the twenty-six weeks ended June 27, 2021 was primarily due to (i) leveraging increased restaurant sales that have recovered from depressed levels due to effects of the COVID-19 pandemic, partially offset by (ii) the increase in credit card fees, supplies, utilities and repairs and maintenance totaling approximately $13.9 million as the operations at company-owned restaurants were temporarily suspended and government-mandated dining room restrictions imposed due to the COVID-19 pandemic during the twenty-six weeks ended June 28, 2020, (iii) an increase in third-party delivery services fees of $7.7 million as a result of continued off-premises sales and (iv) the increase in pre-opening expenses of $0.4 million.

For improved comparability due to the impact of the COVID-19 pandemic on fiscal 2020, the increase in other restaurant operating expenses as a percentage of restaurant sales of 13.7% during the twenty-six weeks ended June 30, 2019 to 16.9% during the twenty-six weeks ended June 27, 2021 was primarily driven by off-premises packaging costs, personal protective equipment, supplies and third-party delivery service fees.

***Occupancy Expenses***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Occupancy expenses | $ 27,757 | $ 25,182 | 10.2% |
| As a percentage of restaurant sales | 10.0% | 19.2% | (9.2)% |

The increase in occupancy expenses during the twenty-six weeks ended June 27, 2021 as compared to the twenty-six weeks ended June 28, 2020 was primarily due to the increase in the number of company-owned restaurants and the number of leases that had commenced during the respective periods. Pre-opening rent expense was $0.7 million during the twenty-six weeks ended June 27, 2021 as compared to $1.1 million during the twenty-six weeks ended June 28, 2020.

***General and Administrative Expenses***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| General and administrative expenses | $ 27,341 | $ 22,278 | 22.7% |

The increase in general and administrative expenses during the twenty-six weeks ended June 27, 2021 as compared to the twenty-six weeks ended June 28, 2020 was primarily due to (i) the increase in compensation of $5.7 million resulting from additional headcount and performance-related bonuses as compared to 2020 when there were furloughs and the reduction in bonuses, (ii) the increase of $0.7 million in marketing spend, partially offset by (iii) the reduction of $1.7 million in consulting, accounting and other expenses incurred in connection with public-company readiness efforts during fiscal 2020.

***Depreciation and Amortization***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Depreciation and amortization | $ 15,762 | $ 15,028 | 4.9% |

The increase in depreciation and amortization recognized during the twenty-six weeks ended June 27, 2021 as compared to the twenty-six weeks ended June 28, 2020 was primarily due to incremental depreciation expense associated with NROs.

***Impairments and Loss on Disposal of Assets***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Impairments and loss on disposal of assets | $ 163 | $ 255 | (36.1)% |

There were no impairment losses recognized on intangible assets or fixed assets during the twenty-six weeks ended June 27, 2021 and June 28, 2020.

Loss on disposal of assets recognized during the periods indicated were related to retirements and replacements of fixed assets as well as disposals of assets.

***Transaction Expenses, Net***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Transaction expenses, net | $ 626 | $ 99 | n/m(1) |

(1) Not meaningful.

Transaction expenses, net primarily represents the revaluation of the contingent consideration payable to previous stockholders for tax savings generated through use of federal and state loss carryforwards. See Note 9, *Income Taxes*, in the notes to the interim unaudited consolidated financials statements and Note 14, *Income Taxes*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

***Income (Loss) from Operations***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Income (Loss) from operations | $ 16,157 | $ (33,877) | n/m(1) |

(1) Not meaningful.

Income from operations for the twenty-six weeks ended June 27, 2021 as compared to Loss from operations for the twenty-six weeks ended June 28, 2020 was primarily due to (i) the temporary suspension of operations at company-owned restaurants and seating capacity restrictions due to the COVID-19 pandemic in fiscal 2020 and (ii) the impact of the operating results of 27 NROs in the third fiscal quarter of 2020 through June 27, 2021, partially offset by (iii) the increase in food and beverage costs, labor and other related expenses and third-party delivery fees as restaurant sales and traffic increased during the twenty-six weeks ended June 27, 2021.

***Interest Expense***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Interest expense | $ 12,605 | $ 10,667 | 18.2% |

The increase in interest expense during the twenty-six weeks ended June 27, 2021 as compared to the twenty-six weeks ended June 28, 2020 was primarily due to the additional interest incurred pursuant to the fourth amendment of our credit agreement in August 2020 of $2.2 million. See Note 7, *Debt*, in the notes to the interim unaudited consolidated financial statements included elsewhere in this prospectus for additional information.

***Other Income, Net***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Other income, net | $ 321 | $ 360 | (10.8)% |

Other income, net includes items deemed to be non-operating based on management's assessment of the nature of the item in relation to our core operations.

***Income Tax Expense (Benefit)***

| | Twenty-Six Weeks Ended | | |
|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | Change |
| | (in thousands) | | |
| Income tax expense (benefit) | $ 2,110 | $ (12,762) | n/m(1) |

(1) Not meaningful.

The effective income tax rate for the twenty-six weeks ended June 27, 2021 was 54.5% as compared to 28.9% for the twenty-six weeks ended June 28, 2020. The change in the effective income tax rate was primarily due to the change in the valuation allowance for federal and state deferred tax assets, the benefit of tax credits for FICA taxes on certain employees' tips and the forecasted 2021 pre-tax book income as compared to forecasted 2020 pre-tax book loss.

The Company has a blended federal and state statutory rate of approximately 25.0%. The effective income tax rate for the twenty-six weeks ended June 27, 2021 and June 28, 2020 were different from the blended federal and state statutory rate primarily due to the change in the valuation allowance for federal and state deferred tax assets and the benefit of tax credits for FICA taxes on certain employees' tips.

**Quarterly Results of Operations**

The following table sets forth statements of operations data for the first and second fiscal quarters of 2021 and each quarter in fiscal 2020 and fiscal 2019. We have prepared the unaudited quarterly information on a basis consistent with the audited consolidated financial statements included elsewhere in this prospectus. In the opinion of management, the financial information reflects all adjustments which we consider necessary for a fair presentation of this data. This information should be read in conjunction with the audited consolidated financial statements and related notes included elsewhere in this prospectus. The results of interim historical periods are not necessarily indicative of the results for any future period.

| | Quarter ended | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | June 27, 2021 | March 28, 2021 | December 27, 2020 | Sept. 27, 2020 | June 28, 2020 | March 29, 2020 | December 29, 2019 | Sept. 29, 2019 | June 30, 2019 | March 31, 2019 |
| | (in thousands, except per share data) | | | | | | | | | |
| Total revenues | $153,962 | $127,170 | $ 109,393 | $ 99,749 | $ 28,283 | $104,963 | $ 114,213 | $109,646 | $109,223 | $103,291 |
| Income (Loss) from operations | $ 12,312 | $ 3,845 | $ (4,728) | $ (8,617) | $(27,669) | $ (6,208) | $ (2,528) | $ (3,678) | $ (32,715) | $ 1,365 |
| Net income (loss) and total comprehensive income (loss) * | $ 3,804 | $ (2,041) | $ (7,117) | $(11,142) | $(25,490) | $ (5,932) | $ (5,775) | $ (7,030) | $ (29,543) | $ (3,124) |
| Net income (loss) per common share - basic | $ 0.08 | $ (0.05) | $ (0.16) | $ (0.25) | $ (0.57) | $ (0.13) | $ (0.13) | $ (0.16) | $ (0.66) | $ (0.07) |
| Net income (loss) per common share - diluted | $ 0.08 | $ (0.05) | $ (0.16) | $ (0.25) | $ (0.57) | $ (0.13) | $ (0.13) | $ (0.16) | $ (0.66) | $ (0.07) |

* The results of the fourth fiscal quarter of 2019 include the impact of an out of period correction of an error that resulted in a $1.4 million increase in the income tax benefit. See Note 2, *Summary of Significant Accounting Policies*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

**Non-GAAP Metrics**

For a description of Adjusted EBITDA and Adjusted EBITDA Margin and restaurant level operating profit and restaurant level operating profit margin and reconciliations to the most directly comparable GAAP measures, please see the "Summary Historical Consolidated Financial and Other Data" starting on page 21. For

improved comparability due to the impact of the COVID-19 pandemic on fiscal 2020, the reconciliation of Net loss and total comprehensive loss and margin, the most directly comparable GAAP measure, to Adjusted EBITDA and margin for the twenty-six weeks ended June 30, 2019 is as follows:

| | Twenty-Six Weeks Ended June 30, 2019 (in thousands) |
|---|---|
| Net loss and total comprehensive loss | $ (32,666) |
| Depreciation and amortization | 13,034 |
| Interest expense | 10,245 |
| Income tax benefit | (9,048) |
| EBITDA | (18,435) |
| Initial public offering ("IPO")-readiness and strategic transition costs(1) | 4,009 |
| Impairments and loss on disposal of assets(2) | 32,880 |
| Transaction expenses, net(3) | 1,107 |
| Stock-based compensation(4) | 556 |
| Recruiting and relocation costs(5) | 435 |
| Severance costs(6) | 192 |
| Adjusted EBITDA | $ 20,744 |
| Total revenues | $ 212,514 |
| Net loss and comprehensive loss margin | (15.4)% |
| Adjusted EBITDA Margin | 9.8% |

(1) Represents costs related to information technology support and external professional service costs incurred in connection with IPO- readiness efforts as well as the assessment and redesign of our systems and processes. These costs are recorded within general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(2) Includes impairments recognized on intangible assets and fixed assets as well as costs related to the disposal of assets due to retirements, replacements or certain restaurant closures.

(3) Primarily represents costs incurred in connection with the acquisition of certain franchised restaurants, costs incurred in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name and costs related to restaurant closures. In addition, the amount also includes costs associated with the revaluation of the contingent consideration payable to previous stockholders for tax savings generated through use of federal and state loss carryforwards. See Note 14, *Income Taxes*, in the notes to the audited financial statements and Note 9, *Income Taxes*, in the notes to the interim unaudited consolidated financial statements included elsewhere in this prospectus for additional information.

(4) Represents non-cash, stock-based compensation expense which is recorded in general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(5) Represents costs incurred for hiring qualified individuals as we assessed the redesign of our systems and processes. These costs are recorded within general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(6) Severance costs are recorded in general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

For improved comparability due to the impact of the COVID-19 pandemic on fiscal 2020, the reconciliation of Loss from operations and margin, the most directly comparable GAAP financial measure, to Restaurant level operating profit and margin for the twenty-six weeks ended June 30, 2019 is as follows:

| | Twenty-Six Weeks Ended June 30, 2019 (in thousands) |
|---|---|
| Loss from operations | $ (31,350) |
| Less: Franchise revenues | (3,692) |
| Add: | |
| General and administrative expenses | 25,902 |
| Depreciation and amortization | 13,035 |
| Impairments and loss on disposal of assets(1) | 32,880 |
| Transaction expenses, net(2) | 1,107 |
| Restaurant level operating profit | $ 37,882 |
| Restaurant sales | $ 208,822 |
| Loss from operations margin | (15.0)% |
| Restaurant level operating profit margin | 18.1% |

(1) Includes impairments recognized on intangible assets and fixed assets as well as costs related to the disposal of assets due to retirements, replacements or certain restaurant closures.

(2) Primarily represents costs incurred in connection with the acquisition of certain franchised restaurants, costs incurred in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name and costs related to restaurant closures. In addition, the amount also includes costs associated with the revaluation of the contingent consideration payable to previous stockholders for tax savings generated through use of federal and state loss carryforwards. See Note 14, *Income Taxes*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

**Liquidity and Capital Resources**

***Liquidity***

Our primary sources of liquidity are cash flow from operations, cash and cash equivalents, credit capacity under our Senior Credit Facilities, and proceeds from equity offerings, including this offering. As of June 27, 2021, we had cash and cash equivalents of $48.0 million and availability under our Senior Credit Facilities of $21.1 million.

As of June 27, 2021, we had $288.8 million in outstanding borrowings under our Senior Credit Facilities, which excludes unamortized debt issuance costs and deferred issuance costs. Our total indebtedness as of June 27, 2021 was $294.0 million. See “Description of Material Indebtedness.” After giving effect to the application of the estimated net proceeds from this offering, our total indebtedness will be $135.5 million. See “Use of Proceeds.” Our principal uses of cash include capital expenditures for the development, acquisition or remodeling of restaurants, lease obligations, debt service payments and strategic infrastructure investments. Our requirements for working capital are not significant because our customers pay for their food and beverage purchases in cash or on debit or credit cards at the time of the sale and we are able to sell many of our inventory items before payment is due to the supplier of such items.

During fiscal 2020, the temporary closure of our dining rooms and the limitations on seating capacity due to the COVID-19 pandemic resulted in significantly reduced traffic in our restaurants which has negatively impacted our operating cash flows. In response, we took immediate steps to preserve liquidity including curtailing new restaurant construction and elective project spending, deferring rent payments and furloughing employees. Together with our lenders, we entered into two amendments to our Credit Agreement on April 27, 2020 and on August 14,

2020, the principal effects of which incorporated paid-in-kind interest to be added to the outstanding amounts drawn and suspended debt covenant compliance from April 1, 2020 through March 28, 2021. See Note 10, *Debt*, in the notes to the audited consolidated financial statements and Note 7, *Debt*, in the notes to the interim unaudited consolidated financial statements included elsewhere in this prospectus for additional information.

In conjunction with the August 14, 2020 amendment to our Credit Agreement, we issued preferred shares to our owners in exchange for proceeds of $40.0 million, of which a portion was subsequently used to repay the outstanding balance of $10.5 million on the revolving credit facility.

We estimate that our capital expenditures will total approximately $30.0 million to $35.0 million in fiscal 2021, which we plan to fund primarily with cash generated from our operating activities as well as with borrowings under our Senior Credit Facilities.

We believe that our cash flow from operations, availability under our Senior Credit Facilities and available cash and cash equivalents will be sufficient to meet our liquidity needs for at least the next 12 months. We anticipate that to the extent that we require additional liquidity, it will be funded through additional indebtedness, the issuance of equity, or a combination thereof. Although we believe that our current level of total available liquidity is sufficient to meet our short-term and long-term liquidity requirements, we regularly evaluate opportunities to improve our liquidity position in order to enhance financial flexibility. Although we have no specific current plans to do so, if we decide to pursue one or more significant acquisitions, we may incur additional debt or sell additional equity to finance such acquisitions, which would result in additional expenses or dilution.

***Senior Credit Facilities and Unused Borrowing Capacity***

Our Senior Credit Facilities mature on August 21, 2023. We have pledged substantially all our assets under our Senior Credit Facilities. For our Senior Credit Facilities excluding the Revolving Facility, principal payments at a rate of 0.25% of the original principal amounts are due quarterly with the remainder of principal (including paid-in-kind interest) and unpaid interest due at maturity, and have a commitment fee payable quarterly in arrears at 1% per annum, applicable to unused commitments. Our Revolving Facility includes a commitment fee at a rate of 0.50% per annum of the initial revolving credit commitment. The Senior Credit Facilities contain covenants that provide for, among other things, maintenance of certain ratios and restrictions on additional indebtedness. We were in compliance with the covenants as of June 27, 2021, December 27, 2020 and December 29, 2019.

The following table summarizes our unused borrowing capacity as of June 27, 2021, December 27, 2020 and December 29, 2019:

| | June 27, 2021 | December 27, 2020 | December 29, 2019 |
|---|---|---|---|
| | | (in thousands) | |
| Undrawn revolving credit facility | $ 19,620 | $ 19,620 | $ 2,620 |
| Undrawn initial delayed draw term facility | — | — | 15,000 |
| Undrawn second amendment delayed draw term facility | 1,500 | 1,500 | 40,000 |
| Total unused borrowing capacity | $ 21,120 | $ 21,120 | $ 57,620 |

***Summary of Cash Flows***

The following table presents a summary of our cash provided by (used in) operating, investing and financing activities for the twenty-six weeks ended June 27, 2021 and June 28, 2020 and for fiscal 2020 and fiscal 2019:

| | Twenty-Six Weeks Ended | | Fiscal | |
|---|---|---|---|---|
| | June 27, 2021 | June 28, 2020 | 2020 | 2019 |
| | (in thousands) | | | |
| Cash provided by (used in) operating activities | $ 30,428 | $ (19,908) | $(18,364) | $ 21,465 |
| Cash used in investing activities | (19,524) | (19,352) | (26,974) | (82,389) |
| Cash (used in) provided by financing activities | (1,717) | 40,474 | 73,314 | 55,761 |
| Net increase (decrease) in cash and cash equivalents and restricted cash | $ 9,187 | $ 1,214 | $ 27,976 | $ (5,163) |

Cash provided by operating activities during the twenty-six weeks ended June 27, 2021 as compared to cash used in operating activities during the twenty-six weeks ended June 28, 2020 was primarily driven by (i) the increase in restaurant sales and traffic, (ii) the increase in sales of gift cards and (iii) the timing of operational receipts and payments, partially offset by (iv) payments for rent deferrals.

Cash used in investing activities increased during the twenty-six weeks ended June 27, 2021 as compared to the twenty-six weeks ended June 28, 2020 primarily as a result of curtailing new restaurant construction during the first half of fiscal 2020 due to the COVID-19 pandemic.

Cash flows used in financing activities during the twenty-six weeks ended June 27, 2021 comprised of repayments on our Senior Credit Facilities as compared to proceeds from the issuance of long-term debt received, net of repayments made on our Senior Credit Facilities during the twenty-six weeks ended June 28, 2020.

Cash from operating activities decreased during fiscal 2020 as compared to fiscal 2019 primarily due to impacts of the COVID-19 pandemic which reduced in-restaurant dining room traffic and sales of gift cards. Further decreases to cash from operating activities were the result of compensation paid to furloughed employees and the Company's funding of the employee portion of health insurance premiums on behalf of furloughed participants. These uses of cash from operating activities are partially offset by employee retention credits of $0.9 million and the deferral of payroll tax payments totaling $6.7 million provided for under the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") as well as rent deferrals and abatements.

The decrease in cash used in investing activities during fiscal 2020 as compared to fiscal 2019 was primarily due to lower capital expenditures and cash outflows related to acquisitions.

The increase in cash provided by financing activities during fiscal 2020 as compared to fiscal 2019 was primarily due to proceeds from the issuance of preferred shares, partially offset by lower net borrowings on the Senior Credit Facilities.

**Contractual Obligations**

The following table sets forth certain contractual obligations, debt obligations and commitments as of December 27, 2020:

| | Total | Less than 1 year | 1-3 years | 4-5 years | More than 5 years |
|---|---|---|---|---|---|
| | | | (in thousands) | | |
| Long-term debt(1) | $290,761 | $ 3,609 | $286,323 | $ 819 | $ 10 |
| Operating lease obligations(2) | $695,858 | $ 41,695 | $ 80,327 | $82,530 | $ 491,306 |
| Purchase obligations(3) | $ 2,500 | $ 2,500 | $ — | $ — | $ — |
| Interest(4) | $ 63,213 | $ 19,297 | $ 43,865 | $ 51 | $ — |

(1) Amount includes Senior Credit Facilities and finance lease liabilities. Amount is not reduced by unamortized debt discount and deferred issuance costs and finance lease interest expense.
(2) Amounts represent undiscounted future minimum rental commitments under non-cancelable operating leases and includes option renewal periods only to the extent it is reasonably certain that the extension options will be exercised.
(3) Purchase obligations include agreements to purchase goods or services that are enforceable, legally binding and specify all significant terms, including fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.
(4) Projected future interest payments on long-term debt are based on interest rates in effect as of December 27, 2020 and assume only scheduled principal payments.

The above table excludes short-term, exclusive contracts we enter into with certain vendors, primarily of inventory, restaurant-level service contracts, advertising and technology, to supply us with food, beverages and paper goods, obligating us to purchase specified quantities, products and/or services at fixed prices. These commitments are cancellable and there are no material financial penalties associated with these agreements in the event of early termination. We also enter into purchase commitments related to construction, marketing and other service-related arrangements that occur in the normal course of business. Such commitments are excluded from the above table, as they are typically short-term in nature.

In addition, other unrecorded obligations that have been excluded from the contractual obligations table include contingent rent payments, property taxes, insurance payments and common area maintenance costs.

**Off-Balance Sheet Arrangements**

Except for certain letters of credit entered into as security under the terms of several of our leases and the unrecorded contractual obligations set forth above, we did not have any off-balance sheet arrangements as of June 27, 2021, December 27, 2020 and December 29, 2019.

**Critical Accounting Estimates**

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements and related notes included elsewhere in this prospectus, which have been prepared in accordance with GAAP. The preparation of these financial statements and related notes requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. Certain of our accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. These judgments are based on our historical experience, terms of existing contracts, our evaluation of trends in the industry, information available from other outside sources, as appropriate. We evaluate our estimates and judgments on an on-going basis. Our actual results may differ from these estimates. Judgments and uncertainties affecting the application of those policies may result in materially different amounts being reported under different conditions or using different assumptions. The accounting policies that we believe to be the most critical to an understanding of our financial condition and results of operations and that require the most complex and subjective management judgments are discussed below.

***Goodwill and Indefinite-Lived Intangibles***

Goodwill and indefinite-lived intangibles, which include our registered trade names, trademarks, domains and liquor licenses, are tested for impairment annually, on the first day of the fourth quarter of the fiscal year, or whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. Significant judgments are used to determine if an indicator of impairment has occurred. Such indicators could include negative operating performance of our restaurants, economic and restaurant industry trends, legal factors,

significant competition or changes in our business strategy. Any adverse change in these factors could have a significant impact on the recoverability of our goodwill and indefinite-lived intangible assets and could have a material impact on our consolidated financial statements.

We have identified one reporting unit to which we have attributed goodwill. If we determine that it is more likely than not that the carrying value of our reporting unit exceeds the fair value, a quantitative analysis is performed. We estimate the fair value of our reporting unit using the best information available, including market information (also referred to as the market capitalization or market approach) and discounted cash flow projections (also referred to as the income approach). The market approach estimates fair value by applying projected cash flow earnings multiples to the reporting unit's operating performance. The multiples are derived from comparable publicly-traded companies with similar operating and investment characteristics. The income approach uses the reporting unit's projection of estimated operating results and cash flows that are discounted using a weighted-average cost of capital that reflects current market conditions. We recognize an impairment loss when the carrying value of the reporting unit exceeds the estimated fair value.

We estimate the fair value of trade names and trademarks using the relief-from-royalty method, which requires assumptions related to projected sales, assumed royalty rates that could be payable if we did not own the trademarks and a discount rate. We recognize an impairment loss when the carrying value of the trademarks exceed the estimated fair value.

The effect of the COVID-19 pandemic was considered an indicator of impairment in April 2020 indicating that the carrying value of goodwill and indefinite-lived intangible assets may not be recoverable. We performed a quantitative impairment assessment in April 2020 and determined there was no impairment loss to be recognized. The fair value of the reporting unit exceeded its carrying value by 9% while all other indefinite lived intangible assets significantly exceeded their carrying value, which we define as being greater than 20%. We also performed our annual impairment test of goodwill and indefinite-lived intangibles as of the first day of the fourth quarter of fiscal 2020 and determined there was no impairment loss to be recognized. The fair value of the reporting unit in the annual impairment test in fiscal 2020 exceeded its carrying value by 8% (the decrease from 9% in April 2020 was primarily due to a change in the weighted average cost of capital) and the fair value of all other indefinite-lived intangible assets significantly exceeded their carrying values. We performed a qualitative annual impairment assessment for goodwill and indefinite-lived assets as of the first day of the fourth quarter of fiscal 2019 and determined there was no indication of impairment. See Note 6, *Goodwill*, and Note 7, *Intangible Assets, Net*, in the notes to the audited consolidated financial statements included in this prospectus for additional information.

***Long-Lived Assets and Definite-Lived Intangible Assets***

Long-lived assets deployed at company-owned restaurants include (i) property, fixtures and equipment, (ii) operating lease right-of-use asset, net of the related operating lease liability and (iii) reacquired rights to the extent the restaurant had been previously acquired by the Company. Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. Recoverability is measured by a comparison of the carrying amount of an asset group to the estimated undiscounted future cash flows expected to be generated by the asset group. The comparison is performed at the lowest level of identifiable cash flows, which is primarily at the individual restaurant level. Significant judgement is used to determine the expected useful lives of long-lived assets and the estimated future cash flows, including projected sales growth and operating margins. If the carrying amount of the asset group exceeds its estimated undiscounted future cash flows, an impairment charge is recognized.

Definite-lived intangible assets consist of franchise rights which arose from the purchase price allocation in connection with the Advent Acquisition and also include reacquired rights from the Company's acquisitions of franchised restaurants. Definite-lived intangible assets are amortized on a straight-line basis over their estimated useful lives and are also reviewed for impairment whenever events or change in circumstances indicate that the carrying amount of an asset may not be recoverable. Significant judgments are used to determine if an indicator of

impairment has occurred. Such indicators may include, among others: negative operating performance of our restaurants, economic and restaurant industry trends, legal factors, significant competition or changes in our business strategy. Any adverse change in these factors could have a significant impact on the recoverability of these assets and the resulting impairment charge could have a material impact on our consolidated financial statements.

Recoverability of definite-lived intangible assets is measured by a comparison of the carrying amount of the asset group to the estimated undiscounted future cash flows expected to be generated by the asset group. If the total future undiscounted net cash flows are less than the carrying amount, this may be an indicator of impairment. An impairment loss is recognized when the asset's carrying value exceeds its estimated fair value, which is generally estimated using discounted future cash flows expected from future use of the asset group.

Long-lived assets and definite-lived intangible assets were evaluated for impairment in April 2020 as the effect of the COVID-19 pandemic was considered a triggering event indicating that the carrying amounts of our long-lived assets and definite-lived intangibles may not be recoverable. We performed a quantitative impairment assessment and we did not record any impairment charges during fiscal 2020. See Note 7, *Intangible Assets, Net*, and Note 8 – *Property, Fixtures and Equipment, Net*, in the notes to the audited consolidated financial statements included in this prospectus for additional information.

***Leases***

We lease our restaurant facilities and corporate offices, as well as certain restaurant equipment under various non-cancelable agreements. We evaluate our leases at contract inception to determine whether we have the right to control use of the identified asset for a period of time in exchange for consideration. If we determine that we have the right to obtain substantially all the economic benefit from use of the identified asset and the right to direct the use of the identified asset, we recognize a right-of-use asset and lease liability. At contract inception, we also evaluate our leases to estimate their expected term which includes reasonably certain renewal options, and their classification as either operating leases or finance leases. Lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments, accrued lease payments or lease incentives. To determine the present value of the lease liability, we estimate the incremental borrowing rates corresponding to the reasonably certain lease term as our leases do not provide an implicit rate. Assumptions used in determining our incremental borrowing rate include a market yield implied by our outstanding secured term loans interpolated for various maturities using our synthetic credit rating, which is determined using a regression analysis of rated publicly-traded comparable companies and their financial data.

We assess the impairment of the right-of-use asset at the asset group level whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Changes in these assumptions and management judgments may produce materially different amounts in the recognition of the right-of-use assets and lease liabilities.

In fiscal 2020, we renegotiated numerous lease agreements that primarily resulted in rent abatements or rent deferrals due to the effects of the COVID-19 pandemic. See Note 2, *Summary of Significant Accounting Policies*, in the notes to the audited consolidated financial statements included in this prospectus for additional information as to our accounting for these lease modifications in connection with the lease accounting guidance issued by the FASB in April 2020.

***Income Taxes***

We use the asset and liability method of accounting for income taxes. Under this method, deferred tax assets or liabilities are recognized for the estimated future tax effects attributable to temporary differences between the carrying value and the tax basis of assets and liabilities as well as tax credit carryforwards. The estimates we make under this method include, among other items, depreciation and amortization expense allowable for tax

purposes, credits for items such as taxes paid on reported employee tip income, effective rates for state and local income taxes and the deductibility of certain items. In addition, our annual effective income tax rate is adjusted as additional information becomes available during the reporting period.

We recognized deferred tax assets for all deductible temporary differences to the extent that it is probable that taxable income will be available against which the deductible temporary differences can be utilized. A valuation allowance for deferred tax assets is provided when it is more likely than not that a portion of the deferred tax assets will not be realized. Potential for recovery of deferred tax assets is evaluated by estimating the future taxable profits expected, scheduling of anticipated reversal of taxable temporary differences, and considering prudent and feasible tax planning strategies. We continue to monitor and evaluate the rationale for recording a valuation allowance against deferred tax assets. As we increase earnings and utilize deferred tax assets, it is possible the valuation allowance could be reduced or eliminated.

We assess liabilities for uncertain tax positions and recognize a liability when a position taken or expected to be taken in a tax return is more likely than not, or more than a 50% likelihood, to be sustained upon examination by tax authorities based on its technical merits. A recognized tax position is then measured at the largest amount of benefit that is more likely than not of being realized upon ultimate settlement. We determined that there were no material uncertain tax positions which were required to be recorded or disclosed in the financial statements for fiscal 2020 and fiscal 2019.

Interest and penalties, when incurred, are recognized in other income (expense), net on the consolidated statements of operations and comprehensive loss.

***Fair Value of Common Stock and Stock-Based Compensation***

Stock-based compensation expense is measured based on the award's grant date fair value. Stock-based compensation expense related to time-based stock options is recognized as stock-based compensation expense on an accelerated recognition method over the requisite service period. The fair value of performance-based stock option awards is recognized as stock-based compensation expense when the condition is deemed probable of being achieved. We account for forfeitures as they occur.

During the periods presented, our common stock was not publicly traded. As there has been no public market, the estimated fair value has been determined with input from management, considering as one of the factors the most recently available third-party valuations of common stock and an assessment of additional objective and subjective factors that were relevant at the date of the grant. We estimate the fair value of our common stock using a combination of the income approach (discounted cash flows of internal projected future cash flows) and the market approach (comparing comparable publicly-traded peer group in the restaurant industry), which are equally weighted.

Beginning in the first fiscal quarter of 2021, we determined the Company's equity value using the probability weighted expected return method ("PWERM"), or the hybrid method. Under the hybrid method, multiple valuation approaches are used and then combined into a single probability weighted valuation using a PWERM, which considers the probability of an initial public offering and sale scenarios. The results of the valuation approaches were weighted based on a variety of factors, including: the current macroeconomic environment, current industry conditions and length of time since arms-length market transaction events. Additionally, a discount for lack of marketability was applied to account for the lack of access to an active public market. The resulting value was then allocated to outstanding equity using an option-pricing model.

We estimate the fair value of stock options using the Black-Scholes valuation model. Calculating the fair value of stock-based awards requires certain assumptions and judgments. We based our volatility assumption of 41.2% and 34.1% for fiscal 2020 and fiscal 2019, respectively, on the historical volatility of the selected peer group and we based our expected term of 4.5 years for both fiscal 2020 and fiscal 2019 using the historical

information of the selected peer group. The assumptions underlying these valuations represented management's best estimate, which involved inherent uncertainties and the application of management's judgment. As a result, if we had used significantly different assumptions or estimates, the fair value of our common stock and our stock-based compensation expense could have been materially different.

Once a public trading market for our common stock has been established in connection with the closing of this offering, the fair value of our common stock will be determined based on the quoted market price of our common stock.

***Gift Card Revenue Recognition***

We sell gift cards to customers in our restaurants, through our website and through select third parties. A liability is initially established for the value of the gift card when sold. We recognize revenue from gift cards when the card is redeemed by the customer. There is uncertainty when calculating gift card breakage, the amount of gift cards which will not be redeemed, because management is required to make assumptions and to apply judgment regarding the effects of future events. We recognize gift card breakage revenue using estimates based on historical redemption patterns. If actual redemptions vary from the estimated breakage, gift card breakage revenue may differ from the amount recorded. We periodically update our estimates used for breakage and apply that rate to gift card redemptions.

***Self-Insurance Reserves***

We retain large deductibles or self-insured retentions for employee group health claims nationally, a portion of our general liability insurance and our employee workers' compensation programs. We maintain coverage with a third- party insurer to limit our total exposure for these programs. The accrued liabilities associated with our self-insured programs are based on our estimate of the ultimate costs to settle known claims, as well as claims incurred but not yet reported to us ("IBNR") as of the balance sheet date. Our estimated liabilities are based on information provided by our insurance broker and insurer, combined with our judgment regarding a number of assumptions and factors, including the frequency and severity of claims, claims development history, case jurisdiction, applicable legislation and our claims settlement practices. Significant judgment is required to estimate IBNR amounts, as parties have yet to assert such claims. If actual claims trends, including the severity or frequency of claims, differ from our estimates, our financial results could be impacted.

***Business Combinations***

We account for acquisitions using the purchase method of accounting. Accordingly, assets acquired and liabilities assumed are recorded at their estimated fair values at the acquisition date. Our purchase price allocation methodology contains uncertainties because it requires us to make certain assumptions and to apply judgment to estimate the fair value of acquired assets and liabilities, including, but not limited to, property and equipment, intangible assets, and goodwill. The excess of purchase price over fair value of net assets acquired, including the amount assigned to identifiable intangible assets, is recorded as goodwill. Given the time it takes to obtain pertinent information to finalize our purchase price allocation, it may be several quarters before we are able to finalize those initial fair value estimates. Accordingly, it is not uncommon for the initial estimates to be subsequently revised. The results of operations of acquired businesses are included in the consolidated financial statements from the acquisition date.

**Qualitative and Quantitative Disclosure About Market Risk**

***Commodity and Food Price Risks***

Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including food and beverage, energy and other commodities. We have been able to partially offset cost increases resulting from a number of factors, including market conditions, shortages or interruptions in supply due to weather or other conditions beyond our control, governmental regulations and

inflation, by increasing our menu prices, as well as making other operational adjustments that increase productivity. However, substantial increases in costs and expenses could impact our results of operations to the extent that such increases cannot be offset by menu price increases.

***Interest Rate Risk***

Our Senior Credit Facilities incur interest at a floating rate. We seek to manage exposure to adverse interest rate changes through our normal operating and financing activities. As of December 27, 2020, we had $288.0 million in outstanding borrowings under our Senior Credit Facilities, excluding unamortized debt discount and deferred issuance costs. Based on the amount outstanding under our Senior Credit Facilities as of December 27, 2020, a change of one hundred basis points in the applicable interest rate would cause an increase or decrease in interest expense of approximately $2.9 million on an annual basis.

**Effects of Inflation**

Inflation impacts all our restaurant operating expenses. While we have been able to partially offset inflation and other changes in operating expenses by gradually increasing menu prices, coupled with more efficient purchasing practices, productivity improvements and greater economies of scale, there can be no assurance that we will be able to continue to do so in the future. From time to time, competitive conditions could limit our menu pricing flexibility. In addition, macroeconomic conditions could make additional menu price increases imprudent. We anticipate cost pressure on several commodities for fiscal 2021. We are planning moderate price increases in fiscal 2021, which may or may not be enough to recover increased operating expenses. There can be no assurance that future cost increases can be offset by increased menu prices or that increased menu prices will be fully absorbed without any resulting change to their visit frequencies or purchasing patterns. In addition, there can be no assurance that we will generate same-restaurants sales growth in an amount sufficient to offset inflationary or other cost pressures. However, we anticipate our food and beverage costs as a percentage of restaurant sales will remain consistent with fiscal 2020 from a combination of price increases, product mix changes and recipe modifications.

Additionally, wages paid in our restaurants are impacted by changes in federal and state hourly minimum wage rates. Accordingly, changes in the federal and state hourly minimum wage rates directly affect our labor costs. Wages and benefits are also affected by supply and demand forces in specific regions. The restaurant industry and we typically attempt to offset the effect of inflation, at least in part, through periodic menu price increases and various cost reduction programs.

A portion of the leases for our company-owned restaurants provide for contingent rent obligations based on a percentage of sales. As a result, an increase in occupancy and related expenses will offset a proportionate share of any menu price increases at our company-owned restaurants.

**Recently Issued Accounting Pronouncements**

For a discussion of recently issued accounting pronouncements, see Note 2, *Summary of Significant Accounting Policies*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus.

***Jumpstart Our Business Startups Act of 2012***

The JOBS Act permits us, as an emerging growth company, to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We are choosing to “opt out” of this provision and, as a result, we will comply with new or revised accounting standards as required when they are adopted. This decision to opt out of the extended transition period under the JOBS Act is irrevocable.

# BUSINESS

## We Are First Watch

We are First Watch – an award-winning daytime restaurant concept serving made-to-order breakfast, brunch and lunch using fresh ingredients. Since our founding in 1983, we have built our brand on our commitment to operational excellence, our "You First" culture and our culinary mission centered around a fresh, innovative menu that is continuously evolving. These foundational brand pillars have established First Watch as the largest and fastest growing concept in Daytime Dining. Our one shift, from 7:00 a.m. to 2:30 p.m., and one main menu enable us to optimize restaurant operations and attract and retain employees who are passionate about hospitality and drawn to our "No Night Shifts Ever" approach. This differentiation has driven high employee satisfaction and retention, and strong consumer demand and operating performance as evidenced by our 28 consecutive quarters of same-restaurant sales growth from fiscal 2013 to fiscal 2019 and positive annual same-restaurant traffic growth from fiscal 2014 to fiscal 2019, prior to the emergence of the COVID-19 pandemic. In January 2020, we were recognized as "America's Favorite Restaurant Brand" in *Market Force's* annual consumer study and as one of three industry finalists for Black Box Intelligence's 2020 Best Practices award.

Our unique one-shift and one-menu approach, coupled with our commitment to our employees and customers throughout the COVID-19 pandemic allowed us to retain and attract employees and reopen our restaurants with accelerating operating momentum in the second half of 2020 and into 2021, recording same-restaurant sales growth of 16.3% in the second fiscal quarter of 2021 relative to the second fiscal quarter of 2019. Importantly, our same-restaurant traffic growth in the second fiscal quarter of 2021 was ahead of the comparable quarter in 2019 by 1.0%. Throughout the COVID-19 pandemic, we invested in supplemental compensation and expanded health benefits for our people while at the same time we accelerated strategic investments in our business and continued to expand our footprint, opening 42 and 18 System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively. As of June 27, 2021, we had 423 System-wide restaurants across 28 states, 335 of our restaurants were company-owned and 88 were operated by our franchisees.

## Our Promise: Yeah, It's Fresh!

At First Watch, we take a creative approach to Daytime Dining led by a focus on and commitment to freshness. Each item is made-to-order and prepared with care – you will not find microwave ovens, heat lamps or deep fryers in our kitchens. Every morning, we arrive at the crack of dawn to slice and juice fresh fruits and vegetables, bake muffins, brew our fresh coffee and whip up our French Toast batter from scratch. Our award-winning chef-driven menu includes elevated executions of classic favorites for breakfast, lunch and brunch, along with First Watch-specific specialties such as our protein-packed Quinoa Power Bowl®, Farmstand Breakfast Tacos, Avocado Toast, Morning Meditation (juiced in-house daily), our new Vodka Kale Tonic, Chickichangas and our famous Million Dollar Bacon. While our menu constantly evolves, our focus on – and commitment to – freshness never wavers.

## Our Mission: You First

For more than 38 years, we have cultivated an organizational culture built on our mission of "You First," which puts serving others above all else. As a company, we put our employees first and empower them to do whatever it takes to put our customers first. We give back in meaningful ways to the local communities in which we operate and also support national and international causes we care about, such as our Project Sunrise partnership that supports women-owned coffee farms in Colombia, which in turn empowers them to reinvest in their communities. Our "You First" mission, in addition to our quality of life advantage inherent in our single-shift operating model, has led us to be recognized as an employer of choice in our industry, according to a five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair. We believe that our approach to our employees not only long before but also during the COVID-19 pandemic has enabled us to retain and attract employees to get our restaurants staffed up to meet the current consumer demand better than our peers.

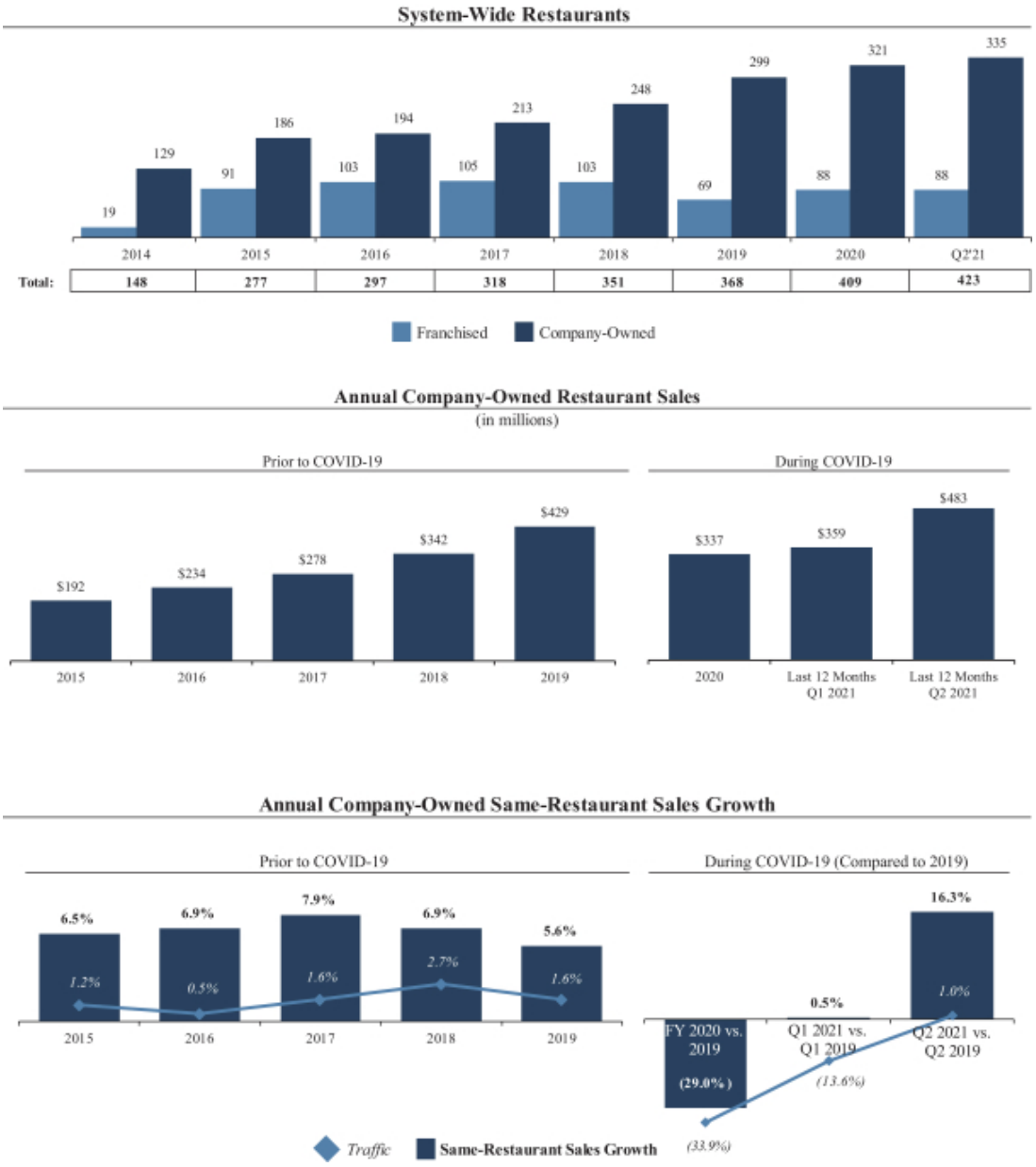
**Proven Record of Sustained Growth**

We have delivered almost four decades of sales and unit growth as a result of our broad brand appeal, compelling economic proposition and difficult-to-replicate business model. We have achieved consistent growth in total System-wide restaurants to 423 as of June 27, 2021, from 277 restaurants in fiscal 2015. Over the six-year period ended December 29, 2019 (prior to the emergence of the COVID-19 pandemic), we:

- Consistently delivered same-restaurant sales growth, averaging 6.3% annually
- Consistently achieved positive annual same-restaurant traffic growth, averaging 1.4% annually

Over the five-year period ended December 29, 2019 (prior to the emergence of the COVID-19 pandemic), we:

- Consistently increased AUVs by 25.7%, from $1.3 million in fiscal 2015 to $1.6 million in fiscal 2019
- Consistently opened new company-owned restaurants with an average Cash-on-Cash Return of 50.8%




**Our COVID-19 Response and How We Emerged as a Stronger Company**

Our strong momentum in fiscal 2019 continued into January 2020 and February 2020 with same-restaurant sales growth of 7.4% and 4.7%, respectively. However, as the COVID-19 pandemic emerged in March 2020, our management team devised a strategy not only to prioritize the health and safety of our employees and customers in keeping with our “You First” culture, but also to accelerate planned strategic initiatives that would position us

to be more nimble in capturing sales. The following are some of the actions we took that enabled us to persevere during the pandemic and emerge as a stronger company in 2021:

- Aligned with our sponsor, Advent, to commit capital both to our people as well as to our continued new restaurant development and real estate pipeline;
- Began closing all dining rooms during the week of March 15, 2020 (regardless of state and local orders), transitioning to off-premises sales only and rapidly deploying our first phase of new hardware and software enhancements to enable this critical sales channel;
- Furloughed most of our employees, but provided relief payments to help with immediate needs for those hourly employees with more than three years of service, while committing to make managers and corporate employees “whole” upon return for any financial shortfall between the state and federal benefits they received and their base salaries;
- Paid both employer and employee portion of healthcare premiums for furloughed employees enrolled in our healthcare plans, covered 100% of out-of-pocket costs for insured employees and their families for medical visits related to the COVID-19 pandemic and secured telemedicine services for employees;
- Temporarily suspended all operations at our company-owned restaurants on April 13, 2020 to prioritize the health and safety of our team members;
- Established the “You First Fund,” which provides tax-free grants to in-need employees and which had distributed approximately $800,000 in such grants through June 2021;
- Deployed new safety protocols and procedures as well as an employee wellness screening tool with COVID-19 contact tracing. Our efforts were recognized in a Technomic survey in the third quarter of 2020 that rated First Watch as best in its peer group with regard to customer safety and sanitation; and
- Offered employees a payment in consideration for the time taken to receive their full schedule of immunization, once COVID-19 vaccines were available.

With respect to our operations, we rapidly addressed new consumer behaviors by accelerating previously planned initiatives to position ourselves for short-term recovery and long-term growth such as online ordering to enable third-party delivery services, the expansion of our carefully curated alcohol program and touchless payment technology:

- Developed and launched a new mobile app to allow customers to order takeout and delivery and to join our dining room waitlist remotely;
- Integrated technology into our waitlist management solution to gather customer data on consumer preferences;
- Accelerated the rollout of our alcohol program, which has proven to be an incremental occasion for consumers, increasing overall beverage incidence by 230 basis points;
- Maintained the entirety of our menu throughout the COVID-19 pandemic while also prioritizing culinary innovation through our seasonal menu program;
- Expanded our patio and outdoor service areas and reduced and distanced our freestanding tables;
- Proactively contacted our landlords to negotiate rent deferrals or abatements, postpone turnover dates for certain restaurants, secure waivers of alcohol sales restrictions and obtain dedicated curbside parking for off-premises order pick up; and
- Continued to invest in new company-owned restaurants and develop our future NRO pipeline, leading to a 7.4% increase in our company-owned restaurants from 299 in fiscal 2019 to 321 in fiscal 2020.

A total of approximately $4.8 million of costs were incurred in fiscal 2020 in connection with the COVID-19 pandemic, and were comprised of the following: (i) inventory obsolescence and spoilage of approximately $0.6 million, (ii) compensation paid to employees upon furlough and return from furlough of $1.4 million, (iii) $0.7 million for health insurance costs paid for furloughed employees, net of employee retention credits and (iv) supplies, such as personal protection equipment, of approximately $2.1 million.

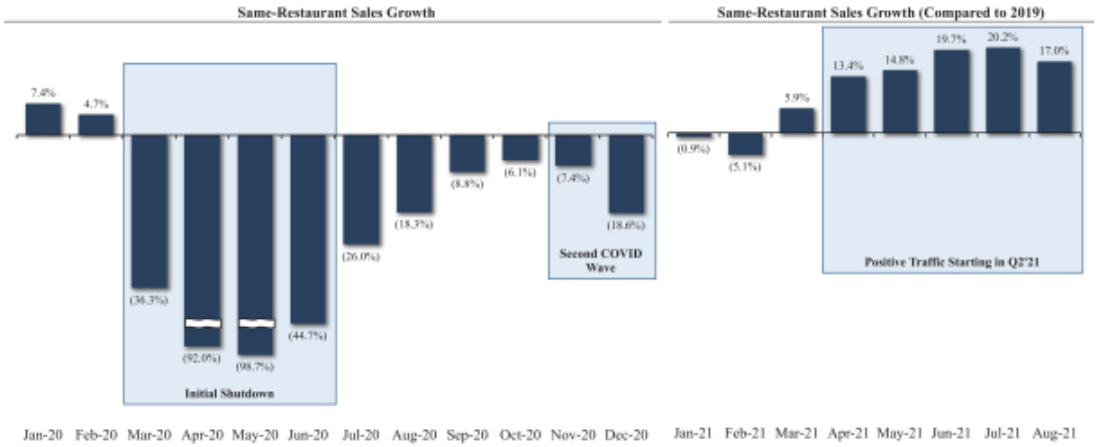
Since beginning our phased reopening in May 2020, our restaurants have steadily grown sales and transactions despite the seating capacity of restaurant dining rooms remaining constrained by state and local government mandates as well as our own internal standards taken to protect employees and customers. In Florida, for example, where approximately 30% of our company-owned restaurants are located, despite the state lifting indoor dining distancing restrictions on September 25, 2020, we maintained six-foot distances between tables through the first fiscal quarter of 2021 for the safety of our customers and employees.

As a result of the new initiatives that we put in place, when our company-owned restaurants reopened, we were able to meet the new customer demand for off-premises dining while also serving the in-restaurant customer traffic as it continued to increase. Our off-premises sales channel had been a relatively small portion of our sales pre-pandemic; in the fourth fiscal quarter of 2019 our average weekly off-premises sales were $1,897 per restaurant. In fiscal 2020, our off-premises sales benefited significantly from our technology investments and initiatives to reduce customer friction when ordering off-premises as well as changes in consumer behavior; this resulted in average weekly off-premises sales increasing to $8,082 per restaurant during the fourth fiscal quarter of 2020. Moreover, even as we saw our dine-in traffic grow steadily in 2021, our off-premises business remained relatively consistent with average weekly sales of $8,079 per restaurant in the second fiscal quarter of 2021. To ensure that our third-party delivery business was positioned for long-term success, we introduced a surcharge for third-party orders. We believe that off-premises sales will remain an incremental channel for us that serves an additional use occasion for our customers and that it will be an important part of growing average unit volumes to higher than pre-pandemic levels.

According to Nation’s Restaurant News, in 2019, First Watch was the fastest-growing full-service restaurant concept in the United States, based on year-over-year System-wide sales growth metrics, and in 2020, FSR Magazine identified First Watch as the fastest-growing full-service restaurant chain based on unit growth. Despite the COVID-19 pandemic, we continued to build and open new restaurants in 2020 with 23 company-owned restaurants in fiscal 2020 and continued to develop our pipeline for fiscal 2021 and fiscal 2022 new restaurant growth. During the twenty-six weeks ended June 27, 2021, our NROs have performed exceptionally well, even when compared to the strong performance of our existing restaurants, and generated annualized average sales of $2.0 million, relative to our existing restaurants that generated annualized average sales of $1.7 million.

Starting in March 2021, we began to consistently report positive same-restaurant sales growth measured against pre-COVID results, including 5.9%, 13.4%, 14.8% and 19.7% same-restaurant sales growth in March, April, May and June of 2021, respectively, relative to March, April, May and June of 2019, respectively. Our momentum has continued into the third quarter of fiscal 2021 with same-restaurant sales for the month of July up 64.9% over 2020 and up 20.2% over 2019 and the month of August was up 45.2% over 2020 and up 17.0% over 2019. Similarly, our traffic in those months was up 5.1% and up 2.0% in July and August over 2019, respectively.

**Monthly Same-Restaurant Sales Growth Since January 2020**




**Long-Term Consumer Trends in Our Favor**

We believe that we are well-positioned to continue to benefit from the confluence of a number of long-term multi-generational consumer trends:

***Increasing Morning Meal Occasions.***

The morning meal (Breakfast and morning Snack) has been the only foodservice daypart with consistent year-over-year growth for the last several years, according to RKMA. The restaurant industry captured two additional breakfast visits per capita, from 2015 to 2018, and with 78% of breakfasts still being prepared at home during 2019 according to the NPD Group. With 102 billion breakfast occasions and 50 billion morning snack occasions in 2019, per a January 2020 NPD Breakfast Insights report, morning restaurant traffic provides a compelling long-term opportunity for future growth. We believe that the broad appeal of our menu and the quality of our ingredients gives us a competitive advantage over many alternatives that offer breakfast and lunch. We believe that migration from dense urban to suburban areas, where most of our restaurants are located, will result in increased traffic and brand awareness. Increased work-from-home routines have kept people in suburban areas for larger portions of the day, increasing First Watch exposure to an incremental customer base.

***Demand for Fresh, Healthy Food.***

According to RKMA, almost two thirds of consumers consider a healthy menu an important factor in their restaurant choice and according to the NPD Group, 60% of consumers say they want more protein in their diet. The COVID-19 pandemic has progressed trends globally towards wellness with consumers becoming more focused than ever on living and eating healthier. Our freshly made food, with simple, high-quality, protein-rich ingredients, such as cage-free eggs and quinoa, aligns well with these consumer trends. According to Market Force data in January 2020, First Watch scored 36 and 23 points higher than the second place breakfast brand in categories of healthy choices and food quality, respectively.

***Consumers Want "On-Demand" Dining.***

Consumers want the ability to order what they want and when they want it without regard to traditional daypart conventions. Increasingly busy schedules, the rise of the "gig" economy, flexible job hours and growth of remote workers, trends magnified by the COVID-19 pandemic, are powering demand for convenient, fast and flexible Daytime Dining offerings from our all-day menu, for which traditional rigid breakfast and lunch dayparts were not designed. In the second fiscal quarter of 2021, our average weekly off-premises sales per restaurant were $8,079 compared to $1,897 in the fourth fiscal quarter of 2019 and $8,082 in the fourth fiscal quarter of 2020.

**We Are Disrupting a Massive Category**

As consumer needs have evolved, so have we. Our "Urban Farm" positioning provides a creative, farm-fresh breakfast, brunch and lunch menu in a warm and rustic yet contemporary atmosphere – creating an energizing Daytime Dining experience that resonates with consumers. We enjoy broad appeal to a customer base that includes the morning traditionalists as well as a growing segment of younger, healthier and more affluent customers. These digital-centric consumers care about food and quality, are willing to pay more, and report higher advocacy for and share of visits to First Watch. There is no other concept with an offering similar to ours at a comparable scale. Our operating hours encompass breakfast, brunch and lunch, which represent 63% of all restaurant sales in the U.S., according to RKMA. Our business model and our scale position us for continued growth within this massive category.

***Unrelenting Commitment to Fresh Ingredients and Culinary Innovation***

Our creative, on-trend menu and seasonal offerings define the culinary voice of our brand and highlight our commitment to quality and freshness. We believe this commitment is a key differentiator between First Watch and larger restaurant concepts that have failed to evolve. When we say, "Yeah, It's Fresh," we mean it. While many established restaurant concepts are outsourcing a large part of the preparation of their food, we still do much of it in-house in each restaurant every day.

That commitment to quality and freshness is further evidenced throughout our award-winning menu with ingredients such as cage-free eggs, organic mixed greens and all-natural chicken, just to name a few. Our highly-curated menu of approximately 60 entrée items – small relative to most in our industry – features a thoughtful balance of classic favorites prepared and presented in an elevated way using high-quality ingredients, along with innovative and interesting specialty dishes that take the consumer on a culinary exploration.

Our creativity and innovation extend beyond today's offerings and into our overall menu strategy. Successful platform introductions such as our Fresh Juice program and Shareables, which include menu items such as Million Dollar Bacon and Holey Donuts, were added in the past few years, adding incremental revenue opportunities while enhancing our culinary credibility. We have seen our Fresh Juice and Shareables platforms rise from 9.6% and 3.4% of customers purchasing in the fourth fiscal quarter ended December 30, 2018, respectively, to 15.6% and 5.7% in the second fiscal quarter of 2021 and our gross per person average over that same period rose from $12.29 to $14.69.

***One Shift, One Menu, One Focus***

We believe that our compelling business model, built around "One Shift, One Menu, One Focus" affords us competitive advantages. Our single-shift restaurant hours, by design, result in "No Night Shifts Ever." This helps make us an employer of choice in the foodservice industry, which we believe allows us to attract superior talent, retain employees longer and create a unifying organizational culture. Our single menu, throughout the day and across all restaurants in our system, streamlines our supply chain and restaurant operations, simplifies our employee training and provides for a consistent customer experience. Our singular emphasis on Daytime Dining gives us the clarity of purpose to relentlessly focus on delivering a superior experience.

***"You First" Culture Elevates Employee and Customer Satisfaction***

Our "You First" culture is palpable at every level of our organization. Our hiring, training and retention strategies empower our more than 9,000 employees, united by our culture, to deliver superior customer experiences. We invest heavily in our leaders by conducting 11 weeks of training for all managers, including a one-week F.A.R.M. (First Watch Academy of Restaurant Management) program traditionally held at our Home Office in Florida, where each of our managers-in-training is immersed in our culture, vision and mission. Our restaurant-level manager turnover was 29% during the last twelve months ending March 2020, which is meaningfully lower than our peer average of 41% as reported by Black Box.

During the COVID-19 pandemic, we continued to invest in our employee relationships through a high touch program of outreach, communication and, where possible, assistance. As a result of our proactive approach, 75% of the hourly employees who had been working for us for over three years and approximately 90% of general managers returned to work with us when our restaurants reopened.

We have always believed our employees are our greatest asset, and the initiatives we had in place prior to the COVID-19 pandemic and the additional steps we subsequently took further enhanced our culture and elevated our employee, and ultimately customer, satisfaction. First Watch ranked first in Market Force's Composite Loyalty Index metric as of January 2020, evidencing the compelling level of satisfaction amongst our customers. We believe that the incredible culture at First Watch became even stronger as a result of the pandemic, evidenced by our overall score in the Glassdoor survey having increased relative to the pre-pandemic period. A five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair ranked us #1 for work/life balance and for overall employee satisfaction in the restaurant industry.

***Track Record of Resilience and Exceptional Same-Restaurant Traffic and Sales Growth***

Our strong brand with growing awareness, broad consumer appeal and excellence in execution have created outstanding and consistent performance over time. Over the five-year fiscal period ended December 29, 2019, our same-restaurant sales growth was positive every year, averaging 6.8% annually, and our same-restaurant traffic growth was 1.5%. This positive momentum has continued in the second fiscal quarter of 2021 performance with same-restaurant sales growth of 16.3% and same-restaurant traffic growth of 1.0% compared to the same fiscal period in 2019.

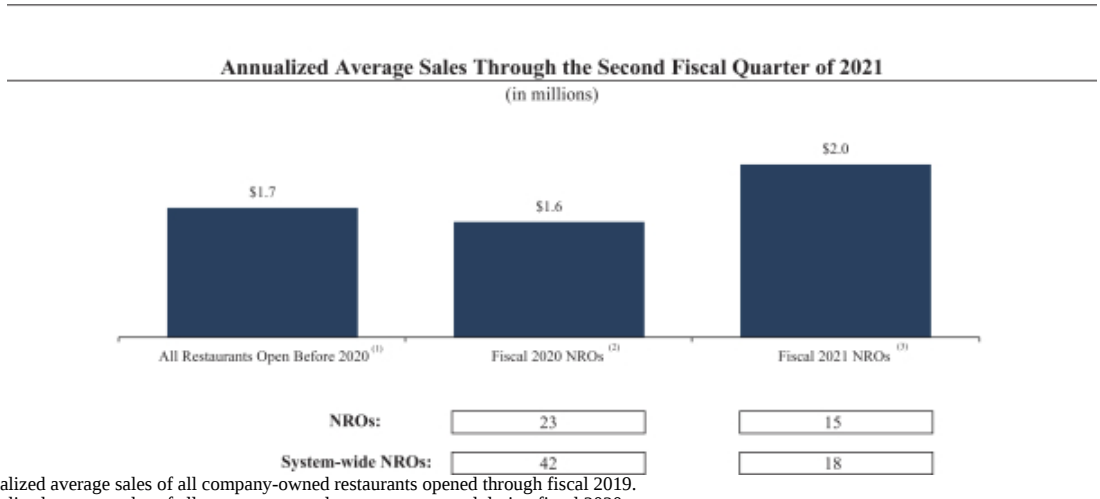
In addition to exemplary historical performance, our concept has proven to be highly adaptable and resilient during adverse market conditions. During the unprecedented COVID-19 restrictions, we temporarily closed all our company-owned restaurants and navigated significant capacity restrictions in the months following. In response, we rapidly enhanced our off-premises technological and operational capabilities to meet the change in consumer demand through those channels.

We have also seen rapid sales recovery as many geographies reduced on-premises dining restrictions that were imposed after the onset of the COVID-19 pandemic. For example, by March 2021, nearly all our restaurants had reopened to full dining-room capacity and we began to consistently achieve highly positive same-restaurant sales growth, including 5.9% 13.4%, 14.8% and 19.7% same-restaurant sales growth in March, April, May and June of 2021, respectively, relative to March, April, May and June of 2019, respectively. Our momentum has continued into the third quarter of fiscal 2021 with same restaurant sales for the month of July up 64.9% over 2020 and up 20.2% over 2019 and the month of August was up 45.2% over 2020 and up 17.0% over 2019. Similarly, our traffic in those months was up 5.1% and up 2.0% in July and August over 2019, respectively.

***Strong Restaurant Productivity and Proven Portability***

The success of our brand is reflected in our restaurant-level performance and Cash-on-Cash Return. In fiscal 2019, prior to the pandemic, we generated an AUV of $1.6 million in a single shift (seven and a half hours daily), comparable to many restaurants open for several shifts or in some cases around the clock. We have demonstrated the portability of our model by successfully operating restaurants in 28 states. Restaurants in our top decile, by fiscal 2019 sales, span nine different states and 14 different DMAs. DMAs are geographic areas in the United States in which local television viewing is measured by The Nielsen

Company. Despite the challenges of the COVID-19 pandemic and its impact on our sales, we have seen a broad and rapid sales recovery and opened 42 and 18 System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively. Our NROs have displayed exemplary performance evidenced by the current momentum in our business. Our fiscal 2020 NROs have generated annualized average sales of $1.6 million and our NROs opened during the twenty-six weeks ended June 27, 2021 have generated annualized average sales of $2.0 million.




(1) Represents annualized average sales of all company-owned restaurants opened through fiscal 2019.
(2) Represents annualized average sales of all company-owned restaurants opened during fiscal 2020.
(3) Represents annualized average sales of all company-owned restaurants opened during the twenty-six weeks ended June 27, 2021.

***Experienced, Passionate Leadership Team and Deep Bench of Talent***

Our team is led by passionate executives who have an extensive mix of experience in our brand and with other leading consumer facing businesses. Christopher A. Tomasso, our President, Chief Executive Officer and Director, has more than 24 years of industry experience and joined First Watch in 2006. Mr. Tomasso sets the strategic vision and brand positioning for the company, while enhancing its organizational culture. Mr. Tomasso was recognized with FSR Reader's Choice Award as one of two top C-Suite Executives in 2021. Mel Hope, our Chief Financial Officer and Treasurer, has more than 36 years of public accounting and industry experience including serving as Chief Financial Officer of large, successful public and private companies. We have a deep bench of talent throughout the organization. Our executives and key employees average more than 15 years of industry experience and our restaurant general managers have an average tenure at First Watch of five years. In addition, we have dozens of fully-trained, tested, high-performing managers positioned throughout our system who are poised to step into the general manager role as we execute our growth strategy and open new restaurants.

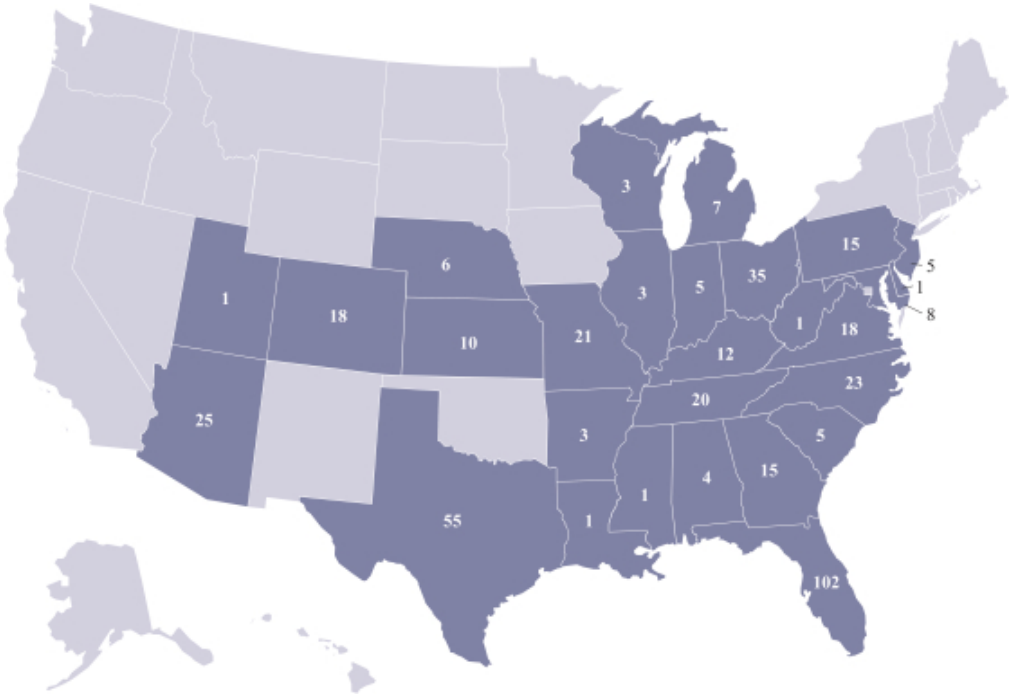
**How We Will Continue to Grow Sales and Profits**

While we are proud of our success in having grown sales and restaurant level operating profit consistently for many years prior to the pandemic, our focus is on the future. We believe our continued growth will come from opening new restaurants in existing and new geographies and driving traffic and building sales at our existing restaurants as new customers discover First Watch and regulars come and enjoy us more frequently. While 2020 was a challenging year given the COVID-19 pandemic, the investment in our employees and operational capabilities have enabled us to emerge as an even stronger company with greater abilities to leverage multiple channels for growth. We are even more confident in our growth strategies based on the consumer reaction to our brand and strong resurgence we have seen throughout 2021 since reopening our restaurants and since capacity restrictions have been reduced.

***Grow Our Brand Footprint by Consistently Opening New Restaurants***

First Watch has grown from 277 restaurants in fiscal 2015 to 423 System-wide restaurants as of June 27, 2021 while increasing annual AUV from $1.3 million in fiscal 2015 to $1.6 million in fiscal 2019 and achieving positive same-restaurant sales growth and traffic except for fiscal 2020. In Florida, our most mature market with the greatest number of company-owned restaurants, we have grown from 54 to 99 restaurants over the last six years, while generating average annual same-restaurant sales growth of 6.8% from fiscal 2015 to fiscal 2019. We believe we have significant potential to expand our presence within all the states in which we currently operate as well as new ones. We have a significant opportunity to grow density both in existing and new markets. Our deeply experienced restaurant development team in partnership with a third-party real estate analytics firm conducted an in-depth study that concludes we have the potential for more than 2,200 locations in the United States.

**Restaurant Count by State as of June 27, 2021**




Despite the challenges of the COVID-19 pandemic, First Watch remained committed to invest in growth throughout 2020 and 2021 and continued to open new restaurants. We opened 42 and 18 System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively, representing growth rates of 11.1% and 9.3%, respectively, over the prior periods. Furthermore, those NROs have performed exceptionally well, evidencing our compelling business momentum and ability to successfully grow our footprint. Our NROs during the twenty-six weeks ended June 27, 2021, have generated annualized average sales of $2.0 million relative to our existing restaurants' annualized average sales of $1.7 million. Our pipeline for the full fiscal year of 2021 remains robust and we expect a total of 32 System-wide NROs.

We employ a comprehensive, data-driven real estate approval process to select and develop every new site. In selecting new locations, we combine rigorous data on specific market characteristics, demographics, and growth, with a human element that takes into account brand impact and opportunity of individual market and sites. Every new restaurant further drives brand awareness and creates meaningful marketing buzz when we open in new markets. We intend to leverage our rigorous real estate site selection process to open more than 130 company-owned restaurants from 2022 through 2024. While our existing franchisees are committed to developing restaurants in the future, we expect company-owned restaurants will be the primary growth driver of our footprint over the long term.

***Drive Restaurant Traffic and Build Sales***

We have a significant runway to continue to grow traffic and restaurant sales by executing against a defined set of strategies.

- ***Continue Menu Innovation.*** We continuously evolve our offering to keep our menu fresh and exciting yet operationally efficient. Our chef-led culinary innovation team maintains a keen awareness of emerging culinary trends and immerses themselves in the marketplace through frequent culinary inspiration tours using experiences to develop a robust pipeline of exciting new recipes and menu offerings. We intend to drive continued incremental customer spending through our five highly-anticipated seasonal menus and the introduction of new menu platforms similar to our introductions of Fresh Juices and Shareables. For fiscal 2019, 8.5% of customers purchased items from our seasonal menu, 12.0% purchased Fresh Juices and 4.5% purchased Shareables. We expect menu innovation to continue to provide incremental growth opportunities in the future.
- ***Offer Alcohol as Only First Watch Can.*** The alcoholic beverage offerings at First Watch are unique and reflect our culinary innovation in combining fresh juices and ingredients with a variety of liquors. At the end of fiscal 2019, early tests showed that offering alcoholic beverages where practical throughout our system was a highly-incremental new sales growth platform, opening up new occasions for our consumers to enjoy dining out and allowing us to reach new demographics. During the COVID-19 pandemic, we accelerated this initiative to better position the First Watch brand upon recovery as we learned that customers joining us for breakfast or lunch were interested in making the meal more of a celebration at times. As of June 27, 2021, our alcohol menu is offered in 244 System-wide restaurants with clear plans to continue the expansion to all restaurants where feasible. Since the rollout in fiscal 2020, the presence of alcohol on our menu has lifted overall dine-in beverage attachment by 230 basis points in restaurants where it is served, indicating the incrementality of the offering. Further, for the second fiscal quarter of 2021, alcohol accounted for 3.6% of in-restaurant sales at company-owned restaurants and increased the average in-restaurant customer spend by $0.30 as compared to our restaurants that do not offer alcohol. These incremental alcohol sales are highly profitable. More importantly, we remain confident in the long-term opportunity to innovate within this platform to further elevate the social occasion of breakfast, brunch and lunch. Similar to the establishment of our Fresh Juice and Shareables platforms, we remain optimistic that further consumer awareness and excitement (through new items and promotion) around alcohol will drive new, additional occasions and broaden our appeal to a new demographic seeking an experiential occasion over a meal.
- ***Convenience and Increased Accessibility through Our Off-Premises Offering.*** During the COVID-19 pandemic, we integrated technology into our business to enhance customer access and enable off-premises consumption. In fiscal 2019, off-premises sales accounted for $1,971 in average weekly sales. We have now built the foundation to optimize the off-premises opportunity through our digital channels (both through direct ordering as well as third-party delivery). These off-premises platforms, now available in all restaurants, contributed $8,079 of average weekly sales per restaurant during the second fiscal quarter of 2021, compared to $1,897 in the fourth fiscal quarter of 2019. Even as our dining room sales recovered during the twenty-six weeks ended June 27, 2021, off-premises sales remained strong, indicating continued customer demand. We see future opportunity to refine and grow

this demand largely by focusing on in-restaurant infrastructure, especially in our new restaurant prototypes. We have seen encouraging results in 2021 NROs from innovations such as dedicated make lines and to-go rooms, separate entrances and dedicated parking spots to enhance the experience of both our off-premises and dine-in customers.

- ***Increase Our Brand Awareness.*** We believe First Watch is still in the early stages of our life cycle, as consumers in our existing and new markets continue to discover the First Watch brand. Over 38 years, First Watch has grown primarily through word-of-mouth as our service, menu and environment created ardent fans as evident in our numerous local awards and customer satisfaction scores. In January 2020, First Watch was named "America's Favorite Restaurant Brand" by Market Force. This study evaluated restaurants across multiple sectors and based its ranking on customer recommendations and brand satisfaction. This strong customer affinity was also highlighted in a recent 2021 national study where First Watch ranked 10th in net promoter score among the country's 74 largest restaurant brands and comparable to the industry's most highly regarded names. Despite this, brand awareness remains low as indicated by a 2021 nationally represented survey where only 11% were aware of First Watch. The combination of both high customer satisfaction and opportunity for growing awareness highlights strong potential for the brand.

  As our development of new restaurants continues, we believe the increased penetration in new and existing markets will contribute to higher brand awareness. While we believe that organic growth of awareness contributes more to our local feel, we also recognize the future potential of strategically applying advertising dollars in appropriate channels to accelerate this opportunity. Our advertising costs represented approximately 1% of total revenues in fiscal 2019 and in fiscal 2020. We intend to grow our brand awareness primarily through increased investment in cost-efficient digital channels in order to further leverage our first party, owned, customer data to target and reach the right audiences that will lead to higher conversion and higher return on investment. We have successfully piloted these approaches to-date and remain confident that this approach provides further growth opportunity to build traffic and sales.

***Deliver an Excellent On-Premise Dining Experience.*** Excellence in restaurant-level execution, recognized by customers and reinforced by the hundreds of accolades we have received, increases the visit frequency of our customer, promotes trial by new consumers and ultimately encourages loyalty. We have received hundreds of awards from local and national media outlets that we believe matter to consumers – including being named one of TripAdvisor's Best Restaurant Chains in 2019. While off-premises dining during the COVID-19 pandemic has emerged as a sizeable use occasion for many customers cautious to eat outside their homes, we believe that our unwavering focus will remain on delivering an amazing dining experience in our restaurants to every customer in every visit. We aim to continue to leverage our "One Shift, One Menu, One Focus" model to stay distinguishably different from our competitors by executing on delivering a superior dining experience every day to further drive traffic and build sales.

***Additional Platforms and Initiatives.*** We have seen the opportunity, over time, to selectively evolve our concept and offerings via the implementation of key strategies and initiatives. Future initiatives include:

- ***Weekday Lunch***: We believe that we have the opportunity to significantly increase market share by driving incremental customer visits during the weekday lunch daypart through the evolution of our menu with fresh, convenient and differentiated lunch-oriented offerings. In fiscal 2019, only 6.0% of our weekday customers purchased lunch entrées. As a result of the evolving consumer landscape driven by the COVID-19 pandemic, there has been a significant migration of people from urban to suburban areas, where a meaningful portion of our restaurants exist. This migration, coupled with an increasing work-from-home trend, presents First Watch with an incremental customer opportunity during the weekday business hours which we believe will further propel growth in our lunch daypart. With the evolution of a new optimized core menu, the presence of our off-premises channels and the opportunity to apply targeted marketing, we believe the weekday lunch occasion holds future opportunity to build sales and traffic.

- ***Customer Technology & Customer Data:*** As we fast-tracked the implementation of our off-premises platforms in fiscal 2020, we also took the opportunity to accelerate the implementation of customer data acquisition systems in order to better inform the habits and behaviors of our customers. With the large increase in remote digital orders, we also sought to digitize in-restaurant orders for the purpose of creating an omnichannel view of the First Watch customer. By integrating remote waitlist, remote orders, tokenized credit card transactions and WiFi into one system, we now have the ability to better understand trial, frequency and customer lifetime value. Since the establishment of these systems, we have gathered 2.9 million unique customer profiles. The advancements in these foundational systems provide future opportunity for targeted communication and the development of more advanced customer relationship management systems aimed at growing customer frequency.
- ***Restaurant Technology Unlocking Throughput & Capacity:*** For 38 years, we grew organically from an intense focus on people and service, delivering a unique restaurant experience that has been difficult for competitors to duplicate at scale. The introduction of our off-premises platform laid a strong foundation for certain technologies that will now unlock further in-restaurant innovation, enabling greater peak hour throughput and capacity, thus the ability to serve more demand. In many of our restaurants, we experience more weekend demand than we are currently able to serve, indicated by extended wait times during peak hours. Through new technological tools to enable optimal seating configurations, lower table turn times and more efficient kitchen order routing, we believe that we have the opportunity to achieve higher peak hour sales. Most key among these opportunities is the installation of kitchen display screens, a core technology system in the industry, to our back-of-house to automate our order routing. We remain confident that the addition of this technology will unlock greater efficiency within our kitchens and raise our ability to serve more of our unfulfilled demand.

**Our Menu**

We serve breakfast, brunch and lunch using fresh ingredients. Our limited menu of less than 60 entrée items is customizable to personal preference, including our “Healthier Side” options such as our Power Bowls, Salads and Egg-sclusives. Additionally, we offer a seasonal menu, which is rotated five times per year, and adds optionality to our customers. Each seasonal menu is tested in market one year prior to national rollout, allowing for testing of consumer acceptance and informing supply chain planning to optimize supply.

**Properties**

As of June 27, 2021, we had 335 company-owned restaurants and 88 franchised restaurants located in 28 states, including a large presence in Florida, Texas, Ohio, Arizona and Missouri. We lease all our company-owned restaurant facilities.

As of June 27, 2021, company-owned and franchised restaurants by jurisdiction were:

| State | Company-Owned | Franchise operated | Total |
|---|---|---|---|
| Alabama | 4 | 0 | 4 |
| Arizona | 25 | 0 | 25 |
| Arkansas | 0 | 3 | 3 |
| Colorado | 18 | 0 | 18 |
| Delaware | 1 | 0 | 1 |
| Florida | 98 | 4 | 102 |
| Georgia | 14 | 1 | 15 |
| Illinois | 3 | 0 | 3 |
| Indiana | 4 | 1 | 5 |
| Kansas | 10 | 0 | 10 |

| State | Company-Owned | Franchise operated | Total |
|---|---|---|---|
| Kentucky | 2 | 10 | 12 |
| Louisiana | 0 | 1 | 1 |
| Maryland | 8 | 0 | 8 |
| Michigan | 7 | 0 | 7 |
| Mississippi | 0 | 1 | 1 |
| Missouri | 15 | 6 | 21 |
| Nebraska | 0 | 6 | 6 |
| New Jersey | 5 | 0 | 5 |
| North Carolina | 3 | 20 | 23 |
| Ohio | 35 | 0 | 35 |
| Pennsylvania | 15 | 0 | 15 |
| South Carolina | 0 | 5 | 5 |
| Tennessee | 12 | 8 | 20 |
| Texas | 40 | 15 | 55 |
| Utah | 0 | 1 | 1 |
| Virginia | 16 | 2 | 18 |
| West Virginia | 0 | 1 | 1 |
| Wisconsin | 0 | 3 | 3 |
| TOTAL | 335 | 88 | 423 |

New restaurant development has historically included both NROs and conversion of acquired restaurants. Average net build-out costs for our NROs are approximately $900,000. For our NROs, we have restaurant sales expectations of $1.8 million in the first year, $1.9 million in the second year and $2.0 million in the third year. In the third year, expected restaurant level operating profit margin for our NROs is approximately 19% and expected Cash-on-Cash Returns are approximately 40%.

| | Twenty-Six Weeks Ended June 27, 2021 | | | Fiscal 2020 | | | Fiscal 2019 | | |
|---|---|---|---|---|---|---|---|---|---|
| | Company-owned | Franchise operated | Total | Company-owned | Franchise operated | Total | Company-owned | Franchise operated | Total |
| **Beginning of period** | 321 | 88 | 409 | 299 | 69 | 368 | 248 | 103 | 351 |
| New restaurants | 15 | 3 | 18 | 23 | 19 | 42 | 38 | 18[2] | 56 |
| Franchisee acquisitions | — | — | — | — | — | — | 18 | (18) | — |
| Relocations | (1) | — | (1) | — | — | — | (1) | (1) | (2) |
| Closures/Disenfranchised | — | (3) | (3) | (1)[1] | — | (1) | (4) | (33) | (37)[2] |
| **End of period** | 335 | 88 | 423 | 321 | 88 | 409 | 299 | 69 | 368 |

(1) During fiscal 2020, we had one company-owned restaurant closure as our landlord bought out the lease for the First Watch location in Clayton, MO.

(2) All remaining restaurants that operated under The Egg & I trade name had either closed, disenfranchised or were strategically acquired by the Company and converted to restaurants operating under the First Watch trade name as of December 29, 2019.

***Restaurant Design***

Our typical restaurant reflects our “Urban Farm” branding in a rustic yet contemporary atmosphere. Our restaurants typically range from approximately 3,400 square feet to 4,000 square feet in size with indoor seating that accommodates approximately 120-140 customers, and many of our new and planned restaurants range from

4,000 square feet to 5,000 square feet. We have been building larger restaurants to address the consumer demand we have been experiencing. Additionally, many of our restaurants have patio seating, which accommodates additional customers, and we have been expanding our restaurants' outdoor seating options. Many of our new and planned restaurants include patio seating as well as thoughtfully-designed bar/counter spaces and dedicated to-go areas. Our restaurants are characterized by distinctive exterior and interior design, color schemes, and layout, including custom designed decor and furnishings consistent with our brand imaging. We supplement our nationally consistent design with local decor elements such as paintings and other fixtures that are unique to each restaurant.

**Site Selection Criteria and Approval Process**

As of June 27, 2021, we operated restaurants successfully in 28 states and in a variety of commercial retail environments, of which we prefer free-standing or end cap sites in high-quality trade areas. Our track record of operating 423 System-wide restaurants as of June 27, 2021 furnishes us with significant insight for new site selection.

Our restaurant development team is staffed with experienced commercial real estate personnel who use site modeling analysis to identify and prioritize areas of unmet demand. Based upon these priorities, trade areas, traffic patterns, current and future commercial and residential development, competitive forces and sales transfer from existing restaurants are taken into consideration. The teams are then aided by commercial brokers with whom they prospect for potential sites with targeted characteristics for visibility, co-tenancy, access and egress, parking and square footage.

On average, new company-owned restaurant sites are typically identified and evaluated at least 18 months prior to opening. Potential sites are modeled for financial performance based upon proposed lease terms and projected sales. The financial models, together with site and architectural renderings, trade area characteristics, competitive information and proposed lease terms are presented for approval or rejection by the Company's real estate committee comprised of senior leadership from real estate, operations, marketing, legal and finance teams.

**Restaurant Management and Operations**

***Quality and Food Safety***

We and our franchisees are focused on maintaining high food quality and food safety in each restaurant through the careful training and supervision of personnel and by following rigorous quality and cleanliness standards that have been established. Standards for food preparation and cleaning procedures are defined, monitored and maintained by our quality assurance department. We contract with third-party inspectors to regularly monitor restaurant performance through unannounced non-biased food safety assessments with program standards that meet or exceed those of local health departments. These inspections are intended to achieve active managerial control in our restaurants in an effort to reduce risk factors and maintain a strong food safety culture.

Restaurant management incentive plans provide strong motivation to meet and exceed standards. In addition, as part of our overall food quality assurance, we have a process in place to review vendors' food safety practices to ensure they meet or exceed industry standards.

***Restaurant Staff and Operations Leadership***

Each restaurant operates with a staff of approximately 20 to 30 team members led by the general manager(s) of the restaurant.

Our kitchen staff begin food preparation prior to our 7:00 a.m. opening time. During a restaurant's 7:00 a.m. to 2:30 p.m. shift, our staff focus intensely on operational execution including, among other things, gracious service, order accuracy, food preparation and "instagrammable" plating.

Applicants for restaurant positions are pre-qualified for interview through their entry of certain information into our hiring portal. We are diligent in reviewing applicants, each of whom is interviewed by the general manager in advance of hiring. We seek to staff our restaurants with employees who are friendly, service oriented, eager to prepare high-quality food and a good fit for our "You First" culture. As of December 27, 2020, we had approximately 8,000 in-restaurant and regional operations personnel. We believe we employ a smaller span of control than most other restaurant concepts which we think is a contributing factor of our sustained results and track record of success.

***Training***

We have a legacy of operational excellence that ensures a memorable customer experience and allows us to reliably execute new and creative meal preparations. To continue that legacy, we established a training facility at our Home Office named the F.A.R.M. Our new managers-in-training have traditionally travelled to the F.A.R.M for a week-long immersion in the processes, culture and management tools we have developed. As a result of the COVID-19 pandemic, we have temporarily moved to a remote training format, but we plan to return to the F.A.R.M. In addition, managers in training also complete a comprehensive 11-week C.A.F.E. ("Customer and Food Expert") training program in the restaurants, alongside experienced managers. Hourly employees go through at least three days of initial on boarding training and shadowing. In the spirit of continuous development, there is also on-going in-restaurant training conducted for staff by General Managers and Directors of Operations as well as award-winning on-line training that is developed by our training department and provided through our Virtual Learning Academy. Our commitment to training and leveraging our base of veteran general managers in new restaurants ensures that all restaurants benefit from a shared culture and deliver a consistently efficient and gracious customer experience.

**Franchise Program**

Our existing franchised restaurant base consists of successful, experienced multi-unit restaurant operators. As a result of attractive returns on company-owned restaurants, we curtailed our franchising program in 2017 and are not extending franchise agreements to new franchisees. As of June 27, 2021, we had 15 franchisees that operated 88 restaurants. Our existing franchisees hold 38 total new restaurant development obligations as of June 27, 2021 which are required to be filled over the next five years. Our typical agreements grant a franchisee the right to operate for an initial term of 10 years with additional renewal terms that total 10 years subject to various conditions that include upgrades to the restaurant facility and brand image. All franchise agreements grant licenses to use our trademarks, trade secrets and proprietary methods, recipes and procedures. The initial franchise fee for each restaurant is $35,000 to $40,000. Franchisees are required to pay 4.0%-4.5% of franchised restaurant sales in royalties and contribute 1%-3% of franchised restaurant sales to a system fund, which is used for advertising, marketing and public relations programs and materials on a system-wide basis.

**Marketing and Advertising**

We use a variety of marketing channels, including email communications, affiliate partnerships, social media interactions, digital marketing, direct mailers, public relations initiatives and local community sponsorships, promotions and partnerships, to drive brand awareness and traffic to our restaurants. We are active in the communities in which we operate, and partner with local organizations to create meaningful bonds. We focus our marketing efforts on building a connection with our customers. Additionally, we are focused on increasing our engagement with social media platforms in order to generate brand awareness and also to gather information we can then apply to future marketing efforts.

We promote our brand through our "Yeah, It's Fresh" slogan, which is now a registered trademark. The slogan aims to deliver our message that First Watch delivers a made-to-order menu prepared with quality, fresh ingredients.

**Purchasing and Distribution**

Maintaining high standards of quality in our restaurants depends in part on our ability to acquire fresh ingredients and other necessary supplies that meet our standards and specifications from reliable suppliers. We regularly inspect vendors to ensure that products purchased conform to our standards and that prices offered are competitive. Our quality assurance department requires a third-party supplier audit or Global Food Safety Initiative certification for all food distributors and manufacturing facilities to ensure good manufacturing practices, food safety, pest control, sanitation, training, regulatory compliance and food defense systems are in place. We negotiate and contract directly with the suppliers of our food, and we contract with two distributors for delivery to our restaurants of the majority of all our food and produce. Most restaurants accept deliveries of produce at least three times per week. In the normal course of business, we evaluate bids from multiple suppliers for various products. Our most frequently used food items are bacon, coffee, eggs, avocados, potatoes and bread. We have a dedicated supply chain department to manage fluctuations in supply and prices that can significantly impact our restaurant service and profit performance.

**Intellectual Property**

We have registered First Watch the Daytime Cafe, You First, Yeah It's Fresh and certain other names used by our restaurants as trademarks or service marks with the USPTO. In addition, the First Watch logo, website name and address and Facebook and Twitter accounts are our intellectual property. Our policy is to pursue and maintain registration of service marks and trademarks and to oppose vigorously any infringement or dilution of the service marks or trademarks. We maintain certain recipes for our menu items, as well as certain standards, specifications and operating procedures, as trade secrets or confidential information.

**Competition**

As consumers increasingly seek higher quality breakfast, brunch and lunch experiences, we believe we are well-positioned to compete with a wide range of national, regional and local establishments that operate during our hours of operation. More directly, we do not believe there is a comparable offering within our segment (at scale) and view our primary competition as a network of independent restaurants in neighborhoods across the United States.

**Environmental Matters**

We are subject to federal, state and local laws and regulations relating to environmental protection, including regulation of discharges into the air and water, storage and disposal of waste and clean-up of contaminated soil and groundwater. Under various federal, state and local laws, an owner or operator of real estate may be liable for the costs of removal or remediation of hazardous or toxic substances on, in or emanating from such property. Such liability may be imposed without regard to whether the owner or operator knew of, or was responsible for, the presence of such hazardous or toxic substances, and in some cases, we may have obligations imposed by indemnity provisions in our leases.

**Regulation and Compliance**

We are subject to extensive federal, state and local government regulation, including those relating to, among others, public health and safety, zoning and fire codes, and franchising. Failure to obtain or retain food or other licenses and registrations or exemptions would adversely affect the operations of restaurants, or the ability to franchise. Although we have not experienced and do not anticipate any significant problems in obtaining required licenses, permits or approvals, any difficulties, delays or failures in obtaining such licenses, permits, registrations, exemptions, or approvals could delay or prevent the opening of, or adversely impact the viability of, a restaurant in a particular area. Additionally, the COVID-19 pandemic has resulted in frequently revised state and local government regulations affecting our business beginning in March 2020, which have significantly impacted our restaurant operations and continue to do so. Such regulations govern, for example, employee leave, opening and closing of restaurants and dining rooms, sanitation practices, guest spacing within dining rooms and other social distancing practices and personal protective equipment.

The development of additional restaurants will be subject to compliance with applicable regulations, including those relating to zoning, land use, water quality and retention, and environment. We believe federal and state environmental regulations have not had a material effect on operations, but more stringent and varied requirements of local government bodies with respect to zoning, land use and environmental factors, among others, could delay construction and increase development costs for new restaurants.

We are also subject to the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986 and various federal and state laws governing such matters as minimum wages, exempt versus non-exempt, overtime, unemployment tax rates, workers' compensation rates, citizenship requirements and other working conditions. A significant portion of the hourly staff is paid at rates consistent with the applicable federal or state minimum wage and, accordingly, increases in the minimum wage and/or changes in exempt versus non-exempt status will increase labor costs. We are also subject to the ADA, which prohibits discrimination on the basis of disability in public accommodations and employment, which may require us to design or modify our restaurants to make reasonable accommodations for disabled persons.

As of June 27, 2021, our alcohol menu is offered in 244 restaurants with clear plans to continue the expansion to all restaurants where feasible. Alcoholic beverage control regulations require each of our restaurants that will sell alcoholic beverages to apply to a state authority and, in certain locations, county or municipal authorities for a license that must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of daily operations of our restaurants, including the minimum age of patrons and employees, hours of operation, advertising, trade practices, wholesale purchasing, other relationships with alcoholic beverages manufacturers, wholesalers and distributors, inventory control and handling, storage and dispensing of alcoholic beverages. We are also subject in certain states to "dram shop" statutes, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. We carry liquor liability coverage as part of our existing comprehensive general liability insurance for restaurants that serve alcoholic beverages. We may decide not to obtain liquor licenses in certain jurisdictions due to the high costs associated with obtaining liquor licenses in such jurisdictions.

Our franchising activities are subject to the rules and regulations of the FTC and various state laws regulating the offer and sale of franchises. Substantive state laws that regulate the franchisor-franchisee relationship exist in a substantial number of states, and bills have been introduced in Congress from time to time that would provide for federal regulation of the franchisor-franchisee relationship. The state laws often limit, among other things, the duration and scope of non- competition provisions, the ability of a licensor to terminate or refuse to renew a franchise agreement and the ability of a franchisor to designate sources of supply. We believe that our franchising procedures comply in all material respects with both the FTC franchise rule and all applicable state laws regulating franchising in those states in which we have offered franchises.

For a discussion of the various risks we face from regulation and compliance matters, see "Risk Factors."

**Management Information Systems**

All our restaurants use computerized management information systems, which we believe are scalable to support our future growth plans. These systems are designed to enable functionality, improve operating efficiencies, provide us with timely access to financial and marketing data and reduce restaurant and corporate administrative time and expense. In addition, our in-restaurant systems are used to process customer orders, credit card payments, employee time-keeping and scheduling.

**Employees**

As of December 27, 2020, we had more than 8,000 employees, a majority of whom were restaurant employees. None of our employees are part of a collective bargaining agreement, and we believe our relationships with our employees are satisfactory.

**Legal Proceedings**

We are involved in various claims and legal actions that arise in the ordinary course of business. We do not believe that the ultimate resolution of any of these actions, individually or taken in the aggregate, will have a material adverse effect on our financial position, results of operations, liquidity or capital resources. A significant increase in the number of claims or an increase in amounts owing under successful claims could materially adversely affect our business, financial condition, results of operations and cash flows.

# MANAGEMENT

## Directors, Executive Officers and Key Employees

The following table sets forth the names and ages, as of June 27, 2021, of the individuals who will serve as our executive officers, key employees and members of our Board at the time of the offering.

| Name | Age | Position |
|---|---|---|
| Christopher A. Tomasso | 51 | President, Chief Executive Officer and Director |
| Mel Hope | 60 | Chief Financial Officer and Treasurer |
| Jay Wolszczak | 52 | General Counsel and Secretary |
| Dan Jones | 42 | Chief Operations Officer |
| Eric Hartman | 49 | Chief Development Officer |
| Laura Sorensen | 48 | Chief People Officer |
| Calum Middleton | 41 | Chief Strategy Officer |
| Rob Conti | 51 | Senior Vice President, Technology |
| Matt Eisenacher | 41 | Senior Vice President, Brand Strategy and Innovation |
| Brian Fisher | 53 | Senior Vice President, Operations |
| Rania Khouri | 47 | Senior Vice President, Accounting and Financial Reporting |
| Lilah Rippett | 62 | Senior Vice President, Supply Chain |
| Shane Schaibly | 38 | Senior Vice President, Culinary Strategy |
| John Zimmermann | 58 | Vice President, Quality Assurance and Food Safety |
| Kenneth L. Pendery, Jr. | 67 | Director and Chairman Emeritus |
| Ralph Alvarez | 66 | Director and Chairman of the Board |
| Julie M.B. Bradley | 52 | Director |
| Tricia Glynn | 40 | Director |
| William Kussell | 62 | Director |
| Michael White | 33 | Director |
| Lisa Price | 59 | Director |

### *Christopher A. Tomasso*

Mr. Tomasso has served as a director since December 2019, and has served as our President and Chief Executive Officer since August 2017 and December 2019, respectively. Mr. Tomasso has also served as director, president and chief executive officer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since October 2017, December 2015 and June 2018, respectively. In addition, Mr. Tomasso served as chief marketing officer of First Watch Restaurants, Inc. from August 2006 to December 2015.

Mr. Tomasso’s management, investment, marketing, and corporate strategy expertise make him well qualified to serve as a director.

### *Mel Hope*

Mr. Hope has served as our Chief Financial Officer and Treasurer since December 2019. Mr. Hope has also served as chief financial officer, executive vice president and treasurer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since July 2018. Prior to joining us, Mr. Hope served as managing director and chief operating officer of Genesis Real Estate Advisers, LLC from March 2016 to August 2018, as managing director of Blue Plate Development and Consulting, LLC from May 2014 to February 2016 and as chief financial officer of Popeyes Louisiana Kitchen, Inc. from February 2008 to May 2014.

***Jay Wolszczak***

Mr. Wolszczak has served as our General Counsel and Secretary since December 2019. Mr. Wolszczak has also served as chief legal officer, general counsel and secretary of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since May 2018. Previously, Mr. Wolszczak worked at Hard Rock Café International (USA), Inc. from October 1997 to April 2018 where he most recently served as general counsel.

***Dan Jones***

Mr. Jones will be named our Chief Operations Officer upon the completion of this offering. Previously, Mr. Jones served as chief operating officer of Cava Group, Inc. from August 2016 to September 2021 and as regional director of operations at Starbucks Corporation from August 2002 to August 2016.

***Eric Hartman***

Mr. Hartman has served as Chief Development Officer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since November 2016. In addition, Mr. Hartman founded the business SEVA Development Services LLC and served as its president from January 2014 to November 2016, and worked at Bloomin' Brands, Inc. from August 2001 to January 2014 where he most recently served as vice president of real estate and development.

***Laura Sorensen***

Ms. Sorensen has served as Chief People Officer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since August 2016. Prior to joining us, Ms. Sorensen worked at Darden Restaurants from June 2010 to August 2016 where she most recently served as senior vice president of human resources for LongHorn Steakhouse.

***Calum Middleton***

Mr. Middleton has served as Chief Strategy Officer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since June 2021. Mr. Middleton also served as senior vice president of finance of First Watch Restaurants, Inc. from January 2019 to June 2021 and vice president of finance from February 2018 to January 2019 and director of financial planning & analysis of First Watch Restaurants, Inc. from March 2015 to February 2018. Prior to joining us, he worked at Star2Star Communications, LLC from November 2012 to January 2015 where he most recently served as senior vice president of financial planning and analysis.

***Rob Conti***

Mr. Conti has served as Senior Vice President of Technology of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since March 2019. Prior to joining us, Mr. Conti served as the Florida manager of systems engineering of Cisco Systems, Inc. from February 2018 to March 2019 and as the chief technology officer of Holiday Retirement from August 2017 to February 2018. Prior to these positions, he served as vice president of information technology of Hard Rock Café International (USA), Inc. from June 1999 to August 2017.

***Matt Eisenacher***

Mr. Eisenacher has served as Senior Vice President of Brand Strategy and Innovation of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since April 2019. Prior to joining us, Mr. Eisenacher served as chief concept officer of the Piada Group from December 2013 to March 2019.

***Brian Fisher***

Mr. Fisher has served as Senior Vice President of Operations of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since January 2015, and as vice president of operations at First Watch Restaurants, Inc. from January 2012 to January 2015.

***Rania Khouri***

Ms. Khouri has served as Senior Vice President of Accounting and Financial Reporting of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since February 2021. Ms. Khouri has also served as vice president of financial reporting of First Watch Restaurants, Inc. from April 2019 to January 2021. Prior to joining us, she served as the controller and vice president of finance of Hard Rock Café International (USA), Inc. from August 2017 to May 2018. Prior to that, she served as the head of external reporting of Fiat Chrysler Automobiles N.V. from January 2015 to July 2017.

***Lilah Rippett***

Ms. Rippett has served as Senior Vice President of Supply Chain of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since June 2021. Ms. Rippet has also served as vice president of purchasing and distributions of First Watch Restaurants, Inc. from January 2017 to June 2021. Prior to joining us, she served as the vice president of strategic integration of Benihana, Inc. from October 2014 to October 2016.

***Shane Schaibly***

Mr. Schaibly has served as Senior Vice President of Culinary Strategy of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since June 2021. Mr. Schaibly has also served as vice president of culinary strategy of the Company from January 2017 to June 2021 and was director of culinary operations of First Watch Restaurants, Inc. from February 2014 to December 2016.

***John Zimmermann***

Mr. Zimmermann has served as Vice President of Quality Assurance and Food Safety of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since March 2017. Prior to joining us, Mr. Zimmermann served as regional director of food safety of Sysco Corporation from November 2015 to March 2017. He also previously served as senior director of quality assurance and food safety of Sodexo, Inc. from May 1995 to March 2017.

***Kenneth L. Pendery, Jr.***

Mr. Pendery has served as a director since August 2017 and as Chairman Emeritus of our Board since December 2019. He has also served as a director and executive chairman of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since October 1994 and June 2018, respectively. In addition, Mr. Pendery previously served as chief executive officer of First Watch Restaurants, Inc. from May 1999 until June 2018 and has been a key leader of First Watch Restaurants, Inc. of over 35 years.

We believe that Mr. Pendery’s broad management, investment, and corporate strategy expertise make him well qualified to serve as a director.

***Ralph Alvarez***

Mr. Alvarez has served as a director and as chairman since December 2019. Mr. Alvarez has served as an operating partner of Advent since July 2017. Previously, Mr. Alvarez served as the executive chairman of Skylark Co., Ltd. from January 2013 to March 2018, as a director of Realogy Holdings Corp. from August 2013

until May 2018 and as a director of Dunkin' Brands Group from May 2012 until December 2020, and currently serves as a director of Lowe's Companies, Inc., Traeger, Inc. and Eli Lilly & Company.

We believe Mr. Alvarez's extensive management expertise and his leadership experience on several boards of directors across multiple industries make him well qualified to serve as a director.

***Julie M.B. Bradley***

Ms. Bradley has served as a director since January 2020. Previously, Ms. Bradley served as chief financial officer, chief accounting officer and treasurer of TripAdvisor, Inc. from 2011 to 2015. In addition, she served as a director of Constant Contact, Inc. from 2015 to 2016, as a director of Wayfair Inc. from 2012 to May 2021, and as a director of Blue Apron Holdings, Inc. from 2015 to October 2020. Ms. Bradley has also served as a director of GoodRx Holdings, Inc. since August 2020 and of ContextLogic Inc. since October 2020.

We believe Ms. Bradley's extensive operational, management and leadership expertise in public companies make her well qualified to serve on our board.

***Tricia Glynn***

Ms. Glynn has served as a director since August 2017. Ms. Glynn has also served as a managing director of Advent since October 2016. Previously, she served as principal of Bain Capital Private Equity from August 2004 to July 2016. In addition, she has also served as a director of lululemon athletica inc. from August 2017 to June 2021 and of Burlington Stores, Inc. from August 2012 to June 2018.

We believe Ms. Glynn's extensive management, investment, and leadership expertise in public companies make her well qualified to serve as a director.

***William Kussell***

Mr. Kussell has served as a director since August 2017. He has served as an operating partner of Advent since February 2010. Previously, Mr. Kussell served as chairman of the board of directors of Bojangles', Inc. from August 2011 to January 2019, and as a director of Extended Stay America, Inc. from June 2010 until June 2016.

We believe Mr. Kussell's extensive management expertise and his leadership experience on boards of directors across multiple industries make him well qualified to serve as a director.

***Lisa Price***

Ms. Price has served as a director since September 2020. She founded the business Carol's Daughter in January 1993 and has served as an executive of Carol's Daughter since its founding.

We believe Ms. Price's extensive management experience and leadership expertise make her well qualified to serve as a director.

***Michael White***

Mr. White has served as a director since April 2019. He has served as principal of Advent since January 2021. Previously, Mr. White served as vice president of Advent from January 2019 to January 2021 and vice president of TPG Capital from August 2016 to December 2018.

We believe Mr. White's extensive investment and management expertise make him well qualified to serve as a director.

**Appointment of Executive Officer**

Effective October 4, 2021, we intend to name Dan Jones as our Chief Operations Officer. Previously, Mr. Jones served as chief operating officer of Cava Group, Inc. from August 2016 to September 2021 and as regional director of operations at Starbucks Corporation from August 2002 to August 2016.

We have entered into a standard offer letter with Mr. Jones. We will also enter into an award agreement and our standard indemnification agreement for executive officers with Mr. Jones.

**Board of Directors**

Our business and affairs are managed under the direction of our Board. Our amended and restated certificate of incorporation will provide that the total number of directors constituting our Board shall be at least one, or such larger number as may be fixed from time to time by resolution of at least a majority of directors then in office. Contemporaneously with this offering, our Board will be composed of 8 directors.

Our amended and restated certificate of incorporation will provide that our Board will be divided into three classes, with one class being elected at each annual meeting of stockholders. Each director will serve a three-year term, with expiration staggered according to class. Class I will initially consist of 2 directors, Class II will initially consist of 3 directors and Class III will initially consist of 3 directors. The Class I directors, whose terms will expire at the first annual meeting of our stockholders following the filing of our amended and restated certificate of incorporation, will be William Kussell and Lisa Price. The Class II directors, whose terms will expire at the second annual meeting of our stockholders following the filing of our amended and restated certificate of incorporation, will be Julie M.B. Bradley, Kenneth L. Pendery, Jr. and Michael White. The Class III directors, whose terms will expire at the third annual meeting of our stockholders following the filing of our amended and restated certificate of incorporation, will be Ralph Alvarez, Tricia Glynn and Christopher A. Tomasso. See “Description of Capital Stock – Anti-takeover Provisions.”

**Director Independence and Controlled Company Exemption**

Following the completion of this offering, Advent will continue to indirectly beneficially own more than 50% of the voting power of our common stock. As a result, we will be considered a “controlled company” within the meaning of Nasdaq rules. “Controlled companies” under those rules are companies of which more than 50% of the voting power is held by an individual, a group or another company. On this basis, we may avail ourselves of the “controlled company” exemption under the corporate governance rules of Nasdaq. Accordingly, we will not be required to have a majority of “independent directors” on our Board as defined under the rules of Nasdaq nor will we be required to have a compensation committee and a nominating and corporate governance committee composed entirely of independent directors. The “controlled company” exemption does not modify the independence requirements for the audit committee, and we intend to comply with the requirements of the Sarbanes-Oxley Act and the listing requirements of Nasdaq, which require that our audit committee be composed of at least three members, one of whom must be independent upon the listing of our common stock, a majority of whom must be independent within 90 days of listing and each of whom must be independent within one year of listing. However, we anticipate that our Board will be composed of a majority of independent directors and that each of our committees will be composed of at least a majority of independent directors. Our Board has affirmatively determined that each of Ralph Alvarez, Julie M.B. Bradley, Tricia Glynn, Lisa Price, William Kussell and Michael White are independent directors under the applicable rules of Nasdaq.

If at any time we cease to be a “controlled company” under the rules of Nasdaq, our Board will take all action necessary to comply with Nasdaq corporate governance rules, including as applicable appointing a majority of independent directors to the Board and establishing certain committees composed entirely of independent directors, subject to a permitted “phase-in” period.

**Board Committees**

Our Board has established an audit committee, compensation committee, and a nominating and corporate governance committee. Each committee operates under a charter that has been approved by our Board and will have the composition and responsibilities described below. Members serve on these committees until their resignations or until otherwise determined by our Board. The charter of each committee will be available on our website.

***Audit Committee***. The primary purposes of our audit committee are to produce the annual report of the audit committee required by the rules of the SEC and assist the Board's oversight of:

- audits of our financial statements;
- the integrity of our financial statements;
- our process relating to risk management and the conduct and systems of internal controls over financial reporting and disclosure controls and procedures;
- the qualifications, engagement, compensation, independence and performance of our independent auditor; and
- the performance of our internal audit function.

The audit committee is currently composed of and, upon the consummation of this offering, and prior to the listing of our common stock, will continue to be composed of Ralph Alvarez, Julie M.B. Bradley, William Kussell and Michael White. Julie M.B. Bradley will serve as chair of the audit committee. Each of Ralph Alvarez, Julie M.B. Bradley and Michael White qualifies as an "audit committee financial expert" as such term has been defined by the SEC in Item 407(d) of Regulation S-K. Our Board has affirmatively determined that Ralph Alvarez, Julie M.B. Bradley and William Kussell meet the definition of an "independent director" for the purposes of serving on the audit committee under applicable Nasdaq rules and Rule 10A-3 under the Exchange Act. We intend to comply with these independence requirements for all members of the audit committee within the time periods specified under such rules. The audit committee will be governed by a charter that complies with the rules of Nasdaq.

***Nominating and Corporate Governance Committee.*** The primary purposes of our nominating and corporate governance committee are to recommend candidates for appointment to the Board and to review the corporate governance guidelines of the Company, including:

- identifying and screening individuals qualified to serve as directors;
- developing, recommending to the Board and reviewing the Company's corporate governance guidelines;
- coordinating and overseeing the annual self-evaluation of the Board and its committees; and
- reviewing on a regular basis the overall corporate governance of the Company and recommending improvements to the Board where appropriate.

The nominating and corporate governance committee is currently composed of and, upon the consummation of this offering, and prior to the listing of our common stock, will continue to be composed of Ralph Alvarez, Tricia Glynn and Lisa Price, each of whom have been determined by the Board to be independent directors under the applicable rules of Nasdaq. Tricia Glynn will serve as chair of the nominating and corporate governance committee. The nominating and corporate governance committee will be governed by a charter that complies with the rules of Nasdaq.

***Compensation Committee.*** The primary purposes of our compensation committee are to produce the annual report of the compensation committee required by the rules of the SEC and to assist the Board in overseeing our employee compensation policies and practices, including:

- determining and approving the compensation of our Chief Executive Officer and determining, approving and recommending to the Board for its approval the compensation of our other executive officers;
- reviewing, approving, and recommending to the Board for its approval incentive compensation and equity compensation policies and programs.

The compensation committee is currently composed of and, upon the consummation of this offering, and prior to the listing of our common stock, will continue to be composed of Ralph Alvarez and Tricia Glynn, each of whom have been determined by the Board to be independent directors under the applicable rules of Nasdaq. Tricia Glynn will serve as chair of the compensation committee. The compensation committee will be governed by a charter that complies with the rules of Nasdaq.

**Compensation Committee Interlocks and Insider Participation**

The members of our compensation committee during 2020 were Ralph Alvarez and Tricia Glynn. During 2020, none of our executive officers served (i) as a member of the compensation committee or board of directors of another entity, one of whose executive officers served on our compensation committee, or (ii) as a member of the compensation committee of another entity, one of whose executive officers served on our Board.

**Indemnification of Directors and Officers**

Our amended and restated certificate of incorporation will provide that we will indemnify our directors and officers to the fullest extent permitted by the DGCL.

We intend to enter into indemnification agreements with each of our executive officers and directors prior to the completion of this offering. The indemnification agreements will provide the executive officers and directors with contractual rights to indemnification, expense advancement and reimbursement, to the fullest extent permitted under the DGCL, subject to certain exceptions contained in those agreements.

**Code of Ethics and Business Conduct**

Prior to the completion of this offering, we will amend our code of business conduct and ethics that applies to all of our employees, officers, agents, consultants, representatives, affiliates, subsidiaries and anyone who is authorized to act on our behalf. A copy of the amended code will be available on our website located at www.firstwatch.com. We intend to satisfy the disclosure requirement regarding any amendments to or waivers from our code for our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, by posting such information on our Internet website promptly following the date of such amendment or waiver.

**Corporate Governance Guidelines**

Our Board will adopt corporate governance guidelines in accordance with the corporate governance rules of Nasdaq that serve as a flexible framework within which our Board and its committees operate. These guidelines will cover a number of areas including the duties and responsibilities of the Board, director independence, Board leadership structure, executive sessions, Chief Executive Officer evaluations, management development and succession planning, director nomination, qualification and election, director orientation and continuing education, Board agenda, materials, information and presentations, director access to senior managers and independent advisers, Board communication with stockholders and others, standing board committees, director compensation and annual board and committee performance evaluations. A copy of our corporate governance guidelines will be posted on our website.

## EXECUTIVE COMPENSATION

The following tables and accompanying narrative disclosure set forth information about the compensation provided to certain of our executive officers during fiscal 2020. These executive officers, who consist of our principal executive officer and the two most highly compensated executive officers (other than our principal executive officer) who were serving as executive officers as of December 27, 2020, the end of our last completed fiscal year, were:

- Christopher A. Tomasso, President, Chief Executive Officer and Director
- Mel Hope, Chief Financial Officer
- Laura Sorensen, Chief People Officer

We refer to these individuals in this section as our "NEOs" or "named executive officers."

### Summary Compensation Table

The following table sets forth certain information regarding the total compensation awarded to, earned by or paid to our named executive officers for fiscal 2020.

| Name and Principal Position | Year | Salary ($)(1) | Bonus ($)(2) | Stock awards ($) | Option awards ($) | Nonequity incentive plan compensation ($) | Nonqualified deferred compensation earnings ($) | All other compensation ($)(3) | Total ($) |
|---|---|---|---|---|---|---|---|---|---|
| Christopher A. Tomasso, *President, Chief Executive Officer and Director* | 2020 | 439,104 | 201,309 | — | — | — | — | 24,161 | 664,574 |
| Mel Hope, *Chief Financial Officer* | 2020 | 369,442 | 157,229 | — | — | — | — | 15,677 | 542,348 |
| Laura Sorensen, *Chief People Officer* | 2020 | 372,367 | 158,512 | — | — | — | — | 18,572 | 549,451 |

(1) Salary represents the amount earned in fiscal 2020, pursuant to the terms of each NEO's employment agreement, respectively. See "Employment Arrangements" below.
(2) Amount reflects the cash bonuses earned in fiscal 2020. See "Annual Cash Bonus" below.
(3) Amount consists of the following:

| Name | Life insurance premiums ($) | 401(k) employer match ($) | Long term disability benefit ($) | Health insurance premiums ($) | Fitness reimbursement ($) | Executive physical services ($) | Total ($) |
|---|---|---|---|---|---|---|---|
| Christopher A. Tomasso | 5,902 | 4,513 | 1,361 | 7,885 | — | 4,500 | 24,161 |
| Mel Hope | 900 | — | 2,392 | 7,885 | — | 4,500 | 15,677 |
| Laura Sorensen | 900 | 3,907 | 1,310 | 7,885 | 70 | 4,500 | 18,572 |

### Narrative Discussion of the Summary Compensation Table

In fiscal 2020, we compensated our NEOs through a combination of base salary and annual cash bonuses. Our NEOs are also eligible to receive certain benefits, which include a 401(k) plan with matching contributions, life insurance, executive physical services and group health insurance, including medical, dental and vision insurance.

We did not grant equity awards to our NEOs in 2020. Historically, we granted awards of stock options to our NEOs under the 2017 Plan upon hire and in certain other circumstances. A portion of these awards are subject to time-based vesting while a portion are subject to performance-based vesting, based upon Advent's receipt of aggregate cash amounts representing certain multiples of Advent's invested capital ("MOIC") and subject to the participant's continued employment or service on the applicable vesting date. In connection with this offering, stock options subject to time-based vesting will continue to vest in accordance with their terms and a number of stock options subject to performance-based vesting will convert into stock options subject to time-based vesting determined based on the number of such options that would vest if Advent were to sell for cash the shares of our common stock held by Advent at a per share price equal to the initial public offering price. Stock options subject to performance-based vesting that do not convert into time-based vesting stock options will be forfeited, however, in connection with this offering, the forfeiture condition for one tranche of performance-based vesting stock options will be waived and, after this offering, such unvested stock options will convert into stock options subject to time-based vesting. Such converted options will be eligible to vest one-third (1/3rd) on each of the first two anniversaries of the effective date of the offering and one-third (1/3rd) on the 273rd day following the second anniversary of the effective date of the offering.

**Annual Cash Bonus**

The corporate employee annual incentive cash bonus plan is based in part on an EBITDA performance component. Due to the impact of COVID-19 on the Company's business in fiscal 2020, it was determined that the previously established annual incentive cash bonus would no longer be effective to incentivize the Company's employees. A committee of the Board therefore authorized a discretionary cash bonus equal to 65% of the NEO's original bonus potential.

**Employment Arrangements**

We are currently party to employment agreements with Christopher A. Tomasso and Laura Sorensen and an offer letter with Mel Hope. The material provisions of the employment agreements and offer letter are described below. We are also party to a letter agreement with Kenneth L. Pendery, Jr., the Chairman Emeritus of our Board.

**Christopher A. Tomasso**

We entered into an employment agreement with Christopher A. Tomasso (the "Tomasso Employment Agreement") in August 2017. The Tomasso Employment Agreement provides for a one-year term beginning on August 21, 2017, with automatic one-year renewals. The Tomasso Employment Agreement provides that Mr. Tomasso will receive an annualized base salary and is eligible to participate in the Company's annual cash bonus plan described above. Under the Tomasso Employment Agreement, our Board may, in its discretion, change the amount of Mr. Tomasso's annualized base salary to such greater amount as it may deem appropriate.

In addition to the above, Mr. Tomasso participates in the employee benefits programs offered by us to our similarly-situated employees.

Mr. Tomasso may terminate the agreement any time with 30 days' prior written notice, provided, however, we may accelerate Mr. Tomasso's last day of employment to any date within the 30 day notice period without converting the resignation into anything other than a voluntary resignation. We may terminate Mr. Tomasso's employment for death, "disability" or "cause," as defined in the Tomasso Employment Agreement, by written notice to Mr. Tomasso. Mr. Tomasso may resign with prior written notice for any reason.

If we terminate Mr. Tomasso's employment without "cause" or Mr. Tomasso terminates his employment for "good cause," then we must provide Mr. Tomasso with (i) the unpaid annual base salary due for the period prior to and through the date of termination, and following submission of proper expense reports by Mr. Tomasso,

reimbursement for all expenses properly incurred under the terms of the Tomasso Employment Agreement (the "Accrued Obligations"); (ii) continued payment of Mr. Tomasso's annual base salary for a period of 12 months following the date of termination; (iii) accrued but unused vacation through the termination date; and (iv) a pro rata portion of Mr. Tomasso's annual bonus that Mr. Tomasso would have earned for the year in which his termination occurred. These payments (other than the Accrued Obligations) are subject to Mr. Tomasso's execution and non-revocation of a waiver and release of claims.

In the event that Mr. Tomasso's employment is terminated due to his death or disability, we must provide Mr. Tomasso's beneficiaries with (i) the Accrued Obligations; (ii) continued payment of Mr. Tomasso's annual base salary for a period of six months following the date of termination; (iii) accrued but unused vacation through the termination date payable on the next regular payroll date following the termination date; and (iv) a pro rata portion of Mr. Tomasso's annual bonus that Mr. Tomasso would have earned for the year in which his death or disability occurred.

For purposes of the Tomasso Employment Agreement, "good cause" means the occurrence of one or more of the following conditions, without Mr. Tomasso's consent: (i) a material reduction in Mr. Tomasso's annual base salary or annual bonus; (ii) any material diminution in Mr. Tomasso's responsibilities; or (iii) the relocation of our headquarters more than 20 miles from the existing location; provided that any such condition will only constitute good cause if Mr. Tomasso provides us with a prior written notice of his intent to resign for good cause and we have not remedied the alleged violations within 30 days of such notice.

For purposes of the Tomasso Employment Agreement, "cause" means (i) indictment for any crime involving moral turpitude, fraud or misrepresentation or Mr. Tomasso pleading guilty or nolo contendere to, any felony or crime involving moral turpitude that is damaging to our reputation; (ii) commission of any act which is a felony; (iii) gross misconduct or fraud involving the operations of the Company; (iv) misappropriation or embezzlement of funds or property of the Company; (v) willful conduct which is materially injurious to the reputation, business or business relationships of the Company; (vi) violation of any of the provisions of the Tomasso Employment Agreement or any material Company policy or work rule; (vii) failure to follow reasonable directions or instructions by our Board, or refusal or failure to substantially perform his duties and responsibilities under the Tomasso Employment Agreement to the reasonable satisfaction of the Board.

The Tomasso Employment Agreement includes perpetual confidentiality, non-compete and mutual non-disparagement provisions, as well as provisions relating to assignment of inventions.

**Laura Sorensen**

We entered into an employment agreement with Laura Sorensen (the "Sorensen Employment Agreement") in August 2017. The Sorensen Employment Agreement provides for a one-year term beginning on August 21, 2017, with automatic one-year renewals. The Sorensen Employment Agreement provides that Ms. Sorensen will receive an annualized base salary and is eligible to participate in the Company's annual cash bonus plan described above. Under the Sorensen Employment Agreement, our Board may, in its discretion, change the amount of Ms. Sorensen's annualized base salary to such greater amount as it may deem appropriate.

In addition to the above, Ms. Sorensen participates in the employee benefits programs offered by us to our similarly-situated employees.

Ms. Sorensen may terminate the agreement any time with 30 days' prior written notice, provided, however, we may accelerate Ms. Sorensen's last day of employment to any date within the 30 day notice period without converting the resignation into anything other than a voluntary resignation. We may terminate Ms. Sorensen's employment for death, "disability" or "cause," as defined in the Sorensen Employment Agreement, by written notice to Ms. Sorensen. Ms. Sorensen may resign with prior written notice for any reason.

If we terminate Ms. Sorensen's employment without "cause" or Ms. Sorensen terminates her employment for "good cause," then we must provide Ms. Sorensen with (i) the Accrued Obligations; (ii) continued payment of Ms. Sorensen's annual base salary for a period of 12 months following the date of termination; (iii) accrued but unused vacation through the termination date; and (iv) a pro rata portion of Ms. Sorensen's annual bonus that Ms. Sorensen would have earned for the year in which her termination occurred. These payments (other than the Accrued Obligations) are subject to Ms. Sorensen's execution and non-revocation of a waiver and release of claims.

In the event that Ms. Sorensen's employment is terminated due to her death or disability, we must provide Ms. Sorensen's beneficiaries with (i) the Accrued Obligations; (ii) continued payment of Ms. Sorensen's annual base salary for a period of six months following the date of termination; (iii) accrued but unused vacation through the termination date payable on the next regular payroll date following the termination date; and (iv) a pro rata portion of Ms. Sorensen's annual bonus that Ms. Sorensen would have earned for the year in which her death or disability occurred.

For purposes of the Sorensen Employment Agreement, "good cause" means the occurrence of one or more of the following conditions, without Ms. Sorensen's consent: (i) a material reduction in Ms. Sorensen's annual base salary or annual bonus; (ii) any material diminution in Ms. Sorensen's responsibilities; or (iii) the relocation of our headquarters more than 20 miles from the existing location; provided that any such condition will only constitute good cause if Ms. Sorensen provides us with a prior written notice of her intent to resign for good cause and we have not remedied the alleged violations within 30 days of such notice.

For purposes of the Sorensen Employment Agreement, "cause" means (i) indictment for any crime involving moral turpitude, fraud or misrepresentation or Ms. Sorensen pleading guilty or nolo contendere to, any felony or crime involving moral turpitude that is damaging to our reputation; (ii) commission of any act which is a felony; (iii) gross misconduct or fraud involving the operations of the Company; (iv) misappropriation or embezzlement of funds or property of the Company; (v) willful conduct which is materially injurious to the reputation, business or business relationships of the Company; (vi) violation of any of the provisions of the Sorensen Employment Agreement or any material Company policy or work rule; (vii) failure to follow reasonable directions or instructions by our Board, or refusal or failure to substantially perform her duties and responsibilities under the Sorensen Employment Agreement to the reasonable satisfaction of the Board.

The Sorensen Employment Agreement includes perpetual confidentiality, non-compete and mutual non-disparagement provisions, as well as provisions relating to assignment of inventions.

**Mel Hope**

We entered into an offer letter with Mr. Hope in July 2018. Mr. Hope is eligible to participate in the Company's annual cash bonus plan described above. Mr. Hope is also eligible to participate in the executive health program that includes a concierge doctor. Additionally, Mr. Hope is eligible to receive cell phone reimbursement, fitness reimbursement and reimbursement for documented regular and customary professional licensing fees and expenses. If we terminate Mr. Hope's employment without "cause," or if Mr. Hope terminates his employment for "good reason," then we must provide Mr. Hope with continued payment of his base salary for a period of 12 months, consistent with Company practices. These severance payments are subject to Mr. Hope's execution and non-revocation of a waiver and release of claims.

For purposes of our arrangement with Mr. Hope, "cause" means (i) indictment for any crime involving moral turpitude, fraud or misrepresentation or Mr. Hope pleading guilty or nolo contendere to, any felony or crime involving moral turpitude that is damaging to our reputation; (ii) commission of any act which is a felony; (iii) gross misconduct or fraud involving the operations of the Company; (iv) misappropriation or embezzlement of funds or property of the Company; (v) willful conduct which is materially injurious to the reputation, business or business relationships of the Company; (vi) violation of any of the provisions of the letter agreement by which Mr. Hope accepted our offer of employment or any material Company policy or work rule; (vii) failure to follow reasonable directions or instructions by the Board, or refusal or failure to substantially perform his duties and responsibilities under the letter agreement by which Mr. Hope accepted our offer of employment to the reasonable satisfaction of the Board.

For the purposes of our arrangement with Mr. Hope, "good reason" means (i) any material diminution in his responsibilities, authorities or duties, or (ii) a relocation of more than 50 miles from his primary work location and primary residence.

**Kenneth L. Pendery, Jr.**

We previously entered into an employment agreement with Kenneth L. Pendery, Jr. in August 2017. Pursuant to a letter agreement with Mr. Pendery dated February 1, 2021 (the "Letter Agreement"), Mr. Pendery agreed that the prior employment agreement would be terminated effective January 31, 2021 and that all of the parties' rights and obligations contained in such employment agreement would terminate, including without limitation any severance obligations thereunder. The Letter Agreement provides for Mr. Pendery's continued employment with the Company as an emeritus member of the Board, effective immediately following January 31, 2021 and for a period of 19 months thereafter (the "Emeritus Board Service Period"). The Letter Agreement provides that Mr. Pendery will not receive any compensation, but will continue to be entitled to Company-provided health insurance, long-term disability and other benefits, including the continued vesting of his stock-based compensation awards as permitted by the 2017 Plan, during the Emeritus Board Service Period. At the end of the Emeritus Board Service Period, Mr. Pendery's employment with the Company will terminate, at which time Mr. Pendery will be entitled to severance in the amount of $245,000 less required withholdings and deductions in consideration of Mr. Pendery's Emeritus Board Service Period and other contributions to the Company. On September 19, 2021, the Board amended the vesting schedule applicable to Mr. Pendery's performance options that convert into time-vesting options in connection with this offering to provide that all of the converted options will vest on August 1, 2022 and, if Mr. Pendery's service with the Company terminates as a result of his death or permanent disability, any unvested options will accelerate and fully vest as of the date of termination. The Board also extended the period during which Mr. Pendery may exercise his vested options until the 10th anniversary of the date of grant.

**Outstanding Equity Awards at Fiscal Year-End**

The following table sets forth certain information with respect to outstanding equity awards held by our named executive officers as of December 27, 2020.

| | Option Awards | | | | | |
|---|---|---|---|---|---|---|
| Name | Option grant date | Number of securities underlying unexercised options (#) exercisable | Number of securities underlying unexercised options (#) unexercisable | Equity incentive plan awards: Number of securities underlying unexercised unearned options (#) | Option exercise price ($) | Option expiration date |
| Christopher A. Tomasso | 8/21/2017 | 372,897 | 248,598 | 621,495 | 8.45 | 8/21/2027 |
| Mel Hope | 7/30/2018 | 42,616 | 63,925 | 106,542 | 8.45 | 7/30/2028 |
| | 7/31/2019 | 8,286 | 33,146 | 41,433 | 13.52 | 7/31/2029 |
| Laura Sorensen | 8/21/2017 | 88,785 | 59,190 | 147,975 | 8.45 | 8/21/2027 |

The option awards represent the following: (i) 50% of the shares subject to each stock option grant are subject to the time-based vesting in equal installments on each of the first five anniversaries of the applicable grant date, subject to the participant's continued employment or service on the applicable vesting date and (ii) 50% of the shares subject to each stock option grant are subject to performance-based vesting, based upon Advent's receipt of aggregate cash amounts representing MOIC targets and subject to the participant's continued employment or service on the applicable vesting date.

As described above, in connection with this offering, a number of stock options subject to performance-based vesting will convert into stock options subject to time-based vesting determined based on the number of

such options that would performance vest if Advent were to sell for cash the shares of our common stock held by Advent at a per share price equal to the initial public offering price. Stock options subject to performance-based vesting that do not convert into time-based vesting stock options will be forfeited, however, in connection with this offering, the forfeiture condition for one tranche of performance-based vesting stock options will be waived and, after this offering, such unvested stock options will convert into stock options subject to time-based vesting. Such converted options will be eligible to vest one-third (1/3rd) on each of the first two anniversaries of the effective date of the offering and one-third (1/3rd) on the 273rd day following the second anniversary of the effective date of the offering.

***2017 Plan***

The 2017 Plan provides for the grant of options, stock appreciation rights ("SARs"), restricted stock, and other stock option awards to our directors, and employees, as well as to directors, and employees of any of our subsidiaries or affiliates. The maximum number of shares available for issuance to participants pursuant to awards under the 2017 Plan is 6,138,240. The shares available for issuance under the 2017 Plan may consist, in whole or in part, of authorized and unissued shares or treasury shares. A total of 5,143,290 shares of our common stock are subject to outstanding option awards under the 2017 Plan as of December 27, 2020. After the completion of this offering, we do not intend to grant any further awards under the 2017 Plan.

***2021 Plan***

In connection with this offering, we plan to adopt a new equity incentive plan, the 2021 Plan. The 2021 Plan provides flexibility to motivate, attract and retain the service providers who are expected to make significant contributions to our success and allow participants to share in such success. The principal features of the 2021 Plan are summarized below.

***Purpose***

The purpose of the 2021 Plan is to align the interests of eligible participants with our stockholders by providing incentive compensation tied to the Company's performance. The intent of the 2021 Plan is to advance the Company's interests and increase stockholder value by attracting, retaining and motivating key personnel upon whose judgment, initiative and effort the successful conduct of our business is largely dependent.

***Awards***

The types of awards available under the 2021 Plan include stock options (both incentive and non-qualified), SARs, restricted stock awards, restricted stock units ("RSUs") and stock-based awards. All awards granted to participants under the 2021 Plan will be represented by an award agreement.

***Shares Available***

Approximately 4,034,072 outstanding shares of common stock as of the consummation of the initial public offering are available for awards under the 2021 Plan.

We refer to the aggregate number of shares available for awards under the 2021 Plan as the "share reserve." On the first day of each fiscal year, commencing on January 1, 2023 and ending on (and including) January 1, 2032, the share reserve will automatically increase by a number equal to the least of (i) two percent (2%) of the total number of shares of common stock actually issued and outstanding on the last day of the preceding fiscal year, (ii) a number of shares of common stock determined by the Board; and (iii) 4,034,072 shares of common stock. Within the share reserve, a total of 4.0 million shares of common stock as of the consummation of the initial public offering are available for awards of incentive stock options.

If any award granted under the 2021 Plan is cancelled, expired, forfeited, or surrendered without consideration or otherwise terminated without delivery of the shares to the participant, then such unissued shares will be returned to the 2021 Plan and be available for future awards under the 2021 Plan.

Shares that are withheld from any award in payment of the exercise, base or purchase price or taxes related to such an award, not issued or delivered as a result of the net settlement of any award, or repurchased by the company on the open market with the proceeds of a stock option will be deemed to have been delivered under the Plan and will not be returned to the 2021 Plan nor be available for future awards under the 2021 Plan. The payment of dividend equivalents in cash in conjunction with any outstanding award shall not count against the share reserve.

***Eligibility***

Any employee, officer, non-employee director or any natural person who is a consultant or other personal service provider to the Company or any of its subsidiaries or affiliates can participate in the 2021 Plan, at the Committee's (as defined below) discretion. In its determination of eligible participants, the Committee may consider any and all factors it considers relevant or appropriate, and designation of a participant in any year does not require the Committee to designate that person to receive an award in any other year.

***Administration***

Pursuant to its terms, the 2021 Plan may be administered by the compensation committee of our Board, such other committee of the Board appointed by the Board to administer the 2021 Plan or the Board, as determined by the Board (such administrator of the 2021 Plan, the "Committee"). The Committee has the power and discretion necessary to administer the 2021 Plan, with such powers including, but not limited to, the authority to select persons to participate in the 2021 Plan, determine the form and substance of awards under the 2021 Plan, determine the conditions and restrictions, if any, subject to which such awards will be made, modify the terms of awards, accelerate the vesting of awards, and make determinations regarding a participant's termination of employment or service for purposes of an award. The Committee's determinations, interpretations and actions under the 2021 Plan are binding on the Company, the participants in the 2021 Plan and all other parties. It is anticipated that the 2021 Plan will be administered by our compensation committee, which solely consists of independent directors, as appointed by the Board from time to time. The compensation committee may delegate authority to one or more officers of the Company to grant awards to eligible persons other than members of the Board or who are subject to Rule 16b-3 of the Exchange Act, as permitted under the 2021 Plan and under applicable law.

***Award Limit for Non-Employee Directors***

No non-employee director may be granted during any calendar year, awards having a fair value that, when added to all other cash compensation received in respect of service as a member of our Board for such calendar year, exceeds $750,000, provided however such limit shall be $1,000,000 during the calendar year in which the registration statement of which this prospectus form a part becomes effective.

***Stock Options***

A stock option grant entitles a participant to purchase a specified number of shares of our common stock during a specified term (with a maximum term of ten years) at an exercise price that will not be less than the fair market value of a share as of the date of grant (unless otherwise determined by the Committee).

The Committee will determine the requirements for vesting and exercisability of the stock options, which may be based on the continued employment or service of the participant with the Company for a specified time period, upon the attainment of performance goals or both. The stock options may terminate prior to the end of the term or vesting date upon termination of employment or service (or for any other reason), as determined by the Committee. Unless approved by the our stockholders, the Committee may not take any action with respect to a stock option that

would be treated as a "repricing" under the then applicable rules, regulations or listing requirements of the stock exchange on which shares of common stock are listed, or that would result in the cancellation of "underwater" stock options in exchange for cash or other awards, other than in connection with a change in control.

Stock options granted under the 2021 Plan will be either non-qualified stock options or incentive stock options (with incentive stock options intended to meet the applicable requirements under the Code). Stock options are nontransferable except in limited circumstances.

***Stock Appreciation Rights***

A SAR granted under the 2021 Plan will give the participant a right to receive, upon exercise or other payment of the SAR, an amount in cash, shares of common stock or a combination of both equal to (i) the excess of (a) the fair market value of a share on the date of exercise less (b) the base price of the SAR that the Committee specified on the date of the grant multiplied by (ii) the number of shares as to which such SAR is exercised or paid. The base price of a SAR will not be less than the fair market value of a share as of the date of grant. The right of exercise in connection with a SAR may be made by the participant or automatically upon a specified date or event. SARs are nontransferable, except in limited circumstances.

The Committee will determine the requirements for vesting and exercisability of the SARs, which may be based on the continued employment or service of the participant with the Company for a specified time period or upon the attainment of specific performance goals. The SARs may be terminated prior to the end of the term (with a maximum term of ten years) upon termination of employment or service, as determined by the Committee. Unless approved by our stockholders, the Committee may not take any action with respect to a SAR that would be treated as a "repricing" under the then applicable rules, regulations or listing requirements of the stock exchange on which shares of common stock are listed, or that would result in the cancellation of "underwater" SARs in exchange for cash or other awards, other than in connection with a change in control.

***Restricted Stock Awards***

A restricted stock award is a grant of a specified number of shares of common stock to a participant, which restrictions will lapse upon the terms that the Committee determines at the time of grant. The Committee will determine the requirements for the lapse of the restrictions for the restricted stock awards, which may be based on the continued employment or service of the participant with the Company over a specified time period, upon the attainment of performance goals, or both.

The participant will have the rights of a stockholder with respect to the shares granted under a restricted stock award, including the right to vote the shares and receive all dividends and other distributions with respect thereto, unless the Committee determines otherwise to the extent permitted under applicable law. If a participant has the right to receive dividends paid with respect to a restricted stock award, such dividends shall not be paid to the participant until the underlying award vests. Any shares granted under a restricted stock award are nontransferable, except in limited circumstances.

***Restricted Stock Units***

An RSU granted under the 2021 Plan will give the participant a right to receive, upon vesting and settlement of the RSUs, one share per vested unit or an amount per vested unit equal to the fair market value of one share as of the date of determination, or a combination thereof, at the discretion of the Committee. The Committee may grant RSUs together with dividend equivalent rights (which will not be paid until the award vests), and the holder of any RSUs will not have any rights as a stockholder, such as dividend or voting rights, until the shares of common stock underlying the RSUs are delivered.

The Committee will determine the requirements for vesting and payment of the RSUs, which may be based on the continued employment or service of the participant with the Company for a specified time period and also

upon the attainment of specific performance goals. RSUs will be forfeited if the vesting requirements are not satisfied. RSUs are nontransferable, except in limited circumstances.

***Stock-Based Awards***

Stock-based awards may be granted to eligible participants under the 2021 Plan and consist of an award of, or an award that is valued by reference to, shares of common stock. A stock-based award may be granted for past employment or service, in lieu of bonus or other cash compensation, as director's compensation or any other purpose as determined by the Committee, and shall be based upon or calculated by reference to the common stock. The Committee will determine the requirements for the vesting and payment of the stock-based award, with the possibility that awards may be made with no vesting requirements. Upon receipt of the stock-based award that consists of shares of common stock, the participant will not have any rights of a stockholder with respect to the shares of common stock, including the right to vote and receive dividends, until such time as shares of common stock (if any) are issued to the participant.

***Plan Amendments or Termination***

The Board may amend, modify, suspend or terminate the 2021 Plan; provided that if such amendment, modification, suspension or termination materially and adversely affects any award, the Company must obtain the affected participant's consent, subject to changes that are necessary to comply with applicable laws. Certain amendments or modifications of the 2021 Plan may also be subject to the approval of our stockholders as required by SEC and Nasdaq rules or applicable law.

***Termination of Service***

Awards under the 2021 Plan may be subject to reduction, cancellation or forfeiture upon termination of service or failure to meet applicable performance conditions or other vesting terms.

Under the 2021 Plan, unless an award agreement provides otherwise, if a participant's employment or service is terminated for cause, or if after termination the Committee determines that the participant engaged in an act that falls within the definition of cause, or if after termination the participant engages in conduct that violates any continuing obligation of the participant with respect to the Company, the Company may cancel, forfeit and/or recoup any or all of that participant's outstanding awards. In addition, if the Committee makes the determination above, the Company may suspend the participant's right to exercise any stock option or SAR, receive any payment or vest in any award pending a determination of whether the act falls within the definition of cause (as defined in the 2021 Plan). If a participant voluntarily terminates employment or service in anticipation of an involuntary termination for cause, that shall be deemed a termination for cause.

***Right of Recapture***

Awards granted under the 2021 Plan may be subject to recoupment in accordance with Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (regarding recoupment of erroneously awarded compensation). The Company has the right to recoup any gain realized by the participant from the exercise, vesting or payment of any award if, within one year after such exercise, vesting or payment (a) the participant is terminated for cause, (b) if after the participant's termination the Committee determines that the participant engaged in an act that falls within the definition of cause or violated any continuing obligation of the participant with respect to the Company or (c) the Committee determines the participant is subject to recoupment due to a clawback policy.

***Change in Control***

Under the 2021 Plan, in the event of a change in control of the Company, as defined in the 2021 Plan, all outstanding awards shall either be (a) continued or assumed by the surviving company or its parent or

(b) substituted by the surviving company or its parent for awards, with substantially similar terms (with appropriate adjustments to the type of consideration payable upon settlement, including conversion into the right to receive securities, cash or a combination of both, and with performance conditions deemed achieved (i) for any completed performance period, based on actual performance, or (ii) for any partial or future performance period, at the greater of the target level or actual performance, unless otherwise provided in an award agreement).

Only to the extent that outstanding awards are not continued, assumed or substituted upon or following a change in control, the Committee may, but is not obligated to, make adjustments to the terms and conditions of outstanding awards, including without limitation (i) acceleration of exercisability, vesting and/or payment immediately prior to, upon or following such event, (ii) upon written notice, provided that any outstanding stock option and SAR must be exercised during a period of time immediately prior to such event or other period (contingent upon the consummation of such event), and at the end of such period, such stock options and SARs shall terminate to the extent not so exercised, and (iii) cancellation of all or any portion of outstanding awards for fair value (in the form of cash, shares, other property or any combination of such consideration), less any applicable exercise or base price.

***Assumption of Awards in Connection with an Acquisition***

The Committee may assume or substitute any previously granted awards of an employee, director or consultant of another corporation who becomes eligible by reason of a corporate transaction. The terms of the assumed award may vary from the terms and conditions otherwise required by the 2021 Plan if the Committee deems it necessary. The assumed awards will not reduce the total number of shares available for awards under the 2021 Plan.

***Adjustments***

In the event of any recapitalization, reclassification, share dividend, extraordinary cash dividend, stock split, reverse stock split, merger, reorganization, consolidation, combination, spin-off or other similar corporate event or transaction affecting the shares of common stock, the Committee will make equitable adjustments to (i) the number and kind of shares or other securities available for awards and covered by outstanding awards, (ii) the exercise, base or purchase price or other value determinations of outstanding awards, and/or (iii) any other terms of an award affected by the corporate event.

**Potential Payments Upon Termination or Change-In-Control**

Our NEOs are entitled to receive severance payments upon termination of employment as provided above in “– Employment Arrangements.” Upon a change in control, all stock options subject to time-based vesting will become fully vested and all stock options subject to performance-based vesting will vest to the extent the applicable MOIC targets are achieved.

### Director Compensation

The following table sets forth information concerning the compensation of our directors (other than our CEO) for fiscal 2020. Compensation information for Mr. Tomasso is included in the "Summary Compensation Table" above. In fiscal 2020, our directors (other than Mr. Pendery and directors affiliated with Advent) received (1) an annual cash retainer of $75,000, payable in equal quarterly installments and (2) option awards. Other than as set forth in the table and described herein, during fiscal 2020, we did not pay any fees to, make any equity awards or non-equity awards to, or pay any other compensation to the non-employee members of our board of directors. We also reimburse each of our directors for all reasonable out-of-pocket expenses incurred in connection with attendance at board and committee meetings.

| Name | Fees earned or paid in cash ($)(1) | Option awards ($)(2)(3) | All other compensation ($)(4) | Total ($) |
|---|---|---|---|---|
| Kenneth L. Pendery, Jr. | — | — | 565,829 | 565,829 |
| Ralph Alvarez | 75,000 | — | — | 75,000 |
| Julie M.B. Bradley | 69,658 | 58,688 | — | 128,346 |
| Tricia Glynn | — | — | — | — |
| William Kussell | 75,000 | — | — | 75,000 |
| David Mussafer | — | — | — | — |
| Michael White | — | — | — | — |
| Lisa Price | 22,860 | 91,805 | — | 114,665 |

(1) For Mses. Bradley and Price, amount reflects pro-rated amounts since commencing services as a director in fiscal 2020.

(2) Amounts in this column represent the aggregate grant date fair value of stock options computed in accordance with FASB ASC Topic 718 granted to certain of our directors (other than our CEO) during fiscal 2020. For additional information regarding the calculation of this amount and related assumptions, see Note 17, *Stock-Based Compensation*, in the notes to our audited consolidated financial statements included elsewhere in this prospectus.

(3) As of December 27, 2020, our directors (other than our CEO) held the following outstanding option awards:

| Name | Option awards outstanding as of December 27, 2020 |
|---|---|
| Kenneth L. Pendery, Jr. | 532,710 |
| Ralph Alvarez | 236,760 |
| Julie M.B. Bradley | 73,986 |
| Tricia Glynn | — |
| William Kussell | 118,380 |
| David Mussafer | — |
| Michael White | — |
| Lisa Price | 78,920 |

(4) For Mr. Pendery, amount includes salary ($379,536) and an annual bonus ($174,658) that Mr. Pendery received from the Company's wholly-owned subsidiary, First Watch Restaurant, Inc. as well as life insurance premiums ($900), long term disability benefits ($460), health insurance premiums ($5,775), and executive physical services ($4,500) that we paid in fiscal 2020 on his behalf. See "Executive Compensation — Employment Arrangements."

### Post-offering Director Compensation

The Board has approved a compensation framework for our directors that are not employees of the Company and not employees of Advent ("Non-Employee Director Compensation") for their service on the Board and its committees following the closing of the IPO. The Non-Employee Director Compensation framework includes a $75,000 base retainer; $10,000 for service as a member of the Audit Committee and $20,000 for service as the Audit Committee Chair; $7,500 for service as a member of the Compensation Committee and $15,000 for service as the Compensation Committee Chair; $6,000 for service as a member of the Nominating and Corporate Governance Committee and $10,000 for service as the Nominating and Corporate Governance Committee Chair; and we anticipate that our directors will also receive an annual equity grant beginning in 2022.

## PRINCIPAL STOCKHOLDERS

The following table shows information as of September 20, 2021 regarding the beneficial ownership of our common stock as adjusted to give effect to this offering by:

- each person or group who is known by us to own beneficially more than 5% of our common stock;
- each member of our Board and each of our named executive officers ("NEOs"); and
- all members of our Board and our executive officers as a group.

Beneficial ownership of shares is determined under rules of the SEC and generally includes any shares over which a person exercises sole or shared voting or investment power. Except as noted by footnote, and subject to community property laws where applicable, we believe based on the information provided to us that the persons and entities named in the table below have sole voting and investment power with respect to all shares of our common stock shown as beneficially owned by them. Percentage of beneficial ownership is based on shares of common stock outstanding as of September 20, 2021 and 57,629,596 shares of common stock outstanding after giving effect to this offering, assuming no exercise of the underwriters' option to purchase additional shares, or 59,048,446 shares of common stock, assuming the underwriters exercise their option to purchase additional shares in full. Shares of common stock subject to options currently exercisable or exercisable within 60 days of the date of this prospectus are deemed to be outstanding and beneficially owned by the person holding the options for the purposes of computing the percentage of beneficial ownership of that person and any group of which that person is a member, but are not deemed outstanding for the purpose of computing the percentage of beneficial ownership for any other person. Except as otherwise indicated, the persons named in the table below have sole voting and investment power with respect to all shares of capital stock held by them. Unless otherwise indicated, the address for each holder listed below is 8725 Pendery Place, Suite 201, Bradenton, FL 34201.

| | Shares of common stock beneficially owned before this offering | | Shares of common stock beneficially owned after this offering (assuming no exercise of the option to purchase additional shares) | | Shares of common stock beneficially owned after this offering assuming full exercise of the option to purchase additional shares | |
|---|---|---|---|---|---|---|
| **Name and address of beneficial owner** | **Number of shares** | **Percentage of shares** | **Number of shares** | **Percentage of shares** | **Number of shares** | **Percentage of shares** |
| **5% stockholders:** | | | | | | |
| Funds managed by Advent International Corporation (1) | 46,739,784 | 97.0% | 46,739,784 | 81.1% | 46,739,784 | 79.2% |
| **NEOs and directors:** | | | | | | |
| Christopher A. Tomasso (2) | 708,964 | 1.5% | 708,964 | 1.2% | 708,964 | 1.2% |
| Mel Hope (3) | 80,499 | * | 80,499 | * | 80,499 | * |
| Jay Wolszczak (4) | 80,499 | * | 80,499 | * | 80,499 | * |
| Eric Hartman (5) | 145,635 | * | 145,635 | * | 145,635 | * |
| Laura Sorensen (6) | 143,971 | * | 143,971 | * | 143,971 | * |
| Calum Middleton (7) | 33,542 | * | 33,542 | * | 33,542 | * |
| Kenneth L. Pendery, Jr (8) | 593,130 | 1.2% | 593,130 | 1.0% | 593,130 | 1.0% |
| Ralph Alvarez (9) | 454,887 | * | 454,887 | * | 454,887 | * |
| Julie M.B. Bradley (11) | 7,399 | * | 7,399 | * | 7,399 | * |
| Tricia Glynn (10) | — | * | — | * | — | * |
| William Kussell (12) | 85,738 | * | 85,738 | * | 85,738 | * |
| Michael White (10) | — | * | — | * | — | * |
| Lisa Price (13) | 7,893 | * | 7,893 | * | 7,893 | * |
| **All Board members and executive officers as a group (13 persons)** | **2,342,157** | **4.7%** | **2,342,157** | **4.0%** | **2,342,157** | **3.9%** |

* Represents beneficial ownership of less than 1% of our outstanding common stock.

(1) Amount beneficially owned after this offering includes: (i) 2,801,208 shares of common stock held by Advent International GPE VIII Limited Partnership; (ii) 3,040,469 shares of common stock held by Advent International GPE VIII-B-1 Limited Partnership; (iii) 2,267,020 shares of common stock held by Advent International GPE VIII-B-2 Limited Partnership; (iv) 3,539,978 shares of common stock held by Advent International GPE VIII-B-3 Limited Partnership; (v) 8,543,936 shares of common stock held by Advent International GPE VIII-B Limited Partnership; (vi) 1,395,510 shares of common stock held by Advent International GPE VIII-C Limited Partnership; (vii) 1,193,501 shares of common stock held by Advent International GPE VIII-D Limited Partnership; (viii) 353,680 shares of common stock held by Advent International GPE VIII-F Limited Partnership; (ix) 3,133,388 shares of common stock held by Advent International GPE VIII-H Limited Partnership; (x) 2,913,665 shares of common stock held by Advent International GPE VIII-I Limited Partnership; (xi) 2,863,279 shares of common stock held by Advent International GPE VIII-J Limited Partnership (the funds set forth in the foregoing clauses (i)-(xi), the "Advent VIII Luxembourg Funds"); (xii) 6,570,631 shares of common stock held by Advent International GPE VIII-A Limited Partnership; (xiii) 1,329,140 shares of common stock held by Advent International GPE VIII-E Limited Partnership; (xiv) 2,254,307 shares of common stock held by Advent International GPE VIII-G Limited Partnership; (xv) 1,343,488 shares of common stock held by Advent International GPE VIII-K Limited Partnership; (xvi) 1,220,984 shares of common stock held by Advent International GPE VIII-L Limited Partnership (the funds set forth in the foregoing clauses (xii)-(xvi), the "Advent VIII Cayman Funds"); (xvii) 103,389 shares of common stock held by Advent Partners GPE VIII Limited Partnership; (xviii) 644,355 shares of common stock held by Advent Partners GPE VIII Cayman Limited Partnership; (xix) 124,235 shares of common stock held by Advent Partners GPE VIII-A Limited Partnership; (xx) 85,955 shares of common stock held by Advent Partners GPE VIII-A Cayman Limited Partnership; and (xxi) 1,017,666 shares of common stock held by Advent Partners GPE VIII-B Cayman Limited Partnership (the funds set forth in the foregoing clauses (xvii)-(xxi), the "Advent VIII Partners Funds").

GPE VIII GP S.à r.l. is the general partner of the Advent VIII Luxembourg Funds. GPE VIII GP Limited Partnership is the general partner of the Advent VIII Cayman Funds. AP GPE VIII GP Limited Partnership is the general partner of the Advent VIII Partners Funds. Advent International GPE VIII, LLC is the manager of GPE VIII GP S.à r.l. and the general partner of each of GPE VIII GP Limited Partnership and AP GPE VIII GP Limited Partnership.

Advent is the manager of Advent International GPE VIII, LLC and may be deemed to have voting and dispositive power over the shares held by the Advent VIII Luxembourg Funds, the Advent VIII Cayman Funds and the Advent VIII Partners Funds. Investment decisions by Advent are made by a number of individuals currently comprised of John L. Maldonado, David M. McKenna and David M. Mussafer. The address of each of the entities and individuals named in this footnote is c/o Advent International Corporation, Prudential Tower, 800 Boylston St., Suite 3300, Boston, MA 02199.

(2) Includes 497,196 shares of common stock held by Mr. Tomasso that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

(3) Includes 80,499 shares of common stock held by Mr. Hope that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

(4) Includes 80,499 shares of common stock held by Mr. Wolszczak that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

(5) Includes 118,380 shares of common stock held by Mr. Hartman that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

(6) Includes 118,380 shares of common stock held by Ms. Sorensen that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

(7) Includes 33,542 shares of common stock held by Mr. Middleton that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

(8) Includes 380,046 shares of common stock held by Kenneth L. Pendery, Jr., and his successors, as Trustee U/A with Kenneth L. Pendery, Jr. Dated February 15, 2017, as Amended. Also includes 213,084 shares of common stock held by Kenneth L. Pendery, Jr., and his successors, as Trustee U/A with Kenneth L.

Pendery, Jr. Dated February 15, 2017, as Amended that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

(9) Includes 71,028 shares of common stock held by Mr. Alvarez that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

(10) Ms. Glynn and Mr. White are employees of Advent but do not have voting or dispositive power over any shares deemed to be beneficially owned by Advent.

(11) Includes 7,399 shares of common stock held by Ms. Bradley that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

(12) Includes 47,352 shares of common stock held by Mr. Kussell that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days. Also includes 57,007 shares of common stock held by the Melanie Kussell Irrevocable Trust of 2014 and 57,007 shares of common stock held by the David Kussell Irrevocable Trust of 2014.

(13) Includes 7,893 shares of common stock held by Ms. Price that are issuable upon exercise of stock options that are currently exercisable or are exercisable within 60 days.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Set forth below is a description of certain relationships and related person transactions between us or our subsidiaries and our directors, executive officers or holders of more than 5% of our voting securities.

### Board Compensation

For a discussion of our director compensation, please see "Executive Compensation — Director Compensation."

### Sale of Preferred Stock

On August 14, 2020, we entered into a subscription agreement with AI Fresh Holdings Limited Partnership ("Partnership"), pursuant to which Partnership subscribed for and received shares of our preferred stock (the "Subscription") with an aggregate value of $38.8 million. In order to finance the Subscription, Partnership entered into a subscription agreement with Advent, pursuant to which Advent subscribed for and received newly issued Preferred Units of Partnership with an aggregate value of $38.8 million. We amended our certificate of incorporation in connection with the Subscription to provide for, among other things, preferential payments to the holders of preferred stock in the event of a liquidation or a Deemed Liquidation Event (as defined therein). Additionally, Partnership amended the Limited Partnership Agreement to provide for certain preferential rights for the holders of Preferred Units, including to receive preferential payments upon the payment of distributions to partners.

On August 14, 2020, we entered into a convertible promissory note with Advent with an initial principal amount of $1.2 million (the "Promissory Note"). The Promissory Note has since been repaid and is no longer outstanding.

### Employment Agreements

We have entered into employment agreements with Christopher A. Tomasso, our President, Chief Executive Officer and Director and Laura Sorensen, our Chief People Officer. See "Executive Compensation – Employment Arrangements."

### Indemnification Agreements

We intend to enter into indemnification agreements with each of our executive officers and directors prior to the completion of this offering. The indemnification agreements will provide the executive officers and directors with contractual rights to indemnification, expense advancement and reimbursement, to the fullest extent permitted under the DGCL, subject to certain exceptions contained in those agreements.

### Policies for Approval of Related Person Transactions

In connection with this offering, we will adopt a written policy relating to the approval of related person transactions. A "related person transaction" is a transaction or arrangement or series of transactions or arrangements in which we participate (whether or not we are a party) and a related person has a direct or indirect material interest in such transaction. Our audit committee will review and approve or ratify all relationships and related person transactions between us and (i) our directors, director nominees or executive officers, (ii) any 5% record or beneficial owner of our common stock or (iii) any immediate family member of any person specified in (i) and (ii) above. The audit committee will review all related person transactions and, where the audit committee determines that such transactions are in our best interests, approve such transactions in advance of such transaction being given effect, or ratify such transactions, as applicable.

As set forth in the related person transaction policy, in the course of its review and approval or ratification of a related party transaction, the audit committee will, in its judgment, consider in light of the relevant facts and circumstances whether the transaction is, or is not inconsistent with, our best interests, including consideration of various factors enumerated in the policy.

Any member of the audit committee who is a related person with respect to a transaction under review will not be permitted to participate in the discussions or approval or ratification of the transaction. However, such member of the audit committee will provide all material information concerning the transaction to the audit committee. Our policy also includes certain exceptions for transactions that need not be reported and provides the audit committee with the discretion to pre-approve certain transactions.

## DESCRIPTION OF MATERIAL INDEBTEDNESS

### Senior Credit Facilities

On August 21, 2017, FWR Holding Corporation, a Delaware corporation and a wholly-owned indirect subsidiary of the Company (the "Borrower"), entered into a credit agreement (as amended pursuant to the First Amendment (as defined below), the Second Amendment (as defined below), the Third Amendment (as defined below) and the Fourth Amendment (as defined below), the "Credit Agreement"), among the Borrower, AI Fresh Parent, Inc., a Delaware corporation ("Holdings") and a wholly-owned direct subsidiary of the Company, Golub Capital Markets LLC, as administrative agent and collateral agent (the "Administrative Agent"), and the lenders from time to time party thereto, pursuant to which the lenders party thereto agreed to provide senior secured credit facilities, consisting of (i) an initial term loan facility in an original principal amount equal to $155.0 million (the "Initial Term Loan Facility" and the loans thereunder, the "Initial Term Loans"), (ii) a delayed draw term loan facility in an original principal amount equal to $50.0 million (as increased pursuant to the First Amendment and the Second Amendment, the "Initial DDTL Facility" and the loans thereunder, the "Initial Delayed Draw Term Loans") and (iii) a revolving credit facility in an original principal amount equal to $20.0 million (the "Revolving Facility" and the loans thereunder, the "Initial Revolving Loans"; the Revolving Facility, together with the Initial Term Loan Facility and the Initial DDTL Facility, collectively, the "Senior Credit Facilities"), including a letter of credit facility with a $5.0 million sublimit. On February 28, 2019, the Borrower entered into a first amendment to Credit Agreement (the "First Amendment"), pursuant to which the lenders party thereto agreed to add additional delayed draw term loan commitments in an original principal amount equal to $50.0 million (the "First Amendment DDTL Commitments"). On December 20, 2019, the Borrower entered into a second amendment to Credit Agreement (the "Second Amendment"), pursuant to which the lenders party thereto agreed to add additional delayed draw term loan commitments in an original principal amount equal to $40.0 million (the "Second Amendment DDTL Commitments"). On April 27, 2020, the Borrower entered into a third amendment and waiver to Credit Agreement (the "Third Amendment"), pursuant to which, among other things, the lenders party thereto agreed to waive an excess borrowing under the Initial DDTL Facility as a result of a miscalculation. On August 14, 2020, the Borrower entered into a fourth amendment to Credit Agreement (the "Fourth Amendment"), pursuant to which, among other things, the lenders party thereto agreed to suspend the Leverage Financial Covenant during the Covenant Suspension Period and the Borrower agreed to an increase in the interest rate applicable to the Initial Revolving Loans and the Term Loans, which increase shall be paid in kind.

The First Amendment DDTL Commitments are fully drawn as of December 27, 2020. A total of $1.5 million of the Second Amendment DDTL Commitments are available for borrowings until December 20, 2021.

#### *Interest Rate and Fees*

Borrowings under the Senior Credit Facilities bear interest, at the Borrower's option, at a rate per annum equal to either (a) (i) the greater of an adjusted London interbank offered rate (the "Adjusted Eurocurrency Rate") and 1.00% plus (ii) 5.50% per annum plus (iii) the applicable payment in kind ("PIK") rate set forth below or (b) (i) the alternate base rate ("ABR") plus (ii) 4.50% per annum plus (iii) the applicable PIK rate set forth below. ABR is a floating rate per annum equal to the highest of (i) the federal funds effective rate plus 0.50%, (ii) to the extent ascertainable, the London interbank offered rate for a 1-month interest period on such day plus 1.00%, (iii) the rate of interest last quoted by *The Wall Street Journal* as the "prime rate" in the U.S. and (iv) 1.00%.

The applicable PIK rate is calculated based upon the total net leverage ratio of the Borrower and its restricted subsidiaries on a consolidated basis, as set forth below.

| Level | Total Net Leverage Ratio | PIK Rate |
|---|---|---|
| **I** | > 7.00:1.00 | 1.50% |
| **II** | £ 7.00:1.00 and > 6.00:1.00 | 0.75% |
| **III** | £ 6.00:1.00 | 0.25% |

The following fees are required to be paid under the Senior Credit Facilities:

- a commitment fee to each revolving lender payable quarterly in arrears at a rate equal to 0.50% per annum applicable to such revolving lender's unused commitments under the Revolving Facility;
- a commitment fee to each delayed draw term loan lender payable quarterly in arrears at a rate equal to 1.00% per annum applicable to such delayed draw term loan lender's unused commitments under the Initial Delayed Draw Term Facility;
- a participation fee to each revolving lender payable quarterly in arrears at a rate equal to the applicable Adjusted Eurocurrency Rate margin for Initial Revolving Loans on the daily face amount of such revolving lender's letter of credit exposure;
- a customary fronting fee to each issuing bank payable quarterly in arrears on the daily face amount of such issuing bank's letter of credit exposure and such issuing bank's standard fees with respect to the issuance, amendment, renewal or extension of letters of credit or processing of drawings thereunder; and
- an annual administrative agency fee payable to the Administrative Agent.

***Voluntary Prepayments***

Subject to certain notice requirements, the Borrower may voluntarily prepay outstanding loans under the Senior Credit Facilities in whole or in part without premium or penalty other than customary "breakage" costs with respect to Adjusted Eurocurrency Rate loans.

***Amortization; Mandatory Prepayments; Final Maturity***

The Initial Term Loans and, once drawn, the Initial Delayed Draw Term Loans (collectively, the "Term Loans") amortize at an annual rate equal to approximately 1.00% per annum, payable in equal quarterly installments of 0.25% of the original principal amount of the Term Loans. The Initial Revolving Loans do not require amortization payments.

In addition, the Credit Agreement requires mandatory prepayments of the Term Loans with:

- 50% of excess cash flow (as such term is defined in the Credit Agreement) for each fiscal year, minus, at the Borrower's option, the amount of any voluntary prepayment of loans under the Senior Credit Facilities (in the case of any voluntary prepayment of Initial Revolving Loans, to the extent accompanied by a permanent reduction of the related commitment), subject to other exceptions and subject to stepdowns to (i) 25% if the total net leverage ratio is less than or equal to 4.25:1.00 and greater than 3.75:1.00 and (ii) 0% if the total net leverage ratio is less than or equal to 3.75:1.00;
- 100% of the net cash proceeds of certain asset sales and/or insurance/condemnation events above a threshold amount, subject to reinvestment rights and other exceptions; and
- 100% of the net cash proceeds of any issuance or incurrence of debt that is not permitted by the Credit Agreement.

Loans under the Senior Credit Facilities mature on August 21, 2023.

***Guarantors***

The obligations of the Borrower under the Credit Agreement are guaranteed by Holdings and each wholly-owned domestic subsidiary of the Borrower, subject to certain exceptions. Certain future-formed or acquired wholly owned domestic subsidiaries of the Borrower will also be required to guarantee the obligations under the Credit Agreement.

***Security***

The obligations of the Borrower under the Credit Agreement are secured by first-priority security interests in substantially all of the assets of the Borrower and the guarantors, subject to permitted liens and other exceptions.

***Certain Covenants; Representations and Warranties***

The Credit Agreement contains customary affirmative covenants (including reporting obligations) and negative covenants and requires the Borrower to make customary representations and warranties. The negative covenants, among other things and subject to certain exceptions, limit the ability of the Borrower and certain of its subsidiaries to:

- incur or guarantee additional indebtedness;
- create liens;
- pay dividends or make other distributions in respect of equity;
- make payments in respect of subordinated debt;
- enter into burdensome agreements with negative pledge clauses or restrictions on subsidiary distributions;
- make investments, including acquisitions, loans, and advances;
- make capital expenditures for new restaurant openings;
- repurchase franchised unit locations;
- consolidate, merge, liquidate, or dissolve;
- sell, transfer, or otherwise dispose of assets;
- engage in transactions with affiliates;
- materially alter the business conducted by the Borrower and certain of its subsidiaries; and
- amend or otherwise change the terms of the documentation governing certain restricted debt.

***Financial Covenants***

The Credit Agreement contains a maximum leverage financial covenant, which requires the Borrower to maintain a ratio of consolidated total net debt to consolidated EBITDA (with certain adjustments as set forth in the Credit Agreement) no greater than (i) for the fiscal quarter ending on June 27, 2021, 10.00:1.00, (ii) for the fiscal quarter ending on September 26, 2021, 8.25:1.00, (iii) for the fiscal quarter ending on December 26, 2021, 7.00:1.00, (iv) for the fiscal quarter ending on March 27, 2022, 6.50:1.00 and (v) for the fiscal quarter ending on June 26, 2022 and each fiscal quarter ending thereafter, 6.00:1.00, tested as of the last day of each fiscal quarter and determined on the basis of the four most recently ended fiscal quarters of the Borrower for which financial statements have been delivered pursuant to the Credit Agreement (except with respect to consolidated EBITDA for the four fiscal quarter periods ending June 27, 2021, September 26, 2021 and December 26, 2021, which will be determined by annualizing consolidated EBITDA (i.e., (a) consolidated EBITDA for the four fiscal quarter period ending June 27, 2021 shall equal consolidated EBITDA for the fiscal quarter ending June 27, 2021 multiplied by four, (b) consolidated EBITDA for the four fiscal quarter period ending September 26, 2021 shall equal consolidated EBITDA for the fiscal quarter ending June 27, 2021 plus consolidated EBITDA for the fiscal quarter ending September 26, 2021 multiplied by two, and (c) consolidated EBITDA for the four fiscal quarter period ending December 26, 2021 shall equal consolidated EBITDA for the fiscal quarter ending June 27, 2021 plus consolidated EBITDA for the fiscal quarter ending September 26, 2021 plus consolidated EBITDA for the fiscal quarter ending December 26, 2021 multiplied by 4/3)), subject to customary “equity cure” rights.

The Credit Agreement also contains a minimum liquidity covenant, which requires the Borrower to maintain liquidity (consisting of the unrestricted cash of the Borrower and its subsidiaries and the undrawn amount of commitments under the Initial Revolving Facility) of not less than $10.0 million, tested on the 15th and last calendar day of each calendar month, for the period commencing on August 14, 2020 and ending on the first date on or after June 27, 2021 on which a compliance certificate is delivered to the Administrative Agent demonstrating compliance with the reinstated Leverage Financial Covenant. The minimum liquidity covenant is also subject to customary “equity cure” rights.

***Events of Default***

The Credit Agreement contains customary events of default, subject in certain circumstances to specified grace periods, thresholds and exceptions, including, among others, payment defaults, cross-defaults to certain material indebtedness, covenant defaults, material inaccuracy of representations and warranties, bankruptcy events, material judgments, material defects with respect to guarantees and collateral and change of control. If an event of default occurs, the lenders would be entitled to take various actions, including acceleration of the loans and termination of the commitments under the Credit Agreement, foreclosure on collateral and all other remedial actions available to a secured creditor. Bankruptcy events and the failure to pay certain amounts owing under the Credit Agreement may result in an increased interest rate equal to 2.00% per annum plus, in the case of overdue principal or interest of any loan or unreimbursed letter of credit disbursement, the rate of interest otherwise applicable to the relevant loan or letter of credit disbursement or, in the case of any other amount, the rate applicable to Initial Revolving Loans that bear interest by reference to the ABR.

# DESCRIPTION OF CAPITAL STOCK

The following is a description of (i) the material terms of our amended and restated certificate of incorporation and amended and restated bylaws as they will be in effect upon the consummation of this offering and (ii) certain applicable provisions of Delaware law. We refer you to our amended and restated certificate of incorporation and amended and restated bylaws, copies of which will be filed as exhibits to the registration statement of which this prospectus is a part.

## Authorized Capitalization

Our authorized capital stock shall consist of 300,000,000 shares of common stock, par value $0.01 per share and 10,000,000 shares of preferred stock, par value $0.01 per share. Following the consummation of this offering, 57,629,596 shares of common stock and no shares of preferred stock shall be issued and outstanding.

## Common Stock

Holders of our common stock are entitled to the rights set forth below.

### *Voting Rights*

At any meeting of stockholders at which directors are to be elected, directors will be elected by a plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Our stockholders will not have cumulative voting rights. Except as otherwise provided in our amended and restated certificate of incorporation, our bylaws or as required by law, all matters to be voted on by our stockholders other than matters relating to the election and removal of directors must be approved by a majority of the shares present in person or represented by proxy at the meeting and voting on the subject matter.

### *Dividend Rights*

Holders of common stock will share equally in any dividend declared by our Board, subject to the rights of the holders of any outstanding preferred stock.

### *Liquidation Rights*

In the event of any voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of our affairs, holders of our common stock would be entitled to share ratably in our assets that are legally available for distribution to stockholders after payment of liabilities. If we have any preferred stock outstanding at such time, holders of the preferred stock may be entitled to distribution and/or liquidation preferences. In either such case, we must pay the applicable distribution to the holders of our preferred stock before we may pay distributions to the holders of our common stock.

### *Registration Rights*

Certain of our existing stockholders have certain registration rights with respect to our common stock pursuant to a stockholders agreement.

### *Other Rights*

Our stockholders have no preemptive or other rights to subscribe for additional shares. There will be no redemption, conversion or sinking fund provisions applicable to our common stock. All holders of our common stock are entitled to share equally on a share-for-share basis in any assets available for distribution to common stockholders upon our liquidation, dissolution or winding up. All outstanding shares are, and all shares offered by this prospectus will be, when sold, validly issued, fully paid and non-assessable.

**Preferred Stock**

Our Board is authorized to provide for the issuance of preferred stock in one or more series and to fix the preferences, powers and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof, including the dividend rate, conversion rights, voting rights, redemption rights and liquidation preference and to fix the number of shares to be included in any such series without any further vote or action by our stockholders. Any preferred stock so issued may rank senior to our common stock with respect to the payment of dividends or amounts upon liquidation, dissolution or winding up, or both. In addition, any such shares of preferred stock may have class or series voting rights. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control of our company without further action by the stockholders and may adversely affect the voting and other rights of the holders of our common stock. The Company issued 266,667 shares of preferred stock, par value $0.01 per share, to existing stockholders, including Advent, directors and executive officers, on August 14, 2020, and such shares will convert into 3,156,812 shares of our common stock immediately prior to the completion of this offering.

**Anti-takeover Provisions**

Our amended and restated certificate of incorporation and amended and restated bylaws will contain provisions that delay, defer or discourage transactions involving an actual or potential change in control of us or change in our management. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions will be designed to encourage persons seeking to acquire control of us to first negotiate with our Board, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they will also give our Board the power to discourage transactions that some stockholders may favor, including transactions in which stockholders might otherwise receive a premium for their shares or transactions that our stockholders might otherwise deem to be in their best interests. Accordingly, these provisions could adversely affect the price of our common stock.

***Classified Board of Directors***

Our Board is divided into three classes, Class I, Class II and Class III, with members of each class serving staggered three-year terms. Our amended and restated certificate of incorporation will provide that the authorized number of directors may be changed only by resolution of the Board. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. Our amended and restated certificate of incorporation and our amended and restated bylaws will also provide that a director may be removed by the affirmative vote of the holders of a majority of the voting power of our outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class, and only for cause so long as our Board is classified. Any vacancy on our Board, including a vacancy resulting from an enlargement of our Board, may be filled only by vote of a majority of our directors then in office. Our classified Board could have the effect of delaying or discouraging an acquisition of us or a change in our management. See “Risk Factors – Risks Related to Our Company and Organizational Structure – Delaware law and our organizational documents, as well as our existing and future debt agreements, may impede or discourage a takeover, which could deprive our investors of the opportunity to receive a premium for their shares.”

***Special Meetings of Stockholders and Advance Notice Requirements for Stockholder Meetings, Nominations and Proposals***

Our amended and restated bylaws will provide that special meetings of the stockholders may be called only upon the request of a majority of our Board, the Chairperson of our Board or the Chief Executive Officer. Our amended and restated bylaws will prohibit the conduct of any business at an annual or special meeting other than as specified in the notice for such meeting or otherwise brought before the meeting by or at the direction of the Board or a duly authorized committee or authorized officer to whom the Board or committee delegated such authority. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers or changes in control or management of our company.

Our amended and restated bylaws will establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our Board or a committee of our Board. In order for any matter to be "properly brought" before a meeting, a stockholder will have to comply with the advance notice requirements of directors, which may be filled only by a vote of a majority of directors then in office, even though less than a quorum, and not by the stockholders. Our amended and restated bylaws will allow the presiding officer at a meeting of the stockholders to adopt rules and regulations for the conduct of meetings, which may have the effect of precluding the conduct of certain business at a meeting if the rules and regulations are not followed. These provisions may also defer, delay or discourage a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.

***No Stockholder Action by Written Consent***

Our amended and restated certificate of incorporation and our amended and restated bylaws will provide that after the time that Advent collectively owns less than 50% of our then outstanding common stock, subject to the rights of any holders of preferred stock to act by written consent instead of a meeting, stockholder action may be taken only at an annual meeting or special meeting of stockholders and may not be taken by written consent instead of a meeting. Failure to satisfy any of the requirements for a stockholder meeting could delay, prevent or invalidate stockholder action.

***Section 203 of the DGCL***

Our amended and restated certificate of incorporation will provide that the provisions of Section 203 of the DGCL, which relate to business combinations with interested stockholders, do not apply to us. Section 203 of the DGCL prohibits a publicly held Delaware corporation from engaging in a business combination transaction with an interested stockholder (a stockholder who owns more than 15% of our common stock) for a period of three years after the interested stockholder became such unless the transaction fits within an applicable exemption, such as Board approval of the business combination or the transaction that resulted in such stockholder becoming an interested stockholder. These provisions will apply even if the business combination could be considered beneficial by some stockholders. Our amended and restated certificate of incorporation will contain provisions that have the same effect as Section 203 of the DGCL and will provide that Advent, their respective affiliates or successors, their transferees, and any group as to which such persons are party do not constitute interested stockholders for purposes of these provisions for so long as they collectively own, directly or indirectly, 10% or more of the voting power of our then outstanding shares of voting stock. Although we have elected to opt out of the statute's provisions, we could elect to be subject to Section 203 in the future.

**Amendment to Bylaws and Certificate of Incorporation**

Any amendment to our amended and restated certificate of incorporation must first be approved by a majority of our Board and if required by law, thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment. Our amended and restated bylaws may be amended (x) by the affirmative vote of a majority of the directors then in office, without further stockholder action or (y) by the affirmative vote of at least a majority of the voting power of the then outstanding shares entitled to vote generally in the election of directors, voting together as a single class, without further action by our Board.

**Renouncement of Corporate Opportunity**

Our amended and restated certificate of incorporation will provide that, except as may be expressly agreed in writing between our company and Advent, we renounce any interest or expectancy in, or in being offered an opportunity to participate in, any business opportunity that may from time to time be presented to and that may be a business opportunity for Advent or any of its managers, officers, directors, agents stockholders, members, partners, affiliates, and subsidiaries (other than our company and its subsidiaries) ("Exempted Persons"), even if

the opportunity is one that we might reasonably have pursued or had the ability or desire to pursue if granted the opportunity to do so. No such Exempted Persons will be liable to us for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such person, acting in good faith, pursues or acquires any such business opportunity, directs any such business opportunity to another person or fails to present any such business opportunity, or information regarding any such business opportunity, to us.

**Exclusive Forum**

Our amended and restated certificate of incorporation will provide that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware or, if the Court of Chancery lacks jurisdiction, a state court located within the State of Delaware or the federal district court for the District of Delaware, shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (i) derivative action or proceeding brought on our behalf, (ii) action asserting a claim of breach of a fiduciary duty or other wrongdoing by any current or former director, officer, employee, agent or stockholder to us or our stockholders, (iii) action asserting a claim arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or our amended and restated bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware. Our amended and restated certificate of incorporation also provides that the foregoing exclusive forum provision does not apply to actions brought to enforce any liability or duty created by the Securities Act or Exchange Act, or any other claim or cause of action for which the federal courts have exclusive jurisdiction.

Our amended and restated certificate of incorporation also provides that, unless we consent in writing to an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any action asserting a claim arising under the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder. Pursuant to the Exchange Act, claims arising thereunder must be brought in federal district courts of the United States of America.

To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in any shares of our capital stock shall be deemed to have notice of and consented to the forum provision in our amended and restated certificate of incorporation. In any case, stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. Our amended and restated certificate of incorporation will also provide that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and consented to this choice of forum provision. These exclusive forum provisions may have the effect of discouraging lawsuits against our directors and officers.

**Listing**

We intend to apply to have our common stock listed on Nasdaq under the symbol "FWRG."

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock. Future sales of our common stock in the public market, or the perception that sales may occur, could materially adversely affect the prevailing market price of our common stock at such time and our ability to raise equity capital in the future.

### Sale of Restricted Securities

Upon consummation of this offering, we will have 57,629,596 shares of our common stock outstanding (or 59,048,446 shares, if the underwriters exercise their option to purchase additional shares in full). Of these shares, all shares sold in this offering will be freely tradable without further restriction or registration under the Securities Act, except that any shares purchased by our affiliates may generally only be sold in compliance with Rule 144, which is described below. Of the remaining outstanding shares, 48,170,596 shares will be deemed "restricted securities" under the Securities Act.

### Lock-Up Arrangements and Registration Rights

In connection with this offering, we, each of our directors, executive officers and certain other stockholders, will enter into lock-up agreements that restrict the sale of our securities for up to 180 days after the date of this prospectus, subject to certain exceptions or an extension in certain circumstances.

In addition, following the expiration of the lock-up period, we expect that certain stockholders will have the right, subject to certain conditions, to require us to register the sale of their shares of our common stock under federal securities laws. If these stockholders exercise this right, our other existing stockholders may require us to register their registrable securities.

Following the lock-up periods described above, all of the shares of our common stock that are restricted securities or are held by our affiliates as of the date of this prospectus will be eligible for sale in the public market in compliance with Rule 144 under the Securities Act.

### Rule 144

The shares of our common stock sold in this offering will generally be freely transferable without restriction or further registration under the Securities Act, except that any shares of our common stock held by an "affiliate" of ours may not be resold publicly except in compliance with the registration requirements of the Securities Act or under an exemption under Rule 144 or otherwise. Rule 144 permits our common stock that has been acquired by a person who is an affiliate of ours, or has been an affiliate of ours within the past three months, to be sold into the market in an amount that does not exceed, during any three-month period, the greater of:

- one percent of the total number of shares of our common stock outstanding; or
- the average weekly reported trading volume of our common stock for the four calendar weeks prior to the sale.

Such sales are also subject to specific manner of sale provisions, a six-month holding period requirement, notice requirements and the availability of current public information about us.

No shares of our common stock will be eligible for sale under Rule 144 immediately upon the closing.

Rule 144 also provides that a person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has for at least six months beneficially owned shares of our common stock that are restricted securities, will be entitled to freely sell such shares of our common stock subject only to the availability of current public information regarding us. A person who is not deemed to have been an affiliate of ours at any time during the

three months preceding a sale, and who has beneficially owned for at least one year shares of our common stock that are restricted securities, will be entitled to freely sell such shares of our common stock under Rule 144 without regard to the current public information requirements of Rule 144.

**Rule 701**

Rule 701 generally allows a stockholder who purchased shares of our capital stock pursuant to a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days to sell these shares in reliance upon Rule 144, but without being required to comply with the public information, holding period, volume limitation or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required to wait until 90 days after the date of this prospectus before selling those shares pursuant to Rule 701.

**Additional Registration Statements**

We intend to file a registration statement on Form S-8 under the Securities Act to register 4,034,072 shares of our common stock to be issued or reserved for issuance under the 2021 Plan. Such registration statement is expected to be filed soon after the date of this prospectus and will automatically become effective upon filing with the SEC. Accordingly, shares registered under such registration statement will be available for sale in the open market, unless such shares are subject to vesting restrictions with us or the lock-up restrictions described above.

## MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a general discussion of the material U.S. federal income tax consequences to non-U.S. holders (as defined herein) of the purchase, ownership and disposition of our common stock. This discussion does not provide a complete analysis of all potential U.S. federal income tax considerations relating thereto. This description is based on the U.S. Internal Revenue Code of 1986, as amended (the "Code"), existing and proposed U.S. Treasury regulations promulgated thereunder, administrative pronouncements, judicial decisions, and interpretations of the foregoing, all as of the date hereof and all of which are subject to change, possibly with retroactive effect. This discussion is limited to non-U.S. holders (as defined herein) who hold shares of our common stock as capital assets within the meaning of Section 1221 of the Code (generally for investment). Moreover, this discussion is for general information only and does not address all of the tax consequences that may be relevant to you in light of your particular circumstances, nor does it discuss special tax provisions, which may apply to you if you are a holder who is subject to special treatment under U.S. federal income tax laws, such as certain financial institutions or financial services entities, insurance companies, tax-exempt entities or governmental organizations, tax-qualified retirement plans, "qualified foreign pension funds" (and entities all of the interests of which are held by qualified foreign pension funds), dealers in securities or currencies, persons who have elected to mark securities to market, entities that are treated as partnerships or other pass-through entities for U.S. federal income tax purposes (and partners or beneficial owners thereof), foreign branches, "controlled foreign corporations," "passive foreign investment companies," former U.S. citizens or long-term residents, holders that acquired our ordinary shares in a compensatory transaction, holders subject to special tax accounting rules as a result of any item of gross income with respect to our ordinary shares being taken into account in an applicable financial statement, corporations that accumulate earnings to avoid U.S. federal income tax, persons deemed to sell common stock under the constructive sale provisions of the Code, and persons that hold common stock as part of a straddle, hedge, conversion transaction, or other integrated investment. In addition, this discussion does not address estate or gift taxes, the alternative minimum tax, the Medicare tax on certain investment income or any state, local or foreign taxes or any U.S. federal tax laws other than U.S. federal income tax laws.

You are urged to consult with your own tax advisor concerning the U.S. federal income tax consequences of acquiring, owning and disposing of our common stock, as well as the application of any state, local, or foreign income and other tax laws or tax treaties.

As used in this section, a "non-U.S. holder" is a beneficial owner of our common stock that is not, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States,
- a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) that is created or organized in or under the laws of the United States, any state thereof or the District of Columbia,
- an estate the income of which is subject to U.S. federal income taxation regardless of its source, or
- a trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (ii) it has a valid election in effect under applicable U.S. Treasury regulations to be treated as a domestic trust.

If a partnership or other entity treated as a pass-through entity for U.S. federal income tax purposes is a holder of our common stock, the tax treatment of a partner in the partnership or an owner of the other pass-through entity will depend upon the status of the partner or owner and the activities of the partnership or other pass-through entity. Any partnership or other pass-through entity, and any partner in such a partnership or owner of such a pass-through entity, holding shares of our common stock should consult its own tax advisor as to the particular U.S. federal income tax consequences applicable to it.

***INVESTORS CONSIDERING THE PURCHASE OF OUR COMMON STOCK SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE APPLICATION OF U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AND THE CONSEQUENCES OF OTHER FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS, AND APPLICABLE TAX TREATIES.***

**Distributions on Common Stock**

Although we do not currently anticipate doing so in the foreseeable future (as discussed in the section entitled "Dividend Policy"), if we do pay distributions on shares of our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Distributions in excess of our current and accumulated earnings and profits will constitute a return of capital that is applied against and reduces, but not below zero, a non-U.S. holder's adjusted tax basis in shares of our common stock. Any remaining excess will be treated as gain realized on the sale or other disposition of our common stock. See "– Dispositions of Common Stock."

Any dividend paid to a non-U.S. holder on our common stock will generally be subject to U.S. federal withholding tax at a 30% rate, subject to the discussion below regarding effectively connected income. The withholding tax might not apply, however, or might apply at a reduced rate, under the terms of an applicable income tax treaty between the United States and the non-U.S. holder's country of residence. You should consult your own tax advisors regarding your entitlement to benefits under a relevant income tax treaty. Generally, in order for us or our paying agent to withhold tax at a lower treaty rate, a non-U.S. holder must certify its entitlement to treaty benefits. A non-U.S. holder generally can meet this certification requirement by providing a valid Internal Revenue Service ("IRS") Form W-8BEN or IRS Form W-8BEN-E (or other applicable form), as applicable, to us or our paying agent. If the non-U.S. holder holds the stock through a financial institution or other agent acting on the non-U.S. holder's behalf, the non-U.S. holder will be required to provide appropriate documentation to the agent. The non-U.S. holder's agent will then be required to provide certification to us or our paying agent, either directly or through other intermediaries. Even if our current or accumulated earnings and profits are less than the amount of the distribution, the applicable withholding agent may elect to treat the entire distribution as a dividend for U.S. federal tax purposes. A non-U.S. holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, generally may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

Dividends received by a non-U.S. holder that are effectively connected with a U.S. trade or business conducted by the non-U.S. holder and, if required by an applicable income tax treaty between the United States and the non-U.S. holder's country of residence, are attributable to a permanent establishment (or, in certain cases involving individual holders, a fixed base) maintained by the non-U.S. holder in the United States, are generally not subject to such withholding tax. To obtain this exemption, a non-U.S. holder must provide the applicable withholding agent with a valid IRS Form W-8ECI (or applicable successor form) properly certifying such exemption. Such effectively connected dividends, although generally not subject to withholding tax (provided certain certification and disclosure requirements are satisfied), are taxed at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. In addition to the graduated tax described above, such effectively connected dividends received by corporate non-U.S. holders may also be subject to a branch profits tax at a rate of 30% or such lower rate as may be specified by an applicable income tax treaty.

**Dispositions of Common Stock**

Subject to the discussion below on backup withholding and other withholding requirements, gain realized by a non-U.S. holder on a sale, exchange or other disposition of our common stock generally will not be subject to U.S. federal income or withholding tax, unless:

- the gain (i) is effectively connected with the conduct by the non-U.S. holder of a U.S. trade or business and (ii) if required by an applicable income tax treaty between the United States and the non-U.S.

holder's country of residence, is attributable to a permanent establishment (or, in certain cases involving individual holders, a fixed base) maintained by the non-U.S. holder in the United States (in which case the special rules described below apply),

- the non-U.S. holder is an individual who is present in the United States for 183 or more days in the taxable year of such disposition and certain other conditions are met (in which case the gain would be subject to a flat 30% tax, or such reduced rate as may be specified by an applicable income tax treaty, which may be offset by certain U.S. source capital losses, provided the non-U.S holder has timely filed U.S. federal income tax returns with respect to such losses), or
- we are, or have been, a U.S. real property holding corporation (a "USRPHC") for U.S. federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition of our common stock and the non-U.S. holder's holding period for our common stock.

Generally, a corporation is a USRPHC if the fair market value of its "United States real property interests" equals 50% or more of the sum of the fair market value of (a) its worldwide real property interests and (b) its other assets used or held for use in a trade or business. The tax relating to a disposition of stock in a USRPHC does not apply to a non-U.S. holder whose holdings, actual and constructive, amount to 5% or less of our common stock at all times during the applicable period, provided that our common stock is regularly traded on an established securities market. No assurance can be provided that our stock will be regularly traded on an established securities market at all times for purposes of the rules described above. Although there can be no assurances in this regard, we believe we have not been and are not currently a USRPHC, and do not anticipate being a USRPHC in the future. You should consult your tax advisor about the consequences that could result if we have been, are or become a USRPHC.

If any gain from the sale, exchange or other disposition of our common stock (1) is effectively connected with a U.S. trade or business conducted by a non-U.S. holder and (2) if required by an applicable income tax treaty between the United States and the non-U.S. holder's country of residence, is attributable to a permanent establishment (or, in certain cases involving individuals, a fixed base) maintained by such non-U.S. holder in the United States, then the gain generally will be subject to U.S. federal income tax at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. In addition to the graduated tax described above, such effectively connected gain realized by corporate non-U.S. holders may also be subject to a branch profits tax at a rate of 30% or such lower rate as may be specified by an applicable income tax treaty.

**Backup Withholding and Information Reporting**

Any dividends that are paid to a non-U.S. holder must be reported annually to the IRS and to the non-U.S. holder. Copies of these information returns also may be made available to the tax authorities of the country in which the non-U.S. holder resides under the provisions of various treaties or agreements for the exchange of information. Dividends paid on our common stock and the gross proceeds from a taxable disposition of our common stock may be subject to additional information reporting and may also be subject to U.S. federal backup withholding if such non-U.S. holder fails to comply with applicable U.S. information reporting and certification requirements. Provision of an IRS Form W-8 appropriate to the non-U.S. holder's circumstances will generally satisfy the certification requirements necessary to avoid the additional information reporting and backup withholding.

Backup withholding is not an additional tax. Any amounts so withheld under the backup withholding rules will be refunded by the IRS or credited against the non-U.S. holder's U.S. federal income tax liability, provided that the required information is timely furnished to the IRS.

**Other Withholding Taxes**

Provisions commonly referred to as "FATCA" impose withholding (separate and apart from, but without duplication of, the withholding tax described above) at a rate of 30% on payments of U.S.-source dividends

(including our dividends) paid to "foreign financial institutions" (which is broadly defined for this purpose and in general includes investment vehicles) and certain other non-U.S. entities unless various U.S. information reporting and due diligence requirements (generally relating to ownership by U.S. persons of interests in or accounts with those entities) have been satisfied, or an exemption applies. Withholding imposed under FATCA may also apply to gross proceeds from the sale or other disposition of domestic corporate stock (including our stock); although, under proposed U.S. Treasury regulations published on December 18, 2018, no withholding would apply to such gross proceeds. The preamble to such proposed regulations specifies that taxpayers (including withholding agents) are permitted to rely on the proposed regulations pending finalization. An intergovernmental agreement between the United States and an applicable foreign jurisdiction may modify these requirements. Accordingly, the entity through which our common stock is held may affect the determination of whether such withholding is required. If FATCA withholding is imposed, a beneficial owner that is not a foreign financial institution generally will be entitled to a refund of any amounts withheld by filing a U.S. federal income tax return containing the required information (which may entail significant administrative burden). Non-U.S. holders should consult their tax advisors regarding the effects of FATCA on their investment in our common stock.

***THE PRECEDING DISCUSSION OF U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS TAX ADVISOR REGARDING THE PARTICULAR U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS, INTERGOVERNMENTAL AGREEMENTS OR TAX TREATIES.***

## UNDERWRITING

BofA Securities, Inc., Goldman Sachs & Co. LLC and Jefferies LLC are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

| Underwriter | Number of shares |
|---|---|
| BofA Securities, Inc. | |
| Goldman Sachs & Co. LLC | |
| Jefferies LLC | |
| Barclays Capital Inc. | |
| Citigroup Global Markets Inc. | |
| Piper Sandler & Co. | |
| Cowen and Company, LLC | |
| Guggenheim Securities, LLC | |
| Stifel, Nicolaus & Company, Incorporated | |
| Telsey Advisory Group LLC | |
| Total | 9,459,000 |

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

### Commissions and Discounts

The representatives have advised us that the underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $17.30 per share. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their option to purchase additional shares.

| | Per Share | Without Option | With Option |
|---|---|---|---|
| Public offering price | $ | $ | $ |
| Underwriting discount | $ | $ | $ |
| Proceeds, before expenses, to us | $ | $ | $ |

The expenses of the offering, not including the underwriting discount, are estimated at $5.0 million and are payable by us. We have also agreed to reimburse the underwriters for certain of their expenses incurred in connection with, among others, the review and clearance by the Financial Industry Regulatory Authority, Inc. ("FINRA") in an amount up to $35,000.

**Option to Purchase Additional Shares**

We have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus, to purchase up to 1,418,850 additional shares at the public offering price, less the underwriting discount. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

**No Sales of Similar Securities**

We, our executive officers and directors and our other existing security holders have agreed not to sell or transfer any common stock or securities convertible into, exchangeable for, exercisable for, or repayable with common stock, for 180 days after the date of this prospectus without first obtaining the written consent of the representatives. Specifically, we and these other persons have agreed, with certain limited exceptions, not to directly or indirectly

- offer, pledge, sell or contract to sell any common stock,
- sell any option or contract to purchase any common stock,
- purchase any option or contract to sell any common stock,
- grant any option, right or warrant for the sale of any common stock,
- lend or otherwise dispose of or transfer any common stock,
- request or demand that we file or make a confidential submission of a registration statement related to the common stock, or
- enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for or repayable with common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition.

**Stock Exchange Listing**

We expect the shares to be approved for listing on Nasdaq, subject to notice of issuance, under the symbol "FWRG."

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations between us and the representatives. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are

- the valuation multiples of publicly traded companies that the representatives believe to be comparable to us,
- our financial information,
- the history of, and the prospects for, our company and the industry in which we compete,
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues,

- the present state of our development, and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

**Price Stabilization, Short Positions and Penalty Bids**

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional shares described above. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option granted to them. “Naked” short sales are sales in excess of such option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters’ purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on the Nasdaq, in the over-the-counter market or otherwise.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

**Electronic Distribution**

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

**Other Relationships**

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

**European Economic Area**

In relation to each Member State of the European Economic Area (each a "Relevant State"), no shares have been offered or will be offered pursuant to the offering to the public in that Relevant State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation), except that offers of shares may be made to the public in that Relevant State at any time under the following exemptions under the Prospectus Regulation:

a. to any legal entity which is a qualified investor as defined under the Prospectus Regulation;

b. to fewer than 150 natural or legal persons (other than qualified investors as defined under the Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or

c. in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of shares shall require the Company or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

Each person in a Relevant State who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with the Company and the underwriters that it is a qualified investor within the meaning of the Prospectus Regulation.

In the case of any shares being offered to a financial intermediary as that term is used in Article 5(1) of the Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer to the public other than their offer or resale in a Relevant State to qualified investors, in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

The Company, the underwriters and their affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

For the purposes of this provision, the expression an "offer to the public" in relation to any shares in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129.

The above selling restriction is in addition to any other selling restrictions set out below.

In connection with the offering, the underwriters are not acting for anyone other than the Company and will not be responsible to anyone other than the Company for providing the protections afforded to their clients nor for providing advice in relation to the offering.

**Notice to Prospective Investors in the United Kingdom**

In relation to the United Kingdom ("UK"), no shares have been offered or will be offered pursuant to the offering to the public in the UK prior to the publication of a prospectus in relation to the shares which has been approved by the Financial Conduct Authority in the UK in accordance with the UK Prospectus Regulation and the FSMA, except that offers of shares may be made to the public in the UK at any time under the following exemptions under the UK Prospectus Regulation and the FSMA:

a. to any legal entity which is a qualified investor as defined under the UK Prospectus Regulation;

b. to fewer than 150 natural or legal persons (other than qualified investors as defined under the UK Prospectus Regulation), subject to obtaining the prior consent of representatives for any such offer; or

c. at any time in other circumstances falling within section 86 of the FSMA,

provided that no such offer of shares shall require the Company or any underwriter to publish a prospectus pursuant to Section 85 of the FSMA or Article 3 of the UK Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation.

Each person in the UK who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with the Company and the underwriters that it is a qualified investor within the meaning of the UK Prospectus Regulation.

In the case of any shares being offered to a financial intermediary as that term is used in Article 5(1) of the UK Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer to the public other than their offer or resale in the UK to qualified investors, in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

The Company, the underwriters and their affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

For the purposes of this provision, the expression an "offer to the public" in relation to any shares in the UK means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, the expression "UK Prospectus Regulation" means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018, and the expression "FSMA" means the Financial Services and Markets Act 2000, as amended.

This document is for distribution only to persons who (i) have professional experience in matters relating to investments and who qualify as investment professionals within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended, the "Financial Promotion Order"), (ii) are persons falling within Article 49(2)(a) to (d) ("high net worth companies, unincorporated associations etc.") of the Financial Promotion Order, (iii) are outside the United Kingdom, or (iv) are persons to whom an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) in connection with the issue or sale of any securities may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as "relevant persons"). This document is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this document relates is available only to relevant persons and will be engaged in only with relevant persons.

**Notice to Prospective Investors in Switzerland**

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX listing rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority, and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

**Notice to Prospective Investors in the Dubai International Financial Centre**

This prospectus relates to an exempt offer ("Exempt Offer") in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The shares to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

**Notice to Prospective Investors in Australia**

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission, in relation to the offering. This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the "Corporations Act"), and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the shares may only be made to persons (the "Exempt Investors") who are "sophisticated investors" (within the meaning of section 708(8) of the Corporations Act), "professional investors" (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the shares without disclosure to investors under Chapter 6D of the Corporations Act.

The shares applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring shares must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

**Notice to Prospective Investors in Hong Kong**

The shares have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that ordinance; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that ordinance. No advertisement, invitation or document relating to the shares has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the Securities and Futures Ordinance and any rules made under that ordinance.

**Notice to Prospective Investors in Japan**

The shares have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948, as amended) and, accordingly, will not be offered or sold, directly or indirectly, in Japan, or for the benefit of any Japanese Person or to others for re-offering or resale, directly or indirectly, in Japan or to any Japanese Person, except in compliance with all applicable laws, regulations and ministerial guidelines promulgated by relevant Japanese governmental or regulatory authorities in effect at the relevant time. For the purposes of this paragraph, "Japanese Person" shall mean any person resident in Japan, including any corporation or other entity organized under the laws of Japan.

**Notice to Prospective Investors in Singapore**

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, the shares were not offered or sold or caused to be made the subject of an invitation for subscription or purchase and will not be offered or sold or caused to be made the subject of an invitation for subscription or purchase, and this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares, has not been circulated or distributed, nor will it be circulated or distributed, whether directly or indirectly, to any person in Singapore other than (i) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289) of Singapore, as modified or amended from time to time (the "SFA")) pursuant to Section 274 of the SFA, (ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities or securities-based derivatives contracts (each term as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

(a) to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;

(b) where no consideration is or will be given for the transfer;

(c) where the transfer is by operation of law; or

(d) as specified in Section 276(7) of the SFA.

**Notice to Prospective Investors in Canada**

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the *Securities Act* (Ontario), and are permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.* Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 (or, in the case of securities issued or guaranteed by the government of a non-Canadian jurisdiction, section 3A.4) of National Instrument 33-105 *Underwriting Conflicts* ("NI 33-105"), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

## LEGAL MATTERS

Weil, Gotshal & Manges LLP, New York, New York, has passed upon the validity of the common stock offered hereby on behalf of us. Certain legal matters will be passed upon on behalf of the underwriters by Latham & Watkins LLP.

## EXPERTS

The financial statements as of December 27, 2020 and December 29, 2019 and for each of the two years in the period ended December 27, 2020 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

In connection with the offering, PricewaterhouseCoopers LLP ("PwC") completed an independence assessment to evaluate the services and relationships with the Company and its affiliates that may bear on PwC's independence under the SEC and PCAOB independence rules for the audit period commencing December 31, 2018. PwC informed the Company that, commencing in February 2020 and continuing through June 2020, a PwC member firm was engaged to provide permissible tax compliance services to a portfolio company controlled by Advent, which currently is the majority equity holder of the Company, pursuant to a contingent fee of approximately $40,000. The existence of the contingent fee is not in accordance with the SEC and PCAOB auditor independence rules.

PwC provided an overview of the facts and circumstances surrounding the contingent fee arrangement to our audit committee and management, including the entity involved, the fees earned and other relevant factors. Considering the facts presented, our audit committee and PwC have concluded that the contingent fee would not impair PwC's application of objective and impartial judgment on any matters encompassed within the audit engagement performed by PwC for our financial statements as of and for the fiscal year ended December 27, 2020, and that no reasonable investor would conclude otherwise.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of our common stock offered by this prospectus. For purposes of this section, the term registration statement means the original registration statement and any and all amendments including the schedules and exhibits to the original registration statement or any amendment. This prospectus, filed as part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules thereto as permitted by the rules and regulations of the SEC. For further information about us and our common stock, you should refer to the registration statement, including the exhibits. This prospectus summarizes provisions that we consider material of certain contracts and other documents to which we refer you. Because the summaries may not contain all of the information that you may find important, you should review the full text of those documents.

This registration statement, including its exhibits and schedules, will be filed with the SEC. The SEC maintains a website at *http://www.sec.gov* from which interested persons can electronically access the registration statement, including the exhibits and schedules to the registration statement. We intend to furnish our stockholders with annual reports containing financial statements audited by our independent auditors.

We have not authorized anyone to give you any information or to make any representations about us or the transactions we discuss in this prospectus other than those contained in this prospectus. If you are given any information or representations about these matters that is not discussed in this prospectus, you must not rely on that information. This prospectus is not an offer to sell or a solicitation of an offer to buy securities anywhere or to anyone where or to whom we are not permitted to offer or sell securities under applicable law.

**FIRST WATCH RESTAURANT GROUP, INC.**
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## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of First Watch Restaurant Group, Inc.

***Opinion on the Financial Statements***

We have audited the accompanying consolidated balance sheets of First Watch Restaurant Group, Inc. and its subsidiaries (the "Company") as of December 27, 2020 and December 29, 2019, and the related consolidated statements of operations and comprehensive loss, of equity and of cash flows for the years then ended, including 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 as of December 27, 2020 and December 29, 2019, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*Change in Accounting Principle*

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for leases in 2019.

***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 of these consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

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.

/s/ PricewaterhouseCoopers LLP
Tampa, Florida
April 23, 2021, except for the effects of the stock split discussed in Note 21 to the consolidated financial statements, as to which the date is September 22, 2021

We have served as the Company's auditor since 1999.

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED BALANCE SHEETS**
*(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)*

| | DECEMBER 27, 2020 | DECEMBER 29, 2019 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 38,846 | $ 11,121 |
| Restricted cash | 251 | — |
| Accounts receivable | 3,915 | 5,741 |
| Inventory | 2,915 | 2,711 |
| Prepaid expenses | 2,490 | 3,109 |
| Deferred offering costs | — | 1,307 |
| Other current assets | 621 | 253 |
| Total current assets | 49,038 | 24,242 |
| Goodwill | 345,219 | 345,219 |
| Intangible assets, net | 143,662 | 144,558 |
| Operating lease right-of-use assets | 307,558 | 302,513 |
| Property, fixtures and equipment, net | 160,744 | 164,334 |
| Other long-term assets | 1,291 | 1,214 |
| Total assets | $ 1,007,512 | $ 982,080 |
| **Liabilities and Equity** | | |
| Current liabilities: | | |
| Accounts payable | $ 4,220 | $ 5,086 |
| Accrued liabilities | 13,482 | 19,144 |
| Accrued compensation and deferred payroll taxes | 10,856 | 11,260 |
| Deferred revenues | 4,273 | 7,119 |
| Current portion of operating lease liabilities | 40,111 | 27,436 |
| Current portion of long-term debt | 3,590 | 2,972 |
| Total current liabilities | 76,532 | 73,017 |
| Operating lease liabilities | 307,802 | 295,632 |
| Long-term debt, net | 286,400 | 250,397 |
| Deferred income taxes | 10,313 | 30,304 |
| Deferred payroll taxes | 3,333 | — |
| Other long-term liabilities | 2,266 | 2,933 |
| Total liabilities | 686,646 | 652,283 |
| Commitments and contingencies (Note 18) | | |
| Equity: | | |
| Preferred stock; $0.01 par value; 266,667 shares authorized, issued and outstanding | 3 | — |
| Common stock; $0.01 par value; 300,000,000 shares authorized and 45,013,784 shares issued and outstanding at December 27, 2020; 300,000,000 shares authorized and 45,013,784 shares issued and outstanding at December 29, 2019 | 450 | 450 |
| Additional paid-in capital | 423,345 | 382,598 |
| Accumulated deficit | (102,932) | (53,251) |
| Total equity | 320,866 | 329,797 |
| Total liabilities and equity | $ 1,007,512 | $ 982,080 |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**
*(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)*

| | FISCAL YEAR | |
|---|---|---|
| | 2020 | 2019 |
| **Revenues:** | | |
| Restaurant sales | $ 337,433 | $ 429,309 |
| Franchise revenues | 4,955 | 7,064 |
| Total revenues | 342,388 | 436,373 |
| **Operating costs and expenses:** | | |
| Restaurant operating expenses (exclusive of depreciation and amortization shown below): | | |
| Food and beverage costs | 76,975 | 100,689 |
| Labor and other related expenses | 120,380 | 148,537 |
| Other restaurant operating expenses | 63,776 | 59,402 |
| Occupancy expenses | 51,375 | 46,151 |
| General and administrative expenses | 46,322 | 55,818 |
| Depreciation and amortization | 30,725 | 28,027 |
| Impairments and loss on disposal of assets | 315 | 33,596 |
| Transaction (income) expenses, net | (258) | 1,709 |
| Total operating costs and expenses | 389,610 | 473,929 |
| Loss from operations | (47,222) | (37,556) |
| Interest expense | (22,815) | (20,080) |
| Other income (expense), net | 483 | (255) |
| Loss before income tax benefit | (69,554) | (57,891) |
| Income tax benefit | 19,873 | 12,419 |
| **Net loss and total comprehensive loss** | (49,681) | (45,472) |
| Less: Net loss attributable to non-controlling interest | — | (33) |
| **Net loss and comprehensive loss attributable to First Watch Restaurant Group, Inc.** | $ (49,681) | $ (45,439) |
| Net loss per common share attributable to First Watch Restaurant Group, Inc. - basic and diluted | $ (1.10) | $ (1.01) |
| Weighted average number of common shares outstanding - basic and diluted | 45,013,784 | 45,013,784 |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED STATEMENTS OF EQUITY**
*(IN THOUSANDS, EXCEPT SHARE AMOUNTS)*

| | Preferred Stock | | Common Stock | | Additional Paid-in Capital | Accumulated Deficit | Total Equity Attributable to First Watch Restaurant Group, Inc. | Non-controlling Interest | Total Equity |
|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | | | | | |
| **Balance at December 30, 2018** | — | $ — | 45,013,784 | $ 450 | $ 381,665 | $ (7,691) | $ 374,424 | $ 250 | $ 374,674 |
| Net loss | — | — | — | — | — | (45,439) | (45,439) | (33) | (45,472) |
| Stock-based compensation | — | — | — | — | 1,160 | — | 1,160 | — | 1,160 |
| Acquisition of non- controlling interest | — | — | — | — | (227) | — | (227) | (217) | (444) |
| Adoption - lease standard (ASC 842) | — | — | — | — | — | (121) | (121) | — | (121) |
| **Balance at December 29, 2019** | — | $ — | 45,013,784 | $ 450 | $ 382,598 | $ (53,251) | $ 329,797 | $ — | $ 329,797 |
| Share issuance | 266,667 | 3 | — | — | 39,997 | — | 40,000 | — | 40,000 |
| Net loss | — | — | — | — | — | (49,681) | (49,681) | — | (49,681) |
| Stock-based compensation | — | — | — | — | 750 | — | 750 | — | 750 |
| **Balance at December 27, 2020** | 266,667 | $ 3 | 45,013,784 | $ 450 | $ 423,345 | $ (102,932) | $ 320,866 | $ — | $ 320,866 |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
*(IN THOUSANDS)*

| | FISCAL YEAR | |
|---|---|---|
| | 2020 | 2019 |
| **Cash flows from operating activities:** | | |
| Net loss | $(49,681) | $(45,472) |
| Adjustments to reconcile net loss to net cash (used in) provided by operating activities: | | |
| Depreciation and amortization | 30,725 | 28,027 |
| Deferred income taxes | (19,991) | (12,558) |
| Non-cash operating lease costs | 11,727 | 10,772 |
| Amortization of debt discount and deferred issuance costs | 1,282 | 1,128 |
| Impairments and loss on disposal of assets | 315 | 33,596 |
| Stock-based compensation | 750 | 1,160 |
| Settlement gains from acquisitions | — | (160) |
| Changes in assets and liabilities, net of acquisitions: | | |
| Accounts receivable | 1,826 | (3,192) |
| Inventory | (203) | (439) |
| Prepaid expenses | 619 | (439) |
| Deferred offering costs | 1,307 | — |
| Other assets, current and long-term | (446) | (1,094) |
| Accounts payable | (866) | (740) |
| Accrued liabilities | (3,670) | 5,566 |
| Accrued compensation and deferred payroll taxes, current and long-term | 2,929 | 643 |
| Deferred revenues, current and long-term | (3,060) | 2,024 |
| Operating lease liabilities | 8,073 | 3,101 |
| Other liabilities | — | (458) |
| Net cash (used in) provided by operating activities | (18,364) | 21,465 |
| **Cash flows from investing activities:** | | |
| Capital expenditures | (26,749) | (59,169) |
| Purchase of intangible assets | (225) | — |
| Acquisitions, net of cash acquired | — | (22,770) |
| Acquisition of non-controlling interest | — | (450) |
| Net cash used in investing activities | (26,974) | (82,389) |
| **Cash flows from financing activities:** | | |
| Proceeds from preferred stock issuance | 40,000 | — |
| Proceeds from issuance of long-term debt | 54,600 | 50,000 |
| Repayments of long-term debt | (3,947) | (2,099) |
| Proceeds from borrowings on revolving credit facility | 22,000 | 42,000 |
| Repayments of borrowings on revolving credit facility | (39,000) | (32,500) |
| Payment of debt issuance costs | — | (915) |
| Finance lease payments | (339) | (500) |
| Contingent consideration payment | — | (225) |
| Net cash provided by financing activities | 73,314 | 55,761 |
| Net increase (decrease) in cash and cash equivalents and restricted cash | 27,976 | (5,163) |
| **Cash and cash equivalents and restricted cash:** | | |
| Beginning of year | 11,121 | 16,284 |
| End of year | $ 39,097 | $ 11,121 |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS - *continued***
*(IN THOUSANDS)*

| | FISCAL YEAR | |
|---|---|---|
| | 2020 | 2019 |
| **Supplemental cash flow information:** | | |
| Cash paid for interest | $19,821 | $18,929 |
| Cash paid for income taxes, net of refunds | $ 163 | $ 152 |
| **Supplemental disclosures of non-cash investing and financing activities:** | | |
| Interest converted to long-term debt | $ 1,583 | $ — |
| Leased assets obtained in exchange for new operating lease liabilities | $21,333 | $70,355 |
| Remeasurements of operating lease assets and lease liabilities | $ (3,850) | $ 134 |
| Terminations of operating lease liabilities | $ (711) | $ (3,293) |
| Leased assets obtained in exchange for new finance lease liabilities | $ 277 | $ 2,666 |
| Remeasurements of finance leased assets and lease liabilities | $ 164 | $ — |
| Change in liabilities from acquisition of property, fixtures and equipment | $ (860) | $ 210 |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

## 1. Nature of Business and Organization

First Watch Restaurant Group, Inc. (collectively with its wholly-owned subsidiaries, "the Company", or "Management") is a Delaware holding company. On December 20, 2019, the name of the Company was changed from AI Fresh Super Holdco, Inc. to First Watch Restaurant Group, Inc. Effective August 21, 2017, the Company's outstanding stock was purchased for $530.0 million by funds affiliated with or managed by Advent International Corporation (the "Advent Acquisition").

The Company operates and franchises restaurants in 29 states operating under the "First Watch" trade name which prepare and serve made-to-order breakfast, brunch and lunch. The Company does not operate outside of the United States and all of its assets are located in the United States.

The Company operates restaurants through its wholly owned subsidiary, First Watch Restaurants, Inc., and is a franchisor through its wholly owned subsidiary, First Watch Franchise Development Co. As of December 27, 2020, the Company operated 321 company-owned restaurants and 88 franchised restaurants. As of December 29, 2019, the Company operated 299 company-owned restaurants and 69 franchised restaurants.

## 2. Summary of Significant Accounting Policies

### Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP").

The Company operates on a 52- or 53-week fiscal year which ends on the last Sunday of the calendar year. The fiscal years ended December 27, 2020 ("Fiscal 2020") and December 29, 2019 ("Fiscal 2019") each included 52 weeks of operations.

Comprehensive income (loss) is a measure of net income (loss) and all other changes in equity that result from transactions other than with equity holders, and would normally be recorded in the Consolidated Statements of Equity and the Consolidated Statements of Comprehensive Income (Loss). The Company does not have any components of other comprehensive income (loss) recorded within its consolidated financial statements. Accordingly, there is no difference between net loss and comprehensive loss.

### Reclassifications

The Company reclassified certain items in the consolidated financial statements for the prior period to be comparable with the classification for the current period. These reclassifications are related to the disaggregation of certain balances, including supplemental disclosures of non-cash investing and finance activities and disclosures in the notes to the consolidated financial statements.

### Correction of an Error in Fiscal 2019

Management identified an error relating to the valuation allowance for deferred tax assets in a prior period. Management excluded indefinite deferred tax liabilities, commonly referred to as "naked credits," in measuring the appropriate full valuation allowance amount. However, an incorrect value for the goodwill deferred tax liability was utilized in calculating the valuation allowance in a prior period. The error was corrected in Fiscal 2019. This out-of-period adjustment resulted in an increase of approximately $1.4 million in income tax benefit on the Consolidated Statements of Operations and Comprehensive Loss for Fiscal 2019 and a related decrease to deferred income taxes on the Consolidated Balance Sheet as of December 29, 2019. Management assessed the materiality of this error on the previously issued consolidated financial statements and concluded that the error was not material to any of the previously issued

consolidated financial statements and the impact of correcting the error in Fiscal 2019 is not material to the consolidated financial statements as of and for the fiscal year ended December 29, 2019.

**COVID-19 Global Pandemic**

In March 2020, the World Health Organization declared the novel strain of coronavirus ("COVID-19") a global pandemic and recommended containment and mitigation measures worldwide. The Company experienced a significant reduction in guest traffic at its restaurants due to changes in consumer behavior as public health officials encouraged social distancing and state and local governments mandated restrictions including suspension of dine-in operations, reduced restaurant seating capacity, table spacing requirements and additional physical barriers. On April 13, 2020, to help ensure the safety of its employees, Management temporarily suspended all operations at the company-owned restaurants. In June 2020, substantially all of the company-owned restaurants were reopened in compliance with state and local capacity restrictions.

The COVID-19 pandemic is not eradicated and the extent to which COVID-19 may continue to impact the Company's business and its customers is uncertain. The consolidated financial statements include estimates and judgments and there may be changes to those estimates in future periods as a result of the COVID-19 pandemic.

**Principles of Consolidation**

The Company's consolidated financial statements include the accounts of its wholly owned subsidiaries. In Fiscal 2019, the Company's consolidated financial statements included the accounts of its majority-owned subsidiary, TFW-NC, LLC, ("TFW"), in which the Company owned more than 50% of the voting shares and had a controlling financial interest. During Fiscal 2019, the Company acquired the remaining interest in TFW (see Note 12, *Acquisitions*, for additional information). All intercompany transactions and balances have been eliminated in consolidation.

The Company does not hold ownership interests in any franchisee and does not provide financial support to franchisees. As a result, the Company's franchise relationships are not variable interest entities and are not consolidated.

**Use of Estimates**

The preparation of the consolidated financial statements in accordance with GAAP requires Management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates and such differences could be material.

**Segment Reporting**

Management determined the Company's single operating segment on the basis that the Company's Chief Operating Decision Maker (the "CODM"), the Chief Executive Officer, assesses performance and allocates resources at the Company's consolidated level. The Company does not have any customer that represents more than 10% of total revenues for the periods presented.

**Business Combinations**

The Company's business combinations are accounted for using the purchase method of accounting. The consideration transferred in a business combination, identifiable assets acquired and liabilities assumed are measured at fair value as of the date of the acquisition. Goodwill is recognized for the amount by which

the purchase consideration exceeds the fair values of the net assets acquired. Costs incurred in connection with business combinations are expensed as incurred.

**Fair Value of Financial Instruments**

Certain assets and liabilities are carried at fair value. Fair value is the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

Financial assets and liabilities carried at fair value are classified and disclosed in one of the following three levels of the fair value hierarchy, of which the first two are considered observable inputs and the last is considered unobservable. The classification of a financial asset or liability within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

Level 1 Quoted prices (unadjusted) in active markets for identical assets or liabilities

Level 2 Observable inputs available other than quoted prices included in Level 1

Level 3 Unobservable inputs based on assumptions that cannot be determined by observable market data

The carrying amounts of the Company's financial instruments, including cash equivalents, accounts receivable and accounts payable, approximate their fair values due to their short-term maturities.

**Cash and Cash Equivalents and Restricted Cash**

Cash and cash equivalents include all cash balances and highly liquid investments with an original maturity of three months or less. Amounts receivable from credit card processors are considered cash equivalents because they are highly liquid and are typically converted to cash within three business days.

Amounts included in restricted cash represent those required to be set aside by a contractual agreement for the settlement of insurance claims.

**Concentrations of Credit Risk**

Financial instruments, which potentially subject the Company to concentrations of market and credit risk, are cash and cash equivalents and restricted cash. At times, cash balances may be in excess of the Federal Deposit Insurance Corporation insurance limits. The Company has not experienced any losses to date as a result of these risks. Management periodically assesses the quality of the financial institutions and believes that the risk related to these deposits is minimal.

**Accounts Receivable**

Accounts receivable consist primarily of receivables from franchisees, receivables from off-premises third- party service providers, receivables from gift card sales and vendor rebates. The Company believes all amounts to be collectible based on a variety of factors it evaluates, including historical experience, current economic conditions, and other factors. Accordingly, no allowance for credit losses or doubtful accounts has been recorded as of December 27, 2020 and December 29, 2019.

**Inventory**

Inventory consists primarily of food and beverage costs and is stated at the lower of cost (determined by the first-in, first-out method) or net realizable value. No adjustment is deemed necessary to reduce inventory to net realizable value due to the rapid turnover and utilization of inventory.

**Leases**

The Company's restaurant facilities, corporate offices and certain restaurant equipment are leased under various agreements having initial terms expiring between 2021 and 2032. Restaurant facility leases generally have renewal periods of five to 20 years, exercisable at the option of the Company. At the commencement of each lease, an evaluation is performed to determine whether (i) the contract involves the use of property or equipment, (ii) the Company controls the use of the asset and (iii) the Company has the right to direct the use of the asset. Upon possession of a leased asset, Management determines the classification of the related lease contract as an operating or finance lease. The majority of the Company's real estate leases are classified as operating leases and the majority of the Company's equipment leases are classified as finance leases.

For operating leases with lease terms greater than twelve months, a lease liability is recognized for future fixed lease payments and a corresponding right-of-use asset is recognized representing the Company's right to use the underlying asset during the lease term. The lease liability is initially measured as the present value of the future fixed lease payments that will be made over the lease term using the Company's incremental borrowing rate as there are no implicit rates provided in the lease contracts. The Company's incremental borrowing rate is based on a market yield implied by the Company's outstanding secured term loans interpolated for various maturities using the Company's synthetic credit rating, which was determined using a regression analysis of rated publicly-traded comparable companies and their financial data. Lease expense, which includes the effects of free rent periods and rent escalation clauses within certain of the Company's leases, is recognized on a straight-line basis over the lease term within Occupancy expenses. Tenant improvement allowances are amortized on a straight-line basis over the term of the lease as a reduction of lease expense. The lease term, which commences on the date the Company has the right to control the use of the property, includes the Company's options to extend the lease to the extent it is reasonably certain that the extension options will be exercised.

Leases with indexed rent escalation clauses are recorded using the index that existed at lease commencement or upon the latest modification requiring remeasurement. Subsequent changes in the index are recorded as variable lease expense. Contingent rent payments which are based on a percentage of sales for certain restaurant facilities are recorded as variable lease expense when the Company determines that such sales levels will be achieved. In addition to fixed lease payments, certain of the Company's real estate leases also require payment of a proportionate share of property taxes, insurance and maintenance costs, which are recorded as variable lease expense. Variable lease expense is recorded within Occupancy expenses and future variable rent obligations are not included within the lease liabilities on the Consolidated Balance Sheets.

The operating lease right-of-use asset is measured at the amount of the lease liability with adjustments for (i) rent prepayments made prior to or at lease commencement, (ii) landlord incentives and (iii) favorable and unfavorable leasehold positions. The depreciable life of an operating lease right-of-use asset is limited by the expected lease term. None of the Company's leases contain any material residual value guarantees or material restrictive covenants.

Fixed lease and non-lease components of the Company's restaurant facility leases are accounted for as a single lease component. Leases with an initial term of 12 months or less are not recorded on the Consolidated Balance Sheets, however, they are recognized on a straight-line basis over the lease term within Other restaurant operating expenses and Occupancy expenses.

In Fiscal 2020, Management renegotiated numerous lease agreements that primarily resulted in rent abatements or rent deferrals during the period of the closures of the Company-owned restaurants as a result of COVID-19. In April 2020, the Financial Accounting Standards Board (the "FASB") issued a question

and answer document focused on the application of lease accounting guidance to lease concessions provided as a result of COVID-19 (the "Lease Modification Q&A"). The Lease Modification Q&A provides entities with the option to elect to account for lease concessions, primarily rent deferrals or rent abatements, as though the enforceable rights and obligations existed in the original lease when the total cash flows resulting from the modified lease are substantially similar to the cash flows in the original lease. Management elected this practical expedient for COVID-19 related rent concessions and has elected to remeasure the lease liability using the original discount rate with a corresponding adjustment to the right-of- use asset. Rent deferrals increase the lease liability and right-of use asset until amounts are paid with no impact to lease expense. Rent abatements are recognized on a straight-line basis over the respective remaining lease term.

Finance lease liabilities and corresponding finance lease assets are recognized at an amount equal to the present value of the minimum lease payments over the expected lease term. The amortization of finance lease assets is recognized over the shorter of the lease term or useful life of the underlying asset within Depreciation and amortization. The interest expense related to finance leases, including any variable lease payments, is recognized in Interest expense. Finance lease assets are classified in Property, fixtures and equipment, net and current maturities and long-term portions of finance lease liabilities are classified within Current portion of long-term debt and Long-term debt, net, respectively, on the Consolidated Balance Sheets.

**Property, Fixtures and Equipment**

Property, fixtures and equipment, including capitalized software, are stated at cost less accumulated depreciation. Refurbishments and improvements that increase the productive capacity or extend the useful life of assets are capitalized and depreciated over their estimated useful lives. Repair and maintenance costs are expensed as incurred. Leasehold improvements are depreciated over the shorter of their useful life or the expected lease term. The carrying amount of assets sold, replaced or retired and the related accumulated depreciation are eliminated at the time of disposal and any resulting gains and losses on disposal are recognized in the Consolidated Statements of Operations and Comprehensive Loss.

Direct internal costs associated with the acquisition, development, design and construction of company- owned restaurants are capitalized as these costs have a future benefit to the Company. Upon restaurant opening, these costs are depreciated and recorded in Depreciation and amortization. Direct internal costs of $0.4 million and $0.3 million were capitalized in Fiscal 2020 and Fiscal 2019, respectively.

Depreciation is computed using the straight-line method over the following estimated useful lives:

| | |
|---|---|
| Building and land improvements | 30 to 40 years |
| Leasehold improvements | 3 to 20 years |
| Furniture and fixtures | 2 to 10 years |
| Equipment (including capitalized software) | 2 to 15 years |
| Vehicles | 3 to 10 years |

**Goodwill and Indefinite-lived Intangible Assets**

Goodwill and indefinite-lived intangible assets, which consist of the Company's registered trademarks, trade names, domains and liquor licenses are evaluated for impairment annually on the first day of the fourth quarter of the fiscal year, or whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. The Company has one reporting unit for goodwill impairment testing purposes.

Management may elect to perform a qualitative assessment to determine whether it is more likely than not that the reporting unit and/or asset group is impaired. If the qualitative assessment is not performed, or if

it is not more likely than not that the estimated fair value of the reporting unit and indefinite-lived intangible assets exceeds the respective carrying value, a quantitative analysis is required.

Management's quantitative assessment for determining the fair value of the reporting unit uses a blend of the market capitalization approach and the income approach. The market capitalization approach uses Management's selection of peer companies to estimate fair value. The income approach uses the discounted cash flow method estimating future cash flow, sales and traffic growth rates, operating margins, and new restaurant openings, each of which are inputs that fall within Level 3 of the fair value hierarchy.

The fair value of the indefinite-lived intangibles is determined through a relief from royalty method using certain unobservable inputs that fall within Level 3 of the fair value hierarchy.

The respective carrying values are compared to the related estimated fair values and an impairment loss is recognized in an amount equal to the excess of the carrying value over estimated fair value.

**Definite-lived Intangible Assets**

Intangible assets with definite lives consist of franchise rights which arose from the purchase price allocation in connection with the Advent Acquisition and also include reacquired rights from the Company's acquisitions of franchised restaurants. Definite-lived intangible assets are amortized over their estimated useful lives and are tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

When evaluating the carrying amount for recoverability, the total future undiscounted net cash flows expected to be generated by the asset are compared to the carrying amount. If the total future undiscounted net cash flows are less than the carrying amount, this may be an indicator of impairment. An impairment loss is recognized when the asset's carrying value exceeds its estimated fair value. Fair value is generally estimated using a discounted cash flow model using unobservable inputs that fall within Level 3 of the fair value hierarchy.

**Impairment Assessment of Long-lived Assets**

Long-lived assets deployed at company-owned restaurants include (i) property, fixtures and equipment, (ii) operating lease right-of-use asset, net of the related operating lease liability and (iii) reacquired rights to the extent the restaurant had been previously acquired by the Company.

When circumstances indicate that the carrying value may not be recoverable, an evaluation for impairment is performed at the lowest level of identifiable cash flows, which is at the individual restaurant level. If the total future undiscounted net cash flows are less than the carrying value of the long-lived assets at the individual restaurant level, the fair value is determined based on discounted future net cash flows expected to result from the use and eventual disposition of the assets, which are unobservable inputs that fall within Level 3 of the fair value hierarchy. An impairment loss is recognized in an amount equal to the excess of the carrying value over the estimated fair value.

**Self-Insurance Reserves**

The Company is self-insured primarily for employee group health claims and for workers' compensation in Ohio. The Company holds stop-loss insurance which funds individual health claims in excess of $105,000 per occurrence and workers' compensation claims in Ohio in excess of $450,000 per occurrence annually. The Consolidated Statements of Operations and Comprehensive Loss include expenses related to the costs of claims reported and an estimate of claims incurred but not reported. A liability of

$1.3 million and $1.5 million for estimated unpaid claims is recorded within Accrued liabilities as of December 27, 2020 and December 29, 2019, respectively.

**Revenue Recognition**

Revenues from food and beverage sales are reported, net of discounts and taxes. For in-restaurant dining and take-out sales, revenues are recognized when payment is tendered. For delivery sales made through the Company's mobile application and website, the Company controls the delivery services and recognizes revenue, including delivery fees, when the delivery partner transfers the food and beverage to the customer. With respect to sales made through the delivery partner's mobile application or website, the Company recognizes revenue, excluding delivery fees collected by the delivery partner, when control of the food and beverage is transferred to the delivery partner. Payment is received from the delivery partner subsequent to the transfer of food and beverage and the payment terms are short-term.

Franchise revenues include initial franchise fees and ongoing sales-based royalty and system fund contributions, which are used for advertising, marketing and public relations programs and materials. The license granted to develop and operate a restaurant is the distinct performance obligation that is transferred to the franchisee. Ancillary promised services, such as training, which are not considered distinct within the context of the franchise agreement, are combined with the franchise license and are considered one distinct performance obligation. Payments for initial franchise fees are received either upon execution of the franchise agreement and/or upon opening of the restaurant. These payments are deferred and recognized as revenue throughout the contractual term of the related franchise agreement. Unamortized deferred franchise fees are recognized as revenue upon the termination of franchise agreements with franchisees. The short-term and long-term unamortized portion of these liabilities are included in Deferred revenues and in Other long-term liabilities, respectively.

Royalty and system fund contributions from franchisees are based on a percentage of sales and are recognized as revenue in the period the sales occurred.

Gift cards are sold at restaurants and certain retail venues. Deferred revenues includes liabilities established for the value of the gift cards when sold. Revenue is recognized from gift card sales upon redemption by the customer. Management estimates the amount of gift cards for which the likelihood of redemption is remote, referred to as the "breakage factor", using historical gift card redemption patterns. The estimated breakage, less an administrative fee, is recognized over the expected period of redemption as the remaining gift card values are redeemed, which is generally over a period of two years. Utilizing this method, Management estimates both the breakage and the time period of redemption. If actual redemption patterns vary from these estimates, actual gift card breakage income may differ from the amounts recorded. Estimates of the redemption period and breakage rate applied are updated periodically. Gift card liabilities are included in Deferred revenues.

**Food and Beverage Costs**

The components of food and beverage costs at company-owned restaurants fluctuate directly with sales volumes and are impacted by changes in commodity prices or promotional activities.

**Pre-opening Expenses**

Other restaurant operating expenses and Occupancy expenses include pre-opening expenses which are costs incurred to open new restaurants. These costs consist of manager salaries, recruiting expenses,

employee payroll, training and marketing costs, as well as lease expense recorded during the period between the date of possession of the restaurant facility and the restaurant opening date. Pre-opening expenses are recognized in the period in which the expense is incurred and totaled $3.9 million and $5.8 million during Fiscal 2020 and Fiscal 2019, respectively.

**Consideration Received from Vendors**

The Company receives consideration from certain vendors for volume rebates and advertising allowances. Volume rebates are accounted for as an adjustment to the cost of the vendors' products. Advertising allowances are intended to offset the Company's costs of advertising and promotions and are recorded as a reduction of General and administrative expenses when recognized.

**Advertising Costs**

Advertising costs are recognized as incurred or, in the case of advertisements, when the advertisement occurs. Advertising costs were $3.3 million and $4.4 million during Fiscal 2020 and Fiscal 2019, respectively, and are included in General and administrative expenses and in Other restaurant operating expenses.

**Debt Issuance Costs**

Debt discount and deferred issuance costs incurred in connection with the issuance of long-term debt are recorded as reductions of long-term debt and are amortized over the term of the related debt. Amortization expense of debt discount and deferred issuance costs is included in Interest expense.

**Income Taxes**

Income taxes are accounted for under the asset and liability method of accounting. Under this method, deferred tax assets or liabilities are recognized for the estimated future tax effects attributable to temporary differences between the carrying value and the tax basis of assets and liabilities as well as tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to be applicable in the years in which the differences are expected to be recovered or settled. Changes in deferred tax assets or liabilities are recognized in Income tax benefit.

Deferred tax assets are recognized for all deductible temporary differences to the extent that it is probable that taxable income will be available against which the deductible temporary differences can be utilized. Realization of deferred tax assets is dependent upon the availability of taxable income and a valuation allowance for deferred tax assets is provided when it is more likely than not that a portion of the deferred tax assets will not be realized. In the assessment for realization of deferred tax assets, Management considers all sources of taxable income including (i) taxable income in any available carry back period, (ii) scheduling of anticipated reversal of taxable temporary differences, (iii) tax-planning strategies and (iv) taxable income expected to be generated in the future other than from reversing temporary differences and carryforwards. Management continues to evaluate the rationale for recording a valuation allowance on its deferred tax assets and as the Company increases earnings and utilizes deferred tax assets, it is possible the valuation allowance could be reduced or eliminated.

The Company has no uncertain tax positions requiring recognition or disclosure in the consolidated financial statements in Fiscal 2020 and Fiscal 2019.

Interest and penalties, when incurred, are recognized in Other income (expense), net.

**Stock-Based Compensation**

Stock-based compensation expense is recognized for stock option awards granted and is based on the fair value of the options on the date of grant. The fair value of stock option awards is determined using the Black-Scholes option pricing model. The fair value of service-based stock option awards is recognized as expense on a graded vesting schedule over the requisite service period. The fair value of performance-based stock option awards is recognized as expense when the performance condition is probable of being achieved. Forfeitures of stock option awards are recognized as they occur. Determining the fair value of stock option awards at the grant date requires judgment, including estimating the expected term that the stock options will be outstanding prior to exercise, volatility, dividend yield and risk-free interest rate. Stock-based compensation expense is included in General and administrative expenses. Stock option exercises are settled with authorized but unissued shares of the Company's common stock.

**Recently Adopted Financial Accounting Standards**

On December 30, 2019, the Company adopted Accounting Standards Update ("ASU") 2018-15, "*Intangibles-Goodwill and Other-Internal-Use Software* (Subtopic 350-40): *Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*," ("ASU 2018-15"), which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. Amortization expense is recorded in the same expense line as the hosted service costs over the expected term of the hosting arrangement, which includes reasonably certain renewals, pursuant to ASU 2018-15. A total of $0.3 million of implementation costs of hosting arrangements that are service contracts were capitalized in Fiscal 2020, which were recorded within Prepaid expenses and Other long-term assets. The amortization of the Company's hosting arrangements was recorded in General and administrative expenses.

On December 30, 2019, the Company adopted ASU 2016-13, "*Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*," ("ASU 2016-13"), which requires measurement and recognition of losses for financial instruments under the current expected credit loss model versus incurred losses under previous guidance. The Company's adoption of ASU 2016-13 and its related amendments did not have a material effect on its consolidated financial statements.

On December 31, 2018, the Company adopted ASC 842 using the modified retrospective transition method included in ASU 2018-11, "*Leases (Topic 842), Targeted Improvements*", ("ASU 2018-11"). Management elected the package of practical expedients permitted under the transition guidance and also elected the accounting policy election to combine lease and non-lease components for restaurant facility leases. In addition, the Company adopted the short-term lease recognition exemption and did not recognize operating lease right-of-use assets and operating lease liabilities for leases with terms of twelve months or less. Management used the Company's incremental borrowing rate to discount the future fixed lease payments for all leases. The Company's incremental borrowing rate was determined based on a market yield implied by the outstanding secured term loans (see Note 10, *Debt*, for additional information), which was interpolated for various maturities based on the shape of the corresponding market yield curve. The corresponding market yield curve was selected based on the Company's synthetic credit rating, which was determined using a regression analysis of rated publicly-traded comparable companies and their financial data.

On December 31, 2018, operating lease right-of-use assets of $246.0 million, operating lease liabilities of $252.8 million and a debit to the beginning balance of accumulated deficit for $0.1 million were recorded in conjunction with the adoption of ASU 2018-11. In addition, the land lease asset and related financing obligation of $1.5 million which related to one restaurant facility that was sold and leased back from a third

party in 2014 and which did not previously qualify for sale accounting was derecognized. The lease related to this transaction is accounted for as an operating lease. Financing obligations are classified within Long-term debt, net. The adoption of ASC 842 did not have a material impact on the Consolidated Statements of Operations and Comprehensive Loss and the Consolidated Statement of Cash Flows in Fiscal 2019.

**Summary of Recently Issued Accounting Pronouncements**

In March 2020, the FASB issued ASU 2020-04, "*Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*," ("ASU 2020-04"). The new guidance provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships and other transactions affected by reference rate reform if certain criteria are met. ASU 2020-04 was effective beginning March 12, 2020 and may be applied prospectively to contract modifications made and hedging relationships entered into or evaluated on or before December 31, 2022. Management is currently evaluating its contracts and the optional expedients provided by the new standard.

## 3. Revenues

The following tables include a detail of liabilities from contracts with customers:

| *(in thousands)* | DECEMBER 27, 2020 | DECEMBER 29, 2019 |
|---|---|---|
| Deferred revenues: | | |
| Deferred gift card revenue | $ 4,024 | $ 6,902 |
| Deferred franchise fee revenue - current | 249 | 217 |
| Total current deferred revenues | $ 4,273 | $ 7,119 |
| Other long-term liabilities: | | |
| Deferred franchise fee revenue - non-current | $ 2,025 | $ 2,239 |

Changes in deferred gift card liabilities were as follows:

| | FISCAL YEAR | |
|---|---|---|
| *(in thousands)* | 2020 | 2019 |
| Deferred gift card revenue: | | |
| Balance, beginning of period | $ 6,902 | $ 4,982 |
| Gift card sales | 5,197 | 15,898 |
| Gift card liabilities assumed through acquisitions | — | 146 |
| Gift card redemptions | (6,924) | (12,689) |
| Gift card breakage | (1,151) | (1,435) |
| Balance, end of period | $ 4,024 | $ 6,902 |

Gift cards are combined in one homogeneous pool and are not separately identifiable. As such, the revenue recognized consists of gift cards that were part of the deferred revenue balance at the beginning of the period as well as gift cards that were issued during the period.

Changes in deferred franchise fee liabilities were as follows:

| *(in thousands)* | FISCAL YEAR 2020 | 2019 |
|---|---|---|
| Deferred franchise fee revenue: | | |
| Balance, beginning of period | $2,456 | $2,331 |
| Cash received | 158 | 687 |
| Franchise revenues recognized | (340) | (436) |
| Business combinations [1] | — | (126) |
| Balance, end of period | $2,274 | $2,456 |

[1] *Recognized $0.1 million of deferred franchise fees within additional paid-in capital upon acquisition of non-controlling interest in Fiscal 2019.*

Revenues recognized disaggregated by type were as follows:

| *(in thousands)* | FISCAL YEAR 2020 | 2019 |
|---|---|---|
| Restaurant sales: | | |
| In-restaurant dining sales | $ 257,029 | $ 400,345 |
| Third-party delivery sales | 38,524 | 2,648 |
| Take-out sales | 41,880 | 26,316 |
| Total restaurant sales | $ 337,433 | $ 429,309 |
| Franchise revenues: | | |
| Royalty and system fund contributions | 4,615 | 6,628 |
| Initial fees | 340 | 436 |
| Total franchise revenues | $ 4,955 | $ 7,064 |
| Total revenues | $ 342,388 | $ 436,373 |

Deferred revenues as of December 27, 2020 are expected to be recognized as follows:

| | *(in thousands)* |
|---|---|
| Fiscal year | |
| 2021 | $ 4,273 |
| 2022 | $ 276 |
| 2023 | $ 298 |
| 2024 | $ 299 |
| 2025 | $ 301 |
| Thereafter | $ 851 |

## 4. COVID-19 Charges

Following is a summary of the charges recorded in connection with the COVID-19 pandemic in Fiscal 2020:

| *(in thousands)* | Consolidated Statement of Operations and Comprehensive Loss | FISCAL 2020 |
|---|---|---|
| Inventory obsolescence and spoilage | Food and beverage costs | $ 562 |
| Compensation for employees upon furlough and return from furlough | Labor and other related expenses | 1,065 |
| Health insurance costs paid for furloughed employees, net of employee retention credit of $0.9 million | Labor and other related expenses | 746 |
| Other expenses | Other restaurant operating expenses | 936 |
| Compensation for employees upon furlough and return from furlough | General and administrative expenses | 360 |
| Other expenses | General and administrative expenses | 1,080 |
| Total COVID-19 charges | | $ 4,749 |

## 5. Accounts Receivable

Accounts receivable consists of the following:

| *(in thousands)* | DECEMBER 27, 2020 | DECEMBER 29, 2019 |
|---|---|---|
| Receivables from third-party delivery providers | $ 1,742 | $ 42 |
| Receivables related to gift card sales | 1,028 | 3,622 |
| Receivables from franchisees | 591 | 721 |
| Rebate receivables | 514 | 675 |
| Receivable for lease termination | — | 450 |
| Other receivables | 40 | 231 |
| Total accounts receivable | $ 3,915 | $ 5,741 |

## 6. Goodwill

The changes in the carrying value of goodwill were as follows:

| *(in thousands)* | |
|---|---|
| Balance as of December 30, 2018 | $ 330,834 |
| Increases - acquisitions | 14,385 |
| Balance as of December 29, 2019 | 345,219 |
| Increases | — |
| Balance as of December 27, 2020 | $ 345,219 |

The combination of the abrupt limitations on seating capacity in restaurant dining rooms and the temporary suspension of operations at the company-owned restaurants in April 2020 due to COVID-19 was considered a triggering event indicating that the carrying value of goodwill may not be recoverable. As a result, Management performed a quantitative annual impairment assessment of goodwill in April 2020. No impairment loss was recorded as a result of the quantitative assessment.

In June 2020, substantially all of the company-owned restaurants had reopened dining rooms with limited seating capacity in compliance with state and local regulations and had operationalized digital ordering, take-out and delivery methods.

Management performed a quantitative annual impairment assessment of goodwill on the first day of the fourth quarter of Fiscal 2020. Based on this quantitative assessment, no impairment loss for goodwill was recorded.

Management performed a qualitative assessment for its annual evaluation of goodwill in Fiscal 2019 and determined there was no impairment loss to be recognized.

## 7. Intangible Assets, Net

Intangible assets, net consists of the following:

| | | DECEMBER 27, 2020 | | |
|---|---|---|---|---|
| *(in thousands)* | Weighted Average Useful Lives | Gross Carrying Value | Accumulated Amortization | Net Carrying Value |
| Registered trademarks, trade names, domains, liquor licenses | Indefinite | $137,776 | $ (316) | $137,460 |
| Franchise rights | 9 years | 9,404 | (3,202) | 6,202 |
| | | $147,180 | $ (3,518) | $143,662 |

| | | DECEMBER 29, 2019 | | |
|---|---|---|---|---|
| *(in thousands)* | Weighted Average Useful Lives | Gross Carrying Value | Accumulated Amortization | Net Carrying Value |
| Registered trademarks, trade names, domains, liquor licenses | Indefinite | $137,551 | $ (316) | $137,235 |
| Franchise rights | 11 years | 10,363 | (3,040) | 7,323 |
| | | $147,914 | $ (3,356) | $144,558 |

As described above, in April 2020, the effects of COVID-19 were considered a triggering event indicating that the carrying value of intangible assets may not be recoverable. As a result, Management performed a quantitative impairment assessment for the Company's intangible assets in April 2020. No impairment loss was recorded as a result of the quantitative assessment. Management performed a quantitative annual impairment assessment on the first day of the fourth quarter of Fiscal 2020 and determined there was no impairment loss to be recognized.

The Company's franchise rights which arose from the Advent Acquisition were also tested for impairment in April 2020. These franchise rights are a separate asset group for impairment testing as the related franchise agreements have distinct royalty cash inflows. The quantitative assessment indicated the estimated future undiscounted net cash flows were greater than the net book value of the franchise rights and no impairment loss was recorded during the second quarter of Fiscal 2020. The definite-lived reacquired rights from the Company's acquisitions were tested at the individual restaurant level in the asset group which includes long-lived assets of the individual restaurants (see Note 8, *Property, Fixtures and Equipment, Net*, for additional information).

In the second quarter of Fiscal 2019, Management conducted a strategic review of its restaurant operations and identified needs for increased capital investment and operational changes in The Egg & I

restaurants in order for them to remain competitive. Following an internal assessment related to the company-owned The Egg & I restaurants and discussions with The Egg & I franchisees, Management determined there was a reluctance to make sufficient capital investment and operational changes. As such, Management concluded a triggering event had occurred in the second quarter of Fiscal 2019 and determined it was more likely than not that the carrying value of The Egg & I definite and indefinite-lived intangible assets exceeded their fair values.

Management performed a quantitative assessment of the expected future cash flows from The Egg & I trade name using the relief from royalty method. As a result of this assessment, a non-cash impairment charge of $29.0 million was recognized related to the indefinite-lived intangible assets during the second quarter of Fiscal 2019. Additionally, the Company's management evaluated The Egg & I franchise rights, which were definite-lived intangible assets amortized over 13 years. As a result of this evaluation, the Company recognized an additional non-cash impairment charge of $3.2 million during the second quarter of Fiscal 2019. The remaining net book value for The Egg & I trade name and franchise rights, respectively, were amortized through the end of Fiscal 2019. All remaining restaurants that operated under The Egg & I trade name had either closed, disenfranchised or were strategically acquired by the Company and converted to restaurants operating under the First Watch trade name as of December 29, 2019.

Management performed a qualitative assessment for its annual evaluation of indefinite-lived intangible assets in Fiscal 2019 and determined there was no impairment loss to be recognized.

Total amortization expense related to definite-lived intangible assets was $1.1 million and $2.1 million in Fiscal 2020 and Fiscal 2019, respectively. Amortization expense in Fiscal 2019 included the accelerated amortization totaling $0.7 million related to the net carrying value of The Egg & I definite and indefinite-lived intangible assets after the non-cash impairment charges recognized during the second quarter of Fiscal 2019.

Estimated future amortization of definite-lived intangible assets as of December 27, 2020 is as follows:

| | *(in thousands)* |
|---|---|
| Fiscal year | |
| 2021 | $ 1,030 |
| 2022 | $ 957 |
| 2023 | $ 807 |
| 2024 | $ 807 |
| 2025 | $ 809 |

## 8. Property, Fixtures and Equipment, Net

Property, fixtures and equipment, net consists of the following:

| *(in thousands)* | DECEMBER 27, 2020 | DECEMBER 29, 2019 |
|---|---|---|
| Building and land improvements | $ 1,354 | $ 1,354 |
| Leased land asset | 1,190 | 1,190 |
| Leasehold improvements | 128,252 | 111,543 |
| Furniture, fixtures and equipment (including capitalized software) | 105,520 | 91,985 |
| Financing lease assets | 3,137 | 2,272 |
| Vehicles | 455 | 455 |
| Total property, fixtures and equipment | 239,908 | 208,799 |
| Accumulated depreciation | (86,250) | (56,737) |
| Construction-in-progress | 7,086 | 12,272 |
| Total property, fixtures and equipment, net | $ 160,744 | $ 164,334 |

The Company's long-lived assets at company-owned restaurants were evaluated for impairment in April 2020 as a result of the effects of the COVID-19 pandemic using future undiscounted net cash flows over the respective lease terms. As the estimated future undiscounted net cash flows were greater than the net book value of the respective asset groups, no impairment loss was recognized.

Assets totalling $0.3 million were retired or replaced in the ordinary course of business in Fiscal 2020.

In Fiscal 2019, a non-cash impairment charge of $0.3 million was recognized primarily related to one under- performing restaurant. The impairment was determined as the amount by which the carrying value of the restaurant's asset group exceeded its fair value. Fair value was determined based on estimates of discounted future cash flows. In addition, $1.1 million of assets were disposed of associated with restaurants that were remodeled, relocated or closed. These charges were recorded in Impairment and loss on disposal of assets.

Depreciation expense was $29.6 million and $25.9 million during Fiscal 2020 and Fiscal 2019, respectively.

As of December 27, 2020 and December 29, 2019, Property, fixtures and equipment, net included $1.2 million in land related to sale and leaseback transactions accounted for as financing obligations.

## 9. Accrued Liabilities

Accrued liabilities consists of the following:

| *(in thousands)* | DECEMBER 27, 2020 | DECEMBER 29, 2019 |
|---|---|---|
| Construction liabilities | $ 4,301 | $ 5,318 |
| Sales tax | 2,159 | 2,996 |
| Self-insurance and general liability reserves | 1,297 | 1,792 |
| Utilities | 1,016 | 1,417 |
| Common area maintenance | 700 | 180 |
| Credit card fees | 520 | 803 |
| Property tax | 424 | 939 |
| Accounting and consulting | 251 | 1,282 |
| Contingent rent | 234 | 423 |
| Legal services and contingencies | 126 | 2,207 |
| Other | 2,454 | 1,787 |
| Total accrued liabilities | $ 13,482 | $ 19,144 |

## 10. Debt

Long-term debt, net consists of the following:

| *(in thousands)* | DECEMBER 27, 2020 Balance | DECEMBER 27, 2020 Interest rate (1) | DECEMBER 29,2019 Balance | DECEMBER 29,2019 Interest rate (1) |
|---|---|---|---|---|
| Senior Credit Facilities: | | | | |
| Initial Term Loan Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity | $150,214 | 8.00% | $151,513 | 7.29% |
| Initial Delayed Draw Term Loan Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity | 48,992 | 8.00% | 49,410 | 7.29% |
| First Amendment Delayed Draw Term Facility Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity | 49,458 | 8.00% | 34,875 | 7.29% |
| Second Amendment Delayed Draw Term Facility Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity | 39,369 | 8.00% | — | — |
| Revolving Credit Facility Annual commitment fee of 0.50% | — | — | 17,000 | 7.29% |
| Finance lease liabilities | 2,300 | | 2,196 | |
| Financing obligations | 3,050 | | 3,050 | |
| Less: Unamortized debt discount and deferred issuance costs | (3,393) | | (4,675) | |
| Total Debt, net | 289,990 | | 253,369 | |
| Less: Current portion of long-term debt | (3,590) | | (2,972) | |
| Long-term debt, net | $286,400 | | $250,397 | |

(1) *Borrowings under the Senior Credit Facilities bear interest, at the Company's option, at a rate per annum equal to either (a) (i) the greater of an adjusted London Interbank Offered Rate (the "Adjusted Eurocurrency Rate") and 1.00%, plus (ii) the applicable Adjusted Eurocurrency Rate spread, or (b) (i) the alternate base rate ("ABR") plus (ii) the applicable ABR spread. ABR is a floating rate per annum equal to the highest of (i) the federal funds effective rate plus 0.50%, (ii) to the extent ascertainable, the London interbank offered rate for a 1-month interest period on such day plus 1.00%, (iii) the rate of interest last quoted by The Wall Street Journal as the "prime rate" in the U.S. and (iv)1.00%. Borrowings under the Senior Credit Facilities also bear an additional interest pursuant to the Fourth Amendment that is paid in kind. The applicable rate for the additional interest ranges from 0.25% to 1.5% of the outstanding balances, depending on the leverage ratio.*

FWR Holding Corporation, a Delaware corporation and a wholly-owned subsidiary of the Company, is the borrower ( the "Borrower") under a credit agreement, dated as of August 21, 2017, (as amended by the First Amendment to Credit Agreement dated as of February 28, 2019 (the "First Amendment"), the Second Amendment to Credit Agreement dated as of December 20, 2019 (the "Second Amendment"), the Third Amendment and Waiver to Credit Agreement dated as of April 27, 2020 (the "Third Amendment") and the Fourth Amendment to Credit Agreement dated as of August 14, 2020 (the "Fourth Amendment"), the "Credit Agreement"), which consists of an initial term loan facility ($155.0 million), an initial delayed draw

term facility ($50.0 million) and a revolving credit facility (available commitment of $20.0 million and includes a $5.0 million sub-limit for letters of credit) for an initial total available borrowing commitment of $225.0 million. The Credit Agreement matures on August 21, 2023.

Pursuant to the First Amendment, the lenders agreed to decrease the interest rate applicable to the loans under the Credit Agreement and certain lenders agreed to provide additional delayed term loan commitments in an aggregate principal amount of $50.0 million that was available commencing on February 28, 2019 (the “first amendment delayed draw term facility”). The total $50.0 million had been drawn in Fiscal 2019.

Pursuant to the Second Amendment, certain lenders agreed to provide additional delayed term loan commitments in an aggregate principal amount of $40.0 million that was available commencing on December 20, 2019 (the “second amendment delayed draw term facility”). A total of $39.6 million had been drawn in Fiscal 2020.

The First Amendment and Second Amendment were accounted for as debt modifications and a total of $1.5 million in costs was incurred, of which $0.9 million was recognized and amortized as debt discount and deferred issuance costs and $0.6 million was recognized in Other (expense) income, net during Fiscal 2019.

Pursuant to the Third Amendment, a condition to borrowing under each delayed draw term facility and the revolving credit facility was added, whereby the aggregate cash balance of the Borrower and its subsidiaries would not exceed $15.0 million at the time of and immediately after giving effect to any such borrowing, which was superseded by the Fourth Amendment with respect to the revolving credit facility, as described below. In addition, the Third Amendment modified certain affirmative and negative covenants under the Credit Agreement and added new affirmative covenants that require the Borrower to deliver cash flow forecasts and monthly financial reports and hold monthly conference calls with lenders until December 31, 2020. The new reporting affirmative covenants were superseded by the Fourth Amendment, as described below. Furthermore, the Third Amendment waived a specific event of default relating to an over- borrowing. The Third Amendment was accounted for as a debt modification and all costs incurred were third-party costs that were recognized in Other (expense) income, net.

Prior to the execution of the Fourth Amendment, the Company received proceeds from an offering of preferred shares totaling $40.0 million, a portion of the proceeds of which were subsequently used to repay the outstanding balance of $10.5 million on the revolving credit facility (see Note 15, *Stockholders’ Equity*, for additional information).

Pursuant to the Fourth Amendment, additional interest is charged on outstanding amounts drawn by the Borrower that shall be paid in kind by being added to the outstanding principle amounts. The Fourth Amendment also provided for: (i) the suspension of debt covenant compliance from April 1, 2020 through March 28, 2021, (ii) an extension of the additional monthly reporting requirements implemented pursuant to the Third Amendment until the first date on which a Compliance Certificate (as defined in the Credit Agreement) is delivered demonstrating compliance with a Total Leverage Ratio (as defined in the Credit Agreement) of 7.00:1.00, (iii) a minimum liquidity covenant, tested twice monthly until the first date on or after June 27, 2021 on which a Compliance Certificate is delivered demonstrating compliance with the Financial Covenant Level (as defined in the Credit Agreement) applicable at such time, (iv) additional restrictions on the ability of the Borrower and its subsidiaries to make restricted payments and restricted debt payments, incur indebtedness, make investments and pay management fees during the period from August 14, 2020 until the first date on or after September 26, 2021 on which a Compliance Certificate is delivered demonstrating compliance with the Financial Covenant Level applicable at such time, (v) additional limitations on the ability of the Borrower to make certain restricted payments and pay management fees and (vi) a restriction on the ability of the Borrower and its subsidiaries to make capital

expenditures for new restaurant openings and/or repurchases of franchised unit locations (other than to the extent funded with certain capital contributions) unless a liquidity threshold is met. The Fourth Amendment was accounted for as a debt modification and all costs incurred were third-party costs that were recognized in Other (expense) income, net.

The initial term loan facility, an initial delayed draw term facility, first amendment delayed draw term facility and the second amendment delayed draw term facility are collectively referred to as "DDTL facilities".

In addition to the undrawn revolving credit facility, the Company had availability of $1.5 million of DDTL facilities at December 27, 2020.

The estimated fair value of the outstanding debt, excluding finance lease obligations and financing obligations, is classified as Level 3 in the fair value hierarchy and was estimated using discounted cash flow models using market yield and yield volatility. The estimated fair value of the outstanding debt, excluding finance lease liabilities and financing obligations, is as follows:

| *(in thousands)* | DECEMBER 27, 2020 | DECEMBER 29, 2019 |
|---|---|---|
| Initial term loan | $ 150,239 | $ 151,955 |
| Initial delayed draw term facility | 49,000 | 49,554 |
| First amendment delayed draw term facility | 49,466 | 34,977 |
| Second amendment delayed draw term facility | 39,376 | — |
| Revolving credit facility | — | 17,048 |
| Total | $ 288,081 | $ 253,534 |

Principal payments due on the outstanding debt, excluding finance lease liabilities and financing obligations, as of December 27, 2020 are as follows:

| | *(in thousands)* |
|---|---|
| Fiscal Year | |
| 2021 | $ 2,946 |
| 2022 | 2,946 |
| 2023 | 282,141 |
| | $ 288,033 |

**Letter of Credit**

The Company utilizes a standby letter of credit to satisfy workers' compensation requirements, as discussed in Note 2, *Summary of Significant Accounting Policies*. The contract amount of the letter of credit approximates its fair value. As of December 27, 2020 and December 29, 2019, the open letter of credit was approximately $0.4 million and there were no draws against the letter of credit. The Company pays participation fees for the letter of credit based on a varying percentage of the amount not drawn.

**Debt Covenants**

Substantially all of the Company's assets are pledged as collateral under the Credit Agreement. The Credit Agreement contains covenants that provide for, among other things, maintenance of certain financial ratios; restrictions on payment of dividends or other distributions; restrictions on creating liens; restrictions on making investments, including acquisitions, loans, and advances; restrictions on additional indebtedness; selling, transferring, or otherwise disposing of assets; liquidating or dissolving subsidiaries of the Company;

materially altering the Company's business; engaging in transactions with affiliates and entering into burdensome agreements. The Borrower was in compliance with all covenants as of December 27, 2020 and December 29, 2019.

## 11. Leases

The following table includes a detail of lease assets and liabilities:

| *(in thousands)* | Consolidated Balance Sheets Classification | DECEMBER 27, 2020 | DECEMBER 29, 2019 |
|---|---|---|---|
| Operating lease right-of-use assets | Operating lease right-of-use assets | $ 307,558 | $ 302,513 |
| Finance lease assets | Property, fixtures and equipment, net | 2,212 | 2,272 |
| Total lease assets | | $ 309,770 | $ 304,785 |
| Operating lease liabilities(1) - current | Current portion of operating lease liabilities | $ 40,111 | $ 27,436 |
| Operating lease liabilities - non-current | Operating lease liabilities | 307,802 | 295,632 |
| Finance lease liabilities - current | Current portion of long-term debt | 645 | 578 |
| Finance lease liabilities - non-current | Long-term debt, net | 1,655 | 1,618 |
| Total lease liabilities | | $ 350,213 | $ 325,264 |

(1) *Excludes all variable lease expense*

The components of lease expense are as follows:

| *(in thousands)* | Consolidated Statements of Operations and Comprehensive Loss Classification | Fiscal Year 2020 | 2019 |
|---|---|---|---|
| Operating lease expense | Occupancy expenses<br>General and administrative expenses<br>Other restaurant operating expenses | $41,813 | $37,075 |
| Variable lease expense | Occupancy expenses<br>General and administrative expenses<br>Food and beverage costs | 9,692 | 9,788 |
| Finance lease expense: | | | |
| Amortization of leased assets | Depreciation and amortization | 501 | 425 |
| Interest on lease liabilities | Interest expense | 184 | 163 |
| Total lease expense (1) | | $52,190 | $47,451 |

(1) *Includes contingent rent of $0.1 million and $0.7 million during Fiscal 2020 and Fiscal 2019, respectively.*

Supplemental cash flow information related to leases is as follows:

| *(in thousands)* | Fiscal Year 2020 | 2019 |
|---|---|---|
| Cash paid for amounts included in the measurement of lease liabilities: | | |
| Operating cash flows - operating leases | $22,011 | $23,195 |
| Operating cash flows - finance leases | $ 184 | $ 163 |
| Financing cash flows - finance leases | $ 339 | $ 500 |

Supplemental information related to leases was as follows:

| | Fiscal Year 2020 | 2019 |
|---|---|---|
| Weighted-average remaining lease term (in years) | | |
| Operating leases | 16.3 | 17.1 |
| Finance leases | 4.4 | 4.8 |
| Weighted-average discount rate (1) | | |
| Operating leases | 9.1% | 9.1% |
| Finance leases | 8.0% | 8.1% |

(1) *Based on the Company's incremental borrowing rate.*

Future minimum lease payments on lease liabilities as of December 27, 2020 are as follows:

| *(in thousands)* | Operating Leases | Finance Leases |
|---|---|---|
| Fiscal year | | |
| 2021 | $ 41,695 | $ 663 |
| 2022 | 39,755 | 618 |
| 2023 | 40,572 | 618 |
| 2024 | 41,252 | 618 |
| 2025 | 41,278 | 201 |
| Thereafter | 491,306 | 10 |
| Total future minimum lease payments (1) | 695,858 | 2,728 |
| Less: imputed interest | (347,945) | (428) |
| Total present value of lease liabilities | $ 347,913 | $ 2,300 |

(1) *Excludes approximately $61.6 million of signed operating leases that have not commenced as of December 27, 2020.*

**Sale-Leaseback Transactions**

In 2015, Management entered into an agreement relating to the sale and leaseback of the land for use in restaurant operations and received cash proceeds of $3.1 million. As the Company had continuing involvement with the property, the sale of the land did not qualify for sale accounting. As a result, the cash proceeds were recorded as a financing obligation. As of December 27, 2020 and December 29, 2019, the balance of the financing obligation was $3.1 million.

## 12. Acquisitions

The Company did not have acquisitions in Fiscal 2020.

On December 31, 2018, four restaurants were acquired from a franchisee for approximately $7.0 million in cash. The acquisition was accounted for as a business combination and $5.1 million was attributed to goodwill, which was tax deductible for income tax purposes. The purchase price was allocated to the fair value of assets acquired and liabilities assumed at the date of the acquisition as follows:

| *(in thousands)* | |
|---|---|
| Purchase price | $6,999 |
| Recognized amounts of identifiable assets acquired and liabilities assumed: | |
| Cash | $ 3 |
| Inventory | 25 |
| Other long-term assets | 21 |
| Property, fixtures and equipment | 903 |
| Reacquired rights | 971 |
| Favorable leasehold positions | 67 |
| Accrued liabilities | (55) |
| Gain on settlement of pre-existing agreements | (40) |
| Goodwill | $5,104 |

On January 28, 2019, five operating restaurants and rights for two additional restaurant sites were acquired from a franchisee for approximately $9.9 million in cash. The acquisition was accounted for as a business combination and $4.4 million was attributed to goodwill, which was tax deductible for income tax purposes. A total of $0.2 million of deferred franchise revenues was recognized in Franchise revenues in Fiscal 2019 as a result of terminating the pre-existing franchise agreements. The purchase price was allocated to the fair value of assets acquired and liabilities assumed at the date of the acquisition as follows:

| *(in thousands)* | |
|---|---|
| Purchase price | $9,907 |
| Recognized amounts of identifiable assets acquired and liabilities assumed: | |
| Cash | $ 5 |
| Inventory | 56 |
| Prepaid expenses | 9 |
| Other long-term assets | 15 |
| Property, fixtures and equipment | 4,438 |
| Reacquired rights | 968 |
| Accrued liabilities | (20) |
| Goodwill | $4,436 |

During the months June 2019 through December 2019, a series of acquisitions of nine individual restaurants from unrelated franchisees was completed for total cash consideration of approximately $6.2 million. The acquisitions were individually accounted for as business combinations and $4.8 million was attributed to goodwill, which was tax deductible for income tax purposes. The total purchase price was allocated to the fair value of assets acquired and liabilities assumed at the respective dates of the acquisitions as follows:

| *(in thousands)* | |
|---|---|
| Purchase price | $6,196 |
| Recognized amounts of identifiable assets acquired and liabilities assumed: | |
| Cash | $ 7 |
| Inventory | 52 |
| Prepaid expenses | 31 |
| Other current assets | 42 |
| Property, fixtures and equipment | 966 |
| Reacquired rights | 455 |
| Accrued liabilities | (82) |
| Gains on settlements of pre-existing agreements | (120) |
| Goodwill | $4,845 |

The portions of the purchase price of all acquisitions during Fiscal 2019 attributable to goodwill represent benefits expected as a result of the strategic acquisitions, including sales and unit growth opportunities. The Company incurred transaction costs totaling $0.9 million during Fiscal 2019 for all acquisitions, which were expensed as incurred. The operating results of the acquired restaurants have been included in the consolidated financial statements since the respective dates of the acquisitions. Pro-forma financial information for the period prior to the acquisitions was not presented due to the immaterial impact of the financial results on the consolidated financial statements during Fiscal 2019.

On June 14, 2018, the Company acquired a 75% controlling financial interest in TFW, which was a franchisee with no operating restaurants at the time of the acquisition, for approximately $0.1 million. On December 24, 2019, the remaining 25% non-controlling interest in TFW was acquired for $0.45 million. The acquisition was accounted for as an equity transaction with the difference between the cash paid and the carrying amount of the non-controlling interest recognized as a decrease to equity attributable to First Watch Restaurant Group, Inc.

## 13. Transaction (Income) Expenses, Net

Transaction (income) expenses, net consists of the following:

| | FISCAL YEAR | |
|---|---|---|
| *(in thousands)* | 2020 | 2019 |
| Conversion costs | $ 71 | $1,596 |
| Acquisition - related costs | — | 872 |
| (Gain) Loss on restaurant closures | (36) | 488 |
| Gain on lease termination, net | — | (885) |
| Contingent consideration liability revaluation (Note 14) | (293) | (362) |
| Total transaction (income) expenses, net | $(258) | $1,709 |

The Company incurred $0.1 million and $1.6 million of costs in Fiscal 2020 and Fiscal 2019, respectively, in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name.

As a result of revaluing the contingent consideration liability initially recognized in connection with the Advent Acquisition (see Note 14, *Income Taxes*, for additional information), the Company decreased the liability and recorded $0.3 million and $0.4 million in Fiscal 2020 and Fiscal 2019, respectively, within Transaction (income) expenses, net.

In Fiscal 2019, the Company incurred $0.9 million of costs in connection with the acquisitions of restaurants from franchisees and incurred lease termination and other related costs of $0.5 million for closures of restaurants.

On December 16, 2019, an agreement was executed to terminate the lease for one restaurant facility in January 2020. Pursuant to the agreement, the Company received $0.45 million in December 2019 and received an additional $0.45 million upon vacating the leased property in January 2020. A gain on lease termination of $0.9 million, net of closure costs, was recorded in Fiscal 2019.

## 14. Income Taxes

Income tax benefit consists of the following:

| *(in thousands)* | FISCAL YEAR 2020 | 2019 |
|---|---|---|
| Current provision: | | |
| Federal | $ — | $ — |
| State | 118 | 139 |
| | 118 | 139 |
| Deferred (benefit) provision: | | |
| Federal | (18,458) | (10,438) |
| State | (1,533) | (2,120) |
| | (19,991) | (12,558) |
| Income tax benefit | $ (19,873) | $ (12,419) |

A reconciliation of the federal statutory income tax rate to the Company's effective income tax rate is as follows:

| | FISCAL YEAR 2020 | 2019 |
|---|---|---|
| Income taxes at federal statutory rate | (21.0)% | (21.0)% |
| State income taxes, net of federal tax effect | (4.1) | (2.9) |
| FICA tip credit | (4.7) | (6.9) |
| Valuation allowance for federal and state | 1.8 | 10.2 |
| Rate change | (0.1) | (0.9) |
| Other | (0.5) | — |
| Total | (28.6)% | (21.5)% |

The Company has a blended federal and state statutory rate of approximately 25.0%. The effective income tax rate for Fiscal 2020 was higher than the blended federal and state statutory rate primarily due to

the change in the valuation allowance and the benefit of the tax credits for FICA taxes on certain employee tips. The effective income tax rate for Fiscal 2019 was lower than the blended federal and state statutory rate primarily due to the change in the valuation allowance for federal and state deferred tax assets and the benefit of tax credits for FICA taxes on certain employees' tips.

The components of deferred tax assets and liabilities at December 27, 2020 and December 29, 2019 are as follows:

| *(in thousands)* | DECEMBER 27, 2020 | DECEMBER 29, 2019 |
|---|---|---|
| Deferred income tax assets | | |
| FICA tip credit | $ 28,324 | $ 24,771 |
| Net operating loss | 37,365 | 12,254 |
| Operating lease liabilities | 86,615 | 81,487 |
| Organizational costs | 914 | 1,091 |
| Interest limitation | 1,500 | 2,818 |
| Accrued compensation | 2,032 | 421 |
| Deferred revenues | 561 | 600 |
| Stock-based compensation | 918 | 733 |
| Other | 1,094 | 1,276 |
| Valuation allowance | (30,214) | (28,975) |
| Total deferred income tax assets | 129,109 | 96,476 |
| Deferred income tax liabilities | | |
| Operating lease right-of-use assets | (76,190) | (75,092) |
| Depreciation | (27,873) | (16,876) |
| Indefinite-lived assets | (35,359) | (34,812) |
| Total deferred income tax liabilities | (139,422) | (126,780) |
| Net deferred income tax liabilities | $ (10,313) | $ (30,304) |

Based upon an evaluation of the Company's deferred tax assets, Management has recognized a valuation allowance of $30.2 million and $29.0 million as of December 27, 2020 and December 29, 2019, respectively. The valuation allowance primarily relates to the Company's federal tax credit carryforwards and charitable contribution carryforwards that are not expected to be realized prior to the statutory expiration of the carryforward. The valuation allowance will be maintained until sufficient positive evidence exists to support its reversal, including but not limited to, the magnitude and duration of the Company's historical losses as compared to potential future profits within taxing jurisdictions to overcome such negative evidence.

The Company has federal net operating loss carryforwards of $161.7 million at December 27, 2020, of which $117.3 million have an indefinite life and $44.4 million can be carried forward twenty years and will expire between 2033 and 2037. The Company had federal net operating loss carryforwards of $53.1 million at December 29, 2019, of which $9.5 million had an indefinite life and $43.6 million can be carried forward twenty years and will expire between 2033 and 2037. The Company has state net operating loss carryforwards of $66.5 million and $24.1 million at December 27, 2020 and December 29, 2019, respectively. The Company also has general business tax credits of $28.5 million and $24.9 million at December 27, 2020 and December 29, 2019, respectively, which can be carried forward twenty years and will expire between 2027 and 2040.

As of December 27, 2020, approximately $38.3 million, $19.0 million and $14.7 million of the federal loss carryforwards, state loss carryforwards and general business credits, respectively, were accumulated

from operations prior to the Advent Acquisition in August 2017. To the extent these federal and state loss carryforwards and general business credits are utilized to reduce taxes payable, the Company is required to pay the previous stockholders an amount equal to tax savings. This requirement lapses with respect to any tax year, or portion thereof, beginning after December 31, 2024, or if a change in control event occurs. In connection with the accounting for the Advent Acquisition, a contingent consideration liability of $1.2 million was initially recognized, of which approximately $0.2 million was paid in Fiscal 2019. As a result of revaluing the contingent consideration liability using actual results, expected projections and state tax law changes in Fiscal 2020, the contingent consideration liability for expected payments to be made to the previous stockholders was $0.3 million as of December 27, 2020, of which $0.2 million was recorded within Other long-term liabilities and $0.1 million was recorded within Accrued liabilities. As of December 29, 2019, the contingent consideration liability was $0.6 million, of which $0.1 million was recorded within Accrued liabilities and $0.5 million within Other long-term liabilities.

Changes in the deferred tax asset valuation allowance are as follows:

| *(in thousands)* | |
|---|---|
| Balance as of December 30, 2018 | $(24,654) |
| Increases to income tax benefit | (4,321) |
| Balance as of December 29, 2019 | (28,975) |
| Increases to income tax benefit | (1,239) |
| Balance as of December 27, 2020 | $(30,214) |

The Company is subject to examination by federal, state, and local jurisdictions, where applicable. As of December 27, 2020, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations are from the year 2013 and forward.

On March 27, 2020, the U.S. government enacted the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) to provide certain relief as a result of COVID-19. The CARES Act provides tax relief, along with other stimulus measures, including a retroactive technical correction of prior tax legislation for tax depreciation of certain qualified improvement property, among other changes. A total of $59.3 million of accelerated tax depreciation deductions was recognized related to qualified assets placed in service in Fiscal 2020, Fiscal 2019 and Fiscal 2018. Furthermore, the CARES Act made favorable changes to the Section 163(j) interest limitation and as a result, the Company was able to deduct additional interest totaling $18.9 million and $8.6 million for Fiscal 2020 and Fiscal 2019, respectively. In addition, Management began deferring the employer-paid portion of social security taxes as permitted by the CARES Act in the second quarter of Fiscal 2020. A total of $6.7 million was deferred, of which $3.3 million was recorded within Accrued compensation and deferred payroll taxes and the remaining amount was recorded within Deferred payroll taxes. Furthermore, the CARES Act provided for refundable employee retention tax credits, which can be used to offset payroll tax liabilities. As a result, a credit of $0.9 million was recorded as an offset to payroll tax expense in Fiscal 2020.

## 15. Stockholders’ Equity

The Company is authorized to issue 266,667 of preferred stock having a par value of $0.01 per share. The Company issued 266,667 preferred stock shares to existing stockholders, including Advent International Corporation, directors and executive officers, in Fiscal 2020. Preferred stockholders are entitled to receive dividends, as and if declared by the board of directors, on an as-converted basis with common stock. In the event of liquidation, dissolution or winding up of the Company, or upon a change of control, sale of all or substantially all the assets of the Company, the preferred stockholders are first entitled

to the assets of the Company available for distribution. Each preferred stockholder is entitled to receive for each share of preferred stock, prior to distribution on the common stock, an amount equal to the greater of (i) the original price per share of preferred stock plus any declared and unpaid dividends, and (ii) the amount such preferred stockholder would receive on an as-converted to common stock basis. The preferred stock is convertible at the option of the holders without the payment of additional consideration and is mandatorily convertible upon an initial public offering of the Company. The preferred stock votes on an as-converted to common stock basis. The preferred stock is not redeemable other than in the event the Company consummates a change of control, sale, or sale of substantially all the assets of the Company, but does not distribute the proceeds thereof in a dissolution event. The proceeds from the issuance of the preferred shares were used to repay the outstanding balance of $10.5 million on the revolving credit facility and for working capital and general corporate purposes.

The Company is authorized to issue 300,000,000 common stock shares with a par value of $0.01 per share. Each share of common stock entitles the holder to one vote for each share of common stock held and common stockholders will not have cumulative voting rights. Common stockholders are entitled to receive dividends, as and if declared by the board of directors. In addition, all common stockholders are entitled to share equally on a share-for-share basis in any assets available for distribution to common stockholders upon liquidation, dissolution, or winding up of the Company, after payment is made to the preferred stockholders.

No cash dividends were declared or paid in Fiscal 2020 and Fiscal 2019.

## 16. Defined Contribution Plan

The Company sponsors a defined contribution 401(k) savings plan (“401(k) Plan”) which requires the Company to match contributions for participants with at least one year of service 25% of the first 6% of the employees’ wages deferred into the 401(k) Plan. The 401(k) Plan also allows for additional profit-sharing contributions by the Company at the sole discretion of Management. All Company contributions vest over a five-year period. Total expense for the Company’s contributions to the 401(k) Plan was $0.3 million and $0.5 million in Fiscal 2020 and Fiscal 2019, respectively.

## 17. Stock Based Compensation

Stock-based awards are granted to employees and non-employee directors. The 2017 Omnibus Equity Incentive Plan (the “Options Plan”), which was effective from August 31, 2017, authorizes stock-based awards to be granted for up to 6,138,240 shares of common stock. The Options Plan provides for the issuance of any one or combination of the following awards: (i) Stock Options; (ii) Stock Appreciation Rights; (iii) Restricted Stock and (iv) Other Stock-Based Awards, for which the terms are defined by the Options Plan. There were a total of 995,011 and 1,008,669 shares of common stock authorized and available for future issuance as of December 27, 2020 and December 29, 2019, respectively.

Stock option awards are generally granted with 50% of the awards vesting over a five-year requisite service period and 50% of the awards vesting upon the occurrence of certain events, and only if certain market conditions have been achieved, as defined. Stock-based compensation expense for the performance-based option awards is recognized if it is considered probable that the performance conditions will be met. Any performance-based option awards not achieving the market conditions upon a change in control will be terminated. Stock options have an exercisable life of no more than ten years from the date of grant. The exercise price for any stock option award must be at least equal to the fair value of the common stock on the grant date.

A summary of option transactions under the Options Plan for Fiscal 2020 and Fiscal 2019 was as follows:

| | FISCAL YEAR | | | |
|---|---|---|---|---|
| | 2020 | | 2019 | |
| | Number of Options | Weighted-Average Exercise Price | Number of Options | Weighted-Average Exercise Price |
| Outstanding, beginning of period | 5,129,571 | $ 9.21 | 4,358,954 | $ 8.59 |
| Granted | 272,410 | $ 13.11 | 829,807 | $ 13.04 |
| Forfeited | (258,752) | $ 11.79 | (59,190) | $ 8.45 |
| Outstanding, end of period | 5,143,229 | $ 10.08 | 5,129,571 | $ 9.21 |
| Exercisable, end of period | 1,261,614 | $ 8.78 | 798,711 | $ 8.53 |

The fair value of the non-vested options at grant dates was as follows:

| | Number of Options | Grant Date Fair Value |
|---|---|---|
| Nonvested, December 30, 2018 | 3,984,303 | $ 1.84 |
| Granted | 829,807 | $ 1.33 |
| Vested | (429,979) | $ 1.86 |
| Forfeited | (53,271) | $ 1.68 |
| Nonvested, December 29, 2019 | 4,330,860 | $ 1.74 |
| Granted | 272,410 | $ 1.02 |
| Vested | (487,086) | $ 1.80 |
| Forfeited | (234,569) | $ 1.72 |
| Nonvested, December 27, 2020 | 3,881,615 | $ 1.68 |

The fair value of vested stock options was $0.9 million and $0.8 million during Fiscal 2020 and Fiscal 2019, respectively. Stock-based compensation expense was $0.8 million and $1.2 million during Fiscal 2020 and Fiscal 2019, respectively, which was included in General and administrative expenses.

As of December 27, 2020, the amount of stock-based compensation expense not yet recognized on non-vested time-based awards was approximately $0.8 million and will be recognized over a weighted-average period of approximately two years. As of December 27, 2020, the amount of stock-based compensation expense not yet recognized on non-vested performance-based awards was approximately $4.5 million and will be expensed upon the performance conditions becoming probable. The remaining contractual life for stock option awards granted was approximately 7 years at December 27, 2020.

The assumptions utilized to determine the fair value of stock options were as follows for the following periods:

| | FISCAL YEAR | |
|---|---|---|
| | 2020 | 2019 |
| Weighted average risk-free interest rate | 0.64% | 2.02% |
| Weighted average expected volatility | 41.18% | 34.13% |
| Expected term (years) | 4.5 | 4.5 |
| Expected dividend yield | — | — |

The risk-free interest rate is determined by reference to the U.S. Treasury yield curve in effect at the time of the grant of the award for time periods approximately equal to the expected term of the stock option award. The expected term of stock option awards has been determined based on data from publicly traded companies as the Company lacks company-specific historical or implied volatility information. Therefore, Management also estimates its expected volatility based on historical volatilities of a publicly traded set of peer companies in the restaurant industry and expects to continue to do so until such time as it has adequate historical data regarding the volatility of its own traded stock price. The expected dividend yield is based on the fact that the Company has never paid cash dividends and does not have intentions of paying dividends in the foreseeable future.

## 18. Commitments and Contingencies

*Purchase Commitments*

Effective January 1, 2016, Management entered into an agreement with a vendor to purchase product. The agreement will remain in effect through the later of (i) the purchase of 406,905 gallons of product or (ii) five years from the effective date. The remaining minimum purchase commitment as of December 27, 2020 was approximately $2.5 million.

The Company uses a limited number of suppliers and distributors for many of its ingredients. In Fiscal 2020 and Fiscal 2019, the Company purchased 100% of its pork from two suppliers, 100% of its eggs from two suppliers and 80% of its avocados from one supplier. These ingredients were purchased pursuant to purchase orders at prevailing market prices and were not limited by minimum purchase requirements. The Company also purchased 100% of its coffee from one supplier pursuant to a contract that includes quarterly minimum purchase commitments at prevailing market prices. There are no material financial penalties associated with these quarterly minimum purchase commitments.

In the normal course of business, the Company has other agreements with terms of one year or less, expiring at various dates through Fiscal 2021 whereby the Company is able to purchase ingredients at prevailing market prices. These obligations are generally short-term in nature and are recorded as liabilities when the related goods are received or services rendered. The Company also entered into other contracts with certain vendors to supply food, beverages, paper goods, and other supplies related to normal business operations, service contracts and technology. There are no material financial penalties associated with these commitments in the event of early termination.

*Legal Proceedings*

The Company is subject to legal proceedings, claims and liabilities that arise in the ordinary course of business. In the opinion of Management, the amount of the ultimate liability with respect to these matters was not material as of December 27, 2020. In the event any litigation losses become probable and estimable, the Company will recognize any anticipated losses.

Disputed claims involving former employees for which a $0.6 million liability was recorded in Fiscal 2019 was settled and paid in Fiscal 2020.

## 19. Net Loss Per Common Share

The following table sets forth the computations of basic and diluted net loss per common share attributable to First Watch Restaurant Group, Inc.:

| *(in thousands, except share and per share data)* | FISCAL YEAR 2020 | 2019 |
|---|---|---|
| Numerator: | | |
| Net loss attributable to First Watch Restaurant Group, Inc. | $ (49,681) | $ (45,439) |
| Denominator: | | |
| Weighted average common shares outstanding—basic and diluted | 45,013,784 | 45,013,784 |
| Net loss per common share attributable to First Watch Restaurant Group, Inc. -basic and diluted | $ (1.10) | $ (1.01) |

Diluted net loss per common share is calculated by adjusting the weighted average shares outstanding for the theoretical effect of potential common shares that would be issued for preferred stock and stock option awards outstanding and unvested as of December 27, 2020 and December 29, 2019 using the two-class method and treasury method, respectively. All preferred stock and stock option awards outstanding were excluded from the calculation of diluted loss per common share because of their anti-dilutive impact for Fiscal 2020. All stock option awards were excluded from the calculation of diluted loss per common share because of their anti-dilutive impact for Fiscal 2019. As a result, there was no difference between basic and diluted net loss per common share attributable to First Watch Restaurant Group, Inc. during Fiscal 2020 and Fiscal 2019.

## 20. Condensed Financial Information of Registrant (Parent Company Only)

**FIRST WATCH RESTAURANT GROUP, INC.**
**(PARENT COMPANY ONLY)**
**CONSOLIDATED BALANCE SHEETS**
*(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)*

| | DECEMBER 27, 2020 | DECEMBER 29, 2019 |
|---|---|---|
| **Assets:** | | |
| Investment in subsidiaries | $ 320,866 | $ 329,797 |
| **Equity:** | | |
| Preferred Stock; $0.01 par value; 266,667 shares authorized, issued and outstanding | $ 3 | $ — |
| Common stock; $0.01 par value; 300,000,000 shares authorized and 45,013,784 shares issued and outstanding at December 27, 2020; 300,000,000 shares authorized and 45,013,784 shares issued and outstanding at December 29, 2019 | 450 | 450 |
| Additional paid-in capital | 423,345 | 382,598 |
| Accumulated deficit | (102,932) | (53,251) |
| Total equity attributable to First Watch Restaurant Group, Inc. | $ 320,866 | $ 329,797 |

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**
*(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)*

| | FISCAL YEAR | |
|---|---|---|
| | 2020 | 2019 |
| **Equity in net loss of subsidiaries** | | |
| Net loss | $ (49,681) | $ (45,472) |
| Net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted | $ (1.10) | $ (1.01) |
| Weighted average number of common shares outstanding – basic and diluted | 45,013,784 | 45,013,784 |

Statements of cash flows have not been presented as First Watch Restaurant Group, Inc. did not have any cash as of, or for the fiscal years ended December 27, 2020 and December 29, 2019.

*Basis of Presentation*

The Company is a holding company without any operations of its own, (the "Parent Company"). Pursuant to the terms of the Credit Agreement discussed in Note 10, *Debt*, the Company and certain of its subsidiaries have restrictions on their ability to, among other things, incur additional indebtedness, pay dividends or make certain intercompany loans and advances. As a result of these restrictions, these parent company financial statements have been prepared in accordance with Rule 12-04 of Regulation S-X, as restricted net assets of the Company's subsidiaries (as defined in Rule 4-08(e)(3) of Regulation S-X) exceed 25% of the Company's consolidated net assets as of December 27, 2020 and December 29, 2019.

These condensed financial statements have been prepared on a "parent-only" basis. These condensed parent company financial statements have been prepared using the same accounting principles and policies described in the notes to the Company's consolidated financial statements, with the only exception being that the parent company accounts for its subsidiaries using the equity method. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted. The accompanying condensed financial information should be read in conjunction with the accompanying Company's consolidated financial statements and related notes thereto.

## 21. Subsequent Events

For its annual consolidated financial statements as of December 27, 2020 and for the year then ended, the Company evaluated subsequent events through April 23, 2021, the date on which the consolidated financial statements were issued, and, with respect to the stock split described below, through September 22, 2021.

*Stock Split*

On September 19, 2021, the Company's board of directors and its shareholders approved an amendment to the Company's Certificate of Incorporation, which the Company filed on September 20, 2021. Such amendment i) effected a 11.838-for-1 stock split of its issued and outstanding shares of common stock and a proportional adjustment to the existing conversion ratio of the Company's preferred stock and ii) authorized an increase to the number of shares of common stock of the Company to 300,000,000 common shares. The par value of each share of the Company's common share and preferred share was not adjusted in

connection with the aforementioned stock split. Accordingly, all share and per share amounts for all periods presented in the accompanying consolidated financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect this stock split, adjustment of the preferred stock conversion ratio and the increase in authorized shares.

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED BALANCE SHEETS**
*(IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)*
*(Unaudited)*

| | JUNE 27, 2021 | DECEMBER 27, 2020 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 48,033 | $ 38,846 |
| Restricted cash | 251 | 251 |
| Accounts receivable | 2,950 | 3,915 |
| Inventory | 3,246 | 2,915 |
| Prepaid expenses | 3,864 | 2,490 |
| Deferred offering costs | 1,049 | — |
| Other current assets | 968 | 621 |
| Total current assets | 60,361 | 49,038 |
| Goodwill | 345,219 | 345,219 |
| Intangible assets, net | 143,499 | 143,662 |
| Operating lease right-of-use assets | 319,124 | 307,558 |
| Property, fixtures and equipment, net of accumulated depreciation of $100,208 and $86,250, respectively | 164,181 | 160,744 |
| Other long-term assets | 1,311 | 1,291 |
| Total assets | $ 1,033,695 | $ 1,007,512 |
| **Liabilities and Equity** | | |
| Current liabilities: | | |
| Accounts payable | $ 6,367 | $ 4,220 |
| Accrued liabilities | 15,772 | 13,482 |
| Accrued compensation and deferred payroll taxes | 16,204 | 10,856 |
| Deferred revenues | 2,884 | 4,273 |
| Current portion of operating lease liabilities | 38,222 | 40,111 |
| Current portion of long-term debt | 3,619 | 3,590 |
| Total current liabilities | 83,068 | 76,532 |
| Operating lease liabilities | 321,514 | 307,802 |
| Long-term debt, net | 287,639 | 286,400 |
| Deferred income taxes | 12,346 | 10,313 |
| Deferred payroll taxes | 3,333 | 3,333 |
| Other long-term liabilities | 2,850 | 2,266 |
| Total liabilities | 710,750 | 686,646 |
| Commitments and contingencies (Note 10) | | |
| Equity: | | |
| Preferred stock; $0.01 par value; 266,667 shares authorized, issued and outstanding | 3 | 3 |
| Common stock; $0.01 par value; 300,000,000 shares authorized; 45,013,784 shares issued and outstanding | 450 | 450 |
| Additional paid-in capital | 423,661 | 423,345 |
| Accumulated deficit | (101,169) | (102,932) |
| Total equity | 322,945 | 320,866 |
| Total liabilities and equity | $ 1,033,695 | $ 1,007,512 |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)**
*(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)*
*(Unaudited)*

| | TWENTY-SIX WEEKS ENDED | |
|---|---|---|
| | JUNE 27, 2021 | JUNE 28, 2020 |
| **Revenues:** | | |
| Restaurant sales | $ 277,054 | $ 131,193 |
| Franchise revenues | 4,078 | 2,053 |
| Total revenues | 281,132 | 133,246 |
| **Operating costs and expenses:** | | |
| Restaurant operating expenses (exclusive of depreciation and amortization shown below): | | |
| Food and beverage costs | 60,512 | 30,987 |
| Labor and other related expenses | 85,999 | 50,012 |
| Other restaurant operating expenses | 46,815 | 23,282 |
| Occupancy expenses | 27,757 | 25,182 |
| General and administrative expenses | 27,341 | 22,278 |
| Depreciation and amortization | 15,762 | 15,028 |
| Impairments and loss on disposal of assets | 163 | 255 |
| Transaction expenses, net | 626 | 99 |
| Total operating costs and expenses | 264,975 | 167,123 |
| Income (Loss) from operations | 16,157 | (33,877) |
| Interest expense | (12,605) | (10,667) |
| Other income, net | 321 | 360 |
| Income (Loss) before income tax expense (benefit) | 3,873 | (44,184) |
| Income tax expense (benefit) | 2,110 | (12,762) |
| **Net income (loss) and total comprehensive income (loss)** | $ 1,763 | $ (31,422) |
| Net income (loss) per common share - basic | $ 0.04 | $ (0.70) |
| Net income (loss) per common share - diluted | $ 0.04 | $ (0.70) |
| Weighted average number of common shares outstanding - basic | 45,013,784 | 45,013,784 |
| Weighted average number of common shares outstanding - diluted | 45,560,575 | 45,013,784 |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED STATEMENTS OF EQUITY**
*(IN THOUSANDS, EXCEPT SHARE AMOUNTS)*
*(Unaudited)*

| | Preferred Stock | | Common Stock | | Additional Paid-in Capital | Accumulated Deficit | Total Equity |
|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | | | |
| **Balance at December 27, 2020** | 266,667 | $ 3 | 45,013,784 | $ 450 | $423,345 | $ (102,932) | $320,866 |
| Net income | — | — | — | — | — | 1,763 | 1,763 |
| Stock-based compensation | — | — | — | — | 316 | — | 316 |
| **Balance at June 27, 2021** | 266,667 | $ 3 | 45,013,784 | $ 450 | $423,661 | $ (101,169) | $322,945 |

| | Common Stock | | Additional Paid-in Capital | Accumulated Deficit | Total Equity |
|---|---|---|---|---|---|
| | Shares | Amount | | | |
| **Balance at December 29, 2019** | 45,013,784 | $ 450 | $382,598 | $ (53,251) | $329,797 |
| Net loss | — | — | — | (31,422) | (31,422) |
| Stock-based compensation | — | — | 379 | — | 379 |
| **Balance at June 28, 2020** | 45,013,784 | $ 450 | $382,977 | $ (84,673) | $298,754 |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
*(IN THOUSANDS)*
*(Unaudited)*

| | TWENTY-SIX WEEKS ENDED | |
|---|---|---|
| | JUNE 27, 2021 | JUNE 28, 2020 |
| **Cash flows from operating activities:** | | |
| Net income (loss) | $ 1,763 | $ (31,422) |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: | | |
| Depreciation and amortization | 15,762 | 15,028 |
| Amortization of debt discount and deferred issuance costs | 639 | 644 |
| Non-cash operating lease costs | 6,272 | 5,895 |
| Deferred income taxes | 2,033 | (12,859) |
| Impairments and loss on disposal of assets | 163 | 255 |
| Stock-based compensation | 316 | 379 |
| Changes in assets and liabilities: | | |
| Accounts receivable | 965 | 3,639 |
| Inventory | (332) | (14) |
| Prepaid expenses | (1,374) | 19 |
| Deferred offering costs | (1,049) | (696) |
| Other assets, current and long-term | (366) | (154) |
| Accounts payable | 2,147 | 2,304 |
| Accrued liabilities | 5,567 | (4,553) |
| Accrued compensation and deferred payroll taxes, current and long-term | 5,347 | (4,366) |
| Deferred revenues, current and long-term | (1,410) | (3,099) |
| Operating lease liabilities | (6,015) | 9,092 |
| Net cash provided by (used in) operating activities | 30,428 | (19,908) |
| **Cash flows from investing activities:** | | |
| Capital expenditures | (19,165) | (19,235) |
| Purchase of intangible assets | (359) | (117) |
| Net cash used in investing activities | (19,524) | (19,352) |
| **Cash flows from financing activities:** | | |
| Proceeds from issuance of long-term debt | — | 54,600 |
| Repayments of long-term debt | (1,473) | (2,474) |
| Proceeds from borrowings on revolving credit facility | — | 17,000 |
| Repayments of borrowings on revolving credit facility | — | (28,500) |
| Finance lease payments | (244) | (152) |
| Net cash (used in) provided by financing activities | (1,717) | 40,474 |
| Net increase in cash and cash equivalents and restricted cash | 9,187 | 1,214 |
| **Cash and cash equivalents and restricted cash:** | | |
| Beginning of period | 39,097 | 11,121 |
| End of period | $ 48,284 | $ 12,335 |
| **Supplemental cash flow information:** | | |
| Cash paid for interest | $ 9,866 | $ 9,572 |
| Cash paid for income taxes, net of refunds | $ 31 | $ 31 |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS - *continued***
*(IN THOUSANDS)*
*(Unaudited)*

| | TWENTY-SIX WEEKS ENDED | |
|---|---|---|
| | JUNE 27, 2021 | JUNE 28, 2020 |
| **Supplemental disclosures of non-cash investing and financing activities:** | | |
| Interest converted to long-term debt | $ 2,198 | $ — |
| Leased assets obtained in exchange for new operating lease liabilities | $ 19,355 | $ 12,075 |
| Leased assets obtained in exchange for new finance lease liabilities | $ 143 | $ 152 |
| Remeasurements of operating lease assets and lease liabilities | $ (1,476) | $ (3,453) |
| Remeasurements of finance lease assets and lease liabilities | $ 7 | $ 164 |
| Change in liabilities from acquisition of property, fixtures and equipment | $ (475) | $ (3,502) |

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

**FIRST WATCH RESTAURANT GROUP, INC.**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

## 1. Nature of Business and Organization

First Watch Restaurant Group, Inc. (collectively with its wholly-owned subsidiaries, "the Company" or "Management") operates and franchises restaurants in 28 states operating under the "First Watch" trade name which are focused on made-to-order breakfast, brunch and lunch. As of June 27, 2021, the Company operated 335 company-owned restaurants and 88 franchised restaurants. As of December 27, 2020, the Company operated 321 company-owned restaurants and 88 franchised restaurants.

## 2. Summary of Significant Accounting Policies

### Basis of Presentation

The accompanying interim unaudited consolidated financial statements have been prepared by the Company in accordance with generally accepted accounting principles in the United States of America ("GAAP") and pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). Accordingly, they do not include all the information and notes required by GAAP for complete financial statements. We have prepared the interim unaudited consolidated financial statements on the same basis as the audited financial statements and have included all adjustments necessary for the fair statement and presentation of the consolidated financial statements for the interim periods presented. The results of operations for interim periods are not necessarily indicative of the results to be expected for other interim periods or the entire fiscal year. These interim unaudited consolidated financial statements should be read in conjunction with the audited consolidated financial statements and the related notes thereto included elsewhere in this prospectus.

### Use of Estimates

The preparation of the consolidated financial statements in accordance with GAAP requires Management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from the estimates and such differences could be material.

### Deferred Offering Costs

The Company capitalizes certain legal, professional accounting, and other third-party fees that are directly associated with in-process equity financings as deferred offering costs until such financings are consummated. After consummation of the equity financing, these costs are recorded in equity as a reduction of additional paid-in capital generated as a result of the offering. As of June 27, 2021, the Company had recorded $1.0 million of deferred offering costs related to its planned initial public offering of common stock. There were no deferred offering costs as of December 27, 2020.

### Newly Issued Accounting Standards Not Yet Adopted

In March 2020, the FASB issued ASU 2020-04, "*Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*," ("ASU 2020-04"). The new guidance provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships and other transactions affected by reference rate reform if certain criteria are met. ASU 2020-04 was effective beginning March 12, 2020 and may be applied prospectively to contract modifications made and hedging relationships entered into or evaluated on or before December 31, 2022. Management is currently evaluating its contracts and the optional expedients provided by the new standard.

## 3. Revenues

The following tables include a detail of contract liabilities with customers:

| *(in thousands)* | JUNE 27, 2021 | DECEMBER 27, 2020 |
|---|---|---|
| Deferred revenues: | | |
| Deferred gift card revenue | $ 2,657 | $ 4,024 |
| Deferred franchise fee revenue - current | 227 | 249 |
| Total current deferred revenues | $ 2,884 | $ 4,273 |
| Other long-term liabilities: | | |
| Deferred franchise fee revenue - non-current | $ 2,005 | $ 2,025 |

Changes in deferred gift card contract liabilities were as follows:

| | TWENTY-SIX WEEKS ENDED | |
|---|---|---|
| *(in thousands)* | JUNE 27, 2021 | JUNE 28, 2020 |
| Deferred gift card revenue: | | |
| Balance, beginning of period | $ 4,024 | $ 6,902 |
| Gift card sales | 3,085 | 1,788 |
| Gift card redemptions | (4,060) | (4,018) |
| Gift card breakage | (392) | (679) |
| Balance, end of period | $ 2,657 | $ 3,993 |

Changes in deferred franchise fee contract liabilities were as follows:

| | TWENTY-SIX WEEKS ENDED | |
|---|---|---|
| *(in thousands)* | JUNE 27, 2021 | JUNE 28, 2020 |
| Deferred franchise fee revenue: | | |
| Balance, beginning of period | $ 2,274 | $ 2,456 |
| Cash received | 82 | 38 |
| Franchise revenues recognized | (124) | (228) |
| Balance, end of period | $ 2,232 | $ 2,266 |

Revenues recognized disaggregated by type were as follows:

| *(in thousands)* | TWENTY-SIX WEEKS ENDED JUNE 27, 2021 | JUNE 28, 2020 |
|---|---|---|
| Restaurant sales: | | |
| Dine-in sales | $ 203,836 | $ 113,961 |
| Third-party delivery sales | 37,352 | 4,806 |
| Take-out sales | 35,866 | 12,426 |
| Total restaurant sales | $ 277,054 | $ 131,193 |
| Franchise revenues: | | |
| Royalty and system fund contributions | $ 3,954 | $ 1,825 |
| Initial fees | 124 | 228 |
| Total franchise revenues | $ 4,078 | $ 2,053 |
| Total revenues | $ 281,132 | $ 133,246 |

## 4. COVID-19 Charges

Following is a summary of the charges recorded in connection with the COVID-19 pandemic during the twenty-six weeks ended June 27, 2021 and June 28, 2020:

| *(in thousands)* | Consolidated Statements of Operations and Comprehensive Income (Loss) | TWENTY-SIX WEEKS ENDED JUNE 27, 2021 | JUNE 28, 2020 |
|---|---|---|---|
| Inventory obsolescence and spoilage | Food and beverage costs | $ — | $ 400 |
| Compensation for employees upon furlough and return from furlough | Labor and other related expenses | 3 | 1,047 |
| Health insurance premiums paid for furloughed employees, net of employee retention credits | Labor and other related expenses | — | 784 |
| Other expenses | Other restaurant operating expenses | 16 | 479 |
| Compensation for employees upon furlough and return from furlough | General and administrative expenses | 128 | 333 |
| Other expenses | General and administrative expenses | 64 | 839 |
| Total COVID-19 charges | | $ 211 | $ 3,882 |

## 5. Accounts Receivable

Accounts receivable consisted of the following:

| *(in thousands)* | JUNE 27, 2021 | DECEMBER 27, 2020 |
|---|---|---|
| Receivables from franchisees | $ 902 | $ 591 |
| Receivables from third-party delivery providers | 899 | 1,742 |
| Receivables related to gift card sales | 514 | 1,028 |
| Rebate receivables | 591 | 514 |
| Other receivables | 44 | 40 |
| Total accounts receivable | $ 2,950 | $ 3,915 |

## 6. Accrued Liabilities

Accrued liabilities consisted of the following:

| *(in thousands)* | JUNE 27, 2021 | DECEMBER 27, 2020 |
|---|---|---|
| Construction liabilities | $ 3,826 | $ 4,301 |
| Sales tax | 3,427 | 2,159 |
| Self-insurance and general liability reserves | 1,282 | 1,297 |
| Utilities | 1,058 | 1,016 |
| Legal services and contingencies | 1,058 | 126 |
| Credit card fees | 899 | 520 |
| Property tax | 880 | 424 |
| Common area maintenance | 425 | 700 |
| Contingent rent | 402 | 234 |
| Accounting and consulting | 389 | 251 |
| Other | 2,126 | 2,454 |
| Total accrued liabilities | $ 15,772 | $ 13,482 |

## 7. Debt

Long-term debt, net consisted of the following:

| *(in thousands)* | JUNE 27, 2021 Balance | JUNE 27, 2021 Interest rate (1) | DECEMBER 27, 2020 Balance | DECEMBER 27, 2020 Interest rate (1) |
|---|---|---|---|---|
| Senior Credit Facilities: | | | | |
| Initial Term Loan | | | | |
| Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity | $150,585 | 8.00% | $150,214 | 8.00% |
| Initial Delayed Draw Term Loan | | | | |
| Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity | 49,116 | 8.00% | 48,992 | 8.00% |
| First Amendment Delayed Draw Term Facility | | | | |
| Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity | 49,585 | 8.00% | 49,458 | 8.00% |
| Second Amendment Delayed Draw Term Facility | | | | |
| Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity | 39,471 | 8.00% | 39,369 | 8.00% |
| Revolving credit facility | — | | — | |
| Finance lease liabilities | 2,205 | | 2,300 | |
| Financing obligations | 3,050 | | 3,050 | |
| Less: Unamortized debt discount and deferred issuance costs | (2,754) | | (3,393) | |
| Total debt, net | 291,258 | | 289,990 | |
| Less: Current portion of long-term debt | (3,619) | | (3,590) | |
| Long-term debt, net | $287,639 | | $286,400 | |

(1) *Borrowings under the Senior Credit Facilities bear interest, at the Company's option, at a rate per annum equal to either (a) (i) the greater of an adjusted London Interbank Offered Rate (the "Adjusted Eurocurrency Rate") and 1.00%, plus (ii) the applicable Adjusted Eurocurrency Rate spread, or (b) (i) the alternate base rate ("ABR") plus (ii) the applicable ABR spread. ABR is a floating rate per annum equal to the highest of (i) the federal funds effective rate plus 0.50%, (ii) to the extent ascertainable, the London interbank offered rate for a 1-month interest period on such day plus 1.00%, (iii) the rate of interest last quoted by The Wall Street Journal as the "prime rate" in the U.S. and (iv)1.00%. Borrowings under the Senior Credit Facilities also bear an additional interest pursuant to the Fourth Amendment that is paid in kind. The applicable rate for the additional interest ranges from 0.25% to 1.5% of the outstanding balances, depending on the leverage ratio.*

The estimated fair value of the outstanding debt, excluding finance lease obligations and financing obligations, is classified as Level 3 in the fair value hierarchy and was estimated using discounted cash flow models using market yield and yield volatility. The estimated fair value of the outstanding debt, excluding finance lease liabilities and financing obligations, is as follows:

| *(in thousands)* | JUNE 27, 2021 |
|---|---|
| Initial term loan | $ 150,604 |
| Initial delayed draw term loan | 49,122 |
| First amendment delayed draw term facility | 49,591 |
| Second amendment delayed draw term facility | 39,476 |
| Total | $ 288,793 |

The Company was in compliance with all financial covenants as of June 27, 2021 and December 27, 2020.

## 8. Leases

The following table includes a detail of lease assets and liabilities:

| *(in thousands)* | Consolidated Balance Sheet Classification | JUNE 27, 2021 | DECEMBER 27, 2020 |
|---|---|---|---|
| Operating lease right-of-use assets | Operating lease right-of-use assets | $319,124 | $ 307,558 |
| Finance lease assets | Property, fixtures and equipment, net | 2,096 | 2,212 |
| Total lease assets | | $321,220 | $ 309,770 |
| Operating lease liabilities (1) - current | Current portion of operating lease liabilities | $ 38,222 | $ 40,111 |
| Operating lease liabilities - non-current | Operating lease liabilities | 321,514 | 307,802 |
| Finance lease liabilities - current | Current portion of long-term debt | 674 | 645 |
| Franchise lease liabilities - non-current | Long-term debt, net | 1,531 | 1,655 |
| Total lease liabilities | | $361,941 | $ 350,213 |

(1) *Excludes all variable lease expense*.

The components of lease expense were as follows:

| *(in thousands)* | Consolidated Statements of Operations and Comprehensive Income (Loss) Classification | TWENTY-SIX WEEKS ENDED JUNE 27, 2021 | JUNE 28, 2020 |
|---|---|---|---|
| Operating lease expense | Occupancy expenses<br>General and administrative expenses<br>Other restaurant operating expenses | $21,886 | $20,639 |
| Variable lease expense | Occupancy expenses<br>General and administrative expenses<br>Food and beverage costs | 6,092 | 4,577 |
| Finance lease expense: | | | |
| Amortization of leased assets | Depreciation and amortization | 266 | 248 |
| Interest on lease liabilities | Interest expense | 90 | 89 |
| Total lease expense (1) | | $28,334 | $25,553 |

(1) *Includes contingent rent of $0.4 million during the twenty-six weeks ended June 27, 2021. There was no contingent rent during the twenty-six weeks ended June 28, 2020.*

Supplemental cash flow information related to leases was as follows:

| *(in thousands)* | TWENTY-SIX WEEKS ENDED JUNE 27, 2021 | JUNE 28, 2020 |
|---|---|---|
| Cash paid for amounts included in the measurement of lease liabilities: | | |
| Operating cash flows - operating leases | $ 21,617 | $ 5,685 |
| Operating cash flows - finance leases | $ 90 | $ 89 |
| Financing cash flows - finance leases | $ 244 | $ 152 |

Supplemental information related to leases was as follows:

| | TWENTY-SIX WEEKS ENDED JUNE 27, 2021 | JUNE 28, 2020 |
|---|---|---|
| Weighted-average remaining lease term (in years) | | |
| Operating leases | 15.8 | 16.7 |
| Finance leases | 3.9 | 4.9 |
| Weighted-average discount rate (1) | | |
| Operating leases | 9.1% | 9.1% |
| Finance leases | 8.0% | 8.0% |

(1) *Based on the Company's incremental borrowing rate.*

As of June 27, 2021, future minimum lease payments for finance and operating leases consisted of the following:

| *(in thousands)* | Operating Leases | Finance Leases |
|---|---|---|
| Fiscal year | | |
| 2021 | $ 20,012 | $ 371 |
| 2022 | 40,868 | 654 |
| 2023 | 43,076 | 654 |
| 2024 | 43,615 | 654 |
| 2025 | 43,693 | 210 |
| Thereafter | 517,747 | 28 |
| Total future minimum lease payments (1) | 709,011 | 2,571 |
| Less: imputed interest | (349,275) | (366) |
| Total present value of lease liabilities | $ 359,736 | $ 2,205 |

(1) *Excludes approximately $32.5 million of executed operating leases that have not commenced as of June 27, 2021.*

## 9. Income Taxes

| | TWENTY-SIX WEEKS ENDED | |
|---|---|---|
| *(in thousands)* | JUNE 27, 2021 | JUNE 28, 2020 |
| Income (Loss) before income tax expense (benefit) | $ 3,873 | $ (44,184) |
| Income tax expense (benefit) | $ 2,110 | $ (12,762) |
| Effective tax rate | 54.5% | 28.9% |

The effective income tax rate for the twenty-six weeks ended June 27, 2021 was 54.5% as compared to 28.9% for the twenty-six weeks ended June 28, 2020. The change in the effective income tax rates was primarily due to the change in the valuation allowance for federal and state deferred tax assets, the benefit of tax credits for FICA taxes on certain employees' tips and the forecasted 2021 pre-tax book income as compared to forecasted 2020 pre-tax book loss.

The Company has a blended federal and state statutory rate of approximately 25.0%. The effective income tax rate for the twenty-six weeks ended June 27, 2021 and June 28, 2020 were different from the blended federal and state statutory rate primarily due to the change in the valuation allowance for federal and state deferred tax assets and the benefit of tax credits for FICA taxes on certain employees' tips.

The Company is required to pay the previous stockholders an amount equal to tax savings to the extent federal and state loss carryforwards and general business credits that had been accumulated from operations prior to August 2017 are utilized to reduce tax liabilities. This requirement lapses with respect to any tax year, or portion thereof, beginning after December 31, 2024, or if a change in control event occurs. A contingent consideration liability of $1.2 million was initially recognized, of which approximately $0.2 million was paid in Fiscal 2019. As a result of revaluing the contingent consideration liability using actual results and forecasted projections, an additional $0.6 million for expected payments to be made to the previous stockholders was recognized within Transaction expenses, net on the consolidated statements of operations and comprehensive income (loss) during the twenty-six weeks ended June 27, 2021. As of June 27, 2021 the contingent consideration liability was $0.9 million, of which $0.1 million was recorded within Accrued liabilities and $0.8 million was recorded within Other long-term liabilities on the consolidated balance sheets. As of December 27, 2020, the

contingent consideration liability was $0.3 million, of which $0.1 million was recorded within Accrued liabilities and $0.2 million was recorded within Other long-term liabilities on the consolidated balance sheets.

## 10. Commitments and Contingencies

*Legal Proceedings*

The Company is subject to legal proceedings, claims and liabilities that arise in the ordinary course of business. In the event any litigation losses become probable and estimable, the Company will recognize any anticipated losses. In the opinion of Management, the amount of the liability with respect to these matters was not material as of June 27, 2021.

## 11. Net Income (Loss) Per Common Share

The following table sets forth the computations of basic and diluted net income (loss) per common share:

| | TWENTY-SIX WEEKS ENDED | |
|---|---|---|
| *(in thousands, except share and per share data)* | JUNE 27, 2021 | JUNE 28, 2020 |
| Numerator: | | |
| Net income (loss) | $ 1,763 | $ (31,422) |
| Denominator: | | |
| Weighted average common shares outstanding - basic | 45,013,784 | 45,013,784 |
| Weighted average common shares outstanding - diluted | 45,560,575 | 45,013,784 |
| Net income (loss) per common share - basic | $ 0.04 | $ (0.70) |
| Net income (loss) per common share - diluted | $ 0.04 | $ (0.70) |
| Time-based option awards outstanding not included in diluted net income (loss) per common share as their effect is anti-dilutive | 630,195 | 2,604,325 |

Diluted net income (loss) per common share is calculated by adjusting the weighted average shares outstanding for the theoretical effect of potential common shares that would be issued for preferred stock and stock option awards outstanding and unvested as of the respective periods using the two-class method and treasury method, respectively.

All performance-based option awards have been excluded from the diluted net income (loss) per common share calculation for all periods presented as the performance condition was not considered probable of being met.

During the twenty-six weeks ended June 28, 2020, all stock option awards outstanding were excluded from the calculation of diluted net loss per common share because of their anti-dilutive impact.

## 12. Subsequent Events

The Company has evaluated subsequent events through August 19, 2021, the date on which the interim unaudited consolidated financial statements were issued, and, with respect to the stock split described below, through September 22, 2021.

*Stock Split*

On September 19, 2021, the Company’s board of directors and its shareholders approved an amendment to the Company’s Certificate of Incorporation, which the Company filed on September 20, 2021. Such amendment i) effected a 11.838-for-1 stock split

of its issued and outstanding shares of common stock and a proportional adjustment to the existing conversion ratio of the Company's preferred stock and ii) authorized an increase to the number of shares of common stock of the Company to 300,000,000 common shares. The par value of each share of the Company's common share and preferred share was not adjusted in connection with the aforementioned stock split. Accordingly, all share and per share amounts for all periods presented in the accompanying consolidated financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect this stock split, adjustment of the preferred stock conversion ratio and the increase in authorized shares.

*Modification of Stock Based Awards*

On August 31, 2021, the Company's board of directors amended the 2017 Omnibus Equity Incentive Plan such that the performance-based options that convert into time-based options upon an initial public offering no longer vest over a period of three years, but instead shall vest one-third (1/3rd) on each of the first two anniversaries of an initial public offering and one-third (1/3rd) on the 273rd day following the second anniversary of an initial public offering. This was accounted for as a modification for accounting purposes, resulting in a new fair value for all the performance-based options as of the modification date. As of the modification date, the unrecognized compensation expense of all outstanding performance-based options was $15.6 million.

On September 19, 2021, the Company modified performance-based awards that contained a market condition granted under the 2017 Omnibus Equity Incentive Plan, such that the vesting terms for one such tranche of its performance-based option awards that contain a market condition were amended to waive the market condition. Accordingly, upon an initial public offering, such tranche shall convert into time-based option awards and shall vest one-third (1/3rd) on each of the first two anniversaries of an initial public offering and one-third (1/3rd) on the 273rd day following the second anniversary of an initial public offering. This was accounted for as a modification for accounting purposes resulting in a new fair value for such tranche as of the modification date. As of the modification date, the unrecognized compensation expense of the outstanding tranche was approximately $10.4 million.

On September 19, 2021, the Company modified the terms of its performance-based option awards granted under the 2017 Omnibus Equity Incentive Plan to its Chairman Emeritus. The modification accelerated the vesting period of the performance-based option awards that convert into time-based option awards upon an initial public offering such that they no longer vest one-third (1/3rd) on each of the first two anniversaries of an initial public offering and one-third (1/3rd) on the 273rd day following the second anniversary of an initial public offering, but instead shall vest on August 1, 2022. Additionally, the exercise period of his time-based and performance-based vested awards was modified such that any vested option may be exercised at any time prior to the 10th anniversary of the original grant date. These actions were accounted for as modifications for accounting purposes resulting in an increase to the fair value of his awards of $0.3 million.

After consideration of all of the above modifications to the performance-based awards, the unrecognized compensation expense of all outstanding performance-based options was $20.9 million.

*2021 Equity Incentive Plan*

On September 19, 2021, the Company's board of directors adopted, and on September 19, 2021 its stockholders approved, the First Watch Restaurant Group, Inc. 2021 Equity Incentive Plan (the "2021 Plan"), which will become effective immediately prior to the effectiveness of the registration statement for the Company's initial public offering. The 2021 Plan provides for the grant of incentive stock options,

nonqualified stock options, stock appreciation rights, restricted stock awards, restricted stock units, and stock-based awards. The number of shares of common stock to be reserved for issuance under the 2021 Plan is equal to 7% of the total number of shares of common stock issued and outstanding as of the closing of the Company's initial public offering, which is 4,034,072 common shares ("Share Reserve"). The number of shares of common stock that may be issued under the 2021 Plan will automatically increase on the first day of each fiscal year, commencing on January 1, 2023 and continuing for each fiscal year until, and including, the fiscal year ending on (and including) January 1, 2032, equal to the least of (i) 2% of the total number of shares of common stock actually issued and outstanding on the last day of the preceding fiscal year, (ii) a number of shares of common stock determined by the board of directors; and (iii) the number of shares of common stock equal to the Share Reserve. If any award granted under the 2021 Plan is cancelled, expired, forfeited, or surrendered without consideration or otherwise terminated without delivery of the shares to the participant, then such unissued shares will be returned to the 2021 Plan and be available for future awards under the 2021 Plan. Shares that are withheld from any award in payment of the exercise, base or purchase price or taxes related to such an award, not issued or delivered as a result of the net settlement of any award, or repurchased by the Company on the open market with the proceeds of a stock option will be deemed to have been delivered under the 2021 Plan and will not be returned to the 2021 Plan nor be available for future awards under the 2021 Plan.

**9,459,000 Shares**


## Common Stock

**Prospectus**

**BofA Securities** **Goldman Sachs & Co. LLC** **Jefferies**

**Barclays** **Citigroup** **Piper Sandler** **Cowen** **Guggenheim Securities** **Stifel**

**Telsey Advisory Group**

**, 2021**

**Until , 2021 (25 days after the date of this prospectus), all dealers that buy, sell or trade in shares of these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.**

## PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

### Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all costs and expenses, other than the underwriting discount, paid or payable by us in connection with the sale of the common stock being registered. All amounts shown are estimates except for the SEC registration fee, the FINRA filing fee and the listing fee for Nasdaq.

| | Amount Paid or to be Paid |
|---|---|
| SEC registration fee | $ 23,736 |
| FINRA filing fee | 33,134 |
| Stock exchange listing fee | 250,000 |
| Blue sky qualification fees and expenses | 5,000 |
| Printing and engraving expenses | 575,000 |
| Legal fees and expenses | 2,400,000 |
| Accounting fees and expenses | 1,260,000 |
| Transfer agent and registrar fees and expenses | 15,500 |
| Miscellaneous expenses | 437,630 |
| Total | $ 5,000,000 |

### Item 14. Indemnification of Officers and Directors.

The Registrant is governed by the DGCL. Section 145 of the DGCL provides that a corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was or is an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the corporation's best interest and, for criminal proceedings, had no reasonable cause to believe that such person's conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the same conditions, except that such indemnification is limited to expenses (including attorneys' fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys' fees) which such officer or director actually and reasonably incurred in connection therewith.

The Registrant's amended and restated bylaws will authorize the indemnification of its officers and directors, consistent with Section 145 of the DGCL, as amended. The Registrant intends to enter into indemnification agreements with each of its directors and executive officers. These agreements, among other things, will require the Registrant to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of the Registrant, arising out of the person's services as a director or executive officer.

Reference is made to Section 102(b)(7) of the DGCL, which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of

the director's fiduciary duty, except (i) for any breach of the director'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) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends of unlawful stock purchase or redemptions or (iv) for any transaction from which a director derived an improper personal benefit.

The Registrant expects to maintain standard policies of insurance that provide coverage (i) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (ii) to the Registrant with respect to indemnification payments that it may make to such directors and officers.

The proposed form of Underwriting Agreement to be filed as Exhibit 1.1 to this Registration Statement provides for indemnification to the Registrant's directors and officers by the underwriters against certain liabilities.

## Item 15. Recent Sales of Unregistered Securities

The following sets forth information regarding all unregistered securities sold by the Registrant in transactions that were exempt from the requirements of the Securities Act in the last three years and does not give effect to a 11.838-for-1 stock split of our common stock:

- In July 2018, the Registrant granted options to three employees to purchase an aggregate of 41,000 shares of its common stock at an exercise price of $100 per share.
- In October 2018, the Registrant granted options to 11 employees to purchase an aggregate of 15,719 shares of its common stock at an exercise price of $140 per share.
- In April 2019, the Registrant granted options to 10 employees to purchase an aggregate of 39,670 shares of its common stock at an exercise price of $150 per share.
- From July 2019 through April 2020, the Registrant granted options to seven employees and directors to purchase an aggregate of 42,107 shares of its common stock at an exercise price of $160 per share.
- From September 2020 through February 2021, the Registrant granted options to seven employees and directors to purchase an aggregate of 23,834 shares of its common stock at an exercise price of $150 per share.
- On August 14, 2020, the Registrant sold 258,745.8805 shares of preferred stock to AI Fresh Holdings Limited Partnership for an aggregate purchase price of $38,811,882.08, at a price of $150 per share.
- On September 24, 2020, the Registrant sold 7,920.7861 shares of preferred stock to AI Fresh Holdings Limited Partnership for an aggregate purchase price of $1,188,117.92, at a price of $150 per share.

The offers, sales and issuances of the preferred stock listed above were exempt from registration under the Securities Act under Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder as transactions by an issuer not involving a public offering. The shares of common stock in all of the transactions listed above were issued or will be issued in reliance upon Section 4(2) of the Securities Act or Rule 701 promulgated under Section 3(b) of the Securities Act as the sale of such securities did not or will not involve a public offering. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. All recipients had adequate access, through their relationships with the Registrant, to information about the Registrant.

**Item 16. Exhibits and Financial Statement Schedules**

**(a) *Exhibits:***

| Exhibit No. | Description |
|---|---|
| 1.1 | Form of Underwriting Agreement. |
| 3.1 | Form of Amended and Restated Certificate of Incorporation of First Watch Restaurant Group, Inc. to be in effect prior to the consummation of the offering made under this Registration Statement. |
| 3.2 | Form of Amended and Restated Bylaws of First Watch Restaurant Group, Inc. to be in effect prior to the consummation of the offering made under this Registration Statement. |
| 3.3** | Certificate of Incorporation of First Watch Restaurant Group, Inc., as currently in effect. |
| 3.4 | Certificate of Amendment to Amended and Restated Certificate of Incorporation of First Watch Restaurant Group, Inc., as currently in effect. |
| 3.5 | Bylaws of First Watch Restaurant Group, Inc., as currently in effect. |
| 4.1** | Form of Certificate of Common Stock. |
| 4.2 | Form of Registration Rights Agreement. |
| 5.1** | Opinion of Weil, Gotshal & Manges LLP. |
| 10.1(a)** | Credit Agreement, dated as of August 21, 2017, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as Administrative Agent. |
| 10.1(b)** | First Amendment to Credit Agreement, dated as of February 28, 2019, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as Administrative Agent. |
| 10.1(c)** | Second Amendment to Credit Agreement, dated as of December 20, 2019, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as Administrative Agent. |
| 10.1(d)** | Third Amendment to Credit Agreement, dated as of April 27, 2020, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as Administrative Agent. |
| 10.1(e)** | Fourth Amendment to Credit Agreement, dated as of August 14, 2020, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as Administrative Agent. |
| 10.2** | Employment Agreement, dated August 21, 2017, by and between First Watch Restaurants, Inc. and Christopher A. Tomasso. |
| 10.3** | 2017 AI Fresh Super Holdco, Inc. Equity Incentive Plan, dated as of August 31, 2017. |
| 10.4** | Employment Agreement, dated August 21, 2017, by and between First Watch Restaurants, Inc. and Laura Sorensen. |
| 10.5** | Employment Agreement, dated August 21, 2017, by and between First Watch Restaurants, Inc. and Eric Hartman. |
| 10.6 | Form of First Watch Restaurant Group, Inc. 2021 Equity Incentive Plan. |
| 10.7** | Form of Director Indemnification Agreement for First Watch Restaurant Group, Inc. |
| 10.8** | Letter Agreement, dated February 1, 2021, by and between First Watch Restaurants, Inc. and Kenneth L. Pendery, Jr. |
| 21.1** | List of subsidiaries. |
| 23.1 | Consent of PricewaterhouseCoopers LLP. |
| 23.2** | Consent of Weil, Gotshal & Manges LLP (included in Exhibit 5.1). |
| 24.1** | Power of Attorney (included on signature page). |

** Previously filed.

**Item 17. Undertakings**

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

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

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Bradenton, State of Florida, on September 22, 2021.

**FIRST WATCH RESTAURANT GROUP, INC.**

By: /s/ Christopher A. Tomasso
Name: Christopher A. Tomasso
Title: President, Chief Executive Officer and Director

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on September 22, 2021.

| Signature | Title |
|---|---|
| /s/ Christopher A. Tomasso<br>Christopher A. Tomasso | President, Chief Executive Officer and Director (Principal Executive Officer) |
| *<br>Mel Hope | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) |
| *<br>Jay Wolszczak | General Counsel and Secretary |
| *<br>Kenneth L. Pendery, Jr. | Chairman Emeritus |
| *<br>Ralph Alvarez | Director and Chairman of the Board |
| *<br>Julie M.B. Bradley | Director |
| *<br>Tricia Glynn | Director |
| *<br>William Kussell | Director |
| *<br>Lisa Price | Director |
| *<br>Michael White | Director |

*By: /s/ Christopher A. Tomasso
Name: Christopher A. Tomasso
Title: Attorney-in-fact

**Exhibit 1.1**

FIRST WATCH RESTAURANT GROUP, INC.

(a Delaware corporation)

9,459,000 Shares of Common Stock

UNDERWRITING AGREEMENT

Dated: September [ ● ], 2021

FIRST WATCH RESTAURANT GROUP, INC.

(a Delaware corporation)

9,459,000 Shares of Common Stock

**UNDERWRITING AGREEMENT**

September [•], 2021

BofA Securities, Inc.
Goldman Sachs & Co. LLC
Jefferies LLC

as Representatives of the several Underwriters

c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

c/o Jefferies LLC
4201 Congress Street, Suite 350
Charlotte, North Carolina 28209

Ladies and Gentlemen:

First Watch Restaurant Group, Inc., a Delaware corporation (the "Company"), confirms its agreement with BofA Securities, Inc. ("BofA"), Goldman Sachs & Co. LLC ("Goldman Sachs"), Jefferies LLC ("Jefferies") and each of the other Underwriters named in Schedule A hereto (collectively, the "Underwriters," which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom BofA, Goldman Sachs and Jefferies are acting as representatives (in such capacity, the "Representatives"), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of shares of Common Stock, par value $0.01 per share, of the Company ("Common Stock") set forth in Schedule A hereto and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of 1,418,850 additional shares of Common Stock. The aforesaid 9,459,000 shares of Common Stock (the "Initial Securities") to be purchased by the Underwriters and all or any part of the 1,418,850 shares of Common Stock subject to the option described in Section 2(b) hereof (the "Option Securities") are herein called, collectively, the "Securities."

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-1 (No. 333-259360), including the related preliminary prospectus or prospectuses, covering the registration of the sale of the Securities under the Securities Act of 1933, as amended (the "1933 Act"). Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430A ("Rule 430A") of the rules and regulations of the Commission under the 1933 Act (the "1933 Act Regulations") and Rule 424(b) ("Rule 424(b)") of the 1933 Act Regulations. The information included in such prospectus that was omitted from such registration statement at the time it became effective but that is deemed to be part of such registration statement at the time it became effective pursuant to Rule 430A(b) is herein called the "Rule 430A Information." Such registration statement, including the amendments thereto, the exhibits thereto and any schedules thereto, at the time it became effective, and including the Rule 430A Information, is herein called the "Registration Statement." Any registration statement filed pursuant to Rule 462(b) of the 1933 Act Regulations is herein called the "Rule 462(b) Registration Statement" and, after such filing, the term "Registration Statement" shall include the Rule 462(b) Registration Statement. Each prospectus used prior to the effectiveness of the Registration Statement, and each prospectus that omitted the Rule 430A Information that was used after such effectiveness and prior to the execution and delivery of this Agreement, is herein called a "preliminary prospectus." The final prospectus, in the form first furnished to the Underwriters for use in connection with the offering of the Securities, is herein called the "Prospectus." For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system ("EDGAR").

As used in this Agreement:

"Applicable Time" means [•], New York City time, on September [•], 2021 or such other time as agreed by the Company and the Representatives.

"General Disclosure Package" means any Issuer General Use Free Writing Prospectuses issued at or prior to the Applicable Time, the most recent preliminary prospectus that is distributed to investors prior to the Applicable Time and the information included on Schedule B-1 hereto, all considered together.

"Issuer Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 of the 1933 Act Regulations ("Rule 433"), including without limitation any "free writing prospectus" (as defined in Rule 405 of the 1933 Act Regulations ("Rule 405")) relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a "road show that is a written communication" within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

"Issuer General Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors (other than a "*bona fide* electronic road show," as defined in Rule 433 (the "Bona Fide Electronic Road Show")), as evidenced by its being specified in Schedule B-2 hereto.

"Issuer Limited Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

"Testing-the-Waters Communication" means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the 1933 Act or Rule 163B under the 1933 Act.

"Written Testing-the-Waters Communication" means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405.

SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company*. The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), and agrees with each Underwriter, as follows:

(i) Registration Statement and Prospectuses. The Registration Statement has become effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company's knowledge, contemplated. The Company has complied with each request (if any) from the Commission for additional information.

Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, the Applicable Time, the Closing Time and any Date of Delivery complied and will comply in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus, the Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, and, in each case, at the Applicable Time, the Closing Time and any Date of Delivery complied and will comply in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus delivered to the Underwriters for use in connection with this offering and the Prospectus was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(ii) Accurate Disclosure. Neither the Registration Statement nor any amendment thereto, at its effective time, on the date hereof, at the Closing Time or at any Date of Delivery, contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. At the Applicable Time and any Date of Delivery, none of (A) the General Disclosure Package, (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package and (C) and individual Written Testing-the-Waters Communication, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto, as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Time or at any Date of Delivery, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement (or any post-effective amendment thereto), the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in the first paragraph under the heading "Underwriting–Commissions and Discounts," the information in the second, third and fourth paragraphs under the heading "Underwriting–Price Stabilization, Short Positions and Penalty Bids" and the information under the heading "Underwriting–Electronic Distribution" in each case contained in the Prospectus (collectively, the "Underwriter Information").

(iii) Issuer Free Writing Prospectuses. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. The Company has made available a Bona Fide Electronic Road Show in compliance with Rule 433(d)(8)(ii) such that no filing of any "road show" (as defined in Rule 433(h)) is required in connection with the offering of the Securities.

(iv) Testing-the-Waters Materials. The Company (A) has not engaged in any Testing-the-Waters Communication other than Testing-the-Waters Communications with the consent of the Representatives with entities that are qualified institutional buyers within the meaning of Rule 144A under the 1933 Act or institutions that are accredited investors within the meaning of Rule 501 under the 1933 Act and (B) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company reconfirms that the Representatives have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed any Written Testing-the-Waters Communications other than those listed on Schedule B-3 hereto.

(v) Company Not Ineligible Issuer. At the time of filing the Registration Statement and any post-effective amendment thereto, the Company was not and is not an "ineligible issuer," as defined in Rule 405.

(vi) Emerging Growth Company Status. From the time of the initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any Person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and is an "emerging growth company," as defined in Section 2(a) of the 1933 Act (an "Emerging Growth Company").

(vii) Independent Accountants. The accountants who certified the financial statements and supporting schedules included in the Registration Statement, the General Disclosure Package and the Prospectus are independent public accountants as required by the 1933 Act, the 1933 Act Regulations and the Public Company Accounting Oversight Board.

(viii) Financial Statements; Non-GAAP Financial Measures. The financial statements included in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly in all material respects the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in all material respects in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly in all material respects the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein.

(ix) No Material Adverse Change in Business. Except as otherwise stated therein, since the date of the latest audited financial statements of the Company included in the Registration Statement, the General Disclosure Package or the Prospectus, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise (a "Material Adverse Effect"), (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise, and (C) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(x) Good Standing of the Company. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not, singly or in the aggregate, result in a Material Adverse Effect.

(xi) Good Standing of Subsidiaries. Each "significant subsidiary" of the Company (as such term is defined in Rule 1-02 of Regulation S-X) (each, a "Subsidiary" and, collectively, the "Subsidiaries") has been duly organized and is validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not, singly or in the aggregate, result in a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, all of the issued and outstanding capital stock of each Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock of any Subsidiary were issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary. Each "significant subsidiary" of the Company (as such term is defined in Rule 1-02(w) of Regulation SX promulgated by the Commission) has been listed in Exhibit 21.1 to the Registration Statement.

(xii) Capitalization. The authorized, issued and outstanding shares of capital stock of the Company are as set forth in the Registration Statement, the General Disclosure Package and the Prospectus in the column entitled "Actual" under the caption "Capitalization" (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to reservations, agreements or employee benefit plans referred to in the Registration Statement, the General Disclosure Package and the Prospectus or pursuant to the exercise of convertible securities or options referred to in the Registration Statement, the General Disclosure Package and the Prospectus). The outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. None of the outstanding shares of capital stock of the Company were issued in violation of the preemptive or other similar rights of any securityholder of the Company.

(xiii) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(xiv) Authorization and Description of Securities. The Securities to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale to the Underwriters pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be validly issued and fully paid and non-assessable; and the issuance of the Securities is not subject to the preemptive or other similar rights of any securityholder of the Company. The Common Stock conforms to all statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus and such description conforms to the rights set forth in the instruments defining the same.

(xv) Registration Rights. There are no persons with registration rights or other similar rights to have any securities (A) registered for sale pursuant to the Registration Statement or (B) otherwise registered for sale by the Company under the 1933 Act pursuant to this Agreement, other than those rights that have been disclosed in the Registration Statement, the General Disclosure Package and the Prospectus.

(xvi) Absence of Violations, Defaults and Conflicts. Neither the Company nor any of its subsidiaries is (A) in violation of its charter, by-laws or similar organizational document, (B) in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the properties or assets of the Company or any subsidiary is subject (collectively, "Agreements and Instruments"), except for such defaults that would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, assets or operations (each, a "Governmental Entity"), except, in the case of clauses (A) (if such entity is not the Company or a Subsidiary), (B) and (C) above, for such violations that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the Registration Statement, the General Disclosure Package and the Prospectus and compliance by the Company with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default under or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or liens, charges or encumbrances that would not, singly or in the aggregate, be reasonably expected to result in a

Material Adverse Effect), nor will such action result in any violation of the provisions of the charter, by-laws or similar organizational document of the Company or any of its subsidiaries or any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity(except for such violations of any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity that would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect).

(xvii) Absence of Labor Dispute. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or any subsidiary's principal suppliers, manufacturers or contractors, which, in either case, would be reasonably expected to result in a Material Adverse Effect.

(xviii) Absence of Proceedings. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, there is no action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, which, if determined adversely to the Company or any of its subsidiaries, would be reasonably expected to result in a Material Adverse Effect, or which might materially and adversely affect their respective properties or assets or the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder; and the aggregate of all pending legal or governmental proceedings to which the Company or any such subsidiary is a party or of which any of their respective properties or assets is the subject which are not described in the Registration Statement, the General Disclosure Package and the Prospectus, including ordinary routine litigation incidental to the business, could not be reasonably expected to result in a Material Adverse Effect.

(xix) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the rules of the Nasdaq Global Select Market, state securities laws or the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA").

(xx) Possession of Licenses and Permits. The Company and its subsidiaries possess such material permits, licenses, approvals, consents and other authorizations (collectively, "Governmental Licenses") issued by the appropriate Governmental Entities necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, result in a Material Adverse Effect. The Company and its subsidiaries are in compliance with the terms and conditions of all Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, result in a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, result in a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would be reasonably expected to result in a Material Adverse Effect.

(xxi) Title to Property. The Company and its subsidiaries do not own any real property. The Company and its subsidiaries have good title to all personal property owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (A) are described in the Registration Statement, the General Disclosure Package and the Prospectus or (B) would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect; and all of the leases and subleases material to the business of the Company and its subsidiaries, considered as one enterprise, and under which the Company or any of its subsidiaries holds properties described in the Registration Statement, the General Disclosure Package or the Prospectus, are in full force and effect, and neither the Company nor any such subsidiary has any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease, except as would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect.

(xxii) Possession of Intellectual Property. Except as (A) described in the Registration Statement, the General Disclosure Package and the Prospectus; or (B) would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect: (x) the Company and its subsidiaries own or possess, or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names or other intellectual property (collectively, "Intellectual Property") necessary to carry on the business now operated by them, and (y) neither the Company nor any of its subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company or any of its subsidiaries therein.

(xxiii) Environmental Laws. Except as described in the Registration Statement, the General Disclosure Package and the Prospectus or would not, singly or in the aggregate, be reasonably expected to result in a Material Adverse Effect, (A) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (B) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) to the knowledge of the Company, there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (D) to the knowledge of the Company, there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(xxiv) Accounting Controls. The Company and each of its subsidiaries maintain effective internal control over financial reporting (as defined under Rule 13a-15 under the 1934 Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Registration Statement, the General Disclosure Package and the Prospectus, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(xxv) Compliance with the Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or, to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002, as amended and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 related to loans, to the extent compliance is required as of the date of the Agreement.

(xxvi) Payment of Taxes. All United States federal income tax returns of the Company and its subsidiaries required by law to be filed have been filed (or have requested extensions thereof) and all taxes, shown by such returns or otherwise assessed, which are due and payable, have been paid, except for cases in which the failure to pay would not reasonably be expected to have a Material Adverse Effect or assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The Company and its subsidiaries have filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law except insofar as the failure to file such returns would not be reasonably expected to result in a Material Adverse Effect, and have paid all taxes due pursuant to such returns or pursuant to any assessment received by the Company and its subsidiaries, except for cases in which the failure to pay would not reasonably be expected to have a Material Adverse Effect or for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company. The charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not be reasonably expected to result in a Material Adverse Effect.

(xxvii) Insurance. The Company and its subsidiaries carry or are entitled to the benefits of insurance, with financially sound and reputable insurers, in such amounts and covering such risks as is generally maintained by companies of established repute engaged in the same or similar business, and all such insurance is in full force and effect. The Company has no reason to believe that it or any of its subsidiaries will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect.

(xxviii) Investment Company Act. The Company is not required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Registration Statement, the General Disclosure Package and the Prospectus will not be required, to register as an "investment company" under the Investment Company Act of 1940, as amended (the "1940 Act").

(xxix) Absence of Manipulation. The Company has not taken, directly or indirectly, any action which is designed, or that could be reasonably expected, to cause or result in, or which constitutes, the stabilization or manipulation of the price of the Securities in violation of applicable laws or statutes.

(xxx) Foreign Corrupt Practices Act. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxi) Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the "Money Laundering Laws"); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xxxii) OFAC. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or controlled affiliate of the Company or any of its subsidiaries is an individual or entity ("Person") currently the subject or target of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the United Nations Security Council ("UNSC"), the European Union, Her Majesty's Treasury ("HMT"), or other relevant sanctions authority (collectively, "Sanctions"), nor is the Company located, organized or resident in a country or territory that is the subject of Sanctions; and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partners 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.

(xxxiii) Statistical and Market-Related Data. Any statistical and market-related data included in the Registration Statement, the General Disclosure Package or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate in all material respects.

(xxxiv) Cybersecurity. (A) There has been no material security breach or incident, unauthorized access or disclosure, or other compromise of the Company or its subsidiaries information technology and computer systems, networks, hardware, software, data and databases (including the data and information of their respective customers, employees, suppliers, vendors and any third party data maintained, processed or stored by the Company and its subsidiaries, and, to the Company's knowledge, any such data processed or stored by third parties on behalf of the Company and its subsidiaries), equipment or technology (collectively, "IT Systems and Data") (B) neither the Company nor its subsidiaries have been notified in writing of, or to the Company's knowledge been otherwise notified of, and each of them have no knowledge of any event or condition that could result in, any material security breach or incident, unauthorized access or disclosure or other compromise to their IT Systems and Data and (C) the Company and its subsidiaries have implemented commercially reasonable administrative and technological safeguards designed to maintain and protect the integrity, continuous operation, redundancy and security of their IT Systems and Data reasonably consistent with industry standards and practices, or as required by applicable regulatory standards. The Company and its subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, external policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification.

(b) *Officer's Certificates*. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) *Initial Securities*. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at the price per share set forth in Schedule A, that number of Initial Securities set forth in Schedule A opposite the name of such Underwriter, plus any additional number of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject, in each case, to such adjustments among the Underwriters as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(b) *Option Securities*. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase up to an additional [•] shares of Common Stock, at the price per share set forth in Schedule A, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities. The option hereby granted may be exercised for 30 days after the date hereof and may be exercised in whole or in part at any time from time to time upon notice by the Representatives to the Company setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter bears to the total number of Initial Securities, subject, in each case, to such adjustments as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(c) *Payment*. Payment of the purchase price for, and delivery of certificates or security entitlements for, the Initial Securities shall be made at the offices of Latham & Watkins LLP at 1271 Avenue of the Americas, New York, New York 10020 or at such other place as shall be agreed upon by the Representatives and the Company, at 9:00 A.M. (New York City time) on the second (third, if the Applicable Time is after 4:30 P.M. (New York City time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of certificates or security entitlements for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from the Representatives to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company against delivery to the Representatives for the respective accounts of the Underwriters of certificates or security entitlements for the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. The Representatives, individually and not as representatives of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

SECTION 3. Covenants of the Company. The Company covenants with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests*. The Company, subject to Section 3(b), will comply with the requirements of Rule 430A, and will notify the Representatives immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective or any amendment or supplement to the Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop order, prevention or suspension and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) *Continued Compliance with Securities Laws*. The Company will comply with the 1933 Act and the 1933 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Registration Statement, the General Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172 of the 1933 Act Regulations ("Rule 172"), would be) required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the General Disclosure Package or the Prospectus in order that the General Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly (A) give the Representatives notice of such event, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the General Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Representatives with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Representatives or counsel for the Underwriters shall object. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. The Company has given the Representatives notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the Applicable Time; the Company will give the Representatives notice of its intention to make any such filing from the Applicable Time to the Closing Time and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object.

(c) *Delivery of Registration Statements*. The Company has furnished or will deliver to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith) and signed copies of all consents and certificates of experts, and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses*. The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Blue Sky Qualifications*. The Company will use its best efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(f) *Rule 158*. The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(g) *Use of Proceeds*. The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Registration Statement, the General Disclosure Package and the Prospectus under "Use of Proceeds."

(h) *Listing*. The Company will use its best efforts to effect and maintain the listing of the Common Stock (including the Securities) on the Nasdaq Global Select Market.

(i) *Restriction on Sale of Securities*. During a period of 180 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file or confidentially submit any registration statement under the 1933 Act with respect to any of the foregoing or (ii) engage in any hedging or other transaction or arrangement (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined) which is designed to or which reasonably could be expected to lead to or result in a sale, loan, pledge or other disposition, or transfer of any of the economic consequences of ownership, in whole or in part, directly or indirectly, of any shares of Common Stock of the Company or any derivative instruments, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, without the prior written consent of the Representatives; provided that confidential or non-public submissions to the Commission of any registration statements under the 1933 Act may be made if (w) no public announcement of such confidential or non-public submission shall be made, (x) if any demand was made for, or any right exercised with respect to, such registration of shares of Stock or securities convertible, exercisable or exchangeable into Stock, no public announcement of such demand or exercise of rights shall be made, (y) the Company shall provide written notice at least three business days prior to such confidential or non-public submission to the representatives and (z) no such confidential or non-public submission shall become a publicly filed registration statement during the 180-day restricted period. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder, (B) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof and referred to in the Registration Statement, the General Disclosure Package and the Prospectus, (C) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company referred to in the Registration Statement, the General Disclosure Package and the Prospectus, (D) any shares of Common Stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan referred to in the Registration Statement, the General Disclosure Package and the Prospectus , (E) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act, provided that such plan

does not provide for the transfer of shares of Common Stock during the 180-day restricted period and the establishment of such plan does not require or otherwise result in any public filing or other public announcement of such plan during the 180-day restricted period, (F) the issuance of up to 5% of the outstanding shares of Common Stock in connection with the acquisition of the assets of, or a majority or controlling portion of the equity of, or a joint venture with another entity in connection with the acquisition by the Company or any of its subsidiaries of such entity; provided in the case of this clause (F) the transferee of such shares agrees to be bound in writing to the restrictions set forth in this Section 3(i), (G) the filing of any registration statement on Form S-8 or a successor form thereto relating to the shares of Common Stock granted pursuant to or reserved for issuance under the stock-based compensation plans of the Company and its subsidiaries referred to in clauses (C) or (D), and (H) shares of Common Stock issued pursuant to a plan of reorganization.

(j) If the Representatives, in their sole discretion, agree to release or waive the restrictions set forth in a lock-up agreement described in Section 5(i) hereof for an officer or director of the Company and provide the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit C hereto through a major news service at least two business days before the effective date of the release or waiver.

(k) *Reporting Requirements*. The Company, during the period when a Prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and 1934 Act Regulations. Additionally, the Company shall report the use of proceeds from the issuance of the Securities as may be required under Rule 463 under the 1933 Act.

(l) *Issuer Free Writing Prospectuses*. The Company agrees that, unless it obtains the prior written consent of the Representatives, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus,” or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representatives will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule B-2 hereto and any “road show that is a written communication” within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representatives. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representatives as an “issuer free writing prospectus,” as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(m) *Certification Regarding Beneficial Owners*. The Company will deliver to the Representatives, on the date of execution of this Agreement, a properly completed and executed Certification Regarding Beneficial Owners of Legal Entity Customers, together with copies of identifying documentation, and the Company undertakes to provide such additional supporting documentation as the Representatives may reasonably request in connection with the verification of the foregoing certification.

(n) *Testing-the-Waters Materials*. If at any time following the distribution of any Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission.

(o) *Emerging Growth Company Status*. The Company will promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to the later of (i) completion of the distribution of the Securities within the meaning of the 1933 Act and (ii) completion of the 180-day restricted period referred to in Section 3(i).

SECTION 4. Payment of Expenses.

(a) *Expenses*. The Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (iii) the preparation, issuance and delivery of the certificates or security entitlements for the Securities to the Underwriters, including any stock, registration, documentary, capital, issuance, transfer or other similar taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company's counsel and independent accountants, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto up to an aggregate of $5,000, (vi) the fees and expenses of any transfer agent or registrar for the Securities, (vii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, it being understood that except as provided in this Section 4 or Section 6 hereof, the Underwriters will pay all of the travel, lodging and other expenses of the Underwriters or any of their employees incurred by them in connection with any road show presentation to potential investors and 50% of the costs of any aircraft chartered in connection with the road show presentations, (viii) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by FINRA of the terms of the sale of the Securities (provided that the reimbursement obligation for such fees and expenses of counsel for the Underwriters shall not exceed, in the aggregate, $35,000) and (ix) the fees and expenses incurred in connection with the listing of the Securities on the Nasdaq Global Select Market.

*Termination of Agreement*. If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5 or Section 9(a)(i) or (iii) hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters. For the avoidance of doubt, if this Agreement is terminated pursuant to Section 10 hereof, the Company shall have no obligation to reimburse a defaulting Underwriter for out-of-pocket costs and expenses (including the fees and expenses of their counsel) incurred by such defaulting Underwriter in connection with this Agreement and the offering contemplated hereby.

SECTION 5. Conditions of Underwriters' Obligations. The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company or any of its subsidiaries delivered pursuant to the provisions hereof, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement; Rule 430A Information*. The Registration Statement, including any Rule 462(b) Registration Statement, has become effective and, at the Closing Time, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company's knowledge, contemplated; and the Company has complied with each request (if any) from the Commission for additional information. A prospectus containing the Rule 430A Information shall have been filed with the Commission in the manner and within the time frame required by Rule 424(b) or a post-effective amendment providing such information shall have been filed with, and declared effective by, the Commission in accordance with the requirements of Rule 430A.

(b) *Opinion of Counsel for Company*. At the Closing Time, the Representatives shall have received the opinion and negative assurance letter, dated the Closing Time, of Weil, Gotshal & Manges LLP, counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, to the effect set forth in Exhibit A hereto.

(c) *Opinion of Counsel for Underwriters*. At the Closing Time, the Representatives shall have received the opinion and negative assurance letter, dated the Closing Time, of Latham & Watkins LLP, counsel for the Underwriters, in form and substance reasonably satisfactory to the Representatives.

(d) *Officers' Certificate*. At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries considered as one enterprise, and the Representatives shall have received a certificate of the Chief Executive Officer or the President of the Company and of the chief financial or chief accounting officer of the Company, dated the Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement under the 1933 Act has been issued, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to their knowledge, contemplated.

[( )] *Chief Financial Officer's Certificate*. At the time of the execution of this Agreement and at the Closing Time, the Representatives shall have received from the Chief Financial Officer of the Company a certificate, dated the date hereof or the Closing Time, respectively, as to the accuracy of certain financial and other information included in the Registration Statement, the General Disclosure Package and the Prospectus in form and substance reasonably satisfactory to the Representatives.]

(e) *Accountant's Comfort Letter*. At the time of the execution of this Agreement, the Representatives shall have received from PricewaterhouseCoopers LLP a letter, dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the General Disclosure Package and the Prospectus.

(f) *Bring-down Comfort Letter*. At the Closing Time, the Representatives shall have received from PricewaterhouseCoopers LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(g) *Approval of Listing*. At the Closing Time, the Securities shall have been approved for listing on the Nasdaq Global Select Market, subject only to official notice of issuance.

(h) *Lock-up Agreements*. At the date of this Agreement, the Representatives shall have received an agreement substantially in the form of Exhibit B hereto signed by the persons listed on Schedule C hereto.

(i) *Rating*. Neither the Company nor its subsidiaries have any debt securities or preferred stock that are rated by any "nationally recognized statistical rating organization" (as defined in Section 3(a)(62) of the 1934 Act).

(j) *Conditions to Purchase of Option Securities*. In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the statements in any certificates furnished by the Company and any of its subsidiaries hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officers' Certificate. A certificate, dated such Date of Delivery, of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

[( ) Chief Financial Officer's Certificate. A certificate, dated such Date of Delivery, of the Chief Financial Officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5[( )] hereof remains true and correct as of such Date of Delivery.

(ii) Opinion of Counsel for Company. If requested by the Representatives, the favorable opinion and negative assurance letter of Weil, Gotshal & Manges LLP, counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(iii) Opinion of Counsel for Underwriters. If requested by the Representatives, the opinion and negative assurance letter of Latham & Watkins, LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(v) Bring-down Comfort Letter. If requested by the Representatives, a letter from PricewaterhouseCoopers LLP, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(e) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(k) *Additional Documents*. At the Closing Time and at each Date of Delivery (if any) counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably request.

(l) *Termination of Agreement*. If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representatives by notice to the Company at any time at or prior to Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7, 8, 14, 15, 16 and 17 shall survive any such termination and remain in full force and effect.

SECTION 6. Indemnification.

(a) *Indemnification of Underwriters*. The Company agrees to indemnify and hold harmless each Underwriter, its affiliates (as such term is defined in Rule 501(b) under the 1933 Act (each, an "Affiliate")), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430A Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included (A) in any preliminary prospectus, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto), or (B) in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Securities ("Marketing Materials"), including any roadshow or investor presentations made to investors by the Company (whether in person or electronically), or the omission or alleged omission in any preliminary prospectus, Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, Prospectus or in any Marketing Materials of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company;

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in the Registration Statement (or any post-effective amendment thereto), including the Rule 430A Information, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) *Indemnification of Company, Directors and Officers*. Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any post-effective amendment thereto), including the Rule 430A Information, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(c) *Actions against Parties; Notification*. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by BofA, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution is or could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party, in form and substance satisfactory to such indemnified party, from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement without Consent if Failure to Reimburse*. If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 45 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(e) *Non-Exclusive Remedies.* The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

SECTION 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions received by such Underwriter in connection with the Securities underwritten by it and distributed to the public.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

SECTION 8. Representations, Warranties and Agreements to Survive. All representations, warranties, indemnities and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates, any person controlling any Underwriter, its officers or directors or the Company or any officer or director or any person controlling the Company and (ii) delivery of and payment for the Securities.

SECTION 9. Termination of Agreement.

(a) *Termination*. The Representatives may terminate this Agreement, by notice to the Company, if after the execution and delivery of this Agreement and at any time at or prior to the Closing Time (i) if there has been, in the judgment of the Representatives, since the time of execution of this Agreement or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the Nasdaq Global Select Market, or (iv) if trading generally on the NYSE MKT or the New York Stock Exchange or in the Nasdaq Global Select Market has been suspended or materially limited or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or (v) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or with respect to Clearstream or Euroclear systems in Europe, or (vi) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities*. If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7, 8, 14, 15, 16 and 17 shall survive such termination and remain in full force and effect.

SECTION 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at the Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed one-eleventh of the number of Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds one-eleventh of the number of Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase, and the Company to sell, the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter. Any termination of this Agreement pursuant to this Section 10(ii) shall be without liability on the part of the Company, except that the Company will continue to be liable for the payment of expenses as set forth in Section 4 hereof and except that the provisions of Section 6 and Section 7 hereof shall not terminate and shall remain in effect.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either the (i) Representatives or (ii) the Company shall have the right to postpone Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term “Underwriter” includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Representatives as follows: (i) in care of BofA at One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), with a copy to ECM Legal (facsimile: (212) 230-8730); (ii) in care of Goldman Sachs at 200 West Street, New York, New York 10282-2198, attention of Registration Department; and (iii) in care of Jefferies at 520 Madison Avenue, New York, New York 10022, attention of General Counsel (facsimile: (646) 619-4437). Notices to the Company shall be directed to it at 8725 Pendery Place, Bradenton, Florida 34201-2006, attention of General Counsel (facsimile: (941) 907-8933), with a copy to Weil, Gotshal & Manages LLP, 767 Fifth Avenue, New York, New York 10153, attention of Alexander Lynch, Esq.

SECTION 12. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the initial public offering price of the Securities and any related discounts and commissions, is an arm’s-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, and does not constitute a recommendation, investment advice, or solicitation of any action by the Underwriters, (b) in connection with the offering of the Securities and the process leading thereto, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the

Company, any of its subsidiaries or their respective stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Securities or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any of its subsidiaries on other matters) and no Underwriter has any obligation to the Company with respect to the offering of the Securities except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, (e) the Underwriters have not provided any legal, accounting, regulatory, investment or tax advice with respect to the offering of the Securities and the Company has consulted its own respective legal, accounting, financial, regulatory and tax advisors to the extent it deemed appropriate, and (f) none of the activities of the Underwriters in connection with the transactions contemplated herein constitutes a recommendation, investment advice or solicitation of any action by the Underwriters with respect to any entity or natural person.

SECTION 13. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Section 13, a "BHC Act Affiliate" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k). "Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b). **"**Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable. "U.S. Special Resolution Regime" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

SECTION 14. Parties. This Agreement shall each inure to the benefit of and be binding upon the Underwriters and the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 15. Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

SECTION 16. GOVERNING LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

SECTION 17. Consent to Jurisdiction; Waiver of Immunity. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby ("Related Proceedings") shall be instituted in (i) the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan or (ii) the courts of the State of New York located in the City and County of New York, Borough of Manhattan (collectively, the "Specified Courts"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a "Related Judgment"), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

SECTION 18. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 19. Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. Electronic signatures complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law will be deemed original signatures for purposes of this Agreement. Transmission by telecopy, electronic mail or other transmission method of an executed counterpart of this Agreement will constitute due and sufficient delivery of such counterpart.

SECTION 20. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters and the Company in accordance with its terms.

Very truly yours,

FIRST WATCH RESTAURANT GROUP, INC.

By _____

Title:

CONFIRMED AND ACCEPTED,
as of the date first above written:

BOFA SECURITIES, INC.
GOLDMAN SACHS & CO. LLC
JEFFERIES LLC

By: BOFA SECURITIES, INC.

By _____
Authorized Signatory

By: GOLDMAN SACHS & CO. LLC

By _____
Authorized Signatory

By: JEFFRIES LLC

By _____
Authorized Signatory

For themselves and as Representatives of the other Underwriters named in Schedule A hereto.

SCHEDULE A

The initial public offering price per share for the Securities shall be $[•].

The purchase price per share for the Securities to be paid by the several Underwriters shall be $[•], being an amount equal to the initial public offering price set forth above less $[•] per share, subject to adjustment in accordance with Section 2(b) for dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities.

| Name of Underwriter | Number of Initial Securities |
|---|---|
| BofA Securities, Inc. | [•] |
| Goldman Sachs & Co. LLC | [•] |
| Jefferies LLC | [•] |
| [•] | [•] |
| Total | [•] |

SCHEDULE B-1

Pricing Terms

1. The Company is selling [•] shares of Common Stock.
2. The Company has granted an option to the Underwriters, severally and not jointly, to purchase up to an additional [•] shares of Common Stock.
3. The initial public offering price per share for the Securities shall be $[•].

SCHEDULE B-2

Free Writing Prospectuses

[•]

SCHEDULE B-3

Written Testing-the-Waters Communications

[•]

SCHEDULE C

List of Persons and Entities Subject to Lock-up

FORM OF OPINION OF COMPANY'S COUNSEL
TO BE DELIVERED PURSUANT TO SECTION 5(b)

SEE ATTACHED.

**Form of lock-up from directors, officers or other stockholders pursuant to Section 5(i)**

Exhibit B

**Lock-Up Agreement**

BofA Securities, Inc.
Goldman Sachs & Co. LLC
Jefferies LLC
as Representatives of the several
Underwriters to be named in the
within mentioned Underwriting Agreement

c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

c/o Jefferies LLC
4201 Congress Street, Suite 350
Charlotte, North Carolina 28209

Re: Proposed Public Offering of Common Stock by First Watch Restaurant Group, Inc.

Dear Sirs:

The undersigned, a securityholder, officer and/or director of First Watch Restaurant Group, Inc., a Delaware corporation (the "Company"), understands that BofA Securities, Inc., Goldman Sachs & Co. LLC and Jefferies LLC (collectively, the "Representatives") propose to enter into an Underwriting Agreement (the "Underwriting Agreement") with the Company providing for the public offering (the "Public Offering") of shares of the Company's common stock, par value $0.01 per share (the "Common Stock"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Underwriting Agreement.

In consideration of the Representatives' agreement to purchase and make the Public Offering of the Common Stock, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned hereby agrees that, without the prior written consent of the Representatives, the undersigned will not, and will not cause any direct or indirect affiliate to, during the period beginning on the date of this letter agreement (this "Letter Agreement") and ending at the close of business 180 days after the date of the final prospectus relating to the Public Offering (the "Prospectus") (such period, the "Restricted Period"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (including without limitation, Common Stock or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and

Exchange Commission and securities which may be issued upon exercise of a stock option or warrant) (collectively, the "Lock-Up Securities"), (2) enter into any hedging, swap or other agreement or transaction that transfers, in whole or in part, any of the economic consequences of ownership of the Lock-Up Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Lock-Up Securities, in cash or otherwise or (3) publicly disclose the intention to do any of the foregoing. The undersigned acknowledges and agrees that the foregoing precludes the undersigned from engaging in any hedging or other transactions or arrangements (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined) designed or intended, or which could reasonably be expected to lead to or result in, a sale, loan, pledge or other disposition or transfer (whether by the undersigned or any other person) of any economic consequences of ownership, in whole or in part, directly or indirectly, of any Lock-Up Securities, whether any such transaction or arrangement (or instrument provided for thereunder) would be settled by delivery of Common Stock or other securities, in cash or otherwise (any such sale, loan, pledge or other disposition, or transfer of economic consequences, a "Transfer").

Notwithstanding the foregoing, the undersigned may:

(a) transfer the undersigned's Lock-Up Securities:

(i) as a bona fide gift or gifts, or for bona fide estate planning purposes,

(ii) by will, other testamentary document or intestacy,

(iii) to any trust, partnership, limited liability company or other entity for the direct or indirect benefit of the undersigned, the immediate family or affiliate of the undersigned, or if the undersigned is a trust, to a trustor or beneficiary of the trust or to the estate of a beneficiary of such trust (for purposes of this Letter Agreement, "immediate family" shall mean any relationship by blood, current or former marriage, domestic partnership or adoption, not more remote than first cousin),

(iv) to any partnership, limited liability company or other entity of which the undersigned and the immediate family of the undersigned are the legal and beneficial owner of all of the outstanding equity securities or similar interests,

(v) to any immediate family member or any investment fund or other entity controlled or managed by the undersigned,

(vi) if the undersigned is a corporation, partnership, limited liability company, trust or other business entity, (A) to another corporation, partnership, limited liability company, trust or other business entity that is an affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned, or to any investment fund or other entity controlling, controlled by, managing or managed by or under common control with the undersigned or affiliates of the undersigned (including, for the avoidance of doubt, where the undersigned is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), or (B) as part of a distribution to limited partners, limited liability company members or shareholders of the undersigned, or holders of similar equity interests in the undersigned,

(vii) by operation of law, such as pursuant to a qualified domestic order, divorce settlement, divorce decree or separation agreement,

(viii) to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under clauses (i) through (iv) above,

(ix) pursuant to an order of a court or regulatory agency having jurisdiction over the undersigned,

(x) to the Company from an employee of the Company upon death, disability or termination of employment or other service relationship with the Company or the undersigned's failure to meet certain conditions set out upon receipt of such Lock-Up Securities, in each case, of such employee,

(xi) as part of a sale of the undersigned's Lock-Up Securities acquired in open market transactions after the closing date for the Public Offering,

(xii) to the Company in connection with the vesting, settlement, or exercise of restricted stock units, options, warrants or other rights to purchase shares of Common Stock (including, in each case, by way of "net" or "cashless" exercise), including for the payment of exercise price and tax and remittance payments due as a result of the vesting, settlement, or exercise of such restricted stock units, options, warrants or rights, provided that any such shares of Common Stock received upon such exercise, vesting or settlement shall be subject to the terms of this Letter Agreement, and provided further that any such restricted stock units, options, warrants or rights are held by the undersigned pursuant to an agreement or equity awards granted under a stock incentive plan or other equity award plan, each such agreement or plan which is described in the Registration Statement, the General Disclosure Package and the Prospectus, or

(xiii) pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction that is approved by the Board of Directors of the Company and made to all holders of the Company's capital stock involving a Change of Control (as defined below) of the Company (for purposes hereof, "Change of Control" shall mean the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons, of shares of capital stock if, after such transfer, such person or group of affiliated persons would hold at least a majority of the outstanding voting securities of the Company (or the surviving entity)); provided that in the event that such tender offer, merger, consolidation or other similar transaction is not completed, the undersigned's Lock-Up Securities shall remain subject to the provisions of this Letter Agreement;

provided that (A) in the case of any transfer or distribution pursuant to clause (a)(i), (ii), (iii), (iv), (v), (vi) and (viii) , such transfer shall not involve a disposition for value and each donee, devisee, transferee or distributee shall execute and deliver to the Representatives a lock-up letter in the form of this Letter Agreement, (B) in the case of any transfer or distribution pursuant to clause (a) (i), (iii), (iv), (v), (vi) and (ix) no filing by any party (donor, donee, devisee, transferor, transferee, distributer or distributee) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or other public announcement shall be required or shall be made voluntarily in connection with such transfer or distribution (other than a filing on a Form 5 made after the expiration of the Restricted Period referred to above) and (C) in the case of any transfer or distribution pursuant to clause (a) (ii), (vii), (viii), (ix), (xi) and (xii) it shall be a condition to such transfer that no public filing, report or announcement shall be voluntarily made and if any filing under Section 16(a) of the Exchange Act, or other public filing, report or announcement reporting a reduction in beneficial ownership of shares of Common Stock in connection with such transfer or distribution shall be legally required during the Restricted Period, such filing, report or announcement shall clearly indicate in the footnotes thereto the nature and conditions of such transfer;

(b) exercise outstanding options, settle restricted stock units or other equity awards or exercise warrants pursuant to plans described in the Registration Statement, the General Disclosure Package and the Prospectus; provided that any Lock-Up Securities received upon such exercise, vesting or settlement shall be subject to the terms of this Letter Agreement;

(c) convert outstanding preferred stock, warrants to acquire preferred stock or convertible securities into shares of Common Stock or warrants to acquire shares of Common Stock; provided that any such shares of Common Stock or warrants received upon such conversion shall be subject to the terms of this Letter Agreement; and

(d) establish trading plans pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Lock-Up Securities; provided that (1) such plans do not provide for the transfer of Lock-Up Securities during the Restricted Period and (2) no filing by any party under the Exchange Act or other public announcement shall be required or made voluntarily in connection with such trading plan and any public announcement or filing under the Exchange Act made by any person regarding the establishment of such plan during the Restricted Period shall include a statement that the undersigned is not permitted to transfer, sell or otherwise dispose of securities under such plan during the Restricted Period in contravention of this Letter Agreement.

If the undersigned is an officer or director of the Company, (i) the Representatives on behalf of the Underwriters agree that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of Lock-Up Securities, the Representatives on behalf of the Underwriters will notify the Company of the impending release or waiver, and (ii) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the Representatives on behalf of the Underwriters hereunder to any such officer or director shall only be effective two business days after the publication date of such announcement. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer not for consideration or that is to an immediate family member as defined in FINRA Rule 5130(i)(5) and (b) the transferee has agreed in writing to be bound by the same terms described in this letter to the extent and for the duration that such terms remain in effect at the time of the transfer.

In furtherance of the foregoing, the Company, and any duly appointed transfer agent for the registration or transfer of the securities described herein, are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Letter Agreement.

In the event that, during the Restricted Period, the Representatives release or waive, in full or in part, any prohibition set forth in this Letter Agreement in respect of Common Stock held by any Significant Holder (as defined below) (a "Triggering Release"), the same percentage of Common Stock of the undersigned subject to this Letter Agreement as the percentage of securities being released in the Triggering Release represents with respect to the securities held directly or indirectly by such Significant Holder (calculated as a percentage of the total outstanding securities subject to this Letter Agreement held directly or indirectly by such Significant Holder) at the time of the request of the Triggering Release shall be automatically and concurrently released from this Letter Agreement to the same extent. For the purposes of the foregoing, a "Significant Holder" shall mean any person or entity that beneficially owns 1% or more of the total outstanding shares of Common Stock at the time of such Triggering Release. Notwithstanding the foregoing, the provisions of this paragraph will not apply (1) if the release or waiver is effected solely to permit a transfer not involving a disposition for value and the transferee agrees in writing to be bound by the same terms described in this Letter Agreement to the extent and for the duration that such terms remain in effect at the time of transfer, (2) if the release or waiver is effected in connection with an underwritten public offering that is wholly or partially a secondary offering of Common Stock (an "Underwritten Sale") conducted in compliance with the registration rights agreement, to be entered into in connection with the Public Offering, among the Company and the other parties thereto, such early release shall only apply with

respect to the undersigned's participation in such Underwritten Sale or (3) if the release or waiver is granted to a Significant Holder in an amount, individually or in the aggregate with any prior releases or waivers, of no more than 1% of the total outstanding shares of Common Stock at the time of such release or waiver. The Representatives shall notify the undersigned within two business days of the occurrence of a Triggering Release, provided, that the failure to provide such notice shall not give rise to any claim or liability against the Representatives.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Letter Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned acknowledges and agrees that the Underwriters have not provided any recommendation or investment advice nor have the Underwriters solicited any action from the undersigned with respect to the Public Offering of the Common Stock and the undersigned has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate. The undersigned further acknowledges and agrees that, although the Representatives may be required or choose to provide certain Regulation Best Interest and Form CRS disclosures to you in connection with the Public Offering, the Representatives and the other Underwriters are not making a recommendation to you to enter into this Letter Agreement, participate in the Public Offering, or sell any Shares at the price determined in the Public Offering, and nothing set forth in such disclosures is intended to suggest that either of the Representatives or any Underwriter is making such a recommendation.

Nothing in this Letter Agreement shall prevent the undersigned from making a demand for, or exercising any right with respect to, the registration of the undersigned's Common Stock, provided that (i) no sales of Common Stock shall be made in connection with any such demand or any such exercise by the undersigned or any of its affiliates prior to the expiration of the Restricted Period and (ii) no filing by any party (donor, donee, devisee, transferor, transferee, distributer or distributee) under the Exchange Act, or other public announcement shall be required or shall be made voluntarily in connection with any such demand or any such exercise prior to the expiration of the Restricted Period; provided further that in no event shall the Company be permitted to take an action in violation of Section 3(i) of the Underwriting Agreement.

The undersigned understands that, if (1) prior to the execution of the Underwriting Agreement, the Company files an application to withdraw the Registration Statement related to the Public Offering, (2) the Underwriting Agreement does not become effective by December 31, 2021, (3) the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, or (4) the Representatives on behalf of the Underwriters advise the Company, or the Company advises the Representatives, in writing, prior to the execution of the Underwriting Agreement, that they have determined not to proceed with the Public Offering, the undersigned shall be released from all obligations under this Letter Agreement.

The undersigned understands that the Representatives are entering into the Underwriting Agreement and proceeding with the Public Offering in reliance upon this Letter Agreement. This agreement may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com or www.echosign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

This Letter Agreement and any claim, controversy or dispute arising under or related to this Letter Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Very truly yours,

Signature: _____

Print Name: _____

FORM OF PRESS RELEASE
TO BE ISSUED PURSUANT TO SECTION 3(j)

FIRST WATCH RESTAURANT GROUP, INC.
[Date]

FIRST WATCH RESTAURANT GROUP, INC. (the "Company") announced today that BofA Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, the representatives in the Company's recent public sale of shares of common stock, is [waiving] [releasing] a lock-up restriction with respect to shares of the Company's common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver] [release] will take effect on , 20 , and the shares may be sold on or after such date.

**This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.**

**Exhibit 3.1**

**AMENDED AND RESTATED**
**CERTIFICATE OF INCORPORATION**
**OF FIRST WATCH RESTAURANT GROUP, INC.**

**(Under Sections 242 and 245 of the**
**Delaware General Corporation Law)**

First Watch Restaurant Group, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware, as amended (the "DGCL"), does hereby certify as follows:

FIRST. The Corporation filed its original Certificate of Incorporation with the Secretary of State of the State of Delaware on August 10, 2017 under the name AI Fresh Super Holdco, Inc., and the Corporation filed a Certificate of Amendment of Certificate of Incorporation to change its name to First Watch Restaurant Group, Inc. on December 20, 2019 (as further amended to date, the "Previous Certificate of Incorporation").

SECOND. The Board of Directors of the Corporation (the "Board of Directors") adopted resolutions proposing to amend and restate the Previous Certificate of Incorporation, and the stockholders of the Corporation have duly approved the amendment and restatement by written consent pursuant to and in accordance with Section 228 of the DGCL.

THIRD. This Amended and Restated Certificate of Incorporation (this "Certificate") has been duly adopted in accordance with Sections 228, 242 and 245 of the DGCL.

FOURTH. This Certificate restates, integrates and further amends the Previous Certificate of Incorporation of the Corporation to read in its entirety as follows:

## ARTICLE I

1.1 Name. The name of the Corporation is:

First Watch Restaurant Group, Inc.

## ARTICLE II

2.1 Address. The address of the Corporation's registered office in the State of Delaware is c/o Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent for service of process in the State of Delaware at such address is The Corporation Trust Company.

## ARTICLE III

3.1 Purpose. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized and incorporated under the DGCL.

## ARTICLE IV

4.1 Authorized Shares. The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 310,000,000 shares, divided into two classes as follows: (i) 300,000,000 shares shall be designated shares of common stock, par value $0.01 per share ("Common Stock") and (ii) 10,000,000 shares shall be designated shares of preferred stock, par value $0.01 per share (the "Preferred Stock"). Notwithstanding anything to the contrary contained herein, the rights and preferences of the Common Stock shall at all times be subject to the rights and preferences of the Preferred Stock as may be set forth in one or more certificates of designations filed with the Secretary of State of the State of Delaware from time to time in accordance with the DGCL and this Certificate. The number of authorized shares of Preferred Stock and Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) from time to time by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding shares of stock entitled to vote thereon, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Common Stock or the Preferred Stock voting separately as a class or series shall be required therefor.

4.2 Common Stock. The Common Stock shall have the following powers, designations, preferences and rights and qualifications, limitations and restrictions:

(a) Voting. Each holder of record of shares of Common Stock shall have one vote for each share of Common Stock held of record by such holder of record as of the applicable record date on any matter on which stockholders are generally entitled to vote and that is submitted to a vote of the stockholders of the Corporation; provided, however, that to the fullest extent permitted by law, holders of Common Stock, as such, shall have no voting power with respect to, and shall not be entitled to vote on, any amendment to this Certificate (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series of Preferred Stock are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to applicable law or this Certificate (including any certificate of designations relating to any series of Preferred Stock).

(b) Dividends and Distributions. Subject to the prior rights of all classes or series of stock at the time outstanding having prior rights as to dividends or other distributions, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property, or stock as may be declared on the Common Stock by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in all such dividends and other distributions.

(c) Liquidation, etc. Subject to the prior rights of creditors of the Corporation and the holders of all classes or series of stock at the time outstanding having prior rights as to distributions upon liquidation, dissolution or winding up of the Corporation, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of shares of Common Stock shall be entitled to receive their ratable and proportionate share of the remaining assets of the Corporation.

(d) No holder of shares of Common Stock shall have cumulative voting rights.

(e) No holder of shares of Common Stock shall be entitled to preemptive rights pursuant to this Certificate.

4.3 Preferred Stock. The Board of Directors is hereby expressly authorized, to the fullest extent as may now or hereafter be permitted by the DGCL, by resolution or resolutions, at any time and from time to time, to provide for the issuance of a share or shares of Preferred Stock in one or more series and to fix for each such series (i) the number of shares constituting such series and the designation of such series, (ii) the voting powers (if any), whether full or limited, of the shares of such series, (iii) the powers, preferences, and relative, participating, optional or other special rights of the shares of each such series, and (iv) the qualifications, limitations, and restrictions thereof, and to cause to be filed with the Secretary of State of the State of Delaware a certificate of designation with respect thereto. Without limiting the generality of the foregoing, to the fullest extent as may now or hereafter be permitted by the DGCL, the authority of the Board of Directors with respect to the Preferred Stock and any series thereof shall include, but not be limited to, determination of the following:

(a) the number of shares constituting any series, which number the Board of Directors may thereafter increase or decrease (but not below the number of shares thereof then outstanding) and the distinctive designation of that series;

(b) the dividend rate or rates on the shares of any series, the terms and conditions upon which and the periods in respect of which dividends shall be payable, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

(c) the voting rights, if any, of such series and, if the shares shall have voting rights, the number of votes per share and the terms and conditions of such voting rights;

(d) whether any series shall have conversion privileges and, if so, the terms and conditions of conversion, including provision for adjustment of the conversion rate upon such events as the Board of Directors shall determine;

(e) whether the shares of any series shall be redeemable and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

(f) whether any series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;

(g) the rights of the shares of any series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and

(h) any other powers, preferences, rights, qualifications, limitations, and restrictions of any series.

The powers, preferences and relative, participating, optional and other special rights of the shares of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. Unless otherwise provided in the resolution or resolutions providing for the issuance of such series of Preferred Stock, shares of Preferred Stock, regardless of series, which shall be issued and thereafter acquired by the Corporation through purchase, redemption, exchange, conversion or otherwise shall return to the status of authorized but unissued Preferred Stock, without designation as to series of Preferred Stock, and the Corporation shall have the right to reissue such shares.

4.4 Power to Sell and Purchase Shares. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons, and for such consideration and for such corporate purposes, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration and for such corporate purposes, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.

## ARTICLE V

5.1 Powers of the Board. Except as otherwise provided by the DGCL or this Certificate, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by applicable law or by this Certificate (including any certificate of designations relating to any series of Preferred Stock) or the Bylaws of the Corporation (as amended and/or restated, the "Bylaws"), the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, except as otherwise specifically required by law or as otherwise provided in this Certificate (including any certificate of designations relating to any series of Preferred Stock).

5.2 Number of Directors. The total number of directors constituting the Board of Directors shall be at least one and, subject to any rights of the holders of any series of Preferred Stock then outstanding to elect additional directors under specified circumstances or otherwise, the total number of directors constituting the whole Board of Directors shall be determined from time to time exclusively by resolution adopted by the Board of Directors.

5.3 Classification. Subject to the terms of any one or more series of Preferred Stock, and effective upon the date the shares of Common Stock are first publicly traded (the "IPO Date"):

(a) the directors of the Corporation shall be divided into three classes designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. The Board of Directors may assign members of the Board of Directors already in office to such classes as of the IPO Date. No director shall be a member of more than one class of directors. Directors shall be elected by the plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote thereon.

(b) The term of office of the initial Class I directors shall expire at the first annual meeting of the stockholders following the IPO Date; the term of office of the initial Class II directors shall expire at the second annual meeting of the stockholders following the IPO Date; and the term of office of the initial Class III directors shall expire at the third annual meeting of the stockholders following the IPO Date. At each annual meeting of stockholders, commencing with the first annual meeting of stockholders following the IPO Date, successors to the class of directors whose term expires at that annual meeting shall be elected to hold office until the third annual meeting next succeeding his or her election and until his or her respective successor shall have been duly elected and qualified. If the number of directors is changed, any increase or decrease shall be apportioned among the classes in such a manner as the Board of Directors shall determine so as to maintain the number of directors in each class as nearly equal as possible, but in no case will a decrease in the number of directors shorten the term of any incumbent director.

5.4 Removal of Directors. Subject to the terms of any one or more series of Preferred Stock, any director may be removed from office at any time by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class, and only for cause so long as the Board of Directors is classified.

5.5 Director Elections by Holders of Preferred Stock. Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock shall have the right, voting separately by series, to elect one or more directors at an annual or special meeting of stockholders, the election, filling of vacancies, removal of directors and other features of such one or more directorships shall be governed by the terms of such one or more series of Preferred Stock to the extent permitted by law. During any period when the holders of any series of Preferred Stock, voting separately as a series or together with one or more series, have the right to elect additional directors, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, resignation, disqualification or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

## ARTICLE VI

6.1 Elections of Directors. Elections of directors need not be by written ballot except and to the extent provided in the Bylaws.

6.2 Advance Notice. Advance notice of nominations for the election of directors or proposals of other business to be considered by stockholders, made other than by the Board of Directors or a duly authorized committee thereof or any authorized officer of the Corporation to whom the Board of Directors or such committee shall have delegated such authority, shall be given in the manner provided in the Bylaws. Without limiting the generality of the foregoing, the Bylaws may require that such advance notice include such information as the Board of Directors may deem appropriate or useful.

6.3 No Stockholder Action by Written Consent. Subject to the terms of any one or more series of Preferred Stock, from and after the time that Advent International Corporation ("Advent"), a Delaware corporation, and its affiliates collectively, beneficially own (as shall be determined in accordance with Rules 13d-3 and 13d-5 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) less than 50% of the then outstanding shares of the Common Stock, then any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such stockholders of the Corporation and may not be effected by any written consent in lieu of a meeting by such stockholders. For purposes of this Section 6.3, Section 5.3 above and Article X below, "affiliates" shall mean, with respect to a given person, any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified; provided, however, that for the purposes of this definition none of (i) the Corporation, its subsidiaries and any entities (including corporations, partnerships, limited liability companies or other persons) in which the Corporation or its subsidiaries hold, directly or indirectly, an ownership interest, on the one hand, or (ii) Advent and its affiliates (excluding the Corporation, its subsidiaries or other entities described in clause (i)), on the other hand, shall be deemed to be "affiliates" of one another. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as applied to any person means the possession, direct or indirect, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

6.4 Special Meetings of Stockholders. Subject to the terms of any one or more series of Preferred Stock, special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called at any time, but only by or at the direction of a majority of the directors then in office, the Chairperson of the Board of Directors or the Chief Executive Officer of the Corporation,.

## ARTICLE VII

7.1 Limited Liability of Directors. To the fullest extent permitted by the DGCL, as the same exists or as may hereafter be amended, no director of the Corporation shall have any personal liability to the Corporation or any of its stockholders for monetary damages for any breach of fiduciary duty as a director. If the DGCL is amended hereafter to permit the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be

eliminated or limited to the fullest extent permitted by the DGCL, as so amended, without further action by the Corporation. Any alteration, amendment, addition to or repeal of this Section 7.1, or adoption of any provision of this Certificate (including any certificate of designations relating to any series of Preferred Stock) inconsistent with this Section 7.1, shall not reduce, eliminate or adversely affect any right or protection of a director of the Corporation existing at the time of such alteration, amendment, addition to, repeal or adoption with respect to acts or omissions occurring prior to such alteration, amendment, addition to, repeal or adoption.

7.2 Change in Rights. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any acts or omissions occurring prior to such alteration, amendment, addition to, repeal or adoption.

## ARTICLE VIII

8.1 Location of Meetings and Books. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

## ARTICLE IX

9.1 Amendments to Bylaws. In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors is expressly authorized and empowered to make, alter, amend, add to or repeal any and all Bylaws by a resolution of the Board of Directors. In addition to any vote required by this Certificate (including any certificate of designations relating to any series of Preferred Stock) or applicable law, the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding shares entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to make, alter, amend, add to or repeal any or all Bylaws of the Corporation or to adopt any provision inconsistent therewith.

## ARTICLE X

10.1 Section 203 of the DGCL. The Corporation shall not be governed by Section 203 of the DGCL ("Section 203"), and the restrictions contained in Section 203 shall not apply to the Corporation.

10.2 Limitations on Business Combinations. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

(a) prior to such time, the Board of Directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; or

(b) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least eighty-five percent (85%) of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (1) persons who are directors and also officers of the Corporation and (2) employee stock plans of the Corporation in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

(c) at or subsequent to such time, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66⅔% of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

10.3 Exceptions to Prohibition on Interested Stockholder Transactions. The restrictions contained in this Article X shall not apply if:

(a) a stockholder becomes an interested stockholder inadvertently and (i) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an interested stockholder; and (ii) would not, at any time within the three- year period immediately prior to a business combination between the Corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition of ownership; or

(b) the business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (i) constitutes one of the transactions described in the second sentence of this Section 10.3(b) of Article X; (ii) is with or by a person who either was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of the Board of Directors; and (iii) is approved or not opposed by a majority of the directors then in office (but not less than one) who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the Corporation is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly-owned subsidiary or to the Corporation) having an aggregate market value equal to fifty percent (50%) or more of either that aggregate market value of all of the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock (as defined hereinafter) of the Corporation; or (z) a proposed tender or exchange offer for fifty percent (50%) or more of the outstanding voting stock of the Corporation. The Corporation shall give not less than 20 days' notice to all interested stockholders prior to the consummation of any of the transactions described in clause (x) or (y) of the second sentence of this Section 10.3(b) of Article X.

10.4 As used in this Article X only, and unless otherwise provided by the express terms of this Article X, the following terms shall have the meanings ascribed to them as set forth in this Section 10.4 and, to the extent such terms are defined elsewhere in this Certificate, such definition shall not apply to this Article X:

(a) “affiliate” has the meaning ascribed to it in Section 6.3 of Article VI of this Certificate.

(b) “associate” when used to indicate a relationship with any person, means: (1) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of twenty percent (20%) or more of any class of voting stock; (2) any trust or other estate in which such person has at least a twenty percent (20%) beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (3) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(c) “business combination” when used in reference to the Corporation and any interested stockholder of the Corporation, means:

(i) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (i) with the interested stockholder, or (ii) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation section 2 of this Article X is not applicable to the surviving entity;

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

(iii) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (a) pursuant to the exercise, exchange or conversion of the securities exercisable for, exchangeable for or convertible into stock of the Corporation or any subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (b) pursuant to a merger under Section 251(g) of the DGCL; (c) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (d) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (e) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (c)-(e) of this section 3(b)(iii) of this Article X shall there be an increase in the interested stockholder’s proportionate share of the stock of any class or series of the Corporation or the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(iv) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(v) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in section (3)(b)(i)-(iv) above of this Article X) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(d) "control," including the terms "controlling," "controlled by" and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of twenty percent (20%) or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Article X, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group (as such term is used in Rule 13d-5 under the Exchange Act, as such Rule is in effect as of the date of this Certificate) have control of such entity.

(e) "interested stockholder" means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of fifteen percent (15%) or more of the outstanding voting stock of the Corporation, or (ii) is an affiliate or associate of the Corporation and was the owner of fifteen percent (15%) or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder, and the affiliates and associates of such person; provided, however, that the term "interested stockholder" shall in no case include or be deemed to include (1) the Investors or their direct or indirect transferees and such transferees' current or future affiliates or associates, or (2) any person whose ownership of share in excess of the fifteen percent (15%) limitation set forth herein is the result of any action taken solely by the Corporation; provided that such person specified in this clause (2) shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include voting stock deemed to be owned by the person through application of the definition of "owner" below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(f) “Investors” means Advent and any of its current or future affiliates or successors or any group, or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, for so long as they collectively own, directly or indirectly, 10% or more of the voting power of the Corporation’s then outstanding shares of voting stock of the Corporation.

(g) “owner,” including the terms “own” and “owned,” when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

(i) beneficially owns such stock, directly or indirectly; or

(ii) has (1) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants, options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person’s affiliates or associates until such tendered stock is accepted for purchase or exchange; or (2) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person’s right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or

(iii) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (2) of section (3)(f)(ii) above of this Article X), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

(h) “person” means any individual, corporation, partnership, or unincorporated association or other entity.

(i) “stock” means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(j) “voting stock” means, with respect to any corporation, stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock in this Article X shall refer to such percentage of votes of such voting stock.

10.5 Corporate Opportunities. To the fullest extent permitted by Section 122(17) of the DGCL and except as may be otherwise expressly agreed in writing by the Corporation and Advent, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, business

opportunities, which are from time to time presented to Advent or any of its managers, officers, directors, agents, stockholders, members, partners, affiliates and subsidiaries (other than the Corporation and its subsidiaries), even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and no such person or entity shall be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such person or entity pursues or acquires such business opportunity, directs such business opportunity to another person or entity or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries unless, in the case of any such person who is a director or officer of the Corporation, such business opportunity is expressly offered to such director or officer in writing solely in his or her capacity as a director or officer of the Corporation. Neither the alteration, amendment, addition to or repeal of this Article X, nor the adoption of any provision of this Certificate (including any certificate of designations relating to any series of Preferred Stock) inconsistent with this Article X, shall eliminate or reduce the effect of this Article X in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article X, would accrue or arise, prior to such alteration, amendment, addition, repeal or adoption.

## ARTICLE XI

11.1 Exclusive Forum.

(a) Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery lacks jurisdiction, a state court located within the State of Delaware or the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for: any (i) derivative action or proceeding brought on behalf of the Corporation; (ii) action asserting a claim of breach of a fiduciary duty owed by or other wrongdoing by any current or former director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders; (iii) action asserting a claim arising under any provision of the DGCL or this Certificate or the Bylaws (as either may be amended from time to time), or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; or (iv) action asserting a claim governed by the internal affairs doctrine. This Section 11.1(a) shall not apply in any respect to claims or causes of action brought to enforce a duty or liability created by the Securities Act of 1933, as amended (the "Securities Act"), or the Exchange Act, or the rules and regulations promulgated thereunder, or any other claim or cause of action for which the federal courts have exclusive jurisdiction.

(b) Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any action asserting a claim arising under the Securities Act or the rules and regulations promulgated thereunder. Pursuant to the Exchange Act, claims arising thereunder must be brought in the federal district courts of the United States of America.

## ARTICLE XII

12.1 Amendment. The Corporation reserves the right, at any time and from time to time, to alter, amend, add to or repeal any provision contained in this Certificate (including any certificate of designations relating to any series of Preferred Stock) in any manner now or hereafter prescribed by the laws of the State of Delaware, and all rights, preferences, privileges and powers of any nature conferred upon stockholders, directors or any other persons herein are granted subject to this reservation.

## ARTICLE XIII

13.1 Severability. If any provision (or any part thereof) of this Certificate shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate including, without limitation, each portion of any section of this Certificate containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Certificate (including, without limitation, each such containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service or for the benefit of the Corporation to the fullest extent permitted by law.

[*The remainder of this page is intentionally left blank.*]

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be executed on its behalf on the _____ day of the month of _____ in the year 2021.

First Watch Restaurant Group, Inc.

By: _____
Name:
Title:

**Exhibit 3.2**

# AMENDED AND RESTATED BYLAWS

# OF

# FIRST WATCH RESTAURANT GROUP, INC.
**(a Delaware corporation)**

**Effective [•], 2021**

## ARTICLE I

## STOCKHOLDERS

Section 1.01. Annual Meetings. The annual meeting of the stockholders of First Watch Restaurant Group, Inc. (the "Corporation") for the election of directors and for the transaction of such other business as properly may come before such meeting shall be held at such place, either within or without the State of Delaware, or, within the sole discretion of the Board of Directors of the Corporation (the "Board of Directors" or "Board"), and subject to such guidelines and procedures as the Board of Directors may adopt, by means of remote communication as authorized by the General Corporation Law of the State of Delaware (the "DGCL"), and at such date and at such time as may be fixed from time to time by resolution of the Board of Directors and set forth in the notice of the meeting.

Section 1.02. Special Meetings. Subject to the terms of any one or more series of Preferred Stock, special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called at any time, but only by or at the direction of a majority of the Board of Directors, the Chairperson of the Board of Directors or the Chief Executive Officer of the Corporation. The ability of stockholders to call a special meeting of stockholders is specifically denied. Any such special meetings of the stockholders shall be held at such places, within or without the State of Delaware, or, within the sole discretion of the Board of Directors, and subject to such guidelines and procedures as the Board of Directors may adopt, by means of remote communication as authorized by the DGCL, as shall be specified in the respective notice thereof.

Section 1.03. Stockholder Action by Consent. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote only to the extent permitted by and in the manner provided in the Certificate of Incorporation of the Corporation (as it may be amended from time to time, the "Certificate of Incorporation") and in accordance with applicable law.

Section 1.04. Notice of Meetings; Waiver.

(a) Unless otherwise prescribed by statute or the Certificate of Incorporation of the Corporation, the Secretary of the Corporation or any Assistant Secretary shall cause notice of the place, if any, date and hour of each meeting of the stockholders, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, to be given personally by mail or by electronic transmission, or as otherwise provided in these Bylaws, not fewer than ten (10) nor more than sixty (60) days prior to the meeting, except as otherwise required by applicable law, the Certificate of Incorporation or these Bylaws.

(b) All such notices shall be delivered in writing or in any other manner permitted by the DGCL. If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the Corporation. If delivered by courier service, notice shall be deemed given at the earlier of when the notice is received or left at such stockholder's address as the same appears on the records of the Corporation. If given by electronic mail, notice shall be deemed given when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by the DGCL. Notice to stockholders may also be given by other forms of electronic transmission consented to by the stockholder. If given by facsimile telecommunication, such notice shall be deemed given when directed to a number at which the stockholder has consented to receive notice by facsimile. If given by a posting on an electronic network together with separate notice to the stockholder of such specific posting, such notice shall be deemed given upon the later of (x) such posting and (y) the giving of such separate notice. If notice is given by any other form of electronic transmission, such notice shall be deemed given when directed to the stockholder.

(c) Notwithstanding Section 1.04(b) of this Article I, a notice may not be given by electronic transmission (including email) from and after the time: (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation; and (ii) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent or other person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. For purposes of these Bylaws, except as otherwise limited by applicable law, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), 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 recipient through an automated process. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. A notice by electronic mail will include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files or information.

(d) A written waiver of any notice of any annual or special meeting signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders need be specified in a written waiver of notice. Attendance of a stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(e) If a stockholder meeting is to be held by means of remote communication and stockholders will take action at such meeting, the notice of such meeting must: (i) specify the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present and vote at such meeting; and (ii) provide, or be accompanied by, the information required to access the stockholder list. A waiver of notice may be given by electronic transmission.

Section 1.05. Quorum. Except as otherwise required by law or by the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business at such meeting. Where a separate vote by one or more classes or series is required, the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote shall constitute a quorum entitled to take action with respect to that vote on that matter. Shares of the Corporation's capital stock shall neither be entitled to vote nor counted for quorum purposes if such shares belong to (i) the Corporation, (ii) another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation or (iii) any other entity, if a majority of the voting power of such other entity is otherwise controlled, directly or indirectly, by the Corporation; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.06. Voting.

(a) Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question.

(b) Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, directors shall be elected as set forth in Section 2.02 of these Bylaws. All other matters presented to the stockholders at a meeting at which a quorum is present shall, unless a different or minimum vote is required by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the Corporation which are present in person or by proxy and entitled to vote thereon.

Section 1.07. Voting by Ballot. No vote of the stockholders on an election of directors or any other matter need be taken by written ballot or by electronic transmission unless otherwise provided in the Certificate of Incorporation or required by law.

Section 1.08. Postponement and Adjournment. Any meeting of stockholders may be postponed, rescheduled or cancelled by action of the Board of Directors at any time in advance of such meeting. If a quorum is not present at any meeting of the stockholders, the Chairperson of such meeting shall have the power to adjourn the meeting without a vote of the stockholders. In the absence of a quorum, the stockholders so present may, by the affirmative vote of the holders of a majority in voting power of the shares of the Corporation which are present in person or by proxy and entitled to vote thereon, adjourn the meeting from time to time until a quorum shall attend. Notice of any adjourned meeting of the stockholders of the Corporation need not be given if the place, if any, date and hour thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.09. Proxies. Any stockholder entitled to vote at any meeting of the stockholders may authorize another person or persons to vote at any such meeting and express such vote on behalf of such stockholder by proxy. A stockholder may authorize a valid proxy by executing a written instrument signed by such stockholder, or by causing such stockholder's signature to be affixed to such writing by any reasonable means including, but not limited to, by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person designated as the holder of the proxy, a proxy solicitation firm or a like authorized agent. Such proxy must be filed with the Secretary of the Corporation before or at the time of the meeting at which such proxy will be voted. No such proxy shall be voted or acted upon after the expiration of three (3) years from the date of such proxy, unless such proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and

only as long as, it is coupled with an interest. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing with the Secretary of the Corporation either an instrument in writing revoking the proxy or another duly executed proxy bearing a later date. Proxies by telegram, cablegram, or other electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the stockholder. Any copy or other reliable reproduction of a writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 1.10. Organization; Procedure. At every meeting of stockholders, the Chairperson of such meeting shall be the Chairperson of the Board or, if no Chairperson of the Board has been elected or in the event of his or her absence or disability, a Chairperson chosen by the Board of Directors. The Secretary of the Corporation, or in the event of his or her absence or disability, an Assistant Secretary, if any, or if there be no Assistant Secretary, in the absence of the Secretary of the Corporation, an appointee of the Chairperson of the meeting, shall act as Secretary of the meeting. The order of business and all other matters of procedure at every meeting of stockholders may be determined by the Chairperson of such meeting.

Section 1.11. Business at Annual and Special Meetings. No business may be transacted at an annual or special meeting of stockholders other than business that is:

(a) specified in a notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or a duly authorized committee thereof,

(b) otherwise brought before the meeting by or at the direction of the Board of Directors or a duly authorized committee thereof or any authorized officer of the Corporation to whom the Board of Directors or such committee shall have delegated such authority, or

(c) otherwise brought before the meeting by a “Record Holder” who complies with the notice procedures set forth in Section 1.12 of these Bylaws.

A “Record Holder” is a stockholder that holds of record stock of the Corporation entitled to vote at the meeting on the business (including any election of a director) to be appropriately conducted at the meeting. Clause (c) of this Section 1.11 shall be the exclusive means for a Record Holder to make director nominations or submit other business before a meeting of stockholders (other than proposals brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and included in the Corporation’s notice of meeting, which proposals are not governed by these Bylaws). Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at a stockholders’ meeting except in accordance with the procedures set forth in Section 1.11 and Section 1.12 of these Bylaws.

Section 1.12. Notice of Stockholder Business and Nominations. In order for a Record Holder to properly bring any item of business before a meeting of stockholders, the Record Holder must give timely notice thereof in writing to the Secretary of the Corporation in compliance with the requirements of this Section 1.12. This Section 1.12 shall constitute an "advance notice provision" for annual meetings for purposes of Rule 14a-4(c)(1) under the Exchange Act.

(a) To be timely, a Record Holder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation:

(i) in the case of an annual meeting of stockholders, not earlier than the open of business on the one-hundred twentieth (120th) day and not later than the close of business on the ninetieth (90th) day prior to the first anniversary of the preceding year's annual meeting (which date shall be May 30, 2021, for purposes of the Corporation's first annual meeting of stockholders after its shares of common stock are first publicly traded); provided, however, that in the event the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the open of business on the one-hundred twentieth (120th) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to the date of such annual meeting or, if the first public announcement by the Corporation of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation;

(ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not earlier than the open of business on the one-hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the date on which notice of the date of the special meeting was made by the Corporation, mailed or public disclosure of the date of the special meeting was made, whichever first occurs; and

(iii) in no event shall any adjournment or postponement of an annual or special meeting, or the announcement thereof, commence a new time period (or extend the time period) for the giving of a stockholder's notice as described above.

(b) To be in proper form, whether in regard to a nominee for election to the Board of Directors or other business, a Record Holder's notice to the Secretary must:

(i) set forth, as to the Record Holder, the following information together with a representation as to the accuracy of the information:

(A) the name and address of the Record Holder as they appear on the Corporation's books (the "Holder");

(B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by the Holder or any Stockholder Associated Person of the Record Holder (except that such Holder or Stockholder Associated Person of the Record Holder shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Holder or Stockholder Associated Person of the Record Holder has a right to acquire beneficial ownership at any time in the future) and the date such ownership was acquired;

(C) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the price, value or volatility of any class or series of shares of the Corporation, whether or not the instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") that is directly or indirectly owned beneficially by the Holder or any Stockholder Associated Person of the Record Holder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the price, value or volatility of shares of the Corporation;

(D) any proxy, contract, arrangement, understanding or relationship pursuant to which the Holder or Stockholder Associated Person of the Record Holder has a right to vote or has granted a right to vote any shares of any security of the Corporation;

(E) any short interest in any security of the Corporation (for purposes of these Bylaws a person shall be deemed to have a short interest in a security if the Holder or any Stockholder Associated Person of the Record Holder directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security);

(F) any rights to dividends on the shares of any security of the Corporation owned beneficially by the Holder or any Stockholder Associated Person of the Record Holder that are separated or separable from the underlying shares of the Corporation;

(G) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company or similar entity in which the Holder or any Stockholder Associated Person of the Record Holder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, is the manager, managing member or directly or indirectly beneficially owns an interest in the manager or managing member of a limited liability company or similar entity;

(H) any performance-related fees (other than an asset-based fee) that the Holder or any Stockholder Associated Person of the Record Holder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments or short interests, if any;

(I) any arrangements, rights, or other interests described in Sections 1.12(b)(i)(C)-(H) held by members of such Holder's immediate family sharing the same household;

(J) a representation that the Record Holder intends to appear in person or by proxy at the meeting to nominate the person(s) named or propose the business specified in the notice and whether or not such stockholder intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding shares required to approve the nomination(s) or the business proposed and/or otherwise to solicit proxies from stockholders in support of the nomination(s) or the business proposed;

(K) a certification regarding whether or not such Holder and any Stockholder Associated Person of the Record Holder have complied with all applicable federal, state and other legal requirements in connection with such Holder's and/or Stockholder Associated Persons' acquisition of shares or other securities of the Corporation and/or such Holder's and/or Stockholder Associated Persons' acts or omissions as a stockholder of the Corporation;

(L) any other information relating to the Holder and/or Stockholder Associated Person of the Record Holder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder; and

(M) any other information as reasonably requested by the Corporation.

Such information shall be provided as of the date of the notice and shall be supplemented by the Holder not later than ten (10) days after the record date for the meeting to disclose such ownership as of the record date.

(ii) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, the notice must set forth:

(A) a reasonably detailed description of the business desired to be brought before the meeting (including the text of any resolutions proposed for consideration), the reasons for conducting such business at the meeting, and any material direct or indirect interest of the Holder or any Stockholder Associated Persons in such business; and

(B) a reasonably detailed description of all agreements, arrangements and understandings, direct and indirect, between the Holder, and any other person or persons (including their names) in connection with the proposal of such business by the Holder.

(iii) set forth, as to each person, if any, whom the Holder proposes to nominate for election or reelection to the Board of Directors:

(A) all information with respect to such proposed nominee that would be required to be set forth in a Record Holder's notice pursuant to this Section 1.12 if such proposed nominee were a Record Holder;

(B) all information relating to the nominee (including, without limitation, the nominee's name, age, business and residence address and principal occupation or employment and the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the nominee) that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(C) a description of any agreements, arrangements and understandings between or among such stockholder or any Stockholder Associated Person, on the one hand, and any other persons (including any Stockholder Associated Person), on the other hand, in connection with the nomination of such person for election as a director; and

(D) a description of all direct and indirect compensation and other material monetary agreements, arrangements, and understandings during the past three years, and any other material relationships, between or among the Holder and respective affiliates and associates, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K if the Holder making the nomination or on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of Item 404 and the nominee were a director or executive officer of such registrant.

(iv) with respect to each nominee for election or reelection to the Board of Directors, the Record Holder shall include a completed and signed questionnaire, representation, and agreement required by Section 1.13 of these Bylaws. 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 the proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of the nominee. The number of nominees a Record Holder may nominate for election at an annual or special meeting (or in the case of Record Holder giving the notice on behalf of a beneficial owner, the number of nominees a Record Holder may nominate for election at the annual or special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual or special meeting.

(c) For purposes of these Bylaws:

(i) "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act and the rules and regulations thereunder;

(ii) "Stockholder Associated Person" means, with respect to any stockholder, (A) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depositary) and (B) any person controlling, controlled by or under common control with any stockholder, or any Stockholder Associated Person identified in clause (A) above; and

(iii) "Affiliate" and "Associate" are defined by reference to Rule 12b-2 under the Exchange Act. An "affiliate" is any "person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." "Control" is defined as the "possession, direct or indirect, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract, or otherwise." The term "associate" of a person means: (i) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is,

directly or indirectly, the beneficial owner of ten (10) percent or more of any class of equity securities, (ii) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(d) Only those persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible to serve as directors. Only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these Bylaws, provided, however, that, once business has been properly brought before the meeting in accordance with Section 1.12, nothing in this Section 1.12(d) shall be deemed to preclude discussion by any stockholder of such business. If any information submitted pursuant to this Section 1.12 by any stockholder proposing a nominee(s) for election as a director at a meeting of stockholders is inaccurate in any material respect, such information shall be deemed not to have been provided in accordance with Section 1.12. Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, the Chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in compliance with the procedures set forth in these Bylaws and, if he or she should determine that any proposed nomination or business is not in compliance with these Bylaws, he or she shall so declare to the meeting and any such nomination or business not properly brought before the meeting shall be disregarded or not be transacted.

(e) Notwithstanding the foregoing provisions of these Bylaws, a Record Holder also shall comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these Bylaws; provided, however, that any references in these Bylaws to the Exchange Act or the rules thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 1.11 or Section 1.12 of these Bylaws.

(f) Nothing in these Bylaws shall be deemed to (i) affect any rights of (A) stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act or (B) the holders of any series of Preferred Stock, if any, if so provided under any applicable certificate of designation for such Preferred Stock or in the Certificate or Incorporation, or (ii) affect any rights of any holders of common stock pursuant to a stockholders’ agreement with the Corporation existing on the date on which these Bylaws were adopted or impose any requirements, restrictions or limitations under Sections 1.11, 1.12 or 1.13 of these Bylaws unless expressly imposed by any such stockholders’ agreement.

Section 1.13. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation by a Holder, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Section 1.12 of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire providing the information requested about the background and qualifications of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement (the questionnaire, representation, and agreement to be in the form provided by the Secretary upon written request) that such person:

(a) is not and will not become a party to:

(i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation, or

(ii) any Voting Commitment that could limit or interfere with the person's ability to comply, if elected as a director of the Corporation, with the person's fiduciary duties under applicable law,

(b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, and

(c) in the person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

Section 1.14. Inspectors of Elections. Preceding any meeting of the stockholders, if required by law, the Board of Directors shall appoint one (1) or more persons to act as "inspectors" of elections, and may designate one (1) or more alternate inspectors. In the event no inspector or alternate is able to act, the Chairperson of such meeting shall appoint one (1) or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of an inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting, the authenticity, validity, and effect of proxies and ballots, and the existence of a quorum;

(c) specify the information relied upon to determine the validity of electronic transmissions in accordance with Section 1.09 of these Bylaws;

(d) count all votes and ballots;

(e) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;

(f) certify his or her determination of the number of shares represented at the meeting, and his or her count of all votes and ballots;

(g) appoint or retain other persons or entities to assist in the performance of the duties of inspector;

(h) when determining the shares represented and the validity of proxies and ballots, be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Section 1.09 of these Bylaws, ballots and the regular books and records of the Corporation. The inspector may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers or their nominees or a similar person which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspector considers other reliable information as outlined in this section, the inspector, at the time of his or her certification pursuant to paragraph (f) of this section, shall specify the precise information considered, the person or persons from whom the information was obtained, when this information was obtained, the means by which the information was obtained, and the basis for the inspector's belief that such information is accurate and reliable; and

(i) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

Section 1.15. Opening and Closing of Polls. The date and time for the opening and the closing of the polls for each matter to be voted upon at a stockholder meeting shall be fixed by the Chairperson of the meeting and announced at the meeting. The inspector shall be prohibited from accepting any ballots, proxies or votes or any revocations thereof or changes thereto after the closing of the polls, unless the Delaware Court of Chancery upon application by a stockholder shall determine otherwise.

Section 1.16. List of Stockholders Entitled to Vote. The Corporation shall prepare, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, 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, during ordinary business hours, for a period of at least ten (10) days prior to the meeting either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided

with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal executive office. 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 the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected 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, such list shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.16 or to vote in person or by proxy at any meeting of the stockholders. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list.

## ARTICLE II

## BOARD OF DIRECTORS

Section 2.01. General Powers. Except as may otherwise be provided by the DGCL or the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon it by applicable law, the Certificate of Incorporation (including any certificate of designations relating to any series of preferred stock) or these Bylaws, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, except as otherwise specifically required by law or as otherwise provided in the Certificate of Incorporation (including any certificate of designations relating to any series of preferred stock).

Section 2.02. Number, Election and Qualification. Subject to the terms of any one or more series of Preferred Stock, the total number of directors constituting the Board of Directors shall be at least one, or such larger number as may be fixed from time to time exclusively by a resolution adopted by the Board of Directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires. At any meeting of stockholders at which directors are to be elected, directors shall be elected by the plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote thereon. Directors need not be stockholders of the Corporation. To the extent set forth in the Certificate of Incorporation, the directors of the Corporation shall be divided into classes with terms set forth therein.

Section 2.03. The Chairperson of the Board. The Board of Directors may elect a Chairperson of the Board from among its members. If elected, the Board of Directors shall designate the Chairperson of the Board as either a non-executive Chairperson of the Board or an executive Chairperson of the Board. The Chairperson of the Board shall not be deemed an officer of the Corporation, unless the Board shall determine otherwise. Subject to the control vested in the Board by statute, by the Certificate of Incorporation,

or by these Bylaws, the Chairperson of the Board shall, if present, preside over all meetings of the stockholders and of the Board and shall have such other duties and powers as from time to time may be assigned to him or her by the Board, the Certificate of Incorporation or these Bylaws. References in these Bylaws to the "Chairperson of the Board" shall mean the non-executive Chairperson of the Board or executive Chairperson of the Board, as designated by the Board of Directors from time to time. In the absence (or inability or refusal to act) of the Chairperson of the Board, the Chief Executive Officer (if such person shall be a director) or such other director or officer of the Corporation designated by the Chairperson of the Board shall preside when present at all meetings of the stockholders and the Board.

Section 2.04. Annual and Regular Meetings. The annual meeting of the Board of Directors for the purpose of electing officers and for the transaction of such other business as may come before the meeting shall be held after the annual meeting of the stockholders and may be held at such places within or without the State of Delaware and at such times as the Board may from time to time determine, and if so determined notice thereof need not be given. Notice of such annual meeting of the Board of Directors need not be given. The Board of Directors from time to time may by resolution provide for the holding of regular meetings and fix the place (which may be within or without the State of Delaware) and the date and hour of such meetings. Notice of regular meetings need not be given, provided, however, that if the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be mailed promptly, or sent by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, electronic mail or other electronic means, to each director who shall not have been present at the meeting at which such action was taken, addressed to him or her at his or her usual place of business, or shall be delivered to him or her personally. Notice of such action need not be given to any director who attends the first regular meeting after such action is taken, except when the director attends such 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.

Section 2.05. Special Meetings; Notice. Special meetings of the Board of Directors for any purpose or purposes shall be held whenever called by the Chairperson of the Board, Chief Executive Officer or by the Board of Directors pursuant to the following sentence, at such place (within or without the State of Delaware), date and hour as may be specified in the notices of such meetings. Special meetings of the Board of Directors also may be held whenever called pursuant to a resolution approved by the Board of Directors. Notice shall be duly given to each director (a) in person or by telephone at least twenty-four (24) hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy, or other means of electronic transmission, or delivering written notice by hand, to such director's last known business, home or means of electronic transmission address at least twenty-four (24) hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or to such other address as any director may request by

notice to the Secretary at least seventy-two (72) hours in advance of the meeting. Notice of any special meeting need not be given to any director who attends such meeting except when the director attends such 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.

Section 2.06. Quorum; Voting. At all meetings of the Board of Directors, the presence of at least a majority of the total number of directors shall constitute a quorum for the transaction of business. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, the vote of at least a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.07. Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting of the Board of Directors to another time or place.

Section 2.08. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission. After the action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board of Directors or committee.

Section 2.09. Regulations; Manner of Acting. To the extent consistent with applicable law, the Certificate of Incorporation and these Bylaws, the Board of Directors may adopt by resolution such rules and regulations for the conduct of meetings of the Board of Directors and for the management of the property, affairs and business of the Corporation as the Board of Directors may deem appropriate. The directors shall act only as a Board of Directors and the individual directors shall have no power in their individual capacities unless expressly authorized by the Board of Directors.

Section 2.10. Action by Telephonic Communications. Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and communicate with each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 2.11. Resignations. Any director may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such Director, to the Corporation. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 2.12. Removal of Directors. Directors may be removed from office as provided in the Certificate of Incorporation.

Section 2.13. Vacancies and Newly Created Directorships. Subject to the terms of any one or more series of Preferred Stock, any vacancies in the Board of Directors for any reason and any newly created directorships resulting by reason of any increase in the number of directors shall be filled only by the Board of Directors (and not by the stockholders), acting by a majority of the Board of Directors, even if less than a quorum, or by a sole remaining director, and any directors so appointed shall hold office until the next election of the class of directors to which such directors have been appointed and until their successors are duly elected and qualified.

Section 2.14. Compensation. The amount, if any, which each director shall be entitled to receive as compensation for such director's services, shall be fixed from time to time by resolution of the Board of Directors or any committee thereof or as an agreement between the Corporation and any director. The directors may be reimbursed their out-of-pocket expenses, if any, of attendance at each meeting of the Board of Directors in accordance with the Corporation's policies in effect from time to time and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. 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 and reimbursement for service as committee members.

Section 2.15. Reliance on Accounts and Reports, Etc. A director, or a member of any committee designated by the Board of Directors, shall, in the performance of such director's or member's duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the Board of Directors, or by any other person as to the matters the director or the member reasonably believes are within such other person's professional or expert competence and who the director or member reasonably believes or determines has been selected with reasonable care by or on behalf of the Corporation.

## ARTICLE III

## COMMITTEES

Section 3.01. Committees. The Board of Directors, by resolution, may designate from among its members one (1) or more committees of the Board of Directors, each consisting of one or more directors as from time to time may be fixed by the Board of Directors. Any such committee shall serve at the pleasure of the Board of Directors. The Board of Directors may appoint a Chairperson of any committee, who shall preside at meetings of any such committee. The Board of Directors may elect one (1) or more of its members as alternate members of any such committee who may take the place of any absent or disqualified member or members at any meeting of such committee, upon request of the Chairperson of the Board or the Chairperson of such committee.

Section 3.02. Powers. Subject to any limitation imposed by applicable law, each committee shall have and may exercise such powers of the Board of Directors as may be provided by resolution or resolutions of the Board of Directors or provided in charters or other organization documents of such committee approved by the Board of Directors. No committee shall have the power or authority: to approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted by the Board of Directors to the stockholders for approval; or to adopt, amend or repeal the Bylaws of the Corporation.

Section 3.03. Proceedings. Except as otherwise provided herein or required by law, each committee may fix its own rules of procedure and may meet at such place (within or without the State of Delaware), at such time and upon such notice, if any, as it shall determine from time to time. Each committee shall keep minutes of its proceedings and shall report such proceedings to the Board of Directors at the meeting of the Board next following any such proceedings.

Section 3.04. Quorum and Manner of Acting. Except as may be otherwise provided in the resolution creating such committee or in the rules of such committee, at all meetings of any committee, the presence of members (or alternate members) constituting a majority of the total number of committee members serving shall constitute a quorum for the transaction of business, except that, in the case of one-member committees, the presence of one member shall constitute a quorum and in the case of two-member committees, the presence of two members shall constitute a quorum. The act of the majority of the members present at any meeting at which a quorum is present shall be the act of such committee. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting, in accordance with Section 2.08 of Article II of these bylaws. The members of any committee shall act only as a committee, and the individual members of such committee shall have no power in their individual capacities unless expressly authorized by the Board of Directors or the committee.

Section 3.05. Action by Telephonic Communications. Unless otherwise provided by the Board of Directors, members of any committee may participate in a meeting of such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and communicate with each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 3.06. Absent or Disqualified Members. In the absence or disqualification of a member of any committee, if no alternate member is present to act in his or her stead, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she 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.

Section 3.07. Resignations. Any member (and any alternate member) of any committee may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such member, to the Board of Directors or the Chairperson of the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 3.08. Removal. Any member (and any alternate member) of any committee may be removed at any time, either for or without cause, by resolution adopted by the Board of Directors.

Section 3.09. Vacancies. If any vacancy shall occur in any committee, by reason of disqualification, death, resignation, removal or otherwise, the remaining members (and any alternate members) shall continue to act, and any such vacancy may be filled by the Board of Directors.

## ARTICLE IV

## OFFICERS

Section 4.01. Chief Executive Officer. The Board of Directors may elect a Chief Executive Officer to serve at the pleasure of the Board of Directors. The Chief Executive Officer shall (a) supervise the implementation of policies adopted or approved by the Board of Directors, (b) exercise a general supervision and superintendence over all the business and affairs of the Corporation subject to the authority of the Board of Directors, (c) appoint and remove subordinate officers, agents and employees, except those appointed by the Board of Directors, and (d) possess such other powers and perform such other duties as may be assigned to him or her by these Bylaws, as may from time to time be assigned by the Board of Directors and as may be incident to the office of Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general authority to execute bonds, deeds and contracts in the name of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these Bylaws, the Board of Directors or the Chief Executive Officer.

Section 4.02. Chief Financial Officer of the Corporation. The Board of Directors may elect a Chief Financial Officer of the Corporation to serve at the pleasure of the Board of Directors. The Chief Financial Officer of the Corporation shall (a) have the custody of the corporate funds and securities, except as otherwise provided by the Board of Directors, (b) keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, (c) 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 Board of Directors, (d) disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and (e) render to the Chief Executive Officer and the Board of Directors, whenever they may require it, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Corporation.

Section 4.03. Treasurer and Assistant Treasurers. The Board of Directors may elect a Treasurer of the Corporation and any number of Assistant Treasurers to serve at the pleasure of the Board of Directors. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board or the Chief Executive Officer or the Chief Financial Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these Bylaws, to disburse such funds as authorized by the Board or the Chief Executive Officer, to make proper accounts of such funds, and to render as required by the Board statements of all such transactions and of the financial condition of the Corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board) shall perform the duties and exercise the powers of the Treasurer.

Section 4.04. Secretary of the Corporation. The Board of Directors shall elect a Secretary of the Corporation to serve at the pleasure of the Board of Directors. The Secretary of the Corporation shall (a) keep minutes of all meetings of the stockholders and of the Board of Directors, (b) authenticate records of the Corporation, (c) give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and (d) in general, have such powers and perform such other duties as may be assigned to him or her by these Bylaws, as may from time to time be assigned to him or her by the Board of Directors or the Chief Executive Officer and as may be incident to the office of Secretary of the Corporation. 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, and if there be no Assistant Secretary, then the Board of Directors may choose another officer to cause such notice to be given. 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, which may be kept or filed (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors.

Section 4.05. Other Officers Elected by Board of Directors. At any meeting of the Board of Directors, the Board of Directors may elect a President (who may or may not be the Chief Executive Officer), a Chief Operations Officer, Vice Presidents, Assistant Secretaries or such other officers of the Corporation as the Board of Directors may deem necessary, to serve at the pleasure of the Board of Directors. Other officers elected by the Board of Directors shall have such powers and perform such duties as may be assigned to such officers by or pursuant to authorization of the Board of Directors or by the Chief Executive Officer. Any number of offices may be held by the same person.

Section 4.06. Term of Office. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign, but, subject to the requirements of the Certificate of Incorporation, any officer may be removed pursuant to the provisions set forth in Section 4.07.

Section 4.07. Removal and Resignation; Vacancies. Any officer may be removed for or without cause at any time by the Board of Directors. Any officer may resign at any time by delivering a resignation in writing or by electronic transmission, signed or given by such officer, to the Board of Directors, the Chief Executive Officer or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise, shall be filled by or pursuant to authorization of the Board of Directors.

Section 4.08. Authority and Duties of Officers. The officers of the Corporation shall have such authority and shall exercise such powers and perform such duties as may be specified in these Bylaws or pursuant to authorization of the Board of Directors, or which generally pertain to such officer's title and each officer shall exercise such powers and perform such duties as may be required by law.

## ARTICLE V

## CAPITAL STOCK

Section 5.01. Certificates of Stock. The Board of Directors may authorize that some or all of the shares of any or all of the Corporation's classes or series of stock be evidenced by a certificate or certificates of stock. The Board of Directors may also authorize the issue of some or all of the shares of any or all of the Corporation's classes or series of stock without certificates. The rights and obligations of stockholders with the same class and/or series of stock shall be identical whether or not their shares are represented by certificates.

(a) Shares with Certificates. If the Board of Directors chooses to issue shares of stock evidenced by a certificate or certificates, each individual certificate shall include the following on its face: (i) the Corporation's name, (ii) the fact that the Corporation is organized under the laws of Delaware, (iii) the name of the person to whom the certificate is issued, (iv) the number of shares represented thereby, (v) the class of shares and the designation of the series, if any, which the certificate represents, and (vi) such other information as applicable law may require or as may be lawful. If the Corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations determined for each class or series (and the authority of the Board of Directors to determine variations for future series) shall be summarized on the front or back of each certificate. Alternatively, each certificate shall state on its front or back that the Corporation will furnish the stockholder this information in writing, without charge, upon request. Each certificate of stock issued by the Corporation shall be signed by any two officers of the Corporation. If the person who signed a certificate no longer holds office when the certificate is issued, the certificate is nonetheless valid.

(b) Shares without Certificates. If the Board of Directors chooses to issue shares of stock without certificates, the Corporation, shall, within a reasonable time after the issue or transfer of shares without certificates, send the stockholder a written notice containing the information required to be set forth or stated on certificates pursuant to the laws of the DGCL. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

Section 5.02. Signatures. All signatures on the certificate referred to in Section 5.01 of these Bylaws may be in engraved or printed form, to the extent permitted by law. In case any officer, transfer agent or registrar who has signed, or whose engraved or printed 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 he or she were such officer, transfer agent or registrar at the date of issue.

Section 5.03. Lost, Stolen or Destroyed Certificates. Except as provided in this Section 5.03, no new share certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may direct that a new certificate be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon delivery to the Corporation of an affidavit (or other document acceptable to the Corporation) of the owner or owners of such certificate, setting forth such allegation. The Corporation may require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond (or other security, including an indemnification agreement) sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

Section 5.04. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, the Corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Within a reasonable time after the transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the laws of the DGCL. Subject to the provisions of the Certificate of Incorporation and these Bylaws, the Board of Directors may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, transfer and registration of shares of the Corporation. Except as otherwise required by law, no transfer of stock shall be valid against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing the names of the persons from and to whom it was transferred.

Section 5.05. Record Date.

(a) In order to determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty (60) nor fewer than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, 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. 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, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights of the stockholders 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 date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 5.06. Registered Stockholders. The Corporation may treat the registered owner as the person exclusively entitled to receive dividends and other distributions, to vote, to receive notice and otherwise to exercise all the rights and powers of the owner of the shares represented by such certificate.

Section 5.07. Transfer Agent and Registrar. The Board of Directors may appoint one (1) or more transfer agents and one (1) or more registrars, and may require all certificates representing shares to bear the signature of any such transfer agents or registrars.

## ARTICLE VI

## INDEMNIFICATION

Section 6.01. Indemnification and Advancement of Expenses. The Corporation shall indemnify and provide advancement to any Indemnitee (as defined below) to the fullest extent permitted by law, as such may be amended from time to time. The rights to indemnification and advancement conferred in this Section shall be contract rights. In furtherance of the foregoing indemnification and advancement obligations, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Corporation. Any Indemnitee shall be entitled to the rights of indemnification and advancement provided in this Section 6.01(a) if, by reason of his or her Corporate Status (as defined below), Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding other than a Proceeding by or in the right of the Corporation. Pursuant to this Section 6.01(a), any Indemnitee shall be indemnified against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her, or on his or her behalf, in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal Proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee 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 Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Corporation. Any Indemnitee shall be entitled to the rights of indemnification and advancement provided in this Section 6.01(b) if, by reason of his or her Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Corporation. Pursuant to this Section 6.01(b), any Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been finally adjudged to be liable to the Corporation unless and to the extent that the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine that such indemnification may be made.

(c) Other Sources. The Corporation hereby acknowledges that Indemnitees may have certain rights to indemnification, advancement of expenses and/or insurance provided by sources other than the Corporation ("Third Party Indemnitors"). The Corporation hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to the Indemnitees are primary and any obligation of the Third Party Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Indemnitees are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by the Indemnitees and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement by reason of such Indemnitee's Corporate Status to the extent legally permitted and as required by the terms of this paragraph and the Bylaws of the Corporation from time to time (or any other agreement between the Corporation and the Indemnitees), without regard to any rights the Indemnitees may have against the Third Party Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Third Party Indemnitors from any and all claims against the Third Party Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Third Party Indemnitors on behalf of the Indemnitees with respect to any claim for which the Indemnitees have sought indemnification from the Corporation shall affect the foregoing and the Third Party Indemnitors shall have a right of contribution and/or to be subrogated to the extent of such advancement or payment to all of the rights of recovery of the Indemnitees against the Corporation. The Corporation and the Indemnitees agree that the Third Party Indemnitors are express third party beneficiaries of the terms of this paragraph.

Section 6.02. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Article VI, to the extent that any Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If such Indemnitee is not wholly successful in such Proceeding

but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 6.02 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6.03. Employees and Agents. This Article VI 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 persons other than Indemnitees when and as authorized by appropriate corporate action. Without limiting the generality of the foregoing, the Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and advancement of expenses to employees and agents of the Corporation.

Section 6.04. Advancement of Expenses. Notwithstanding any other provision of this Article VI, the Corporation shall advance all Expenses incurred by or on behalf of any Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Corporation of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding, and regardless of such Indemnitee's ability to repay any such amounts in the event of an ultimate determination that Indemnitee is not entitled thereto. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 6.04 shall be unsecured and interest free.

Section 6.05. Non-Exclusivity. The rights to indemnification and to the payment of Expenses incurred in defending a Proceeding in advance of the final disposition of such Proceeding conferred in this Article VI shall not be exclusive of any other rights which any person may have or hereafter acquire under applicable law, the Certificate of Incorporation, these Bylaws, any agreement, vote of stockholders, resolution of directors or otherwise. The assertion or employment of any right or remedy in this Article VI, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 6.06. Insurance. The Corporation shall have the power to purchase and maintain insurance, at its expense, to the fullest extent permitted by law, as such may be amended from time to time. Without limiting the generality of the foregoing, the Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the Corporation, or who is serving, was serving, or has agreed to serve at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, against any liability asserted against him or her and incurred by him or her or on his or her behalf in such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability.

Section 6.07. Indemnification and Advancement. The Corporation shall indemnify, advance expenses to and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (Indemnitee) who was or is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Corporation or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including appeal therefrom, in which Indemnitee was, is, will or might be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Corporation, by reason of any action (or failure to act) taken by him or her of any action (or failure to act) on his or her part while acting as a director or officer of the Corporation, or by reason of the fact that Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Section 6.07.

Section 6.08. Exception to Rights of Indemnification and Advancement. Notwithstanding any provision in this Article VI, the Corporation shall not be obligated by this Article VI to make any indemnity or advancement in connection with any claim made against an Indemnitee:

(a) subject to Section 6.01(c), for which payment has actually been made to or on behalf of such Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by such Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) for reimbursement to the Corporation of any bonus or other incentive-based or equity based compensation or of any profits realized by Indemnitee from the sale of securities of the Corporation in each case as required under the Exchange Act; or

(d) in connection with any Proceeding (or any part of any Proceeding) initiated by such Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by such Indemnitee against the Corporation or its directors, officers, employees or other Indemnitees, unless (i) the Corporation has joined in or, prior to such Proceeding's initiation, the Board of Directors authorized such Proceeding (or any part of such Proceeding), (ii) the Corporation provides the indemnification or advancement, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, or (iii) the Proceeding is one to enforce such Indemnitee's rights under this Article VI, or any other indemnification, advancement or exculpation rights to which Indemnitee may at any time be entitled under applicable law or any agreement.

Section 6.09. Definitions. For purposes of this Article VI:

(a) "Corporate Status" describes the status of an individual who is or was or has agreed to become a director or officer of the Corporation or while an officer or director of the Corporation who is serving, was serving, or has agreed to serve at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise.

(b) "Enterprise" shall mean the Corporation and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Corporation (or any of their wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, of which Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

(c) "Expenses" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Article VI, ERISA excise taxes and penalties, and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding, including, without limitation, reasonable compensation for time spent by the Indemnitee for which he or she is not otherwise compensated by the Corporation or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the principal, premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent.

(d) "Indemnitee" means any current or former director or officer of the Corporation; and

(e) "Proceeding" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Corporation or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including appeal therefrom, in which Indemnitee was, is, will or might be involved as a party, potential party, non-party witness or otherwise by reason of the fact of Indemnitee's Corporate Status, by reason of any action (or failure to act) taken by him or of any action (or failure to act) on his part while acting pursuant to his Corporate Status, whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Article VI. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this Article VI.

Section 6.10. Right of Indemnitee to Bring Suit. If a claim under this Article VI is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, Indemnitee may at any time thereafter bring suit against the Corporation in the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware to recover the unpaid amount of the claim. In any such action, the Corporation shall have the burden of proving that Indemnitee was not entitled to the requested indemnification, advancement or payment of Expenses. It shall be a defense to any such action (other than an action brought to enforce a claim for Expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that Indemnitee has not met the standards of conduct which make it permissible under these Bylaws, the Certificate of Incorporation or the DGCL for the Corporation to indemnify Indemnitee for the amount claimed. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification or advancement is proper in the circumstances because Indemnitee has met the applicable standard of conduct set forth in these Bylaws, the Certificate of Incorporation or the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met any applicable standard of conduct. If successful, in whole or in part, Indemnitee shall also be entitled to be paid the Expenses of prosecuting such action to the fullest extent permitted by law.

Section 6.11. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6.12. Change in Rights. Neither any amendment nor repeal of this Article VI, nor the adoption of any provision in these Bylaws inconsistent with this Article VI, shall eliminate or reduce the effect of this Article VI in respect of any acts or omissions occurring prior to such alteration, amendment, addition to, repeal or adoption.

## ARTICLE VII

## GENERAL PROVISIONS

Section 7.01. Dividends. Subject to any applicable provisions of law or the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting of the Board of Directors and any such dividend may be paid in cash, property or shares of the Corporation's capital stock. A member of the Board of Directors, or a member of any committee designated by the Board of Directors, shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who the director or member reasonably believes or determines has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section 7.02. Execution of Instruments. The Board of Directors may authorize, or provide for the authorization of, officers, employees or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. Any such authorization must be in writing or by electronic transmission and may be general or limited to specific contracts or instruments. The officers of the Corporation may also execute and deliver such contracts or instruments which generally pertain to the duties associated with such officer's title. Any person who is authorized to execute a contract, instrument or other document on behalf of the Corporation may execute a power of attorney allowing another person to execute such document on behalf of the Corporation.

Section 7.03. Voting as Stockholder. Unless otherwise determined by resolution of the Board of Directors, the Chief Executive Officer, the President, if any, the Chief Financial Officer, any Executive Vice President or any other person authorized by the Board of Directors shall have full power and authority on behalf of the Corporation to attend any meeting of stockholders or equity holders of any corporation or other entity in which the Corporation may hold stock or equity interests, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock or equity interests. Such officers acting on behalf of the Corporation shall have full power and authority to execute any instrument expressing consent to or dissent from any action of any such corporation or entity without a meeting. The Board of Directors may by resolution from time to time confer such power and authority upon any other person or persons.

Section 7.04. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

Section 7.05. Notices. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given in writing or by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

Section 7.06. Form of Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of, any information storage device or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in the DGCL, (ii) record the information specified in the DGCL, and record transfers as specified in the DGCL. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

Section 7.07. Severability. If any provision (or any part thereof) of these Bylaws shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of these Bylaws (including, without limitation, each portion of any section of these Bylaws containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of these Bylaws (including, without limitation, each such containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service or for the benefit of the Corporation to the fullest extent permitted by law.

## ARTICLE VIII

## AMENDMENT OF BYLAWS

Section 8.01. By the Board. Subject to the provisions of the Certificate of Incorporation, the Board of Directors may make, alter, amend, add to or repeal any and all of these Bylaws.

Section 8.02. By the Stockholders. Subject to the provisions of the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding shares entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to make, alter, amend, add to or repeal any or all Bylaws of the Corporation or to adopt any provision inconsistent therewith.

## ARTICLE IX

## CONSTRUCTION

In the event of any conflict between the provisions of these Bylaws as in effect from time to time and the provisions of the Certificate of Incorporation of the Corporation as in effect from time to time, the provisions of such Certificate of Incorporation shall be controlling. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “person” includes corporations, other business entities, and natural persons.

**Exhibit 3.4**

CERTIFICATE OF AMENDMENT
TO
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
FIRST WATCH RESTAURANT GROUP, INC.

September 20, 2021

First Watch Restaurant Group, Inc. (hereinafter called the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify as follows:

**FIRST**: Pursuant to a unanimous written consent of the Board of Directors of the Corporation, resolutions were duly adopted setting forth a proposed amendment of the Amended and Restated Certificate of Incorporation of the Corporation filed with the Secretary of State of the State of Delaware on August 13, 2020 (the "Certificate of Incorporation") whereby the Certificate of Incorporation of the Corporation is hereby amended by striking out ARTICLE FOURTH thereof and by substituting in lieu of said Article the following new Article:

> FOURTH: The total number of shares of capital stock that the Corporation shall have authority to issue is 300,266,667 shares, consisting of 300,000,000 shares of common stock, par value $0.01 per share ("Common Stock") and 266,667 shares of preferred stock, par value $0.01 per share ("Preferred Stock").

Immediately upon this Certificate of Amendment to the Certificate of Incorporation becoming effective pursuant to the General Corporation Law of the State of Delaware (such time, the "Stock Split Effective Time"), each share of Common Stock shall be automatically converted into 11.838 shares of Common Stock (the "Stock Split"). No fractional shares of Common Stock shall be issued upon the Stock Split. If, upon aggregating all of the Common Stock held by a holder of Common Stock immediately following the Stock Split, a holder of Common Stock would otherwise be entitled to a fractional share of Common Stock, the number of shares of Common stock held by such holder shall be rounded up to the nearest whole share. Any stock certificate that, immediately prior to the Stock Split Effective Time, evidenced or otherwise represented shares of the Common Stock shall, from and after the Stock Split Effective Time, without further action by any holder of shares of Common Stock, be deemed for all purposes to evidence ownership of, and to represent the whole number of shares of Common Stock into which the Common Stock represented by such certificate was reclassified and the foregoing shall be appropriately reflected in the Corporation's stock record books. If, at any time after the Stock Split Effective Time, a stock certificate issued prior to the Stock Split Effective Time and formerly representing shares of Common Stock is presented to the Corporation for transfer, exchange or reissuance, such stock certificate shall be cancelled and exchanged for stock certificates evidencing or otherwise representing the number of shares of Common Stock deemed evidenced and represented by such stock certificate pursuant to this provision.

**SECOND**: Said amendment was duly adopted in accordance with the provisions of Section 242 of the DGCL.

**IN WITNESS WHEREOF**, the undersigned has duly executed this Certificate of Amendment on the date first written above.

By: /s/ Jay Wolszczak
Name: Jay Wolszczak
Title: Secretary

*[Signature Page to the Certificate of Amendment of the Amended and Restated Certificate of Incorporation]*

**Exhibit 3.5**

BYLAWS OF

FIRST WATCH RESTAURANT GROUP, INC.

A DELAWARE CORPORATION

## PREAMBLE

These Bylaws are subject to, and governed by, the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law") and the Certificate of Incorporation (the "Certificate") of First Watch Restaurant Group, Inc., a Delaware corporation (the "Corporation"). In the event of a direct conflict between the provisions of these Bylaws and the mandatory provisions of the Delaware General Corporation Law or the provisions of the Certificate, such provisions of the Delaware General Corporation Law or the Certificate, as the case may be, will be controlling.

## ARTICLE I. OFFICES

1.1. Registered Office. The registered office of the Corporation shall be established and maintained at the location of the registered agent of the Corporation.

1.2. Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors of the Corporation (the "Board") may from time to time determine.

## ARTICLE II. MEETINGS OF STOCKHOLDERS

2.1. Annual Meeting. An annual meeting of stockholders of the Corporation shall be held at such place, on such date, and at such time as the Board shall fix each year. At such meeting, the stockholders shall elect directors and transact such other business as may properly be brought before the meeting.

2.2. Special Meetings. Except as otherwise required by law, a special meeting of the stockholders of the Corporation may be called at any time by the stockholders holding a majority of the voting power of the Corporation or a majority of the Board. A special meeting shall be held on such date and at such time as shall be designated by the person(s) calling the meeting and stated in the notice of the meeting or in a duly executed waiver of notice of such meeting. Only such business shall be transacted at a special meeting as may be stated or indicated in the notice of such meeting or in a duly executed waiver of notice of such meeting.

2.3. Place of Meetings. An annual meeting of stockholders may be held at any place within or without the State of Delaware designated by the Board. A special meeting of stockholders may be held at any place within or without the State of Delaware designated in the notice of the meeting or a duly executed waiver of notice of such meeting. Meetings of stockholders shall be held at the principal office of the Corporation unless another place is designated for meetings in the manner provided herein.

2.4. Notice of Meetings. Written or printed notice stating the place, day, and time of each meeting of the stockholders and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered pursuant to Section 8.1 not less than ten nor more than 60 days before the date of the meeting, by or at the direction of the President, the Secretary, or the officer or person(s) calling the meeting, to each stockholder of record entitled to vote at such meeting. Notice of any meeting of stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy and shall not, at the beginning of such meeting, object to the transaction of any business because the meeting is not lawfully called or convened, or who shall, either before or after the meeting, submit a signed waiver of notice, in person or by proxy.

2.5. Voting Lists. At least ten days before each meeting of stockholders, the Secretary or other officer of the Corporation who has charge of the Corporation's stock ledger, either directly or through another officer appointed by him or through a transfer agent appointed by the Board, shall prepare a complete list of stockholders entitled to vote thereat, arranged in alphabetical order and showing the address of each stockholder and number of shares registered in the name of each stockholder. For a period of ten days prior to such meeting, such list shall be kept on file at a place within the city where the meeting is to be held, which place shall be specified in the notice of meeting or a duly executed waiver of notice of such meeting or, if not so specified, at the place where the meeting is to be held and shall be open to examination by any stockholder during ordinary business hours. Such list shall be produced at such meeting and kept at the meeting at all times during such meeting and may be inspected by any stockholder who is present.

2.6. Quorum and Adjournments. The stockholders holding a majority of the voting power of the Corporation entitled to vote on a matter, present in person or by proxy, shall constitute a quorum at any meeting of stockholders, except as otherwise provided by law, the Certificate, or these Bylaws. If a quorum shall not be present, in person or by proxy, at any meeting of stockholders, the stockholders entitled to vote thereat who are present, in person or by proxy, or, if no stockholder entitled to vote is present, any officer of the Corporation may adjourn the meeting from time to time, without notice other than announcement at the meeting (unless the Board, after such adjournment, fixes a new record date for the adjourned meeting), until a quorum shall be present, in person or by proxy. At any adjourned meeting at which a quorum shall be present, in person or by proxy, any business may be transacted which may have been transacted at the original meeting had a quorum been present; provided that, if the adjournment is for more than 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 of record entitled to vote at the adjourned meeting.

2.7. Required Vote; Withdrawal of Quorum. When a quorum is present at any meeting, the vote of the stockholders holding a majority of the voting power of the Corporation who are present, in person or by proxy, shall decide any question brought before such meeting, unless the question is one on which, by express provision of statute, the Certificate, or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. The stockholders present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

2.8. Closing of Transfer Books or Fixing of Record Date.

(a) For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders, or any adjournment thereof, 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 may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, for any such determination of stockholders, such date in any case to be not more than 60 days and not less than ten days prior to such meeting nor more than 60 days prior to any other action. If no record date is fixed:

(i) 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.

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

(iii) 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 may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by law or these Bylaws, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office in the State of Delaware, principal place of business, or such officer or agent shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by law or these Bylaws, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

2.9. Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder or by the stockholder's duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after three years from the date of its execution, unless otherwise

provided in the proxy. If no date is stated in a proxy, such proxy shall be presumed to have been executed on the date of the meeting at which it is to be voted. Each proxy shall be revocable unless expressly provided therein to be irrevocable and coupled with an interest sufficient in law to support an irrevocable power or unless otherwise made irrevocable by law.

2.10. Voting of Shares. Except as provided in the Certificate, each outstanding share of capital stock having voting rights shall be entitled to one vote upon each matter submitted to a vote at a meeting of stockholders.

2.11. Conduct of Meeting. The Executive Chairman of the Board, if any, and if none or in the Executive Chairman's absence, the President shall preside at all meetings of stockholders. The Secretary shall keep the records of each meeting of stockholders. In the absence or inability to act of any such officer, such officer's duties shall be performed by the officer given the authority to act for such absent or non-acting officer under these Bylaws or by some person appointed by the meeting.

2.12. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate, any action required by law to be taken at any annual meeting or special meeting of stockholders of the Corporation, or any action which may be taken at any annual meeting or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Every written consent of stockholders shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by this Section 2.12 to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office, principal place of business, or such officer or agent shall be by hand or by certified or registered mail, return receipt requested.

2.13. Inspectors. The Board may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If any of the inspectors so appointed shall fail to appear or act, the chairman of the meeting shall, or if inspectors shall not have been appointed, the chairman of the meeting may, appoint one or more inspectors. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of such inspector's ability. The inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the validity and effect of proxies and shall receive votes, ballots, or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots, or

consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request, or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

## ARTICLE III. DIRECTORS

3.1. Management. The business and property of the Corporation shall be managed by the Board. Subject to the restrictions imposed by law, the Certificate, or these Bylaws, the Board may exercise all the powers of the Corporation.

3.2. Number, Qualification, Election, Term. The number of directors of the Corporation shall be not less than one. The first Board shall consist of the number of directors named in the Certificate or, if no directors are so named, shall consist of the number of directors elected by the incorporator(s) at an organizational meeting or by unanimous written consent in lieu thereof. Thereafter, within the limits above specified, the number of directors which shall constitute the entire Board shall be determined by resolution of the Board. Except as otherwise required by law, the Certificate, or these Bylaws, the directors shall be elected at an annual meeting of stockholders at which a quorum is present. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy and entitled to vote on the election of directors. Each director so chosen shall hold office until the first annual meeting of stockholders held after such director's election and until such director's successor is elected and qualified or, if earlier, until such director's death, resignation, or removal from office. None of the directors need be a stockholder of the Corporation or a resident of the State of Delaware. Each director must have attained the age of majority.

3.3. Change in Number. No decrease in the number of directors constituting the entire Board shall have the effect of shortening the term of any incumbent director.

3.4. Removal. Except as otherwise provided in the Certificate, or these Bylaws, at any meeting of stockholders called expressly for that purpose, any director or the entire Board may be removed, with or without cause, by a vote of the stockholders holding a majority of the voting power of the Corporation on the election of directors.

3.5. Vacancies. Vacancies and newly-created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the Board, though less than a quorum, or by the sole remaining director, and each director so chosen shall hold office until the first annual meeting of stockholders held after such director's election and until such director's successor is elected and qualified or, if earlier, until such director's death, resignation, or removal from office. If there are no directors in office, an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly-created directorship, the directors then in office shall constitute less than a majority of the Board (as constituted immediately prior to any such increase), the Court of Chancery of the State of Delaware may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors,

summarily order an election to be held to fill any such vacancies or newly-created directorships or to replace the directors chosen by the directors then in office. Except as otherwise provided in these Bylaws, when one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in these Bylaws with respect to the filling of other vacancies.

3.6. Meetings of Directors. The directors may hold their meetings and may have an office and keep the books of the Corporation, except as otherwise provided by statute, in such place or places within or without the State of Delaware as the Board may from time to time determine or as shall be specified in the notice of such meeting or duly executed waiver of notice of such meeting.

3.7. First Meeting. Each newly elected Board may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of stockholders, and no notice of such meeting shall be necessary.

3.8. Election of Officers. At the first meeting of the Board after each annual meeting of stockholders at which a quorum shall be present, the Board shall elect the officers of the Corporation.

3.9. Regular Meetings. Regular meetings of the Board shall be held at such times and places as shall be designated from time to time by resolution of the Board. Notice of such regular meetings shall not be required.

3.10. Special Meetings. Special meetings of the Board shall be held whenever called by the Executive Chairman of the Board or any two directors.

3.11. Notice. The Secretary shall give written notice of each special meeting to each director at least 24 hours before the meeting. Notice of any such meeting need not be given to any director who shall, either before or after the meeting, submit a signed waiver of notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of notice to him. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

3.12. Quorum; Majority Vote. At all meetings of the Board or any committee of the Board, a majority of the Board or of such committee shall constitute a quorum for the transaction of business. If at any meeting of the Board or a committee of the Board there shall be less than a quorum present, a majority of those present or any director solely present may adjourn the meeting from time to time without further notice. Unless the act of a greater number is required by law, the Certificate, or these Bylaws, the act of a majority of the directors present at a meeting at which a quorum is in attendance shall be the act of the Board. At any time that the Certificate provides that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in these Bylaws to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors.

3.13. Procedure. At meetings of the Board, business shall be transacted in such order as from time to time the Board may determine. The Executive Chairman of the Board, if any, or if none or in the Executive Chairman's absence, the President shall preside at all meetings of the Board. In the absence or inability to act of either such officer, a chairman shall be chosen by the Board from among the directors present. The Secretary of the Corporation shall act as the secretary of each meeting of the Board unless the Board appoints another person to act as secretary of the meeting. The Board shall keep regular minutes of its proceedings which shall be placed in the minute book of the Corporation.

3.14. Presumption of Assent. A director of the Corporation who is present at the meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action unless such director's dissent shall be entered in the minutes of the meeting or unless such director shall file such director's written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward any dissent by certified or registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

3.15. Action By Consent. Unless otherwise restricted by the Certificate or by these Bylaws, any action required or permitted to be taken at a meeting of the Board, or of any committee of the Board, may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, shall be signed by all the directors or all the committee members, as the case may be, entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a vote of such directors or committee members, as the case may be, and may be stated as such in any certificate or document filed with the Secretary of State of the State of Delaware or in any certificate delivered to any person. Such consent or consents shall be filed with the minutes of proceedings of the board or committee, as the case may be.

3.16. Telephonic Meetings. Unless otherwise restricted by the Certificate or these Bylaws, members of the Board may participate in a meeting of the Board by means of a conference telephone or similar communications equipment by means of which persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.17. Compensation. The Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, paid to directors for attendance at regular or special meetings of the Board or any committee thereof; provided, that nothing contained herein shall be construed to preclude any director from serving the Corporation in any other capacity or receiving compensation therefor.

## ARTICLE IV. COMMITTEES OF THE BOARD

4.1. Designation. The Board may, by resolution adopted by a majority of the Board, designate one or more committees.

4.2. Number; Qualification; Term. Each committee shall consist of one or more directors appointed by resolution adopted by a majority of the Board. The number of committee members may be increased or decreased from time to time by resolution adopted by a majority of the Board. Each committee member shall serve as such until the earliest of (i) the expiration of such member's term as director, (ii) such member's resignation as a committee member or as a director, or (iii) such member's removal as a committee member or as a director.

4.3. Authority. Each committee, to the extent expressly provided in the resolution establishing such committee, shall have and may exercise all of the authority of the Board in the management of the business and property of the Corporation except to the extent expressly restricted by law, the Certificate, or these Bylaws.

4.4. Committee Changes. The Board shall have the power at any time to fill vacancies.

4.5. Alternate Members of Committees. The Board may designate one or more directors as alternate members of any committee. Any such alternate member may replace any absent or disqualified member at any meeting of the committee. If no alternate committee members have been so appointed to a committee or each such alternate committee member is absent or disqualified, the member or members of such committee present at any meeting and not disqualified from voting, whether or not such director or directors constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

4.6. Regular Meetings. Regular meetings of any committee may be held without notice at such time and place as may be designated from time to time by the committee and communicated to all members thereof.

4.7. Special Meetings. Special meetings of any committee may be held whenever called by any committee member. The committee member calling any special meeting shall cause notice of such special meeting, including therein the time and place of such special meeting, to be given to each committee member at least two days before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of any committee need be specified in the notice or waiver of notice of any special meeting.

4.8. Quorum; Majority Vote. At meetings of any committee, a majority of the number of members designated by the Board shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting of any committee, a majority of the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. The act of a majority of the members present at any meeting at which a quorum is in attendance shall be the act of a committee, unless the act of a greater number is required by law, the Certificate, or these Bylaws.

4.9. Telephonic Meetings. Unless otherwise restricted by the Certificate or these Bylaws, members of a committee may participate in a meeting of the committee by means of a conference telephone or similar communications equipment by means of which persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

4.10. Minutes. Each committee shall cause minutes of its proceedings to be prepared and shall report the same to the Board upon the request of the Board. The minutes of the proceedings of each committee shall be delivered to the Secretary of the Corporation for placement in the minute books of the Corporation.

4.11. Compensation. Committee members may, by resolution of the Board, be allowed a fixed sum and expenses of attendance, if any, for attending any committee meetings or a stated salary.

4.12. Responsibility. The designation of any committee and the delegation of authority to it shall not operate to relieve the Board or any director of any responsibility imposed upon it or such director by law.

## ARTICLE V. OFFICERS

5.1. Number and Qualification. The Corporation shall have such officers as may be necessary or desirable for the business of the Corporation. The officers of the Corporation shall consist of a President, a Treasurer, a Secretary, and such other officers as the Board may from time to time elect or appoint, including a Chief Executive Officer, a Chief Financial Officer, and one or more Vice Presidents. Each officer shall hold office until such officer's successor shall have been duly elected and shall have qualified, until such officer's death, or until such officer shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same person. None of the officers need be a stockholder or a director of the Corporation or a resident of the State of Delaware.

5.2. Removal. Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

5.3. Resignations. Any officer may resign at any time by giving written notice to the Corporation; provided, however, that notice to the Board, President or Secretary shall be deemed to constitute notice to the Corporation. Such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.4. Vacancies. Any vacancy among the officers, whether caused by death, resignation, removal or any other cause, shall be filled by the Board.

5.5. Authority. Officers shall have such authority and perform such duties in the management of the Corporation as are provided in these Bylaws or as may be determined by resolution of the Board not inconsistent with these Bylaws.

5.6. Compensation. The compensation, if any, of officers and agents shall be fixed from time to time by the Board; provided, however, that the Board may delegate the power to determine the compensation of any officer and agent (other than the officer to whom such power is delegated) to the Executive Chairman of the Board or the President.

5.7. President. The President shall have general executive charge, management, and control of the properties and operations of the Corporation in the ordinary course of its business, with all such powers with respect to such properties and operations as may be reasonably incident to such responsibilities. The President shall also be the chief executive officer of the Corporation unless the Board otherwise provides. If no chief executive officer shall have been appointed by the Board, all references herein to "chief executive officer" shall be to the President. The President shall execute bonds, mortgages, and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation. If the Board has not elected an Executive Chairman of the Board or in the absence or inability to act of the Executive Chairman of the Board, the President shall exercise all of the powers and discharge all of the duties of the Executive Chairman of the Board. As between the Corporation and third parties, any action taken by the President in the performance of the duties of the Executive Chairman of the Board shall be conclusive evidence that there is no Executive Chairman of the Board or that the Executive Chairman of the Board is absent or unable to act.

5.8. Vice-President. Each Vice President, as thereunto authorized by the Board, shall have such powers and duties as may be assigned to him by the Board, the Executive Chairman of the Board, or the President, and (in order of their seniority as determined by the Board or, in the absence of such determination, as determined by the length of time they have held the office of Vice President) shall exercise the powers of the President during that officer's absence or inability to act. As between the Corporation and third parties, any action taken by a Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken. The Vice President may sign, with the Treasurer or Secretary, certificates for shares of the Corporation, the issue of which shall have been authorized by resolution of the Board.

5.9. Treasurer. The Treasurer shall have the responsibility for maintaining the financial records of the Corporation, shall have custody of the Corporation's funds and securities, shall keep full and accurate account of receipts and disbursements, shall deposit all monies and valuable effects in the name and to the credit of the Corporation in such depository or depositories as may be designated by the Board, and shall perform such other duties as may be prescribed by the Board, the Executive Chairman of the Board, or the President. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Corporation, and shall sign with the President, or a Vice President, certificates for shares of the Corporation, the issue of which shall have been authorized by resolution of the Board.

5.10. Secretary. Except as otherwise provided in these Bylaws, the Secretary shall keep the minutes of all meetings of the Board and of the stockholders in books provided for that purpose, and the Secretary shall attend to the giving and service of all notices. The Secretary may sign with the Executive Chairman of the Board or the President, in the name of the Corporation, all contracts of the Corporation and affix the seal of the Corporation thereto. The Secretary may sign with the Executive Chairman of the Board, the President or a Vice President all certificates for shares of stock of the Corporation, and the Secretary shall have charge of the certificate books, transfer books, and stock papers as the Board may direct, all of which shall at

all reasonable times be open to inspection by any director upon application at the office of the Corporation during business hours. The Secretary shall in general perform all duties incident to the office of the Secretary, subject to the control of the Board, the Executive Chairman of the Board, and the President.

5.11. Assistant Treasurers and Assistant Secretaries. Assistant Secretaries and Treasurers, as thereunto authorized by the Board, may sign with the President or a Vice-President certificates for shares of the Corporation, the issue of which shall have been authorized by a resolution of the Board. The assistant Treasurers and assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Treasurer or the Secretary, respectively, or by the President or the Board, and in the absence of the Treasurer or Secretary, as the case may be, shall perform the duties and exercise the powers of the Treasurer or Secretary, as applicable.

5.12. Bonds of Officers. If required by the Board, any officer of the Corporation shall give a bond for the faithful discharge of such officer's duties in such amount and with such surety or sureties as the Board may require.

## ARTICLE VI. CERTIFICATES FOR STOCK AND THEIR TRANSFER

6.1. Certificates of Stock. Each stockholder shall be entitled to a certificate signed by, or in the name of the Corporation by the President or a Vice President, and by the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, certifying the number of shares owned by him. Any or all of the signatures on the certificate may be by facsimile and may be sealed with the seal of the Corporation or a facsimile thereof. If any officer, transfer agent, or registrar who has signed, or whose facsimile signature has been placed upon, a certificate has ceased to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if the signatory were such officer, transfer agent, or registrar at the date of issue. The certificates shall be consecutively numbered and shall be entered in the books of the Corporation as they are issued and shall exhibit the holder's name and the number of shares.

6.2. Replacement of Lost, Stolen or Destroyed Certificates. The Board may direct a new certificate or certificates to be issued in place of a certificate or certificates theretofore issued by the Corporation and alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate or certificates representing shares to be lost or destroyed. When authorizing such issue of a new certificate or certificates the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or such person's legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond with a surety or sureties satisfactory to the Corporation in such sum as it may direct as indemnity against any claim, or expense resulting from a claim, that may be made against the Corporation with respect to the certificate or certificates alleged to have been lost or destroyed.

6.3. Transfers of Stock. Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation.

6.4. Registered Stockholders. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, 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 law.

6.5. Regulations. The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board may establish.

6.6. Legends. The Board shall have the power and authority to provide that certificates representing shares of stock bear such legends as the Board deems appropriate to assure that the Corporation does not become liable for violations of federal or state securities laws or other applicable law.

## ARTICLE VII. CERTAIN TRANSACTIONS

7.1. Transactions with Interested Parties. 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 or committee thereof which authorizes the contract or transaction or solely because such director or officer or their votes are counted for such purpose, if:

(a) The material facts as to such interested director or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board 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

(b) The material facts as to such interested director or officer's 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

(c) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board, a committee thereof, or the stockholders.

7.2. Quorum. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

## ARTICLE VIII. NOTICES

8.1. Method. Whenever by statute, the Certificate, or these Bylaws, notice is required to be given to any committee member, director, or stockholder and no provision is made as to how such notice shall be given, personal notice shall not be required and any such notice may be given (a) in writing, by mail, postage prepaid, addressed to such committee member, director, or

stockholder at such person's address as it appears on the books or (in the case of a stockholder) the stock transfer records of the Corporation, or (b) by any other method permitted by law (including but not limited to overnight courier service, electronic mail, telegram, telex, or telefax). Any notice required or permitted to be given by mail shall be deemed to be delivered and given at the time when the same is deposited in the United States mail as aforesaid. Any notice required or permitted to be given by overnight courier service shall be deemed to be delivered and given at the time delivered to such service with all charges prepaid and addressed as aforesaid. Any notice required or permitted to be given by electronic mail, telegram, telex, or telefax shall be deemed to be delivered and given at the time transmitted with all charges prepaid and addressed as aforesaid.

8.2. Waivers. Whenever any notice is required to be given to any stockholder, director, or committee member of the Corporation by statute, the Certificate, or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a stockholder, director, or committee member at a meeting shall constitute a waiver of notice of such meeting, except where such person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## ARTICLE IX. INDEMNIFICATION

9.1. Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to Section 9.3 of this Article IX, 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 such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation 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 such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such 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 such 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 such 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 such person's conduct was unlawful.

9.2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 9.3 of this Article IX, 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 such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation 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 such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; 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 of the State of Delaware 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 of the State of Delaware or such other court shall deem proper.

9.3. Authorization of Indemnification. Any indemnification under this Article IX (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 or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 9.1 or Section 9.2 of this Article IX, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, 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, without the necessity of authorization in the specific case.

9.4. Good Faith Defined. For purposes of any determination under Section 9.3 of this Article IX, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 9.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 9.1 or Section 9.2 of this Article IX, as the case may be.

9.5. Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 9.3 of this Article IX, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for

indemnification to the extent otherwise permissible under Section 9.1 or Section 9.2 of this Article IX. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 9.1 or Section 9.2 of this Article IX, as the case may be. Neither a contrary determination in the specific case under Section 9.3 of this Article IX nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 9.5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

9.6. Expenses Payable in Advance. Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall 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 Article IX. 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.

9.7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these Bylaws, 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, it being the policy of the Corporation that indemnification of the persons specified in Section 9.1 and Section 9.2 of this Article IX shall be made to the fullest extent permitted by law. The provisions of this Article IX shall not be deemed to preclude the indemnification of any person who is not specified in Section 9.1 or Section 9.2 of this Article IX but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

9.8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation 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 or the obligation to indemnify such person against such liability under the provisions of this Article IX.

9.9. Certain Definitions. For purposes of this Article IX, 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 or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation 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 the provisions of this Article IX 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. The term "another enterprise" as used in this Article IX shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article IX, references to "fines" shall include any excise taxes assessed on a person with respect to an 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 or officer 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 Article IX.

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

9.11. Limitation on Indemnification. Notwithstanding anything contained in this Article IX to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 9.5 of this Article IX), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board.

9.12. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article IX to directors and officers of the Corporation.

## ARTICLE X. MISCELLANEOUS

10.1. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board; provided, that if such fiscal year is not fixed by the Board and the selection of the fiscal year is not expressly deferred by the Board, the fiscal year shall be the calendar year.

10.2. Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof.

10.3. Dividends. Subject to provisions of law and the Certificate, dividends may be declared by the Board at any regular or special meeting and may be paid in cash, in property, or in shares of stock of the Corporation. Such declaration and payment shall be at the discretion of the Board.

10.4. Reserves. There may be created by the Board out of funds of the Corporation legally available therefor such reserve or reserves as the directors from time to time, in their discretion, consider proper to provide for contingencies, to equalize dividends, or to repair or maintain any property of the Corporation, or for such other purpose as the Board shall consider beneficial to the Corporation, and the Board may modify or abolish any such reserve in the manner in which it was created.

10.5. Seal. The seal of the Corporation shall be such as from time to time may be approved by the Board.

10.6. Resignations. Any director, committee member, or officer may resign by so stating at any meeting of the Board or by giving written notice to the Board, the Executive Chairman of the Board, the President, or the Secretary. Such resignation shall take effect at the time specified therein or, if no time is specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

10.7. Reliance Upon Books, Reports and Records. Each director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of such person's 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 its officers or employees, or committees of the Board so designated, or by any other person as to matters which such director or committee 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

10.8. Telephone Meetings. Stockholders (acting for themselves or through a proxy), members of the Board, and members of a committee of the Board may participate in and hold a meeting of such stockholders, Board, or committee by means of a conference telephone or similar communications equipment by means of which persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

10.9. Invalid Provisions. If any part of these Bylaws shall be held invalid or inoperative for any reason, the remaining parts, so far as it is possible and reasonable, shall remain valid and operative.

10.10. Mortgages, etc. With respect to any deed, deed of trust, mortgage, or other instrument executed by the Corporation through its duly authorized officer or officers, the attestation to such execution by the Secretary of the Corporation shall not be necessary to constitute such deed, deed of trust, mortgage, or other instrument a valid and binding obligation against the Corporation unless the resolutions, if any, of the Board authorizing such execution expressly state that such attestation is necessary.

10.11. Headings. The headings used in these Bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation.

10.12. References. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender should include each other gender where appropriate.

10.13. Amendments. These Bylaws may be altered, amended, or repealed or new bylaws may be adopted by the stockholders or by the Board at any regular meeting of the stockholders or the Board or at any special meeting of the stockholders or the Board if notice of such alteration, amendment, repeal, or adoption of new Bylaws be contained in the notice of such special meeting.

* * * * * *

**Exhibit 4.2**

# REGISTRATION RIGHTS AGREEMENT

by and among

First Watch Restaurant Group, Inc.

and

the other parties hereto

[•], 2021

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This REGISTRATION RIGHTS AGREEMENT (this "Agreement"), is made as of [•], 2021, by and among (i) First Watch Restaurant Group, Inc., a Delaware corporation (the "Company"), and (iii) each of the Persons listed on the signature pages hereto (each a "Holder", and collectively the "Holders").

W I T N E S S E T H:

WHEREAS, the Holders own Registrable Securities;

WHEREAS, as of the date hereof, payment has been made by certain underwriters for the initial public offering of shares of Common Stock ("IPO"); and

WHEREAS, in connection with the IPO, the parties desire to set forth certain registration rights applicable to the Registrable Securities.

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

Section 1. Certain Definitions. As used herein, the following terms shall have the following meanings:

"Affiliate" means with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise. For the avoidance of doubt, neither the Company nor any Person controlled by the Company shall be deemed to be an Affiliate of any Holder.

"Agreement" means this Registration Rights Agreement, as this agreement may be amended, modified, supplemented or restated from time to time after the date hereof.

"Beneficial Ownership" shall mean, with respect to a specified Person, the ownership of securities as determined in accordance with Rule 13d-3 of the Exchange Act, as such Rule is in effect from time to time. The terms "Beneficially Own" and "Beneficial Owner" shall have a correlative meaning.

"Block Trade" means an offering and/or sale of Registrable Securities by one or more of the Holders on a block trade or underwritten basis (whether firm commitment or otherwise) without substantial marketing efforts prior to pricing, including, without limitation, a same day trade, overnight trade or similar transaction.

"Business Day" shall mean a day other than a Saturday, Sunday, or federal holiday or other day on which commercial banks in the City of New York are authorized or required by law or other governmental action to close.

"Claims" has the meaning ascribed to such term in Section 2.7(a).

"Common Stock" shall mean the shares of Common Stock, $0.01 par value per share, of the Company, and any and all securities of any kind whatsoever which may be issued after the date hereof in respect of, or in exchange for, such shares of common stock of the Company pursuant to a merger, consolidation, stock split, stock dividend or recapitalization of the Company or otherwise.

"Common Stock Equivalents" means all options, warrants and other securities convertible into, or exchangeable or exercisable for (at any time or upon the occurrence of any event or contingency and without regard to any vesting or other conditions to which such securities may be subject) shares of capital stock or other equity securities of such Person (including, without limitation, any note or debt security convertible into or exchangeable for shares of capital stock or other equity securities of such Person).

"Demand Exercise Notice" has the meaning ascribed to such term in Section 2.1(a).

"Demand Registration" has the meaning ascribed to such term in Section 2.1(a).

"Demand Registration Request" has the meaning ascribed to such term in Section 2.1(a).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC issued under such Act, as they may from time to time be in effect.

"Expenses" means any and all fees and expenses incident to the Company's performance of or compliance with Article 2, including, without limitation: (i) SEC, stock exchange or FINRA, and all other registration and filing fees and all listing fees and fees with respect to the inclusion of securities on the Nasdaq Global Select Market or on any other securities market on which the Common Stock is listed or quoted, (ii) fees and expenses of compliance with state securities or "blue sky" laws of any state or jurisdiction of the United States or compliance with the securities laws of foreign jurisdictions and in connection with the preparation of a "blue sky" survey, including, without limitation, reasonable fees and expenses of outside "blue sky" counsel and securities counsel in foreign jurisdictions, (iii) word processing, printing and copying expenses, (iv) messenger and delivery expenses, (v) expenses incurred in connection with any road show, (vi) fees and disbursements of counsel for the Company, (vii) with respect to each registration or underwritten offering, the reasonable fees and disbursements of one counsel for the Participating Holder(s) (selected by the Majority Participating Holders), (viii) fees and disbursements of all independent public accountants (including the expenses of any audit and/or comfort letter and updates thereof) and fees and expenses of other Persons, including special experts, retained by the Company, (ix) fees and expenses payable to any Qualified Independent Underwriter, (x) any other fees and disbursements of underwriters, if any, customarily paid by issuers or sellers of securities, including reasonable fees and expenses of counsel for the underwriters in connection with any filing with or review by FINRA (excluding, for the avoidance of doubt, any underwriting discount, commissions, or spread), (xi) fees and expenses of any transfer agent or custodian and (xii) expenses for securities law liability insurance and any rating agency fees.

"Family Member" means, with respect to any Person who is an individual, any spouse, parent, siblings or lineal descendants of such Person (including adoptive relationships) and any trust or other estate planning vehicle over which such Person has Control established for the benefit of such Person and/or such Person's spouse and/or such Person's descendants (by birth or adoption), parents, siblings or dependents.

"FINRA" means the Financial Industry Regulatory Authority, Inc.

"Holder(s)" means (1) any Person who is a signatory to this Agreement, or (2) any Permitted Transferee to whom any Person who is a signatory to this Agreement shall assign or transfer any rights hereunder; provided that in the case of clause (2), such Person or such transferee, as applicable, has executed and delivered to the Company a joinder agreement in the form of Exhibit A hereto, and has thereby agreed in writing to be bound by this Agreement in respect of such Registrable Securities.

"Incidental Registration Notice" has the meaning ascribed to such term in Section 2.2(a).

"Initiating Holder(s)" has the meaning ascribed to such term in Section 2.1(a).

"IPO" has the meaning ascribed to such term in the Preamble.

"Law" means any law (including common law), statute, code, ordinance rule or regulation of any governmental entity.

"Litigation" means any action, proceeding or investigation in any court or before any governmental authority.

"Lock-Up Agreement" means any agreement entered into by a Holder that provides for restrictions on the transfer of Registrable Securities held by such Holder.

"Long Form Registrations" has the meaning ascribed to such term in Section 2.1(a).

"Majority Participating Holders" means Participating Holders holding more than 50% of the Registrable Securities proposed to be included in any offering of Registrable Securities by such Participating Holders pursuant to Section 2.1 or Section 2.2.

"Market Standoff Period" has the meaning ascribed to such term in Section 2.3(a).

"Opt-Out Request" has the meaning ascribed to such term in Section 3.13(c).

"Participating Holders" means all Holders of Registrable Securities which are proposed to be included in any offering of Registrable Securities pursuant to Section 2.1 or Section 2.2.

"Permitted Transferee" (a) in the case of a Holder who is an individual, (i) any executor, administrator or testamentary trustee of such Holder's estate if such Holder dies, (ii) any Person receiving Registerable Securities of such Holder by will, intestacy laws or the laws of descent or survivorship, or (iii) any trustee of a trust (including an inter vivos trust) of which there are no principal beneficiaries other than such Holder or one or more Family Members of such Limited Partner over which such Limited Partner has Control and (b) in the case of a Holder that is not an individual, its Affiliates, its limited partners, and its limited liability company members.

"Person" means any individual, corporation (including not for profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, joint-stock company, unincorporated organization, governmental entity or agency or other entity of any kind or nature.

"Piggyback Registration" has the meaning ascribed to such term in Section 2.2(a).

"Policies" has the meaning ascribed to such term in Section 3.13(b).

"Qualified Independent Underwriter" means a "qualified independent underwriter" within the meaning of FINRA Rule 5121.

"Registrable Securities" means (a) any shares of Common Stock held by the Holders at any time (including those held as a result of, or issuable upon, the conversion or exercise of Common Stock Equivalents), whether now owned or acquired by the Holders at a later time, (b) any shares of Common Stock issued or issuable, directly or indirectly, in exchange for or with respect to the Common Stock referenced in clause (a) above by way of stock dividend, stock split or combination of shares in connection with a reclassification, recapitalization, merger, share exchange, consolidation or other reorganization and (c) any securities issued in replacement of or exchange for any securities described in clause (a) or (b) above. 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 such securities shall have been declared effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (B) such securities are able to be immediately sold pursuant to Rule 144 without restrictions as to volume limitations and (C) such securities are otherwise transferred or sold, the Company has delivered a new certificate or other evidence of ownership for such securities not bearing a legend and such securities may be resold without subsequent registration under the Securities Act.

"Rule 144" and "Rule 144A" have the meaning ascribed to such term in Section 3.1.

"SEC" means the Securities and Exchange Commission or such other federal agency which at such time administers the Securities Act.

"Section 3.13 Representatives" has the meaning ascribed to such term in Section 3.13(b).

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC issued under such Act, as they may from time to time be in effect.

"Shelf Offering" has the meaning ascribed to such term in Section 2.1(c)(ii).

"Shelf Registration Statement" means a shelf registration statement filed under Rule 415 of the Securities Act.

"Short Form Registrations" has the meaning ascribed to such term in Section 2.1(a).

"Subsidiary" means any direct or indirect subsidiary of the Company on the date hereof and any direct or indirect subsidiary of the Company organized or acquired after the date hereof.

"Sponsor Stockholders" means the entities set forth on Schedule I hereto and any of their respective Affiliates or any related fund entities or employees and any of their respective Permitted Transferees (in each case, who own, from time to time, Common Stock).

"Take-Down Notice" has the meaning ascribed to such term in Section 2.1(c)(ii).

Section 2. Registration Rights.

2.1. Demand Registrations.

(a) Demand Registrations Generally. This Section 2.1 sets forth the terms pursuant to which a Sponsor Stockholder may request registration under the Securities Act of all or any portion of the Registrable Securities held by such Sponsor Stockholder on Form S-1 or any similar long form registration ("Long Form Registration"), and on Form S-3 or any similar short form registration ("Short Form Registration"), if available. All registrations requested pursuant to this Section 2.1 are referred to herein as "Demand Registrations." If the Company shall receive from (i) a Sponsor Stockholder at any time after the closing of the IPO or (ii) any other Holder or group of Holders holding Registrable Securities at any time beginning on the first (1st) anniversary of the closing of the IPO, a written request that the Company file a registration statement with respect to all or a portion of the Registrable Securities (a "Demand Registration Request,") and the sender(s) of such request pursuant to this Agreement shall be known as the "Initiating Holder(s)"), then the Company shall, within ten (10) Business Days of the receipt thereof, give written notice (the "Demand Exercise Notice") of such request to all other Holders, and, subject to the limitations of this Section 2.1, use its reasonable best efforts to effect, as soon as practicable, the registration under the Securities Act (including, without limitation, by means of a Shelf Registration Statement thereunder if so requested and if the Company is then eligible to use such a registration) of all Registrable Securities that the Holders request to be registered. Each request for a Demand Registration shall specify the approximate number of Registrable Securities requested to be registered.

(b) Long Form Registrations. At any time that the Company is not legally eligible to file a registration statement with the SEC on Form S-3 or any similar short form registration statement, each Sponsor Stockholder or a group of Sponsor Stockholders shall be entitled to request an unlimited amount of Long Form Registrations subject to Section 2.1(e), the Company shall effect such Long Form Registrations pursuant to Section 2.4 and the Company shall pay all Expenses in connection with such Long Form Registrations.

(c) Short Form Registrations.

(i) In addition to the Long Form Registrations provided pursuant to Section 2.1(b), each Sponsor Stockholder or a group of Sponsor Stockholders shall be entitled to request an unlimited number of Short Form Registrations, the Company shall effect such Short Form Registrations pursuant to Section 2.4 and the Company shall pay all Expenses in connection with any such Short Form Registration that covers Registrable Securities with a value of at least $5,000,000. The Company shall use its best efforts to make Short Form Registrations on Form S-3 available for the sale of Registrable Securities and if Short Form Registrations on Form S-3 are available for the sale of Registerable Securities, each Sponsor Stockholder may only request registration on Form S-3.

(ii) At any time that any Short Form Registration is effective, if any Holder or group of Holders holding Registrable Securities delivers a notice to the Company (a "Take-Down Notice") stating that it intends to effect an underwritten offering or distribution of all or part of its Registrable Securities included by it on any Short Form Registration (a "Shelf Offering") and stating the number of the Registrable Securities to be included in the Shelf Offering, then the Company shall amend or supplement the Short Form Registration as may be necessary in order to enable such Registrable Securities to be distributed pursuant to the Shelf Offering (taking into account the inclusion of Registrable Securities by any other Holders thereof pursuant to this Section 2.1(c)(ii)). In connection with any Shelf Offering, the Company shall, promptly after receipt of a Take-Down Notice, deliver such notice to all other Holders of Registrable Securities included in any Short Form Registration and permit each Holder to include its Registrable Securities included on a Short Form Registration in the Shelf Offering if such Holder notifies the proposing Holders and the Company within 2 Business Days after delivery of the Take-Down Notice to such Holder, and in the event that the managing underwriter advises the Holders of such securities in writing that in its or their view the total number or dollar amount of Registrable Securities proposed to be sold in such offering is such as to adversely affect the success of such offering (including, without limitation, securities proposed to be included by other Holders of securities entitled to include securities in such offering pursuant to piggyback registration rights described in Section 2.2 hereof), the managing underwriter may limit the number of shares which would otherwise be included in such Shelf Offering in the same manner as is described in Section 2.1(d).

(iii) Notwithstanding the foregoing, if any Sponsor Stockholder wishes to engage in a Block Trade off of a Shelf Registration Statement on Form S-3 (either through filing an automatic shelf registration statement or through a take-down from an already existing Shelf Registration Statement), then notwithstanding the foregoing time periods, the Initiating Holder only needs to notify the Company of the Block Trade on the day such offering is to commence and the Company shall notify the other Holders that did not initiate the Block Trade. The Holders must elect whether or not to participate in such Block Trade on the day such offering is to commence, and the Company shall as expeditiously as possible use its reasonable best efforts (including co-operating with such Holders with respect to the provision of necessary information) to facilitate such Block Trade (which may close as early as two (2) Business Days after the date it commences), provided, that in the case of such Block Trade, only Sponsor Stockholders shall have a right to notice and to participate, and provided, further, that the Sponsor Stockholder requesting such Block Trade shall use commercially reasonable efforts to work with the Company and the underwriters prior to making such request in order to facilitate preparation of offering documents related to the Block Trade. For the avoidance of doubt, Holders other than the Sponsor Stockholders shall not be entitled to receive notice of, or to elect to participate in, a Block Trade or any Shelf Registration Statement or prospectus to be used in connection with such Block Trade.

(d) Demand Registration Priority. The Company shall not include in any Demand Registration any securities which are not Registrable Securities without the prior written consent of the Majority Participating Holders included in such registration. If a Demand Registration is an underwritten offering and the managing underwriters advise the Company in writing that, in their opinion, the number of Registrable Securities and, if permitted hereunder, other securities requested to be included in such offering exceeds the number of Registrable Securities and other securities, if any, which can be sold in an orderly manner in such offering within a price range acceptable to the Majority Participating Holders to be included in such registration therein, without adversely affecting the marketability of the offering, the Company shall include in such registration prior to the inclusion of any securities which are not Registrable Securities (i) first, the number of Registrable Securities requested to be included which in the opinion of such underwriters can be sold in an orderly manner within the price range of such offering, pro rata among the respective Holders thereof on the basis of the number of Registrable Securities requested to be included therein by each such Holder, and (ii) second, any other securities with respect to which the Company has granted registration rights in accordance with Section 2.1(g) hereof requested to be included in such registration, pro rata among the respective Holders thereof on the basis of the amount of such securities requested to be included therein by each such Holder. Without the consent of the Company and the Majority Participating Holders included in such registration, any Persons other than Holders of Registrable Securities who participate in Demand Registrations which are not at the Company's expense must pay their share of the Expenses as provided in Section 2.5 hereof.

(e) Restrictions on Demand Registrations. The Company shall not be obligated to effect any Demand Registration (i) within thirty (30) days after a Demand Registration pursuant to this Section 2.1 that has been declared or ordered effective, (ii) during the period any applicable restrictions are still in effect pursuant to any Lock-Up Agreement that has not been waived (or is not reasonably expected to be waived) by the underwriters party thereto, (iii) if the Company shall furnish to such Holders a certificate signed by the Chief Executive Officer of the Company stating that in the good faith judgment of the Board (after consultation with external legal counsel), any registration of Registrable Securities should not be made or continued (or sales under a Shelf Registration Statement should be suspended) because (i) such registration (or continued sales under a Shelf Registration Statement) would materially and adversely interfere with any existing or potential material financing, acquisition, corporate reorganization or merger or other material transaction or event involving the Company or any of its subsidiaries or (ii) the Company is in possession of material non-public information, the premature disclosure of which has been determined by the Board to not be in the Company's best interests (in either case, a "Valid Business Reason") then (x) the Company may postpone filing a registration statement relating to a Demand Registration Request or suspend sales under an existing Shelf Registration Statement until five Business Days after such Valid Business Reason no longer exists, but in no event for more than 60 days after the date the Board determines a Valid Business Reason exists and (y) in the case a registration statement has been filed relating to a Demand Registration Request, if the Valid Business Reason has not resulted from actions taken by the Company, the Company may cause such registration statement to be withdrawn and its effectiveness terminated or may postpone amending or supplementing such registration statement until five Business Days after such Valid Business Reason no longer exists, but in no event for more than 60 days after the date the Board determines a Valid Business Reason exists; and the Company shall give written notice to the Participating Holders of its determination to postpone or withdraw a registration statement or suspend sales under a Shelf Registration Statement and of the fact that the Valid Business Reason for such postponement, withdrawal or suspension no longer exists, in

each case, promptly after the occurrence thereof; provided, however, that the Company shall not defer its obligation in this manner for more than (A) 60 days in any 90 day period or (B) for periods exceeding, in the aggregate, 90 days in any 12 month period, or (z) in the case of a Demand Registration, consisting of a Long Form Registration, within 180 days after the effective date of a previous Long Form Registration or a previous registration in which the Holders of Registrable Securities were given piggyback rights pursuant to Section 2.2 and in which at least 75% of the number of Registrable Securities requested to be included by the Holders were included in such registration. In the event the Company gives written notice of a Valid Business Reason, the Holders of Registrable Securities initially requesting such Demand Registration shall be entitled to withdraw such request and, if such request is withdrawn, such Demand Registration shall not be treated as one of the permitted Demand Registrations hereunder and the Company shall pay all Expenses in connection with such registration. Notwithstanding the foregoing, the Company may postpone a Demand Registration hereunder only twice in any twelve-month period.

If the Company shall give any notice of postponement, withdrawal or suspension of any registration statement pursuant to clause (iv) of this Section 2.1(e), the Company shall not, during the period of postponement, withdrawal or suspension, register any Common Stock, other than pursuant to a registration statement on Form S-4 or S-8 (or an equivalent registration form then in effect). Each Holder of Registrable Securities agrees that, upon receipt of any notice from the Company that the Company has determined to withdraw any registration statement pursuant to clause (iv) of this Section 2.1(e), such Holder will discontinue its disposition of Registrable Securities pursuant to such registration statement and, if so directed by the Company, will deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in such Holder's possession of the prospectus covering such Registrable Securities that was in effect at the time of receipt of such notice. If the Company shall have withdrawn or prematurely terminated a registration statement filed pursuant to a Demand Registration (whether pursuant to clause (iv) of this Section 2.1(e) or as a result of any stop order, injunction or other order or requirement of the SEC or any other governmental agency or court), the Company shall not be considered to have effected an effective registration for the purposes of this Agreement until the Company shall have filed a new registration statement covering the Registrable Securities covered by the withdrawn registration statement and such registration statement shall have been declared effective and shall not have been withdrawn. If the Company shall give any notice of withdrawal or postponement of a registration statement, the Company shall, not later than five Business Days after the Valid Business Reason that caused such withdrawal or postponement no longer exists (but in no event later than 60 days after the date of the postponement or withdrawal), use its reasonable best efforts to effect the registration under the Securities Act of the Registrable Securities covered by the withdrawn or postponed registration statement in accordance with Section 2.1 (unless the Initiating Holders shall have withdrawn such request, in which case the Company shall not be considered to have effected an effective registration for the purposes of this Agreement), and such registration shall not be withdrawn or postponed pursuant to clause (iv) of this Section 2.1(c).

(f) Selection of Underwriters. The Majority Participating Holders shall have the right to, in consultation with the Company, select the investment banker(s), manager(s) and legal counsel to administer the offering.

(g) Other Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of Holders that hold or Beneficially Own more than 50% of the Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights the terms of which are more favorable taken as a whole than the registration rights granted to the Holders hereunder unless the Company shall also give such rights to such Holders.

2.2. Piggyback Registrations.

(a) Piggyback Rights. If the Company at any time proposes to file a registration statement with respect to any offering of its securities for its own account or for the account of any Person who holds its securities (other than (i) a registration on Form S-4 or S-8 or any successor form to such forms, (ii) a registration of securities solely relating to an offering and sale to employees, directors or consultants of the Company pursuant to any employee stock plan or other employee benefit plan arrangement, (iii) a registration of non-convertible debt securities, or (iv) any Demand Registration made pursuant to Section 2.1(a) or Section 2.1(b) herein) (a "Piggyback Registration") then, as expeditiously as reasonably possible (but in no event less than ten (10) days following the date of filing such registration statement), the Company shall give written notice (the "Incidental Registration Notice") of such proposed filing to all Holders of Registrable Securities, and such notice shall offer the Holder the opportunity to register such number of Registrable Securities as each such Holder may request in writing. Subject to Section 2.2(c) and Section 2.2(d), the Company shall include in such registration statement all such Registrable Securities which are requested to be included therein within fifteen (15) days after the Incidental Registration Notice is given to such Holders.

(b) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the Company, the Company shall include, after including all of the primary securities the Company desires to include in such registration, (i) first, the number of Registrable Securities requested to be included which in the opinion of such underwriters can be sold in an orderly manner within the price range of such offering, pro rata among the respective Holders thereof on the basis of the number of Registrable Securities requested to be included therein by each such Holder, and (ii) second, other securities with respect to which the Company has granted registration rights in accordance with Section 2.1(g) hereof requested to be included in such registration, pro rata among the respective Holders thereof on the basis of the amount of such securities requested to be included therein by each such Holder.

(c) Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of Holders of the Company's securities, and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the consent of the Majority Participating Holders to be included in such registration, the Company shall include in such registration (i) first, the securities requested to be included therein by the Holders requesting such registration and the Registrable Securities requested to be included in such registration, pro rata among the Holders of such securities and such Registrable Securities on the basis of the number of shares requested to be included therein by each such Holder, and (ii) second, other securities with respect to which the Company has granted registration rights in accordance with Section 2.1(g) hereof requested to be included in such registration, pro rata among the respective Holders thereof on the basis of the amount of such securities requested to be included therein by each such Holder.

(d) Selection of Underwriters. If any Piggyback Registration is an underwritten secondary offering on behalf of the Holders of the Company's securities, the selection of investment banker(s) and manager(s) for the offering must be approved in writing by the Sponsor Stockholders.

(e) Other Registrations. If the Company has previously filed a registration statement with respect to Registrable Securities pursuant to Section 2.1 or pursuant to this Section 2.2, and if such previous registration has not been withdrawn or abandoned or all shares offered thereunder have been sold, the Company shall not file or cause to be effected any other registration of any of its equity securities or securities convertible or exchangeable into or exercisable for its equity securities under the Securities Act (except on Form S-8 or any successor form), whether on its own behalf or at the request of any Holder or Holders of such securities, until a period of at least 180 days has elapsed from the effective date of such previous registration.

2.3. Holdback Agreements.

(a) Each Holder agrees not to offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities, enter into a transaction which would have the same effect or would otherwise effect a public sale or distribution (including sales pursuant to Rule 144), or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of such securities, whether any such aforementioned transaction is to be settled by delivery of such securities or other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap, hedge or other arrangement, in each case during the period beginning seven days before and ending 90 days after the effective date of any underwritten public offering of any equity securities of the Company (including Demand and Piggyback Registrations) (or such longer or shorter period (but not ending later than 180 days after effectiveness) as may be requested in writing by the managing underwriter and agreed to in writing by the Company) (the "Market Standoff Period"), except as part of such underwritten registration if otherwise permitted, unless the underwriters managing the underwritten public offering otherwise agree and such agreement permits all Holders of Registrable Securities to sell such securities on a pro rata basis. In addition, each Holder of Registrable Securities agrees to execute any further letters, agreements and/or other documents reasonably requested by the Company or its underwriters which are consistent with the terms of this Section 2.3(a). The Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such Market Standoff Period.

(b) The Company (i) shall not effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such equity securities, during the period beginning seven days before and ending 180 days after the effective date of any underwritten public offering of the Company's equity securities (including Demand and Piggyback Registrations) (except as part of such underwritten registration or pursuant to registrations on Form S-4 or S-8 or any successor form), unless the underwriters managing the registered public offering otherwise agree, and (ii) shall cause each Holder of its equity securities, or any securities convertible into or exchangeable or exercisable for equity securities, purchased or otherwise acquired from the Company at any time after the date of this Agreement (other than in a registered public offering) to agree not to effect any public sale or distribution (including sales pursuant to Rule 144) of any such securities during any such period (except as part of such underwritten registration, if otherwise permitted), unless the underwriters managing the registered public offering otherwise agree and such agreement permits all Holders of Registrable Securities to sell such securities on a pro rata basis.

2.4. Registration Procedures. If and whenever the Company is required by the provisions of this Agreement to effect or cause the registration of any Registrable Securities under the Securities Act as provided in this Agreement, the Company shall use its reasonable best efforts to effect the registration and the widely disseminated sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall, as expeditiously as possible:

(a) prepare and file with the SEC and FINRA all filings required for the consummation of the offering, including preparing and filing with the SEC a registration statement on than appropriate form of the SEC for the disposition of such Registrable Securities in accordance with the intended method of disposition thereof, which registration form (i) shall be selected by the Company and (ii) shall, in the case of a shelf registration, be available for the sale of the Registrable Securities by the selling Holders thereof and such registration statement shall comply as to form in all material respects with the requirements of the applicable registration form and include all financial statements required by the SEC to be filed therewith, and the Company shall use its reasonable best efforts to cause such registration statement to become effective and remain continuously effective from the date such registration statement is declared effective until the earliest to occur (A) the first date as of which all of the Registrable Securities included in the registration statement have been sold or (B) a period of 90 days in the case of an underwritten offering effected pursuant to a registration statement other than a Shelf Registration Statement and a period of three years in the case of a Shelf Registration Statement (provided that before filing a registration statement or prospectus or any amendments or supplements thereto, the Company shall furnish to the counsel selected by the Majority Participating Holders covered by such registration statement copies of all such documents proposed to be filed, which documents shall be subject to the review and comment of such counsel);

(b) notify each Holder of Registrable Securities of the effectiveness of each registration statement filed hereunder and prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith and such free writing prospectuses and Exchange Act reports as may be necessary to keep such registration statement continuously effective for the period set forth in Section 2.4(a) and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all Registrable Securities covered by such registration statement in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement (and, in connection with any Shelf Registration Statement, file one or more prospectus supplements pursuant to Rule 424 under the Securities Act covering Registrable Securities upon the request of one or more Holders wishing to offer or sell Registrable Securities whether in an underwritten offering or otherwise);

(c) furnish to each seller of Registrable Securities such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller;

(d) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (provided that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction);

(e) promptly notify each seller of such Registrable Securities, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, at the request of any such seller, the Company shall prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading;

(f) promptly notify each Participating Holder and each managing underwriter, if any: (i) when the registration statement, any pre-effective amendment, the prospectus or any prospectus supplement related thereto, any post-effective amendment to the registration statement or any free writing prospectus has been filed and, with respect to the registration statement or any post-effective amendment, when the same has become effective; (ii) of any request by the SEC or state securities authority for amendments or supplements to the registration statement or the prospectus related thereto or for additional information; (iii) of the issuance by the SEC of any stop order suspending the effectiveness of the registration statement or the initiation of any proceedings for that purpose; (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Securities for

sale under the securities or state "blue sky" laws of any jurisdiction or the initiation of any proceeding for such purpose; (v) of the existence of any fact of which the Company becomes aware which results in the registration statement or any amendment thereto, the prospectus related thereto or any supplement thereto, any document incorporated therein by reference, any free writing prospectus or the information conveyed to any purchaser at the time of sale to such purchaser containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make any statement therein not misleading; and (vi) if at any time the representations and warranties contemplated by any underwriting agreement, securities sale agreement, or other similar agreement, relating to the offering shall cease to be true and correct in all material respects; and, if the notification relates to an event described in clause (v), the Company shall promptly prepare and furnish to each such seller and each underwriter, if any, a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein in the light of the circumstances under which they were made not misleading;

(g) cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed and, if not so listed, cause all such Registrable Securities to be listed on a national securities exchange and, without limiting the generality of the foregoing, to arrange for at least two market makers to register as such with respect to such Registrable Securities with FINRA;

(h) cause its senior management, officers and employees to participate in, and to otherwise facilitate and cooperate with the preparation of the registration statement and prospectus and any amendments or supplements thereto (including participating in meetings, drafting sessions, due diligence sessions and rating agency presentations) taking into account the Company's reasonable business needs;

(i) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(j) enter into such customary agreements (including underwriting agreements in customary form) and take all such other actions as the Majority Participating Holders being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including effecting a stock split or a combination of shares);

(k) in any transaction involving the use of an underwriter or underwriters, use its reasonable best efforts (i) to obtain an opinion from the Company's counsel, including local and/or regulatory counsel, and a comfort letter and updates thereof from the Company's independent public accountants who have certified the Company's financial statements included or incorporated by reference in such registration statement, in each case, in customary form and covering such matters as are customarily covered by such opinions and comfort letters (including, in the case of such comfort letter, events subsequent to the date of such financial statements) delivered to underwriters in underwritten public offerings, which opinion and letter shall be dated the dates such opinions and comfort letters are customarily dated and otherwise reasonably satisfactory to the underwriters, if any, and (ii) furnish to each Holder participating in the offering and to each underwriter, if any, a copy of such opinion and letter addressed to such underwriter;

(l) make available for inspection by any seller of Registrable Securities, any underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(m) deliver promptly to counsel for each Participating Holder and to each managing underwriter, if any, copies of all correspondence between the SEC and the Company, its counsel or auditors and all memoranda relating to discussions with the SEC or its staff with respect to the registration statement, and, upon receipt of such confidentiality agreements as the Company may reasonably request, make reasonably available for inspection by counsel for each Participating Holder, by counsel for any underwriter, participating in any disposition to be effected pursuant to such registration statement and by any accountant or other agent retained by any Participating Holder or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees to supply all information reasonably requested by any such counsel for a Participating Holder, counsel for an underwriter, accountant or agent in connection with such registration statement;

(n) use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness of the registration statement, or the prompt lifting of any suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction, in each case, as promptly as reasonably practicable;

(o) provide a CUSIP number for all Registrable Securities, not later than the effective date of the registration statement;

(p) use its best efforts to make available its senior management, employees and personnel for participation in "road shows" and other marketing efforts and otherwise provide reasonable assistance to the underwriters (taking into account the needs of the Company's businesses and the requirements of the marketing process) in marketing the Registrable Securities in any underwritten offering;

(q) promptly prior to the filing of any document which is to be incorporated by reference into the registration statement or the prospectus (after the initial filing of such registration statement), and prior to the filing of any free writing prospectus, provide copies of such document to counsel for each Participating Holder and to each managing underwriter, if any, and make the Company's representatives reasonably available for discussion of such document and make such changes in such document concerning the Participating Holders prior to the filing thereof as counsel for the Participating Holders or underwriters may reasonably request;

(r) furnish to counsel for each Participating Holder and to each managing underwriter, without charge, at least one signed copy of the registration statement and any post-effective amendments or supplements thereto, including financial statements and schedules, all documents incorporated therein by reference, the prospectus contained in such registration statement (including each preliminary prospectus and any summary prospectus), any other prospectus filed under Rule 424 under the Securities Act and all exhibits (including those incorporated by reference) and any free writing prospectus utilized in connection therewith;

(s) cooperate with the Participating Holders and the managing underwriter, if any, to facilitate the timely preparation and delivery of certificates not bearing any restrictive legends representing the Registrable Securities to be sold, and cause such Registrable Securities to be issued in such denominations and registered in such names in accordance with the underwriting agreement at least two Business Days prior to any sale of Registrable Securities to the underwriters or, if not an underwritten offering, in accordance with the instructions of the Participating Holders at least two Business Days prior to any sale of Registrable Securities and instruct any transfer agent and registrar of Registrable Securities to release any stop transfer orders in respect thereof;

(t) cooperate with any due diligence investigation by any manager, underwriter or Participating Holder and make available such documents and records of

(u) the Company and its Subsidiaries that they reasonably request (which, in the case of the Participating Holder, may be subject to the execution by the Participating Holder of a customary confidentiality agreement in a form which is reasonably satisfactory to the Company);

(v) take no direct or indirect action prohibited by Regulation M under the Exchange Act;

(w) use its best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security Holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months beginning with the first day of the Company's first full calendar quarter after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(x) permit any Holder of Registrable Securities which Holder, in its sole and exclusive judgment, might be deemed to be an underwriter or a controlling person of the Company, to participate in the preparation of such registration or comparable statement and to require the insertion therein of material, furnished to the Company in writing, which in the reasonable judgment of such Holder and its counsel should be included;

(y) in the event of the issuance of any stop order suspending the effectiveness of a registration statement, or of any order suspending or preventing the use of any related prospectus or suspending the qualification of any of the Company's equity securities included in such registration statement for sale in any jurisdiction, the Company shall use its best efforts promptly to obtain the withdrawal of such order;

(z) use its best efforts to cause such Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the sellers thereof to consummate the disposition of such Registrable Securities;

(aa) obtain a cold comfort letter from the Company's independent public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters as the Majority Participating Holders reasonably request; provided, that such Registrable Securities constitute at least 10% of the securities covered by such registration statement; and

(bb) take all such other commercially reasonable actions as are necessary or advisable in order to expedite or facilitate the disposition of such Registrable Securities;

(cc) take all reasonable action to ensure that any free writing prospectus utilized in connection with any registration covered by Section 2.1 or 2.2 complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related prospectus, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(dd) in connection with any underwritten offering, if at any time the information conveyed to a purchaser at the time of sale includes any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, promptly file with the SEC such amendments or supplements to such information as may be necessary so that the statements as so amended or supplemented will not, in light of the circumstances, be misleading.

2.5. Registration Expenses. All Expenses incurred in connection with any registration, filing, qualification or compliance pursuant to Article 2 shall be borne by the Company, whether or not a registration statement becomes effective. All underwriting discounts and all selling commissions relating to securities registered by the Holders shall be borne by the holders or such securities pro rata in accordance with the number of shares sold in the offering by such Participating Holder.

2.6. No Required Sale. Nothing in this Agreement shall be deemed to create an independent obligation on the part of any Holder to sell any Registrable Securities pursuant to any effective registration statement.

2.7. Indemnification.

(a) In the event of any registration and/or offering of any securities of the Company under the Securities Act pursuant to this Article 2, the Company will, and hereby agrees to, and hereby does, indemnify and hold harmless, to the fullest extent permitted by law, each Holder, its directors, officers, fiduciaries, trustees, employees, shareholders, members or general and limited partners (and the directors, officers, fiduciaries, employees, shareholders, members, beneficiaries or general and limited partners thereof), any underwriter (as defined in the Securities Act) for such Holder and each Person, if any, who controls such Holder or underwriter within the

meaning of the Securities Act or Exchange Act, from and against any and all losses, claims, damages or liabilities, joint or several, actions or proceedings (whether commenced or threatened) and expenses (including reasonable fees of counsel and any amounts paid in any settlement effected with the Company's consent, which consent shall not be unreasonably withheld or delayed) to which each such indemnified party may become subject under the Securities Act or otherwise in respect thereof (collectively, "Claims"), insofar as such Claims arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement under which such securities were registered under the Securities Act or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary or final prospectus or any amendment or supplement thereto, together with the documents incorporated by reference therein, or any free writing prospectus utilized in connection therewith, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (iii) any untrue statement or alleged untrue statement of a material fact in the information conveyed by the Company to any purchaser at the time of the sale to such purchaser, or the omission or alleged omission to state therein a material fact required to be stated therein, or (iv) any violation by the Company of any federal, state or common law rule or regulation applicable to the Company and relating to action required of or inaction by the Company in connection with any such registration, and the Company will reimburse any such indemnified party for any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such Claim as such expenses are incurred; provided, however, that the Company shall not be liable to any such indemnified party in any such case to the extent such Claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact or omission or alleged omission of a material fact made in such registration statement or amendment thereof or supplement thereto or in any such prospectus or any preliminary or final prospectus or free writing prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of such indemnified party specifically for use therein. Such indemnity and reimbursement of expenses shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified party and shall survive the transfer of such securities by such seller.

(b) Each Participating Holder shall, severally and not jointly, indemnify and hold harmless (in the same manner and to the same extent as set forth in paragraph (a) of this Section 2.7) to the extent permitted by law the Company, its officers and directors, each Person controlling the Company within the meaning of the Securities Act, each underwriter (within the meaning of the Securities Act) of the Company's securities covered by such a registration statement, any Person who controls such underwriter, and any other Holder selling securities in such registration statement and each of its directors, officers, partners or agents or any Person who controls such Holder with respect to any untrue statement or alleged untrue statement of any material fact in, or omission or alleged omission of any material fact from, such registration statement, any preliminary or final prospectus contained therein, or any amendment or supplement thereto, or any free writing prospectus utilized in connection therewith, if such statement or alleged statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company or its representatives by or on behalf of such Participating Holder, specifically for use therein and reimburse such indemnified

party for any legal or other expenses reasonably incurred in connection with investigating or defending any such Claim as such expenses are incurred; provided, however, that the aggregate amount which any such Participating Holder shall be required to pay pursuant to this Section 2.7(b) and 2.7(d) shall in no case be greater than the amount of the net proceeds actually received by such Participating Holder upon the sale of the Registrable Securities pursuant to the registration statement giving rise to such Claim. The Company and each Participating Holder hereby acknowledge and agree that, unless otherwise expressly agreed to in writing by such Participating Holders to the contrary, for all purposes of this Agreement, the only information furnished or to be furnished to the Company for use in any such registration statement, preliminary or final prospectus or amendment or supplement thereto or any free writing prospectus are statements specifically relating to (a) the Beneficial Ownership of Common Stock by such Participating Holder and its Affiliates and (b) the name and address of such Participating Holder. Such indemnity and reimbursement of expenses shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified party and shall survive the transfer of such securities by such Holder.

(c) Any Person entitled to indemnification under this Agreement shall notify promptly the indemnifying party in writing of the commencement of any action or proceeding with respect to which a claim for indemnification may be made pursuant to this Section 2.7, but the failure of any indemnified party to provide such notice shall not relieve the indemnifying party of its obligations under the preceding paragraphs of this Section 2.7, except to the extent the indemnifying party is materially and actually prejudiced thereby and shall not relieve the indemnifying party from any liability which it may have to any indemnified party otherwise than under this Article 2. In case any action or proceeding is brought against an indemnified party, the indemnifying party shall be entitled to (x) participate in such action or proceeding and (y) unless, in the reasonable opinion of outside counsel to the indemnified party, a conflict of interest between such indemnified and indemnifying parties may exist in respect of such claim, assume the defense thereof jointly with any other indemnifying party similarly notified, with counsel reasonably satisfactory to such indemnified party. The indemnifying party shall promptly notify the indemnified party of its decision to assume the defense of such action or proceeding. If, and after, the indemnified party has received such notice from the indemnifying party, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense of such action or proceeding other than reasonable costs of investigation; provided, however, that (i) if the indemnifying party fails to take reasonable steps necessary to defend diligently the action or proceeding within 10 days after receiving notice from such indemnified party that the indemnified party believes it has failed to do so; or (ii) if such indemnified party who is a defendant in any action or proceeding which is also brought against the indemnifying party reasonably shall have concluded that there may be one or more legal or equitable defenses available to such indemnified party which are not available to the indemnifying party or which may conflict with those available to another indemnified party with respect to such Claim; or (iii) if representation of both parties by the same counsel is otherwise inappropriate under applicable standards of professional conduct, then, in any such case, the indemnified party shall have the right to assume or continue its own defense as set forth above (but with no more than one firm of counsel for all indemnified parties in each jurisdiction, except to the extent any indemnified party or parties reasonably shall have made a conclusion described in clause (ii) or (iii) above) and the indemnifying party shall be liable for any expenses therefor. No indemnifying party

shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim), unless such settlement or compromise (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action or claim and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party. The indemnity obligations contained in Sections 2.7(a) and 2.7(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the indemnified party which consent shall not be unreasonably withheld.

(d) If for any reason the foregoing indemnity is held by a court of competent jurisdiction to be unavailable to an indemnified party under Section 2.7(a) or (b), then each applicable indemnifying party shall contribute to the amount paid or payable to such indemnified party as a result of any Claim in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and the indemnified party, on the other hand, with respect to such Claim as well as any other relevant equitable considerations. The relative fault shall be determined by a court of law 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 the indemnifying party or the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. If, however, the allocation provided in the second preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative faults but also the relative benefits of the indemnifying party and the indemnified party as well as any other relevant equitable considerations. The parties hereto agree that it would not be just and equitable if any contribution pursuant to this Section 2.7(d) were to be 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 preceding sentences of this Section 2.7(d). The amount paid or payable in respect of any Claim shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such Claim. 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. Notwithstanding anything in this Section 2.7(d) to the contrary, no indemnifying party (other than the Company) shall be required pursuant to this Section 2.7(d) to contribute any amount greater than the amount of the net proceeds actually received by such indemnifying party upon the sale of the Registrable Securities pursuant to the registration statement giving rise to such Claim, less the amount of any indemnification payment made by such indemnifying party pursuant to Section 2.7(b).

(e) The indemnity and contribution agreements contained herein shall be in addition to any other rights to indemnification or contribution which any indemnified party may have pursuant to law or contract (except as set forth in subsection (f) below) and shall remain operative and in full force and effect regardless of any investigation made or omitted by or on behalf of any indemnified party and shall survive the transfer of the Registrable Securities by any such party and the completion of any offering of Registrable Securities in a registration statement.

(f) If a customary underwriting agreement shall be entered into in connection with any registration pursuant to Section 2.1 or 2.2 and certain indemnity, contribution and related provisions between the Company and the Participating Holder, the indemnity, contribution and related provisions set forth therein shall supersede the indemnification and contribution provisions set forth in this Section 2.7.

2.8. Participation in Underwritten Registrations. No Person may participate in any registration hereunder which is underwritten unless such Person (i) agrees to sell such Person's Registrable Securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements; provided, that no Holder of Registrable Securities included in any underwritten registration shall be required to make any representations or warranties to the Company or the underwriters (other than representations and warranties regarding such Holder and such Holder's intended method of distribution) or to undertake any indemnification obligations, or provide any information, to the Company or the underwriters with respect thereto, except as otherwise provided in Section 2.8 hereof.

2.9. No Inconsistent Agreements. The Company shall not hereafter enter into any agreement with respect to its securities that is inconsistent with or violates the rights granted to the Holders in this Agreement.

2.10. Adjustments Affecting Registrable Securities. The Company shall not take any action, or permit any change to occur, with respect to its securities which would adversely affect the ability of the Holders of Registrable Securities to include such Registrable Securities in a registration undertaken pursuant to this Agreement or which would adversely affect the marketability of such Registrable Securities in any such registration (including, without limitation, effecting a stock split or a combination of shares).

Section 3. General

3.1. Rule 144 and Rule 144A. If the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act in respect of the Common Stock or Common Stock Equivalents, the Company covenants that (i) so long as it remains subject to the reporting provisions of the Exchange Act, it will timely file the reports required to be filed by it under the Securities Act or the Exchange Act (including, but not limited to, the reports under Sections 13 and 15(d) of the Exchange Act referred to in subparagraph (c)(1)(i) of Rule 144 promulgated by the SEC under the Securities Act, as such Rule may be amended ("Rule 144")) or, if the Company is not required to file such reports, it will, upon the request of any Holder, make publicly available other information so long as necessary to permit sales by such Holder under Rule 144, Rule 144A promulgated by the SEC under the Securities Act, as such Rule may be amended ("Rule 144A"), or any similar rules or regulations hereafter adopted by the SEC, and (ii) it will take such further action as any Holder may reasonably request, all to the extent

required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144, (B) Rule 144A or (C) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements.

3.2. Nominees for Beneficial Owners. If Registrable Securities are held by a nominee for the Beneficial Owner thereof the Beneficial Owner thereof may, at its option, be treated as the Holder of such Registrable Securities for purposes of any request or other action by any Holder or Holders of Registrable Securities pursuant to this Agreement (or any determination of any number or percentage of shares constituting Registrable Securities held by any Holder or Holders of Registrable Securities contemplated by this Agreement), provided that the Company shall have received assurances reasonably satisfactory to it of such Beneficial Ownership.

3.3. Amendments and Waivers. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Company or any Holder unless such modification, amendment or waiver is approved in writing by (i) the Company and (ii) the Holders holding or Beneficially Owning more than 50% of the Registrable Securities then held by all Holders; provided that any amendment, modification, supplement or waiver of any of the provisions of this Agreement which disproportionately and materially adversely affects any Holder shall not be effective without the written approval of such Holder. For purposes of the foregoing proviso, each Sponsor Stockholder shall be deemed to be disproportionately materially adversely affected if any material right specifically granted to any such Person herein (even if such right is granted to one or more other Sponsor Stockholder), is amended, modified, supplemented or waived. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar). No failure or delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof or of any other or future exercise of any such right, power or privilege.

3.4. Notices.

(a) All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by e-mail, (iii) when received or rejected by the addressee if sent by registered or certified mail, postage prepaid, return receipt requested, or (iv) one Business Day following the day sent by reputable overnight courier (with written confirmation of receipt), in each case at the following addresses (or to such other address as a party may have specified by notice given to the other party pursuant to this provision):

(i) if to the Company, to:

First Watch Restaurant Group, Inc.
8725 Pendery Place, Suite 201
Bradenton, FL 34201
Attention: Jay Wolszczak
E-mail: JWolszczak@FIRSTWATCH.com

with a copy, which shall not constitute notice, to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Alexander D. Lynch and Ashley Butler
Email: alex.lynch@weil.com; ashley.butler@weil.com

(ii) if to the Holders, to the address indicated in the records of the Company.

(b) Whenever any notice is required to be given by law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

3.5. Successors and Assigns. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and the respective successors, permitted assigns, heirs and personal representatives of the parties hereto, whether so expressed or not. This Agreement may not be assigned by the Company without the prior written consent of the Sponsor Stockholders. Each Holder shall have the right to assign all or part of its or his rights and obligations under this Agreement only in accordance with transfers of Registrable Securities to such Holder's Permitted Transferees. Upon any such assignment, such assignee shall have and be able to exercise and enforce all rights of the assigning Holder which are assigned to it and, to the extent such rights are assigned, any reference to the assigning Holder shall be treated as a reference to the assignee. If any Holder shall acquire additional Registrable Securities, such Registrable Securities shall be subject to all of the terms, and entitled to all the benefits, of this Agreement.

3.6. Entire Agreement. This Agreement and the other documents referred to herein or delivered pursuant hereto which form part hereof constitute the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

3.7. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS AND JUDICIAL DECISIONS OF THE STATE OF DELAWARE APPLICABLE TO AGREEMENTS EXECUTED AND PERFORMED ENTIRELY WITHIN SUCH STATE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

(b) Jurisdiction. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of (i) the Court of Chancery of the State of Delaware and (ii) the United States District Court located in the State of Delaware for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement in (I) the Court of Chancery of the State of

Delaware or (II) the United States District Court located in the State of Delaware and waives any claim that such suit or proceeding has been brought in an inconvenient forum. Each of the parties hereto agrees that a final and unappealable judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction within or outside the United States or in any other manner provided in law or in equity

(c) WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (III) IT MAKES SUCH WAIVER VOLUNTARILY AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS 3.7.

3.8. Interpretation; Construction.

(a) The table of contents and headings in this Agreement are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

3.9. Counterparts. This Agreement may be executed and delivered in any number of separate counterparts (including by facsimile or electronic mail), each of which shall be an original, but all of which together shall constitute one and the same agreement.

3.10. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the

intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

3.11. Remedies. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, without the posting of any bond, and, if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

3.12. Further Assurances. Each party hereto 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 hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

3.13. Confidentiality.

(a) Each Holder acknowledges that the provisions of this Agreement that require communications by the Company or other Holders to such Holder may result in such Holder and its Section 3.13 Representatives acquiring material non-public information (which may include, solely by way of illustration, the fact that an offering of the Company's securities is pending or the number of Company securities or the identity of the selling Holders).

(b) Each Holder agrees that it will maintain the confidentiality of such material non-public information and, to the extent such Holder is not a natural person, such confidential treatment shall be in accordance with procedures adopted by it in good faith to protect confidential information of third parties delivered to such Holder ("Policies"); provided that a Holder may deliver or disclose material non-public information to (i) its directors, officers, employees, agents, attorneys, affiliates and financial and other advisors, in each case, who reasonably need to know such information (collectively, the "Section 3.13 Representatives"), (ii) any federal or state regulatory authority having jurisdiction over such Holder, (iii) any Person if necessary to effect compliance with any law, rule, regulation or order applicable to such Holder, (iv) in response to any subpoena or other legal process, or (v) in connection with any litigation to which such Holder is a party and such Holder is advised by counsel that such information reasonably needs to be disclosed in connection with such litigation; provided further, that in the case of clause (i), the recipients of such material non-public information are subject to the Policies or are directed to hold confidential the material non-public information in a manner substantially consistent with the terms of this Section 3.13.

(c) Each Holder shall have the right, at any time and from time to time (including after receiving information regarding any potential sale or distribution to the public of Common Stock of the Company pursuant to an offering registered under the Securities Act, whether by the Company, by Holders and/or by any other Holders of the Company's Common Stock), to elect to not receive any notice that the Company or any other Holders otherwise are required to deliver pursuant to this Agreement by delivering to the Company a written statement signed by such Holder that it does not want to receive any notices hereunder (an "Opt-Out Request"); in which case and notwithstanding anything to the contrary in this Agreement the Company and other Holders shall not be required to, and shall not, deliver any notice or other information required to be provided to Holders hereunder to the extent that the Company or such other Holders reasonably expect would result in a Holder acquiring material non-public information. An Opt-Out Request may state a date on which it expires or, if no such date is specified, shall remain in effect indefinitely. A Holder who previously has given the Company an Opt-Out Request may revoke such request at any time, and there shall be no limit on the ability of a Holder to issue and revoke subsequent Opt-Out Requests; provided that each Holder shall use commercially reasonable efforts to minimize the administrative burden on the Company arising in connection with any such Opt-Out Requests.

3.14. Termination and Effect of Termination. This Agreement shall terminate with respect to each Holder when such Holder no longer holds any Registrable Securities and will terminate in full when no Holder holds any Registrable Securities, except for the provisions of Sections 2.9, which shall survive any such termination. No termination under this Agreement shall relieve any Person of liability for breach or Expenses incurred prior to termination. In the event this Agreement is terminated, each Person entitled to indemnification rights pursuant to Section 2.9 shall retain such indemnification rights with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

**COMPANY:**

**First Watch Restaurant Group, Inc.**

By: _____
Name:
Title:

[*SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT*]

**HOLDERS:**

**[•]**

By: _____
Name:
Title:

[*SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT*]

Schedule I

**SPONSOR STOCKHOLDERS**

[To Come.]

EXHIBIT A

**FORM OF**
**JOINDER AGREEMENT**

THIS JOINDER AGREEMENT (this "Joinder") is made and entered into as of [•] by the undersigned (the "New Holder") in accordance with the terms and conditions set forth in that certain Registration Rights Agreement by and among First Watch Restaurant Group, Inc., a Delaware corporation (including any successor, the "Company"), and the Holders party thereto, dated as of [•], 2021 (as the same may be amended, restated or otherwise modified from time to time, the "Registration Rights Agreement"), for the benefit of, and for reliance upon by, the Company and the Holders party thereto. Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Registration Rights Agreement.

WHEREAS, the New Holder desires to exercise certain rights granted to it under the Registration Rights Agreement; and

WHEREAS, the execution and delivery to the Company of this Joinder by the New Holder is a condition precedent to the New Holder's exercise of any of its rights under the Registration Rights Agreement.

NOW, THEREFORE, in consideration of the premises and covenants herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the New Holder hereby agrees as follows:

1. Joinder. By the execution and delivery of this Joinder, the New Holder hereby agrees to become, and to be deemed to be, and shall become and be deemed to be, for all purposes under the Registration Rights Agreement, a Holder, with the same force and effect as if the New Holder had been an original signatory thereto, and the New Holder agrees to be bound by all of the terms and conditions of, and to assume all of the obligations of, a Holder under, the Registration Rights Agreement. All of the terms, provisions, representations, warranties, covenants and agreements set forth in the Registration Rights Agreement with respect to a Holder are incorporated by reference herein and shall be legally binding upon, and inure to the benefit of, the New Holder.

2. Further Assurances. The New Holder agrees to perform any further acts and execute and deliver any additional documents and instruments that may be necessary or reasonably requested by the Company to carry out the provisions of this Joinder or the Registration Rights Agreement.

3. Binding Effect. This Joinder and the Registration Rights Agreement shall be binding upon, and shall inure to the benefit of, the New Holder and its successors and permitted assigns, subject to the terms and provisions of the Registration Rights Agreement. It shall not be necessary in connection with the New Holder's status as a Holder to make reference to this Joinder.

IN WITNESS WHEREOF, the New Holder has executed this Joinder as of the date first above written.

[NEW HOLDER]

By: _____
Name: _____
Title: _____

Address:

_____
_____
_____
_____

Accepted and agreed:

[•]

By: _____
Name: _____
Title: _____

**Exhibit 10.6**

**FIRST WATCH RESTAURANT GROUP, INC.**

**2021 EQUITY INCENTIVE PLAN**

1. Purpose. The purpose of the First Watch Restaurant Group, Inc., 2021 Equity Incentive Plan is to further align the interests of eligible participants with those of the Company's stockholders by providing incentive compensation opportunities tied to the performance of the Company and its Common Stock. The Plan is intended to advance the interests of the Company and increase stockholder value by attracting, retaining and motivating key personnel upon whose judgment, initiative and effort the successful conduct of the Company's business is largely dependent.

2. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth below:

"*Affiliate*" means, with respect to a Person, any other Person directly or indirectly controlling, controlled by, or under common control with such first Person.

"*Award*" means a Stock Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit, or Stock-Based Award granted under the Plan.

"*Award Agreement*" means a notice or an agreement entered into between the Company and a Participant or provided by the Company to a Participant setting forth the terms and conditions of an Award granted to a Participant as provided in Section 14.2 hereof.

"*Board*" means the Board of Directors of the Company.

"*Cause*" has the meaning set forth in Section 12.2 hereof.

"*Change in Control*" has the meaning set forth in Section 11.3 hereof.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Committee*" means (i) the Compensation Committee of the Board, (ii) such other committee of no fewer than two members of the Board who are appointed by the Board to administer the Plan or (iii) the Board, as determined by the Board.

"*Common Stock*" means the common shares of the Company, par value $0.001 per share (and any shares or other securities into which such Common Stock may be converted or into which it may be exchanged.

"*Company*" means First Watch Restaurant Group, Inc., a corporation organized and existing under the laws of the State of Delaware, or any successor thereto.

"*Date of Grant*" means the date on which an Award under the Plan is granted by the Committee or such later date as the Committee may specify to be the effective date of an Award.

"*Disability*" means, unless otherwise defined in an Award Agreement, a disability described in Treasury Regulations Section 1.409A-3(i)(4)(i)(A). A Disability shall be deemed to occur at the time of the determination by the Committee of the Disability.

"*Effective Date*" means the day immediately prior to the date on which the Company's registration statement on Form S-1 in connection with its initial public offering of Common Stock is declared effective by the Securities and Exchange Commission under the Securities Act, subject to approval of the Plan by the stockholders of the Company.

"*Eligible Person*" means any Person who is an officer, employee, Non-Employee Director, or any natural person who is a consultant or other personal service provider of the Company or any of its Subsidiaries.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

"*Fair Market Value*" means, as applied to a specific date, the price of a share of Common Stock that is based on the opening, closing, actual, high, low or average selling prices of a share of Common Stock reported on any established stock exchange or national market system including without limitation the National Association of Securities Dealers, Inc. Automated Quotation System ("*NASDAQ*"), the New York Stock Exchange and the National Market System on the applicable date, the preceding trading day, the next succeeding trading day, or an average of trading days, as determined by the Committee in its discretion. Unless the Committee determines otherwise or unless otherwise specified in an Award Agreement, Fair Market Value shall be deemed to be equal to the closing price of a share of Common Stock on the date as of which Fair Market Value is to be determined, or if shares of Common Stock are not publicly traded on such date, as of the most recent date on which shares of Common Stock were publicly traded. Notwithstanding the foregoing, if the Common Stock is not traded on any established stock exchange or national market system, the Fair Market Value means the price of a share of Common Stock as established by the Committee.

"*Incentive Stock Option*" means a Stock Option granted under Section 6 hereof that is intended to meet the requirements of Section 422 of the Code and the regulations thereunder.

"*Non-Employee Director*" means a member of the Board who is not an employee of the Company or any of its Subsidiaries.

"*Nonqualified Stock Option*" means a Stock Option granted under Section 6 hereof that is not an Incentive Stock Option.

"*Participant*" means any Eligible Person who holds an outstanding Award under the Plan.

"*Person*" means an individual, corporation, partnership, association, trust, unincorporated organization, limited liability company or other legal entity. All references to Person shall include an individual Person or a group (as defined in Rule 13d-5 under the Exchange Act) of Persons.

"*Plan*" means the First Watch Restaurant Group, Inc. 2021 Equity Incentive Plan as set forth herein, effective as of the Effective Date and as may be amended from time to time, as provided herein, and includes any sub-plan or appendix that may be created and approved by the Board to allow Eligible Persons of Subsidiaries to participate in the Plan.

"*Restricted Stock Award*" means a grant of shares of Common Stock to an Eligible Person under Section 8 hereof that are issued subject to such vesting and transfer restrictions as the Committee shall determine, and such other conditions, as are set forth in the Plan and the applicable Award Agreement.

"*Restricted Stock Unit*" means a contractual right granted to an Eligible Person under Section 9 hereof representing notional unit interests equal in value to a share of Common Stock to be paid or distributed at such times, and subject to such conditions, as set forth in the Plan and the applicable Award Agreement.

"*Securities Act*" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

"*Service*" means a Participant's employment with the Company or any Subsidiary or a Participant's service as a Non-Employee Director, consultant or other service provider with the Company or any Subsidiary, as applicable.

"*Stock Appreciation Right*" means a contractual right granted to an Eligible Person under Section 7 hereof entitling such Eligible Person to receive a payment, representing the excess of the Fair Market Value of a share of Common Stock over the base price per share of the right, at such time, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.

"*Stock-Based Award*" means a grant of shares of Common Stock or any award that is valued by reference to shares of Common Stock to an Eligible Person under Section 10 hereof.

"*Stock Option*" means a contractual right granted to an Eligible Person under Section 6 hereof to purchase shares of Common Stock at such time and price, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.

"*Subsidiary*" means an entity (whether or not a corporation) that is wholly or majority owned or controlled, directly or indirectly, by the Company or any other Affiliate of the Company that is so designated, from time to time, by the Committee, during the period of such Affiliated status; provided, however, that with respect to Incentive Stock Options, the term "Subsidiary" shall include only an entity that qualifies under Section 424(f) of the Code as a "subsidiary corporation" with respect to the Company.

"*Treasury Regulations*" means regulations promulgated by the United States Treasury Department.

3. Administration.

3.1 *Committee Members*. The Plan shall be administered by the Committee. To the extent deemed necessary by the Board, each Committee member shall satisfy the requirements for (i) an "independent director" under rules adopted by the NASDAQ or other principal exchange on which the Common Stock is then listed and (ii) a "non-employee director" within the meaning of Rule 16b-3 under the Exchange Act. Notwithstanding the foregoing, the mere fact that a Committee member shall fail to qualify under any of the foregoing requirements shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan. The Board may exercise all powers of the Committee hereunder and may directly administer the Plan. Neither the Company nor any member of the Board or Committee shall be liable for any action or determination made in good faith by the Board or Committee with respect to the Plan or any Award thereunder.

3.2 *Committee Authority*. The Committee shall have all powers and discretion necessary or appropriate to administer the Plan and to control its operation, including, but not limited to, the power to (i) determine the Eligible Persons to whom Awards shall be granted under the Plan, (ii) prescribe the restrictions, terms and conditions of all Awards, (iii) interpret the Plan and terms of the Awards, (iv) adopt rules for the administration, interpretation and application of the Plan as are consistent therewith, and interpret, amend or revoke any such rules, (v) make all determinations with respect to a Participant's Service and the termination of such Service for purposes of any Award, (vi) correct any defect(s) or omission(s) or reconcile any ambiguity(ies) or inconsistency(ies) in the Plan or any Award thereunder, (vii) make all determinations it deems advisable for the administration of the Plan, (viii) decide all disputes arising in connection with the Plan and to otherwise supervise the administration of the Plan, (ix) subject to the terms of the Plan, amend the terms of an Award in any manner that is not inconsistent with the Plan, (x) accelerate the vesting or, to the extent applicable, exercisability of any Award at any time (including, but not limited to, upon a Change in Control or upon termination of Service of a Participant under certain circumstances (including, without limitation, upon retirement)) and (xi) adopt such procedures, modifications or subplans as are necessary or appropriate to permit participation in the Plan by Eligible Persons who are foreign nationals or provide services outside of the United States. The Committee's determinations under the Plan need not be uniform and may be made by the Committee selectively among Participants and Eligible Persons, whether or not such Persons are similarly situated. The Committee shall, in its discretion, consider such factors as it deems relevant in making its interpretations, determinations and actions under the Plan including, without limitation, the recommendations or advice of any officer or employee of the Company or board of directors of a Subsidiary or such attorneys, consultants, accountants or other advisors as it may select. All interpretations, determinations, and actions by the Committee shall be final, conclusive, and binding upon all parties.

3.3 *Delegation of Authority*. The Committee shall have the right, from time to time, to delegate in writing to one or more officers of the Company the authority of the Committee to

grant and determine the terms and conditions of Awards granted under the Plan, subject to the requirements of Section 157(c) of the Delaware General Corporation Law (or any successor provision) or such other limitations as the Committee shall determine. In no event shall any such delegation of authority be permitted with respect to Awards granted to any member of the Board or to any Eligible Person who is subject to Rule 16b-3 under the Exchange Act. The Committee shall also be permitted to delegate, to any appropriate officer or employee of the Company, responsibility for performing certain ministerial functions under the Plan. In the event that the Committee's authority is delegated to officers or employees in accordance with the foregoing, all provisions of the Plan relating to the Committee shall be interpreted in a manner consistent with the foregoing by treating any such reference as a reference to such officer or employee for such purpose. Any action undertaken in accordance with the Committee's delegation of authority hereunder shall have the same force and effect as if such action was undertaken directly by the Committee and shall be deemed for all purposes of the Plan to have been taken by the Committee.

4. Shares Subject to the Plan.

4.1 *Number of Shares Reserved*. Subject to adjustment as provided in Section 4.3 and Section 4.5 hereof, the total number of shares of Common Stock that are available for issuance under the Plan (the "*Share Reserve*") shall equal . Within the Share Reserve, the total number of shares of Common Stock available for issuance as Incentive Stock Options shall equal the maximum number of shares available for issuance under the Plan. Each share of Common Stock subject to an Award shall reduce the Share Reserve by one share. Any shares of Common Stock delivered under the Plan shall consist of authorized and unissued shares or treasury shares.

4.2 *Annual Increase in Shares Reserved.* On the first day of each fiscal year of the Company during the term of the Plan, commencing on January 1, 2023 and ending on (and including) January 1, 2032, the aggregate number of shares of Common Stock that may be issued under the Plan shall automatically increase by a number equal to the least of (i) two percent (2%) of the total number of shares of Common Stock actually issued and outstanding on the last day of the preceding fiscal year, (ii) a number of shares of Common Stock determined by the Board; and (iii) shares of Common Stock.

4.3 *Share Replenishment*. Following the Effective Date, to the extent that an Award granted under this Plan is canceled, expired, forfeited or surrendered without consideration or otherwise terminated without delivery of the shares of Common Stock to the Participant under the Plan, the shares of Common Stock retained by or returned to the Company will (i) not be deemed to have been delivered under the Plan, (ii) be available for future Awards under the Plan, and (iii) increase the Share Reserve by one share for each share that is retained by or returned to the Company. Notwithstanding the foregoing, shares of Common Stock that are (x) withheld from any Award granted under this Plan in payment of the exercise, base or purchase price or taxes relating to such an Award, (y) not issued or delivered as a result of the net settlement of any Award, or (z) repurchased by the Company on the open market with the proceeds of a Stock Option, will be deemed to have been delivered under the Plan and will not be available for future Awards under the Plan. The payment of dividend equivalents in cash in conjunction with any outstanding Award shall not count against the Share Reserve.

4.4 *Awards Granted to Non-Employee Directors*. No Non-Employee Director may be granted, during any calendar year, Awards having a fair value (determined on the date of grant) that, when added to all cash compensation paid to the Non-Employee Director in respect of the Non-Employee Director's service as a member of the Board for such calendar year, exceeds (i) $1,000,000 in the year that such Non-Employee Director is first elected to serve as a director on the Board; and (ii) $750,000 in each subsequent year.

4.5 *Adjustments*. If there shall occur any change with respect to the outstanding shares of Common Stock by reason of any recapitalization, reclassification, stock dividend, extraordinary cash dividend, stock split, reverse stock split or other distribution with respect to the shares of Common Stock or any merger, reorganization, consolidation, combination, spin-off or other corporate event or transaction or any other change affecting the Common Stock (other than regular cash dividends to stockholders of the Company), the Committee shall, in the manner and to the extent it considers appropriate and equitable to the Participants and consistent with the terms of the Plan, cause an adjustment to be made to (i) the maximum number and kind of shares of Common Stock or other securities provided in Sections 4.1 hereof and 4.2 hereof, (ii) the number and kind of shares of Common Stock, units or other securities or rights subject to then outstanding Awards, (iii) the exercise, base or purchase price for each share or unit or other security or right subject to then outstanding Awards, (iv) other value determinations applicable to the Plan and/or outstanding Awards, and/or (v) any other terms of an Award that are affected by the event. Notwithstanding the foregoing, (a) any such adjustments shall, to the extent necessary to avoid additional taxes, be made in a manner consistent with the requirements of Section 409A of the Code and (b) in the case of Incentive Stock Options, any such adjustments shall, to the extent practicable, be made in a manner consistent with the requirements of Section 424(a) of the Code, unless otherwise determined by the Committee.

5. Eligibility and Awards.

5.1 *Designation of Participants*. Any Eligible Person may be selected by the Committee to receive an Award and become a Participant. The Committee has the authority, in its discretion, to determine and designate from time to time those Eligible Persons who are to be granted Awards, the types of Awards to be granted, the number of shares of Common Stock or units subject to Awards to be granted and the terms and conditions of such Awards consistent with the terms of the Plan. In selecting Eligible Persons to be Participants, and in determining the type and amount of Awards to be granted under the Plan, the Committee shall consider any and all factors that it deems relevant or appropriate. Designation of a Participant in any year shall not require the Committee to designate such Person to receive an Award in any other year or, once designated, to receive the same type or amount of Award as granted to such Participant in any other year.

5.2 *Determination of Awards*. The Committee shall determine the terms and conditions of all Awards granted to Participants in accordance with its authority under Section 3.2 hereof. An Award may consist of one type of right or benefit hereunder or of two or more such rights or benefits granted in tandem.

5.3 *Award Agreements*. Each Award granted to an Eligible Person shall be represented by an Award Agreement. The terms of the Award, as determined by the Committee, will be set forth in the applicable Award Agreements as described in Section 14.2 hereof.

6. Stock Options.

6.1 *Grant of Stock Options*. A Stock Option may be granted to any Eligible Person selected by the Committee, except that an Incentive Stock Option may be granted only to an Eligible Person satisfying the conditions of Section 6.7(a) hereof. Each Stock Option shall be designated on the Date of Grant, in the discretion of the Committee, as an Incentive Stock Option or as a Nonqualified Stock Option. All Stock Options granted under the Plan are intended to comply with or be exempt from the requirements of Section 409A of the Code, to the extent applicable.

6.2 *Exercise Price.* Unless otherwise determined by the Committee, the exercise price per share of a Stock Option (other than a Stock Option substituted or assumed under Section 14.10) shall not be less than one hundred percent (100%) of the Fair Market Value of a share of Common Stock on the Date of Grant. The Committee may in its discretion specify an exercise price per share that is higher than the Fair Market Value of a share of Common Stock on the Date of Grant.

6.3 *Vesting of Stock Options*. The Committee shall, in its discretion, prescribe in an award agreement the time or times at which or the conditions upon which, a Stock Option or portion thereof shall become vested and/or exercisable. The requirements for vesting and exercisability of a Stock Option may be based on the continued Service of the Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified performance goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Stock Option are not satisfied, the Award shall be forfeited.

6.4 *Term of Stock Options*. The Committee shall in its discretion prescribe in an Award Agreement the period during which a vested Stock Option may be exercised; provided, however, that the maximum term of a Stock Option shall be ten (10) years from the Date of Grant. The Committee may provide that a Stock Option will cease to be exercisable upon or at the end of a specified time period following a termination of Service for any reason as set forth in the Award Agreement or otherwise. A Stock Option may be earlier terminated as specified by the Committee and set forth in an Award Agreement upon or following the termination of a Participant's Service with the Company or any Subsidiary, including by reason of voluntary resignation, death, Disability, termination for Cause or any other reason. Subject to compliance with Section 409A of the Code, as applicable, and the provisions of this Section 6, the Committee may extend at any time the period in which a Stock Option may be exercised, but not beyond ten (10) years from the Date of Grant.

6.5 *Stock Option Exercise; Tax Withholding*. Subject to such terms and conditions as specified in an Award Agreement (including applicable vesting requirements), a Stock Option may be exercised in whole or in part at any time during the term thereof by notice in the form required by the Company, together with payment of the aggregate exercise price and applicable withholding tax. Payment of the exercise price may be made: (i) in cash or by cash equivalent acceptable to the Committee, or, (ii) to the extent permitted by the Committee in its sole discretion in an Award Agreement or otherwise (A) in shares of Common Stock valued at the Fair Market Value of such shares on the date of exercise, (B) through an open-market, broker-assisted sales transaction pursuant to which the Company is promptly delivered the amount of proceeds necessary to satisfy the exercise price, (C) by reducing the number of shares of Common Stock otherwise deliverable upon the exercise of the Stock Option by the number of shares of Common Stock having a Fair Market Value on the date of exercise equal to the exercise price, (D) by a combination of the methods described above or (E) by such other method as may be approved by the Committee. In accordance with Section 14.11 hereof, and in addition to and at the time of payment of the exercise price, the Participant shall pay to the Company the full amount of any and all applicable income tax, employment tax and other amounts required to be withheld in connection with such exercise, payable under such of the methods described above for the payment of the exercise price as may be approved by the Committee and set forth in the Award Agreement.

6.6 *Limited Transferability of Nonqualified Stock Options*. All Stock Options shall be nontransferable except (i) upon the Participant's death, in accordance with Section 14.3 hereof or (ii) in the case of Nonqualified Stock Options only, for the transfer of all or part of the Stock Option to a Participant's "family member" (as defined for purposes of the Form S-8 registration statement under the Securities Act), or as otherwise permitted by the Committee to the extent also permitted by the general instructions of the Form S-8 registration statement, as may be amended from time to time, in each case as may be approved by the Committee in its discretion at the time of proposed transfer; provided, in each case, that any permitted transfer shall be for no consideration. The transfer of a Nonqualified Stock Option may be subject to such terms and conditions as the Committee may in its discretion impose from time to time. Subsequent transfers of a Nonqualified Stock Option shall be prohibited other than in accordance with Section 14.3 hereof.

6.7 *Additional Rules for Incentive Stock Options*.

(a) *Eligibility*. An Incentive Stock Option may be granted only to an Eligible Person who is considered an employee for purposes of Treasury Regulation Section 1.421-1(h) with respect to the Company or any Subsidiary that qualifies as a "subsidiary corporation" with respect to the Company for purposes of Section 424(f) of the Code.

(b) *Annual Limits*. No Incentive Stock Option shall be granted to a Participant as a result of which the aggregate Fair Market Value (determined as of the Date of Grant) of the Common Stock with respect to which incentive stock options under Section 422 of the Code are exercisable for the first time in any calendar year under the Plan and any other stock option plans of the Company or any Subsidiary or parent corporation, would exceed $100,000, determined in accordance with Section 422(d) of the Code. This limitation shall be applied by taking Stock Options into account in the order in which granted. Any Stock Option grant that exceeds such limit shall be treated as a Nonqualified Stock Option.

(c) *Additional Limitations*. In the case of any Incentive Stock Option granted to an Eligible Person who owns, either directly or indirectly (taking into account the attribution rules contained in Section 424(d) of the Code), stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Subsidiary, the exercise price shall not be less than one hundred ten percent (110%) of the Fair Market Value of a share of Common Stock on the Date of Grant and the maximum term shall be five (5) years.

(d) *Termination of Service*. An Award of an Incentive Stock Option may provide that such Stock Option may be exercised not later than (i) three (3) months following termination of Service of the Participant with the Company and all Subsidiaries (other than as set forth in clause (ii) of this Section 6.7(d)) or (ii) one year following termination of Service of the Participant with the Company and all Subsidiaries due to death or permanent and total disability within the meaning of Section 22(e)(3) of the Code, in each case as and to the extent determined by the Committee to comply with the requirements of Section 422 of the Code.

(e) *Other Terms and Conditions; Nontransferability*. Any Incentive Stock Option granted hereunder shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as are deemed necessary or desirable by the Committee, which terms, together with the terms of the Plan, shall be intended and interpreted to cause such Incentive Stock Option to qualify as an "incentive stock option" under Section 422 of the Code. A Stock Option that is granted as an Incentive Stock Option shall, to the extent it fails to qualify as an "incentive stock option" under the Code, be treated as a Nonqualified Stock Option. An Incentive Stock Option shall by its terms be nontransferable other than by will or by the laws of descent and distribution, and shall be exercisable during the lifetime of a Participant only by such Participant.

(f) *Disqualifying Dispositions*. If shares of Common Stock acquired by exercise of an Incentive Stock Option are disposed of within two years following the Date of Grant or one year following the transfer of such shares to the Participant upon exercise, the Participant shall, promptly following such disposition, notify the Company in writing of the date and terms of such disposition and provide such other information regarding the disposition as the Company may reasonably require.

6.8 *Repricing Prohibited.* Subject to the adjustment provisions contained in Section 4.5 hereof and other than in connection with a Change in Control, without the prior approval of the Company's stockholders, neither the Committee nor the Board shall cancel a Stock Option when the exercise price per share exceeds the Fair Market Value of one share of Common Stock in exchange for cash or another Award or cause the cancellation, substitution or amendment of a Stock Option that would have the effect of reducing the exercise price of such a Stock Option previously granted under the Plan or otherwise approve any modification to such a Stock Option, that would be treated as a "repricing" under the then applicable rules, regulations or listing requirements adopted by the NASDAQ or other principal exchange on which the Common Stock is then listed.

6.9 *No Rights as Stockholder*. The Participant shall not have any rights as a stockholder with respect to the shares underlying a Stock Option until such time as shares or Common Stock are delivered to the Participant pursuant to the terms of the Award Agreement.

7. Stock Appreciation Rights.

7.1 *Grant of Stock Appreciation Rights*. Stock Appreciation Rights may be granted to any Eligible Person selected by the Committee. Stock Appreciation Rights may be granted on a basis that allows for the exercise of the right by the Participant, or that provides for the automatic exercise or payment of the right upon a specified date or event. Stock Appreciation Rights shall be non-transferable, except as provided in Section 14.3 hereof. All Stock Appreciation Rights granted under the Plan are intended to comply with or otherwise be exempt from the requirements of Section 409A of the Code, to the extent applicable.

7.2 *Terms of Stock Appreciation Rights*. The Committee shall in its discretion provide in an Award Agreement the time or times at which or the conditions upon which, a Stock Appreciation Right or portion thereof shall become vested and/or exercisable. The requirements for vesting and exercisability of a Stock Appreciation Right may be based on the continued Service of a Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified performance goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Stock Appreciation Right are not satisfied, the Award shall be forfeited. A Stock Appreciation Right will be exercisable or payable at such time or times as determined by the Committee; provided, however, that the maximum term of a Stock Appreciation Right shall be ten (10) years from the Date of Grant. Subject to compliance with Section 409A of the Code, as applicable, and the provisions of this Section 7.2, the Committee may extend at any time the period in which a Stock Appreciation Right may be exercised, but not beyond ten (10) years from the Date of Grant. The Committee may provide that a Stock Appreciation Right will cease to be exercisable upon or at the end of a period following a termination of Service for any reason. The base price of a Stock Appreciation Right shall be determined by the Committee in its discretion; provided, however, that the base price per share shall not be less than one hundred percent (100%) of the Fair Market Value of a share of Common Stock on the Date of Grant (other than with respect to a Stock Appreciation Right substituted or assumed under Section 14.10).

7.3 *Payment of Stock Appreciation Rights*. A Stock Appreciation Right will entitle the holder, upon exercise or other payment of the Stock Appreciation Right, as applicable, to receive an amount determined by multiplying: (i) the excess of the Fair Market Value of a share of Common Stock on the date of exercise or payment of the Stock Appreciation Right over the base price of such Stock Appreciation Right, by (ii) the number of shares as to which such Stock Appreciation Right is exercised or paid. Payment of the amount determined under the foregoing may be made, as approved by the Committee and set forth in the Award Agreement, in shares of Common Stock valued at their Fair Market Value on the date of exercise or payment, in cash or in a combination of shares of Common Stock and cash, subject to applicable tax withholding requirements.

7.4 *Repricing Prohibited*. Subject to the adjustment provisions contained in Section 4.5 hereof and other than in connection with a Change in Control, without the prior approval of the Company's stockholders, neither the Committee nor the Board shall cancel a Stock Appreciation Right when the base price per share exceeds the Fair Market Value of one share of Common Stock in exchange for cash or another Award or cause the cancellation, substitution or amendment of a Stock Appreciation Right that would have the effect of reducing the base price of such a Stock Appreciation Right previously granted under the Plan or otherwise approve any modification to such Stock Appreciation Right that would be treated as a "repricing" under the then applicable rules, regulations or listing requirements adopted by the NASDAQ or other principal exchange on which the Common Stock is then listed.

7.5 *No Rights as Stockholder*. The Participant shall not have any rights as a stockholder with respect to the shares underlying a Stock Appreciation Right unless and until such time as shares or Common Stock are delivered to the Participant pursuant to the terms of the Award Agreement.

8. Restricted Stock Awards.

8.1 *Grant of Restricted Stock Awards*. A Restricted Stock Award may be granted to any Eligible Person selected by the Committee. The Committee may require the payment by the Participant of a specified purchase price in connection with any Restricted Stock Award.

8.2 *Vesting Requirements*. The restrictions imposed on shares granted under a Restricted Stock Award shall lapse in accordance with the vesting requirements specified by the Committee in the Award Agreement. The requirements for vesting of a Restricted Stock Award may be based on the continued Service of the Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified performance goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Restricted Stock Award are not satisfied, the Award shall be forfeited and the shares of Common Stock subject to the Award shall be returned to the Company.

8.3 *Transfer Restrictions*. Shares granted under any Restricted Stock Award may not be transferred, assigned or subject to any encumbrance, pledge or charge until all applicable restrictions are removed or have expired, except as provided in Section 14.3 hereof. Failure to satisfy any applicable restrictions shall result in the subject shares of the Restricted Stock Award being forfeited and returned to the Company. The Committee may require in an Award Agreement that certificates (if any) representing the shares granted under a Restricted Stock Award bear a legend making appropriate reference to the restrictions imposed, and that certificates (if any) representing the shares granted or sold under a Restricted Stock Award will remain in the physical custody of an escrow holder until all restrictions are removed or have expired.

8.4 *Rights as Stockholder*. Subject to the foregoing provisions of this Section 8 and the applicable Award Agreement, the Participant shall have all rights of a stockholder with respect to the shares granted to the Participant under a Restricted Stock Award, including the right to vote the shares and receive all dividends and other distributions paid or made with

respect thereto, unless the Committee determines otherwise at the time the Restricted Stock Award is granted. The Committee shall determine and set forth in a Participant's Award Agreement whether or not a Participant holding a Restricted Stock Award granted hereunder shall have the right to exercise voting rights with respect to the period during which the Restricted Stock Award is subject to forfeiture (the "*Restriction Period*"), and have the right to receive dividends on the Restricted Stock Award during the Restriction Period (and, if so, on what terms) *provided* that if a Participant has the right to receive dividends paid with respect to the Restricted Stock Award, such dividends shall be subject to the same vesting terms as the related Restricted Stock Award.

8.5 *Section 83(b) Election*. If a Participant makes an election pursuant to Section 83(b) of the Code with respect to a Restricted Stock Award, the Participant shall file, within thirty (30) days following the Date of Grant, a copy of such election with the Company and with the Internal Revenue Service, in accordance with the regulations under Section 83 of the Code. The Committee may provide in an Award Agreement that the Restricted Stock Award is conditioned upon the Participant's making or refraining from making an election with respect to the Award under Section 83(b) of the Code.

9. Restricted Stock Units.

9.1 *Grant of Restricted Stock Units*. A Restricted Stock Unit may be granted to any Eligible Person selected by the Committee. The value of each Restricted Stock Unit is equal to the Fair Market Value of a share of Common Stock on the applicable date or time period of determination, as specified by the Committee. Restricted Stock Units shall be subject to such restrictions and conditions as the Committee shall determine. Restricted Stock Units shall be non-transferable, except as provided in Section 14.3 hereof.

9.2 *Vesting of Restricted Stock Units*. The Committee shall, in its discretion, determine any vesting requirements with respect to Restricted Stock Units, which shall be set forth in the Award Agreement. The requirements for vesting of a Restricted Stock Unit may be based on the continued Service of the Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified performance goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Restricted Stock Unit Award are not satisfied, the Award shall be forfeited.

9.3 *Payment of Restricted Stock Units*. Restricted Stock Units shall become payable to a Participant at the time or times determined by the Committee and set forth in the Award Agreement, which may be upon or following the vesting of the Award. Payment of a Restricted Stock Unit may be made, as approved by the Committee and set forth in the Award Agreement, in cash or in shares of Common Stock or in a combination thereof, subject to applicable tax withholding requirements. Any cash payment of a Restricted Stock Unit shall be made based upon the Fair Market Value of a share of Common Stock, determined on such date or over such time period as determined by the Committee.

9.4 *Dividend Equivalent Rights.* Dividends shall not be paid with respect to Restricted Stock Units. Dividend equivalent rights may be granted with respect to the Shares

subject to Restricted Stock Units to the extent permitted by the Committee and set forth in the applicable Award Agreement; provided that any dividend equivalent rights granted shall be subject to the same vesting terms as the related Restricted Stock Units.

9.5 *No Rights as Stockholder*. The Participant shall not have any rights as a stockholder with respect to the shares subject to a Restricted Stock Unit until such time as shares of Common Stock are delivered to the Participant pursuant to the terms of the Award Agreement.

10. Stock-Based Awards.

10.1 *Grant of Stock-Based Awards*. A Stock-Based Award may be granted to any Eligible Person selected by the Committee. A Stock-Based Award may be granted for past Services, in lieu of bonus or other cash compensation, as directors' compensation or for any other valid purpose as determined by the Committee, and shall be based upon or calculated by reference to the Common Stock. The Committee shall determine the terms and conditions of such Awards, and such Awards may be made without vesting requirements. In addition, the Committee may, in connection with any Stock-Based Award, require the payment of a specified purchase price.

10.2 *Rights as Stockholder*. The Participant shall not have any rights as a stockholder with respect to the shares of Common Stock, including the right to vote the shares and receive all dividends and other distributions paid or made with respect thereto, until such time as shares of Common Stock, if any, are issued to the Participant pursuant to the terms of the Award Agreement. If a Participant has the right to receive dividends paid with respect to the Stock-Based Award, such dividends shall be subject to the same vesting terms as the related Stock-Based Award, if applicable.

11. Change in Control.

11.1 *Effect on Awards*. Upon the occurrence of a Change in Control, all outstanding Awards shall either be (a) continued or assumed by the Company (if it is the surviving company or corporation) or by the surviving company or corporation or its parent (with such continuation or assumption including conversion into the right to receive securities, cash or a combination of both), or (b) substituted by the surviving company or corporation or its parent for awards (with such substitution including conversion into the right to receive securities, cash or a combination of both), with substantially similar terms for outstanding Awards (with appropriate adjustments to the type of consideration payable upon settlement of the Awards or other relevant factors, and with any applicable performance conditions deemed achieved (i) for any completed performance period, based on actual performance, or (ii) for any partial or future performance period, at the greater of the target level or actual performance, in each case as determined by the Committee (with the Award remaining subject only to time vesting), unless otherwise provided in an Award Agreement).

11.2 *Certain Adjustments*. Notwithstanding Section 11.1, to the extent that outstanding Awards are not continued, assumed or substituted pursuant to Section 11.1 upon the occurrence of a Change in Control, the Committee is authorized (but not obligated) to make adjustments in the terms and conditions of outstanding Awards, including without limitation the following (or any combination thereof):

(a) acceleration of exercisability, vesting and/or payment of outstanding Awards immediately prior to the occurrence of such event or upon or following such event;

(b) upon written notice, providing that any outstanding Stock Options and Stock Appreciation Rights are exercisable during a period of time immediately prior to the scheduled consummation of the event or such other period as determined by the Committee (contingent upon the consummation of the event), and at the end of such period, such Stock Options and Stock Appreciation Rights shall terminate to the extent not so exercised within the relevant period; and

(c) cancellation of all or any portion of outstanding Awards for fair value (in the form of cash, Common Shares, other property or any combination thereof) as determined in the sole discretion of the Committee; provided, however, that, in the case of Stock Options and Stock Appreciation Rights or similar Awards, the fair value may equal the excess, if any, of the value or amount of the consideration to be paid in the Change in Control transaction to holders of shares of Common Stock (or, if no such consideration is paid, Fair Market Value of the shares of Common Stock) over the aggregate exercise or base price, as applicable, with respect to such Awards or portion thereof being canceled, or if there is no such excess, zero; provided, further, that if any payments or other consideration are deferred and/or contingent as a result of escrows, earn outs, holdbacks or any other contingencies, payments under this provision may be made on substantially the same terms and conditions applicable to, and only to the extent actually paid to, the holders of Common Shares in connection with the Change in Control.

11.3 *Definition of Change in Control.* Unless otherwise defined in an Award Agreement or other written agreement approved by the Committee, "Change in Control" means, and shall occur, if:

(a) any Person (other than the Company, any trustee or other fiduciary holding securities under any employee benefit plan of the Company, or any company owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of shares of Common Stock) 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 50% of the combined voting power of the Company's then outstanding securities;

(b) during any period of two consecutive years (the "*Board Measurement Period*") individuals who at the beginning of such period constitute the Board and any new director (other than a director designated by a Person who has entered into an agreement with the Company to effect a transaction described in paragraph (a), (c), or (d) of this section, or a director initially elected or nominated as a result of an actual or threatened election contest with respect to directors or as a result of any other actual or threatened solicitation of proxies by or on behalf of any Person other than the Board) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the

directors then still in office who either were directors at the beginning of the Board Measurement Period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the Board;

(c) a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; provided, however, that a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Company's then outstanding securities shall not constitute a Change in Control of the Company; or

(d) the consummation of a sale or disposition by the Company of all or substantially all of the Company's assets other than (i) the sale or disposition of all or substantially all of the assets of the Company to a Person or Persons who beneficially own, directly or indirectly, more than 50% of the combined voting power of the outstanding voting securities of the Company at the time of the sale or disposition or (ii) pursuant to a spinoff type transaction, directly or indirectly, of such assets to the stockholders of the Company.

Notwithstanding the foregoing, to the extent necessary to comply with Section 409A of the Code with respect to the payment of "nonqualified deferred compensation," "Change in Control" shall be limited to a "change in control event" as defined under Section 409A of the Code.

12. Forfeiture Events.

12.1 *General*. The Committee may specify in an Award Agreement that the Participant's rights, payments and benefits with respect to an Award are subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, without limitation, termination of Service for Cause, violation of laws, regulations or material Company policies, breach of noncompetition, non-solicitation, confidentiality or other restrictive covenants that may apply to the Participant, application of a Company clawback policy relating to financial restatement, or other conduct by the Participant that is detrimental to the business or reputation of the Company.

12.2 *Termination for Cause*.

(a) *Treatment of Awards*. Unless otherwise provided by the Committee and set forth in an Award Agreement, if (i) a Participant's Service with the Company or any Subsidiary shall be terminated for Cause or (ii) after termination of Service for any other reason, the Committee determines in its discretion either that, (1) during the Participant's period of Service, the Participant engaged in an act or omission which would have warranted termination of Service for Cause or (2) after termination, the Participant engages in conduct that violates any

continuing obligation or duty of the Participant in respect of the Company or any Subsidiary, such Participant's rights, payments and benefits with respect to an Award shall be subject to cancellation, forfeiture and/or recoupment, as provided in Section 12.3 below. The Company shall have the power to determine whether the Participant has been terminated for Cause, the date upon which such termination for Cause occurs, whether the Participant engaged in an act or omission which would have warranted termination of Service for Cause or engaged in conduct that violated any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary. Any such determination shall be final, conclusive and binding upon all Persons. In addition, if the Company shall reasonably determine that a Participant has committed or may have committed any act which could constitute the basis for a termination of such Participant's Service for Cause or violates any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary, the Company may suspend the Participant's rights to exercise any Stock Option or Stock Appreciation Right, receive any payment or vest in any right with respect to any Award pending a determination by the Company of whether an act or omission could constitute the basis for a termination for Cause as provided in this Section 12.2.

(b) *Definition of Cause*. "*Cause*" means with respect to a Participant's termination of Service, the following: (a) in the case where there is no employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant (or where there is such an agreement but it does not define "cause" (or words of like import, which shall include but not be limited to "gross misconduct")), termination due to a Participant's (1) failure to substantially perform Participant's duties or obey lawful directives that continues after receipt of written notice from the Company and a ten (10)-day opportunity to cure; (2) gross misconduct or gross negligence in the performance of Participant's duties; (3) fraud, embezzlement, theft, or any other act of material dishonesty or misconduct; (4) conviction of, indictment for, or plea of guilty or nolo contendere to, a felony or any crime involving moral turpitude; (5) (x) material breach or violation of any agreement with the Company or its Affiliates, including any restrictive covenant agreement applicable to Participant, or (y) significant violation of the code of conduct or similar written policy, including, without limitation, any sexual harassment policy, of the Company or its Affiliates; or (6) other conduct, acts or omissions that, in the good faith judgment of the Company, are likely to significantly injure the reputation, business or a business relationship of the Company or any of its Affiliates; or (b) in the case where there is an employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant that defines "cause" (or words of like import, which shall include but not be limited to "gross misconduct"), "cause" as defined under such agreement. With respect to a termination of Service for a non-employee director, Cause means an act or failure to act that constitutes cause for removal of a director under applicable Delaware law. Any voluntary termination of Service by the Participant in anticipation of an involuntary termination of the Participant's Service for Cause shall be deemed to be a termination for Cause.

12.3 *Right of Recapture*.

(a) *General*. If at any time within one year (or such longer time specified in an Award Agreement or other agreement with a Participant or policy applicable to the Participant) after the date on which a Participant exercises a Stock Option or Stock Appreciation

Right or on which a Stock-Based Award, Restricted Stock Award or Restricted Stock Unit vests, is settled in shares or otherwise becomes payable, or on which income otherwise is realized or property is received by a Participant in connection with an Award, (i) a Participant's Service is terminated for Cause, (ii) the Committee determines in its discretion that the Participant is subject to any recoupment of benefits pursuant to the Company's compensation recovery, "clawback" or similar policy, as may be in effect from time to time, or (iii) after a Participant's Service terminates for any other reason, the Committee determines in its discretion either that, (1) during the Participant's period of Service, the Participant engaged in an act or omission which would have warranted termination of the Participant's Service for Cause or (2) after a Participant's termination of Service, the Participant engaged in conduct that violated any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary, then, at the sole discretion of the Committee, any gain realized by the Participant from the exercise, vesting, payment, settlement or other realization of income or receipt of property by the Participant in connection with an Award, shall be repaid by the Participant to the Company upon notice from the Company, subject to applicable law. Such gain shall be determined as of the date or dates on which the gain is realized by the Participant, without regard to any subsequent change in the Fair Market Value of a share of Common Stock. To the extent not otherwise prohibited by law, the Company shall have the right to offset the amount of such repayment obligation against any amounts otherwise owed to the Participant by the Company (whether as wages, vacation pay or pursuant to any benefit plan or other compensatory arrangement).

(b) *Accounting Restatement*. If a Participant receives compensation pursuant to an Award under the Plan based on financial statements that are subsequently restated in a way that would decrease the value of such compensation, the Participant will, to the extent not otherwise prohibited by law, upon the written request of the Company, forfeit and repay to the Company the difference between what the Participant received and what the Participant should have received based on the accounting restatement, in accordance with (i) any compensation recovery, "clawback" or similar policy, as may be in effect from time to time to which such Participant is subject and (ii) any compensation recovery, "clawback" or similar policy made applicable by law including the provisions of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules, regulations and requirements adopted thereunder by the Securities and Exchange Commission and/or any national securities exchange on which the Company's equity securities may be listed (the "*Policy*"). By accepting an Award hereunder, the Participant acknowledges and agrees that the Policy, whenever adopted, shall apply to such Award, and all incentive-based compensation payable pursuant to such Award shall be subject to forfeiture and repayment pursuant to the terms of the Policy.

13. Transfer, Leave of Absence, Etc. For purposes of the Plan, except as otherwise determined by the Committee, the following events shall not be deemed a termination of Service: (a) a transfer to the service of the Company from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another; or (b) an approved leave of absence for military service or sickness, a leave of absence where the employee's right to re-employment is protected either by a statute or by contract or under the policy pursuant to which the leave of absence was granted, a leave of absence for any other purpose approved by the Company or if the Committee otherwise so provides in writing.

14. General Provisions.

14.1 *Status of Plan*. The Committee may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver shares of Common Stock or make payments with respect to Awards.

14.2 *Award Agreement*. An Award under the Plan shall be evidenced by an Award Agreement in a written or electronic form approved by the Committee setting forth the number of shares of Common Stock or other amounts or securities subject to the Award, the exercise price, base price or purchase price of the Award, the time or times at which an Award will become vested, exercisable or payable and the term of the Award. The Award Agreement also may set forth the effect on an Award of a Change in Control and/or a termination of Service under certain circumstances. The Award Agreement shall be subject to and incorporate, by reference or otherwise, all of the applicable terms and conditions of the Plan, and also may set forth other terms and conditions applicable to the Award as determined by the Committee consistent with the limitations of the Plan. The grant of an Award under the Plan shall not confer any rights upon the Participant holding such Award other than such terms, and subject to such conditions, as are specified in the Plan as being applicable to such type of Award (or to all Awards) or as are expressly set forth in the Award Agreement. The Committee need not require the execution of an Award Agreement by a Participant, in which case, acceptance of the Award by the Participant shall constitute agreement by the Participant to the terms, conditions, restrictions and limitations set forth in the Plan and the Award Agreement as well as the administrative guidelines of the Company in effect from time to time. In the event of any conflict between the provisions of the Plan and any Award Agreement, the provisions of the Plan shall prevail.

14.3 *No Assignment or Transfer; Beneficiaries*. Except as provided in Section 6.6 hereof or as otherwise provided by the Committee to the extent not prohibited under Section A.1.(5) of the general instructions of Form S-8, as may be amended from time to time, Awards under the Plan shall not be assignable or transferable by the Participant, and shall not be subject in any manner to assignment, alienation, pledge, encumbrance or charge. Notwithstanding the foregoing, in the event of the death of a Participant, except as otherwise provided by the Committee, an outstanding Award may be exercised by or shall become payable to the Participant's beneficiary as determined under the Company 401(k) retirement plan or other applicable retirement or pension plan. In lieu of such determination, a Participant may, from time to time, name any beneficiary or beneficiaries to receive any benefit in case of the Participant's death before the Participant receives any or all of such benefit. Each such designation shall revoke all prior designations by the same Participant and will be effective only when filed by the Participant in writing (in such form or manner as may be prescribed by the Committee) with the Company during the Participant's lifetime. In the absence of a valid designation as provided above, if no validly designated beneficiary survives the Participant or if each surviving validly designated beneficiary is legally impaired or prohibited from receiving the benefits under an Award, the Participant's beneficiary shall be the legatee or legatees of such Award designated under the Participant's last will or by such Participant's executors, personal representatives or distributees of such Award in accordance with the Participant's will or the laws of descent and distribution. The Committee may provide in the terms of an Award

Agreement or in any other manner prescribed by the Committee that the Participant shall have the right to designate a beneficiary or beneficiaries who shall be entitled to any rights, payments or other benefits specified under an Award following the Participant's death. Any transfer permitted under this Section 14.3 shall be for no consideration.

14.4 *No Right to Employment or Continued Service*. Nothing in the Plan, in the grant of any Award or in any Award Agreement shall confer upon any Eligible Person or any Participant any right to continue in the Service of the Company or any of its Subsidiaries or interfere in any way with the right of the Company or any of its Subsidiaries to terminate the employment or other service relationship of an Eligible Person or a Participant for any reason or no reason at any time.

14.5 *Rights as Stockholder*. A Participant shall have no rights as a holder of shares of Common Stock with respect to any unissued securities covered by an Award until the date the Participant becomes the holder of record of such securities. Except as provided in Section 4.5 hereof, no adjustment or other provision shall be made for dividends or other stockholder rights, except to the extent that the Award Agreement provides for dividend payments or dividend equivalent rights. The Committee may determine in its discretion the manner of delivery of Common Stock to be issued under the Plan, which may be by delivery of stock certificates, electronic account entry into new or existing accounts or any other means as the Committee, in its discretion, deems appropriate. The Committee may require that the stock certificates (if any) be held in escrow by the Company for any shares of Common Stock or cause the shares to be legended in order to comply with the securities laws or other applicable restrictions. Should the shares of Common Stock be represented by book or electronic account entry rather than a certificate, the Committee may take such steps to restrict transfer of the shares of Common Stock as the Committee considers necessary or advisable.

14.6 *Trading Policy and Other Restrictions*. Transactions involving Awards under the Plan shall be subject to the Company's insider trading policy and other restrictions, terms, conditions and policies established by the Board or Committee from time to time or by applicable law.

14.7 *Section 409A Compliance*. To the extent applicable, it is intended that the Plan and all Awards hereunder comply with, or be exempt from, the requirements of Section 409A of the Code and the Treasury Regulations and other guidance issued thereunder, and that the Plan and all Award Agreements shall be interpreted and applied by the Committee in a manner consistent with this intent in order to avoid the imposition of any additional tax under Section 409A of the Code. In the event that any (i) provision of the Plan or an Award Agreement, (ii) Award, payment, transaction or (iii) other action or arrangement contemplated by the provisions of the Plan is determined by the Committee to not comply with the applicable requirements of Section 409A of the Code and the Treasury Regulations and other guidance issued thereunder, the Committee shall have the authority to take such actions and to make such changes to the Plan or an Award Agreement as the Committee deems necessary to comply with such requirements. No payment that constitutes deferred compensation under Section 409A of the Code that would otherwise be made under the Plan or an Award Agreement upon a termination of Service will be made or provided unless and until such termination is also a

"separation from service," as determined in accordance with Section 409A of the Code. Notwithstanding the foregoing or anything elsewhere in the Plan or an Award Agreement to the contrary, if a Participant is a "specified employee" as defined in Section 409A of the Code at the time of termination of Service with respect to an Award, then solely to the extent necessary to avoid the imposition of any additional tax under Section 409A of the Code, the commencement of any payments or benefits under the Award shall be deferred until the date that is six (6) months plus one (1) day following the date of the Participant's termination of Service or, if earlier, the Participant's death (or such other period as required to comply with Section 409A). For purposes of Section 409A of the Code, a Participant's right to receive any installment payments pursuant to this Plan or any Award granted hereunder shall be treated as a right to receive a series of separate and distinct payments. For the avoidance of doubt, each applicable tranche of Common Shares subject to vesting under any Award shall be considered a right to receive a series of separate and distinct payments. In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on a Participant by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code.

14.8 *Section 457A Compliance.* In the event any Award is subject to Section 457A of the Code ("*Section 457A*"), the Committee may, in its sole discretion and without a Participant's prior consent, amend the Plan and/or Awards, adopt policies and procedures, or take any other actions (including amendments, policies, procedures and actions with retroactive effect) as are necessary or appropriate to (i) exempt the Plan and/or any Award from the application of Section 457A, (ii) preserve the intended tax treatment of any such Award, or (iii) comply with the requirements of Section 457A, including without limitation any such regulations, guidance, compliance programs and other interpretative authority that may be issued after the date of the grant. To the extent that an Award constitutes deferred compensation subject to Section 457A, such Award will be subject to taxation in accordance with Section 457A. In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on a Participant by Section 457A of the Code or any damages for failing to comply with Section 457A of the Code.

14.9 *Securities Law Compliance*. No shares of Common Stock will be issued or transferred pursuant to an Award unless and until all then applicable requirements imposed by Federal and state securities and other laws, rules and regulations and by any regulatory agencies having jurisdiction, and by any exchanges upon which the shares of Common Stock may be listed, have been fully met. As a condition precedent to the issuance of shares of Common Stock pursuant to the grant or exercise of an Award, the Company may require the Participant to take any action that the Company determines is necessary or advisable to meet such requirements. The Committee may impose such conditions on any shares of Common Stock issuable under the Plan as it may deem advisable, including, without limitation, restrictions under the Securities Act, under the requirements of any exchange upon which such shares of the same class are then listed, and under any blue sky or other securities laws applicable to such shares. The Committee may also require the Participant to represent and warrant at the time of issuance or transfer that the shares of Common Stock are being acquired solely for investment purposes and without any current intention to sell or distribute such shares.

14.10 *Substitution or Assumption of Awards in Corporate Transactions. The Committee may grant Awards under the Plan in connection with the acquisition, whether by purchase, merger, consolidation or other corporate transaction, of the business or assets of any corporation or other entity, in substitution for awards previously granted by such corporation or other entity or otherwise. The Committee may also assume any previously granted awards of a former employee or a current employee, director, consultant or other service provider of another corporation or entity that becomes an Eligible Person by reason of such corporation transaction. The terms and conditions of the substituted or assumed awards may vary from the terms and conditions that would otherwise be required by the Plan solely to the extent the Committee deems necessary for such purpose. To the extent permitted by applicable law and the listing requirements of the NASDAQ or other exchange or securities market on which the Common Shares are listed, any such substituted or assumed awards shall not reduce the Share Reserve.*

14.11 *Tax Withholding*. The Participant shall be responsible for payment of any taxes or similar charges required by law to be paid or withheld from an Award or an amount paid in satisfaction of an Award. Any required withholdings shall be paid by the Participant on or prior to the payment or other event that results in taxable income in respect of an Award. The Award Agreement may specify the manner in which the withholding obligation shall be satisfied with respect to the particular type of Award, which may include permitting the Participant to elect to satisfy the withholding obligation by tendering shares of Common Stock to the Company or having the Company withhold a number of shares of Common Stock having a value in each case up to the maximum statutory tax rates in the applicable jurisdiction or as the Committee may approve in its discretion (provided that such withholding does not result in adverse tax or accounting consequences to the Company), or similar charge required to be paid or withheld. In addition, to the extent permitted by the Committee in its sole discretion in an Award Agreement or otherwise, and subject to Section 16 of the Exchange Act, withholding may be satisfied through an open-market, broker-assisted sales transaction pursuant to which the Company is promptly delivered the amount of proceeds necessary to satisfy the withholding amount, which shall be subject to any terms and conditions imposed by the Committee. The Company shall have the power and the right to require a Participant to remit to the Company the amount necessary to satisfy federal, state, provincial and local taxes, domestic or foreign, required by law or regulation to be withheld, and to deduct or withhold from any shares of Common Stock deliverable under an Award to satisfy such withholding obligation.

14.12 *Unfunded Plan*. The adoption of the Plan and any reservation of shares of Common Stock or cash amounts by the Company to discharge its obligations hereunder shall not be deemed to create a trust or other funded arrangement. Except upon the issuance of shares of Common Stock pursuant to an Award, any rights of a Participant under the Plan shall be those of a general unsecured creditor of the Company, and neither a Participant nor the Participant's permitted transferees or estate shall have any other interest in any assets of the Company by virtue of the Plan. Notwithstanding the foregoing, the Company shall have the right to implement or set aside funds in a grantor trust, subject to the claims of the Company's creditors or otherwise, to discharge its obligations under the Plan.

14.13 *Other Compensation and Benefit Plans*. The adoption of the Plan shall not affect any other share incentive or other compensation plans in effect for the Company or any

Subsidiary, nor shall the Plan preclude the Company from establishing any other forms of share incentive or other compensation or benefit program for employees of the Company or any Subsidiary. The amount of any compensation deemed to be received by a Participant pursuant to an Award shall not constitute includable compensation for purposes of determining the amount of benefits to which a Participant is entitled under any other compensation or benefit plan or program of the Company or a Subsidiary, including, without limitation, under any pension or severance benefits plan, except to the extent specifically provided by the terms of any such plan.

14.14 *Plan Binding on Transferees*. The Plan shall be binding upon the Company, its transferees and assigns, and the Participant, the Participant's executor, administrator and permitted transferees and beneficiaries.

14.15 *Severability*. If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

14.16 *Governing Law*. The Plan, all Awards and all Award Agreements, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to the Plan, any Award or Award Agreement, or the negotiation, execution or performance of any such documents or matter related thereto (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with the Plan, any Award or Award Agreement, or as an inducement to enter into any Award Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Delaware, including its statutes of limitations and repose, but without regard to any borrowing statute that would result in the application of the statute of limitations or repose of any other jurisdiction.

14.17 *No Fractional Shares*. No fractional shares of Common Stock shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional shares of Common Stock or whether such fractional shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

14.18 *No Guarantees Regarding Tax Treatment*. Neither the Company nor the Committee make any guarantees to any Person regarding the tax treatment of Awards or payments made under the Plan. Neither the Company nor the Committee has any obligation to take any action to prevent the assessment of any tax on any Person with respect to any Award under Section 409A of the Code, Section 4999 of the Code or otherwise and neither the Company nor the Committee shall have any liability to a Person with respect thereto.

14.19 *Data Protection*. By participating in the Plan, each Participant consents to the collection, processing, transmission and storage by the Company, its Subsidiaries and any third party administrators of any data of a professional or personal nature for the purposes of administering the Plan and in connection with a Participant's status as a stockholder of the Company upon the issuance of any shares of Common Stock pursuant to an Award.

14.20 *Awards to Non-U.S. Participants.* To comply with the laws in countries other than the United States in which the Company or any of its Subsidiaries or Affiliates operates or has employees, Non-Employee Directors or consultants, the Committee, in its sole discretion, shall have the power and authority to (i) modify the terms and conditions of any Award granted to Participants outside the United States to comply with applicable foreign laws, (ii) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local government regulatory exemptions or approvals and (iii) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable. Any subplans and modifications to Plan terms and procedures established under this Section 14.20 by the Committee shall be attached to this Plan document as appendices.

15. Term; Amendment and Termination; Stockholder Approval.

15.1 *Term*. The Plan shall be effective as of the Effective Date. Subject to Section 15.2 hereof, the Plan shall terminate on the tenth anniversary of the Effective Date.

15.2 *Amendment and Termination*. The Board may from time to time and in any respect, amend, modify, suspend or terminate the Plan; provided, however, that no amendment, modification, suspension or termination of the Plan shall materially and adversely affect any Award theretofore granted without the consent of the Participant or the permitted transferee of the Award. The Board may seek the approval of any amendment, modification, suspension or termination by the Company's stockholders to the extent it deems necessary in its discretion for purposes of compliance with Section 422 of the Code or for any other purpose, and shall seek such approval to the extent it deems necessary in its discretion to comply with applicable law or listing requirements of NASDAQ or other exchange or securities market. Notwithstanding the foregoing, the Board shall have broad authority to amend the Plan or any Award under the Plan without the consent of a Participant to the extent it deems necessary or desirable in its discretion to comply with, take into account changes in, or interpretations of, applicable tax laws, securities laws, employment laws, accounting rules and other applicable laws, rules and regulations.

**Exhibit 23.1**

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of First Watch Restaurant Group, Inc. of our report dated April 23, 2021, except for the effects of the stock split discussed in Note 21 to the consolidated financial statements, as to which the date is September 22, 2021, relating to the financial statements of First Watch Restaurant Group, Inc., which appears in this Registration Statement. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
Tampa, Florida
September 22, 2021