Risk Factors Comparison 2024-03-08 to 2023-03-09 Form: 10-K

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

Risks Related to Our Business and Industry We may not achieve our operational, strategic or financial goals. We continue to pursue a number of financial, operational and strategic goals and we may be unsuccessful in achieving some or all of them. Our strategies are designed to, among other objectives, improve restaurant operations and increase our restaurant revenue, comparable restaurant sales, net income and adjusted EBITDA, as defined in management' s discussion and analysis. However, these strategies may not be successful in achieving our goals in part or at all. Further, we may encounter difficulty in executing these strategies. Failing to execute our operational strategies could materially adversely affect our business, financial condition, results of operations or cash flows. Our strategies include innovating our menu offerings, ~~such as~~ **enhancing our menu structure and layout, improving operational effectiveness, optimizing our catering offerings, analyzing our pricing strategies, better understanding and tailoring communications to customers** through the **implementation** ~~introduction of LEANguini; pursuing off~~ - **of** ~~- premise opportunities~~ **a customer data platform** , ~~for example through our dedicated pick- up shelving, order- ahead drive- thru windows and third- party delivery; improving efficiencies and unit level margins by simplifying operations and~~ introducing new technology and equipment, ~~such as steamers; enhancing our menu structure~~ and **continued focus on** ~~layout, including the implementation of digital menu boards; and improving~~ manager selection, training and development of our teams. However, customers may not favor new menu offerings or may not find initiatives aimed at off-premise dining appealing, and our efforts to increase our sales growth and improve our offerings may be unsuccessful. Additionally, our operational initiatives may be ineffective at reducing costs or may reduce the quality of the customer experience. Any failure of our new initiatives could materially adversely affect our business, financial condition, results of operations or cash flows. Further, we have had, and expect to continue to have, initiatives in various stages of testing, evaluation and implementation, upon which we expect to rely to improve our results of operations and financial condition. Failure to achieve successful implementation of our initiatives could materially adversely affect our business, financial condition, results of operations or cash flows. We believe our culture, from the restaurant level up through management, is an important contributor to our success. As time passes, however, we may have difficulty ~~maintaining~~ **adapting** our culture ~~or adapting it~~ sufficiently to meet the needs of our business. Among other important factors, our culture depends on our ability to attract, retain and motivate employees who share our enthusiasm and dedication to our concept. Our comparable restaurant sales, and more broadly, our business, financial condition, results of operations or cash flows, could be materially adversely affected if we do not maintain our infrastructure and culture. Our strategic and operational goals are designed to improve our results of operations, including restaurant revenue and profitability. The level of comparable restaurant sales, which represent the change in year- over- year sales for restaurants open for at least 18 full periods, affects our restaurant revenue growth and will continue to be a critical factor affecting profitability. Our ability to increase comparable restaurant sales depends in part on our ability to successfully implement our initiatives **, including increasing guest traffic** . It is possible that such initiatives will not be successful, that we will not achieve our target comparable restaurant sales growth or that the change in comparable restaurant sales could be negative, which may cause a decrease in restaurant revenue and profitability that could materially adversely affect our business, financial condition, results of operations or cash flows. **For example, in 2023 we experienced a decline in same store sales, as well as an increased loss from operations.** Changes in economic conditions, including higher inflationary pressures and ~~increased~~ **continued elevated** interest rates, may reduce customer demand and increase our costs. Our business, and the restaurant industry in general, depends on consumer discretionary spending. Changes in market conditions, including negative economic conditions resulting from inflation, increased interest rates, recessionary economic cycles, stock market volatility, war, terrorist activities, global economic occurrences or trends or other geo- political events, may result in decreased consumer confidence, increased cost of consumer credit and ultimately reduced consumer disposable income. In turn, consumers may make changes to their discretionary spending behavior in a way that negatively affects our business, including dining out less frequently, reducing the amount they spend while dining out, or choosing to eat at other lower priced restaurants. Additionally, these changes in market conditions may impact our development pipeline, including the availability of new sites, increased construction costs and availability of contract labor. Changes in economic conditions, particularly with respect to inflationary pressures, may result in increased **interest rates persisting for longer than expected and / or further increases in** interest rates, labor shortages, and supply chain disruptions. These inflationary pressures may also increase our costs including our labor and raw material costs, utilities, and our cost of borrowing, and we may not be able to fully offset such higher costs through price increases. For example, in **2023, we executed an amendment to our credit agreement which resulted in increased borrowing rates. Also in** 2022, the cost of several of our food ingredients increased as a result of inflation in many commodities, particularly our cost of chicken. **As a result** ~~To mitigate this increase~~ , we implemented a temporary chicken-price surcharge of $ 1. 00 for several months while chicken was at its peak of the commodity cycle **and made certain other menu price increases throughout 2022** . If customer demand were to decrease or our costs were to increase without a corresponding increase in our prices, our profitability would decline. Moreover, as a result of such economic conditions, we may record additional asset impairment charges, implement additional restaurant closures, or slow our planned growth. Any of these economic factors may materially adversely affect our business, financial condition, results of operations or cash flows. Competition from other restaurant companies could adversely affect us. We face competition from the casual dining, fast- casual and quick- service segments of the restaurant industry. These segments are highly competitive with respect to taste, price, food quality and presentation, service, location and the ambiance and condition of each restaurant, among other things. Our competition includes a variety of locally owned restaurants and national and regional chains who offer dine- in, carry- out and delivery services. Many of our competitors have existed longer and have a more established market presence with substantially greater financial, marketing, personnel and other resources than we have. Among our competitors are a number of multi- unit, multi- market fast- casual restaurant concepts, some of which are expanding nationally. We continually face competition from these concepts and new competitors that strive to compete with our market segments. For example, additional competitive pressures come from the deli sections and in- store cafés of grocery store chains, as well as from convenience stores and online meal preparation sites. These competitors may have, among other things, lower operating costs, food offerings more responsive to consumer preferences, better locations and facilities, more experienced management, more effective marketing and more efficient operations. Several of our competitors compete by offering menu items that are specifically identified as low in carbohydrates, gluten- free, or rich in protein. In addition, many of our competitors emphasize lower- cost value options or meal packages, or strategies we do not currently pursue. Any of these competitive factors may materially adversely affect our business, financial condition, results of operations or cash flows. Our marketing programs may not be successful. We incur costs and expend other resources in our marketing efforts to attract and retain customers. These initiatives may not be successful, resulting in expenses incurred without the benefit of higher revenues. Additionally, many of our competitors have more marketing resources and we may not be able to successfully compete. If our competitors increase spending on marketing, or if our marketing funds decrease for any reason, or if our advertising and promotions are less effective than those of our competitors, our financial performance could be materially affected. Many of our competitors are devoting increased resources to their social media marketing programs. Social media can be challenging because it reaches a broad audience with an ability to respond or react, in near real time. In addition, social media can facilitate the improper disclosure of proprietary information, personally identifiable information, or inaccurate information. As a result, if we do not appropriately manage our social media strategies, our marketing efforts in this area may not be successful and could damage our reputation, negatively impacting our restaurant sales and financial performance. Negative publicity relating to one or more of our restaurants, including our franchised restaurants, could reduce sales at some or all of our other restaurants. Our success is dependent in part upon our ability to maintain and enhance the value of our brand, consumers' connection to our brand and positive relationships with our franchisees. We may be faced with negative publicity relating to food quality, restaurant facilities, customer complaints or litigation alleging illness or injury, health inspection scores, integrity of our or our suppliers' food processing, employee relationships or other matters, regardless of whether the allegations are valid or whether we are held to be responsible. The negative impact of adverse publicity relating to one restaurant may extend far beyond the restaurant or franchise involved to affect some or all of our other restaurants. 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. Negative publicity generated by such incidents may be amplified by the use of social media. A similar risk exists with respect to unrelated food service businesses, if consumers associate those businesses with our own operations or are concerned with the food safety of the broader restaurant industry. Additionally, employee claims against us based on, among other things, wage and hour violations, discrimination, harassment or wrongful termination may also create negative publicity that could materially adversely affect us and divert our financial and management resources that would otherwise be used to benefit the future performance of our operations. A significant increase in the number of these claims or an increase in the number or scope of successful claims could materially adversely affect our business, financial condition, results of operations or cash flows. Consumer demand for our products and our brand' s value could diminish significantly if any such incidents or other matters create negative publicity or otherwise erode consumer confidence in us or our products, or in the restaurant industry as a whole, which would likely result in lower sales and could materially adversely affect our business, financial condition, results of operations or cash flows. Food safety and foodborne illness concerns could have an adverse effect on our business. We cannot guarantee that our internal controls and training will be fully effective in preventing all food safety issues at our restaurants, including any occurrences of foodborne illnesses such as E. coli, Hepatitis A, listeria, norovirus and salmonella. The risk of illnesses associated with our food might also increase in connection with the expansion of our catering and delivery businesses or other situations in which our food is served or delivered in conditions that we cannot control. Furthermore, we and our franchisees rely on third- party vendors throughout our supply chain, making it difficult to monitor food safety compliance and increasing the risk that foodborne illness would affect multiple locations rather than a single restaurant. Some foodborne illness incidents could be caused by third- party vendors and transporters outside of our control. New illnesses resistant to our current precautions may develop in the future, or diseases with long incubation periods could arise, that could give rise to claims or allegations on a retroactive basis. One or more instances of foodborne illness in any of our restaurants or markets or related to food products we sell could negatively affect our restaurant sales nationwide if highly publicized on national media outlets or through social media. This risk exists even if it were later determined that the illness was wrongly attributed to us or one of our restaurants. A number of other restaurant chains have experienced incidents related to foodborne illnesses that have had a material adverse effect on their operations, including E. coli, listeria and norovirus outbreaks at other fast- casual concepts. These incidents at other restaurants could cause some customers to have a negative perception of fast- casual concepts generally, which can negatively affect our restaurants. The occurrence of a similar incident at one or more of our restaurants, or negative publicity or public speculation about an incident, could materially adversely affect our business, financial condition, results of operations or cash flows. ~~Adverse weather conditions~~ **We may raise menu prices or revise our pricing structure, which may not be sufficient to offset rising costs or which** could **decrease customer demand. We have historically, and expect to continue to, utilize menu price increases to help offset cost increases, including increased cost for food ingredients and supplies, wages, employee benefits, insurance costs, 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** ~~affect~~ **affected** ~~our sales~~ . ~~Adverse weather~~ **For example,**

in 2022 and in the first quarter of 2023, primarily in response to inflationary food and labor costs, we made certain menu price increases, which we believe negatively affected our traffic. Unexpected events have impacted and may in the future impact our business, financial ~~conditions~~ - **condition and results of operations. The occurrence of one or more unexpected events** , **including war, acts of terrorism, epidemics and pandemics (** such as ~~regional winter storms~~ **the COVID- 19 pandemic), civil unrest, fires, tornadoes, tsunamis, hurricanes, earthquakes** , floods ~~and hurricanes~~ , and ~~any changes associated with global~~ **other forms of severe weather (including those caused or exacerbated by** climate change **) in the United States or in other locations in which our suppliers are located, have affected and** could **in the future** affect our **operations and** ~~sales at restaurants in locations that experience these weather conditions, which could materially adversely affect our business,~~ financial **performance** ~~condition, results of operations or cash flows~~ . It is possible that weather conditions may impact our business more than other businesses in our industry because of the significant concentration of our restaurants in the Upper Midwest, Rocky Mountain and Mid- Atlantic states **. Such events could affect our guest traffic, sales and operating costs and / or cause complete or partial closure of one or more distribution centers, cause temporary or long- term disruption or inoperability of our information technology systems (including our digital platform), temporary or long- term disruptions in our delivery channel or the supply of products from suppliers, and disruption and delay in the transport of products, any of which may have a material adverse effect on our business, financial condition, and results of operations. Existing insurance coverage may not provide protection from all the costs that may arise from such events** . We are subject to risks associated with long- term non- cancellable leases and the costs of exiting leases at restaurants we have closed or may close in the future may be greater than we estimate or could be greater than the funds we raise to address closure costs. We do not own any real property. Payments under our operating leases account for a significant portion of our operating expenses and we expect the new restaurants we open in the future will similarly be leased. Our leases generally have an initial term of ten years and generally can be extended only in five- year increments (at increased rates). All of our leases require a fixed annual rent, although some require the payment of additional rent if restaurant sales exceed a negotiated amount. Generally, our leases are " net " leases, which require us to pay all of the cost of insurance, taxes, maintenance and utilities. We generally cannot cancel these leases. Additional sites that we lease are likely to be subject to similar long- term non- cancelable leases. In connection with closing restaurants, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. In addition, as each of our leases expires, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to pay increased occupancy costs or to close restaurants in desirable locations. Opening and operating new restaurants entails numerous risks and uncertainties. One element of our operational strategy is the opening of new restaurants and operating those restaurants on a profitable basis. In ~~2022~~ **2023** , we opened ~~sixteen~~ **eighteen** company- owned restaurants and closed ~~five~~ **six** company- owned restaurants. Our franchisees **did not** ~~opened~~ -- **open any new restaurants and closed** three restaurants ~~and closed one restaurant~~ . We **expect future** ~~plan to develop a pipeline to support an~~ annual unit growth rate of approximately ~~7~~ **1- 3** % in **the next few years** ~~2023, with 7 to 10 % unit growth thereafter~~ . Opening new restaurants presents numerous risks and uncertainties. We may not be able to open new restaurants as quickly as planned. In the past, we have experienced delays in opening some restaurants **due to** ~~. For example, in the second half of 2022, several new restaurants were delayed as a result of material~~ adverse weather and permitting delays. Delays or failures in opening new restaurants could occur in the future and could materially adversely affect our business strategy and our expected results. Our ability to open new restaurants also depends on other factors, including: site selection; negotiating leases with acceptable terms; identifying, hiring and training qualified employees; the state of the labor market in each local market; timely delivery of leased premises to use; managing construction and development costs; avoiding the impact of inclement weather, natural disasters and other calamities; obtaining construction materials and labor at acceptable costs; securing required governmental approvals, permits and licenses; **generating sufficient returns on our new restaurant investments;** and accessing ~~sufficient~~ capital **. Our new restaurant growth will decrease from 18 new restaurants in 2023 to 10- 12 in 2024 due to lower than expected rates of return on investment for our recently opened restaurants as well as increased construction and development costs. As a result, we have reduced our new restaurant development pipeline for 2024 and 2025. We are enhancing our operating model and researching a new prototype** . We anticipate our new restaurants may be smaller in terms of square footage and seating than our current restaurants, in accordance with our increased focus on off- premise dining opportunities ~~. We expect that most of our new restaurants will ultimately incorporate order- ahead, drive- thru windows~~ . Customers may react negatively to these features and our re- designed, smaller stores, which could materially adversely affect our business, financial condition, results of operations or cash flows. Our long- term success is partially dependent on our ability to effectively identify appropriate target markets and secure appropriate sites for new restaurants. In order to build new restaurants, we must first identify target markets where we can expand our footprint, taking into account numerous factors, including the location of our current restaurants, local economic trends, population density, area demographics and geography. The selection of target markets for expansion is challenging. We also must locate and secure appropriate sites for new restaurants, which is one of our biggest challenges. There are numerous factors involved in identifying and securing an appropriate site, including, among others: identification and availability of locations; competition; financial conditions affecting developers and potential landlords; developers and potential landlords obtaining licenses or permits for development projects on a timely basis; proximity of potential development sites to an existing location; anticipated development near our new restaurants; and availability of acceptable lease arrangements. If we are unable to fully implement our development plan, our business, financial condition, results of operations or cash flows could be materially adversely affected. New restaurants, once opened, may not be profitable. New restaurants may not be profitable, their sales performance may not follow historical patterns ~~.~~ **,** or our average restaurant sales and comparable restaurant sales may underperform our expectations. In addition, the construction costs supporting the new restaurant ~~opening~~ **openings** may be higher than historical averages, placing a higher profitability threshold to generate an attractive cash- on- cash return. Our ability to operate new restaurants profitably, maintain an attractive cash- on- cash return, and increase average restaurant sales and comparable restaurant sales will depend on many factors, some of which are beyond our control, including: consumer awareness, understanding and support of our brand; general economic conditions, construction cost inflation, local labor costs and availability and prices we pay for the food products and other supplies we use; changes in consumer preferences; competition; temporary and permanent site characteristics of new restaurants; and changes in government regulation. If our new restaurants do not perform as planned, our business and future prospects could be harmed. In addition, if we are unable to achieve our expected average restaurant sales, our business, financial condition, results of operations or cash flows could be materially adversely affected **. The return on investment on our recent new restaurant openings have not been as expected. As a result, we have reduced our new restaurant development pipeline for 2024 and 2025** . Opening new restaurants in existing markets may negatively affect sales at our existing restaurants. The consumer target area of our 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, opening a new restaurant in or near markets in which we already have restaurants could materially adversely affect the sales of these existing restaurants. Existing restaurants could also make it more difficult to build our 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 existing restaurants, but we may selectively open new restaurants in and around areas of existing restaurants that are operating at or near capacity to effectively serve our customers. Sales cannibalization between our restaurants may become significant in the future as we continue to expand our operations and could affect our sales growth, which could, in turn, materially adversely affect our business, financial condition, results of operations or cash flows. Risks Related to Our Employees, Executives and Franchisees Our business could be adversely affected by difficulties in hiring and retaining top- performing employees. Our success depends on the efforts of our employees and our ability to hire, motivate and retain qualified employees. **During 2022, we experienced a higher level of turnover driven by** ~~Conditions~~ **conditions** during the novel coronavirus pandemic (the " COVID- 19 Pandemic ") ~~have exacerbated the difficulty of successfully hiring~~ and ~~retaining quality employees. In addition, during 2022, we experienced a higher level of turnover driven by~~ a more competitive labor market and wage inflation, which had an impact on our ability to **retain and** hire qualified employees. We have taken strategic steps to improve the retention of our labor force, which has improved sequentially since peak levels in mid- 2022 **and turnover levels are now at lower levels and wage inflation is moderating** . There may be a small supply of qualified individuals in some of the communities in which we operate, and competition in these communities for qualified individuals could require us to pay higher wages and provide greater benefits. We devote significant resources to training our employees and strive to reduce turnover in order to keep top performing employees and better realize our investment in training new employees. However, turnover among our restaurant employees may increase. Failure to hire and retain top- performing employees could impact our financial performance by increasing our training and labor costs and reducing the quality of our customers' experiences. A failure to recruit, develop and retain effective leaders or the loss or shortage of personnel with key capacities and skills could impact our strategic growth plans and jeopardize our ability to meet our business performance expectations and growth targets. Our ability to continue to grow our business depends substantially on the contributions and abilities of our executive leadership team and other key management personnel. Changes in senior management could expose us to significant changes in strategic direction and initiatives **. In 2023, we hired a new Chief Financial Officer and appointed an interim Chief Executive Officer while we conduct a comprehensive search process to identify a permanent replacement** . A failure to maintain appropriate organizational capacity and capability to support our strategic initiatives or to build adequate bench strength with key skill sets required for seamless succession of leadership, could jeopardize our ability to meet our business performance expectations and growth targets. If we are unable to attract, develop, retain and incentivize sufficiently experienced and capable management personnel, our business and financial results may suffer. If we or our franchisees face labor shortages or increased labor costs, our operating results could be adversely affected. Labor is a primary component in the cost of operating our restaurants and our success depends in part upon our and our franchisees' ability to control labor costs and attract, motivate and retain a sufficient number of well- qualified restaurant operators and management personnel, as well as a sufficient number of other qualified employees. Qualified individuals needed to fill these positions has been and may continue to be in short supply in some geographic areas. In addition, restaurants have traditionally experienced relatively high employee turnover rates relative to other industries. If we encounter labor shortages, we have and may continue to be forced to temporarily close restaurants or reduce store hours, which could result in reduced revenue. In addition, failure to recruit and retain qualified individuals has and may continue to delay the planned openings of new restaurants. If we increased labor costs, whether because of increased competition for employees, higher employee turnover rates, increases in the federal, state or local minimum wage or other employee benefits costs (including costs associated with workers' compensation and health insurance coverage), our operating expenses could increase. In addition, the implementation of our GM equity program to improve retention levels **has** ~~is expected to increase~~ **increased** our stock- based compensation expense during 2023 and ~~beyond~~ **we expect it will continue in future years** . We may be unable to increase our menu prices in order to pass these increased labor costs on to consumers, in which case our margins would be negatively affected, which could materially and adversely affect our business, financial condition, results of operations or cash flows. We have taken strategic steps to attempt to make our restaurant operations more labor- efficient, including reconfigured restaurant operations, increased off- premise offerings, and new technology and equipment, but in certain instances these may require initial investment costs and there can be no assurances that these strategies will succeed. We may not be successful in executing our franchise strategy. To the extent we are able to **attract and** identify franchisees for the franchising of existing restaurants or the development of new restaurants, our success is dependent on the performance of our franchisees in successfully operating the restaurants. Our franchisees may not achieve financial and operational objectives, and they may close existing restaurants due to underperformance or they may ultimately be unsuccessful in developing new restaurants. We may also not be able to manage our franchise system effectively. Failure to provide our franchisees with adequate support and resources could materially adversely affect these franchisees, as well as cause disputes between us and them and potentially lead to material liabilities. **When we sell restaurants to franchisees, we frequently remain liable on the related restaurant facility leases. If franchise owners default on leases that the Company remains liable on, it could result in material liabilities and negatively impact our results from operations and cash flows.** Franchisees' new unit growth is dependent in part upon borrowing incremental capital to develop new units. **A high** ~~Given the present~~ inflationary environment, **and in** ~~particularly~~ -- **particular** ~~higher~~ **continued elevated** interest rates and cost of borrowings, in addition to construction cost inflation, **may cause our** prospective franchises ~~may face~~ **to experience** high financing costs and move more deliberately than our expectations, as was the case in 2022 **and 2023** . We rely in part on our franchisees, and if our franchisees cannot develop or finance new restaurants, build them on suitable sites or open them on schedule, our success may be affected. We rely in part on our franchisees and the manner in which they operate their locations to develop and promote our business. Although we have developed criteria to evaluate and screen prospective franchisees, we cannot be certain that our franchisees will have the business acumen or financial resources necessary to operate successful franchises in their franchise areas and state franchise laws may limit our ability to terminate or modify these franchise arrangements. Moreover, despite our training, support and monitoring, franchisees may not successfully operate restaurants in a manner consistent with our standards and requirements or may not hire and train qualified managers and other restaurant personnel. The failure of our franchisees to operate their franchises successfully could have a material adverse effect on us, our reputation, our brand and our ability to attract prospective franchisees and could materially adversely affect our business, financial condition, results of operations or cash flows. Franchisees may not have access to the financial or management resources that they need to open the restaurants contemplated by their agreements with us or be able to find suitable sites on which to develop them, or they may elect to cease development for other reasons. Franchisees may not be able to negotiate an acceptable lease or purchase terms for the sites, obtain the necessary permits and government approvals or meet construction schedules. Given the present inflationary environment, prospective franchises may face high financing costs to develop new restaurants and may move more deliberately than our expectations, as was the case in 2022 **and 2023** . Any of these problems could reduce our franchise revenues. Risks Related to Our Supply Chain and Technology We rely heavily on information technology, and any material failure, weakness, interruption or breach of security could prevent us from effectively operating our business. We rely heavily on information systems, including point- of- sale processing in our restaurants, for management of our supply chain, payment of obligations, collection of cash, credit and debit card transactions and other processes and procedures. We also rely on third- party vendors to provide information technology systems and to securely process and store related information, especially as it relates to credit and debit card transactions and online ordering. Our franchisees also rely on information systems and third- party vendors. **In 2023, we introduced a product recommendation engine on our website and app, driven by machine learning, and rolled out digital menu boards in our restaurants, which will enable us to implement strategic pricing decisions based on our recently implemented customer data platform and third- party research.** Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of these systems. Our operations depend upon our and our franchisees', and our vendors', ability to protect 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. Avoiding such incidents in the future will require us and our franchisees and vendors to continue to enhance information systems, procedures and controls and to hire, train and retain employees. The failure of these systems to operate effectively, maintenance problems, upgrading or transitioning to new platforms, or a breach in security of these systems could result in delays in customer service and reduce efficiency in our operations. Remediation of such problems could result in significant, unplanned capital investments and harm our business, financial condition, results of operations or cash flows. We may be harmed by breaches of security of information technology systems or our confidential consumer, employee, financial, or other proprietary data **. We are part of an industry that is vulnerable to cyberattacks and other cybersecurity incidents. In response, we have implemented cybersecurity processes, technologies, and controls to aid in our efforts to assess, identify, and manage cybersecurity risks. Our enterprise risk management framework considers cybersecurity risk alongside other company risks as part of our overall risk assessment process. Our enterprise risk management team includes information technology and digital security functions to gather insights for assessing, identifying and managing cybersecurity threat risks, their severity, and potential mitigations. We assess Noodles & Company' s Cybersecurity program using several frameworks including the cybersecurity framework from the National Institute of Standards and Technology (NIST-CSF). This program includes policies, processes and procedures that help assess and identify our cybersecurity risks and inform how security measures and controls are developed, implemented and maintained. The risk assessment along with risk- based analysis and judgment are used to prioritize our cybersecurity initiatives. During this process, the following factors, among others, are considered: likelihood and severity of risk, impact on the Company and others if a risk materializes, feasibility and cost of controls and impact of controls on operations. We maintain internal resources to perform penetration testing designed to simulate evolving tactics and techniques of real- world threat actors, engage with industry partners and law enforcement and intelligence communities and conduct tabletop exercises and periodic risk interviews across our business. We also engage several independent third- parties to perform internal and external penetration testing of our technology environment periodically and engage other third- parties to periodically conduct assessments of our cybersecurity processes and capabilities. In addition, we continue to expand training and awareness practices to mitigate risk from human error, including mandatory computer- based training and internal communications for employees. Our employees undergo cybersecurity awareness training and regular phishing awareness campaigns that are based upon and designed to emulate real- world contemporary threats. We provide prompt feedback (and, if necessary, additional training or remedial action) based on the results of such exercises** . We use many information technology systems throughout our operations, including systems that record and process customer sales, manage human resources and generate accounting and financial reports. For example, our restaurants use computerized management information systems, including point- of- sale computers that process customer credit card, debit card and gift card payments, and in- restaurant back office computer systems designed to assist in the management of our restaurants and provide labor and food cost management tools. Our franchisees use similar point of sale systems and are required to report business and operational data through an online reporting network. Through these systems, we have access to and store a variety of consumer, employee, financial and other types of information related to our business. We also rely on third- party vendors to provide information technology systems and to securely process and store related information. Our franchisees also use information technology systems and rely on third- party vendors. If our technology systems, or those of third- party vendors we or our franchisees rely upon, are compromised as a result of a cyber- attack (including from circumvention of security systems, denial- of- service attacks, hacking, " phishing " attacks, computer viruses, ransomware, malware, or social engineering) or other external or internal methods, it could materially adversely affect our reputation, business, financial condition, results of operations or cash flows. The cyber risks we face range from cyber- attacks common to most industries to attacks that target us due to the confidential consumer information we obtain through our electronic processing of credit and debit card transactions. Like others in our industry, we have experienced many attempts to compromise our information technology and data, including a successful attempt in 2016 that we have discussed in previous filings, and we may experience more attempts in the future. In addition to property and casualty insurance, which may cover restoration of data, certain physical damage or third- party injuries, we have cybersecurity insurance related to a breach event. However, damage and claims arising from such incidents may not be covered or may exceed the amount of any available insurance. Because cyber- attacks take many forms, change frequently, are becoming increasingly sophisticated, and may be difficult to detect for significant periods of time, we may not be able to respond adequately or timely to future cyber- attacks. If we or our franchisees, or third- party vendors, were to experience a material breach resulting in the unauthorized access, use, or destruction of our information technology systems or confidential consumer, employee, financial, or other proprietary data, it could negatively impact our reputation, reduce our ability to attract and retain customers and employees and disrupt the implementation and execution of our strategic goals. Moreover, such breaches could result in a violation of various privacy- related laws, including the ~~California Consumer~~ **various state specific** ~~Privacy~~ **privacy laws** ~~Act,~~ and subject us to investigations or private litigation, which, in turn, could expose us to civil or criminal liability, fines and penalties imposed by state and federal regulators, claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, compromised security and information systems, failure of our employees to comply with applicable laws, the unauthorized acquisition or use of such information by third parties, or other similar claims, and various costs associated with such matters. We rely heavily on certain vendors, suppliers and distributors, which could adversely affect our business. Our ability to maintain consistent price, quality and safety throughout our restaurants depends in part upon our ability to acquire specified food products and supplies in sufficient quantities from third- party vendors, suppliers and distributors at a reasonable cost. We do not control the businesses of our vendors, suppliers and distributors and our efforts to specify and monitor the standards under which they perform may not be successful. Furthermore, certain food items are perishable, and we have limited control over whether these items will be delivered to us in appropriate condition for use in our restaurants. If any of our distributors or suppliers perform inadequately, or our distribution or supply relationships are disrupted for any reason, our business, financial condition, results of operations or cash flows could be materially adversely affected. If we cannot replace or engage distributors or suppliers who meet our specifications in a short period of time, including any suppliers who are a sole source of supply of a particular ingredient, that could increase our expenses and cause shortages of food and other items at our restaurants, which could cause a restaurant to remove items from its menu. If that were to happen, affected restaurants could experience significant reductions in sales during the shortage or thereafter, especially if customers change their dining habits as a result. Our focus on a limited menu would make the consequences of a shortage of a key ingredient more severe. In addition, because we provide moderately priced food, we may choose not to, or may be unable to, pass along commodity price increases to consumers. These potential changes in food and supply costs could materially adversely affect our business, financial condition, results of operations or cash flows. During 2022, certain vendors experienced staffing pressures and raw material availability that impacted their ability to supply and distribute our food ingredients in a timely and cost- effective manner. Despite the disruption within our vendor base, we did not experience a significant impact in our ability to supply the necessary food ingredients to our restaurants. However, several food ingredients, including chicken, experienced significant inflation predominantly in the second and third quarters of 2022, resulting in higher cost of food. **We did not experience any significant supply chain disruptions** ~~During the fourth quarter of 2022, we saw material market improvement~~ in ~~chicken and other food ingredients, which allowed us to realize improvement in our cost of goods sold and enter into fixed- based pricing agreements fiscal~~ 2023. In addition, we use various third- party vendors to provide, support and maintain most of our management information systems. We also outsource certain accounting, payroll and human resource functions to business process service providers. The failure of such vendors to fulfill their obligations could disrupt our operations. **Any** ~~Additionally, any~~ changes we may make to the services we obtain from our vendors, or new vendors we employ, may disrupt our operations. These disruptions could materially adversely affect our business, financial condition, results of operations or cash flows **. For example, during 2023 our point of sale provider and food ordering vendors experienced temporary system outages. Future outages could lead to greater disruption to our operations** . We also partner with various third- party vendors to deliver our food. If any of our delivery vendors perform inadequately, or our delivery relationships are disrupted for any reason, our business, financial condition, results of operations or cash flows could be materially adversely affected. Our ability to continue to expand our digital business, delivery orders **,** and catering is uncertain, and these business lines are subject to risks. Our revenue from digital orders increased significantly during 2020, especially in response to changing customer habits resulting from the COVID- 19 Pandemic. Digital orders as a percentage of total revenue have remained fairly consistent at over 50 % ~~through~~ **throughout** 2022 **and 2023. We experienced 37 % growth in our catering business from 2022 to 2023** . In response to ~~this~~ **these** ~~trend~~ **trends** , we have promoted our digital business through our rewards program, partnered with third- party delivery companies **,** and ~~are developing~~ **have developed** new- store concepts with reduced indoor- seating, pick- up shelves, and order- ahead drive- thru windows. However, this growth rate may not be sustainable, or our digital business may decline, especially as safety concerns regarding the COVID-19 Pandemic have lessened and consumer preferences may eventually shift back to in- person dining. If our digital business does not continue to expand it may be difficult for us to achieve our planned sales growth and utilize our digital- order focused assets. We rely on third- party providers to fulfill delivery orders, and the ordering and payment platforms used by these third parties, or our mobile app or online ordering system, could be damaged or interrupted by technological failures, user errors, cyber- attacks or other factors, which may materially adversely impact our sales through these channels and could negatively impact our brand. Additionally, our delivery partners are responsible for order fulfillment and may make errors or fail to make timely deliveries, leading to customer disappointment that may negatively impact our brand. We also incur additional costs associated with using third- party service providers to fulfill these digital orders and the costs of delivery may have a material adverse impact on restaurant level margins. Moreover, the third- party restaurant delivery business is intensely competitive, with a number of players competing for market share, online traffic, capital, and delivery drivers and other people resources. The third- party delivery services with which we work may struggle to compete effectively, and if they were to cease or curtail operations, or fail to provide timely delivery services in a cost- effective manner, or if they give greater priority on their platforms to our competitors, our delivery business may be negatively impacted. ~~We have also introduced catering offerings on both a pick- up and delivery~~ **Delivery** ~~basis, and customers may choose our competitors' catering offerings over ours, be disappointed with their experience with our catering, or experience food safety problems if they do not serve our food in a safe manner, which may negatively impact us. Such delivery~~ and catering offerings also increase the risk of illnesses associated with our food because the food is transported and / or served by third parties in conditions we cannot control. Changes in food and supply costs could adversely affect our results of operations. Our profitability depends in part on our ability to anticipate and react to changes in food and supply costs. Shortages or interruptions in the availability of certain supplies caused by seasonal fluctuations, unanticipated demand, problems in production or distribution, food contamination, product recalls, government regulations, inclement weather or other conditions could materially adversely affect the availability, quality and cost of our ingredients, which could harm our operations. Weather related issues, such as freezes, heavy rains or drought, may also lead to temporary spikes in the prices of some ingredients such as produce or meats. Increasing weather volatility or other long- term changes in global weather patterns, including any changes associated with global climate change, could have a significant impact on the price, availability and timing of delivery of some of our ingredients. In addition, at certain times of the year a substantial volume of our produce items is imported from Mexico and other countries. Any new or increased import duties, tariffs or taxes, or other changes in U. S. trade or tax policy, could result in higher food and supply costs. Any increase in the prices of the food products most critical to our menu, such as pasta, beef, chicken, wheat flour, cheese and other dairy products, tofu and vegetables, could materially adversely affect our operating results **, especially if we are unable to increase our menu prices in order to pass these increased costs on to consumers** . In 2022, the cost of several of our food ingredients increased as a result of inflation in many commodities, particularly chicken. As a result, specifically for our chicken purchases, we entered into temporary formula pricing contracts with our vendors and were susceptible to fluctuations in the commodities markets. ~~If~~ **While we saw material market improvement in chicken and other food ingredients in 2023, if** food inflation in the chicken market or any other food ingredient **were to** ~~persists~~ - **persist** , our financial condition and business operations could be ~~more~~ severely impacted **. We have, and expect to continue to, enter into fixed- based pricing agreements for certain food ingredients to reduce our exposure to cost increases, but there can be no guarantee that we will be able to do so on favorable terms or at all** . Our inability or failure to recognize, respond to and effectively manage the accelerated impact of social media could have an adverse effect on our business. There has been a widespread and dramatic increase in the use of social media platforms that allow users to access a broad audience of consumers and other interested persons. The availability of information on social media can be virtually immediate, as can its impact, and users of many social media platforms can post information without filters or checks on the accuracy of the content posted. Adverse information concerning our restaurants or brand, including user reviews, whether accurate or inaccurate, may be posted on such platforms at any time and can quickly reach a wide audience. The resulting harm to our reputation may be immediate, without affording us an opportunity to correct or otherwise respond to the information, and it is challenging to monitor and anticipate developments on social media in order to respond in an effective and timely manner. In addition, although search engine marketing, social media and other new technological platforms offer great opportunities to increase awareness of and engagement with our restaurants and brand, our failure to use social media effectively in our marketing efforts may further expose us to the risks associated with the accelerated impact of social media. Many of our competitors are expanding their use of social media and the social media landscape is rapidly evolving, 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 guests and brand relevance, and we may not do so effectively. A variety of additional risks associated with our use of social media include the possibility of improper disclosure of proprietary information, exposure of personally identifiable information of our employees or guests, fraud, or the publication of out- of- date information, any of which may result in material liabilities or reputational damage. Furthermore, any inappropriate use of social media platforms by our employees could also result in negative publicity that could materially damage our reputation or lead to litigation that materially increases our costs. New technologies or changes in consumer behavior facilitated by these technologies could negatively affect our business. Advances in technologies or certain changes in consumer behavior driven by such technologies could impact the manner in which meals are marketed, prepared, ordered and delivered. We may pursue certain of those technologies, but consumers may not accept them, or we may fail to successfully integrate them into our operations, thereby harming our financial performance. In addition, our competitors, some of whom have more resources than us, may be more effective at responding to such advances in technologies and erode our competitive position. Legal, Accounting, and Regulatory Risks Changes to estimates related to our property, fixtures and equipment 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 materially adversely affect our results of operations. In accordance with accounting guidance as it relates to the impairment of long- lived assets, we make certain estimates and projections with regard to individual restaurant operations, as well as our overall performance, in connection with our impairment analyses for long-lived assets. When impairment triggers are deemed to exist for any location, the estimated undiscounted future cash flows are compared to its carrying value. If the carrying value exceeds the undiscounted cash flows, an impairment charge equal to the difference between the carrying value and the fair value is recorded. The projections of future cash flows used in these analyses require the use of judgment and a number of estimates and projections of future operating results. If actual results differ from our estimates, additional charges for asset impairments may be required in the future. Over the past several years we have recognized significant impairment charges and if future impairment charges continue to be significant, this could have a material adverse effect on our business or results of operations. Failure of our internal control over financial reporting could adversely affect our business and financial results. Our management is responsible for establishing and maintaining effective internal control over financial reporting under Section 404 of the Sarbanes- Oxley Act of 2002. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with accounting principles generally accepted in the United States of America (" GAAP "). Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that we would prevent or detect a material misstatement of our financial statements or fraud. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. The identification of a material weakness could indicate a lack of controls adequate to generate accurate financial statements that, in turn, could cause a loss of investor confidence and decline in the market price of our common stock. We may not be able to timely remediate any material weaknesses that may be identified in future periods or maintain all of the controls necessary for continued compliance. Likewise, we cannot assure you that we will be able to retain sufficient skilled finance and accounting personnel, especially in light of the increased demand for such personnel among publicly traded companies. Governmental regulation may adversely affect our ability to open new restaurants or otherwise adversely affect our business, financial condition, results of operations or cash flows. We are subject to various federal, state and local regulations, including those relating to building and zoning requirements and those relating to the preparation and sale of food. Our restaurants are also subject to state and local licensing and regulation by health, sanitation, food and occupational safety and other agencies. We may experience material difficulties or failures in obtaining the necessary licenses, approvals or permits for our restaurants, which could delay planned restaurant openings or affect the operations at our existing restaurants. In addition, stringent and varied requirements of local regulators with respect to zoning, land use and environmental factors could delay or prevent development of new restaurants in particular locations. ~~Due to the COVID- 19 Pandemic, there could be additional governmental regulations that arise that could impact our business.~~ We are subject to the Americans with Disabilities Act and similar state laws that give civil rights protections to individuals with disabilities in the context of employment, public accommodations and other areas, including our restaurants. We may in the future have to modify restaurants, for example, by adding access ramps or redesigning certain architectural fixtures, to provide service to or make reasonable accommodations for disabled persons. The expenses associated with these modifications could be material. Our operations are also 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. In addition, federal, state and local proposals have been made related to paid sick leave and similar matters. Changes in these laws or implementation of new proposals could materially adversely affect our business, financial condition, results of operations or cash flows. **Our franchising activities are subject to federal rules and regulations administered by the U. S. Federal Trade Commission and laws enacted by a number of states. In particular, we are subject to federal and state laws regulating the offer and sale of franchises, as well as judicial and administrative interpretations of such laws. Such laws impose registration and disclosure requirements on franchisors in the offer and sale of franchises and may also apply substantive standards to the relationship between franchisor and franchisee, including limitations on the ability of franchisors to terminate franchises and alter franchise arrangements. Failure to comply with new or existing franchise laws, rules, and regulations in any jurisdiction or to obtain required government approvals could negatively affect our ability to grow or expand our franchise business and sell franchises.** Changes in employment laws may adversely affect our business. Various federal and state labor laws govern the relationship with our employees and affect **labor and** operating costs. These laws include employee classification as exempt / non- exempt for overtime and other purposes, minimum wage requirements, unemployment tax rates, workers' compensation rates, mandatory health benefits, immigration status and other wage and benefit requirements. Some jurisdictions, including some of those in which we operate, have recently increased their minimum wage by a significant amount, and other jurisdictions are considering similar actions, which may increase our labor costs. Significant additional government- imposed increases in the following areas could materially affect our business, financial condition, operating results or cash flow: overtime rules; mandatory health benefits; vacation accruals; paid leaves of absence, including paid sick leave; and tax reporting. Immigration laws have recently been an area of considerable focus by the Department of Homeland Security, with enforcement operations taking place across the country, resulting in arrests, detentions and deportation of unauthorized workers. Some of these changes and enforcement programs 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. 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 negatively impacts our brand and may make it more difficult to hire and keep qualified employees. Termination of a significant number of employees who were unauthorized employees may disrupt our operations, cause temporary increases in our labor costs as we train new employees and result in additional 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, results of operations or cash flows. New information or attitudes regarding diet and health could result in changes in regulations and consumer consumption habits that could adversely affect our results of operations. Regulations and consumer eating habits may change as a result of new information or attitudes regarding diet, health and safety. Such changes may include federal, state and local regulations and recommendations from medical and diet professionals pertaining to the ingredients and nutritional content of the food and beverages we offer. The success of our restaurant operations is dependent, in part, upon our ability to effectively respond to changes in any consumer health regulations and our ability to adapt our menu offerings to trends in food consumption. If consumer health regulations or consumer eating habits change significantly, we may choose or be required to modify or remove certain menu items, which may cause us to incur costs to implement those changes and may materially adversely affect the appeal of our menu to new or returning customers. To the extent we are unwilling or unable to respond with appropriate changes to our menu offerings, it could materially affect consumer demand and could have a material adverse impact on our business, financial condition, results of operations or cash flows. Government regulation and consumer eating habits 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. As discussed in Part I, “ Business- Governmental Regulation and Environmental Matters ” of this 10- K, 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 they have resulted, and may continue to result in, laws and regulations affecting permissible ingredients and menu offerings. Inconsistencies among state laws with respect to presentation of nutritional content could be challenging for us to comply with in an efficient manner. The Patient Protection and Affordable Care Act also requires covered restaurants to provide to consumers, upon request, a written summary of detailed nutritional information for each standard menu item, and to provide a statement on menus and menu boards about the availability of this information upon request. 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 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. 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 and safety perceptions or to successfully implement the nutrient content disclosure requirements and adapt our menu offerings to trends in eating habits. The imposition of additional menu labeling laws could materially adversely affect our business, financial condition, results of operations or cash flows, as well as our position within the restaurant industry in general. We may not be able to adequately protect our intellectual property, which could harm the value of our brand and could adversely affect our business. Our intellectual property is material to the conduct of our business and our marketing efforts. Our ability to implement our business plan successfully depends in part on our ability to further build brand recognition using our trademarks, service marks, trade dress and other proprietary intellectual property, including our name and logos and the unique ambiance of our restaurants. While it is our policy to protect and defend vigorously our rights to our intellectual property, we cannot predict whether steps taken by us to protect our intellectual property rights will be adequate to prevent misappropriation of these rights or the use by others of restaurant features based upon, or otherwise similar to, our concept. It may be difficult for us to prevent others from copying elements of our concept and any litigation to enforce our rights will likely be costly and may not be successful. Although we believe that we have sufficient rights to all of our trademarks and service marks, we may face claims of infringement that could interfere with our ability to market our restaurants and promote our brand. Any such litigation may be costly and divert resources from our business. Moreover, if we are unable to successfully defend against such claims, we may be prevented from using our trademarks or service marks in the future, may be liable for damages and may have to change our marketing efforts, which in turn could materially adversely affect our business, financial condition, results of operations or cash flows. 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. 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. These kinds of complaints or lawsuits may be more common in a period in which the public is focused on health safety issues, or may attract more attention due to publication on various social media outlets. We are also 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, 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 addition, the restaurant industry has from time to time been subject to claims based on the nutritional content of food products sold and disclosure and advertising practices. We may also become subject to various employee and workplace litigation, including claims related to discrimination, harassment, workplace safety, medical and family leave, and wage- and- hour issues. 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 materially adversely affect our financial condition or results of operations. Any adverse publicity resulting from these allegations, even if proven to be false, may also materially adversely affect our reputation or prospects, which in turn could materially adversely affect our business, financial condition, results of operations or cash flows. **Our business is subject to evolving corporate governance and public disclosure regulations and expectations, including with respect to environmental, social and governance matters, that could expose us to numerous risks. We are subject to changing rules and regulations promulgated by a number of governmental and self- regulatory organizations, including the SEC, the Nasdaq Stock Market and the Financial Accounting Standards Board. These rules and regulations continue to evolve in scope and complexity and many new requirements have been created in response to recently enacted laws, making compliance more difficult and uncertain. In addition, increasingly regulators, customers, investors, employees and other stakeholders are focusing on environmental, social and governance (" ESG ") matters and related disclosures. Within our industry, concerns have been expressed regarding energy management, water management, food and packaging waste management, food safety, nutritional content, labor practices and supply chain and management of food sourcing. These changing rules, regulations and stakeholder expectations have resulted in, and are likely to continue to result in, increased general and administrative expenses and increased management time and attention spent complying with or meeting such regulations and expectations. For example, developing and acting on initiatives within the scope of ESG, and collecting, measuring and reporting ESG related information and metrics can be costly, difficult and time consuming and is subject to evolving reporting standards, including the SEC' s recently proposed climate- related reporting requirements. We may also communicate certain initiatives and goals, regarding environmental matters, diversity, responsible sourcing and social investments and other ESG related matters, in our SEC filings or in other public disclosures. These initiatives and goals within the scope of ESG could be difficult and expensive to implement, the technologies needed to implement them may not be cost effective and may not advance at a sufficient pace, and we could be criticized for the accuracy, adequacy or completeness of the disclosure. In addition, we could be criticized for the scope or nature of such initiatives or goals, or for any revisions to these goals. If our ESG- related data, processes and reporting are incomplete or inaccurate, or if we fail to achieve progress with respect to our goals within the scope of ESG on a timely basis, or at all, our reputation, business, financial performance and growth could be adversely affected.** Risks Related to Our Common Stock and Debt Financing Our quarterly operating results 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 operating results may fluctuate significantly because of several factors, including but not limited to: increases and decreases in average unit volumes and comparable restaurant sales; profitability of our restaurants; labor availability and costs for hourly and management personnel; changes in interest rates; macroeconomic conditions, both nationally and locally; negative publicity relating to the consumption of products we serve; changes in consumer preferences and competitive conditions; impairment of long- lived assets and any loss on and exit costs associated with restaurant closures; expansion to new markets; the timing of new restaurant openings and related expense; restaurant operating costs for our newly- opened restaurants; increases in infrastructure costs; and fluctuations in commodity prices **. During 2023, we experienced lower comparable sales, lower operating income and a decline in our stock price** . Seasonal factors, particularly weather disruptions, and the timing of holidays also cause our revenue to fluctuate from quarter to quarter. Our revenue per restaurant is typically lower in the first and fourth quarters due to reduced winter and holiday traffic and higher in the second and third quarters. As a result of these factors, our quarterly and annual operating results and comparable restaurant sales may fluctuate significantly. Accordingly, results for any one quarter are not necessarily indicative of results to be expected for any other quarter or for any year and comparable restaurant sales for any particular future period may decrease. In the future, operating results may fall below the expectations of securities analysts and investors. In that event, the price of our common stock would likely decrease. Future sales of our common stock, or the perception that such sales may occur, could depress our common stock price. Sales of a substantial number of shares of our common stock in the public market, or the perception that such sales may occur, could depress the market price of our common stock. Our amended and restated certificate of incorporation authorizes us to issue up to 180, 000, 000 shares of Class A common stock and Class B common stock. As of January ~~3~~ **2** , ~~2023~~ **2024** , we have ~~46~~ **44** , ~~040~~ **989** , ~~427~~ **714** outstanding shares of Class A common stock and no outstanding shares of Class B common stock. In addition, as of such date, approximately 3, ~~016~~ **500** , ~~279~~ **591** shares of Class A common stock are issuable upon the exercise of outstanding stock options and the vesting of restricted stock units. Moreover, as of that date, approximately ~~2~~ **3** . ~~0~~ **8** million shares of our common stock are available for future grants under our stock incentive plan and for future purchase under our employee stock purchase plan. Provisions in our organizational documents and Delaware law may delay or prevent our acquisition by a third party. Our amended and restated certificate of incorporation, our second amended and restated bylaws and Delaware law each contain several provisions that may make it more difficult for a third party to acquire control of us without the approval of our Board of Directors. For example, we have a classified Board of Directors with three- year staggered terms, which could delay the ability of stockholders to change the membership of a majority of our Board of Directors. These provisions may make it more difficult or expensive for a third party to acquire a majority of our outstanding equity interests. These provisions also may delay, prevent or deter a merger, acquisition, tender offer, proxy contest or other transaction that might otherwise result in our stockholders receiving a premium over the market price for their common stock. Our credit facility has ~~a~~ variable interest ~~rate~~ **rates** and increases in **or sustained high** interest rates could ~~increase the~~ **continue to result in high borrowing** ~~cost~~ **costs** ~~of servicing such debt~~ . Our ~~Third~~ Amended **and Restated** Credit Facility has a variable interest rate equal to the Secured Overnight Financing Rate (" SOFR ") plus a margin of 1. ~~50~~ **75** % to ~~2~~ **3** . ~~50~~ **00** % per annum, based upon the consolidated total lease ~~–~~adjusted leverage ratio. Interest rates ~~increased~~ **may rise in the future due to inflation or other causes. Interest rates have remained high** during 2022 and **2023** ~~may continue to rise in the future due to inflation or other causes~~ . As a result, the costs of servicing our variable interest rate debt have and could ~~continue to~~ increase

again even if the amount borrowed under such credit facility remains the same. Increased servicing costs could adversely affect our business, financial condition, results of operations or cash flows **. During 2023, we amended our credit agreement which resulted in, among other things, an increase in our borrowing rates** . We may be unable to negotiate favorable borrowing terms, and any additional capital we may require could be senior to existing equity holders, dilute existing equity holders or include unfavorable restrictions. As a general matter, operating and developing our business requires significant capital. Our credit agreement ends in 2027 and securing access to credit on reasonable terms thereafter will require us to extend or refinance such agreement. In addition, in order to pursue our business and operational strategies, we may need additional sources of liquidity in the future and it may be difficult or impossible at such time to increase our liquidity. Our lenders may not agree to amend our credit agreement at such time to increase our borrowing capacity. Further, our requirements for additional liquidity may coincide with periods during which we are not in compliance with covenants under our credit agreement and our lenders may not agree to further amend our credit agreement to accommodate such non- compliance. Even if we are able to access additional liquidity, agreements governing any borrowing arrangement could contain covenants restricting our operations. If we raise additional funds through future issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing we secure in the future could involve higher interest rates, especially given the current inflationary environment, and 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. Moreover, if we issue new debt securities, the debt holders would have rights senior to common stockholders to make claims on our assets. In ~~addition~~ **the fourth quarter of 2023** , **we** ~~variable- rate borrowings under our Amended~~ **amended our** ~~and Restated Credit~~ **credit** ~~Agreement~~ **agreement which resulted in** ~~, dated as of July 27, 2022, use the SOFR to determine the cost of borrowing, instead of the recently discontinued LIBOR. At this time, it is not possible to predict the effect the discontinuance of LIBOR, or the establishment of alternative reference rates such as SOFR, will have on us or our borrowing costs. SOFR is a relatively new reference rate and its composition and characteristics are not the same as LIBOR. Given SOFR' s very limited history and potential volatility as compared to other benchmark or market rates, the future performance of SOFR cannot be predicted based on historical performance. The consequences of using SOFR could include~~ an increase in ~~the cost of~~ our ~~variable~~ **borrowing** ~~rate~~ **rates and modifications** ~~indebtedness. The potential effect of any such event on our cost of capital cannot yet be determined, but we do not expect it~~ to **both the Fixed Charge and** ~~have a material impact on our consolidated~~ **Consolidated Total Lease Adjusted Leverage** ~~financial condition, results of operations~~ --- **rations** ~~, or cash flows. Risks Related to the COVID- 19 Pandemic The COVID- 19 Pandemic has adversely affected and could continue to adversely affect our financial results, operations and outlook for an extended period of time. The COVID- 19 Pandemic,~~ and restrictions **related** ~~imposed by federal, state and local governments in response~~ to **new** ~~the outbreak, have materially disrupted our business. Beginning in 2020, government- imposed restrictions required individuals located in many areas where we operate our restaurants to practice social distancing, wear face covering in our restaurants, self- quarantine for a specific duration if exposed to a confirmed positive individual, limit gathering in groups and / or " stay home " except for " essential " purposes. In response to the COVID- 19 Pandemic, government restrictions and CDC guidance, we have in certain situations been required to temporarily close some of our restaurants, restrict the use of many of our dining rooms while still offering takeout and delivery, and / or implement modified work hours. The mobility restrictions, the impact on staffing levels at our restaurants and in some cases the availability and increase in cost for our vendors to supply food to our restaurants caused by the COVID- 19 Pandemic have adversely affected and are expected to continue to adversely affect our financial condition or operating results. Even as the COVID- 19 Pandemic has subsided, guests may still be reluctant to return to in-~~ restaurant **growth** ~~dining, our team members may leave the job market or restaurant industry and our suppliers may continue to face staffing or cost pressures~~ .