

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

**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  
 (State or Other Jurisdiction of  
 Incorporation or Organization)

5812  
 (Primary Standard Industrial  
 Classification Code Number)

82-4271369  
 (I.R.S. Employer  
 Identification Number)

8027 Cooper Creek Blvd. #103  
 University Park, FL 34201  
 (941) 907-9800

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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**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. 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	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Common stock, \$0.01 par value per share	\$	\$

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) 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.

**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.**

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 January , 2020

PRELIMINARY PROSPECTUS



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 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 \$ and \$ . We intend to apply to have our common stock listed on the under the symbol “ .”

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.” After the completion of this offering, we expect to be a “controlled company” within the meaning of the corporate governance standards of the .

See “[Risk Factors](#)” on page 15 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 108 of this prospectus, for additional information regarding total underwriter compensation.

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

The underwriters expect to deliver the shares against payment in New York, New York on , 2020.

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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” 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 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 management's review of independent industry surveys and publications and other publicly available information prepared by a number of sources, including third-party industry sources. 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 2018 reflect the results of the 52-week fiscal year ended December 30, 2018. All references to fiscal 2019 reflect the results of the 52-week fiscal year ended December 29, 2019. 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).

## **Non-GAAP Financial Measures**

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States of America ("GAAP"). We also supplement our consolidated financial statements with the following non-GAAP financial measures in this prospectus: Adjusted EBITDA, Adjusted EBITDA Margin, Store-Level EBITDA ("SLEBITDA") and SLEBITDA Margin.

### *Adjusted EBITDA and Adjusted EBITDA Margin*

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 loss, income 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 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 loss, the most directly comparable measure under GAAP, to Adjusted EBITDA. 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.

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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 statement 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.

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 loss, the most directly comparable GAAP measure to Adjusted EBITDA. See “Prospectus Summary – Summary Historical Consolidated Financial and Other Data.”

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.

### *SLEBITDA and SLEBITDA Margin*

SLEBITDA and SLEBITDA 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. SLEBITDA represents restaurant sales less restaurant operating expenses, which include cost of sales, labor and other related expenses, other restaurant operating expenses and occupancy expenses. In addition, SLEBITDA excludes corporate-level expenses, pre-opening expenses and deferred rent expense. SLEBITDA Margin represents SLEBITDA as a percentage of restaurant sales.

SLEBITDA and SLEBITDA Margin are important measures we use to evaluate the performance and profitability of each restaurant, individually and in the aggregate. Additionally, SLEBITDA and SLEBITDA

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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 SLEBITDA and SLEBITDA 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 SLEBITDA and SLEBITDA Margin to make decisions regarding future spending and other operational decisions. Our calculations of SLEBITDA and SLEBITDA Margin thereof 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 analysis of our results as reported under GAAP. For a reconciliation of income from operations, the most directly comparable GAAP measure to SLEBITDA, see “Prospectus Summary – Summary Historical Consolidated Financial and Other Data.”

### **Other 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 Returns*

Cash-on-Cash Returns is defined as SLEBITDA (excluding gift card breakage) 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.

#### *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 2018, there were 143 restaurants 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.

#### *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 sales from our company-owned restaurants and franchised restaurants. We do not recognize the sales from our franchised restaurants as revenue. Refer to Note 2 – *Summary of Significant Accounting Policies* in the notes to the audited consolidated financial statements included 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” and the consolidated financial statements as of and for the fiscal year ended December 30, 2018 and notes related thereto included elsewhere in this prospectus, before making an investment decision. Unless the context requires otherwise, references to “our 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 – a high-growth 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 an innovative menu that is always fresh and evolving. Our one shift, from 7:00 a.m. to 2:30 p.m., and one 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. These foundational brand pillars have resulted in strong consumer demand and operating performance as evidenced by our 20 consecutive quarters of positive same-restaurant sales growth and traffic growth since 2014. For fiscal 2018, we generated \$350 million of total revenues. As of December 29, 2019, we had 368 restaurants across 29 states, 299 of our restaurants were company-owned and 69 were operated by our franchisees.

### **Our Promise: Yeah, It’s Fresh!**

At First Watch, we take a creative approach to daytime dining with a focus on 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, along with First Watch-specific specialties such as our protein-packed Quinoa Power Bowl, Farmstand Breakfast Tacos, Avocado Toast, Kale Tonic (juiced in-house daily), 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 36 years, our management has 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. 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.

### **Proven Record of Sustained Growth**

Our long track record of results, spanning almost four decades, demonstrates our broad brand appeal, compelling economic proposition and difficult-to-replicate business model. We have achieved growth in total restaurants to 368 in 2019, from 148 restaurants in 2014. Over the five-year period ended December 30, 2018, we have achieved:

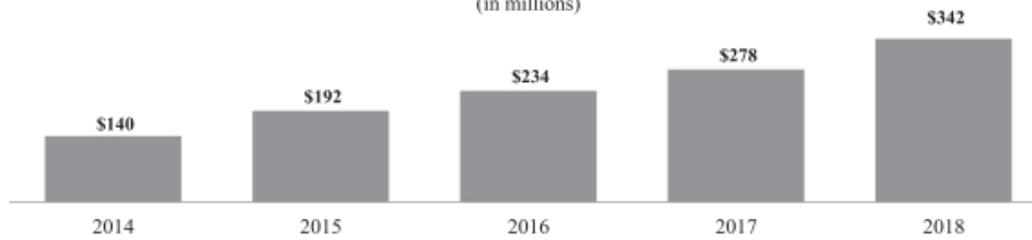
- Consistently positive annual same-restaurant sales growth, averaging 6.5%
- Consistently positive annual same-restaurant traffic growth, averaging 1.4%
- AUV growth of 23%, from \$1.2 million in 2014 to \$1.5 million in 2018

**System-Wide Restaurants (2014 – 2019)**

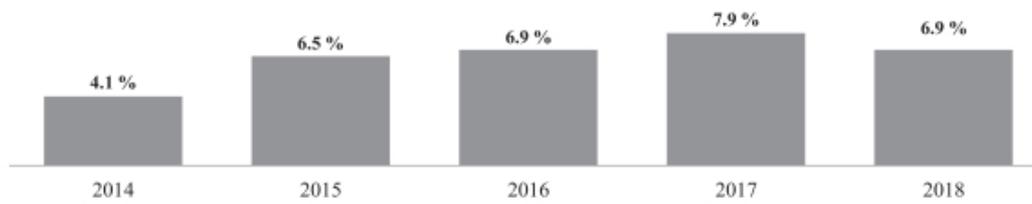


**Annual Restaurant Sales (2014 – 2018)**

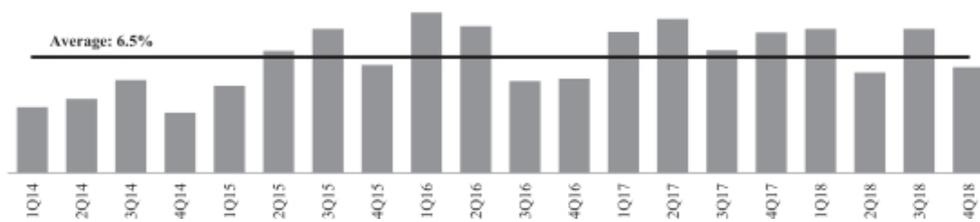
(in millions)



**Annual Same-Restaurant Sales Growth (2014 – 2018)**



**Same-Restaurant Sales Growth by Quarter (2014 – 2018)**



### **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) is the only foodservice daypart with consistent year-over-year growth for the last several years, according to third-party industry sources. The restaurant industry captured two additional breakfast visits per capita, from 2015 to 2018, and with 78% of breakfasts still being prepared at home as of 2019, morning restaurant traffic provides a compelling long-term opportunity for future growth.

**Demand for Fresh, Healthy Food.** More than half of consumers consider a healthy menu an important factor in their restaurant choice and 60% of consumers say they want more protein in their diet, according to third-party industry sources. Our freshly made food, with simple, high-quality, protein-rich ingredients, such as cage-free eggs and quinoa, aligns well with these consumer trends.

**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 are powering demand for convenient, fast and flexible daytime dining offerings, for which traditional rigid breakfast and lunch dayparts were not designed.

### **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 rustic yet contemporary atmosphere – creating an energizing daytime dining experience that resonates with consumers. We enjoy broad appeal that includes attracting healthier and more affluent consumers. 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 third-party industry sources. Our operating 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 less than 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 extends 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.

### ***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 daytime dining experience.

### ***“You First” Culture Elevates Employee and Customer Satisfaction***

Our “You First” mission permeates every level of our organization. We have designed our hiring, training and retention strategies such that our more than 9,000 employees, united by our culture, are empowered to deliver superior customer experiences. We invest heavily in our leaders by conducting 11 weeks of training for all managers, including a one-week First Watch Academy of Restaurant Management (“F.A.R.M.”) program held at our Home Office in University Park, Florida, where each of our managers-in-training is immersed in our culture, vision and mission. Our restaurant-level general manager turnover averaged 19.3% in fiscal 2019, which is meaningfully lower than the industry-reported average of 43%. A five-year longitudinal study of employee surveys on Glassdoor published in 2019 ranked us #1 for work/life balance and among the top five employers in the restaurant industry.

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

Our strong brand with growing awareness, broad consumer appeal and excellence in execution have created outstanding performance over time. Over the five-year period ended December 30, 2018, our same-restaurant sales growth has been positive every year, averaging 6.5%. Importantly, that growth was driven by positive same-restaurant traffic every year during that period.

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

The success of our brand is reflected in our restaurant-level performance and Cash-on-Cash Returns. In fiscal 2019 we generated AUV of \$ \_\_\_\_\_ in a single shift, 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 29 states. Restaurants in our top decile, by fiscal 2019 sales, span \_\_\_\_\_ different states and \_\_\_\_\_ different designated market areas (“DMAs”).

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

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 23 years of industry experience and joined First Watch in 2006. Mr. Tomasso sets the strategic vision and brand positioning for the company, while preserving its organizational culture. Mel Hope, our Chief Financial Officer and Treasurer, has more than 35 years of public accounting and industry experience including serving as Chief Financial Officer of large, successful public companies. We have a deep bench of talent throughout the organization. Our executives and key employees average more than 13 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 Intend to Grow Sales and Profits**

While we are proud of our success in having grown sales and SLEBITDA consistently for many years, our focus is on the future. 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***

First Watch has grown from 148 restaurants in 2014 to 368 restaurants in 2019 while increasing the AUV from \$1.2 million to \_\_\_\_\_ and achieving positive same-restaurant sales growth and traffic in each of those years. In Florida, our most mature market with the greatest number of company-owned restaurants, we have grown from 45 to 90 restaurants over the last six years, while generating average annual same-restaurant sales growth of 5.9% over the same period. 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 estimate potential for \_\_\_\_\_ restaurants across the United States. We intend to leverage our rigorous real estate site selection process to open \_\_\_\_\_ company-owned restaurants over \_\_\_\_\_. 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 interesting. Our chef-led culinary innovation team leverages consumer research to maintain a keen awareness of emerging culinary trends, immerses themselves in the marketplace through frequent culinary inspiration tours and uses those 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 wholly new menu platforms similar to our introductions of Fresh Juices and Shareables. For fiscal 2019, \_\_\_\_\_ % of customers purchased our seasonal menu, \_\_\_\_\_ % purchased Fresh Juices and \_\_\_\_\_ % purchased Shareables. We expect menu innovation to continue to provide incremental growth opportunities in the future.

***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. In a 2017 survey, only 33% of respondents in our existing markets were aware of First Watch. Our advertising costs represent less than 1% of total revenues in fiscal 2018. We intend to grow our brand awareness primarily through increased investment in cost-efficient digital, social and to some extent, traditional media. Additionally, and perhaps even more importantly, our brand awareness will continue to increase as our customers share their experiences online and offline with their family and friends.

***Deliver An Excellent Dining Experience.*** Excellence in restaurant-level execution, recognized by customers and reinforced by the numerous accolades we have received, increases the frequency of our customer visits, promotes trial by new consumers and ultimately creates 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. We aim to continue to leverage our “One Shift, One Menu, One Focus” model to stay distinguishably different from our competitors by focusing on delivering a superior dining experience every day to further drive traffic and build sales.

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

- **Alcohol:** We believe offering alcoholic beverages will be a highly-incremental new sales platform while opening up new occasions for our consumers. This initiative is in the early stages of testing with encouraging results.
- **Off-Premise:** We are in the early stages of integrating technology into our business to enhance customer access and leverage off-premise consumption. Third-party delivery is offered at less than 50 of our restaurants as of the end of fiscal 2019. We are setting the foundation to optimize the off-premise opportunity through a system-wide rollout that takes advantage of improving delivery-related economics in the marketplace. We also intend to evolve our mobile app and the Sun eClub email program, which currently has more than 1.5 million members, to reduce customer friction and enhance targeted campaigns to increase customer frequency.
- **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. Only % of our weekday customer transactions occurred between the hours of 12:00 p.m. and 2:30 p.m. Monday through Friday for fiscal 2019.

### **Our Sponsor**

Founded in 1984, Advent International Corporation (“Advent”) has invested \$47 billion in over 350 private equity transactions in 41 countries and as of June 30, 2019, had \$54.3 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 200 investment professionals across Europe, North America, Latin America and Asia.

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”).

Following the closing of this offering, funds managed by Advent are expected to own approximately % of our outstanding common stock, or %, 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 Relating to This Offering and Ownership of Our Common Stock” and “Principal Stockholders.”

### **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 8027 Cooper Creek Blvd. #103 University Park, Florida 34201, and our telephone number is (941) 907-9800. Our corporate website address is [www.firstwatch.com](http://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:

- our vulnerability to changes in consumer preferences and economic conditions;

- our inability to open new restaurants in new and existing markets;
- our inability to generate same-restaurant sales growth;
- the number of visitors to areas where our restaurants are located may decline;
- 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 control 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 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 than 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	shares of common stock ( purchase additional shares in full). shares if the underwriters exercise their option to
Common stock to be outstanding after this offering	shares of common stock ( purchase additional shares in full). shares if the underwriters exercise their option to
Option to purchase additional shares of common stock	The underwriters have an option to purchase an additional 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	<p>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 \$ million (\$ million if the underwriters exercise their option to purchase additional shares in full) based on an assumed initial public offering price of \$ per share (the midpoint of the price range set forth on the cover of this prospectus).</p> <p>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.”</p>
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 15 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 the under the symbol “.”

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

- excludes shares of our common stock issuable upon the exercise of outstanding stock options at a weighted average exercise price of \$ per share;
- excludes an aggregate of shares of our common stock that will be available for future equity awards under our 2017 Omnibus Equity Incentive Plan (the “2017 Plan”) and our First Watch Restaurant Group, Inc. 2020 Equity Incentive Plan (the “2020 Plan”);
- gives effect to a for stock split of our common stock that will occur prior to the consummation of this offering;

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- 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 \$ \_\_\_\_\_ 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 summary consolidated statement of operations data and consolidated statement of cash flows data for the fiscal year ended December 30, 2018 from the audited consolidated financial statements and related notes thereto included elsewhere in this prospectus. We derived the consolidated balance sheet data as of December 30, 2018 from the audited consolidated financial statements and related notes thereto included elsewhere in this prospectus.

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

	<b>Fiscal Year Ended December 30, 2018 (in thousands, except share and per share data)</b>
<b>Consolidated Statement of Operations and Comprehensive Loss:</b>	
<b>Revenues:</b>	
Restaurant sales	\$ 342,357
Franchise revenues	7,409
Total revenues	349,766
<b>Operating costs and expenses:</b>	
Restaurant operating expenses (exclusive of depreciation and amortization shown below):	
Cost of sales	78,939
Labor and other related expenses	116,546
Other restaurant operating expenses	46,769
Occupancy expenses	36,151
General and administrative expenses	39,299
Depreciation and amortization	26,124
Transaction and other expenses	2,047
Impairment and loss on disposal of assets	658
Total costs and operating expenses	346,533
Income from operations	3,233
Interest expense	(16,480)
Other income (expense), net	724
<b>Loss before income tax benefit</b>	<b>(12,523)</b>
Income tax benefit	221
<b>Net loss and total comprehensive loss</b>	<b>(12,302)</b>
Less: Net loss attributable to non-controlling interest	(6)
<b>Net loss attributable to First Watch Restaurant Group, Inc.</b>	<b>\$ (12,296)</b>
Net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted	<b>\$ (3.23)</b>
Weighted average number of common shares outstanding – basic and diluted	3,802,481

	<b>Fiscal Year Ended December 30, 2018</b>
<b>Consolidated Statement of Cash Flows Data (in thousands):</b>	
Net cash provided by (used in):	
Operating activities	\$ 30,775
Investing activities	\$ (51,896)
Financing activities	\$ 30,284
<b>Other Data:</b>	
Restaurant sales (in thousands)	\$ 342,357
System-wide sales (in thousands)	\$ 467,491
Same-restaurant sales growth	6.9%
AUV (in millions)	\$ 1.5
System-wide restaurants at fiscal year end	351
Company-owned	248
Franchise operated	103
Adjusted EBITDA (in thousands)(a)	\$ 44,230
Adjusted EBITDA Margin	12.6%
SLEBITDA (in thousands)(b)	\$ 71,461
SLEBITDA Margin	20.9%

	<b>As of December 30, 2018</b>	
	<b>Actual</b>	<b>As Adjusted(c) (unaudited)</b>
	(in thousands)	
<b>Consolidated Balance Sheet Data:</b>		
Cash and cash equivalents	\$ 16,284	
Total assets	\$ 664,511	
Total debt(d)	\$ 195,396	
Total liabilities	\$ 289,837	
Working capital	\$ (7,461)	
Total equity	\$ 374,674	

(a) For a discussion of Adjusted EBITDA and Adjusted EBITDA Margin, see “Non-GAAP Financial Measures.” See below for a reconciliation of net loss, the most directly comparable GAAP measure, to Adjusted EBITDA:

	<b>Fiscal Year Ended December 30, 2018 (in thousands)</b>
<b>Net loss</b>	<b>\$ (12,302)</b>
Depreciation and amortization	26,124
Interest expense	16,480
Income tax benefit	(221)
<b>EBITDA</b>	<b>30,081</b>
Pre-opening expenses(1)	3,737
Deferred rent expense(2)	3,772
Strategic transition costs(3)	1,401
Stock-based compensation expense(4)	1,302
Transaction and other expenses(5)	2,047
Impairment and loss on disposal of assets(6)	658
Severance costs(7)	366
Recruiting and relocation costs(8)	866
<b>Adjusted EBITDA</b>	<b>\$ 44,230</b>

- (1) Represents expenses directly incurred to open new restaurants, including pre-opening rent, manager salaries, recruiting expenses, employee payroll and training expenses. These expenses are recorded in other restaurant operating expenses and occupancy expenses on the consolidated statement of operations and comprehensive loss.
  - (2) Consists of the non-cash portion of straight-line rent expense primarily included in occupancy expenses on the consolidated statement of operations and comprehensive loss.
  - (3) Represents transition costs related to IT support and external professional service costs incurred in the assessment and redesign of our systems and processes. These costs are recorded within general and administrative expenses on the consolidated statement of operations and comprehensive loss.
  - (4) Represents non-cash, stock-based compensation expense which is recorded in general and administrative expenses on the consolidated statement of operations and comprehensive loss.
  - (5) Primarily represents costs incurred in connection with the acquisition of certain 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.
  - (6) Primarily includes costs related to the disposal of assets due to retirements, replacements or certain restaurant closures.
  - (7) Severance costs are recorded in general and administrative expenses on the consolidated statement of operations and comprehensive loss.
  - (8) 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 statement of operations and comprehensive loss.
- (b) For a discussion of SLEBITDA and SLEBITDA Margin, see “Non-GAAP Financial Measures.”

See below for a reconciliation of income from operations, the most directly comparable GAAP measure, to SLEBITDA.

	<b>Fiscal Year Ended December 30, 2018 (in thousands)</b>
<b>Income from operations</b>	<b>\$ 3,233</b>
Less: Franchise revenues	(7,409)
<b>Add:</b>	
Pre-opening expenses(1)	3,737
Deferred rent expense(2)	3,772
Depreciation and amortization	26,124
General and administrative expenses	39,299
Transaction and other expenses(3)	2,047
Impairment and loss on disposal of assets(4)	658
<b>SLEBITDA</b>	<b>\$ 71,461</b>
Total revenues	\$ 349,766
Less: Franchise revenues	(7,409)
Restaurant sales	\$ 342,357
<b>SLEBITDA Margin</b>	<b>20.9%</b>

- (1) Represents expenses directly incurred to open new restaurants, including pre-opening rent, manager salaries, recruiting expenses, employee payroll and training expenses.

- (2) Consists of the non-cash portion of straight-line rent expense primarily included in occupancy expenses on the consolidated statement of operations and comprehensive loss.
  - (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.
  - (4) Primarily includes costs related to the disposal of assets due to retirements, replacements or certain restaurant closures.
- (c) We present certain information on an as adjusted basis to give further effect to (i) the sale by us of \_\_\_\_\_ 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 \$ \_\_\_\_\_ 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 (ii) the application of the net proceeds to be received by us from this offering as described in "Use of Proceeds."
- (d) Total debt excludes unamortized debt discount and deferred issuance costs.

## 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 following risks 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.*

### **Risks Related to Our Business and Industry**

***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. 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. 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, resulting from the perception that the practices of restaurant companies 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.

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***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 38 new company-owned restaurants in fiscal 2019 and plan to open \_\_\_\_\_ company-owned restaurants over \_\_\_\_\_. Our franchisees opened 18 new franchise-operated restaurants in fiscal 2019. 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 Southeastern 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; 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, 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.

***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.

***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

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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 cost of sales, 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 as a result of 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.

Weather related issues, such as freezes or drought, may lead to temporary price increases for some ingredients such as produce or meats. Increases in the prices of the ingredients most critical to our menu, such as pork, coffee, eggs, avocados, potatoes and bread, could have a material adverse effect on our business, financial condition and results of operations. 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 price 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

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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 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 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. 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, customer take out or at catered events. 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. 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 SLEBITDA 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;

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- 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. 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.

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, some of our competitors have greater financial resources, which enable them 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 19% of our restaurants were franchised as of December 29, 2019, 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 ours or yours in the future and we could face liability from our franchisees or related to our relationship with our franchisees.***

Franchisees, as independent business operators, may from time to time disagree with us 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 company-owned 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 Southeastern United States, and we could be negatively affected by conditions specific to that region.***

Our restaurants in the Southeastern United States represented approximately 39% of our system-wide restaurants as of December 29, 2019. Our restaurants in Florida represented approximately 25% of our system-wide restaurants as of December 29, 2019. Adverse changes in demographic, unemployment, economic, regulatory or weather conditions in the Southeastern 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 Southeastern 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. In addition, incidents of restaurant commentary has 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 to be 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 or 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, 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. 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 have a limited number of suppliers and distributors for many of our ingredients. As of December 29, 2019, 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 also purchased 100% of our coffee from one supplier. Due to this concentration of suppliers and distributors, the cancellation of our supply arrangements with these suppliers or the disruption, delay or inability of these suppliers to deliver these major products to our restaurants 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 distribution channels. In addition, we do not control the businesses of our suppliers and our efforts to monitor the standards by which they perform may not be successful. If our suppliers fail to comply with food safety or other laws and regulations, or face allegations of non-compliance, their operations may be disrupted. 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.

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 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 business, financial condition and results of operations.

***We have identified material weaknesses in our internal control over financial reporting, which could fail to detect material misstatements of our financial statements or could fail to prevent fraud. If our remediation of the material weaknesses is not effective, or if we otherwise fail to maintain an effective system of internal controls 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

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control over financial in the future to the extent that we are no longer an emerging growth company or a smaller reporting 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 as required by Section 404.

In connection with the audit of our consolidated financial statements for fiscal 2018, 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:

- 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 financial statements. This material weakness resulted in adjustments to accruals and within the statement of cash flows which were recorded prior to the issuance of our fiscal 2018 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 which were recorded prior to the issuance of our fiscal 2018 financial statements.
- We did not design and maintain effective controls over certain information technology general controls for information systems and applications that are relevant to the preparation of the 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. Management determined that, in the aggregate, these information technology deficiencies could result in financial misstatements occurring without prevention or detection.

Each of the aforementioned material weaknesses could result in a misstatement of the financial statements that would result in a material misstatement to the financial statements that would not be prevented or detected.

We are in the process of implementing 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

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personnel, evaluating our financial and information technology control environments and augmenting our internal controls with new accounting policies and procedures, financial reporting 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 controls over financial reporting in the future.

We may not be able to remediate any material weaknesses in time to meet the deadline imposed by the Sarbanes-Oxley Act for compliance with the requirements of Section 404(a) thereof. The failure to achieve and maintain an effective internal control environment 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 demonstrate compliance with Section 404, 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.

***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 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 subject us or our franchisees to litigation or to actions by regulatory authorities.

We are continuing to expand, upgrade and develop our information technology capabilities, including the implementation of a new credit card processing 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

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information technology systems that we 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.

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.

Laws and regulations relating to privacy, data protection, marketing and advertising, and consumer protection are evolving and subject to potentially differing interpretations. These requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another or may conflict with other rules or our practices. As a result, our practices may not have complied or may not comply in the future with all such laws, regulations, requirements and obligations. 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.

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. 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.

In addition, various federal and state legislative and regulatory bodies, or self-regulatory organizations, may expand current laws or regulations, enact new laws or regulations or issue revised rules or guidance regarding privacy, data protection, consumer protection, and advertising. Additionally, the Federal Trade Commission (the “FTC”) and many state attorneys general are interpreting federal and state consumer protection laws to impose standards for the online collection, use, dissemination and security of data. Each of these privacy, security, and data protection laws and regulations, and any other such changes or new laws or regulations, could impose significant limitations, require changes to our business, or restrict our use or storage of personal information, which may increase our compliance expenses and make our business more costly or less efficient to conduct. In

addition, any such changes could compromise our ability to develop an adequate marketing strategy and pursue our growth strategy effectively, which, in turn, could 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 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 name and address and Facebook 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 harmed, 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 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 any intellectual property were invalidated or deemed unenforceable, it could permit competing uses of intellectual property which, in turn, could lead to a decline in our results of operations. If the 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.

***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 13 years and our executive officers have a combined total of 57 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 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. 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.

***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, unemployment tax rates, workers’ compensation rates, overtime, family leave, working conditions, safety standards, immigration status,

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unemployment tax rates, workers' compensation 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, 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

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rates, unionization of restaurant workers, or increases in the federally-mandated or state-mandated minimum wage, change in exempt and non-exempt status, 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 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. 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 certain of our restaurants, and we may introduce alcoholic beverages at additional restaurants in the future. 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

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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 or results of operations.

### ***We may experience higher labor costs and health care costs.***

Various federal and state labor laws govern our relationships with our employees and affect our operating costs. These laws include employee classifications as exempt or non-exempt, minimum wage requirements, unemployment tax rates, workers’ compensation rates, overtime, family leave, safety standards, payroll taxes, citizenship requirements and other wage and benefit requirements for employees classified as non-exempt. As our team members are paid at rates set above, but related to, the applicable minimum wage, further increases in the minimum wage could increase our labor costs. Significant additional government regulations could 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 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

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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, 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.

***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.

***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 December 30, 2018, we had \$330.8 million of goodwill and \$178.2 million of intangible assets, primarily related to the purchase price allocation performed in connection with the Advent Acquisition. We test goodwill and indefinite-lived intangible assets for impairment in the fourth quarter of each fiscal year and whenever events or changes in circumstances indicate that impairment may have 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. During fiscal 2018, we did not record any goodwill or indefinite-lived intangible asset impairment charges. During fiscal 2019, we expect to record a non-cash impairment charge of approximately \$29.3 million as a result of our assessment of the value of The Egg & I indefinite-lived trade name. We cannot accurately predict the amount and timing of any impairment of assets. Should the value of goodwill or other indefinite-lived intangible assets become impaired in the future, any impairment could have a material adverse effect on our financial condition and results of operations. See Note 7 – Goodwill, Note 8 – Intangibles and Note 20 – Subsequent Events in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

***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 charges 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 charges or accelerate the amortization on certain long-lived assets, which may adversely affect our results of operations. During fiscal 2018, we did not record any material long-lived asset impairment charges. During fiscal 2019, we expect to record a non-cash impairment charge of approximately \$3.2 million as a result of our assessment of the value of The Egg & I definite-lived franchise rights. If actual results differ from our estimates, additional charges for asset impairments may be required in the future.

***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 Southeastern 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-

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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 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.

### **Risks Related to Our Indebtedness**

#### ***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 unamortized debt discount and deferred issuance costs, as of December 30, 2018 was \$195.4 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 Senior Credit Facilities, 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), test as of the last day of each fiscal quarter. Our ability to borrow under our Senior Credit

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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, which regulates LIBOR, announced that it intends to phase out LIBOR by the end of 2021. It is unclear whether or not new methods of calculating LIBOR will be established such that it continues to exist after 2021. The U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprised of large U.S. financial institutions, is considering replacing U.S. Dollar LIBOR with a new index calculated by short term repurchase agreements, backed by Treasury securities. 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 Initial Term Loans or Revolving Loans.

## **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.

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Preferred shares, if issued, 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 \_\_\_\_\_ of our outstanding common stock, or \_\_\_\_\_ if the underwriters' option to purchase additional shares is fully exercised. As a result, Advent will indirectly 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 the \_\_\_\_\_.***

Upon the listing of our common stock on the \_\_\_\_\_ in connection with this offering, we will be considered a "controlled company" under the rules of the \_\_\_\_\_. 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 the \_\_\_\_\_, (ii) a nominating/corporate governance committee composed entirely of independent directors and a written nominating/corporate governance committee charter meeting the requirements and (iii) a compensation committee composed entirely of independent directors and a written compensation committee charter meeting the requirements of the \_\_\_\_\_. Following this offering, we intend to use some or all these exemptions. As a result, we may not have a majority of independent directors, our nomination and corporate governance committee and compensation committee may not consist entirely of independent directors and such committees may not be subject to annual performance evaluations. Accordingly, you may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of the \_\_\_\_\_. 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."

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***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 the 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 the . 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;
- the contents of published research reports about us or our industry or the failure of securities analysts to cover our common stock;

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- 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 \_\_\_\_\_ 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 \_\_\_\_\_ % of our outstanding common stock, or \_\_\_\_\_ % 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.

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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 any equity plans, acquisitions or otherwise will dilute all other stockholdings.***

After this offering, we will have an aggregate of \_\_\_\_\_ shares of common stock authorized but unissued and not reserved for issuance under our equity incentive plans. 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 any equity incentive plan, the exercise of outstanding stock options, or otherwise, 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 \$ \_\_\_\_\_ per share, representing the difference between the assumed initial public offering price of \$ \_\_\_\_\_ per share (the midpoint of the estimated initial public offering price range set forth on the cover of this prospectus) and our pro forma net tangible book value (deficit) per share after giving effect to this offering. See “Dilution.”

## **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 the restrictions contained in our Senior Credit Facilities described below, or otherwise making funds available to us under

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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.

### ***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 the [redacted], 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.

### ***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 the [redacted]. 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

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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;
- 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; and
- provide that a 66 $\frac{2}{3}$ % supermajority vote will be required to amend or repeal provisions relating to, among other things, the classification of the Board, the filling of vacancies on the Board and the ability of stockholders to call special meetings of stockholders.

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 bylaws 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, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or other employees.***

Our amended and restated bylaws will provide that, subject to certain exceptions, unless we consent in writing in advance to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by, or any wrongdoing by, any of our directors, officers or employees to us or our stockholders, (iii) any action asserting a claim against us or our directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law, or DGCL, our certificate of incorporation or our bylaws, or (iv) any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or our bylaws, or (v) any action asserting a claim against us or our directors, officers or employees governed by the internal affairs doctrine. This choice of forum provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers, and other employees. Alternatively, if a court were to find this provision of our amended and restated bylaws inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could have a material adverse effect on our business, financial condition and results of operations.

## 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:

- our vulnerability to changes in consumer preferences and economic conditions;
- our inability to open new restaurants in new and existing markets;
- our inability to generate same-restaurant sales growth;
- the number of visitors to areas where our restaurants are located may decline;
- 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 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 \_\_\_\_\_ shares of common stock in this offering will be approximately \$ \_\_\_\_\_ 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 \_\_\_\_\_ 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 \_\_\_\_\_ additional shares of common stock from us, will be approximately \$ \_\_\_\_\_ 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 \$ \_\_\_\_\_ 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 and our Revolving Facility. Loans under the Senior Credit Facilities mature on August 21, 2023. As of December 29, 2019, our Initial Term Loan Facility bears interest at a rate of 7.292%, our Initial Delayed Draw Term Facility bears interest at a rate of 7.292%, and our Revolving Credit Facility bears interest at a rate of 7.292%. 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 \$ \_\_\_\_\_ 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 \$ \_\_\_\_\_ 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.

## 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 December 29, 2019:

- on an actual basis; and
- on an as adjusted basis to give effect to (i) 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) the sale of \_\_\_\_\_ shares of our common stock in this offering at an assumed public offering price of \$ \_\_\_\_\_ per share, which is the midpoint of the price range set forth on the cover of this prospectus, 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,” “Selected Historical Consolidated Financial Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Description of Capital Stock” and the audited consolidated financial statements and notes thereto appearing elsewhere in this prospectus.

	As of December 29, 2019	
	Actual	As Adjusted(1)
	(in thousands)	
Cash and cash equivalents	\$ _____	\$ _____
Debt:		
Total debt(2)	\$ _____	\$ _____
Total liabilities(3)	\$ _____	\$ _____
Equity:		
Common stock, \$0.01 par value per share, _____ shares authorized, actual, authorized, as adjusted, _____ shares issued and outstanding, actual and _____ shares issued and outstanding, as adjusted		
Preferred stock, \$0.01 par value per share, no shares authorized, actual, shares authorized, as adjusted, no shares issued and outstanding, actual and as adjusted		
Additional paid-in capital		
Accumulated deficit		
Total equity	\$ _____	\$ _____
Total capitalization	\$ _____	\$ _____

- (1) Each \$1.00 increase or decrease in the public offering price per share would increase or decrease, as applicable, our net proceeds, after deducting the underwriting discount and estimated offering expenses payable by us, by \$ \_\_\_\_\_ million (assuming no exercise of the underwriters’ option to purchase additional shares). Similarly, an increase or decrease of one million shares of common stock sold in this offering by us would increase or decrease, as applicable, our net proceeds, after deducting the underwriting discount and estimated offering expenses payable by us, by \$ \_\_\_\_\_, based on an assumed initial public offering price of \$ \_\_\_\_\_ per share, which is the midpoint of the price range set forth on the cover of this prospectus.
- (2) Total debt does not reflect unamortized debt discount and deferred issuance costs.
- (3) For a description of facilities, see “Description of Material Indebtedness.”

## 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 net tangible book value 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 value per share attributable to new investors.

Our pro forma net tangible book value as of \_\_\_\_\_ was \$ \_\_\_\_\_, or \$ \_\_\_\_\_ per share of common stock. Pro forma net tangible book value represents the amount of total tangible assets less total liabilities, and pro forma net tangible book value per share represents pro forma net tangible book value divided by the number of shares of common stock outstanding.

After giving effect to (i) the sale of \_\_\_\_\_ shares of common stock in this offering at the assumed initial public offering price of \$ \_\_\_\_\_ per share (the midpoint of the price range set forth on the cover of this prospectus) and (ii) the application of the net proceeds from this offering, our pro forma as adjusted net tangible book value as of \_\_\_\_\_ would have been \$ \_\_\_\_\_ million, or \$ \_\_\_\_\_ per share. This represents an immediate increase in pro forma as adjusted net tangible book value of \$ \_\_\_\_\_ per share to our existing investors and an immediate dilution in pro forma as adjusted net tangible book value of \$ \_\_\_\_\_ 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	\$ _____
Pro forma net tangible book value per share as of _____	
Increase in pro forma net tangible book value per share attributable to new investors	\$ _____
Pro forma as adjusted net tangible book value per share after this offering	
Dilution in net tangible book value per share to new investors in this offering	\$ _____

The following table summarizes, on an as adjusted basis as of \_\_\_\_\_, 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 \$ \_\_\_\_\_ 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		%	\$	%	\$
New investors					
<b>Total</b>		100.0%	\$	100.0%	\$

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ \_\_\_\_\_ per share would increase (decrease) our pro forma as adjusted net tangible book value by \$ \_\_\_\_\_ million, the pro forma as adjusted net tangible book value per share after this offering by \$ \_\_\_\_\_ and the dilution per share to new investors by \$ \_\_\_\_\_ 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.

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

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The above discussion and tables are based on the number of shares and options to purchase shares outstanding as of . 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.

**SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA**

The following tables set forth our selected historical consolidated financial data for the periods as of the dates indicated. We derived the summary consolidated statement of operations data for the fiscal year ended December 30, 2018 from the audited consolidated financial statements and related notes thereto included elsewhere in this prospectus. We derived the consolidated balance sheet data as of December 30, 2018 from our audited consolidated financial statements and related notes thereto included elsewhere in this prospectus.

Our historical results are not necessarily indicative of future results of operations. You should read the information set forth below together with “Prospectus Summary – Summary Historical Consolidated Financial and Other Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Capitalization” and our audited consolidated financial statements and the related notes thereto included elsewhere in this prospectus.

	<b>Fiscal Year Ended December 30, 2018</b>
	<b>(in thousands, except share and per share data)</b>
<b>Consolidated Statement of Operations and Comprehensive Loss:</b>	
<b>Revenues:</b>	
Restaurant sales	\$ 342,357
Franchise revenues	7,409
Total revenues	<u>349,766</u>
<b>Operating costs and expenses:</b>	
Restaurant operating expenses (exclusive of depreciation and amortization shown below):	
Cost of sales	78,939
Labor and other related expenses	116,546
Other restaurant operating expenses	46,769
Occupancy expenses	36,151
General and administrative expenses	39,299
Depreciation and amortization	26,124
Transaction and other expenses	2,047
Impairment and loss on disposal of assets	658
Total costs and operating expenses	<u>346,533</u>
Income from operations	3,233
Interest expense	(16,480)
Other income (expense), net	724
<b>Loss before income tax benefit</b>	<u>(12,523)</u>
Income tax benefit	221
<b>Net loss and total comprehensive loss</b>	<u>(12,302)</u>
Less: Net loss attributable to non-controlling interest	(6)
<b>Net loss attributable to First Watch Restaurant Group, Inc.</b>	<u>\$ (12,296)</u>
Net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted	\$ (3.23)
Weighted average number of common shares outstanding – basic and diluted	3,802,481

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	<b>As of December 30, 2018</b>
	<b>(in thousands)</b>
<b>Consolidated Balance Sheet Data:</b>	
Cash and cash equivalents	\$ 16,284
Total assets	\$ 664,511
Total debt(1)	\$ 195,396
Total liabilities	\$ 289,837
Working capital	\$ (7,461)
Total equity	\$ 374,674

(1) Total debt excludes unamortized debt discount and deferred issuance costs.

## 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," "Selected Historical Consolidated Financial Data" and our audited 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 2018 reflect the results of the 52-week fiscal year ended December 30, 2018. All references to fiscal 2019 reflect the results of the 52-week fiscal year ended December 29, 2019. 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 high-growth 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 Ken Pendery 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 proved its portability by expanding into a number of different markets.

During 2014 and 2015, we completed a series of acquisitions, including The Egg & I, The Good Egg and Bread and Company, consisting of 136 total system-wide restaurants. As of the end of fiscal 2019, The Egg & I and The Good Egg brands have been rebranded as First Watch. The single Bread and Company restaurant has been rebranded to Sun & Fork by First Watch.

In 2017, we entered into a merger transaction through which we were acquired by funds affiliated with or managed by Advent, referred to as the Advent Acquisition.

### 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. Our seasonal menus attract new customers and encourage our regular customers to return.

***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 Dining Experience:*** We will continue to train our staff to provide superior and gracious service to our customers which is built on our philosophy of “You First.”

***Future Platforms and Initiatives:*** We intend to implement strategies and initiatives in the long-term such as increasing incremental visits during the lunch daypart and introducing alcohol to our menu in certain restaurants. In addition, we are developing a third-party delivery program for all of our company-owned restaurants.

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 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 particular future period may decrease.

### **Key Performance Indicators**

To evaluate the performance of our business, we utilize a variety of financial and performance measures. These key measures include restaurant sales, same-restaurant sales growth, new restaurant development, AUV, Adjusted EBITDA, Adjusted EBITDA Margin, SLEBITDA and SLEBITDA Margin.

### ***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 2018, there were 143 restaurants 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.

### ***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.

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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 \_\_\_\_\_ company-owned restaurants over \_\_\_\_\_, 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 SLEBITDA 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.

### ***Average Unit Volume (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.

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

Adjusted EBITDA represents net loss before depreciation and amortization, interest expense and income taxes, adjusted for the impact of certain non-cash and other items that we do not consider in our evaluation of ongoing core operating performance as identified in the reconciliation of net 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.

### ***SLEBITDA and SLEBITDA Margin***

SLEBITDA is defined as restaurant sales, less restaurant operating expenses, which include cost of sales, labor and other related expenses, other restaurant operating expenses and occupancy expenses. SLEBITDA excludes corporate level expenses, pre-opening expenses and deferred rent expense. SLEBITDA Margin represents SLEBITDA as a percentage of restaurant sales. SLEBITDA and SLEBITDA Margin are not required by, nor presented in accordance with GAAP. Rather, SLEBITDA and SLEBITDA 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 SLEBITDA and SLEBITDA Margin are important measures to evaluate the performance and profitability of each restaurant, individually and in the aggregate. SLEBITDA and SLEBITDA Margin have limitations as analytical tools and should not be considered as a substitute for analysis of our results as reported under GAAP. For a reconciliation of income from operations, the most directly comparable GAAP measure, to SLEBITDA, see “Prospectus Summary – Summary Historical Consolidated Financial and Other Data.”

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### **Revenues and Expenses**

#### ***Restaurant Sales***

Restaurant sales represent the aggregate sales of food and beverages, net of discounts, at our 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, our menu prices and product 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.

#### ***Cost of Sales***

Cost of sales includes the direct costs associated with food and beverages at our company-owned restaurants. The components of cost of sales 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 and the performance of our company-owned restaurants.

#### ***Other Restaurant Operating Expenses***

Other restaurant operating expenses consist of marketing expenses, utilities and other operating expenses incidental to operating our company-owned restaurants, such as operating supplies (including paper products and to-go supplies), credit card fees, repairs and maintenance and certain pre-opening expenses for our 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. Pre-opening expenses 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. Pre-opening expenses recorded in other restaurant operating expenses for fiscal 2018 were \$2.3 million.

#### ***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. Pre-opening expenses recorded in occupancy expenses for fiscal 2018 were \$1.4 million.

#### ***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

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costs incurred as well as legal and professional fees. General and administrative expenses also include stock-based compensation expense. We grant stock-based compensation awards to certain employees, officers and non-employee directors as long-term incentive compensation. We recognize the related expense for service-based awards on a graded vesting schedule 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. Certain of our stock-based compensation awards may convert from performance-based to service-based at the time of the offering if certain conditions are not met, which will result in a change to the recognition of the related expense.

As of December 29, 2019, we had total unrecognized stock-based compensation expense related to unvested service-based awards of \$ million, which we expect to recognize over the next years. Included in this amount is approximately \$ million of expense related to awards that will vest upon consummation of this offering resulting in incremental expense being recognized in the period in which this offering is consummated. Following consummation of this offering, if certain options to purchase shares of our common stock have not vested, then those options will convert to service-based vesting if certain performance-based criteria has been satisfied. This could occur as early as , which could result in an aggregate expense of up to \$ million in .

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.

### ***Depreciation and Amortization***

Depreciation and amortization expense 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 and favorable leasehold positions, as well as the amortization for unfavorable leasehold positions.

### ***Impairment and Loss on Disposal of Assets***

Impairment and loss on disposal of assets primarily include the impairment of long-lived assets where the carrying amount of the asset is not recoverable and exceeds the fair value of the asset. Loss on asset disposals includes the write-off of the net book value of assets that have been retired or replaced in the normal course of business, as well as the write-off of the net book value of assets in connection with restaurant closures.

### ***Transaction and Other Expenses***

Transaction and other expenses primarily include 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.

### ***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. Additionally, the amount of proceeds used to pay down our outstanding debt may result in a decrease of the interest rate on our Senior Credit Facilities. We expect that these changes will reduce our annual interest expense by \$ million following this offering. See “Use of Proceeds” and “Description of Material Indebtedness.”

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### **Income Tax Benefit**

Income tax benefit primarily consists of various federal and state taxes. Our effective tax rate differs significantly from the federal statutory rate due to the valuation allowance for federal and state deferred tax assets, partially offset by the benefit of tax credits for certain employees' tips.

### **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. These items can include, among other items, insurance proceeds and costs related to refinancing of our Senior Credit Facilities.

### **Results of Operations**

The following tables summarize key components of our results of operations for the period presented:

	<b>Fiscal Year Ended December 30, 2018</b>	
	<b>(in thousands)</b>	
<b>Consolidated Statement of Operations and Comprehensive Loss Data:</b>		
<b>Revenues:</b>		
Restaurant sales	\$ 342,357	97.9%
Franchise revenues	7,409	2.1%
Total revenues	<u>349,766</u>	<u>100.0%</u>
<b>Operating costs and expenses:</b>		
Restaurant operating expenses(1)(excluding depreciation and amortization shown below):		
Cost of sales	78,939	23.1%
Labor and other related expenses	116,546	34.0%
Other restaurant operating expenses	46,769	13.7%
Occupancy expenses	36,151	10.6%
General and administrative expenses	39,299	11.2%
Depreciation and amortization	26,124	7.5%
Transaction and other expenses	2,047	0.5%
Impairment and loss on disposal of assets	658	0.2%
Total costs and operating expenses	<u>346,533</u>	<u>99.1%</u>
Income from operations	3,233	0.9%
Interest expense	(16,480)	(4.7)%
Other income (expense), net	724	0.3%
<b>Loss before income tax benefit</b>	<u>(12,523)</u>	<u>(3.6)%</u>
Income tax benefit	221	0.1%
<b>Net loss and total comprehensive loss</b>	<u>(12,302)</u>	<u>(3.5)%</u>
Less: Net loss income attributable to non-controlling interest	(6)	n/m(2)
<b>Net loss attributable to First Watch Restaurant Group, Inc.</b>	<u>\$ (12,296)</u>	<u>(3.5)%</u>

(1) As a percentage of restaurant sales.

(2) Not meaningful.

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### Selected Operating Data:

	<b>Fiscal Year Ended December 30, 2018</b>
System-wide sales (in thousands)	\$ 467,491
Same-restaurant sales growth	6.9%
AUV (in millions)	\$ 1.5
System-wide restaurants at fiscal year end	351
Company-owned	248
Franchise operated	103
Adjusted EBITDA (in thousands)	\$ 44,230
Adjusted EBITDA Margin	12.6%
SLEBITDA (in thousands)	\$ 71,461
SLEBITDA Margin	20.9%

### **Restaurant Sales**

Restaurant sales in fiscal 2018 were \$342.4 million.

### **Franchise Revenues**

Franchise revenues in fiscal 2018 were \$7.4 million.

### **Cost of Sales**

Cost of sales in fiscal 2018 were \$78.9 million.

### **Labor and Other Related Expenses**

Labor and other related expenses in fiscal 2018 were \$116.5 million.

### **Other Restaurant Operating Expenses**

Other restaurant operating expenses in fiscal 2018 were \$46.8 million.

### **Occupancy Expenses**

Occupancy expenses in fiscal 2018 were \$36.2 million.

### **General and Administrative Expenses**

General and administrative expenses in fiscal 2018 were \$39.3 million.

### **Depreciation and Amortization**

Depreciation and amortization in fiscal 2018 was \$26.1 million.

### **Transaction and Other Expenses**

Transaction and other expenses in fiscal 2018 were \$2.0 million and primarily include costs incurred for 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.

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### ***Impairment and Loss on Disposal of Assets***

Loss on disposal of assets in fiscal 2018 was \$0.7 million and primarily includes costs related to the disposal of assets due to retirement, replacements or certain restaurant closures.

### ***Income from Operations***

Income from operations for fiscal 2018 was \$3.2 million.

### ***Interest Expense***

Interest expense in fiscal 2018 was \$16.5 million.

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

Other income (expense), net for fiscal 2018 was \$0.7 million of income, which included insurance proceeds of approximately \$0.3 million.

### ***Income Tax Benefit***

Income tax benefit in fiscal 2018 was \$0.2 million.

### ***Liquidity and Capital Resources***

Our primary sources of liquidity are, and after the completion of this offering are expected to continue to be, 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 December 30, 2018, we had cash and cash equivalents of \$16.3 million and availability under our Senior Credit Facilities of \$27.1 million. Our total indebtedness was \$195.4 million, excluding unamortized debt discount and deferred issuance costs, as of December 30, 2018. See “Description of Material Indebtedness.” After giving effect to the application of the estimated net proceeds from this offering, our total indebtedness will be \$        million. See “Use of Proceeds.” Our principal uses of cash include capital expenditures, developing new restaurants, remodeling and converting franchised restaurants to company-owned restaurants under the First Watch trade name, lease obligations, principal and interest payments on our debt and investments in technology. 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.

We estimate that our capital expenditures will total        to        in fiscal 2020, which we plan to fund primarily with cash generated from our operating activities as well as with borrowings under the undrawn portions of 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 the incurrence of additional indebtedness, the issuance of equity, or a combination thereof. We cannot assure you that we will be able to obtain this additional liquidity on reasonable terms, or at all. Additionally, our liquidity and our ability to meet our obligations and fund our capital requirements are also dependent on our future financial performance, which is subject to general economic, financial and other factors that are beyond our control. Accordingly, we cannot assure you that our business will generate sufficient cash flow from operations or that future borrowings will be available from additional indebtedness or otherwise to meet our liquidity needs. 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.

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

Our Senior Credit Facilities mature on August 20, 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 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 December 30, 2018.

The following table summarizes our available liquidity as of the period presented:

<i>(in thousands)</i>	<b>As of December 30, 2018</b>
Cash and cash equivalents	\$ 16,284
Undrawn revolving facility	12,120
Undrawn initial delayed draw term facility	15,000
Total available liquidity	<u>\$ 43,404</u>

### **Statement of Cash Flows**

The following table presents a summary of our cash flows provided by (used in) operating, investing and financing activities for the period presented:

<i>(in thousands)</i>	<b>Fiscal Year Ended December 30, 2018</b>
Cash provided by operating activities	\$ 30,775
Cash used in investing activities	(51,896)
Cash provided by financing activities	30,284
Net increase in cash and cash equivalents	<u>\$ 9,163</u>

Cash provided by operating activities in fiscal 2018 consisted primarily of net loss adjusted to add back (i) \$26.1 million for depreciation and amortization, (ii) \$1.0 million for amortization of debt discount and deferred issuance costs, (iii) \$0.7 million for impairment and loss on disposal of assets and (iv) \$1.3 million for stock-based compensation expense. Cash provided by operating activities in fiscal 2018 also included the positive impact of the change in working capital.

Cash used in investing activities in fiscal 2018 primarily consisted of capital expenditures and acquisitions of restaurants. In fiscal 2018, we had capital expenditures totaling \$37.7 million and used cash of approximately \$14.2 million for the acquisition of certain franchised restaurants.

Cash provided by financing activities in fiscal 2018 consisted primarily of proceeds from our Senior Credit Facilities, which was partially offset by repayments made on our Senior Credit Facilities.

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### **Contractual Obligations**

The following table sets forth certain contractual obligations, debt obligations and commitments as of December 29, 2019, whether or not they appear on our consolidated balance sheet. All amounts in the table may reflect rounding.

<i>(in thousands)</i>	Payments due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years

The above table excludes short-term, exclusive contracts we enter into with certain vendors to supply us with food, beverages and paper goods, obligating us to purchase specified quantities and/or products 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 and are not material as of December 29, 2019.

### **Off-Balance Sheet Arrangements**

Except for operating leases entered into in the normal course of business, 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 December 30, 2018.

### **Critical Accounting Policies**

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 provided by our clients and 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 and domains, are tested for impairment annually, during the fourth quarter of the fiscal year, or whenever events or changes in circumstances indicate that the carrying amount may be impaired. 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.

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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 fair value of our reporting unit using the best information available, including market information (also referred to as the market approach) and discounted cash flow projections (also referred to as the income approach). A market approach estimates fair value by applying cash flow and sales 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.

We performed our annual impairment test of our goodwill and indefinite-lived intangibles in the fourth quarter of fiscal 2018 and determined there were no indicators of impairment.

### ***Property, fixtures and equipment and definite-lived intangible assets***

Property, fixtures and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of an asset 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. Based on a review of operating results for each of our restaurants, we did not record any material impairment charges during fiscal 2018.

Intangible assets with definite lives consist of franchise rights and favorable leasehold positions. Franchise rights were recognized from the purchase price allocation performed in conjunction with the Advent Acquisition and relate to franchised restaurants. Franchise rights also include reacquired rights from our acquisitions of franchised restaurants. Favorable leasehold positions relate to leases acquired resulting from our acquisitions of franchised restaurants where the terms of the leasehold contracts are more favorable than the estimated market terms of the leases at the acquisition date. Intangible assets are amortized on a straight-line basis over the estimated remaining terms of the original franchise agreements. Definite-lived intangible assets 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: a significant decline in our expected future cash flows; a significant change in our business or a significant change in the extent or the manner an asset is used. 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 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 carrying amount of the asset group exceeds its estimated undiscounted future cash flows, an impairment charge is recognized. This charge is determined as the difference between the carrying value of the asset group and the discounted future cash flows expected from future use of the asset group. We did not record any material impairment loss for definite-lived intangible assets during fiscal 2018.

### ***Leases***

We lease our restaurant facilities and corporate offices, as well as certain restaurant equipment under various non-cancelable agreements. Each lease's commencement date is the date on which we have the right to control the use of the leased property and each lease's term includes the non-cancelable base term plus all option periods we are reasonably assured to exercise. In fiscal 2018, the majority of our leases were classified as operating leases under Accounting Standards Codification ("ASC") 840-*Leases*. Rent expense, including rent-free periods, is recognized on a straight-line basis over the lease term and the difference between the base cash rent paid and the straight-line rent expense is recorded as deferred rent.

We capitalize as leasehold improvements our expenditures to construct our leased restaurant facilities. To the extent a portion of these leasehold improvements are contractually due to us by our landlords pursuant to lease terms, we classify tenant improvement allowances as deferred rent on the consolidated balance sheet and amortize the tenant improvement allowances on a straight-line basis over the lease term as an offset to rent expense.

Determining the appropriate expected term for each lease impacts the classification and accounting for leases as either operating or capital, the calculation of the straight-line rent and the term over which the leasehold improvements for each restaurant facility is amortized. If different expected lease terms were used, the amounts of depreciation, amortization and rent expense could be materially different.

### ***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 some portion or all 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 2018.

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

### ***Stock-Based Compensation***

Stock-based compensation expense is measured based on fair value. Stock-based compensation expense related to time-based stock options is recognized as stock-based compensation expense on an accelerated

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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.

We estimate fair value of stock options using the Black-Scholes valuation model. Calculating the fair value of stock-based awards requires certain assumptions and judgments. For our 2018 stock options, we estimated our equity value 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). We based our volatility assumption of 31.4% on the historical volatility of the selected peer group and we based our expected term of 5.6 years using the historical information of the selected peer group. If factors change and we employ different assumptions, stock-based compensation expense may differ significantly from what we have recorded in the past.

### ***Self-Insurance Reserves***

We retain large deductibles or self-insured retentions for employee group health claims nationally and workers' compensation in Ohio. 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.

### ***Gift Card Revenue Recognition***

We sell gift cards to customers in our restaurants, through our websites 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 at the time the gift cards are redeemed. Since an uncertain amount of gift cards sold are not redeemed, 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. A change in our breakage rate estimates by 5% would have resulted in an adjustment in our breakage revenue of \$0.3 million for fiscal 2018.

## **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 30, 2018, we had \$195.4 million in outstanding borrowings under our Senior Credit Facilities, excluding unamortized debt discount and deferred issuance costs.

### ***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 2020. We are planning moderate price increases in fiscal 2020, 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-restaurant sales growth in an amount sufficient to offset inflationary or other cost pressures. However, we anticipate our cost of sales as a percentage of restaurant sales will remain consistent with fiscal 2019 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 – a high-growth 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 an innovative menu that is always fresh and evolving. Our one shift, from 7:00 a.m. to 2:30 p.m., and one 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. These foundational brand pillars have resulted in strong consumer demand and operating performance as evidenced by our 20 consecutive quarters of positive same-restaurant sales growth and traffic growth since 2014. For fiscal 2018, we generated \$350 million of total revenues. As of December 29, 2019, we had 368 restaurants across 29 states, 299 of our restaurants were company-owned and 69 were operated by our franchisees.

### **Our Promise: Yeah, It’s Fresh!**

At First Watch, we take a creative approach to daytime dining with a focus on 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, along with First Watch-specific specialties such as our protein-packed Quinoa Power Bowl, Farmstand Breakfast Tacos, Avocado Toast, Kale Tonic (juiced in-house daily), 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**

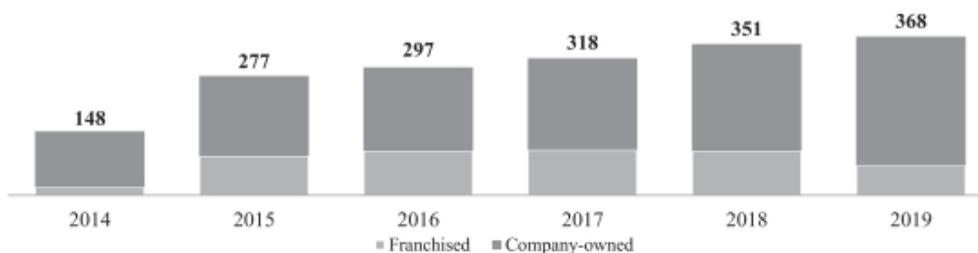
For more than 36 years, our management has cultivated an organizational culture built on our mission of “You First,” which puts serving others above all else. As a company, we put our employees first and empower them to do whatever it takes to put our customers first. We give back in meaningful ways to the local communities in which we operate and also support national and international causes we care about, such as our Project Sunrise partnership. 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.

### **Proven Record of Sustained Growth**

Our long track record of results, spanning almost four decades, demonstrates our broad brand appeal, compelling economic proposition and difficult-to-replicate business model. We have achieved growth in total restaurants to 368 in 2019, from 148 restaurants in 2014. Over the five-year period ended December 30, 2018, we have achieved:

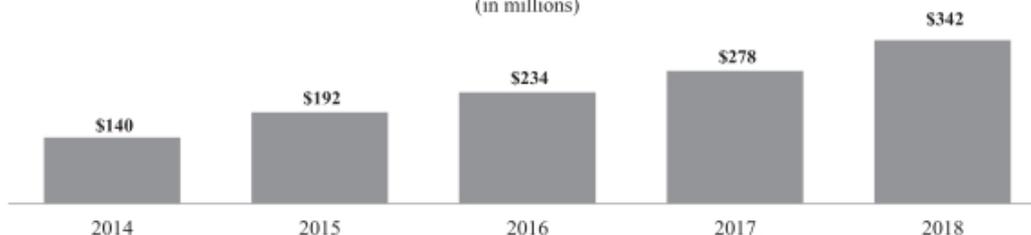
- Consistently positive annual same-restaurant sales growth, averaging 6.5%
- Consistently positive annual same-restaurant traffic growth, averaging 1.4%
- AUV growth of 23%, from \$1.2 million in 2014 to \$1.5 million in 2018

**System-Wide Restaurants (2014 – 2019)**



**Annual Restaurant Sales (2014 – 2018)**

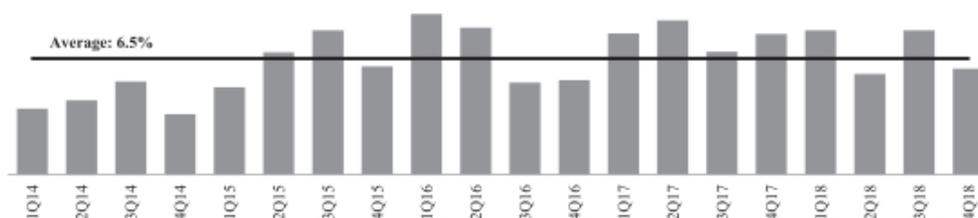
(in millions)



**Annual Same-Restaurant Sales Growth (2014 – 2018)**



**Same-Restaurant Sales Growth by Quarter (2014 – 2018)**



**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) is the only foodservice daypart with consistent year-over-year growth for the last several years, according to third-party industry sources. The restaurant industry captured two additional breakfast visits per capita, from 2015 to 2018,

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and with 78% of breakfasts still being prepared at home as of 2019, morning restaurant traffic provides a compelling long-term opportunity for future growth.

***Demand for Fresh, Healthy Food.*** More than half of consumers consider a healthy menu an important factor in their restaurant choice and 60% of consumers say they want more protein in their diet, according to third-party industry sources. Our freshly made food, with simple, high-quality, protein-rich ingredients, such as cage-free eggs and quinoa, aligns well with these consumer trends.

***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 are powering demand for convenient, fast and flexible daytime dining offerings, for which traditional rigid breakfast and lunch dayparts were not designed.

### **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 rustic yet contemporary atmosphere – creating an energizing daytime dining experience that resonates with consumers. We enjoy broad appeal that includes attracting, healthier and more affluent consumers. 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 third-party industry sources. Our operating 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 less than 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 extends 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.

Our sourcing mission is simple: “Follow the sun and partner with growers who have the best produce at the height of season.” We receive fresh produce deliveries at least three times per week because we believe that is how it should be. Our kitchens are designed and appointed to efficiently execute our fresh food menu at high volumes and during peak hours throughout the day.

### ***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

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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 daytime dining experience.

### ***“You First” Culture Elevates Employee and Customer Satisfaction***

Our “You First” mission permeates every level of our organization. We have designed our hiring, training and retention strategies such that our more than 9,000 employees, united by our culture, are empowered 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 program held at our Home Office in University Park, Florida, where each of our managers-in-training is immersed in our culture, vision and mission. Our restaurant-level general manager turnover averaged 19.3% in fiscal 2019, which is meaningfully lower than the industry-reported average of 43%. A five-year longitudinal study of employee surveys on Glassdoor published in 2019 ranked us #1 for work/life balance and among the top five employers in the restaurant industry.

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

Our strong brand with growing awareness, broad consumer appeal and excellence in execution have created outstanding performance over time. Over the five-year period ended December 30, 2018, our same-restaurant sales growth has been positive every year, averaging 6.5%. Importantly, that growth was driven by positive same-restaurant traffic every year during that period.

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

The success of our brand is reflected in our restaurant-level performance and Cash-on-Cash Returns. In fiscal 2019, we generated AUV of \$ \_\_\_\_\_ in a single shift, 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 29 states. Restaurants in our top decile, by fiscal 2019 sales, span \_\_\_\_\_ different states and \_\_\_\_\_ DMAs.

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

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 23 years of industry experience and joined First Watch in 2006. Mr. Tomasso sets the strategic vision and brand positioning for the company, while preserving its organizational culture. Mel Hope, our Chief Financial Officer and Treasurer, has more than 35 years of public accounting and industry experience including serving as Chief Financial Officer of large, successful public companies. We have a deep bench of talent throughout the organization. Our executives and key employees average more than 13 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 Intend to Grow Sales and Profits***

While we are proud of our success in having grown sales and SLEBITDA consistently for many years, our focus is on the future. 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**

First Watch has grown from 148 restaurants in 2014 to 368 restaurants in 2019 while increasing the AUV from \$1.2 million to [redacted] and achieving positive same-restaurant sales growth and traffic in each of those years. In Florida, our most mature market with the greatest number of company-owned restaurants, we have grown from 45 to 90 restaurants over the last six years, while generating average annual same-restaurant sales growth of 5.9% over the same period. 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 estimate potential for [redacted] restaurants across the United States. We intend to leverage our rigorous real estate site selection process to open [redacted] company-owned restaurants over [redacted]. 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 interesting. Our chef-led culinary innovation team leverages consumer research to maintain a keen awareness of emerging culinary trends, immerses themselves in the marketplace through frequent culinary inspiration tours and uses those 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 wholly new menu platforms similar to our introductions of Fresh Juices and Shareables. For fiscal 2019, [redacted] % of customers purchased our seasonal menu, [redacted] % purchased Fresh Juices and [redacted] % purchased Shareables. We expect menu innovation to continue to provide incremental growth opportunities in the future.

**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. In a 2017 survey, only 33% of respondents in our existing markets were aware of First Watch. Our advertising costs represent less than 1% of total revenues in fiscal 2018. We intend to grow our brand awareness primarily through increased investment in cost-efficient digital, social and to some extent, traditional media. Additionally, and perhaps even more importantly, our brand awareness will continue to increase as our customers share their experiences online and offline with their family and friends.

**Deliver An Excellent Dining Experience.** Excellence in restaurant-level execution, recognized by customers and reinforced by the numerous accolades we have received, increases the frequency of our customer visits, promotes trial by new consumers and ultimately creates 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. We aim to continue to leverage our “One Shift, One Menu, One Focus” model to stay distinguishably different from our competitors by focusing on delivering a superior dining experience every day to further drive traffic and build sales.

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

- **Alcohol:** We believe offering alcoholic beverages will be a highly-incremental new sales platform while opening up new occasions for our consumers. This initiative is in the early stages of testing with encouraging results.
- **Off-Premise:** We are in the early stages of integrating technology into our business to enhance customer access and leverage off-premise consumption. Third-party delivery is offered at less than 50 of our restaurants as of the end of fiscal 2019. We are setting the foundation to optimize the off-premise opportunity through a system-wide rollout that takes advantage of improving delivery-related

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economics in the marketplace. We also intend to evolve our mobile app and the Sun eClub email program, which currently has more than 1.5 million members, to reduce customer friction and enhance targeted campaigns to increase customer frequency.

- **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. Only % of our weekday customer transactions occurred between the hours of 12:00 p.m. and 2:30 p.m. Monday through Friday for fiscal 2019.

### **Our Menu**

We serve breakfast, brunch and lunch classics, as well as innovative dishes, all made from fresh ingredients. Our limited menu of less than 60 entrée items is customizable to personal preference. While the menu is curated, we offer something for everybody through our classic favorites, our “healthier side” options and everything in between, including 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.

### **Properties**

As of December 29, 2019, we had 299 company-owned restaurants and 69 franchised restaurants located in 29 states, including a large presence in Florida, Texas, Ohio, Arizona and Missouri. We lease all our company-owned restaurant facilities.

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As of December 29, 2019, company-owned, franchised and total restaurants by jurisdiction were:

<u>State</u>	<u>Company-Owned</u>	<u>Franchise Operated</u>	<u>Total</u>
Alabama	4	0	4
Arizona	24	0	24
Arkansas	0	2	2
Colorado	17	0	17
Delaware	1	0	1
Florida	87	3	90
Georgia	12	0	12
Illinois	1	0	1
Indiana	4	1	5
Kansas	10	0	10
Kentucky	2	8	10
Louisiana	0	1	1
Maryland	8	0	8
Michigan	4	0	4
Mississippi	0	1	1
Missouri	16	3	19
Nebraska	0	5	5
New Jersey	3	0	3
North Carolina	1	13	14
Ohio	35	0	35
Oklahoma	0	3	3
Pennsylvania	15	0	15
South Carolina	0	3	3
Tennessee	10	8	18
Texas	35	11	46
Utah	0	1	1
Virginia	10	2	12
West Virginia	0	1	1
Wisconsin	0	3	3
TOTAL	299	69	368

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New restaurant development has historically included both new restaurant openings and conversion of acquired restaurants.

	<b>Fiscal Year Ended December 30, 2018</b>	<b>Fiscal Year Ended December 29, 2019</b>
<b>Total First Watch Restaurants</b>	<b>294</b>	<b>367</b>
Company-owned First Watch	239	298
Franchise operated First Watch	55	69
<b>First Watch Company-owned Development</b>	<b>37</b>	<b>54</b>
Company-owned First Watch New Restaurant Openings	27	38
Company-owned First Watch Conversions	10	16
<b>First Watch Franchise operated Development</b>	<b>19</b>	<b>22</b>
First Watch Franchise operated New Restaurant Openings	16	18
First Watch Franchise operated Conversions	3	4
Acquired First Watch Franchise operated Locations	11	7
Company-owned Relocations	(1)	(2)
Franchise operated Relocations	—	(1)

### **Restaurant Design**

Our typical restaurant reflects our “Urban Farm” branding in a rustic yet contemporary atmosphere. Our restaurants typically range from approximately 3,200 square feet to 3,800 square feet in size with indoor seating that accommodates approximately 115-130 customers. Additionally, many of our restaurants have patio seating, which accommodates additional customers. 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**

Currently, we operate restaurants successfully in 29 states and in a variety of commercial retail environments. Our track record of operating 299 existing restaurants furnishes us with significant insight for new site selection. We prefer free-standing or end cap sites in high-quality trade areas.

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. Third-party inspectors are hired to regularly monitor restaurant performance through unannounced food safety audits.

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.

### ***Managers and Restaurant Staff***

Each restaurant operates with a staff of approximately 20 to 30 team members led by the general manager(s) of the restaurant. General managers report to directors of operations, who monitor service, quality and performance metrics.

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 aesthetically-pleasing 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 29, 2019, we had approximately 8,900 in-restaurant and regional operations personnel.

### ***Training***

We have a legacy of operational excellence that ensures a pleasant 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 travel to the F.A.R.M for a week-long immersion in the processes, culture and management tools we have developed. Managers in training also serve alongside experienced managers in restaurants for a minimum of 11 weeks before they are promoted. In addition, there is on-going in-restaurant training conducted for staff by general managers and directors of operations as well as on-line training developed by our training department. 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 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 December 29, 2019, we had 16 franchisees that operated 69 restaurants. Our existing franchisees hold 58 new restaurant development obligations 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. 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, produce and supplies. Most restaurants accept deliveries 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. Fluctuations in supply and prices can significantly impact our restaurant service and profit performance.

## **Intellectual Property**

We have registered First Watch the Daytime Cafe, You First 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.

## **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.

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.

Certain of our restaurants sell alcoholic beverages, and we are exploring adding alcoholic beverage offerings in more restaurants. 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 29, 2019, we had more than 9,000 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 December 29, 2019, of the individuals who will serve as our executive officers, key employees and members of our Board at the time of the offering.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Christopher A. Tomasso	49	President, Chief Executive Officer and Director
Mel Hope	58	Chief Financial Officer and Treasurer
Jay Wolszczak	51	General Counsel and Secretary
Greg Barber	47	Chief Transformation Officer
Eric Hartman	47	Chief Development Officer
Laura Sorensen	47	Chief People Officer
Rob Conti	50	Senior Vice President, Technology
Matt Eisenacher	40	Senior Vice President, Brand Strategy and Innovation
Brian Fisher	52	Senior Vice President, Operations
Calum Middleton	40	Senior Vice President
Rania Khouri	46	Vice President, Financial Reporting
Lilah Rippett	61	Vice President, Purchasing and Distribution
Shane Schaibly	37	Vice President, Culinary Strategy
John Zimmermann	57	Vice President, Quality Assurance and Food Safety
Kenneth L. Pendery, Jr.	66	Director and Chairman Emeritus
Ralph Alvarez	64	Director and Chairman of the Board
Tricia Glynn	39	Director
William Kussell	61	Director
David Mussafer	56	Director
Michael White	32	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 and, as managing director of Blue Plate Development and Consulting, LLC from May 2014 to February 2016.

#### ***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

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subsidiary of the Company, since May 2018. Previously, Mr. Wolszczak served as general counsel of Hard Rock Café International (USA), Inc. from October 1997 to April 2018.

### ***Greg Barber***

Mr. Barber has served as Chief Transformation Officer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since October 2019. Previously, Mr. Barber was the vice president of Global Business Development at PepsiCo from September 2016 to March 2019. In addition, he was the vice president of North American Beverage Strategy at PepsiCo from December 2013 to September 2016.

### ***Eric Hartman***

Mr. Hartman has served as Chief Development Officer and Executive Vice President 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.

### ***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 served as chief people officer of Darden Restaurants from June 2010 to August 2016.

### ***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.

### ***Calum Middleton***

Mr. Middleton has served as Senior Vice President of Finance of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since January 2019. Mr. Middleton also served as vice president of finance of First Watch Restaurants, Inc. 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 served as senior vice president of financial planning and analysis and treasurer of Star2Star Communications, LLC from November 2012 to January 2015.

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### ***Rania Khouri***

Ms. Khouri has served as Vice President of Financial Reporting of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since April 2019. 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 Rippet***

Ms. Rippet has served as Vice President of Purchasing and Distribution of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since January 2017. 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 Vice President of Culinary Strategy of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since January 2017 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 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 and as a director of Realogy Holdings Corp. from August 2013 until May 2018, and currently serves as a director of Lowe's Companies, Inc., Dunkin' Brands Group, 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.

### ***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. since August 2017 and of Burlington Stores, Inc. from August 2012 to June 2018.

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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 December 2019. 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.

### ***David Mussafer***

Mr. Mussafer has served as a director since December 2019. He has served as a managing partner of Advent since 1990. He has served as a director of Advent since 1990, of lululemon athletica inc. since September 2014, and of Serta Simmons Holdings since October 2012. Previously, Mr. Mussafer served as a director of Vantiv, Inc. from June 2009 to June 2015, Five Below, Inc. from October 2010 to April 2016 and Charlotte Russe Holding, Inc. from October 2009 to October 2017.

We believe Mr. Mussafer’s extensive leadership expertise on the boards of several public companies across multiple industries make him well qualified to serve as a director.

### ***Michael White***

Mr. White has served as a director since April 2019. He has served as a vice president of Advent since January 2019. Previously, Mr. White served as 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.

## **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 \_\_\_\_\_ 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 \_\_\_\_\_ directors, Class II will initially consist of \_\_\_\_\_ directors and Class III will initially consist of \_\_\_\_\_ 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 \_\_\_\_\_. 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 \_\_\_\_\_. 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 \_\_\_\_\_. 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” under

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the listing standards. “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 the . Accordingly, we will not be required to have a majority of “independent directors” on our Board as defined under the rules of the nor will we have a compensation committee and a corporate governance and nominating 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 Sarbanes-Oxley and the , which require that our audit committee be composed of at least three members, one of whom will be independent upon the listing of our common stock, a majority of whom will be independent within 90 days of listing and each of whom will be independent within one year of listing. Our Board has affirmatively determined that are independent directors under the applicable rules of the .

If at any time we cease to be a “controlled company” under the rules of the , our Board will take all action necessary to comply with the corporate governance rules, including 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 control 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 Messrs. , and . Upon the consummation of this offering, and prior to the listing of our common stock, our audit committee will be composed of Messrs. , and . Mr. will serve as chair of the audit committee. Mr. 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 Mr. and meet the definition of an “independent director” for the purposes of serving on the audit committee under applicable 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 the .

**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;

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- 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 Messrs. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_. Mr. \_\_\_\_\_ will serve as the chair of the nominating and corporate governance committee. We intend to avail ourselves of the “controlled company” exemption under the rules of the \_\_\_\_\_, which exempts us from the requirement that we have a nominating and corporate governance committee composed entirely of independent directors. The nominating and corporate governance committee will be governed by a charter that complies with the rules of the \_\_\_\_\_.

**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 Messrs. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_. Upon the consummation of this offering, and prior to the listing of our common stock, our compensation committee will be composed of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_. \_\_\_\_\_ will serve as chair of the compensation committee. We intend to avail ourselves of the “controlled company” exemption under the rules of the \_\_\_\_\_, which exempts us from the requirement that we have a compensation committee composed entirely of independent directors. The compensation committee will be governed by a charter that complies with the rules of the \_\_\_\_\_.

### **Compensation Committee Interlocks and Insider Participation**

The members of our compensation committee during 2019 were Messrs. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_. During 2019, 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](http://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 the \_\_\_\_\_ 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 AND DIRECTOR COMPENSATION**

The following discussion and analysis of compensation arrangements should be read with the compensation tables and related disclosures set forth below. This discussion contains forward-looking statements that are based on our current plans and expectations regarding future compensation programs. See “Cautionary Note Regarding Forward-Looking Statements.” Actual compensation programs that we adopt may differ materially from the programs summarized in this discussion.

**Overview**

The discussion below includes a review of our compensation decisions with respect to 2018 for our “named executive officers,” or NEOs, namely our principal executive officer and our two other most highly compensated executive officers. Our NEOs for 2019 were:

- Christopher A. Tomasso, our President, Chief Executive Officer and Director;
- Mel Hope, our Chief Financial Officer and Treasurer; and
- Jay Wolszczak, our General Counsel and Secretary.

In 2019, we compensated our NEOs through a combination of base salary and annual cash bonuses as well as grants of stock options under the terms of our equity incentive plan. Our executive officers are also eligible to receive certain benefits, which include a 401(k) plan with matching contributions, life insurance, automobile allowances and group health insurance, including medical, dental and vision insurance.

**Summary Compensation Table**

The following table sets forth certain information for 2019 concerning the total compensation awarded to, earned by or paid to our NEOs.

<u>Name and principal position</u>	<u>Year</u>	<u>Salary (1)</u>	<u>Bonus (1)</u>	<u>Option awards (2)</u>	<u>Non-Equity Incentive Plan Compensation</u>	<u>Non-Qualified Deferred Compensation Earnings</u>	<u>All other compensation (3)</u>	<u>Total</u>
<b>Christopher A. Tomasso</b> President, Chief Executive Officer and Director	2019	\$	\$	\$	\$	\$	\$	\$
<b>Mel Hope</b> Chief Financial Officer and Treasurer	2019	\$	\$	\$	\$	\$	\$	\$
<b>Jay Wolszczak</b> General Counsel and Secretary	2019	\$	\$	\$	\$	\$	\$	\$

(1) Represents annual salary and bonus amounts paid pursuant to the terms of each NEO’s employment arrangement. See “– Employment Arrangements.”

(2) Represents the aggregate grant date fair value of the option awards granted in 2019, computed in accordance with FASB ASC Topic 718. These values have been determined based on the assumptions set forth in Note 15 – *Stock-based compensation* to our audited consolidated financial statements included elsewhere in this prospectus.

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(3) Includes the following, as set forth below:

Name	Automobile allowance	Life insurance Premiums	401(k) matching and contributions	Relocation and related travel expenses	Health insurance premiums	Total
Christopher A. Tomasso	\$	\$	\$	\$	\$	\$
Mel Hope	\$	\$	\$	\$	\$	\$
Jay Wolszczak	\$	\$	\$	\$	\$	\$

### Outstanding Equity Awards as of December 29, 2019

The following table sets forth certain information about outstanding equity awards held by our NEOs as of December 29, 2019.

Name	Option grant date	Option awards		Option exercise price	Option expiration date
		Number of securities underlying unexercised options exercisable (#)	Number of securities underlying unexercised options unexercisable (#)		
<b>Christopher A. Tomasso</b> President, Chief Executive Officer and Director				\$	
<b>Mel Hope</b> Chief Financial Officer and Treasurer				\$	
<b>Jay Wolszczak</b> General Counsel and Secretary				\$	

### Employment Arrangements

We are currently party to an employment agreement with Christopher A. Tomasso. The material provisions of the employment agreement are described below.

#### Christopher A. Tomasso

We entered into an employment agreement with Christopher A. Tomasso (the "Employment Agreement") in August 2017. The Employment Agreement provides for a one-year term beginning on August 21, 2017, with automatic one-year renewals. The Employment Agreement provides that Mr. Tomasso will receive an annualized base salary. Under the Employment Agreement, our Board, in its discretion, may at any time change the amount of Mr. Tomasso's annualized base salary to such greater amount as it may deem appropriate. In 2019, Mr. Tomasso's salary was \$ . The Employment Agreement also provides that Mr. Tomasso is eligible to receive an annual performance-based cash bonus based on his performance, subject to his continued employment on the date the bonus is paid. In 2019, Mr. Tomasso's annual cash bonus at target was \$ . During fiscal 2019, Mr. Tomasso received \$ for his 2019 annual performance-based cash bonus, which represented approximately % of his base salary.

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

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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 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 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. These payments 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 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 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 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 Employment Agreement to the reasonable satisfaction of the Board.

The 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's annual base salary as of fiscal 2019 was \$ . During fiscal 2019, Mr. Hope received \$ for his 2019 annual performance-based cash bonus, which represented approximately % of his base salary. 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 payroll policies. In addition, Mr. Hope will be entitled to accelerated vesting of his unvested time-based equity awards outstanding immediately prior to a change in control (as defined in the 2017 Plan).

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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.

### **Jay Wolszczak**

We entered into an offer letter with Mr. Wolszczak in April 2018. Mr. Wolszczak’s annual base salary as of fiscal 2019 was \$ . During fiscal 2019, Mr. Wolszczak received \$ for his 2019 annual performance-based cash bonus, which represented approximately % of his base salary. Mr. Wolszczak is also included in the executive health program that includes a concierge doctor. Additionally, Mr. Wolszczak is eligible to receive cell phone reimbursement. If we terminate Mr. Wolszczak’s employment without “cause,” then we must provide Mr. Wolszczak with continued payment of his base salary for a period of 12 months, consistent with Company payroll policies. In addition, Mr. Wolszczak will be entitled to accelerated vesting of his unvested time-based equity awards outstanding immediately prior to a change in control (as defined in the 2017 Plan).

For purposes of our arrangement with Mr. Wolszczak, “cause” means (i) indictment for any crime involving moral turpitude, fraud or misrepresentation or Mr. Wolszczak 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. Wolszczak 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. Wolszczak accepted our offer of employment to the reasonable satisfaction of the Board.

### **Potential Payments Upon Termination Of Employment Or Change Of Control**

Our NEOs are entitled to receive severance payments upon termination of employment and acceleration of time-based vesting equity awards upon a change in control as provided above in “– Employment Arrangements.”

### **Director Compensation**

Prior to this offering, we paid certain of our directors \$75,000 each in annual board fees for service on the board of directors of First Watch Restaurants, Inc., our subsidiary.

Following this offering, we expect to pay certain of our directors, the chair of the audit committee and the chair of the compensation committee.

## **Equity Incentive Plans**

### ***2017 Plan***

The 2017 Plan provides for the grant of options, stock appreciation rights, 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 Plan is 518,520. 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 438,318 shares of our common stock are subject to outstanding option awards under the 2017 Plan as of December 29, 2019. After the completion of this offering, we do not intend to grant any further awards under the 2017 Plan.

### ***2020 Plan***

In connection with this offering, our Board expects to adopt, and our stockholders expect to approve, a new equity incentive plan (the “2020 Plan”) prior to the completion of this offering.

**PRINCIPAL STOCKHOLDERS**

The following table shows information as of \_\_\_\_\_, 2020 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 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 \_\_\_\_\_, 2020 and \_\_\_\_\_ shares of common stock outstanding after giving effect to this offering, assuming no exercise of the underwriters' option to purchase additional shares, or \_\_\_\_\_ 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 8027 Cooper Creek Blvd., #103, University Park, Florida 34201.

Name and address of beneficial owner	Shares of common stock beneficially owned before this offering		Number of shares of common stock being offered	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	
	Number of shares	Percentage of shares		Number of shares	Percentage of shares	Number of shares	Percentage of shares
<b>5% stockholders:</b>							
Funds managed by Advent International Corporation							
<b>NEOs and directors:</b>							
Christopher A. Tomasso							
Mel Hope							
Jay Wolszczak							
Kenneth L. Pendery, Jr.							
Ralph Alvarez							
Tricia Glynn							
William Kussell							
David Mussafer							
Michael White							
<b>All Board members and executive officers as a group (9 persons)</b>							

\* Represents beneficial ownership of less than 1% of our outstanding common stock.

## 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

Prior to this offering, we paid certain of our directors \$75,000 each in annual board fees for service on the board of directors of First Watch Restaurants, Inc. our subsidiary.

Following this offering, we expect to pay certain of our directors, the chair of the audit committee and the chair of our compensation committee.

### Limited Partnership Agreement

On August 21, 2017, AI Fresh Topco, LLC, a Delaware limited liability company and our indirect parent, entered into an amended and restated agreement of limited partnership of AI Fresh Holdings Limited Partnership (the “Partnership”) with Advent and the other limited partners named therein in connection with the Agreement and Plan of Merger, dated as of July 25, 2017 (the “Limited Partnership Agreement”). Pursuant to the Limited Partnership Agreement, our subsidiary AI Fresh Parent, Inc. indirectly acquired all the outstanding capital stock of FWR Holding Corporation, another of our subsidiaries.

Pursuant to the Limited Partnership Agreement, Advent received Class A Units of AI Fresh Holdings Limited Partnership, as well as tag-along, drag-along, and preemptive rights. If such right is assigned by the Partnership, Advent also has a call right to repurchase securities to be sold by any limited partner who was an employee of the Partnership or any of its subsidiaries, subject to the terms and conditions set forth in the Limited Partnership Agreement. Advent also has certain registration rights under the Limited Partnership Agreement, including the right to make unlimited requests for registration of investor registrable securities on Form S-1, S-2 and S-3 or similar long-form or short-form registrations. The Limited Partnership Agreement grants AI Fresh Topco, LLC the exclusive right to manage and control the Partnership as its general partner.

### Employment Agreement

We have entered into an employment agreement with Christopher A. Tomasso, our President, Chief Executive Officer and Director. See “Executive and Director 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), (ii) and (iii) 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.

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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 (the “Credit Agreement”), among the Borrower, AI Fresh Parent, Inc., a Delaware corporation and a wholly-owned direct subsidiary of the Company (“Holdings”), 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 to Credit Agreement described below and the Second Amendment to Credit Agreement described below, 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 to Credit Agreement”), 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 to Credit Agreement”), 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”).

The First Amendment DDTL Commitments are available for borrowings until February 28, 2021. 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) 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%.

The applicable Adjusted Eurocurrency Rate and ABR spreads are 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	Initial Revolving Loans		Initial Term Loans		Initial Delayed Draw Term Loans	
		ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread
I	> 4.25:1.00	4.50%	5.50%	4.50%	5.50%	4.50%	5.50%
II	£ 4.25:1.00	4.25%	5.25%	4.25%	5.25%	4.25%	5.25%

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;

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- 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;
- 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 Covenant***

The Credit Agreement contains a 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 December 29, 2019 to and including the fiscal quarter ending on December 27, 2020, 7.25:1.00, (ii) for the fiscal quarter ending on March 28, 2021 to and including the fiscal quarter ending on December 26, 2021, 7.00:1.00 and (iii) for the fiscal quarter ending on March 27, 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, 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 \_\_\_\_\_ shares of common stock, par value \$0.01 per share and \_\_\_\_\_ shares of preferred stock, par value \$0.01 per share. Following the consummation of this offering, \_\_\_\_\_ 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. Our Board has not authorized the issuance of any shares of preferred stock and we have no agreements or plans for the issuance of any shares of preferred stock.

## **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 of directors. 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.

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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 50.01% 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 (i) if required by law, thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment or (ii) if related to provisions regarding the classification of the Board, the removal of directors, director vacancies, special meetings or the amendment of certain provisions of our amended and restated bylaws or amended and restated certificate of incorporation, thereafter be approved by at least 66 $\frac{2}{3}$ % of the voting power of our then outstanding shares entitled to vote generally in the election of directors. For so long as Advent beneficially owns 10% or more of our then outstanding common stock entitled to vote generally in the election of directors, any amendment to provisions regarding Section 203 of the DGCL or corporate opportunities must also receive Advent’s prior written consent. Our amended and restated bylaws may be amended (x) by the affirmative vote of a majority of the directors then in office, subject to any limitations set forth in the bylaws, without further stockholder action or (y) by the affirmative vote of at least 66 $\frac{2}{3}$ % 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. None of the Exempted Persons or their representatives has any duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as us or any of our subsidiaries. In addition, for so long as Advent and its affiliates beneficially own at least 10% of our then outstanding common stock entitled to vote generally in the election of directors, any amendment, alteration, addition, repeal, revision of provisions related to the “Renouncement of Corporate Opportunity” or adoption of any provision inconsistent with such provisions shall require Advent’s prior written consent.

### **Exclusive Forum**

Our amended and restated bylaws will provide that, subject to certain exceptions, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for certain stockholder litigation matters. However, it is possible that a court could rule that this provision is unenforceable or inapplicable.

### **Listing**

We intend to apply to have our common stock listed on the \_\_\_\_\_ under the symbol “ \_\_\_\_\_ .”

### **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 \_\_\_\_\_ shares of our common stock outstanding (or \_\_\_\_\_ 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, \_\_\_\_\_ 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.

Approximately \_\_\_\_\_ shares of our common stock that are not subject to lock-up arrangements described above 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

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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 \_\_\_\_\_ shares of our common stock to be issued or reserved for issuance under our equity incentive plans. 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

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.

<u>Underwriter</u>	<u>Number of Shares</u>
Total	

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 \$ \_\_\_\_\_ 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.

	<u>Per Share</u>	<u>Without Option</u>	<u>With Option</u>
Public offering price	\$ _____	\$ _____	\$ _____
Underwriting discount	\$ _____	\$ _____	\$ _____
Proceeds, before expenses, to us	\$ _____	\$ _____	\$ _____

The expenses of the offering, not including the underwriting discount, are estimated at \$ \_\_\_\_\_ 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 \$ \_\_\_\_\_.

### 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 \_\_\_\_\_ additional shares at the public offering price, less the underwriting discount. If the

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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 the \_\_\_\_\_ or \_\_\_\_\_ under the symbol “\_\_\_\_\_.”

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.

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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 , 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)

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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 “Member State”), no Shares have been offered or will be offered pursuant to the offering to the public in that Member State prior to the publication of a prospectus in relation to the Shares which has been approved by the competent authority in that Member State or, where appropriate, approved in another Member State and notified to the competent authority in that Member State, all in accordance with the Prospectus Regulation), except that offers of Shares may be made to the public in that Member 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 Issuer or any Manager 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 Member 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 Managers 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 Member 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 representatives 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 Member 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.

### **Notice to Prospective Investors in the United Kingdom**

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are “qualified investors” (as defined in the

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Prospectus Regulation) (i) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the “Order”) and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as “relevant persons”). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in 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 FINMA, 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 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

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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

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- (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 consolidated financial statements as of December 30, 2018 and for the year ended December 30, 2018 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.

## 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.

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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 sheet of First Watch Restaurant Group, Inc. and its subsidiaries (the “Company”) as of December 30, 2018, and the related consolidated statements of operations and comprehensive loss, equity and cash flows for the year 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 30, 2018, and the results of its operations and its cash flows for the year 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 revenue recognition in 2018.

***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 audit. 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 audit of these consolidated financial statements in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audit 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 audit 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 audit provides a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP  
Tampa, Florida  
January 8, 2020

We have served as the Company’s auditor since 1999.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**CONSOLIDATED BALANCE SHEET**  
(IN THOUSANDS, EXCEPT SHARES AND PER SHARE AMOUNTS)

	<u>December 30, 2018</u>
<b>Assets</b>	
Current assets:	
Cash and cash equivalents	\$ 16,284
Accounts receivable	4,978
Accounts receivable – related party	219
Inventory	2,138
Prepaid rent	2,790
Prepaid expenses	2,039
Other current assets	995
Total current assets	<u>29,443</u>
Goodwill	330,834
Intangible assets, net	178,245
Property, fixtures and equipment, net	124,760
Other long-term assets	1,229
Total assets	<u>\$ 664,511</u>
<b>Liabilities and Equity</b>	
Current liabilities:	
Accounts payable	\$ 5,559
Accrued liabilities	13,671
Accrued compensation	10,608
Deferred revenues	5,168
Current portion of long-term debt	1,898
Total current liabilities	<u>36,904</u>
Deferred lease incentives	6,300
Deferred rent	6,620
Deferred income tax liabilities	42,862
Long-term debt, net	188,610
Financing obligations	4,535
Other long-term liabilities	4,006
Total liabilities	<u>289,837</u>
Commitments and contingencies (Note 16)	
Equity:	
Common stock; \$0.01 par value; 4,321,000 shares authorized; 3,802,481 shares issued and outstanding	38
Additional paid-in capital	382,077
Accumulated deficit	(7,691)
Total equity attributable to First Watch Restaurant Group, Inc.	<u>374,424</u>
Non-controlling interest	250
Total equity	<u>374,674</u>
Total liabilities and equity	<u>\$ 664,511</u>

The accompanying notes are an integral part of these consolidated financial statements.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**CONSOLIDATED STATEMENT OF OPERATIONS AND COMPREHENSIVE LOSS**  
*(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)*

	<b>Fiscal Year ended December 30, 2018</b>
<b>Revenues:</b>	
Restaurant sales	\$ 342,357
Franchise revenues	7,409
Total revenues	<u>349,766</u>
<b>Operating costs and expenses:</b>	
Restaurant operating expenses (exclusive of depreciation and amortization shown below):	
Cost of sales	78,939
Labor and other related expenses	116,546
Other restaurant operating expenses	46,769
Occupancy expenses	36,151
General and administrative expenses	39,299
Depreciation and amortization	26,124
Transaction and other expenses	2,047
Impairment and loss on disposal of assets	658
Total costs and operating expenses	<u>346,533</u>
Income from operations	3,233
Interest expense	(16,480)
Other income (expense), net	724
<b>Loss before income tax benefit</b>	<u>(12,523)</u>
Income tax benefit	221
<b>Net loss and total comprehensive loss</b>	<u>(12,302)</u>
Less: Net loss attributable to non-controlling interest	(6)
<b>Net loss attributable to First Watch Restaurant Group, Inc.</b>	<u>\$ (12,296)</u>
Net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted	\$ (3.23)
Weighted average number of common shares outstanding – basic and diluted	3,802,481

The accompanying notes are an integral part of these consolidated financial statements.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**CONSOLIDATED STATEMENT OF EQUITY**  
*(IN THOUSANDS, EXCEPT SHARE AMOUNTS)*

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Equity attributable to First Watch Restaurant Group, Inc.	Non- controlling Interest	Total Equity
	Shares	Amount					
<b>Balances at December 31, 2017</b>	3,802,481	\$ 38	\$380,775	\$ 7,500	\$ 388,313	\$ —	\$388,313
Net loss	—	—	—	(12,296)	(12,296)	(6)	(12,302)
Stock-based compensation	—	—	1,302	—	1,302	—	1,302
Adoption of revenue recognition standard (ASC 606)	—	—	—	(2,895)	(2,895)	—	(2,895)
Contributions from non-controlling interest	—	—	—	—	—	256	256
<b>Balances at December 30, 2018</b>	<u>3,802,481</u>	<u>\$ 38</u>	<u>\$382,077</u>	<u>\$ (7,691)</u>	<u>\$ 374,424</u>	<u>\$ 250</u>	<u>\$374,674</u>

The accompanying notes are an integral part of these consolidated financial statements.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**  
*(IN THOUSANDS)*

	<b>Fiscal year ended December 30, 2018</b>
<b>Cash flows from operating activities:</b>	
Net loss	\$ (12,302)
Adjustments to reconcile net loss to net cash provided by operating activities:	
Depreciation and amortization	26,124
Amortization of debt discount and deferred issuance costs	1,047
Deferred income taxes	(329)
Impairment and loss on disposal of assets	658
Stock-based compensation	1,302
Change in assets and liabilities, net of acquisitions	
Accounts receivable	(332)
Inventory	(432)
Prepaid rent	(495)
Prepaid expenses	157
Other assets, current and long-term	(1,327)
Accounts payable	3,625
Accrued liabilities	306
Accrued compensation	2,132
Deferred revenues, current and long-term	576
Deferred lease incentives	5,137
Deferred rent	5,138
Other liabilities	(210)
Net cash provided by operating activities	<u>30,775</u>
<b>Cash flows from investing activities:</b>	
Capital expenditures	(37,729)
Acquisitions, net of cash acquired	<u>(14,167)</u>
Net cash used in investing activities	<u>(51,896)</u>
<b>Cash flows from financing activities:</b>	
Proceeds from issuance of long-term debt	27,000
Repayments of long-term debt	(1,716)
Proceeds from borrowings on revolving credit facility	29,500
Repayments of borrowings on revolving credit facility	<u>(24,500)</u>
Net cash provided by financing activities	<u>30,284</u>
Net increase in cash and cash equivalents	9,163
<b>Cash and cash equivalents:</b>	
Beginning of year	<u>7,121</u>
End of year	<u>\$ 16,284</u>
<b>Supplemental cash flow information:</b>	
Cash paid for interest	\$ 15,421
Cash paid for income taxes, net of refunds	\$ 163
<b>Supplemental disclosures of non-cash investing and financing activities:</b>	
Increase in liabilities from the acquisition of property, fixtures and equipment and capital leases	\$ 3,110

The accompanying notes are an integral part of these consolidated financial statements.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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**1. Nature of Business and Organization**

First Watch Restaurant Group, Inc. (collectively with its subsidiaries, “the Company”) is incorporated in the state of Delaware and has adopted a holding company structure. On December 20, 2019, the name of the Company was changed from AI Fresh Super Holdco, Inc. to First Watch Restaurant Group, Inc. The Company was the subject of a business combination effective August 21, 2017 under which the outstanding stock of the Company 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 30 states, primarily operating under the trade names “First Watch” and “The Egg & I”, which are focused on made-to-order breakfast, brunch and lunch. The Company operates restaurants through its wholly owned subsidiary, First Watch Restaurants, Inc. and is a franchisor through its wholly owned subsidiaries, First Watch Franchise Development Co. and E&I Holdings, Inc. As of December 30, 2018, the Company operated 248 company-owned restaurants and 103 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 year ended December 30, 2018 (“Fiscal 2018”) 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 statement of equity and the consolidated statement 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.

**Principles of Consolidation**

The Company’s consolidated financial statements include the accounts of its wholly-owned subsidiaries and its majority-owned subsidiary TFW-NC, LLC (“TFW”), in which the Company owns more than 50% of the voting shares and has a controlling financial interest. All intercompany transactions and balances have been eliminated in consolidation.

With the exception of the joint venture agreement with TFW described in Note 3, *Acquisitions*, the Company does not possess any other ownership interests in its franchisees and does not provide financial support to franchisees in its typical franchise relationships. As a result, the Company’s franchise relationships are not deemed variable interest entities and are not consolidated.

**Use of Estimates**

The preparation of the consolidated financial statements in accordance with GAAP requires the Company’s 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.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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**Segment Reporting**

The Company determined its operating segment on the same basis that its Chief Operating Decision Maker (the “CODM”), the Chief Executive Officer, assesses performance and allocates resources, which is at the Company’s consolidated level. All of the Company’s assets are located in the United States. The Company does not have sales outside of the United States, nor does any customer represent more than 10% of total revenues for the period presented.

**Business Combinations**

Business combinations are accounted for using the purchase method of accounting. The consideration transferred in a business combination is measured at fair value and costs incurred in connection with a business combination are recognized in transaction and other expenses in the consolidated statement of operations and comprehensive loss as incurred. The identifiable assets acquired and liabilities assumed are recognized at their acquisition-date fair values. Goodwill is measured as the excess of the consideration over the acquisition-date fair values of the identifiable assets acquired and liabilities assumed. During the measurement period, which may not exceed one year from the acquisition date, any adjustments to the acquisition-date fair value of assets or liabilities recognized arising from additional information obtained about facts and circumstances that existed at the acquisition date are recognized with corresponding adjustments to goodwill.

**Fair Value of Financial Instruments**

Certain assets and liabilities are carried at fair value in accordance with GAAP. Fair value is defined as 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 to be 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 corroborated 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**

Cash and cash equivalents include all cash balances and highly liquid investments with an original maturity of three months or less at the date of purchase. Amounts receivable from credit card processors are considered cash equivalents because they are short in term, highly liquid in nature and are typically converted to cash within three business days of the sales transactions.

**Concentrations of Credit Risk**

Financial instruments, which potentially subject the Company to concentrations of market and credit risk, are cash and cash equivalents. At times, cash balances may be in excess of the Federal Deposit

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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Insurance Corporation insurance limits. The Company has not experienced any losses to date as a result of these risks. The Company's 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 landlords for tenant improvement allowances, receivables from franchisees for franchise revenues, 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 doubtful accounts has been recorded as of December 30, 2018.

#### **Inventory**

Inventory primarily consists 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.

#### **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. The Company expenses repair and maintenance costs that do not extend the useful life of assets as incurred. Leasehold improvements are depreciated over the shorter of their useful life or the expected lease term including cancelable option periods the Company will be reasonably assured to exercise. Capital leases are accounted for as assets and are depreciated on a straight-line basis over the shorter of the estimated useful life of the asset or the lease term. The carrying amount of assets sold or retired and the related accumulated depreciation are eliminated at the time of disposal and any resulting gains and losses on disposal are recorded in the consolidated statement of operations and comprehensive loss.

The Company capitalizes direct internal costs associated with the acquisition, development, design and construction of company-owned restaurants as these costs have a future benefit to the Company. Upon restaurant opening, these costs are depreciated and recorded in depreciation and amortization on the consolidated statement of operations and comprehensive loss. Direct internal costs of \$0.3 million were capitalized during Fiscal 2018.

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

The Company evaluates the carrying value of property, fixtures and equipment if there are indicators of impairment. Identifiable cash flows that are largely independent of other assets and liabilities typically exist for leasehold improvements and the fixtures and equipment for each restaurant. If the total expected undiscounted cash flows are less than the carrying amount of the asset group, the carrying amount of the

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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asset group is written down to its estimated fair value, and an impairment loss is recognized in the consolidated statement of operations and comprehensive loss. Fair value is determined based on discounted future net cash flows expected to result from the use and eventual disposition of the asset group.

**Goodwill**

After initial recognition, goodwill is recorded at cost less any impairment losses. The Company evaluates goodwill for impairment annually, during 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 determined it has one reporting unit for goodwill impairment testing purposes.

The Company may elect to perform a qualitative assessment to determine whether it is more likely than not that the reporting unit is impaired. If the qualitative assessment is not performed, or if the Company determines that it is not more likely than not that the fair value of the reporting unit exceeds the carrying value, a quantitative analysis is required to be performed. Significant assumptions used to determine the fair value under the discounted cash flow method include internal projections of expected future cash flows and operating plans, as well as market conditions relative to the operations of the reporting unit. If the estimated fair value of the reporting unit exceeds the carrying value, no further work is required and no impairment loss is recognized; otherwise, an impairment loss is recognized in the consolidated statement of operations and comprehensive loss in an amount equal to the excess of the carrying value over estimated value.

The Company performed a qualitative assessment for its annual impairment test of goodwill during the fourth quarter of Fiscal 2018 and evaluated macro-economic conditions, industry conditions, local competition and the overall performance of its restaurants. Based on this qualitative assessment, the Company determined that it was not more likely than not that goodwill had been impaired and the Company did not record an impairment loss for goodwill in Fiscal 2018.

**Intangible Assets**

*Indefinite-lived intangible assets*

The Company's indefinite-lived intangible assets consist of registered trademarks, trade names and domains. Indefinite-lived intangible assets are evaluated for impairment annually, during the fourth quarter of the fiscal year, or whenever events or changes in circumstances indicate that their carrying amounts may not be recoverable. The Company may elect to perform a qualitative assessment to determine whether it is more likely than not that the carrying amount of the indefinite-lived intangible assets may not be recoverable. In considering the qualitative approach, similar factors from the goodwill impairment assessment are evaluated to determine whether the Company expects to have an economic benefit from the indefinite-lived intangible assets.

If the qualitative assessment is not performed, or if the Company determines that it is not more likely than not that fair value exceeds the carrying value, performance of a quantitative impairment test is required. If the estimated fair value, which is based on internal discounted cash flow projections, exceeds the carrying value, no further work is required and no impairment loss is recognized. If the carrying value exceeds the estimated fair value, an impairment loss is recognized in the consolidated statement of operations and comprehensive loss in an amount equal to the excess of the carrying value over the estimated fair value.

The Company performed a qualitative assessment for its annual impairment test of its indefinite-lived intangible assets during the fourth quarter of Fiscal 2018 and evaluated macro-economic conditions, industry conditions, local competition and the overall performance of its restaurants. Based on this

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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qualitative assessment, the Company determined that it was not more likely than not that the indefinite-lived intangible assets had been impaired and the Company did not record any impairment loss for indefinite-lived intangible assets in Fiscal 2018.

*Definite-lived intangible assets*

Intangible assets with definite lives consist of franchise rights and favorable leasehold positions. Franchise rights arose from the Advent Acquisition and related to franchised restaurants under both the First Watch and The Egg & I trade names. Franchise rights also include reacquired rights from the Company's acquisitions of franchise restaurants. Favorable leasehold positions relate to lease agreements assumed resulting from the Company's acquisitions of franchised restaurants where the terms of the lease agreements are more favorable than the estimated market terms of the leases at the acquisition date. Intangible assets are amortized on a straight-line basis over the estimated remaining terms of either the respective lease agreement or franchise agreement.

Definite-lived intangible assets are tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. Recoverability of definite-lived intangible assets is measured by a comparison of the carrying amount of the assets to the sum of the future undiscounted net cash flows expected to result from the use and eventual disposition of the assets. If such assets are determined to be impaired, the impairment loss recognized is measured as the amount by which the carrying amount of the assets exceeds their fair value. Fair value is determined based on discounted future net cash flows expected to result from the use and eventual disposition of the assets.

The Company did not record any impairment loss for definite-lived intangible assets during Fiscal 2018.

**Self-Insurance Reserves**

The Company is self-insured primarily for employee group health claims nationally and workers' compensation in Ohio. The Company has purchased stop-loss insurance which funds individual health claims in excess of \$75,000 per occurrence and workers' compensation claims in Ohio in excess of \$500,000 per occurrence annually. The consolidated statement of operations and comprehensive loss includes expenses related to the costs of claims reported and an estimate of claims incurred but not reported. A liability of \$1.2 million for estimated unpaid claims is recorded within accrued liabilities on the consolidated balance sheet as of December 30, 2018.

**Revenue Recognition**

On January 1, 2018, the Company adopted ASU No. 2014-09, "*Revenue from Contracts with Customers*" (*Topic 606*), ("ASU 2014-09") and the related subsequent amendments, which were codified in the Accounting Standards Codification, (collectively, "ASC 606"), using the modified retrospective approach. Refer to "*Recently Adopted Accounting Standards*" below, and Note 4, *Revenues*, for additional information.

Revenues from restaurant sales are recognized when food and beverages are sold, net of discounts, and delivered to the customer. Sales tax collected from customers is excluded from restaurant sales and the obligation is recognized as sales tax payables until the taxes are remitted to the appropriate taxing authorities.

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

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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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 as one distinct performance obligation. Payments for the initial franchise fees are received either upon execution of the franchise agreement and/or upon opening of the restaurant. These payments are initially deferred and recognized as revenue over time throughout the contractual term of the related franchise agreement, in accordance with the revenue recognition method for the performance obligation. Unamortized deferred franchise fees are recognized as revenue upon the termination of franchise agreements with franchisees.

Royalty and system fund contributions are based on a percentage of sales and are recorded as revenue as the fees are earned and become receivable from franchisees.

A liability is initially established for the value of gift cards when sold and included within deferred revenues on the consolidated balance sheet. Revenue is recognized from gift card sales upon redemption by the customer. The Company 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, the Company 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.

### **Contract Liabilities**

Contract liabilities consist of (i) initial franchise fees and (ii) gift card liabilities for gift cards that have been sold but not yet redeemed. The short-term unamortized or unrecognized portion of these contract liabilities is included in deferred revenues on the consolidated balance sheet. The long-term portion of the deferred revenues is included in other long-term liabilities on the consolidated balance sheet.

### **Leases**

The Company leases its restaurant facilities, corporate offices and certain restaurant equipment under various non-cancelable agreements. At the inception of each lease, the Company determines if a contract is or contains a lease. The lease is classified as a finance lease if it meets certain criteria, or as an operating lease when it does not. The majority of the Company’s leases are classified as operating leases.

For operating leases that include rent holidays and rent escalation clauses, the Company recognizes rent expense on a straight-line basis over the lease term from the date the Company has the right to control the use of the leased property. The lease term includes the Company’s options to extend the lease only to the extent it is reasonably certain that the extension options will be exercised. The difference between the straight-line rent amounts and amounts payable under the lease agreements is recorded as deferred rent on the consolidated balance sheet and rent expense is recorded in occupancy expenses and general and administrative expenses on the consolidated statement of operations and comprehensive loss.

For operating leases that include contingent rent payments based upon sales in excess of specified thresholds, contingent rent is accrued in proportion to the sales recognized during the period when the achievement of such sales thresholds is deemed to be probable.

Incentives from landlords for leasehold improvements are amortized over the lease term of the respective lease on a straight-line basis as a reduction of rent expense. Lease acquisition costs, which are included in other long-term assets on the consolidated balance sheet, are capitalized and amortized over the lease term.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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**Cost of Sales**

Cost of sales is primarily comprised of food and beverage costs for inventory. The components of cost of sales are variable and typically fluctuate directly with sales volumes but may be impacted by changes in commodity prices or promotional activities.

**Pre-opening Expenses**

Pre-opening expenses consist of expenses incurred to open new restaurants and primarily consist of manager salaries, recruiting expenses, employee payroll and training costs. Pre-opening expenses also include rent expense recorded during the period between 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. Pre-opening expenses totaled \$3.7 million during Fiscal 2018 and are reported within other restaurant operating expenses and occupancy expenses on the consolidated statement of operations and comprehensive loss.

**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' product. 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 in the consolidated statement of operations and comprehensive loss.

**Advertising Costs**

Advertising costs are recognized as incurred or, in the case of advertisements, when the advertisement occurs. Advertising costs were \$3.4 million during Fiscal 2018 and were included in general and administrative expenses and in other restaurant operating expenses on the consolidated statement of operations and comprehensive loss.

**Debt Issuance Costs**

The Company records discount and deferred issuance costs incurred in connection with the issuance of long-term debt as a reduction of long-term debt and amortizes these costs over the term of the related debt. Amortization expense of debt discount and deferred issuance costs is included in interest expense on the consolidated statement of operations and comprehensive loss.

**Income Taxes**

The Company uses 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. 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 on the consolidated statement of operations and comprehensive loss.

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

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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utilized. A valuation allowance for deferred tax assets is provided when it is more likely than not that some portion or all 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 reversals of taxable temporary differences, and considering prudent and feasible tax planning strategies. The Company continues to monitor and evaluate the rationale for recording a valuation allowance against deferred tax assets. As the Company increases earnings and utilizes deferred tax assets, it is possible the valuation allowance could be reduced or eliminated.

The Company assesses liabilities for uncertain tax positions and recognizes 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. The Company determined that there were no material uncertain tax positions which were required to be recorded or disclosed in the consolidated financial statements.

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

### **Stock-Based Compensation**

The Company recognizes stock-based compensation expense for stock option awards granted, which is based on the fair value of the options on the date of grant using the Black-Scholes option pricing model. The fair value of service-based stock option awards is recognized as stock-based compensation expense on a graded vesting schedule 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. 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 on the consolidated statement of operations and comprehensive loss.

### **Recently Adopted Accounting Standards**

On January 1, 2018, the Company adopted ASC 606, which was effective for accounting periods beginning after December 15, 2017, using the modified retrospective method to those contracts which were not completed as of December 31, 2017. The new guidance is principle-based and provides a five-step model to determine when and how revenue is recognized. The core principle of ASC 606 is that revenue is recognized when promised goods or services are transferred to customers in an amount that reflects the consideration to which a company expects to be entitled in exchange for those goods or services.

ASC 606 did not impact the recognition of the Company's primary source of revenue from company-owned restaurants, whereby revenue is recognized when food and beverages are sold, net of discounts and sales tax. The Company also determined that its accounting for gift cards and related gift card breakage was consistent with the guidance in ASC 606 as the Company had historically recognized breakage in proportion to the historical pattern of customer redemption.

The Company licenses intellectual property to franchisees through franchise agreements, which include the right to develop, open and operate a restaurant over a contractual period of time. As part of these agreements, the Company receives an initial franchise fee, which was historically recognized as revenue

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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upon a new restaurant opening. Under ASC 606, the license to the Company's intellectual property and training are considered one distinct performance obligation. As such, with the adoption of ASC 606 effective January 1, 2018, initial franchise fees are recognized over the contractual term of the franchise agreement. The Company does not consider this advance consideration to be a significant financing component as the initial franchise fee, which represents an insignificant portion of the total fees expected to be collected from franchisees, functions to protect the Company from nonperformance by its franchisees and does not provide a significant financing benefit to the Company.

Franchise royalty fees are based on the sales of the underlying restaurant. ASC 606 did not impact the recognition of the royalty fees from the franchised restaurants and these fees continue to be recognized as the restaurant sales occur.

In addition, system fund contributions, which are based on the sales of the underlying restaurant, were previously recorded as a reduction to general and administrative expenses on the consolidated statement of operations and comprehensive loss. Under ASC 606, the system fund contributions are recognized in franchise revenues on the consolidated statement of operations and comprehensive loss. The Company recognized revenues related to system fund contributions of \$1.2 million during Fiscal 2018.

The Company recorded an increase of approximately \$2.9 million to the accumulated deficit balance for the cumulative effect of the change upon adoption of ASC 606, with an offsetting increase to deferred revenues. The Company also recognized a deferred tax asset of \$0.7 million and a corresponding valuation allowance of \$0.7 million. See Note 4, *Revenues*, for additional information.

On January 1, 2018, the Company adopted Accounting Standards Update ("ASU") No. 2016-04, "*Liabilities – Extinguishments of Liabilities* (Subtopic 405-20), ("ASU 2016-04"), which was issued in March 2016 and was effective for accounting periods beginning after December 15, 2017. ASU 2016-04 requires that breakage for liabilities related to the sale of prepaid stored-value products, which are deemed to be financial liabilities, be accounted for consistent with the breakage guidance in ASC 606. The adoption of ASU 2016-04 did not impact these consolidated financial statements as the Company's accounting for its prepaid gift cards and related breakage was consistent with ASC 606 and as such, was consistent with ASU 2016-04.

On January 1, 2018, the Company early adopted ASU No. 2017-04, "*Intangibles – Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*," ("ASU 2017-04"), on a prospective basis. ASU No. 2017-04 is effective for accounting periods beginning after December 15, 2019, with early adoption permitted. ASU 2017-04 eliminates the second step of goodwill impairment, which requires a hypothetical purchase price allocation. Under ASU 2017-04, goodwill impairment is calculated as the amount a reporting unit's carrying value exceeds its calculated fair value. The adoption of this standard did not materially impact these consolidated financial statements.

On January 1, 2018, the Company adopted ASU No. 2016-15: "*Statements of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*" ("ASU 2016-15"), which provides guidance on the statements of cash flows presentation of certain transactions where diversity in practice exists. ASU 2016-15 was effective for accounting periods beginning after December 15, 2017. The adoption of ASU 2016-15 did not materially impact these consolidated financial statements.

On January 1, 2018, the Company adopted ASU No. 2017-01, "*Business Combinations (Topic 805): Clarifying the Definition of a Business*" ("ASU 2017-01"). ASU No. 2017-01 was effective for periods beginning after December 15, 2017. The amendments in this update provide a more robust framework to use in determining when a set of assets and activities is a business. The amendments also provide more consistency in applying the guidance, reduce the costs of application, and make the definition of a business more operable. The adoption of ASU 2017-01 did not materially impact these consolidated financial statements.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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### **Recently Issued Accounting Pronouncements**

In February 2016, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2016-02: “*Leases (Topic 842)*”, (“ASU 2016-02”), which is effective for interim and annual periods beginning after December 15, 2018. ASU 2016-02 requires entities to recognize right-of-use assets and lease liabilities for both operating and financing leases on the balance sheet and disclose key information about leasing arrangements. In July 2018, ASU 2018-10 was issued, which improved clarity of ASU 2016-02, and ASU 2018-11 was issued, which allows entities to apply the new leases standard at the adoption date and recognize a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. Under the existing accounting guidance for leases, operating leases are not recorded on the consolidated balance sheet.

Recognition of expenses for both operating and finance leases under the new lease standard will be similar to existing accounting guidance and as a result, is expected to limit the impact of the changes on the consolidated statement of operations and comprehensive loss and the consolidated statement of cash flows. The Company intends to adopt the new guidance on December 31, 2018 (the first day of the 2019 fiscal year) using the transition method included in ASU 2018-11 and will not adjust comparative periods. The Company also intends to apply the package of three practical expedients, which allows the Company to not reassess previous accounting conclusions regarding lease identification and classification. In addition, the Company intends to apply the practical expedient of combining lease and non-lease components for its leases, as well as the short-term lease recognition exemption which provides the option to not recognize right-of-use assets and related liabilities for leases with terms of twelve months or less. The Company is still evaluating the impact of the adoption of ASU 2016-02 on its consolidated financial statements, however, the Company expects the adoption to have a significant impact to the consolidated balance sheet given the extent of the Company’s real estate portfolio. The Company expects to recognize right-of-use assets between \$241.0 million to \$246.0 million and lease liabilities between \$250.0 million and \$255.0 million on the consolidated balance sheet. The Company does not expect the adoption of ASU 2016-02 to have a material impact on the consolidated statement of operations and comprehensive loss or on the consolidated statement of cash flows. In preparation for adoption, the Company implemented a new lease accounting system.

In August 2018, the FASB issued ASU 2018-15, “Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract,” (“ASU 2018-15”), which 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, with amortization expense being recorded in the same expense line in the consolidated statement of operations and comprehensive loss as the hosted service costs and over the expected term of the hosting arrangement, which includes reasonably certain renewals. ASU 2018-15 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019 and should be applied either retrospectively or prospectively to all implementation costs incurred after the date of adoption, with early adoption permitted. The Company will adopt ASU 2018-15 prospectively on December 30, 2019. The impact of the adoption of this standard on the Company’s consolidated financial statements will depend on implementation costs of hosting arrangements that are service contracts entered into on or after December 30, 2019.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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### 3. Acquisitions

On January 15, 2018, the Company purchased the assets of eleven existing franchised restaurants from a franchisee pursuant to a right of first refusal for approximately \$14.0 million in cash. The acquisition was accounted for as a business combination and approximately \$2.7 million was attributed to goodwill, which was tax deductible for income tax purposes. The portion of the purchase price attributable to goodwill represents benefits expected as a result of the acquisition, which include sales and unit growth opportunities. The Company incurred transactions costs of approximately \$0.3 million, which were expensed as incurred in transaction and other expenses on the consolidated statement of operations and comprehensive loss. The results of operations of the acquired franchised restaurants are included in the consolidated financial statements from the acquisition date. Pro-forma financial information for the period prior to the acquisition is not presented due to the immaterial impact of the financial results on the consolidated financial statements.

The purchase price was allocated to the fair value of assets acquired and liabilities assumed at the acquisition date as follows:

<i>(in thousands)</i>	
Purchase price	\$13,986
<i>Recognized amounts of identifiable assets acquired and liabilities assumed:</i>	
Cash	22
Inventory	87
Prepaid rent	39
Prepaid expenses	20
Property, fixtures and equipment	7,160
Reacquired rights	3,960
Favorable leasehold positions	233
Accounts payable	(138)
Accrued liabilities	(57)
Deferred revenues	(56)
Goodwill	<u>\$ 2,716</u>

On June 14, 2018, the Company acquired a 75% controlling financial interest in TFW for approximately \$0.1 million. TFW was a franchisee with no operating restaurants at the time of the acquisition. The accounts of TFW have been included in the consolidated financial statements from the acquisition date, with the 25% non-controlling ownership interest reflected as a non-controlling interest in the consolidated financial statements. The non-controlling interest is entitled to 25% of TFW's excess distributable cash, as defined in the agreement. Any transactions entered into with the non-controlling interest are reflected as related party transactions.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

#### 4. Revenues

The following tables include a detail of contract liabilities with customers included on the consolidated balance sheet:

<i>(in thousands)</i>	<b>December 30, 2018</b>
Deferred revenues:	
Deferred gift card revenue	\$ 4,982
Deferred franchise fee revenue – current	186
Total current deferred revenues	\$ 5,168
Other long-term liabilities:	
Deferred franchise fee revenue – non-current	\$ 2,145

Changes in the Company's deferred gift card contract liabilities during Fiscal 2018 were as follows:

<i>(in thousands)</i>	<b>December 30, 2018</b>
Deferred gift card revenue:	
Balance, beginning of period	\$ 3,786
Gift card sales	11,742
Gift card redemptions	(9,497)
Gift card breakage	(1,049)
Balance, end of period	\$ 4,982

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 the Company's deferred franchise fee contract liabilities during Fiscal 2018 were as follows:

<i>(in thousands)</i>	<b>December 30, 2018</b>
Deferred franchise fee revenue:	
Balance, beginning of period	\$ 2,895
Cash received but not recognized as revenue	115
Revenue recognized	(679)
Balance, end of period	\$ 2,331

Total revenues recognized during Fiscal 2018 disaggregated by type was as follows:

<i>(in thousands)</i>	<b>Fiscal 2018</b>
Restaurant sales	\$ 342,357
Franchise revenues:	
Royalty and system fund contributions	6,730
Initial fees	679
Total revenues	\$ 349,766

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

Deferred revenues as of December 30, 2018 are expected to be recognized as follows:

	<i>(in thousands)</i>
Fiscal year	
2019	\$ 5,168
2020	\$ 143
2021	\$ 143
2022	\$ 143
2023	\$ 146
Thereafter	\$ 1,570

**5. Accounts Receivable**

Accounts receivable consisted of the following:

<i>(in thousands)</i>	<b>December 30, 2018</b>
Lease incentive receivables	\$ 2,647
Receivables related to gift card sales	1,021
Receivables from franchisees	665
Rebates receivable	472
Other receivables	173
Total accounts receivable	<u>\$ 4,978</u>

**6. Property, Fixtures and Equipment, Net**

Property, fixtures and equipment, net consisted of the following:

<i>(in thousands)</i>	<b>December 30, 2018</b>
Building and land improvements	\$ 1,381
Leased land asset	2,640
Leasehold improvements	79,294
Furniture, fixtures and equipment (including capitalized software)	65,786
Vehicles	423
Total property, fixtures and equipment	149,524
Accumulated depreciation	(32,447)
Construction-in-progress	7,683
Total property, fixtures and equipment, net	<u>\$ 124,760</u>

Depreciation expense was \$24.9 million during Fiscal 2018.

As of December 30, 2018, property, fixtures and equipment, net included \$2.6 million in land related to sale and leaseback transactions accounted for as financing obligations. See Note 11, *Leases*, for additional information.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

**7. Goodwill**

The change in the carrying value of goodwill was as follows:

<i>(in thousands)</i>	
Balance as of December 31, 2017	\$ 328,008
Increases	2,826
Balance as of December 30, 2018	<u>\$ 330,834</u>

**8. Intangibles**

Intangible assets, net consisted of the following:

<i>(in thousands)</i>	Weighted Average Useful Lives	December 30, 2018		Net Carrying Value
		Gross Carrying Value	Accumulated Amortization	
Registered trademarks, trade names and domains	Indefinite	\$ 166,500	\$ —	\$ 166,500
Franchise rights	11 years	11,340	(1,272)	10,068
Favorable leasehold positions	11 years	2,067	(390)	1,677
		<u>\$ 179,907</u>	<u>\$ (1,662)</u>	<u>\$ 178,245</u>

Unfavorable leasehold positions, which are included in other long-term liabilities on the consolidated balance sheet, relate to leases acquired as part of the Company's acquisitions of franchised restaurants where the terms of the leasehold contracts are less favorable than the estimated market terms of the leases at the acquisition date. Unfavorable leasehold positions are amortized on a straight-line basis over the remaining terms of the lease agreements.

<i>(in thousands)</i>	Weighted Average Useful Lives	December 30, 2018		Net Carrying Value
		Gross Carrying Value	Accumulated Amortization	
Unfavorable leasehold positions	8 years	\$ (1,119)	\$ 258	\$ (861)

Total amortization expense related to intangible assets and unfavorable leasehold positions was \$1.2 million during Fiscal 2018. The Company estimates future amortization for intangible assets and unfavorable leasehold positions to be approximately \$1.2 million for each of the next five fiscal years ending December 31, 2023.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

**9. Accrued Liabilities**

Accrued liabilities consisted of the following:

<i>(in thousands)</i>	<b>December 30, 2018</b>
Construction liabilities	\$ 5,285
Sales tax	2,462
Self-insurance and general liability reserves	1,580
Credit card fees	679
Contingent rent	424
Property tax	337
Utilities	278
Other	2,626
Total Accrued liabilities	<u>\$ 13,671</u>

**10. Debt**

Long-term debt, net consisted of the following:

<i>(in thousands)</i>	<b>Interest Rate</b>	<b>December 30, 2018</b>
Initial term loan	8.26%	\$ 153,063
Initial delayed draw term facility	8.26%	34,833
Initial revolving facility	10.25%	7,500
Less: Unamortized debt discount and deferred issuance costs		(4,888)
Total debt, net		190,508
Less: Current portion of long-term debt		(1,898)
Long-term debt, net		<u>\$ 188,610</u>

The Company, through one of its wholly-owned subsidiaries, entered into a credit agreement on August 21, 2017, (“Credit Agreement”), which includes an initial term loan, an initial delayed draw term facility and an initial revolving facility (collectively, the “Senior Credit Facilities”) for a total available borrowing commitment of \$225.0 million, including a letter of credit facility with a \$5.0 million sublimit. The Company has pledged substantially all of its assets as collateral under the Credit Agreement. The Credit Agreement matures on August 20, 2023 and 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 the Company; materially altering the Company’s business; engaging in transactions with affiliates and entering into burdensome agreements. The Company was in compliance with the covenants as of December 30, 2018.

The Senior Credit Facilities are comprised of the following:

**1) Initial Term Loan**

The initial term loan available commitment of \$155.0 million is to be repaid in quarterly installments beginning December 31, 2017, in amounts equal to 0.25% of the initial term loan plus interest. Remaining principal and unpaid interest are to be paid upon maturity.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

2) *Initial Delayed Draw Term Facility*

The initial delayed draw term facility available commitment of \$50.0 million terminates on the earlier of two years after the Advent Acquisition or the date the initial delayed draw term loan commitment is wholly terminated. The initial delayed draw term facility includes a commitment fee at a rate of 1.00% per annum applicable to the unused commitments under the initial delayed draw term facility. Principal payments at a rate of 0.25% of the original principal amount are due quarterly with the remainder of principal and unpaid interest due at maturity.

3) *Initial Revolving Facility*

The initial revolving facility has an available commitment in the amount of \$20.0 million and includes a commitment fee at a rate of 0.50% per annum of the initial revolving credit commitment.

The Credit Agreement includes a prepayment penalty of 1.00% of the aggregate principal amounts of the initial term loan and the initial delayed draw term facility if prepaid on or prior to August 21, 2019.

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%.

The estimated fair value of the outstanding debt as of December 30, 2018 was as follows:

<i>(in thousands)</i>	<b>December 30, 2018</b>
Initial term loan	\$ 154,544
Initial delayed draw term facility	35,342
Initial revolving facility	7,541
Total	<u>\$ 197,427</u>

The fair value of debt, which is classified as Level 3 in the fair value hierarchy, was estimated using discounted cash flow models using market yield and yield volatility.

Principal payments due on the outstanding debt as of December 30, 2018 are as follows:

Fiscal year	<i>(in thousands)</i>
2019	\$ 1,898
2020	1,898
2021	1,898
2022	1,898
2023	187,804
Total	<u>\$ 195,396</u>

**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

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

approximates its fair value. As of December 30, 2018, 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.

## 11. Leases

### *Operating Leases*

The Company leases its restaurant facilities and corporate offices, as well as certain restaurant equipment under non-cancelable operating leases having terms expiring between 2019 and 2049. Most of the Company's restaurant facility leases have renewal clauses which are exercisable at the option of the Company. Certain of the leases for the Company's restaurant facilities require the payment of contingent rentals based on a percentage of gross revenues, as defined and also generally require the Company to pay a proportionate share of common area maintenance expenses, real estate taxes, and insurance premiums.

Total rent expense was approximately \$36.3 million and included contingent rent of approximately \$0.6 million during Fiscal 2018. Rent expense is included in occupancy expenses and general and administrative expenses on the consolidated statement of operations and comprehensive loss.

Future minimum lease payments on non-cancelable operating leases are as follows:

Fiscal year	(in thousands)
2019	\$ 27,819
2020	28,483
2021	28,478
2022	29,001
2023	29,600
Thereafter	393,366
Total future minimum lease payments (1)	\$ 536,747

- (1) Excludes approximately \$64.4 million of lease payments related to 17 restaurant facility leases signed, but not yet commenced as of December 30, 2018.

### *Financing Obligations*

During 2014, the Company acquired land and buildings valued at \$1.5 million and \$0.8 million, respectively. Subsequently, in 2014, the Company also entered into an agreement relating to the sale and leaseback of the land for use in restaurant operations for cash proceeds of \$1.5 million. As the Company had continuing involvement with the building, the sale of the land did not qualify for sale accounting. As a result, the cash proceeds were recorded as a financing obligation in the amount of \$1.5 million on the consolidated balance sheet.

During 2015, the Company purchased a restaurant that had been operating under a franchise agreement. The acquired land and leasehold improvements were valued at \$1.2 million and \$0.8 million, respectively. Subsequently, in 2015, the Company entered into an agreement relating to the sale and leaseback of the land for use in restaurant operations for cash proceeds of \$3.1 million. As the Company had continuing involvement with the building, the sale of the land did not qualify for sale accounting. As a result, the cash proceeds were recorded as a financing obligation in the amount of \$3.0 million on the consolidated balance sheet.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

Future lease payments on the financing obligations as of December 30, 2018 are as follows:

	<i>(in thousands)</i>
Fiscal year	
2019	\$ 262
2020	283
2021	283
2022	283
2023	283
Thereafter	7,466
Total future minimum lease payments	<u>\$ 8,860</u>

## 12. Income Taxes

Income tax benefit consisted of the following:

<i>(in thousands)</i>	<u>Fiscal 2018</u>
Current (benefit) provision:	
Federal	\$ 4
State	104
	<u>108</u>
Deferred (benefit) provision:	
Federal	(345)
State	16
	<u>(329)</u>
Income tax benefit	<u>\$ (221)</u>

A reconciliation of the federal statutory income tax rate to the Company's effective income tax rate is as follows:

	<u>Fiscal 2018</u>
Income taxes at federal statutory rate	(21.0)%
State income taxes, net of federal tax effect	0.8
FICA tip credit	(25.5)
Valuation allowance for federal and state	48.1
Permanent items	0.3
Rate change	(3.7)
Other	(0.8)
Total	<u>(1.8)%</u>

The Company has a blended federal and state statutory rate of approximately 25%. The effective income tax rate for Fiscal 2018 was lower than the blended federal and state statutory rate primarily due to the valuation allowance for federal and state deferred tax assets, partially offset by the benefit of tax credits for FICA taxes on certain employees' tips.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

The components of deferred tax assets and liabilities were as follows:

<i>(in thousands)</i>	<b>December 30, 2018</b>
<b>Deferred income tax assets</b>	
FICA tip credit	\$ 19,739
Net operating loss	10,042
Accrued rent	1,762
Lease incentives	1,576
Organizational costs	1,200
Interest limitation	908
Accrued compensation	928
Deferred revenues	588
Stock options	467
Other	901
Valuation allowance	(24,654)
<b>Total deferred income tax assets</b>	<b>13,457</b>
<b>Deferred income tax liabilities</b>	
Depreciation	(13,280)
Indefinite-lived assets	(43,039)
<b>Total deferred income tax liabilities</b>	<b>(56,319)</b>
<b>Net deferred income tax liabilities</b>	<b>\$ (42,862)</b>

Realization of the Company's 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 some portion or all of the deferred tax assets will not be realized. The Company considered all sources of taxable income including (i) taxable income in any available carry back period, (ii) the 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. Based on an evaluation of these sources of taxable income, the Company recognized a valuation allowance of \$24.7 million as of December 30, 2018. The Company will maintain a valuation allowance on its deferred tax assets until sufficient positive evidence exists to support the reversal of the valuation allowance, 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 \$43.6 million as of December 30, 2018, that will expire between 2033 and 2037. The Company has state net operating loss carryforwards of \$21.9 million as of December 30, 2018 that will expire between 2020 and 2038. The Company has general business tax credits of \$19.9 million, which can be carried forward twenty years and will expire between 2028 and 2038. Approximately \$38.3 million, \$20.4 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 the Company is able to utilize these federal and state loss carryforwards and general business credits that were accumulated from operations prior to the Advent Acquisition 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, the Company recorded a contingent consideration liability

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

of \$1.2 million, of which \$0.2 million is in accrued liabilities and \$1.0 million is in other long-term liabilities on the consolidated balance sheet for expected payments to be made to the previous shareholders.

Changes in the deferred tax asset valuation allowance were as follows:

<i>(in thousands)</i>	
Balance as of December 31, 2017	\$ 16,609
Increases to income tax benefit	8,045
Balance as of December 30, 2018	\$ 24,654

The Company is subject to examination by federal, state, and local jurisdictions, where applicable. As of December 30, 2018, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations are from the year 2013 forward.

On December 22, 2017, the U.S. government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (the "Tax Act"). The Tax Act made broad and complex changes to the U.S. tax code and the Company's net deferred taxes assets and liabilities were revalued at the enacted U.S. corporate rate in Fiscal 2017. The Company had completed its assessment of income tax effects of the Tax Act in Fiscal 2017 and therefore did not make any further adjustments in association with the filing of its 2017 federal income tax return in Fiscal 2018.

### 13. Stockholders' Equity

The Company is authorized to issue 4,321,000 shares, all of which shall be common stock having a par value of \$0.01. 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 declared by the board of directors. Through December 30, 2018, no cash dividends were declared or paid. 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.

### 14. Defined Contribution Plan

The Company established a defined contribution 401(k) savings plan ("401(k) Plan") covering employees. The 401(k) Plan 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 the Company's management. All Company contributions vest over a five-year period. Total expense for the Company's contributions to the 401(k) Plan during Fiscal 2018 was \$0.5 million.

### 15. Stock-Based Compensation

The Company grants stock-based awards 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 518,520 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. As of December 30, 2018, there was a total of 150,301 common stock authorized and available for future issuance.

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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 achieving certain operational performance targets, as defined. Stock-based compensation expense for the performance-based option awards is recognized if it is considered probable that the operational performance targets will be met. Any performance-based option awards not achieving the operational targets 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 stock option transactions under the Options Plan during Fiscal 2018 was as follows:

	<b>December 30, 2018</b>	
	<b>Number of Options</b>	<b>Weighted- Average Exercise Price</b>
Outstanding, beginning of year	339,000	\$ 100.00
Granted	56,719	\$ 111.09
Forfeited and expired	(27,500)	\$ 100.00
Outstanding, end of year	368,219	\$ 101.70
Exercisable, end of year	31,650	\$ 100.00

The fair value of the non-vested options at grant dates was as follows:

	<b>Number of Options</b>	<b>Grant Date Fair Value</b>
Non-vested, December 31, 2017	339,000	\$ 19.87
Granted	56,719	\$ 30.79
Vested	(31,650)	\$ 19.87
Forfeited and expired	(27,500)	\$ 19.87
Non-vested, December 31, 2018	<u>336,569</u>	<u>\$ 21.71</u>

The fair value of vested stock options was \$0.6 million during Fiscal 2018. Stock-based compensation expense was \$1.3 million during Fiscal 2018 and was included in general and administrative expense on the consolidated statement of operations and comprehensive loss.

As of December 30, 2018, the amount of stock-based compensation expense not yet recognized on non-vested time-based awards was approximately \$2.1 million and will be recognized over a weighted-average period of approximately two years. As of December 30, 2018, the amount of stock-based compensation expense not yet recognized on non-vested performance-based awards was approximately \$4.2 million and will be expensed upon the performance conditions becoming probable. The remaining contractual life for stock option awards granted was approximately 9 years at December 30, 2018.

The Company's management utilized the following assumptions to determine the fair value of stock option awards:

	<b>Fiscal 2018</b>
Weighted average risk-free interest rate	2.88%
Expected term (years)	5.6
Weighted average expected volatility	31.43%
Expected dividend yield	—

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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 set of peer companies in the restaurant industry. As the Company has historically been a private company, the Company lacks company-specific historical or implied volatility information. Therefore, the Company 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.

## 16. Commitments and Contingencies

### *Purchase Commitments*

The Company entered into an agreement with a vendor effective January 1, 2016 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 cost per gallon of product ranged from \$14.49 to \$16.02 in Fiscal 2018.

In the normal course of business, the Company has purchase agreements with terms of one year or less, expiring at various dates through Fiscal 2019 that require the Company to purchase minimum amounts of products. 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 long-term, exclusive contracts with certain vendors to supply food, beverages, paper goods and other supplies, obligating the Company to purchase specified quantities and/or products at fixed prices. There are no material financial penalties associated with these commitments in the event of early termination.

In Fiscal 2018, the Company purchased 100% of its pork from two suppliers, 100% of its eggs from two suppliers, 80% of its avocados from one supplier and 100% of its coffee from one supplier.

### *Legal Proceedings*

The Company is subject to legal proceedings, claims and liabilities that arise in the ordinary course of business. In the opinion of the Company's management, the amount of the ultimate liability with respect to these matters was not material as of December 30, 2018. In the event any litigation losses become probable and estimable, the Company will recognize any anticipated losses.

## 17. Net Loss Attributable to First Watch Restaurant Group, Inc. 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. during Fiscal 2018:

<i>(in thousands, except share and per share data)</i>	<b>Fiscal 2018</b>
<b>Numerator:</b>	
Net loss attributable to First Watch Restaurant Group, Inc.	\$ (12,296)
<b>Denominator:</b>	
Weighted average common shares outstanding – basic and diluted	3,802,481
Net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted	\$ (3.23)

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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 stock option awards outstanding and unvested as of December 30, 2018 under the Options Plan determined using the treasury-stock method. All stock option awards outstanding were excluded from the calculation of diluted loss per common share because of their anti-dilutive impact for Fiscal 2018. As a result, there was no difference between basic and diluted net loss per common share attributable to First Watch Restaurant Group, Inc. for Fiscal 2018.

**18. Related Party Transactions**

At December 30, 2018, a receivable of approximately \$0.2 million is due from a member of TFW.

**19. Condensed Financial Information of Registrant (Parent Company Only)**

**FIRST WATCH RESTAURANT GROUP, INC.**  
**(PARENT COMPANY ONLY)**  
**CONSOLIDATED BALANCE SHEET**  
*(IN THOUSANDS, EXCEPT SHARES AND PER SHARE AMOUNTS)*

	<b>December 30, 2018</b>
<b>Assets:</b>	
Investment in subsidiaries	\$ 374,424
<b>Equity:</b>	
Common stock; \$0.01 par value; 4,321,000 shares authorized; 3,802,481 shares issued and outstanding	\$ 38
Additional paid-in capital	382,077
Accumulated deficit	(7,691)
Total equity attributable to First Watch Restaurant Group, Inc.	\$ 374,424

**FIRST WATCH RESTAURANT GROUP, INC.**  
**CONSOLIDATED STATEMENT OF OPERATIONS AND COMPREHENSIVE LOSS**  
*(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)*

	<b>Fiscal 2018</b>
<b>Equity in net loss of subsidiaries</b>	
Net loss	\$ (12,302)
Net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted	\$ (3.23)
Weighted average number of common shares outstanding – basic and diluted	3,802,481

A statement of cash flows has not been presented as First Watch Restaurant Group, Inc. did not have any cash as of, or for the fiscal year ended December 30, 2018.

*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

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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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 30, 2018.

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 U.S. GAAP have been condensed or omitted. The accompanying condensed financial information should be read in conjunction with the Company's consolidated financial statements and related notes thereto.

## **20. Subsequent Events**

The Company has evaluated subsequent events through January 8, 2020, the date on which the consolidated financial statements were available to be issued.

### *Impairment*

In the second quarter of the fiscal year ended December 29, 2019 ("Fiscal 2019"), the Company's management conducted a strategic review of the Company's operations and identified needs for increased capital investment and for 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, the Company's management determined there was a reluctance to make sufficient capital investment and operational changes. As such, the Company's 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.

The Company's 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, the Company recognized a second quarter non-cash impairment charge of \$29.3 million related to the indefinite-lived intangible assets. Additionally, the Company's management evaluated The Egg & I franchise rights, which are definite-lived intangible assets amortized over 13 years. As a result of this evaluation, the Company recognized a non-cash impairment charge of \$3.2 million in the second quarter of Fiscal 2019. The remaining net book value of \$0.3 million and \$0.4 million for the The Egg & I trade name and franchise rights, respectively, will be amortized through the end of Fiscal 2019, which is the estimated time by which all remaining restaurants under the The Egg & I trade name are expected to close or disenfranchise.

Lease termination and other related closure expenses for restaurants with The Egg & I trade name of approximately \$0.5 million were recorded within transaction and other expenses on the consolidated statement of operations and comprehensive loss in Fiscal 2019.

### *Acquisitions*

During Fiscal 2019, the Company acquired and obtained control of certain franchised restaurants, 11 of which operated under the The Egg & I trade name and 7 of which operated under the First Watch trade

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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name, from multiple franchisees for a total aggregated price of \$21.8 million in cash. These acquired restaurants were converted to company-owned restaurants operating under the First Watch trade name. The acquisitions were accounted for as business combinations and approximately \$14.6 million was attributed to goodwill, which is tax deductible for income tax purposes. The portion of the purchase price attributable to goodwill represents benefits expected as a result of the acquisitions, including sales and unit growth opportunities. The Company incurred transaction costs of approximately \$0.8 million, which were recorded in transaction and other expenses on the consolidated statement of operations and other comprehensive loss. The results of operations, financial position and cash flows of all the Company's acquired restaurants are included in the consolidated financial statements from the dates of acquisition.

#### *Lease termination*

On December 16, 2019, the Company entered into an agreement to terminate the lease for one of its restaurant locations in January 2020. Pursuant to the agreement, the Company received \$0.45 million in December 2019 and will receive an additional \$0.45 million upon vacating the leased property in January 2020. The Company recorded a gain on lease termination of \$0.9 million in transaction and other expenses on the consolidated statement of operations and comprehensive loss in December 2019.

#### *Debt*

The Company executed an amendment to its Credit Agreement, which was effective on February 28, 2019. The amendment provided for a new delayed term loan commitment in an aggregate principal amount of \$50.0 million, which was available on February 28, 2019 and until February 28, 2021. In addition, the Initial Delayed Draw Term Facility Commitment termination date was amended to mean the earlier of two years after the amendment effective date, and the date the Initial Delayed Draw Term Facility Commitment is wholly terminated. Interest continues to be calculated based on the election, by the Company, to accrue interest at the "Alternate Base Rate" or "Eurocurrency Rate" plus the "Applicable Rate" based on the Company's leverage ratio. Applicable Rate was amended and ranges from 4.25% to 6.00%. The amendment to the Credit Agreement also extended the 1.00% prepayment penalty of the aggregate principal amounts of the initial term loans to on or prior to December 31, 2019. The amendment to the Credit Agreement is accounted for as a debt modification. The Company incurred a total of \$0.9 million in costs, of which \$0.5 million is recognized and amortized as debt discount and deferred issuance costs and \$0.4 million is recorded on the consolidated statement of operations and comprehensive loss in the first quarter of Fiscal 2019.

The Company executed a second amendment to its Credit Agreement, which was effective on December 20, 2019. The second amendment provided for a new delayed term loan commitment in an aggregate principal amount of \$40.0 million, which was available on December 20, 2019 and until December 20, 2021. Interest continues to be calculated based on the election, by the Company, to accrue interest at the "Alternate Base Rate" or "Eurocurrency Rate" plus the "Applicable Rate" based on the Company's leverage ratio. The amendment to the Credit Agreement is accounted for as a debt modification. The Company incurred a total of \$0.7 million in costs, of which \$0.4 million is recognized and amortized as debt discount costs and \$0.3 million is recorded on the consolidated statement of operations and comprehensive loss.

#### *Legal*

During Fiscal 2019, the Company had been engaged in pre-litigation settlement discussions relating to a matter involving former employees. Although the Company believes the allegations are not supported by

**FIRST WATCH RESTAURANT GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

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any evidence or the law, the Company considers it probable that there will be a settlement and an outflow of funds related to this matter. As a result, the Company recorded a total liability of \$0.6 million in Fiscal 2019.

*Stock Options*

During Fiscal 2019, a total of 70,099 stock option awards were granted to certain employees and non-employee directors of the Company.

*Non-controlling interest*

On December 24, 2019, the Company entered into an agreement to acquire the 25% non-controlling interest in TFW for \$0.45 million. The Company accounted for this acquisition as an equity transaction with the difference between the cash paid and the carrying amount of the non-controlling interest recognized as a decrease in equity attributable to First Watch Restaurant Group, Inc.

Shares



Common Stock

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Prospectus

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, 2020

Until \_\_\_\_\_, 2020 (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.

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**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 the or

	<b>Amount Paid or to be Paid</b>
SEC registration fee	\$ *
FINRA filing fee	*
Stock exchange listing fee	*
Blue sky qualification fees and expenses	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent and registrar fees and expenses	*
Miscellaneous expenses	*
Total	<u>\$ *</u>

\* To be provided by amendment

**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.

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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:

- In August 2017, in connection with the Advent Acquisition, the Registrant issued 3,802,481 shares to AI Fresh Holding Limited Partnership, a Delaware limited partnership in which funds affiliated with or managed by Advent, certain officers and directors of the company and certain equity holders of the acquired company hold interests, for total consideration of \$380,248,085, or \$100 per share.
- In August 2017, the Registrant granted options to 32 employees and directors to purchase an aggregate of 364,000 shares of its common stock at an exercise price of \$100 per share.
- 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 through October 2019, the Registrant granted options to four employees and directors to purchase an aggregate of 30,429 shares of its common stock at an exercise price of \$160 per share.

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.

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### **Item 16. Exhibits and Financial Statement Schedules**

#### **(a) Exhibits:**

<b>Exhibit No.</b>	<b>Description</b>
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	Bylaws of First Watch Restaurant Group, Inc., as currently in effect.
4.1*	Form of Certificate of Common Stock.
5.1*	Opinion of Weil, Gotshal & Manges, LLP.
10.1*	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.
10.2	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*	Form of First Watch Restaurant Group, Inc. 2020 Equity Incentive Plan.
10.5*	Form of Director Indemnification Agreement for First Watch Restaurant Group, Inc.
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).

\* To be filed by amendment.

### **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.

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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 University Park, State of Florida, on \_\_\_\_\_, 2020.

### FIRST WATCH RESTAURANT GROUP, INC.

By: \_\_\_\_\_  
Name: Christopher A. Tomasso  
Title: President, Chief Executive Officer and Director

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned constitutes and appoints each of Christopher A. Tomasso, Mel Hope and Jay Wolszczak, or any of them, each acting alone, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his name, place and stead, in any and all capacities, to sign this Registration Statement on Form S-1 (including all pre-effective and post-effective amendments and registration statements filed pursuant to Rule 462(b) under the Securities Act), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, each acting alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming that any such attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on \_\_\_\_\_, 2020.

<u>Signature</u>	<u>Title</u>
_____ Christopher A. Tomasso	President, Chief Executive Officer and Director (Principal Executive Officer)
_____ Mel Hope	Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer)
_____ Jay Wolszczak	General Counsel and Secretary
_____ Kenneth L. Pendery, Jr.	Chairman Emeritus
_____ Ralph Alvarez	Director and Chairman of the Board
_____ Tricia Glynn	Director
_____ William Kussell	Director

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Signature

Title

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David Mussafer

Director

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Michael White

Director

**Delaware**  
The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "FIRST WATCH RESTAURANT GROUP, INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF AUGUST, A.D. 2017, AT 11:48 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

6507248 8100  
SR# 20175665069

Authentication: 203036782  
Date: 08-10-17

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**CERTIFICATE OF INCORPORATION**

**OF**

**FIRST WATCH RESTAURANT GROUP, INC.**

THE UNDERSIGNED, being a natural person for the purpose of organizing a corporation under the General Corporation Law of the State of Delaware, hereby certifies that:

FIRST: The name of the Corporation is First Watch Restaurant Group, Inc. (the "Corporation").

SECOND: The address of its registered office in the State of Delaware is c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808, County of New Castle. The name of its registered agent for service of process in the State of Delaware at such address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as from time to time amended.

FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is 100 shares, all of which shares shall be Common Stock having a par value of \$0.01.

FIFTH: The name and mailing address of the incorporator is as follows: Maura L. Foley, c/o Weil, Gotshal & Manges LLP, 100 Federal Street, Boston, Massachusetts 02110.

SIXTH: In furtherance and not in limitation of the powers conferred by law, subject to any limitations contained elsewhere in this Certificate of Incorporation, bylaws of the Corporation may be adopted, amended or repealed by a majority of the board of directors of the Corporation, but any bylaws adopted by the board of directors may be amended or repealed by the stockholders entitled to vote thereon. Election of directors need not be by written ballot.

SEVENTH: (a) A director of the Corporation shall not be personally liable either to the Corporation or to any stockholder for monetary damages for breach of fiduciary duty as a director, except (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, or (ii) for acts or omissions which are not in good faith or which involve intentional misconduct or knowing violation of the law, or (iii) for any matter in respect of which such director shall be liable under Section 174 of Title 8 of the General Corporation Law of the State of Delaware or any amendment thereto or successor provision thereto, or (iv) for any transaction from which the director shall have derived an improper personal benefit. Neither amendment nor repeal of this paragraph (a) nor the adoption of any provision of the Certificate of Incorporation inconsistent with this paragraph (a) shall eliminate or reduce the effect of this paragraph (a) in respect of any matter occurring, or any cause of action, suit or claim that, but for this paragraph (a) of this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

(b) The Corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to, or testifies in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature, by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, employee benefit plan, 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 to the full extent permitted by law, and the Corporation may adopt bylaws or enter into agreements with any such person for the purpose of providing for such indemnification.

EIGHTH: The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Incorporation on this 10th day of August, 2017.

By: /s/ Maura L. Foley  
Maura L. Foley, Incorporator

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.

\* \* \* \* \*

**EMPLOYMENT AGREEMENT**

This EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of August 21, 2017 (the “Effective Date”) between First Watch Restaurants, Inc., a Delaware corporation (together with its successors and assigns permitted hereunder, the “Company”), and Christopher Tomasso (the “Executive”).

**RECITALS**

WHEREAS, the Company and the Executive entered into that certain Employment Agreement effective October 1, 2012 (the “Prior Employment Agreement”) which employment agreement is hereby terminated, cancelled and of no further force or effect; and

WHEREAS, the Board of Directors of the Company (the “Board”) has determined that it is in the best interest of the Company and its stockholders to enter into this Agreement and to continue to employ the Executive on the terms and conditions set forth herein.

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

**AGREEMENT**

**1. Employment Period.** The Executive’s term of employment hereunder shall commence on the Effective Date of this Agreement and continue until the first anniversary of the Effective Date, unless earlier terminated pursuant to Section 3 (the initial employment period and any extended employment period pursuant to this Section 1 shall be referred to herein as the “Employment Period”). Upon the first anniversary of the Effective Date, and on each anniversary thereafter, this Agreement shall automatically renew on the same terms and conditions set forth herein (as amended in writing from time to time by the parties) for one (1) year periods unless the Company or the Executive gives the other party written notice of its/Executive’s election not to renew the Employment Period no later than thirty (30) days prior to the end of the Employment Period. If either party provides a notice not to renew pursuant to this Section 1 and the Executive continues to be employed by the Company after the Employment Period, for any reason, Executive will do so as an at will employee and not pursuant to this Agreement, *provided that*, the Executive’s post-termination obligations pursuant to Sections 4, 5, 6, 8 and 10 of this Agreement (the “Continuing Obligations”) shall survive any such continued at will employment and termination thereof.

**2. Terms of Employment.**

A. **Position and Duties.** During the Employment Period, the Executive shall serve as the President of the Company and, in so doing, shall perform all normal duties and responsibilities associated with such position, subject to the general direction, approval and control of the Chief Executive Officer of the Company and the Board. During the Employment Period, and excluding any periods of vacation or other leaves to which the

Executive is entitled, the Executive agrees to devote substantially all of Executive's business time to the business and affairs of the Company, to use Executive's best efforts to perform faithfully, effectively and efficiently Executive's duties and responsibilities, and to observe and comply with the Company's rules and policies as adopted by the Company from time to time. Provided, however, that the foregoing shall not prevent Executive from (i) maintaining the ownership interests that Executive has in other entities as of the Effective Date, or (ii) maintaining the positions that Executive holds on boards and with trade associations as of the Effective Date. During the Employment Period, the Executive will be employed by the Company on an at will basis, which means that either Executive or the Company can terminate the employment relationship at any time, with or without cause, subject to the terms and conditions set forth in Section 3.

**B. Compensation.**

(1) **Annual Base Salary.** During the Employment Period, the Executive shall receive an annual base salary in the amount of \$325,000.00 less applicable deductions under federal, state and local laws (the "Annual Base Salary"), paid in accordance with the customary payroll practices of the Company. The Board, in its discretion, may at any time change the amount of the Annual Base Salary to such greater amount as it may deem appropriate, and the term "Annual Base Salary," as used in this Agreement, shall refer to the Annual Base Salary as it may so be changed.

(2) **Annual Bonus.** During the Employment Period, the Executive shall be eligible to participate in the Company's key employee bonus plan pursuant to the terms and conditions of that plan, as amended from time to time by the Board, but not within the bonus period ending on December 31, 2017. The Executive shall be eligible to receive an annual bonus of up to 75% of the Annual Base Salary, which will be based upon the achievement of certain clearly defined goals (including, without limitation, achieving EBITDA targets) established by the Board or its Compensation Committee (the "Annual Bonus"), and provided to the Executive prior to the commencement of each annual bonus period. The implementation, continuation and termination of any incentive plan referenced hereunder shall be within the sole discretion of the Board provided that the bonus plan shall not be terminated or materially reduced during the bonus period ending on December 31, 2017. The Annual Bonus, if any, shall be paid to the Executive as set forth in the annual incentive plan. The Executive shall only be eligible to receive the Annual Bonus if Executive is actively employed on the Annual Bonus payout date subject to Section 3.

(3) **Equity.** During the Employment Period, the Executive shall be eligible to participate in the equity incentive plan of AI Fresh Parent, Inc. ("Parent") maintained for senior executives pursuant to the terms and conditions of that plan, as amended from time to time.

(4) **Benefits.** During the Employment Period, the Executive shall be entitled to participate in each benefit plan sponsored by the Company to the extent such benefit plan is generally available to similarly-situated employees of the Company and the Executive is otherwise eligible under the terms of such benefit plan. The amount, eligibility, and extent of the benefits shall be governed by the applicable benefit plan or program of the Company. The Executive shall be entitled to accrue three (3) weeks of paid vacation per year on a pro-rata basis. Vacation days shall not accumulate from year to year and unused vacation days will not be paid upon termination subject to Section 3. Any vacation shall be taken at the reasonable and mutual convenience of the Company and the Executive.

(5) Supplemental Life Insurance Plan. The Executive shall be entitled to participate in a supplemental life insurance plan that may be provided by the Company from time to time, in accordance with the terms and conditions of such programs as administered by the Company.

(6) Expenses. During the Employment Period, the Company shall reimburse the Executive for all reasonable business expenses of types authorized by the Company and reasonably and necessarily incurred or paid for by the Executive in the performance of Executive's duties, responsibilities, and authorities hereunder. The Executive shall provide the Company with all documentation and receipts requested by the Company and required to establish the amount and nature of such expenses. The Executive shall comply with such budget limitations and approval and reporting requirements with respect to expenses as the Company may establish from time to time.

### **3. Obligations upon Termination**

A. Termination/Expiration. The provisions of this Section 3 do not in any way affect the Executive's at will status as provided in Section 2. The Executive is entitled to no other payments, compensation, severance or benefits upon termination except as expressly stated in this Section 3. Upon termination or expiration/nonrenewal of this Agreement, the Executive is entitled to receive any unpaid Annual Base Salary due for the period prior to and through the date of termination, and following submission of proper expense reports by the Executive, reimbursement for all expenses properly incurred in accordance with Section 2.B(6) of this Agreement (jointly, the "Accrued Obligations"). Upon termination for any reason (except death) or expiration/nonrenewal of this Agreement, the Executive shall continue to be fully bound by the Continuing Obligations.

B. Notice of Termination. Any termination of the Executive's employment shall be communicated to the other party by a Notice of Termination. For the Executive, a "Notice of Termination" means a written notice provided to the Company at least thirty (30) days prior to the Executive's last day of employment, *provided however*, the Company may accelerate the Executive's last day of employment to any date within the thirty (30) day notice period without converting the Executive's resignation into anything but a voluntary resignation. For the Company, a "Notice of Termination" means any written notice to the Executive, at any time, which indicates the effective date of termination of the Executive's employment subject to this Section 3.

C. Termination by the Company Due to Death or Disability.

(1) Termination for Death or Disability. The Executive's employment hereunder shall terminate automatically during the Employment Period upon the Executive's death or, at the option of the Company, upon Executive's Disability (defined below). In the case of Disability, the Company shall provide the Executive a Notice of Termination and the Executive's employment with the Company shall terminate effective on the thirtieth (30th) day following Executive's receipt of said notice unless, within said thirty (30) day period, the Executive is able to perform the essential functions of Executive's job duties, with or without reasonable accommodation.

(2) Rights upon Termination for Death or Disability. If the Company terminates the Executive's employment hereunder because of death or Disability, the Executive shall forfeit all rights to any compensation otherwise due to Executive or to which Executive may be entitled under this Agreement, and the Company shall have no further payment obligations to the Executive or Executive's legal representatives, other than: (a) the Accrued Obligations; (b) continued payment of the Annual Base Salary for a period of six (6) months following the date of termination in accordance with the Company's regular payroll practices; (c) accrued but unused vacation through the termination date payable on the next regular payroll date following the termination date; and (d) a pro rata portion of the Annual Bonus that the Executive would have earned for the year in which Executive's death or Disability occurred if Executive had remained employed with the Company through the end of such calendar year, based on the number of months employed by the Company calculated as of the date of termination (the "Prorated Bonus Amount"), and payable when the bonuses are regularly paid as set forth in the annual incentive plan. Except as set forth in this Section 3.C(2), if the Executive is terminated due to death or Disability, the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise.

(3) Definition of Disability. For purposes of this Agreement, at any time the Company sponsors a long-term disability plan for the Company's executives, and subject to applicable law, "Disability" shall mean disability as defined in such long-term disability plan for the purpose of determining a participant's eligibility for benefits, *provided however*, if the long-term disability plan contains multiple definitions of disability, "Disability" shall refer to that definition of disability which, if the Executive qualified for such disability benefits, would provide coverage for the longest period of time. The determination of whether the Executive has a Disability shall be made by the person or persons required to render disability determinations under the long-term disability plan. At any time the Company does not sponsor a long-term disability plan for its executives, "Disability" shall mean the Executive's inability to perform, with or without reasonable accommodation, the essential functions of Executive position hereunder for a period of one hundred twenty (120) days, consecutive or non-consecutive, in any twelve (12)-month period due to Executive's mental or physical incapacity as determined by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative, such agreement as to acceptability not to be unreasonably withheld or delayed. The Executive agrees to cooperate in submitting to a medical examination for the purpose of certifying Disability under this Section 3.C if requested by the Company.

D. Termination by the Company for Cause.

(1) Termination for Cause. The Company may terminate the Executive's employment at any time during the Employment Period for Cause (defined below) upon written notice to the Executive.

(2) Rights upon Termination for Cause. If the Executive's employment hereunder is terminated by the Company for Cause, the Executive shall not be entitled to receive any severance, bonus or other payments, except the Accrued Obligations, payable in a lump sum on the Company's next regular payroll date following the date of termination. Except as set forth in this Section 3.D, the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise. Should the Executive's employment terminate pursuant to this Section 3.D, the Executive shall continue to be fully bound by the Continuing Obligations.

(3) Definition of Cause. For purposes of this Agreement, "Cause" shall include the following: (a) indictment for any crime involving moral turpitude, fraud or misrepresentation or the Executive pleading guilty or nolo contendere to, any felony or crime involving moral turpitude that is damaging to the reputation of the Company; (b) commission of any act which is a felony; (c) gross misconduct or fraud involving the operations of the Company; (d) misappropriation or embezzlement of funds or property of the Company; (e) willful conduct which is materially injurious to the reputation, business or business relationships of the Company; (f) violation of any of the provisions of this Agreement or any material Company policy or work rule (including, for example, the Company's sexual harassment policy, drug policy, etc.); or (g) failure of the Executive to follow the reasonable directions or instructions issued to the Executive by the Board, or the Executive's refusal or failure to substantially perform Executive's duties and responsibilities under this Agreement to the reasonable satisfaction of the Board, *provided however*, that prior to any termination pursuant to subsection 3.D(3)(f) and (g), the Company must give written notice to the Executive stating the reasons triggering subsection 3.D(3)(f) and (g) and the Executive shall thereafter have the right to remedy the condition, if such condition can be remedied in the good faith determination of the Board, within thirty (30) days of the date the Executive received such written notice. If the Executive does not remedy the condition within the thirty (30) day cure period to the reasonable satisfaction of the Board, then the Board may deliver a notice of termination for Cause at any time within thirty (30) days following the expiration of such cure period, in which case termination will be effective upon delivery of such notice.

E. Termination by the Company Without Cause.

(1) Termination Without Cause. The Company may terminate the Executive's employment at any time during the Employment Period without Cause (other than due to death or Disability) upon written notice.

(2) Rights upon Termination Without Cause. If the Executive's employment hereunder is terminated by the Company without Cause, the Executive shall forfeit all rights to any compensation otherwise due to Executive or to which Executive may be entitled under this Agreement, and the Company shall have no further payment obligations to the Executive or Executive's legal representatives, other than: (a) the Accrued Obligations; and (b) *provided* the Executive signs, returns and, if applicable, does not revoke a

general waiver and release of all claims against the Company and its Parent, subsidiaries and affiliates in a form satisfactory to the Board and the Company (the "Release") and complies with the Continuing Obligations, (i) continued payment of the Annual Base Salary for a period of twelve (12) months following the date of termination in accordance with the Company's regular payroll practices (the "Salary Continuation Payments"); (ii) accrued but unused vacation through the termination date; and (iii) the Prorated Bonus Amount.

The first Salary Continuation Payment and the accrued vacation shall be paid to the Executive on the Company's first regular payroll date following the sixtieth (60th) day after the termination date (and will include any Salary Continuation Payment installment that would have otherwise been paid during the period following the termination date through the date of the first Salary Continuation Payment); *provided that*, the Release is irrevocable as of such date. The Prorated Bonus Amount shall be payable on the same day as the final Salary Continuation Payment. If during any period in which the Executive is receiving the Salary Continuation Payments, Executive violates any Continuing Obligations to the Company, the Company's obligations pursuant to Section 3.E(2)(b) shall cease and the Company will have no further obligations to the Executive. Except as set forth in this Section 3.E, if the Executive is terminated without Cause, the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise.

F. Resignation by the Executive Without Cause / Expiration. During the Employment Period, the Executive may resign Executive's employment at any time, for any reason. In addition, the Employment Period may expire/not be renewed as set forth in Section 1. If the Executive's employment terminates pursuant to this Section 3.F as a result of the Company providing the Executive notice of its intent not to renew pursuant to Section 1, then the Executive shall receive (a) the Accrued Obligations; and (b) *provided* the Executive signs, returns and, if applicable, does not revoke the Release and complies with the Continuing Obligations, (i) the Salary Continuation Payments; (ii) accrued but unused vacation through the termination date; and (iii) the Prorated Bonus Amount, each of which shall be payable in accordance with the provisions of Section 3.E. If the Executive resigns Executive's employment for any reason (other than for "Good Cause" as defined in Section 3.G(1) below) or the Executive's employment terminates pursuant to this Section 3.F as a result of the Executive providing the Company notice of Executive's intent not to renew pursuant to Section 1, the Executive shall not be entitled to receive any severance, or other payments, except the Accrued Obligations, and the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise. Should the Executive's employment terminate pursuant to this Section 3.F, the Executive shall continue to be fully bound by Executive's Continuing Obligations.

G. Resignation by the Executive for Good Cause.

(1) If any of the following events shall occur without the Executive's consent, the Executive shall be entitled to resign Executive's employment with the Company for Good Cause: (i) the Company materially reduces Executive's Annual Base Salary or Annual Bonus opportunity percentage; (ii) a material diminution in Executive's responsibilities; or (iii) the Company relocates Company's headquarters more than twenty (20) miles from the existing location. Notwithstanding the foregoing, the events described in clauses

(i), (ii) or (iii) shall not constitute Good Cause unless (A) Executive has given the Company written notice of Executive's resignation for Good Cause, setting forth the conduct of the Company that is alleged to constitute Good Cause, within thirty (30) days following the occurrence of such event, and (B) Executive has provided the Company at least thirty (30) days following the date on which such notice is provided to cure such conduct and the Company has failed to do so. Failing such cure, a termination of employment of Executive by Executive for Good Cause shall be effective on the day following the expiration of such cure period.

(2) If the Executive resigns his employment with the Company for Good Cause in accordance with Section 3.G(1) above, Executive shall be entitled and subject to the same rights and obligations as provided herein for a termination without Cause, as specified by Section 3.E(2) herein.

#### **4. Restrictive Covenants.**

##### **A. Confidential Information.**

(1) Covenant Not to Disclose Confidential Information. The Executive acknowledges that the services to be performed by Executive hereunder are special, unique and extraordinary in that, by reason of Executive's employment hereunder and Executive's past employment with the Company, Executive will acquire and have access to, and has acquired and has had access to, the Company's Confidential Information (defined below), the use or disclosure of which could cause the Company substantial loss and damages which could not be readily calculated and for which no remedy at law would be adequate. The Executive shall not, during the Employment Period or at any time thereafter, disclose in any way the Company's Confidential Information or any part thereof, to any person, firm, corporation, association, or any other operation or entity or use the Confidential Information on Executive's own behalf, for any reason or purpose, except as necessary to perform Executive's job duties, or destroy the Confidential Information. The Executive agrees that Executive will not distribute any Confidential Information to any third person or permit the reproduction of the Confidential Information, except on behalf of the Company in Executive's capacity as an executive of the Company. The Executive hereby assumes responsibility for and shall indemnify and hold the Company harmless from and against any disclosure by the Executive or use by the Executive of the Confidential Information in violation of this Agreement other than pursuant to subpoena, court order, discovery request, or as otherwise required by law, or for whistleblower actions.

(2) Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include, but is not limited to, the following information, which information is not generally known or readily available to the public or the Company's competitors: (a) confidential and proprietary matters relating to the sales operations of the Company, or its Parent, subsidiaries, or affiliates of the Company, including, but not limited to, sales methods; pricing information; merchandising and marketing plans and strategies; proprietary information relating to recipes, services, products and product specifications, processes, techniques and know-how; and supplier and vendor lists; (b) confidential and proprietary matters relating to the business and financial operations of the Company or its Parent, subsidiaries, or affiliates of the Company, including, but not limited to, financial data and plans; budgets and financial statements; business plans and strategies; research

and development plans; product or service plans; training materials; methods of distribution; assets and liabilities; past, present or proposed business operations, mergers or acquisitions or projects; business opportunities for new or developing business; recruiting methodology; and personnel information concerning Company employees (other than the Executive); (c) confidential and proprietary intellectual property of the Company or its Parent, subsidiaries, or affiliates of the Company, including, but not limited to, concepts, ideas, proposals, Inventions (defined in Section 5), formulas, technology, improvements, discoveries, developments, proposed trademarks, trade and domain names; and (d) any trade secret of the Company or its Parent, subsidiaries or affiliates of the Company as defined by law. The Executive understands and agrees that the rights and obligations set forth in this Section 4.A are perpetual and shall extend beyond the Executive's employment with the Company. Confidential Information shall not include general industry information or information which is or becomes publicly available, information which the Executive has lawfully acquired from a source other than the Company (provided that such source is not bound by a confidentiality agreement with the Company), disclosures required by any registration or filing with any agency or regulatory authority; information which is required to be disclosed pursuant to any law, regulation, or rule of any governmental body, agency or authority or court order, and/or as may be necessary for purposes of disclosure to accountants, financial advisors or other counsel, who shall be made aware of and agree to be bound by the confidentiality provisions hereof.

(3) Disclosure of Confidential Information for Certain Purposes. Executive understands that nothing in this Agreement shall be construed to prohibit Executive from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body (including under any governmental agency's whistleblower program). Executive understands that the Defending Trade Secrets Act provides that Executive may not be held criminally or civilly liable under any Federal or state trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In the event that Executive files a lawsuit for retaliation by the Company, Parent or its subsidiaries or affiliates for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney and use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.

**B. Covenant Not to Compete.** During the Employment Period and for the longer of (i) the period of time during which the Executive holds, directly or indirectly, any equity securities of the Company and (ii) a period of one (1) year after the date of termination of the Executive's employment, however caused and for any reason, the Executive shall not:

(1) directly or indirectly induce or attempt to induce any senior managers or executives of the Company or those of any of its Parent, subsidiaries or affiliates to terminate their employment, or refrain from renewing or extending such employment, with the Company or such affiliate or subsidiary;

(2) directly or indirectly own, control or participate in the ownership or control of, or be employed by or on behalf of, or provide services to, any restaurant business which operates a restaurant similar to that operated by the Company within a five (5) mile radius of any restaurant operated or owned by the Company or its Parent, subsidiaries, or affiliates, during the Employment Period; or

(3) directly or indirectly solicit or cause or encourage any person to solicit any business in competition with the Company or its Parent, subsidiaries, or affiliates.

C. Mutual Covenant Not to Disparage. The Executive agrees not to disparage, at any time, the Company, or its Parent, subsidiaries or affiliates of the Company, or any of their business practices, products or services, or any of their directors, officers, agents, representatives, stockholders or affiliates, either orally or in writing. Upon termination of the Executive's employment, the Company agrees that it will instruct its Board of Directors and senior management to not make any oral or written statement that disparages the Executive. Nothing in this Section shall prohibit either the Executive or the Company from responding truthfully to subpoenas or in connection with whistleblower actions and other court ordered inquiries or proceedings.

#### **5. Inventions.**

A. Assignment. The Executive agrees to assign and hereby assigns to the Company, without further consideration, all right, title, and interest that the Executive may presently have or acquire (throughout the United States and in all foreign countries), free and clear of all liens and encumbrances, in and to each Invention (as defined in this Section 5), which Invention shall be the sole property of the Company, whether or not patentable. "Invention" as used herein shall mean all ideas, processes, trademarks, service marks, inventions, technology, computer programs, original works of authorship, designs, formulas, discoveries, patents, copyrights, moral rights (including but not limited to rights to attribution or integrity) and all improvements, rights, and claims related to the foregoing that are in all cases conceived, created, developed, or reduced to practice by the Executive alone or with others during the scope and course of Executive employment with the Company (or any affiliate). In addition, to the extent not assigned, the Executive hereby irrevocably waives any moral rights (including rights of attribution and integrity) that Executive may have with respect to the Inventions. The Executive acknowledges that all original works of authorship which are made by the Executive (solely or jointly with others) within the scope of Executive's employment and which are protectable by copyright are "Works Made For Hire" as defined in the United States Copyright Act (17 USCA, § 101) and are included in the definition of Inventions. The Executive shall promptly disclose any such Invention to the Company.

B. Prior Inventions. Unless attached hereto as an exhibit, the Executive represents that Executive does not have or possess any invention made or developed by Executive prior to Executive's employment with the Company which relates to the business, products or research and development of the Company as of or prior to the date hereof ("Prior Invention"), or that Executive has already assigned all such inventions to the Company. If any Prior Invention is incorporated into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, adapt, use, import, and sell such Prior Invention as part of or in connection with such product, process or machine.

C. **Assistance.** The Executive agrees to assist the Company, or its designee, at the Company's expense, in securing the Company's rights in and to the Inventions and any other intellectual property rights relating thereto in any and all countries. Such assistance shall include the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and other intellectual property rights relating thereto. The Executive agrees to maintain adequate and current written records on the development of all Inventions and to disclose promptly to the Company all Inventions and relevant records, which records will remain the sole property of the Company. The Executive further agrees that all information and records pertaining to any idea, process, trademark, service mark, invention, discovery, improvement, technology, computer program, original work of authorship, design formula, discovery, patent, or copyright that the Executive does not believe to be an Invention, but is conceived, developed, or reduced to practice by the Executive (alone or with others) during Executive's employment with the Company shall be promptly disclosed to the Company (such disclosure to be received in confidence).

**6. Company Property.** The Executive acknowledges that the Confidential Information and any and all notes, records, sketches, computer diskettes, training materials and other documents relating to the Company obtained by or provided to the Executive, created or developed by the Executive during the course of Executive's employment with the Company, or otherwise made, produced or compiled by the Executive during the Employment Period, regardless of the type of medium in which they were preserved, are the sole and exclusive property of the Company and shall be surrendered to the Company upon the Executive's termination from the Company, however caused and for any reason, or on demand at any time by the Company.

**7. Comparative Right to Injunctive Relief.** In the event of a breach or threatened breach of any of the Executive's duties and obligations under the terms and provisions of Sections 4, 5 or 6 hereof, the Company shall be entitled, in addition to any other legal or equitable remedies it may have in connection therewith (including any right to damages that it may suffer), to temporary, preliminary and permanent injunctive relief restraining such breach or threatened breach. The Executive hereby expressly acknowledges that the harm which might result to the Company's business as a result of any noncompliance by the Executive with any of the provisions of Sections 4, 5 or 6 would be irreparable. The Executive specifically agrees that if there is a question as to the enforceability of any of the provisions of Sections 4, 5 or 6, the Executive will not engage in any conduct inconsistent with or contrary to such Sections until after the question has been resolved by a final judgment of a court of competent jurisdiction.

**8. Arbitration.** Subject to Section 7 of this Agreement, and in consideration of the Company employing the Executive and the salary and benefits provided under this Agreement, the Executive and the Company agree that all claims arising out of or relating to Executive employment, including its termination, shall be resolved by binding arbitration. This Agreement expressly does not prohibit either party from seeking provisional injunctive relief, including to prevent irreparable harm, in any court of competent jurisdiction including as set forth in Section 7. The dispute will be arbitrated in accordance with the rules of the American Arbitration Association (“AAA”) under its then-existing Employment Arbitration Rules. The parties shall bear equally the arbitration administrative costs and arbitrator’s fees, subject to applicable law and the AAA rules. Each party shall bear Executive/its own attorneys’ fees and legal costs. The parties agree to file any demand for arbitration within the time limit established by the applicable statute of limitations for the asserted claims. Failure to demand arbitration within the prescribed time period shall result in waiver of said claims. The parties agree that the arbitration shall take place in Tampa, Florida. THE PARTIES HEREBY ACKNOWLEDGE THAT BY THIS AGREEMENT TO ARBITRATE THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

**9. Successors.** The Company may assign its rights and obligations under this Agreement, and may assign or encumber this Agreement and its rights hereunder as security for indebtedness of the Company and its affiliates. Neither this Agreement nor any rights, interests or obligations hereunder may be assigned by the Executive without the prior written consent of the Company.

**10. Confidentiality.** Subject to applicable law, the Executive shall keep this Agreement and the terms of Executive employment with the Company confidential, and shall not disclose or discuss the same with anyone other than Executive’s attorney, accountant or spouse.

**11. Miscellaneous.**

A. **Construction.** This Agreement shall be deemed drafted equally by both the parties. Its language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. The headings in this Agreement are only for convenience and are not intended to affect construction or interpretation. Any references to paragraphs, subparagraphs, sections or subsections are to those parts of this Agreement, unless the context clearly indicates to the contrary. Also, unless the context clearly indicates to the contrary, (1) the plural includes the singular and the singular includes the plural; (2) “and” and “or” are each used both conjunctively and disjunctively; (3) “any,” “all,” “each,” or “every” means “any and all,” and “each and every”; (4) “includes” and “including” are each “without limitation”; (5) “herein,” “hereof,” “hereunder” and other similar compounds of the word “here” refer to the entire Agreement and not to any particular paragraph, subparagraph, section or subsection; and (6) all pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the entities or persons referred to may require.

B. Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

Christopher Tomasso  
[•]

If to the Company:

First Watch Restaurants, Inc.  
c/o Advent International Corporation  
75 State Street  
Boston, Massachusetts 02109  
Attention: Tricia Patrick, James Westra  
Facsimile: (617) 951-0566  
E-mail: [tpatrick@adventinternational.com](mailto:tpatrick@adventinternational.com);  
[jwestra@adventinternational.com](mailto:jwestra@adventinternational.com)

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

Weil, Gotshal & Manges, LLP  
100 Federal Street, Floor 34  
Boston, Massachusetts 02109  
Attention: Marilyn French Shaw  
Facsimile: (617) 772-8333  
E-mail: [marilynfrench.shaw@weil.com](mailto:marilynfrench.shaw@weil.com)

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

C. Enforcement. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the Employment Period, such provision shall be reformed to the maximum extent permissible under law to an enforceable provision as similar in terms as possible to such illegal, invalid or unenforceable provision, and the remaining provisions of this Agreement shall remain in full force and effect. If said illegal, invalid or unenforceable provision cannot be reformed, such provision shall be fully severable from this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a portion of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

D. Withholding. The Company shall be entitled to withhold from any amounts payable under this Agreement any federal, state, local or foreign withholding or other taxes or charges which it is from time to time required to withhold. The Company shall be entitled to rely on an opinion of counsel if any questions as to the amount or requirement of such withholding shall arise.

E. No Waiver. No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at any time.

F. Complete Agreement. This Agreement constitutes the entire and complete understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements, representations and understandings between the Executive and the Company, or its subsidiaries and affiliates, relating to the subject matter herein. Other than expressly set forth herein, the Executive and the Company acknowledge and represent that there are no other promises, terms, conditions or representations (oral or written) regarding any matter relevant hereto. For avoidance of doubt, the Prior Employment Agreement is hereby terminated, cancelled and of no further force or effect. This Agreement may be executed in two or more counterparts.

G. Choice of Law. This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Florida without reference to principles of conflicts of law of Florida or any other jurisdiction, and, where applicable, the laws of the United States.

H. Amendment. This Agreement may not be amended or modified at any time except by a written instrument executed by both the Executive and an authorized representative of the Company and approved by the Board.

I. Executive Acknowledgement and Representation. The Executive acknowledges that Executive has read and understands this Agreement, is fully aware of its legal effect, has not acted in reliance upon any representations or promises made by the Company other than those contained in writing herein, and has entered into this Agreement freely based on the Executive's own judgment. The Executive further represents and warrants that there is no agreement or other legal impediment or contractual obligation that prohibits or would otherwise prevent the Executive from continuing employment with the Company, executing this Agreement, and performing the duties and services provided for hereunder. The Executive further acknowledges that Executive has had the opportunity to consult with an attorney and/or tax advisor of Executive choice with respect to this Agreement.

## **12. 409A**

A. Compliance. It is intended that compensation paid or delivered to the Executive pursuant to this Agreement is either paid in compliance with, or is exempt from, Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder (together, "Section 409A"), and this Agreement shall be interpreted and administered accordingly. However, the Company does not warrant to the Executive that all amounts paid or delivered to him will be exempt from, or paid in compliance

with, Section 409A. The Executive understands and agrees that he bears the entire risk of any adverse federal, state or local tax consequences and penalty taxes which may result from payment on a basis contrary to the provisions of Section 409A or comparable provisions of any applicable state or local income tax laws. The Executive acknowledges that Executive has been advised to seek the advice of a tax advisor with respect to the tax consequences of all payments pursuant to this Agreement, including any adverse tax consequence under Section 409A and applicable state tax law.

**B. Amounts Payable On Account of Termination.** If and to the extent necessary to comply with Section 409A, for the purposes of determining when amounts otherwise payable on account of the Executive's termination of employment under this Agreement will be paid, "terminate", "terminated" or "termination" or words of similar import relating to the Executive's employment with the Company, as used in this Agreement, shall be construed as the date that the Executive first incurs a "separation from service," within the meaning of Section 409A, from the Company.

**C. Interpretative Rules.** In applying Section 409A to amounts paid pursuant to this Agreement, any right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

*[Signature Page to Follow]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the date written below effective as of the day and year first above written.

Dated: August 21, 2017

**EXECUTIVE**

/s/ Christopher Tomasso

Christopher Tomasso

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the date written below effective as of the day and year first above written.

**FIRST WATCH RESTAURANTS, INC.**

Dated: August 21, 2017

By: /s/ Kenneth L. Pendery, Jr.

Name: Kenneth L. Pendery, Jr.

Title: Chief Executive Officer

[SIGNATURE PAGE To EMPLOYMENT AGREEMENT]

AI FRESH SUPER HOLDCO, INC.  
2017 OMNIBUS EQUITY INCENTIVE PLAN

### Article 1. Establishment & Purpose

**1.1 Establishment.** AI Fresh Super Holdco, Inc., a Delaware corporation (the "**Company**"), hereby establishes the 2017 Omnibus Equity Incentive Plan (this "**Plan**") as set forth herein.

**1.2 Purpose of this Plan.** The purpose of this Plan is to attract, retain and motivate the management, employees and certain non-employee independent directors of the Company and its Subsidiaries and Affiliates and to promote the success of the Company's business by providing them with appropriate incentives and rewards either through a proprietary interest in the long-term success of the Company or compensation based on fulfilling certain performance goals.

### Article 2. Definitions

Capitalized terms used and not otherwise defined herein shall have the meanings set forth below.

**2.1 "Affiliate"** has the meaning set forth in the Stockholders Agreement.

**2.2 "Award"** means any Option, Stock Appreciation Right, Restricted Stock or Other Stock-Based Award that is granted under this Plan.

**2.3 "Award Agreement"** means either (a) a written agreement entered into by the Company and a Participant setting forth the terms and provisions applicable to an Award, or (b) a written statement signed by an authorized officer of the Company to a Participant describing the terms and provisions of the actual grant of such Award.

**2.4 "Board"** means the Board of Directors of the Company.

**2.5 "Change in Control"** has the meaning set forth in the Partnership Agreement; provided, that to the extent necessary to comply with Section 409A of the Code with respect to the payment of deferred compensation, "Change in Control" shall be limited to a "change in control event" as defined in Treasury Regulations Section 1.409A-3(i)(5) prescribed pursuant to Section 409A of the Code.

**2.6 "Code"** means the U.S. Internal Revenue Code of 1986, as amended from time to time.

**2.7 "Committee"** means the Board, or any committee thereof designated by the Board to administer this Plan in accordance with Article 3 of this Plan.

**2.8 "Director"** means a member of the Board who is not an Employee.

**2.9 "Eligible Person"** means (a) a Director who is not an employee or partner of Advent International, Inc., a Delaware corporation, or one of its Affiliates, or (b) an Employee.

**2.10 "Employee"** means an officer or other employee of the Company or any Subsidiary or Affiliate, including a member of the Board who is such an employee.

**2.11 "Fair Market Value"** means, as of any day, with respect to the Shares:

- (a) if the Shares are immediately and freely tradable on a stock exchange or in over-the-counter market, the closing price per Share on the preceding day, or if no trades were made on such date, the immediately preceding day on which trades were made; or

- (b) in the absence of such a market for the Shares, the fair value per Share as determined in good faith by the Board and, for the purpose of determining the Option Price or grant price of an Award, consistent with the principles of Section 409A of the Code.

2.12 “**Incentive Stock Option**” means an Option intended to meet the requirements of an incentive stock option as defined in Section 422 of the Code and designated as an Incentive Stock Option in accordance with Article 6 of this Plan.

2.13 “**Nonqualified Stock Option**” means an Option that is not an Incentive Stock Option.

2.14 “**Option**” means any Option granted from time to time under Article 6 of this Plan.

2.15 “**Option Price**” means the purchase price per Share subject to an Option, as determined pursuant to Section 6.2 of this Plan.

2.16 “**Other Stock-Based Award**” means any Award granted under Article 9 of this Plan.

2.17 “**Participant**” means any Eligible Person as set forth in Section 4.1 to whom an Award is granted.

2.18 “**Partnership Agreement**” means that certain Amended and Restated Agreement of Limited Partnership of AI Fresh Holdings Limited Partnership entered into as of August 21, 2017 by and among the AI Fresh Topco LLC, as the general partner and the Persons listed on the signature pages thereto, as may be amended from time to time.

2.19 “**Permanent Disability**” has the meaning set forth below, except with respect to any Participant who is engaged by the Company or one of its Affiliates pursuant to an effective written Service agreement in which there is a definition of “Permanent Disability” or an equivalent term, in which event the definition of “Permanent Disability” as set forth in such Service agreement shall be deemed to be the definition of “Permanent Disability” herein solely for such Participant and only for so long as such employment agreement remains effective. In all other events, the term “Permanent Disability” means: a determination by independent competent medical authority (selected by the Board) that the Participant is unable to perform the Participant’s duties, and in all reasonable medical likelihood such inability shall continue for a consecutive period of 90 days or for a period in excess of 120 days in any 365-day period.

2.20 “**Person**” has the meaning set forth in the Partnership Agreement.

2.21 “**Restricted Stock**” means any Award granted under Article 8 of this Plan.

2.22 “**Restriction Period**” means the period during which Restricted Stock awarded under Article 8 of this Plan is restricted.

2.23 “**Section 409A**” means Section 409A of the Code together with all regulations, guidance, compliance programs and other interpretative authority thereunder.

2.24 “**Service**” means service as an Employee or Director.

2.25 “**Share**” means a share of common stock of the Company, par value \$0.01 per share, or such other class or kind of shares or other securities resulting from the application of Article 11 of this Plan.

2.26 “**Stock Appreciation Right**” means any right granted under Article 7 of this Plan

2.27 “**Subsidiary**” has the meaning set forth in the Partnership Agreement.

2.28 “**Ten-Percent Shareholder**” means a person who on any given date owns, either directly or indirectly (taking into account the attribution rules contained in Section 424(d) of the Code), stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or a Subsidiary or Affiliate.

### **Article 3. Administration**

**3.1 Authority of the Committee.** This Plan shall be administered by the Committee, which 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 (a) determine the Eligible Persons to whom Awards shall be granted under the Plan, (b) prescribe the restrictions, terms and conditions of all Awards, (c) interpret the Plan and terms of the Awards, (d) adopt rules for the administration, interpretation and application of the Plan as are consistent therewith, and interpret, amend or revoke any such rules, (e) make all determinations with respect to a Participant’s Service and the termination of such Service for purposes of any Award, (f) correct any defect(s) or omission(s) or reconcile any ambiguity(ies) or inconsistency(ies) in the Plan or any Award thereunder, (g) make all determinations it deems advisable for the administration of the Plan, (h) decide all disputes arising in connection with the Plan and to otherwise supervise the administration of the Plan, (i) subject to the terms of the Plan, amend the terms of an Award in any manner that is not inconsistent with the Plan, (j) 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 under certain circumstances, as set forth in the Award Agreement or otherwise), and (k) adopt such procedures and subplans as are necessary or appropriate to permit participation in the Plan by Eligible Persons who are foreign nationals or who 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 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.

**3.2 Delegation.** The Committee may delegate to one or more of its members, one or more officers of the Company or any Subsidiary or one or more agents or advisors such administrative duties or powers as it may deem advisable.

### **Article 4. Eligibility and Participation**

**4.1 Eligibility.** Participants will consist of such Eligible Persons as the Committee in its sole discretion determines and whom the Committee may designate from time to time to receive Awards under this Plan; provided, however, that Options and Stock Appreciation Rights may only be granted to those Eligible Persons with respect to whom the Company is an “eligible issuer” within the meaning of Section 409A of the Code. 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 the Participant in any other year.

**4.2 Type of Awards.** Awards under this Plan may be granted in any one or a combination of: (a) Options; (b) Stock Appreciation Rights; (c) Restricted Stock; and (d) Other Stock-Based Awards. Awards granted under this Plan shall be evidenced by Award Agreements (which need not be identical) that provide additional terms and conditions associated with such Awards, including, without limitation restrictive covenants, as determined by the Committee in its sole discretion; provided, however, that in the event of any conflict between the provisions of this Plan and any such Award Agreement, the provisions of this Plan shall prevail.

## **Article 5. Shares Subject to this Plan; Maximum Awards**

### **5.1 Number of Shares Available for Awards.**

- (a) **Shares.** Subject to adjustment as provided in this Article 5 and Article 11 of the Plan, the maximum number of Shares available for issuance to Participants pursuant to Awards under the Plan shall be 518,520. The Shares available for issuance under the Plan may consist, in whole or in part, of authorized and unissued Shares or treasury Shares.
- (b) **Additional Shares.** In the event that any outstanding Award expires or is forfeited, cancelled or otherwise terminated without consideration (i.e., Shares or cash) therefor, the Shares subject to such Award, to the extent of any such forfeiture, cancellation, expiration, termination or settlement, shall again be available for Awards under this Plan; provided, that any Shares tendered to or withheld by the Company as part or full payment for the purchase price, Option Price or grant price of an Award or to satisfy all or part of the Company's tax withholding obligation with respect to an Award shall not again be available for Awards. If the Committee authorizes the assumption under this Plan, in connection with any merger, consolidation, acquisition of property or stock, or reorganization, of awards granted under another plan, such assumption shall not reduce the maximum number of Shares available for issuance under this Plan.

## **Article 6. Options**

**6.1 Grant of Options.** The Committee is hereby authorized to grant Options to Participants. Each Option shall permit a Participant to purchase from the Company a stated number of Shares at an Option Price established by the Committee, subject to the terms and conditions described in this Article 6 and to such additional terms and conditions, as established by the Committee, in its sole discretion, that are consistent with the provisions of the Plan. Options shall be designated as either Incentive Stock Options or Nonqualified Stock Options; provided, that Options granted to Directors shall be Nonqualified Stock Options. An Option granted as an Incentive Stock Option shall, to the extent it fails to qualify under the Code as an Incentive Stock Option, be treated as a Nonqualified Stock Option. None of the Committee, the Company, any of its Subsidiaries or Affiliates or any of their employees or representatives shall be liable to any Participant or to any other Person if it is determined that an Option intended to be an Incentive Stock Option does not qualify under the Code as an Incentive Stock Option. Each Option shall be evidenced by an Award Agreement that shall state the number of Shares covered by such Option. Such Award Agreement shall conform to the requirements of the Plan and may contain such other provisions as the Committee shall deem advisable.

**6.2 Option Price.** The Option Price shall be determined by the Committee at the time of grant, but shall not be less than 100% of the Fair Market Value of a Share on the date of grant. In the case of any Incentive Stock Option granted to a Ten-Percent Shareholder, the Option Price shall not be less than 110% of the Fair Market Value of a Share on the date of grant.

**6.3 Option Term.** The term of each Option shall be determined by the Committee at the time of grant and shall be stated in the Award Agreement, but in no event shall such term be greater than ten years (or, in the case of an Incentive Stock Option granted to a Ten-Percent Shareholder, five years).

**6.4 Time of Exercise.** Options granted under this Article 6 shall be exercisable at such times and be subject to such restrictions and conditions as the Committee shall in each instance approve as set forth in each Award Agreement, which terms and restrictions need not be the same for each grant or for each Participant.

**6.5 Method of Exercise.** Except as otherwise provided in the Plan or in an Award Agreement, an Option may be exercised for all, or from time to time any part, of the Shares for which it is then exercisable. For purposes of this Article 6, the exercise date of an Option shall be the later of the date a notice of exercise is received by the Company and, if applicable, the date full payment is received by the Company pursuant to clauses (a), (b), (c), (d), or (e) of the following sentence (including the applicable tax withholding pursuant to Section 13.3 of the Plan). The aggregate Option Price for the Shares as to which an Option is exercised shall be paid to the Company in full at the time of exercise at the election of the Participant: (a) in cash or its equivalent (e.g., by cashier's check); (b) to the extent permitted by the Committee, in Shares (whether or not previously owned by the Participant) having a Fair Market Value equal to the aggregate Option Price for the Shares being purchased and satisfying such other requirements as may be imposed by the Committee; (c) partly in cash and, to the extent permitted by the Committee, partly in such Shares (as described in (b) above); (d) in connection with a Change in Control, or as may otherwise be permitted by the Committee, by reducing the number of Shares otherwise deliverable upon the exercise of the Option by the number of Shares having a Fair Market Value equal to the Option Price, net of withholding; or (e) if there is a public market for the Shares at such time, subject to such requirements as may be imposed by the Committee, through the delivery of irrevocable instructions to a broker to sell Shares obtained upon the exercise of the Option and to deliver promptly to the Company an amount out of the proceeds of such sale equal to the aggregate Option Price for the Shares being purchased. The Committee may prescribe any other method of payment that it determines to be consistent with applicable law and the purpose of the Plan.

**6.6 Limitations on Incentive Stock Options.** Incentive Stock Options may be granted only to employees of the Company or of a "parent corporation" or "subsidiary corporation" (as such terms are defined in Section 424 of the Code) at the date of grant. The aggregate Fair Market Value (generally determined as of the time the Option is granted) of the Shares with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year under all plans of the Company and of any "parent corporation" or "subsidiary corporation" shall not exceed \$100,000 or the Option shall be treated as a Nonqualified Stock Option, but only to the extent of that portion of the Option in excess of the limit. For purposes of the preceding sentence, unless otherwise designated by the Company, Incentive Stock Options will be taken into account in the order in which they are granted. Each provision of the Plan and each Award Agreement relating to an Incentive Stock Option shall be construed so that each Incentive Stock Option shall be an incentive stock option as defined in Section 422 of the Code, and any provisions of the Award Agreement thereof that cannot be so construed shall be disregarded.

## **Article 7. Stock Appreciation Rights**

**7.1 Grant of Stock Appreciation Rights.** The Committee is hereby authorized to grant Stock Appreciation Rights to Participants. Stock Appreciation Rights shall be evidenced by Award Agreements that shall conform to the requirements of the Plan and may contain such other provisions as the Committee shall deem advisable. Subject to the terms of the Plan and any applicable Award Agreement, a Stock Appreciation Right granted under the Plan shall confer on the holder thereof a right to receive, upon exercise thereof, the excess of: (a) the Fair Market Value of a specified number of Shares on the date of exercise over (b) the grant price of the right as specified by the Committee on the date of the grant. Such payment may be in the form of cash, Shares, other property or any combination thereof, as the Committee shall determine in its sole discretion.

**7.2 Terms of Stock Appreciation Right.** Each Stock Appreciation Right grant shall be evidenced by an Award Agreement that shall state the grant price (which shall not be less than 100% of the Fair Market Value of a Share on the date of grant), term, methods of exercise, methods of settlement and such other provisions as the Committee shall determine. No Stock Appreciation Right shall have a term of more than ten years from the date of grant.

## **Article 8. Restricted Stock**

**8.1 Grant of Restricted Stock.** The Committee is hereby authorized to grant Restricted Stock to Participants. An Award of Restricted Stock is a grant by the Committee of a specified number of Shares to the Participant, which Shares are subject to forfeiture upon the occurrence of specified events. Participants shall be awarded Restricted Stock in exchange for consideration not less than the minimum consideration required by applicable law. Restricted Stock shall be evidenced by an Award Agreement, which shall conform to the requirements of the Plan and may contain such other provisions as the Committee shall deem advisable.

**8.2 Terms of Restricted Stock Awards.** Each Award Agreement evidencing a Restricted Stock grant shall specify: the Restriction Period(s); the number of Shares of Restricted Stock subject to the Award; the purchase price, if any, of the Restricted Stock; the performance, Service or other conditions (including the termination of a Participant's Service whether due to death, Permanent Disability or other reason) under which the Restricted Stock may be forfeited to the Company; and such other provisions as the Committee shall determine. Any Restricted Stock granted under the Plan shall be evidenced in such manner as the Committee may deem appropriate, including book-entry registration or issuance of a stock certificate or certificates (in which case, the certificate(s) representing such Shares shall be legended as to sale, transfer, assignment, pledge or other encumbrances during the Restriction Period and deposited by the Participant, together with a stock power endorsed in blank, with the Company, to be held in escrow during the Restriction Period). At the end of the Restriction Period, the restrictions imposed hereunder and under the Award Agreement shall lapse with respect to the number of Shares of Restricted Stock as determined by the Committee, and, except as provided in Section 13.6, the legend required by this Section 8.2 shall be removed and such number of Shares delivered to the Participant (or, where appropriate, the Participant's legal representative).

**8.3 Voting and Dividend Rights.** The Committee shall determine and set forth in a Participant's Award Agreement whether or not a Participant holding Restricted Stock granted hereunder shall (a) have the right to exercise voting rights with respect to the Restricted Stock during the Restriction Period (the Committee may require a Participant to grant an irrevocable proxy and power of substitution) and/or (b) have the right to receive dividends on the Restricted Stock during the Restriction Period (and, if so, on what terms).

**8.4 Performance Goals.** The Committee may condition the grant of Restricted Stock or the expiration of the Restriction Period upon the Participant's achievement of one or more performance goal(s) specified in the Award Agreement. If the Participant fails to achieve the specified performance goal(s), the Committee shall not grant the Restricted Stock to such Participant, or the Participant shall forfeit the Award of Restricted Stock to the Company, as applicable.

**8.5 Section 83(b) Election.** If a Participant makes an election pursuant to Section 83(b) of the Code in respect of an Award of Restricted Stock, the Participant shall be required to file promptly a copy of such election with the Company.

#### **Article 9. Other Stock-Based Awards**

The Committee, in its sole discretion, may grant Awards of Shares and Awards that are valued, in whole or in part, by reference to, or are otherwise based on the Fair Market Value of, Shares, including without limitation, restricted stock units, dividend equivalent rights and other phantom awards. Such Other Stock-Based Awards shall be in such form, and dependent on such conditions, as the Committee shall determine, including, without limitation, the right to receive one or more Shares (or the equivalent cash value of such Shares) upon the completion of a specified period of Service, the occurrence of an event, and/or the attainment of performance objectives. Subject to the provisions of the Plan, the Committee shall determine to whom and when Other Stock-Based Awards will be made; the number of Shares to be awarded under (or otherwise related to) such Other Stock-Based Awards; whether such Other Stock-Based Awards shall be settled in cash, Shares or a combination; and all other terms and conditions of such Awards (including, without limitation, the vesting provisions thereof and provisions ensuring that all Shares so awarded and issued shall be fully paid and non-assessable). Each Other Stock-Based Award grant shall be evidenced by an Award Agreement, which shall conform to the requirements of the Plan.

#### **Article 10. Compliance with Section 409A of the Code**

**10.1 General.** The Company intends that the Plan and all Awards be construed to avoid the imposition of additional taxes, interest and penalties pursuant to Section 409A. Notwithstanding the Company's intention, in the event any Award is subject to such additional taxes, interest or penalties pursuant to Section 409A, 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 (a) exempt the Plan and/or any Award from the application of Section 409A, (b) preserve the intended tax treatment of any such Award or (c) comply with the requirements of Section 409A, including, without limitation, any such regulations, guidance, compliance programs and other interpretative authority that may be issued after the date of the grant. In no event shall the Company or any of its Subsidiaries or Affiliates be liable for any additional tax, interest or penalties that may be imposed on a Participant under Section 409A or for any damages for failing to comply with Section 409A.

**10.2 Payments to Specified Employees.** Notwithstanding any contrary provision in the Plan or Award Agreement, any payments of nonqualified deferred compensation (within the meaning of Section 409A) that are otherwise required to be made under the Plan to a "specified employee" (as defined under Section 409A) as a result of his or her separation from service (other than a payment that is not subject to Section 409A) shall be delayed for the first six months following such separation from service (or, if earlier, until the date of death of the specified employee) and shall instead be paid (in a manner set forth in the Award Agreement) on the day that immediately follows the end of such six-month period or as soon as administratively practicable thereafter. Any remaining payments of nonqualified deferred compensation shall be paid without delay and at the time or times such payments are otherwise scheduled to be made.

**10.3 Separation from Service.** A termination of Service shall not be deemed to have occurred for purposes of any provision of the Plan or any Award Agreement providing for the payment of any amounts or benefits that are considered nonqualified deferred compensation under Section 409A upon or following a termination of Service unless such termination is also a “separation from service” within the meaning of Section 409A and the payment thereof prior to a “separation from service” would violate Section 409A. For purposes of any such provision of the Plan or any Award Agreement relating to any such payments or benefits, references to a “termination,” “termination of employment,” “termination of service” or like term shall mean “separation from service.”

## **Article 11. Adjustments**

**11.1 Adjustments in Authorized Shares.** In the event of any corporate event or transaction involving the Company, a Subsidiary or an Affiliate (including, but not limited to, a change in the Shares of the Company or the capitalization of the Company), such as a merger, consolidation, reorganization, recapitalization, separation, stock dividend, stock split, reverse stock split, split-up, spin-off, combination of Shares, exchange of Shares, dividend in kind, extraordinary cash dividend, amalgamation or other like change in capital structure (other than normal cash dividends to stockholders of the Company), or any similar corporate event or transaction, the Committee, to prevent dilution or enlargement of Participants’ rights under the Plan, shall substitute or adjust, in its sole discretion: the number and kind of Shares or other property that may be issued under the Plan or under particular forms of Awards; the number and kind of Shares or other property subject to outstanding Awards; the Option Price, grant price or purchase price applicable to outstanding Awards; and/or other value determinations (including performance conditions) applicable to the Plan or outstanding Awards. All adjustments shall be made in good-faith compliance with Section 409A. For the avoidance of doubt, the purchase of Shares or other equity securities of the Company by a stockholder of the Company or any third party from the Company shall not constitute a corporate event or transaction giving rise to an adjustment described in this Section 11.1.

**11.2 Change in Control.** Upon the occurrence of a Change in Control after the Effective Date, unless otherwise specifically prohibited under applicable laws or by the rules and regulations of any governing governmental agencies or national securities exchanges, or unless the Committee shall specify otherwise in the Award Agreement, 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) continuation or assumption of such outstanding Awards under the Plan by the Company (if it is the surviving company or corporation) or by the surviving company or corporation or its parent; (b) substitution by the surviving company or corporation or its parent of equity, equity-based and/or cash awards with substantially the same terms for outstanding Awards (excluding the consideration payable upon settlement of the Awards); (c) accelerated exercisability, vesting and/or lapse of restrictions under outstanding Awards immediately prior to the occurrence of such event; (d) upon written notice, provide that any outstanding Awards must be exercised, to the extent then exercisable, during a reasonable 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 Awards shall terminate to the extent not so exercised within the relevant period; (e) cancellation of all or any portion of outstanding Awards for fair value (in the form of cash, Shares, other property or any combination thereof) as determined in the sole discretion of the Committee and which value may be zero; provided, that in the case of Options and Stock Appreciation Rights or similar Awards, the fair value may equal the excess, if any, of the value of the consideration to be paid in the Change in

Control transaction to holders of the same number of Shares subject to such Awards (or, if no such consideration is paid, Fair Market Value of the Shares subject to such outstanding Awards or portion thereof being cancelled) over the aggregate Option Price or grant price, as applicable, with respect to such Awards or portion thereof being cancelled, or if no such excess, zero; provided, further, that if any payments or other consideration are deferred and/or contingent as a result of escrows, earnouts, 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 Shares in connection with the Change in Control; provided, further, that such payments or other consideration may be limited to comply with Section 409A of the Code; and (f) cancellation of all or any portion of outstanding unvested and/or unexercisable Awards for no consideration.

#### **Article 12. Duration; Amendment, Modification, Suspension and Termination**

**12.1 Duration of Plan.** Unless sooner terminated as provided in Section 12.2, this Plan shall terminate on the tenth (10th) anniversary of the Effective Date.

**12.2 Amendment, Modification, Suspension and Termination of Plan.** Subject to the terms of the Plan, the Committee may amend, alter, suspend, discontinue or terminate this Plan or any portion thereof or any Award (or Award Agreement) hereunder at any time, in its sole discretion; provided, that no action taken by the Committee shall adversely affect any economic rights granted to any Participant or adversely affect in any material respect any non-economic rights granted to any Participant under any outstanding Awards (other than pursuant to Article 10 or as the Committee deems necessary to comply with applicable law, including without limitation, the Dodd-Frank Wall Street Reform and Consumer Protection Act) without the Participant's written consent.

#### **Article 13. General Provisions**

**13.1 No Right to Service or Award.** The granting of an Award under the Plan shall impose no obligation on the Company, any Subsidiary or any Affiliate to continue the Service of a Participant and shall not lessen or affect any right that the Company, any Subsidiary or any Affiliate may have to terminate the Service of such Participant. No Participant or other Person shall have any claim to be granted any Award, and there is no obligation for uniformity of treatment of Participants, or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant (whether or not such Participants are similarly situated).

**13.2 Settlement of Awards.** Each Award Agreement shall establish the form in which the Award shall be settled. The Committee shall determine whether cash, Awards, other securities or other property shall be issued or paid in lieu of fractional Shares or whether such fractional Shares or any rights thereto shall be issued, rounded, forfeited, or otherwise eliminated.

**13.3 Tax Withholding.** The Company shall have the power and the right to deduct or withhold automatically from any amount deliverable under the Award or otherwise, or require a Participant to remit to the Company, the minimum statutory amount to satisfy federal, state and local taxes, domestic or foreign, required by law or regulation to be withheld with respect to any taxable event arising as a result of the Plan. The Committee, in its sole discretion, may permit Participants to satisfy the withholding requirement, in whole or in part, by having the Company withhold Shares having a Fair Market Value equal to the minimum statutory total tax that could be imposed in connection with any such taxable event.

**13.4 No Guarantees Regarding Tax Treatment.** Participants (or their beneficiaries) shall be responsible for all taxes with respect to any Awards under the Plan. The Committee and the Company make no guarantees to any Person regarding the tax treatment of Awards or payments made under the Plan. Neither the Committee nor the Company 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 or Section 457A of the Code or otherwise, and none of the Company, any of its Subsidiaries or Affiliates, or any of their employees or representatives shall have any liability to a Participant with respect thereto.

**13.5 Non-Transferability of Awards.** Unless otherwise determined by the Committee, an Award shall not be transferable or assignable by the Participant except in the event of the Participant's death (subject to the applicable laws of descent and distribution), and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any Subsidiary or Affiliate. No transfer shall be permitted for value or consideration. An award exercisable after the death of a Participant may be exercised by the heirs, legatees, personal representatives or distributees of the Participant. Any permitted transfer of the Awards to heirs, legatees, personal representatives or distributees of the Participant shall not be effective to bind the Company unless the Committee shall have been furnished with written notice thereof and a copy of such evidence as the Committee may deem necessary to establish the validity of the transfer and the acceptance by the transferee or transferees of the terms and conditions hereof.

**13.6 Stockholders Agreement; Conditions and Restrictions on Shares.** Shares received in connection with Awards granted hereunder shall be subject to all of the terms and conditions of the Stockholders Agreement, including all transfer restrictions, repurchase options and participation rights set forth therein. As a condition to receiving, exercising or settling an Award, if not already fully bound by the terms set forth in the Stockholders Agreement, each Participant shall sign (a) a joinder agreement pursuant to which such Participant shall become fully bound by the terms set forth in the Stockholders Agreement, and (b) any registration rights agreement as the Committee may require. The Committee may impose such other conditions or restrictions on any Shares received in connection with an Award as it may deem advisable or desirable. These restrictions may include, but shall not be limited to, requirements that the Participant: (i) hold the Shares received for a specified period of time or (ii) represent and warrant in writing that the Participant is acquiring the Shares for investment and without any present intention to sell or distribute such Shares. The certificates for Shares may include any legend that the Committee deems appropriate to reflect any conditions and restrictions applicable to such Shares.

**13.7 Shares Not Registered.** Shares and Awards shall not be issued under this Plan unless the issuance and delivery of such Shares and any Awards comply with (or are exempt from) all applicable requirements of law, including, without limitation, the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded. The Company shall not be obligated to file any registration statement under any applicable securities laws to permit the purchase or issuance of any Shares or any Awards under this Plan, and, accordingly, any certificates for Shares or documents granting Awards may have an appropriate legend or statement of applicable restrictions endorsed thereon. If the Company deems it necessary to ensure that the issuance of securities under this Plan is not required to be registered under any applicable securities laws, each Participant to whom such security would be purchased or issued shall deliver to the Company an agreement or certificate containing such representations, warranties and covenants as the Company reasonably requires.

**13.8 Awards to Non-U.S. Eligible Persons.** To comply with the laws in countries other than the United States in which the Company or any Subsidiary or Affiliate operates or engages Eligible Persons, the Committee, in its sole discretion, shall have the power and authority to: (a) determine which Subsidiaries or Affiliates shall be covered by the Plan; (b) determine which Employees and Directors outside the United States are eligible to participate in the Plan; (c) modify the terms and conditions of any Award granted to Eligible Persons outside the United States to comply with applicable foreign laws; (d) 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 (e) establish sub-plans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable.

**13.9 Rights as a Stockholder.** Except as otherwise provided herein or in the applicable Award Agreement, a Participant shall have none of the rights of a stockholder with respect to Shares covered by any Award until the Participant becomes the record holder of such Shares.

**13.10 Severability.** If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction, or as to any Person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction, Person, or Award, and the remainder of the Plan and any such Award shall remain in full force and effect.

**13.11 Unfunded Plan.** Participants shall have no right, title or interest whatsoever in or to any investments that the Company or any of its Subsidiaries or Affiliates may make to aid it in meeting its obligations under the Plan. Nothing contained in the Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Company and any Participant, beneficiary, legal representative, or any other Person. To the extent that any Person acquires a right to receive payments from the Company under the Plan, such right shall be no greater than the right of an unsecured general creditor of the Company. All payments to be made hereunder shall be paid from the general funds of the Company, and no special or separate fund shall be established and no segregation of assets shall be made to assure payment of such amounts. The Plan is not subject to the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time.

**13.12 No Constraint on Corporate Action.** Nothing in the Plan shall be construed to: (a) limit, impair or otherwise affect the Company's right or power to make adjustments, reclassifications, reorganizations or changes of or to its capital or business structure or to merge or consolidate, or dissolve, liquidate, sell or transfer all or any part of its business or assets; or (b) limit the right or power of the Company to take any action that it deems to be necessary or appropriate.

**13.13 Successors.** All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation or otherwise, of all or substantially all of the business or assets of the Company.

**13.14 Governing Law.** This Plan and each Award Agreement and all claims or causes of action or other matters (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Plan or any Award Agreement or the negotiation, execution or performance of this Plan or any Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, excluding any conflict- or choice-of-law rule or principle that might otherwise refer construction or interpretation of this Plan to the substantive law of another jurisdiction.

**13.15 Effective Date.** The Plan shall be effective as of the date of its adoption by the Board, which date is set forth below (the "Effective Date").

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This Plan was duly adopted and approved by the Board of Directors of the Company on August 31, 2017.