**Risk Factors Comparison 2023-12-29 to 2023-01-18 Form: 10-K**

**Legend:** **New Text** ~~Removed Text~~ Unchanged Text Moved Text Section

An investment in our common stock involves a high degree of risk. These risks should be considered carefully with the uncertainties described below, and all other information included in this Annual Report on Form 10- K, before deciding whether to purchase our common stock. Additional risks and uncertainties not currently known to management or that management currently deems immaterial and therefore not referenced herein, may also become material and may harm our business, financial condition or results of operations. The occurrence of any of the following risks could harm our business, financial condition and results of operations. The trading price of our common stock could decline due to any of these risks and uncertainties and you may lose part or all of your investment. Certain statements in this report contain forward- looking information. In general, forward- looking statements include estimates of future revenues, cash flow, capital expenditures, or other financial items and assumptions underlying any of the foregoing. Forward- looking statements reflect management' s current expectations regarding future events and use words such as " anticipate ", " believe ", " expect ", " may ", " will " and other similar terminology. These statements speak only as of the date they were made and involve a number of risks and uncertainties that could cause actual results to differ materially from those expressed in the forward- looking statements. Several factors, many beyond our control, could cause actual results to differ materially from management' s expectations. New risks and uncertainties arise from time to time, and we cannot predict when they may arise or how they may affect us. We assume no obligation to update any forward- looking statements after the date of this report as a result of new information, future events or other developments, except as required by applicable laws and regulations. Risks Related to COVID- 19 ~~Pandemic~~ **PandemicThe** ~~The~~ COVID- 19 Pandemic Has Had A Significant Impact On Our Operations Since March 2020 And Could Materially And Adversely Affect Our Future Business And Financial Results. In March 2020, a novel strain of coronavirus was declared a global pandemic and a National Public Health Emergency. The novel coronavirus pandemic and related suggested and mandated social distancing and " shelter- in- place " orders and other governmental mandates relating thereto (collectively, " COVID- 19 ") caused significant disruptions to our business, adversely affected and will, in all likelihood continue to adversely affect, our restaurant operations and financial results for the foreseeable future, particularly if further government directives are put in place for a significant amount of time. ~~Throughout our fiscal year 2022, in accordance with guidance from health officials, we offered both indoor and outdoor food and bar options at all of our restaurants.~~ The **Department of Health and Human Services (HHS) permitted the federal Public Health Emergency for** COVID- 19 ~~pandemic' s impact~~ **(PHE) declared by the Secretary of the Department of Health and Human Services (Secretary) under Section 319 of the Public Health Service (PHS) Act to expire at the end of the day** on **May 11** ~~the economy in general~~ , ~~globally, nationally and locally, could also adversely affect our guests' financial condition, resulting in reduced spending at our restaurants and package liquor stores. The COVID- 19 pandemic and these responses have affected and will continue to adversely affect our guest traffic, sales and operating costs and we cannot predict how long the pandemic will last or what other government responses may occur. During our fiscal year 2022~~ **2023** ~~, our Board of Directors declared a cash dividend of $ 1~~ . **We** ~~00 per share to shareholders of record on March 31, 2022, payable on April 19, 2022. During our fiscal year 2021, our Board of Directors did not declare a cash dividend due to uncertainty surrounding the duration of restrictions mandated by state and local governments in response to COVID- 19. 15We~~ have experienced significant issues relating to suppliers and labor impacted by the COVID- 19 pandemic. If our suppliers' employees are unable to work, whether because of illness, quarantine, limitations on travel or other government restrictions in connection with COVID- 19, or if the supply chain is disrupted for any other reason such as travel limitations and other restrictions on commerce, we could face shortages of food items or other supplies at our restaurants and our operations and sales could be adversely impacted by such supply interruptions. The impact of COVID- 19, and the volatile regional and global economic conditions stemming from the pandemic, may also precipitate or exacerbate other risks discussed in this Item 1A- Risk Factors and elsewhere in this report, any of which could have a material effect on us. ~~This situation is changing rapidly and additional effects may arise that we are not presently aware of or that we currently do not consider to present significant risks to our operations.~~ If we are not able to respond to and manage the impact of such events effectively, our business and financial condition will be negatively impacted. Risks Related to Our Business If we are unable to staff and retain qualified restaurant and package liquor store management and operating personnel in an increasingly competitive market, we may be unable to effectively operate and grow our business and revenues, which could materially adversely affect our financial performance. **12** Similar to the broader economy, we are experiencing labor shortfalls relative to our sales levels in certain parts of our workforce. If we are unable to attract and retain qualified people, our restaurants could be short staffed, we may be forced to incur overtime expenses, and our ability to operate and expand our concepts effectively and to meet our customers' demand could be limited, any of which could materially adversely affect our financial performance. We have experienced and continue to experience significant labor cost inflation. If we are unable to offset higher labor costs, our cost of doing business will significantly increase, which could materially adversely impact our financial performance. Increases in minimum wages and minimum tip credit wages, extensions of personal and other leave policies, other governmental regulations affecting labor costs and a diminishing pool of potential staff members when the unemployment rate falls and legal immigration is restricted, especially in certain localities, could significantly increase our labor costs and make it more difficult to fully staff our restaurants, any of which could materially adversely affect our financial performance. We believe the United States federal government may significantly increase the federal minimum wage and tip credit wage (or eliminate the tip credit wage) and require significantly more mandated benefits than what is currently required under federal law. The State of Florida has already enacted a minimum wage and tip credit, with the minimum wage currently at $ ~~11~~ **12** . 00 per hour and a tip credit of $ 3. 02 per hour. The minimum wage increases $ 1. 00 per hour annually until it reaches $ 15. 00 per hour in 2027. The tip credit does not increase. In addition to increasing the overall wages paid to our minimum wage and tip credit wage earners, these increases create pressure to increase wages and other benefits paid to other staff members who, in recognition of their tenure, performance, job responsibilities and other similar considerations, historically received a rate of pay exceeding the applicable minimum wage or minimum tip credit wage. Because we employ a large workforce, any wage increase and / or expansion of benefits mandates will have a particularly significant impact on our labor costs. Our vendors, contractors and business partners are similarly impacted by wage and benefit cost inflation, and many have or will increase their price for goods, construction and services in order to offset their increasing labor costs. Additionally, while our employees are not currently covered by any collective bargaining agreements, union organizers may engage in efforts to organize our employees and those of other restaurant companies. If a significant portion of our employees were to unionize, our labor costs could increase and it could negatively impact our culture, reduce our flexibility and disrupt our business. In addition, our responses to any union organizing efforts could negatively impact our reputation and dissuade guests from patronizing our restaurants. ~~16~~ Our labor expenses include significant costs related to our health benefit plans. Health care costs continue to rise and are especially difficult to project. Material increases in costs associated with medical claims, or an increase in the severity or frequency of such claims, may cause health care costs to vary substantially from year- over- year. Given the unpredictable nature of actual health care claims trends, including the severity or frequency of claims, in any given year our health care costs could significantly exceed our estimates, which could materially adversely affect our financial performance. Any significant changes to the healthcare insurance system could impact our healthcare costs. Material increases in healthcare costs could materially adversely affect our financial performance. While we try to offset labor cost increases through price increases, more efficient purchasing practices, productivity improvements and greater economies of scale, there can be no assurance that these efforts will be successful. If we are unable to effectively anticipate and respond to increased labor costs, our financial performance could be materially adversely affected. Our Sales and Profit Growth Could Be Adversely Affected If Comparable Restaurant Sales Increases Are Less Than We Expect, and We May Not Successfully Increase Comparable Restaurant Sales or They May Decrease. While future sales growth will depend substantially on our opening new restaurants, changes in comparable restaurant sales (which represent the change in period- over- period sales for restaurants) will also affect our sales growth and will continue to be a critical factor affecting profit growth. This is because the profit margin on comparable restaurant sales is generally higher, as comparable restaurant sales increases enable fixed costs to be spread over a higher sales base. Conversely, declines in comparable restaurant sales can have a significant adverse effect on profitability due to the loss of the positive impact on profit margins associated with comparable restaurant sales increases. There is no assurance that comparable restaurant sales will increase in fiscal year ~~2023~~ **2024** due to, among other things, ongoing consumer and economic uncertainty. **13** Our ability to increase comparable restaurant sales depends on many factors, including: ~~-~~ ● perceptions of the Flanigan' s brand; ~~-~~ ● competition, especially from an increasing number of competitors in the fast casual segment of the restaurant industry and from other restaurants whose strategies overlap ours, as well as from grocery stores, meal kit delivery services and other dining options; ~~-~~ ● executing our strategies effectively, including our marketing and branding strategies; ~~-~~ ● changes in consumer preferences and discretionary spending; ~~-~~ ● our ability to increase menu prices without adversely affecting our existing business; ~~-~~ ● weather, natural disasters and other factors limiting access to our restaurants; and ~~-~~ ● changes in government regulation that may impact customer perceptions of our food. ~~17~~ As a result **,** it is possible that we will not achieve our targeted comparable restaurant sales or that the change in comparable restaurant sales could be negative. A number of these factors are beyond our control and therefore we cannot assure that we will be able to sustain comparable restaurant sales increases. High Unemployment, Instability in the Housing Market, High Energy and Food Costs and General Economic Uncertainty Could Result in a Decline in Consumer Discretionary Spending That Would Materially Affect our Financial Performance. COVID- 19 has had a significant impact on domestic economies and will likely continue to negatively impact these economies for some time. Dining out is a discretionary expense. In addition to COVID- 19, factors that affect consumer behavior and spending for restaurant dining, such as changes in general economic conditions (including national, regional and local economic conditions), discretionary spending patterns, employment levels, instability in the housing market, and high energy and food costs may have a material adverse effect on us. If economic conditions worsen, our financial performance could be adversely affected. Intense Competition In The Restaurant And Package Liquor Store Industry Could Prevent Us From Increasing Or Sustaining Our Revenues And Profitability. The restaurant and package liquor store industry is intensely competitive with respect to food quality, price- value relationships, ambiance, service and location and many restaurants and package liquor stores compete with us at each of our locations. There are a number of well- established competitors with substantially greater financial, marketing, personnel and other resources than ours, and many of our competitors are well established in the markets where we have restaurants and / or stores or where we intend to locate restaurants. Additionally, other companies may develop restaurants and / or stores that operate with similar concepts. Any inability to compete successfully with the other restaurants and / or stores in our markets will prevent us from increasing or sustaining our revenues and profitability and will result in a material adverse effect on our business, financial condition, results of operations or cash flows. We may also need to modify or refine elements of our business to evolve our concepts in order to compete with popular new restaurant formats or store concepts that may develop in the future. There can be no assurance that we will be successful in implementing these modifications or that these modifications will not reduce our profitability. New Information Or Attitudes Regarding Diet And Health Could Result In Changes In Regulations And Consumer Eating Habits That Could Adversely Affect Our Revenues. Regulations and consumer eating habits may change because of new information or attitudes regarding diet and health. These changes may include regulations that impact the ingredients and nutritional content of our menu items at our restaurants. For example, a number of states, counties and cities are enacting menu- labeling laws requiring multi- unit restaurant operators to make certain nutritional information available to guests or restrict the sales of certain types of ingredients in restaurants. The success of our restaurant operations is dependent, in part, upon our ability to respond effectively to changes in consumer health and disclosure regulations and to adapt our menu offerings to trends in eating habits. If consumer health regulations or consumer eating habits change significantly, we may be required to modify or delete certain menu items. To the extent we are unable to respond with appropriate changes to our menu offerings, it could materially affect customer demand and have an adverse impact on our revenues. **14** Adverse Public Or Medical Opinions About Health Effects Of Consuming Our Products As Well As Negative Publicity About Us, Our Restaurants And / ~~or~~ **Or** Package Liquor Stores And About Others Across The Food And Liquor Industry Supply Chain, Whether Or Not Accurate, Could Negatively Affect Us. ~~18~~ Restaurant operators have received more scrutiny from regulators and health organizations in recent years relating to the health effects of consuming certain products. An unfavorable report on the products we use in our menu, the size of our portions or the consumption of those items could influence the demand for our offerings. In addition, adverse publicity or news reports, whether or not accurate, of food quality issues, illness, injury, health concerns, or operating issues stemming from a single restaurant, a limited number of restaurants, restaurants operated by others or generally in the food supply chain could be damaging to the restaurant industry overall and specifically harm our reputation. A decrease in guest traffic because of these types of health concerns or negative publicity could materially harm our results of operations. Our Inability To Successfully And Sufficiently Raise Menu Prices Could Result In A Decline In Profitability. We utilize menu price increases to help offset cost increases, including increased cost for commodities, minimum wages, employee benefits, insurance arrangements, construction, utilities and other key operating costs. If our selection and amount of menu price increases are not accepted by consumers and reduce guest traffic, or are insufficient to counter increased costs, our financial results could be negatively affected. However, we have not experienced any adverse effects from past menu price increases. Increases in Food Costs, Raw Materials and Other Supplies and Services Due to Inflation May Have a Material Adverse Impact on our Financial Performance. Our operating margins depend on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including food and beverage costs, utilities and other supplies and services due to inflation. We attempt to negotiate short- term and long- term agreements for our principal commodity, supply and equipment requirements, depending on market conditions and expected demand. However, we are currently unable to contract for extended periods of time for certain of our commodities. Consequently, these commodities can be subject to unforeseen supply and cost fluctuations due to factors such as changes in demand patterns, increases in the cost of key inputs, fuel costs, weather and other market conditions outside of our control caused by inflation. Dairy costs can also fluctuate due to government regulation. Our suppliers also may be affected by higher costs to produce and transport commodities used in our restaurants, higher minimum wage and benefit costs, and other expenses that they pass through to their customers, which could result in higher costs for goods and services supplied to us. Shortages or Interruptions in the Supply of Food Offering Ingredients and / or Liquor Inventory Could Adversely Affect our Operating Results. Our business is dependent on frequent and consistent deliveries of food offering ingredients and liquor inventory. We may experience shortages, delays or interruptions in the supply of ingredients and other supplies to our restaurants due to inclement weather, natural disasters, labor issues or other operational disruptions at our suppliers, distributors or transportation providers or other conditions beyond our control. In addition, we have a single or a limited number of suppliers for some of our ingredients, including baby back ribs. Although we believe we have potential alternative suppliers and sufficient reserves of food offering ingredients and liquor inventory, shortages or interruptions in our supply of food offering ingredients and liquor inventory could adversely affect our financial results. Our Business Could Be Materially Adversely Affected If We Are Unable To Expand In A Timely And Profitable Manner. ~~19~~ To grow successfully, we must open new restaurants and / or package liquor stores on a timely and profitable basis. We have experienced delays in restaurant and / or package liquor store openings from time to time and may experience delays in the future. During our fiscal year ~~2022~~ **2023** , we opened ~~our new limited partnership owned restaurant in Sunrise, Florida (Store # 85) for business and continued developing~~ our new limited partnership owned restaurant in Miramar, Florida (Store # 25) ~~, which we anticipate opening~~ for business ~~in February 2023. During our fiscal year 2022~~ , **as well as** ~~we also continued developing~~ our ~~new~~ **company owned** package liquor store in Miramar, Florida (Store # 24) **and our newly built stand- alone package liquor store in Hollywood, Florida (Store # 19P) for business, replacing our package liquor store destroyed by fire which previously operated at that site. During our fiscal year 2023, we also continued constructing a stand- alone building on the same site in Hollywood, Florida adjacent to Store # 19P, replacing our restaurant destroyed by fire which previously operated at that site (Store # 19R). We anticipate that the restaurant in Hollywood, Florida (Store # 19R) will open for business in March 2024** . Our ability to open and profitably operate restaurants and / or package liquor stores is subject to various risks such as identification and availability of suitable and economically viable locations, the negotiation of acceptable leases or the purchase terms of existing locations, the availability of limited partner investors or other means to raise capital, the need to obtain all required governmental permits (including zoning approvals) on a timely basis, the need to comply with other regulatory requirements, the availability of necessary contractors and subcontractors, the availability of construction materials and labor, the ability to meet construction schedules and budgets, variations in labor and building material costs, changes in weather or other acts of God that could result in construction delays and adversely affect the results of one or more restaurants and / or package liquor stores for an indeterminate amount of time. If we are unable to manage these risks successfully, we will face increased costs and lower than anticipated revenues which will materially adversely affect our business, financial condition, operating results and cash flow. **15** Changes In Customer Preferences For Casual Dining Styles Could Adversely Affect Financial Performance. Changing customer preferences, tastes and dietary habits can adversely impact our business and financial performance. We offer a large variety of entrees, side dishes and desserts and our continued success depends, in part, on the popularity of our cuisine and casual style of dining. A change from this dining style may have an adverse effect on our business. Our Success Depends Substantially on the Value of our Brands and our Reputation for Offering Guests a Satisfactory Experience. We believe we have built a reasonably strong reputation for the predictability of our menu items, as part of the experience that guests enjoy in our restaurants. We believe we must protect and grow the value of our brands to continue to be successful in the future. Any incident that erodes consumer trust in or affinity for our brands could be harmful to us. If consumers perceive or experience a reduction in food quality, service or ambiance, or in any way believe we failed to deliver a consistently positive experience, our brand value could suffer. Our Marketing And Advertising Strategies May Not Be Successful, Which Could Adversely Impact Our Business. From time to time, we introduce new advertising campaigns and media strategies. If our advertising campaign and new media strategies do not resonate with customers in the manner we hope, they may not result in increased sales, but would still increase our expenses. We will continue to invest in marketing and advertising strategies that we believe will attract customers or increase their connection with our brand. If these marketing and advertising investments do not drive increased restaurant and / or package store sales, the expense associated with these programs will adversely impact our financial results, and we may not generate the levels of comparable sales we expect. ~~20~~ Labor Shortages, An Increase In Labor Costs, Or Inability To Attract Employees Could Harm Our Business. Our employees are essential to our operations and our ability to deliver an enjoyable dining experience to our customers. If we are unable to attract and retain enough qualified restaurant and / or package liquor store personnel at a reasonable cost, and if they do not deliver an enjoyable dining experience, our results may be negatively affected. Additionally, competition for qualified employees could require us to pay higher wages, which could result in higher labor costs. Due To Our Geographic Locations, Restaurants Are Subject To Climate Conditions That Could Affect Operations. All but one (1) of our restaurants and package liquor stores are located in South Florida, with the remaining restaurant located in Central Florida. During hurricane season, (June 1 through November 30 each year), our restaurants and / or package liquor stores may face harsh weather associated with hurricanes and tropical storms. These harsh weather conditions may make it more difficult for customers to visit our restaurants and package liquor stores or may necessitate the closure of the stores and restaurants for a period of time. If customers are unable to visit our restaurants and / or package liquor stores, our sales and operating results may be negatively affected ~~. Hurricane Ian, which struck the Southwest Coast of Florida on September 28, 2022 did not impact any of the Company' s locations~~ . If We Were to Experience Widespread Difficulty Renewing Existing Leases on Favorable Terms, Our Revenue or Occupancy Costs Could be Adversely Affected. Most of the properties on which we operate restaurants are leased from third parties, and some of our leases are due for renewal or extension options in the next several years. Some leases expire without any renewal options. While we currently expect to pursue the renewal of substantially all of our expiring restaurant leases, any difficulty renewing a significant number of such leases, or any substantial increase in rents associated with lease renewals, could adversely impact us. If we have to close any restaurants due to difficulties in renewing leases, we would lose revenue from the affected restaurants and may not be able to open suitable replacement restaurants. Substantial increases in rents associated with lease renewals would increase our occupancy costs, reducing our restaurant margins. Due To Our Geographic Locations, We May Not Be Able To Acquire Windstorm Insurance Coverage Or Adequate Windstorm Insurance Coverage At A Reasonable Rate. Due to the anticipated active hurricane seasons in South Florida in the future, we may not be able to acquire windstorm insurance coverage for our restaurant and package liquor store locations on a year- to- year basis or may not be able to get adequate windstorm insurance coverage at reasonable rates. If we are unable to obtain windstorm insurance coverage or adequate windstorm insurance coverage at reasonable rates, then we will be self- insured for all or a part of the exposure for damages caused by a hurricane impacting South Florida, which may have a material adverse effect upon our financial condition and / or results of operations. We secured windstorm insurance coverage for the period commencing December 30, ~~2022~~ **2023** at a higher premium. (See Item 2. Subsequent Events for a discussion of windstorm insurance for the period commencing December 30, ~~2022~~ **2023** on page ~~38~~ **31** . **16** ~~) 21~~ Our Inability or Failure to Execute a Comprehensive Business Continuity Plan at our Restaurant Support Centers Following a Disaster or Force Majeure Event could have a Material Adverse Impact on our Business. Many of our corporate systems and processes and corporate support for our restaurant and package liquor store operations are centralized at one location. We have disaster recovery procedures and business continuity plans in place to address crisis- level events, including hurricanes and other natural disasters and back up and off- site locations for recovery of electronic and other forms of data and information and the COVID- 19 pandemic has provided a limited test of our ability to manage our business remotely. However, if we are unable to fully implement our disaster recovery plans, we may experience delays in recovery of data, inability to perform vital corporate functions, tardiness in required reporting and compliance, failures to adequately support field operations and other breakdowns in normal communication and operating procedures that could have a material adverse effect on our financial condition, results of operation and exposure to administrative and other legal claims. In addition, these threats are constantly evolving, which increases the difficulty of accurately and timely predicting, planning for and protecting against the threat. As a result, our disaster recovery procedures and business continuity plans security may not adequately address all threats we face or protect us from loss. Inability To Attract And Retain Customers Could Affect Results Of Operations. We take pride in our ability to attract and retain customers, however, if we do not deliver an enjoyable dining experience for our customers, they may not return and results may be negatively affected. A Failure To Comply With Governmental Regulations Could Harm Our Business And Our Reputation. We are subject to regulation by federal agencies and regulation by state and local health, sanitation, building, zoning, safety, fire and other departments relating to the development and operation of restaurants. These regulations include matters relating to the following: ~~-~~ **●** the preparation and sale of food and alcoholic beverages; ~~-~~ **●** employment; ~~-~~ **●** building construction and access; ~~-~~ **●** zoning requirements; and ~~-~~ **●** the environment. Our facilities are licensed and subject to regulation under state and local fire, health and safety codes. The construction and remodeling of restaurants will be subject to compliance with applicable zoning, land use and environmental regulations. We may not be able to obtain necessary licenses or other approvals on a cost- effective and timely basis in order to construct and develop restaurants in the future. Various federal and state labor laws govern our operations and our relationship with our employees, minimum wage, overtime, working conditions, fringe benefit and work authorization requirements. In particular, we are subject to federal immigration regulations. Given the location of many of our restaurants, even if we operate those restaurants in strict compliance with federal immigration requirements, our employees may not all meet federal work authorization or residency requirements, which could lead to disruptions in our work force. ~~22~~ Our business can be adversely affected by negative publicity resulting from, among other things, complaints or litigation alleging poor food quality, food- borne illness or other health concerns or operating issues stemming from one or a limited number of restaurants. Unfavorable publicity could negatively impact public perception of our brands. We are required to comply with the alcohol licensing requirements of the federal government, states and municipalities where our restaurants are located. Alcoholic beverage control regulations require applications to state authorities and, in certain locations, county and municipal authorities for a license and permit to sell alcoholic beverages. Typically, licenses must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of the daily operations of the restaurants, including minimum age of guests and employees, hours of operation, advertising, wholesale purchasing, inventory control and handling and storage and dispensing of alcoholic beverages. If we fail to comply with federal, state or local regulations, our licenses may be revoked and we may be forced to terminate the sale of alcoholic beverages at one or more of our restaurants. **17** The Federal Americans with Disabilities Act (the " ADA ") prohibits discrimination on the basis of disability in public accommodations and employment. We are required to comply with the ADA and regulations relating to accommodating the needs of disabled persons in connection with the construction of new facilities and with significant renovations of existing facilities. Failure to comply with these and other regulations could negatively impact our reputation and could have an adverse effect on our business, financial condition, results of operations or cash flows. We May Face Liability Under Dram Shop Statutes. Our sale of alcoholic beverages subjects us to " dram shop " statutes, which allow an injured person to recover damages from an establishment that served alcoholic beverages to an intoxicated person. If we receive a judgment substantially in excess of our insurance coverage, or if we fail to maintain our insurance coverage, our business, financial condition, operating results or cash flows could be materially and adversely affected. There are currently no " dram shop " claims pending against us. See " Item 1. Business — Government Regulation " for a discussion of the regulations with which we must comply. Concerns relating to pandemics and other diseases, food safety and food- borne illness could reduce customer traffic to our restaurants, disrupt our food supply chain or cause us to be the target of litigation, which could materially adversely affect our financial performance. The COVID- 19 pandemic had a significant adverse impact on our customer traffic and ability to operate our restaurants and may do so again in the foreseeable future. Future pandemics and other diseases may have a similar or more severe impact. In years past, several nationally known restaurants experienced outbreaks of food poisoning believed to be caused by E. coli contained in fresh spinach, which is not included in any of the items on our menu, Asian and European countries experienced outbreaks of avian flu and incidents of " mad cow " disease have occurred in Canadian and U. S. cattle herds. These problems, other food- borne illnesses (such as, hepatitis A, trichinosis or salmonella) and injuries caused by food tampering have in the past, and could in the future, adversely affect the price and availability of affected ingredients and cause changes in consumer preference. As a result, our sales could decline. ~~23~~ Instances of food- borne illnesses, real or perceived, whether at our restaurants or those of our competitors, could also result in negative publicity about us or the restaurant industry, which could adversely affect sales. If we react to negative publicity by changing our menu or other key aspects of the dining experience we offer, we may lose customers who do not accept those changes and may not be able to attract enough new customers to produce the revenue needed to make our restaurants profitable. If our guests become ill from food- borne illnesses, we could be forced to temporarily close some restaurants. A decrease in guest traffic as a result of health concerns or negative publicity, or as a result of a change in our menu or dining experience or a temporary closure of any of our restaurants, could materially harm our business. If We Are Unable To Protect Our Customers' Credit Card Data, We Could Be Exposed To Data Loss, Litigation And Liability, And Our Reputation Could Be Significantly Harmed. In connection with credit card sales, we transmit confidential credit card information by way of secure private retail networks. Although we use private networks, third parties may have the technology or know- how to breach the security of the customer information transmitted in connection with credit card sales, and our security measures and those of our technology vendors may not effectively prohibit others from obtaining improper access to this information. If a person is able to circumvent these security measures, he or she could destroy or steal valuable information or disrupt our operations. Any security breach could expose us to risks of data loss, litigation, and liability, and could seriously disrupt our operations and any resulting negative publicity could significantly harm our reputation. We have not experienced any security breaches to date. If We Experience a Significant Failure in or Interruption of Certain Key Information Technology Systems, our Business ~~could~~ **Could** ~~be~~ **Be** Adversely Impacted. We use a variety of applications and systems to manage the flow of information securely within each of our restaurants and within our centralized corporate infrastructure. The services available within our systems and applications include restaurant and store operations, supply chain, inventory, scheduling, training, human capital management, financial tools and data protection services. The restaurant and store structure is based primarily on a point- of- sale system that operates locally and is integrated with other functions necessary to operations. It records sales transactions, receives out of store orders and authorizes, batches and transmits credit card transactions. The system also allows employees to enter time clock information and to produce a variety of management reports. Select information that is captured from this system at each restaurant or store is collected in the central corporate infrastructure, which enables management to continually monitor operating results. Our ability to manage efficiently and effectively our business depends significantly on the reliability and capacity of these and other systems and our operations depend substantially on the availability of our point- of- sale system and related networks and applications. These systems may be vulnerable to attacks or outages from security breaches, viruses and other disruptive problems, as well as from physical theft, fire, power loss, telecommunications failure or other catastrophic events. Any failure of these systems to operate effectively, whether from security breaches, maintenance problems, upgrades or transitions to new platforms, or other factors could result in interruptions to or delays in our restaurant or other operations, adversely impacting the restaurant or store experience for our customers or negatively impacting our ability to manage our business. If our information technology systems fail and our redundant systems or disaster recovery plans are not adequate to address such failures, or if our business interruption insurance does not sufficiently compensate us for any losses that we may incur, our revenues and profits could be reduced and the reputation of our brand and our business could be materially adversely affected. In addition, remediation of any problems with our systems could result in significant, unplanned expenses. ~~24~~ **18** The Effect of Recent Changes to U. S. Healthcare Laws May Increase Our Healthcare Costs and Negatively Impact Our Financial Results. We offer eligible full- time employees the opportunity to enroll in healthcare coverage subsidized by the Company. For various reasons, many of our eligible employees currently choose not to participate in our healthcare plans. However, under the comprehensive U. S. health care reform law enacted in 2010, the Affordable Care Act, certain provisions, including, the employer mandate, may increase our labor costs significantly. In general, implementing the requirements of the Affordable Care Act is likely to impose additional administrative costs on us. The costs and other effects of these new healthcare requirements cannot be determined with certainty, but they may have a material adverse effect on our financial and operating results. Governmental Regulation in One or More of the Following Areas May Adversely Affect Our Existing and Future Operations and Results, Including by Harming Our Ability to Open New Restaurants or Increasing Our Operating Costs. Employment and Immigration Regulations We are subject to various federal and state laws governing our relationship with and other matters pertaining to our employees, including wage and hour laws, requirements to provide meal and rest periods or other benefits, healthcare, family leave mandates, requirements regarding working conditions and accommodations to certain employees, citizenship or work authorization and related requirements, insurance and workers' compensation rules and anti- discrimination laws. Complying with these rules subjects us to substantial expense and can be cumbersome and can also expose us to liabilities from claims for non- compliance. For example, historically, lawsuits have been filed against us alleging violations of federal and state laws regarding employee wages and payment of overtime. We could suffer losses from and we incur legal costs to defend, these and similar cases and the amount of such losses or costs could be significant. In addition, several states and localities in which we operate and the federal government have from time to time enacted minimum wage increases, paid sick leave and mandatory vacation accruals and similar requirements and these changes could increase our labor costs. Changes in U. S. healthcare laws could also adversely impact us if they result in significant new welfare and benefit costs or increased compliance expenses. We also are subject to being audited from time to time for compliance with citizenship or work authorization requirements. From time to time, the State of Florida considers adopting new state immigration laws and the U. S. Congress and Department of Homeland Security from time to time consider or implement changes to Federal immigration laws, regulations or enforcement programs as well. Changes in immigration or work authorization laws may increase our obligations for compliance and oversight, which could subject us to additional costs and make our hiring process more cumbersome or reduce the availability of potential employees. 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 for all employees throughout our company. However, use of E- Verify does not guarantee that we will properly identify all applicants who are ineligible for employment. Unauthorized workers may subject us to fines or penalties and we could experience adverse publicity that negatively affects our brand and may make it more difficult to hire and keep qualified employees. Termination of a significant number of employees would disrupt our operations including slowing our throughput and could also cause additional adverse publicity and temporary increases in our labor costs as we train new employees. 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. Our reputation and financial performance may be materially harmed as a result of any of these factors. ~~25~~ On the other hand, in the event we wrongfully reject work authorization documents or if our compliance procedures are found to have a disparate impact on a protected class, such as a racial minority or based on the citizenship status of applicants, we could be found to be in violation of anti- discrimination laws. We could experience adverse publicity arising from enforcement activity related to work authorization compliance, anti- discrimination compliance, or both, that negatively impacts our brand and may make it more difficult to hire and keep qualified employees. Moreover, our business could be adversely affected by increased labor costs or difficulties in finding the right employees for our restaurants. **19** Additionally, while we do not currently have any unionized employees, union organizers have engaged in efforts to organize employees of other restaurant companies. If a significant portion of our employees were to become union organized, our labor costs could increase and our efforts to maintain a culture appealing only to top performing employees could be impaired. Potential changes in labor laws, including the possible passage of legislation designed to make it easier for employees to unionize, could increase the likelihood of some or all of our employees being subjected to greater organized labor influence and could have an adverse effect on our business and financial results by imposing requirements that could potentially increase our costs, reduce our flexibility and impact our employee culture. Americans with Disabilities Act and Similar State Laws We are subject to the U. S. Americans with Disabilities Act, or ADA, and similar state laws that give civil rights protections to individuals with disabilities in the context of employment, public accommodations and other areas. We have incurred legal fees in connection with ADA- related complaints in the past and we may in the future have to modify restaurants, for example by adding access ramps or redesigning certain architectural features, to provide service to or make reasonable accommodations for disabled persons under these laws. The expenses associated with these modifications or any damages, legal fees and costs associated with litigating or resolving claims under the ADA or similar state laws, could be material. Nutrition and Food Regulation In recent years there has been an increased legislative, regulatory and consumer focus at the federal, state and municipal levels on the food industry including nutrition and advertising practices. Restaurants operating in the quick- service and fast- casual segments have been a particular focus. For example, the State of California, New York City and a number of other jurisdictions around the U. S. have adopted regulations requiring that chain restaurants include calorie information on their menus and / or make other nutritional information available and nation- wide nutrition disclosure requirements included in the U. S. health care reform law went into effect as of December 1, 2015. These nutrition disclosure requirements may increase our expenses or slow customers as they select their food and beverage choices decreasing our throughput. These initiatives may also change customers' buying habits in a way that adversely impacts our sales. Privacy / Cybersecurity We are required to collect and maintain personal information about our employees and we collect information about customers as part of some of our marketing programs as well. The collection and use of such information is regulated at the federal and state levels and the regulatory environment related to information security and privacy is increasingly demanding. If our security and information systems are compromised or if we otherwise fail to comply with these laws and regulations, we could face litigation and the imposition of penalties that could adversely affect our financial performance. Our reputation as a brand or as an employer could also be adversely affected from these types of security breaches or regulatory violations, which could impair our sales or ability to attract and keep qualified employees. ~~26~~ Local Licensure, Zoning and Other Regulation Each of our restaurants is also subject to state and local licensing and regulation by health, alcoholic beverage, sanitation, food and workplace safety and other agencies. We may experience material difficulties or failures in obtaining the necessary licenses or approvals for new restaurants, which could delay planned restaurant openings. In addition, stringent and varied requirements of local regulators with respect to zoning, use and environmental factors could delay or prevent development of new restaurants in particular locations. Environmental Laws We are subject to federal, state and local environmental laws and regulations concerning the discharge, storage, handling, release and disposal of hazardous or toxic substances, as well as local ordinances relating to our operations. We have not conducted a comprehensive environmental review of our properties or operations. We cannot predict what environmental laws will be enacted in the future, how existing or future environmental laws will be administered or interpreted, or the amount of future expenditures that we may need to make to comply with or to satisfy claims relating to environmental laws. We Could Be Party To Litigation That Could Adversely Affect Us By Distracting Management, Increasing Our Expenses or Subjecting Us to Material Money Damages and Other Remedies. We could be party to litigation that could adversely affect us by distracting management, increasing our expenses or subjecting us to material money damages and other remedies. We could become subject to numerous claims alleging violations of federal and state laws regarding workplace and employment matters, including wages, work hours, overtime, vacation and family leave, discrimination, wrongful termination and similar matters, and we could become subject to class action or other lawsuits related to these or different matters. Our customers could file complaints or lawsuits against us alleging that we are responsible for some illness or injury they suffered at or after a visit to our restaurants or that we have problems with food quality, operations or our food related disclosure or advertising practices. 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. **20** Regardless of whether any claims against us are valid or whether we are ultimately held liable for such claims, they may be expensive to defend and may divert time and money away from our operations and hurt our performance. A significant judgment for any claims against us could materially and adversely affect our financial condition or results of operations. Any adverse publicity resulting from these allegations, whether directed at us or at fast casual or quick-service restaurants generally, may also materially and adversely affect our reputation or prospects, which in turn could adversely affect our results. Our Success May Depend on the Continued Service and Availability of Key Personnel. Our Chairman and Chief Executive Officer and President, James Flanigan, has been the principal architect of our business strategy since 2002. August Bucci, Jeffrey Kastner and Christopher O' Neil, our Chief Operating Officer, Chief Financial Officer and Vice President of Package Operations, respectively, have also served with us since 2002 in the case of Mr. Bucci, since 2004 in the case of Mr. Kastner and 2016 in the case of Mr. O' Neil, and much of our growth has occurred under their direction as well. We believe our executive officers have created an employee culture, food culture and business strategy at our company that has been critical to our success and that may be difficult to replicate under another management team. We also believe that it may be difficult to locate and retain executive officers who are able to grasp and implement our unique strategic vision. If our company culture were to deteriorate following a change in leadership, or if a new management team were to be unsuccessful in executing our strategy or were to change important elements of our current strategy, our growth prospects or future operating results may be adversely impacted. ~~27~~ We ~~are~~ **Are** Exposed to Risks Related to Cybersecurity. Although we maintain systems and processes that are designed to protect the security of our computer systems, software, networks and other technology, there is no assurance that all of our security measures will provide absolute security. Any material incidents could cause us to experience financial losses that are either not insured against or not fully covered through any insurance maintained by us and increased expenses related to addressing or mitigating the risks associated with any such material incidents. Cyber threats are rapidly evolving and are becoming increasingly sophisticated. Despite our efforts to ensure the integrity of our systems, as cyber threats evolve and become more difficult to detect and successfully defend against, one or more cyber threats might defeat the measures that we or our vendors take to anticipate, detect, avoid or mitigate such threats. Certain techniques used to obtain unauthorized access, introduce malicious software, disable or degrade service, or sabotage systems may be designed to remain dormant until a triggering event and we may be unable to anticipate these techniques or implement adequate preventative measures since techniques change frequently or are not recognized until launched, and because cyberattacks can originate from a wide variety of sources. If our information security systems or data are compromised in a material way, our ability to conduct our business may be impaired, we may incur financial losses and we may incur costs to remediate possible harm and / or to pay fines or take other action which could have a material adverse impact on our business. If There is a Material Failure in our Information Technology Systems, Our Business Operations and Profits ~~could~~ **Could** ~~be~~ **Be** Negatively Affected and our Systems may be Inadequate to Support our Future Growth Strategies. We rely heavily on information technology systems in all aspects of our operations including our restaurant point- of sale systems, financial systems, marketing programs, employee engagement, supply chain management, cyber- security, and various other processes and transactions. Our ability to effectively manage and run our business depends on the reliability and capacity of our information technology systems, including technology services and systems for which we contract from third parties. These systems and services may be insufficient to effectively manage and run our business. These systems and our business needs will continue to evolve and require upgrading and maintenance over time, consequently requiring significant future commitments of resources and capital. Moreover, these technology services and systems, communication systems, and electronic data could be subject or vulnerable to damage or interruption from hurricanes, terrorist attacks, floods, fires, power loss, telecommunications failures, computer viruses, loss of data, data breaches, or other attempts to harm our systems. A failure of these systems to operate effectively, problems with transitioning to upgraded or replacement systems, or any other failure to maintain a continuous and secure information technology network for any of the above reasons could result in interruption and delays in customer services, adversely affect our reputation, and negatively impact our results of operations. **21** Acts of Violence at or Threatened Against our Restaurants or the Centers in which they are Located, including Active Shooter Situations and Terrorism, Could Unfavorably Impact our Restaurant Sales, ~~which~~ **Which** ~~could~~ **Could** Materially Adversely Affect our Financial Performance. Any act of violence at or threatened against our restaurants or the centers in which they are located, including active shooter situations and terrorist activities, may result in restricted access to our restaurants and / or restaurant closures in the short- term and, in the long- term, may cause our customers and staff to avoid our restaurants. Any such situation could adversely impact customer traffic and make it more difficult to staff our restaurants fully, which could materially adversely affect our financial performance. ~~28~~ The occurrence or threat of extraordinary events, such as active shooter or future terrorist attacks military and governmental responses, and the protest of future wars, may result in negative changes to economic conditions likely resulting in decreased consumer spending. Additionally, decreases in consumer discretionary spending may impact the frequency with which our customers choose to dine out at restaurants or the amount they spend on meals while dining out at restaurants, thereby adversely affecting our sales and results of operations. A decrease in consumer discretionary spending may also adversely affect our ability to achieve the benefit of planned menu price increases to help preserve our operating margins. Social Media Impact on Customer Perceptions of our Brand. The considerable expansion in the use of social media over recent years can further amplify any negative publicity that may be generated. The adverse impact of publicity on customers' perception of us could have a further negative impact on our sales. If the impact of any such publicity is particularly long- lasting, the value of our brand may suffer and our ability to grow could be diminished. Our ~~digital~~ **Digital** ~~business~~ **Business** , ~~which~~ **Which** ~~has~~ **Has** ~~become~~ **Become** an ~~increasing~~ **Increasingly** ~~significant~~ **Significant** ~~part~~ **Part** of ~~our~~ **Our** ~~business~~ **Business** , is ~~subject~~ **Subject** to ~~risks~~ **Risks** . Primarily due to the COVID-19 pandemic, our revenue derived from digital orders, which includes delivery and customer pickup has increased substantially. While we are uncertain as to whether this business will continue to increase and / or be significant, we have implemented technology, targeted advertising and promotions and to some extent remodeled our restaurants, to accommodate the growth of our digital business. If we do not continue to grow our digital business, it may be difficult for us to recoup these costs or achieve our sales growth potential. We rely on third- party delivery services to fulfill package store delivery orders, and the ordering and payment platforms used by these third- parties, or online ordering system, could be interrupted by technological failures, user errors, cyber- attacks or other factors, which could adversely impact sales through these channels and negatively impact our reputation. Additionally, our delivery partners are responsible for order fulfillment and errors or failures to make timely deliveries could cause guests to stop ordering from us. The third- party delivery business is competitive, with a number of players competing for market share and delivery drivers. If the third- party delivery services that we utilize cease or curtail operations, increase their fees, or give greater priority or promotions on their platforms to our competitors, our delivery business and our sales may be negatively impacted **.** Our **Institutional Lender No Longer Originates, Renews or Modifies loans at LIBOR Effective January 1, 2022. Effective January 1, 2022, our** institutional lender no longer originates, renews or modifies loans at LIBOR ~~effective January 1, 2022. Effective January 1, 2022, our institutional lender no longer originates, renews or modifies loans at LIBOR~~ , except in limited situations. ~~The limited exceptions include our LIBOR transactions which reduce or hedge our LIBOR exposure on contracts entered into before January 1, 2022.~~ As of ~~October 1~~ **September 30** , ~~2022~~ **2023** , we had ~~two~~ **one** variable rate ~~instruments~~ - **instrument** outstanding that ~~are~~ **is** impacted by changes in interest rates. The ~~interest rate of the first variable rate debt instrument is equal to the lender' s LIBOR Rate plus two and one- quarter percent (2. 25 %) per annum and was paid in full subsequent to October 1, 2022. The second~~ variable rate debt instrument is equal to the lender' s BSBY Screen Rate plus one and one- half percent (1. 50 %) per annum. As a means of managing our interest rate risk on the ~~second~~ debt instrument, we entered into an interest rate swap agreement with our unrelated third party lender to convert this variable rate debt obligation to fixed rate. ITEM ~~1B. UNRESOLVED~~ **1BUNRESOLVED** STAFF COMMENTS