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

**FORM 10-K**

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 25, 2022

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number 001-38250



**FAT Brands Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**82-1302696**  
(I.R.S. Employer  
Identification No.)

**9720 Wilshire Blvd., Suite 500**  
**Beverly Hills, CA 90212**  
(Address of principal executive offices, including zip code)

**(310) 319-1850**  
(Registrant's telephone number, including area code)

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

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Title of each class	Trading Symbol(s)	Name of each exchange on which registered
<b>Class A Common Stock, par value \$0.0001 per share</b>	<b>FAT</b>	<b>The Nasdaq Stock Market LLC</b>
<b>Class B Common Stock, par value \$0.0001 per share</b>	<b>FATBB</b>	<b>The Nasdaq Stock Market LLC</b>
<b>Series B Cumulative Preferred Stock, par value \$0.0001 per share</b>	<b>FATBP</b>	<b>The Nasdaq Stock Market LLC</b>
<b>Warrants to purchase Class A Common Stock</b>	<b>FATBW</b>	<b>The Nasdaq Stock Market LLC</b>

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

**None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management’s assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2). Yes ☐ No ☒

The aggregate market value of voting common stock held by non-affiliated stockholders as of June 26, 2022 was approximately \$53.7 million.

As of February 17, 2023, there were 15,316,720 shares of Class A common stock and 1,270,805 shares of Class B common stock outstanding.

FAT BRANDS INC.  
FORM 10-K  
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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

*Certain statements contained herein and certain statements contained in future filings by the Company with the SEC may not be based on historical facts and are “Forward-Looking Statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts contained in this Form 10-K may be forward-looking statements. Statements regarding our future results of operations and financial position, business strategy and plans and objectives of management for future operations, including, among others, statements regarding expected new franchisees, brands, store openings and future capital expenditures are forward-looking statements. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “targets,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions.*

*Forward-looking statements are subject to significant business, economic and competitive risks, uncertainties and contingencies including, but not limited to, the impact of the current novel coronavirus pandemic (“COVID-19”), many of which are difficult to predict and beyond our control, which could cause our actual results to differ materially from the results expressed or implied in such forward-looking statements. These and other risks, uncertainties and contingencies are described in this Annual Report on Form 10-K, including under “Item 1A. Risk Factors”, and the other reports that we file with the SEC from time to time.*

*These forward-looking statements speak only as of the date of this Form 10-K. Except as may be required by law, the Company does not undertake, and specifically disclaims any obligation, to publicly release the results of any revisions that may be made to any Forward-Looking Statements to reflect the occurrence of anticipated or unanticipated events or circumstances after the date of such statements.*

*The following discussion and analysis should be read in conjunction with the Financial Statements of FAT Brands Inc. and the notes thereto included elsewhere in this filing. References in this filing to “the Company,” “we,” “our,” and “us” refer to FAT Brands Inc. and its subsidiaries unless the context indicates otherwise.*

## PART I

### ITEM 1. BUSINESS

FAT Brands Inc. is a leading multi-brand restaurant company that develops, markets, acquires and manages quick service, fast casual, casual dining and polished casual dining restaurant concepts around the world. We operate primarily as a franchisor of restaurants, where we generally do not own or operate the restaurant locations but rather generate revenue by charging franchisees an initial franchise fee as well as ongoing royalties. This “asset light” franchisor model provides us with the opportunity for strong profit margins and an attractive free cash flow profile while minimizing restaurant operating company risk, such as long-term real estate commitments or capital investments. For some of our brands, we also directly own and operate restaurant locations, in addition to franchising restaurants.

Our scalable management platform enables us to add new stores and restaurant concepts to our portfolio with minimal incremental corporate overhead cost, while taking advantage of significant corporate overhead synergies. The expansion of our existing brands as well as the acquisition of additional brands and restaurant concepts are key elements of our growth strategy. In addition to our restaurant operations, we own and operate a manufacturing and production facility in Atlanta, Georgia, which supplies our franchisees with cookie dough, pretzel dry mix and other ancillary products.

As of December 25, 2022, our franchisee base consisted of more than 750 franchisees, who operated an aggregate of approximately 2,200 restaurants, including restaurants under construction. Additionally, we directly owned and operated approximately 130 restaurants as of such date. System wide sales of our franchised and owned locations during fiscal 2022 were approximately \$2.2 billion.

#### **The FAT Brands Difference – Fresh. Authentic. Tasty.**

Our name represents the values that we embrace as a company and the food that we provide to customers – **Fresh. Authentic. Tasty** (which we refer to as “**FAT**”). The success of our franchisor model is tied to consistent delivery by our restaurant operators of freshly prepared, made-to-order food that our customers desire. With the input of our customers and franchisees, we continually strive to keep a fresh perspective on our brands by enhancing our existing menu offerings and introducing appealing new menu items. When enhancing our offerings, we ensure that any changes are consistent with the core identity and attributes of our brands, although we do not intend to adapt our brands to be all things to all people. In conjunction with our restaurant operators (which means the individuals who manage and/or own our franchised restaurants), we are committed to delivering authentic, consistent brand experiences that have strong brand identity with customers. Ultimately, we understand that we are only as good as the last meal served, and we are dedicated to having our franchisees consistently deliver tasty, high-quality food and positive guest experiences in their restaurants.

#### **Our Concepts**

As of December 25, 2022, we were the owner and franchisor of the following restaurant brands in four main categories – Quick Service, Fast Casual, Casual Dining and Polished Casual Dining.

##### ***Quick Service***

- ***Round Table Pizza.*** Round Table Pizza is the franchisor of quick service restaurants located primarily in California and the western United States. Round Table pizzas are made with fresh dough and offered in a variety of original flavors and pizza combinations. Customers also have the option to create their own pizzas. Round Table Pizza includes three restaurant formats – Traditional, Clubhouse and Delivery Only.
- ***Marble Slab Creamery.*** Marble Slab Creamery is a purveyor of hand-mixed ice cream. Founded in 1983, Marble Slab was an innovator of the frozen slab technique where customers select a variety of items to be mixed into their ice cream or frozen yogurt on a chilled marble slab. Marble Slab ice cream is made in small batches in franchise locations using ingredients from around the world and dairy from local farms. Marble Slab has locations in the United States, Canada, Bahrain, Bangladesh, Guam, Kuwait, Pakistan, Puerto Rico and Saudi Arabia.

- **Great American Cookies.** Great American Cookies (which we refer to as “GAC”) was founded in Atlanta, Georgia in 1977 as a single store which relied upon a single chocolate chip cookie recipe. In 1978, GAC began its franchise operations and introduced a complete line of cookies and brownies. Over the last 30 years, GAC further increased its presence in malls throughout the United States and significantly expanded its product offerings. GAC is known for its signature Cookie Cakes, signature flavors and menu of gourmet products baked fresh in store. GAC has franchised stores in the United States, Bahrain, Guam and Saudi Arabia.
- **Hot Dog on a Stick.** Hot Dog on a Stick (which we refer to as “HDOS”) is the franchisor of quick service restaurants primarily located in regional malls in California and the western United States. HDOS founder Dave Barnham opened his first hot dog stand in Santa Monica, California in 1946. HDOS offers its turkey frank dipped in batter and cooked in canola oil, along with fresh squeezed lemonade, hot dog in a bun, cheese on a stick, funnel cake sticks and french fries.
- **Pretzelmaker.** Pretzelmaker and Pretzel Time are franchised concepts that specialize in offering hand-rolled soft pretzels, innovative soft pretzel products, dipping sauces and beverages. Retail locations are primarily located in shopping malls and other types of shopping centers. The brands were founded independently of each other in 1991, united under common ownership in 1998, and consolidated in 2008 to become the new Pretzelmaker.
- **Fazoli’s.** Founded in 1988 in Lexington, Kentucky, Fazoli’s is an Italian restaurant chain known for its fast and fresh premium quality Italian food, including freshly prepared pasta entrees, Submarinos® sandwiches, salads, pizzas, desserts and unlimited signature breadsticks.

#### **Fast Casual**

- **Fatburger.** Founded in Los Angeles, California in 1947, Fatburger (The Last Great Hamburger Stand) has, throughout its history, maintained its reputation as an iconic, all-American, Hollywood favorite hamburger restaurant serving a variety of freshly made-to-order and customizable Fatburgers, Turkeyburgers, Chicken Sandwiches, Impossible™ Burgers, Veggieburgers, french fries, onion rings, soft-drinks and milkshakes.
- **Johnny Rockets.** Founded in 1986 on iconic Melrose Avenue in Los Angeles, California, Johnny Rockets is a world-renowned, international restaurant franchise that offers high quality, innovative menu items including Certified Angus Beef® cooked-to-order hamburgers, Boca Burger®, chicken sandwiches, crispy fries and rich, delicious hand-spun shakes and malts. This dynamic lifestyle brand offers friendly service and upbeat music contributing to the chain’s signature atmosphere of relaxed, casual fun.
- **Elevation Burger.** Established in Northern Virginia in 2002, Elevation Burger is a fast-casual burger, fries and shakes chain that provides its customers with healthier, “elevated” food options. Serving grass-fed beef, organic chicken and french fries cooked using a proprietary olive oil-based frying method, Elevation maintains environmentally friendly operating practices, including responsible sourcing of ingredients, robust recycling programs intended to reduce its carbon footprint, and store décor constructed of eco-friendly materials.
- **Yalla Mediterranean.** Founded in 2014, Yalla Mediterranean is a Los Angeles, California based restaurant chain specializing in authentic, healthful, Mediterranean cuisine with an environmentally conscience and focus on sustainability. The word “yalla”, which means “let’s go”, is embraced in every aspect of Yalla Mediterranean’s culture and is a key component of our concept. Yalla Mediterranean offers a healthful Mediterranean menu of wraps, plates and bowls in a fast-casual setting, with cuisine prepared fresh daily using, GMO-free, local ingredients for a menu that includes vegetarian, vegan, gluten-free and dairy-free options accommodating customers with a wide variety of dietary needs and preferences. The Yalla Mediterranean brand demonstrates its commitment to the environment by using responsibly sourced proteins and utensils, bowls and serving trays made from compostable materials. Due primarily to the COVID-19 pandemic and the emphasis on catering orders, all Yalla Mediterranean stores were closed during the pandemic. We are currently planning to redesign and reintroduce the brand with a rollout of new stores.

#### **Casual Dining**

- **Buffalo's Cafe and Buffalo's Express.** Established in Roswell, Georgia in 1985, Buffalo's Cafe (Where Everyone is Family) is a family-themed casual dining concept known for its chicken wings and 13 distinctive homemade wing sauces, burgers, wraps, steaks, salads and other classic American cuisine. Featuring a full bar and table service, Buffalo's Cafe offers a distinctive dining experience affording friends and family the flexibility to share an intimate dinner together or to casually watch sporting events while enjoying extensive menu offerings. Beginning in 2011, Buffalo's Express was developed and launched as a fast-casual, smaller footprint variant of Buffalo's Cafe offering a limited version of the full menu with an emphasis on chicken wings, wraps and salads. Current Buffalo's Express outlets are co-branded with Fatburger locations, providing our franchisees with complementary concepts that share kitchen space and result in a higher average unit volume (compared to stand-alone Fatburger locations).
- **Hurricane Grill & Wings.** Founded in Fort Pierce, Florida in 1995, Hurricane Grill & Wings is a tropical beach themed casual dining restaurant known for its fresh, jumbo, chicken wings, 35 signature sauces, burgers, bowls, tacos, salads and sides. Featuring a full bar and table service, Hurricane Grill & Wings' laid-back, casual, atmosphere affords family and friends the flexibility to enjoy dining experiences together regardless of the occasion. The acquisition of Hurricane Grill & Wings has been complementary to FAT Brands' existing portfolio chicken wing brands, Buffalo's Cafe and Buffalo's Express.
- **Ponderosa Steakhouse / Bonanza Steakhouse.** Ponderosa Steakhouse, founded in 1965, and Bonanza Steakhouse, founded in 1963, offer the quintessential American steakhouse experience, for which there is strong and growing demand in international markets, particularly in Asia and the Middle East. Ponderosa and Bonanza Steakhouses offer guests a high-quality buffet and broad array of great tasting, affordably priced steak, chicken and seafood entrées. Buffets at Ponderosa and Bonanza Steakhouses feature a large variety of all you can eat salads, soups, appetizers, vegetables, breads, hot main courses and desserts. An additional variation of the brand, Bonanza Steak & BBQ, offers a full-service steakhouse with fresh farm-to-table salad bar and a menu showcasing flame-grilled USDA steaks and house-smoked BBQ, with contemporized interpretations of traditional American classics.
- **Native Grill & Wings.** Based in Chandler, Arizona, Native Grill & Wings is a family-friendly sports grill with locations in Arizona, Illinois and Texas. Native Grill & Wings serves over 20 wing flavors that guests can order by the individual wing, as well as an extensive menu of pizza, burgers, sandwiches and salads.

#### **Polished Casual Dining**

- **Twin Peaks.** Founded in 2005 in Dallas, Texas, Twin Peaks is a leading sports lodge-themed restaurant chain known for its scratch made food, 29-degree cold beer and all-female wait staff. Each Twin Peaks restaurant features a sports viewing experience in a comfortable mountain lodge atmosphere with a customized sports programming package provided by DirecTV. Menu items include smashed and seared to order burgers, in-house smoked ribs, street tacos and hand-breaded chicken wings. We currently franchise, and also directly own and operate, Twin Peaks restaurants in various states in the United States, and we have two international franchised Twin Peaks restaurants in Mexico City, Mexico.

#### **Our Competitive Strengths**

We believe that our competitive strengths include:

- **Management Team Designed to Support Multiple Brands and Categories.** As our business has expanded to 17 brands, we have developed a robust and comprehensive management and systems platform designed to support the expansion of our existing brands while enabling for the accretive and efficient acquisition and integration of additional restaurant concepts. We have distinct teams of managers focused on four main categories – Quick Service, Fast Casual, Casual Dining and Polished Casual Dining. Our platform is scalable and adaptable, allowing us to incorporate growth in existing brands and new concepts into the FAT Brands family with minimal incremental corporate costs.
- **Strong Brands Aligned with FAT Brands Vision.** We have an enviable track record of delivering Fresh, Authentic, and Tasty meals across our franchise system, with leading brands in four categories. Our Fatburger,

Round Table Pizza, Twin Peaks, Johnny Rockets, Fazoli's and Buffalo's concepts have built distinctive brand identities within their respective categories, providing made-to-order, high-quality food at competitive prices. The Ponderosa and Bonanza brands deliver an authentic American steakhouse experience. Hurricane Grill & Wings and Native Grill & Wings offer customers fresh chicken wings with an assortment of sauces and rubs in a casual dining atmosphere. Yalla Mediterranean offers a healthful Mediterranean menu of wraps, plates, and bowls in a fast-casual setting. Elevation Burger was the first organic burger chain, serving premium grass-fed beef patties and heart-healthy olive oil fries in a family and eco-friendly environment. Maintaining alignment with the FAT Brands vision across an expanding platform, we believe that our concepts appeal to a broad base of domestic and global consumers.

- **Ability to Cross-Sell Multiple Brands from the FAT Brands Portfolio.** Our ability to easily and efficiently cross-sell to our existing franchisees new brands from our portfolio affords us the ability to grow more quickly and satisfy our existing franchisees' demands to expand their operations. By having the ability to offer our franchisees a variety of restaurant concepts in multiple categories, our existing franchisees are able to acquire the rights to a well-rounded portfolio of FAT Brands concept offerings to strategically satisfy their respective market demands where opportunities are available. We have developed a pipeline of more than 1,000 restaurants under development driven in part by our diverse and attractive portfolio of brands.
- **Asset Light Business Model Driving High Free Cash Flow Conversion.** We operate primarily as a franchisor of restaurants, where we generally do not own or operate the restaurant locations but rather generate revenue by charging franchisees an initial franchise fee as well as ongoing royalties based on their sales. This "asset light" franchisor model provides us with the opportunity for strong profit margins and an attractive free cash flow profile while minimizing restaurant operating company risks, such as long-term real estate commitments, capital investments and increases in employee wage costs. For some of our brands, we also directly own and operate restaurant locations.
- **Robust Franchisee Support.** Our franchisees are our primary customers and we dedicate considerable resources and industry knowledge to promote their success. We offer our franchisees multiple support services such as public relations, supply chain assistance, site selection analysis, staff training and operational oversight and support. We develop and produce most marketing initiatives for our brands in-house, including advertising campaigns, product placements and social media / digital marketing. We have developed a diverse and loyal base of more than 750 franchisees with restaurants located in 40 countries, including 48 states within the United States, without any excessive market concentration among the franchisees.

## Our Growth Strategy

The principal elements of our growth strategy include:

- **Organically Grow New Store Pipeline and Attract New Franchisees.** We have developed a pipeline of more than 1,000 restaurants under development among our existing and newly acquired franchisees. We also believe that the worldwide markets for our brands are far from saturated and can support a significant increase in units through new franchisee relationships. Additionally, we are seeing strong new franchisee activity as well as continued demand from our existing franchise partners to develop other brands within our portfolio. In many cases, prospective franchisees have experience in and knowledge of markets where we are not currently active, facilitating a smoother brand introduction than we or our existing franchisees could achieve independently.
- **Expand Our Factory Business.** We operate a manufacturing facility in Atlanta, Georgia that supplies batter and pretzel mix to certain of our quick service restaurant brands and operates at approximately 1/3 capacity. We are executing a strategy to expand the facility's production by offering batter to other brand categories within our portfolio and by entering into third-party manufacturing contracts.
- **Capitalize on Growth Opportunities in our Polished Casual Dining Category.** Twin Peaks is a leading sports lodge-themed restaurant chain known for its scratch made food, 29-degree cold beer and all-female wait staff. Twin Peaks has grown from 85 units to 95 units since our acquisition of the brand in October 2021. We will pursue the continued growth of this brand through additional company-owned and franchised units.
- **Acquire New Brands that Enhance Existing Categories.** Our management platform was designed and developed to cost-effectively and seamlessly scale with new restaurant concept acquisitions, particularly those in our existing restaurant categories. We may acquire additional categories of restaurant brands that appeal to a broad base of U.S. and



international customers and that would be accretive to our existing portfolio of brands, including restaurants focused on salads, sandwiches, health and organic foods, coffee and dessert outlets and sports bars.

- **Accelerate Same-Store Sales Growth.** Same-store sales growth reflects the change in year-over-year sales for the comparable store base, which we define as the number of stores open for at least one full fiscal year. To optimize restaurant performance, we have embraced a multi-faceted same-store sales growth strategy. We utilize customer feedback and closely analyze sales data to introduce, test and improve existing and add new menu items. In addition, we regularly utilize public relations and experiential marketing, which we leverage via social media and targeted digital advertising to expand the reach of our brands and to drive traffic to our stores. Furthermore, we have embraced emerging technology and worked with the "Olo" platform to develop our own brand-specific mobile applications, allowing guests to find restaurants, order online, earn rewards and join our e-marketing providers. We have also partnered with third-party delivery service providers, including UberEATS, Grub Hub, DoorDash and Postmates, which provide online and app-based delivery services and constitute a sales channel for our existing locations. Finally, many of our franchisees are pursuing a capital expenditure program to remodel legacy restaurants and to opportunistically co-brand them with our concepts.
- **Driving Store Growth Through Co-Branding.** We franchise co-branded Fatburger / Buffalo's Express locations, Johnny Rockets / Hurricane Grill and Wings locations, Great American Cookies / Marble Slab Creamery locations and Pretzel Maker / Great American Cookie locations. Additionally, we tri-brand Fat Burger / Buffalo's Express / Hot Dog on a Stick locations and Great American Cookies / Marble Slab Creamery / Pretzel Maker locations. Each co-brand and tri-brand giving franchisees the flexibility of offering multiple concepts, while sharing kitchen space, resulting in a higher average check (compared to stand-alone Fatburger locations). Franchisees benefit by serving a broader customer base, and we estimate that co-branding and tri-branding results in a 20%-30% increase in average unit volume compared to stand-alone locations with minimal incremental cost to franchisees. Our acquisition strategy reinforces the importance of co-branding, as we expect to offer each of the complementary brands that we acquire to our existing franchisees on a co-branded basis.
- **Optimize Capital Structure.** In 2021, we funded our acquisition of restaurant brands primarily through the issuances of notes under four separate whole-business securitization facilities, which significantly reduced our net cost of capital compared with acquisitions that we consummated in prior years. In the future, we plan to refinance these notes and may seek an investment rating on a portion of the notes in order to further reduce our cost of capital.
- **Continue Expanding FAT Brands Internationally.** We have a significant global presence, with franchised stores in 40 countries, including 48 states within the United States. We believe that the appeal of our Fresh, Authentic, and Tasty concepts is global, and we are targeting further penetration of Middle Eastern and Asian markets, particularly through expanding and number of units of several of our existing brands.
- **Acquire New Brands that Enhance Existing Categories.** Our management platform was designed and developed to cost-effectively and seamlessly scale with new restaurant concept acquisitions, particularly those in our existing restaurant categories. We have identified additional categories of potential acquisitions that appeal to a broad base of U.S. and international customers and that would be accretive to our existing portfolio of brands, including restaurants focused on salads, sandwiches, health and organic foods, coffee and dessert outlets and sports bars.

## Franchise Program

**General.** We utilize a franchise development strategy as our primary method for new store growth by leveraging the interest of our existing franchisees and those potential franchisees with an entrepreneurial spirit looking to launch their own business. We have a franchisee qualification and selection process to ensure that each franchisee meets our strict brand standards.

**Franchise Agreements.** Our current franchise agreements generally provide for an initial franchise fee ranging from \$0 to \$50,000 per store, and a typical royalty fee of between 0.75% to 7.0% of net sales. In addition, franchisees typically pay an advertising fee based on net sales for local marketing and brand marketing.

**Development Agreements.** For some of our brands, we use development agreements to facilitate the planned expansion of our restaurants through single and multiple unit development. Each development agreement gives a developer the exclusive right to construct, own and operate stores within a defined area. In exchange, the franchisee agrees to open a minimum number of stores in the area in a prescribed time period. Franchisees that enter into development agreements are required to pay a fee, which is credited against franchise fees due when the store is opened in the future. Franchisees may forfeit such fees and lose their rights to future development if they do not maintain the required store opening schedule.

## Franchisee Support

### *Marketing*

Our *Fresh, Authentic and Tasty* values are the anchor that inspires our marketing efforts. Our resolve to maintain our premium positioning, derived from the FAT Brands' values, is reinforced by our management platform, capital light business model, experienced and diverse global franchisee network and seasoned and passionate management team. Although our marketing and advertising programs are concept-specific, we believe that our restaurant customers appreciate the value of their experiences visiting our establishments and, thus, the core of our marketing strategy is to engage and dialogue with customers at our restaurant locations as well as through social media.

Our *Fresh, Authentic and Tasty* values are an invitation for restaurant customers to align with FAT Brands' commitment to consistently deliver freshly prepared, made-to-order food that restaurant customers desire. We are dedicated to keeping a fresh perspective on our concepts, perfecting our existing menu offerings as well as introducing appealing new items. We ensure that any changes are consistent with the core identity of our brands, and we will not adapt our brands to be all things to all people.

Our marketing initiatives include a robust mix of local community marketing, in-store campaigns, product placements, partnerships, promotions, social media, influencer marketing, traditional media and word of mouth advertising. Corresponding with the evolutionary shift in how restaurant customers receive content and engage with media and brands today, we have also dramatically increased our focus on mobile, social, and digital advertising to leverage the content we generate from public relations and experiential marketing to better connect with restaurant customers, sharing information about new menu offerings, promotions, new store openings and other relevant FAT Brands information. We communicate with restaurant customers in creative and organic ways that we believe fortifies our connections with them and increase brand awareness.

### *Site Selection and Development*

Our franchisees work alongside our franchise development department during the search, review, leasing and development process for a new restaurant location. Typically, it takes between 60 and 90 days from the time we sign an agreement with a franchisee until that franchisee signs a lease. When selecting a location, our team assists franchisees in seeking locations based on a variety of factors, including but not limited to traffic patterns, access, visibility, building constraints, competition, activity generators and lease terms.

### *Supply Chain Assistance*

FAT Brands is committed to seeking out and working with best-in-class suppliers and distribution networks on behalf of our franchisees. Our *Fresh, Authentic and Tasty* vision guides us in how we source and develop our ingredients, always looking for the best ways to provide top quality food that is as competitively priced as possible for our franchisees and their customers. We utilize a third-party purchasing and consulting company that provides distribution, rebate collection, product negotiations, audits and sourcing services focusing on negotiating distributor, vendor and manufacturer contracts, thereby ensuring that our brands receive meaningful buying power for our franchisees.

Our team has developed a reliable supply chain and continues to focus on identifying additional back-ups to avoid or minimize any possible interruption of service and product globally for our franchisees. Domestically, FAT Brands has distribution agreements with broadline national distributors as well as regional providers. Internationally, our franchisees have distribution agreements with different providers market-by-market. We utilize distribution centers operated by our distributors. Our broadline national distributors are the main purchasing link in the United States among many of our suppliers, and distribute most of our dry, refrigerated and frozen goods, non-alcoholic beverages, paper goods and cleaning supplies. Internationally, distributors are also used to provide the majority of products to our franchisees.

Food Safety and Quality Assurance. Food safety is one of our top priorities of FAT Brands. As such, we maintain rigorous safety standards for our menu offerings. We have carefully selected preferred suppliers that adhere to our safety standards, and our franchisees are required to source their ingredients from these approved suppliers. Furthermore, our commitment to food safety is strengthened through the direct relationship between our Supply Chain and Field Consultant Assistance teams.

### *Management Information Systems*

FAT Brands restaurants utilize a variety of back-office, computerized and manual, point-of-sale systems and tools. We utilize these systems following a multi-faceted approach to monitor restaurants operational performance, food safety, quality control, customer feedback and profitability.

The point-of-sale systems are designed specifically for the restaurant industry and we use many customized features to evaluate operational performance, provide data analysis, marketing promotional tracking, guest and table management, high-speed credit card and gift card processing, daily transaction data, daily sales information, product mix, average transaction size, order modes, revenue centers and other key business intelligence data. Utilizing these point-of-sale systems back-end, web-based, enterprise level, software solution dashboards, our home office and Franchise Operations Consultant Support staff are provided with real-time access to detailed business data which allows for our home office and Franchise Operations Consultant Support staff to closely, and remotely, monitor stores performance and assist in providing focused and timely support to our franchisees. Furthermore, these systems supply sales, bank deposit and variance data to our accounting department on a daily basis, and we use this data to generate daily sales information and weekly consolidated reports regarding sales and other key measures for each restaurant with final reports following the end of each period.

In addition to utilizing these point-of-sale systems, FAT Brands utilizes systems which provide detailed, real-time (and historical) operational data for all locations, allowing our management team to track product inventories, equipment temperatures, repair and maintenance schedules, intra-shift team communications, consistency in following standard operating procedures and tracking of tasks. FAT Brands also utilizes a web-based employee scheduling software program providing franchisees, and their management teams, increased flexibility and awareness of scheduling needs allowing them to efficiently, and appropriately, manage their labor costs and store staffing requirements/needs. Lastly, FAT Brands utilizes a proprietary customer feedback system allowing customers to provide feedback in real-time to our entire management team, franchisees and store managers.

#### ***Field Consultant Assistance***

In conjunction with utilizing the FAT Brands Management Information Systems, FAT Brands has a team of dedicated Franchise Operations Consultant Support staff who oversee designated market areas and specific subsets of restaurants. Our Franchise Operations Consultant Support staff work in the field daily with franchisees, and their management teams, to ensure that the integrity of all FAT Brands concepts are upheld and that franchisees are utilizing the tools and systems FAT Brands requires in order to provide input to our franchisees to assist them to optimize and accelerate their profitability. FAT Brands Franchise Operations Consultant Support staff responsibilities include the following, many of which are performed on a rotating basis (but are not limited to):

- Conducting announced and unannounced store visits and evaluations;
- Continuous training and re-training of new and existing franchise operations;
- Conducting quarterly workshops for franchisees and their management teams;
- Development and collection of monthly profit and loss statements for each store;
- Store set-up, training, oversight and support for pre- and post- new store openings;
- Training, oversight and implementation of in-store marketing initiatives; and
- Inspections of equipment, temperatures, food-handling procedures, customer service, products in store, cleanliness, and team member attitude.

#### ***Training, Pre-Opening Assistance and Opening Support***

FAT Brands offers Executive level and Operational level training programs to its franchisees, pre-opening assistance and opening assistance. Once open, FAT Brands continually provides ongoing operational and marketing support to our franchisees with the intention of offering advice to their management teams that they can use if they choose to more effectively operate their restaurants and increasing their stores financial profitability.

#### ***Competition***

Our franchised and company owned restaurants compete in the quick service, fast casual, casual and polished casual dining categories of the restaurant industry, a highly competitive industry in terms of price, service, location, and food quality.

The restaurant industry is often affected by changes in consumer trends, economic conditions, demographics, traffic patterns, and concern about the nutritional content of food. Furthermore, there are many well-established competitors with substantially greater financial resources than the Company's, including several national, international, regional and local store franchisors and operators. The restaurant industry also has few barriers to entry and new competitors may emerge at any time.

### **Seasonality and Effects of Weather**

While some of our brands are subject to seasonal fluctuations in their sales and may be affected by inclement weather, our business overall does not experience significant seasonal variability in its financial performance. Holidays and severe weather in certain regions, including hurricanes, tornados, thunderstorms, snow and ice storms, prolonged extreme temperatures and similar conditions, may impact restaurant sales volumes in some of the markets in which we operate. In addition, the risk of increasingly severe weather due to climate change or the risk that those events happen more frequently could increasingly affect our operations in the future.

### **Intellectual Property**

We own, domestically and internationally, valuable intellectual property including trademarks, service marks, trade secrets and other proprietary information related to our restaurant and corporate brands. This intellectual property includes logos and trademarks which are of material importance to our business. Depending on the jurisdiction, trademarks and service marks generally are valid as long as they are used and/or registered. We seek to actively protect and defend our intellectual property from infringement and misuse.

### **Human Capital Resources**

We believe that our employees are critical to our success and seek to provide a working environment which encourages personal growth and success in our workforce. We believe that we have good relations with our employees and offer competitive compensation and benefits customary to our industry. Our benefits package for qualified employees includes employer paid health insurance and opportunities for stock-based incentives. Our restaurant employees receive continuing training and have the opportunity to advance in responsibility and leadership.

We believe that communication is key to the effectiveness of our workforce and schedule regular weekly conference calls with all of our corporate employees, updating them on the direction of the business, important developments within our company and the industry and key milestones to be achieved. We also encourage our employees to be involved in their communities and directly operate two charities - The Seeds of Compassion Fund, Inc., a charitable foundation that provides disaster relief to local communities, and FAT Brands Foundation, a charitable foundation that was organized and seeded by FAT Brands and which seeks additional contributions from our employees, franchise partners and brand partners. From time to time, we also sponsor meal events for first responders and medical professionals during local disasters.

As of December 25, 2022, we had approximately 5,400 employees, including approximately 1,100 full time employees. This amount includes approximately 825 full time and 4,300 part time employees at restaurants which we own and operate. We have a diverse workforce and recently appointed an executive level Diversity, Equity & Inclusion Officer. As an equal opportunity employer, all qualified applicants receive consideration without regard to race, national origin, gender, gender identity, sexual orientation, protected veteran status, disability, age or any other legally protected status.

### **Government Regulation**

U.S. Operations. Our U.S. operations are subject to various federal, state and local laws affecting our business, primarily laws and regulations concerning the franchisor/franchisee relationship, marketing, food labeling, labor and employment, sanitation and safety and anti-bribery and anti-corruption laws. Various federal and state labor laws, along with rules and regulations, govern our relationship with our employees, including such matters as minimum wage, overtime, tip credits, health insurance, working conditions, safety and work eligibility requirements. Each of our franchised and company owned restaurants in the U.S. must comply with licensing and regulation by a number of governmental authorities, which include health, sanitation, safety, fire and zoning agencies in the state and/or municipality in which the restaurant is located. In addition, alcoholic beverage control regulations require each of our restaurants which sells alcohol to apply to a federal and state authority and, in certain locations, municipal authorities for a license and permit to sell alcoholic beverages on and off-premises. Typically, licenses must be renewed annually and may be revoked or suspended for cause by such authority at any time. To date, we have not been materially adversely affected by such licensing and regulation or by any difficulty, delay or failure to obtain required licenses or approvals.

International Operations. Our restaurants outside the U.S. are subject to national and local laws and regulations which in general are similar to those affecting U.S. restaurants. The restaurants outside the U.S. are also subject to tariffs and

regulations on imported commodities and equipment and laws regulating foreign investment, as well as anti-bribery and anti-corruption laws.

See “Risk Factors” for a discussion of risks relating to federal, state, local and international regulation of our business.

## **Our Corporate Information**

FAT Brands Inc. was formed as a Delaware corporation on March 21, 2017. Our corporate headquarters are located at 9720 Wilshire Blvd., Suite 500, Beverly Hills, California 90212. Our main telephone number is (310) 319-1850. Our principal Internet website address is [www.fatbrands.com](http://www.fatbrands.com). The information on our website is not incorporated by reference into, or a part of, this Annual Report.

## **Available Information**

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are filed with the Securities and Exchange Commission (the “SEC”). We are subject to the informational requirements of the Exchange Act and file or furnish reports, proxy statements and other information with the SEC. The public may read and copy any materials filed by us with the SEC at the SEC’s Public Reference Room at 100 F Street, NE, Room 1580, Washington, DC 20549, and may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at [www.sec.gov](http://www.sec.gov). The contents of these websites are not incorporated into this Annual Report. Further, our references to the URLs for these websites are intended to be inactive textual references only. We also make the documents listed above available without charge through the Investor Relations Section of our website at [www.fatbrands.com](http://www.fatbrands.com).

## **ITEM 1A. RISK FACTORS**

*Except for the historical information contained herein or incorporated by reference, this report and the information incorporated by reference contain forward-looking statements that involve risks and uncertainties. These statements include projections about our accounting and finances, plans and objectives for the future, future operating and economic performance and other statements regarding future performance. These statements are not guarantees of future performance or events. Our actual results could differ materially from those discussed in this report. Factors that could cause or contribute to these differences include, but are not limited to, those discussed in the following section, as well as those discussed in Part II, Item 7 entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere throughout this report and in any documents incorporated in this report by reference.*

*You should carefully consider the following risk factors and in the other information included or incorporated in this report. If any of the following risks, either alone or taken together, or other risks not presently known to us or that we currently believe to not be significant, develop into actual events, then our business, financial condition, results of operations or prospects could be materially adversely affected. If that happens, the market price of our common stock could decline, and stockholders may lose all or part of their investment.*

### **Risks Related to Our Franchised Business Model**

***Our operating and financial results and growth strategies are closely tied to the success of our franchisees.***

Most of our restaurants are operated by franchisees, which makes us dependent on the financial success and cooperation of our franchisees. We have limited control over how our franchisees’ businesses are run, and the inability of franchisees to operate successfully could adversely affect our operating and financial results through decreased royalty payments. If our franchisees incur too much debt, if their operating expenses or commodity prices increase or if economic or sales trends deteriorate such that they are unable to operate profitably or repay existing debt, it could result in their financial distress, including insolvency or bankruptcy. If a significant franchisee or a significant number of our franchisees become financially distressed, our operating and financial results could be impacted through reduced or delayed royalty payments. Our success also depends on the willingness and ability of our franchisees to implement major initiatives, which may include financial investment. Our franchisees may be unable to successfully implement strategies that we believe are necessary for their further growth, which in turn may harm the growth prospects and financial condition of the company. Additionally, the failure of our franchisees to focus on the fundamentals of restaurant operations, such as quality service and cleanliness (even if such failures do not rise to the level of breaching the related franchise documents), could have a negative impact on our business.

***Our franchisees could take actions that could harm our business and may not accurately report sales.***

Our franchisees are contractually obligated to operate their restaurants in accordance with the operations, safety, and health standards set forth in our agreements with them and applicable laws. However, although we attempt to properly train and support all our franchisees, they are independent third parties whom we do not control. The franchisees own, operate, and oversee the daily operations of their restaurants, and their employees are not our employees. Accordingly, their actions are outside of our control. 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 at their approved locations, and state franchise laws may limit our ability to terminate or not renew these franchise agreements. 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 adequately train qualified managers and other restaurant personnel. The failure of our franchisees to operate their franchises in accordance with our standards or applicable law, actions taken by their employees or a negative publicity event at one of our franchised restaurants or involving one of our franchisees could have a material adverse effect on our reputation, our brands, our ability to attract prospective franchisees, our company-owned restaurants, and our business, financial condition or results of operations.

Franchisees typically use a point of sale, or POS, cash register system to record all sales transactions at the restaurant. We require franchisees to use a specific brand or model of hardware or software components for their restaurant system. Currently, franchisees report sales manually and electronically, but we do not have the ability to verify all sales data electronically by accessing their POS cash register systems. We have the right under our franchise agreement to audit franchisees to verify sales information provided to us, and we have the ability to indirectly verify sales based on purchasing information but this cannot be done economically across all franchisees. However, franchisees may underreport sales, which would reduce royalty income otherwise payable to us and adversely affect our operating and financial results.

***If we fail to identify, recruit and contract with a sufficient number of qualified franchisees, our ability to open new franchised restaurants and increase our revenues could be materially adversely affected.***

The opening of additional franchised restaurants depends, in part, upon the availability of prospective franchisees who meet our criteria. Most of our franchisees open and operate multiple restaurants, and our growth strategy requires us to identify, recruit and contract with a significant number of new franchisees each year. We may not be able to identify, recruit or contract with suitable franchisees in our target markets on a timely basis or at all. In addition, our 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 they may elect to cease restaurant development for other reasons. If we are unable to recruit suitable franchisees or if franchisees are unable or unwilling to open new restaurants as planned, our growth may be slower than anticipated, which could materially adversely affect our ability to increase our revenues and materially adversely affect our business, financial condition and results of operations.

***If we fail to open new domestic and international franchisee-owned restaurants on a timely basis, our ability to increase our revenues could be materially adversely affected.***

A significant component of our growth strategy includes the opening of new domestic and international franchised restaurants. Our franchisees face many challenges associated with opening new restaurants, including:

- identification and availability of suitable restaurant locations with the appropriate size; visibility; traffic patterns; local residential neighborhood, retail and business attractions; and infrastructure that will drive high levels of customer traffic and sales per restaurant;
- competition with other restaurants and retail concepts for potential restaurant sites and anticipated commercial, residential and infrastructure development near new or potential restaurants;
- ability to negotiate acceptable lease arrangements;
- availability of financing and ability to negotiate acceptable financing terms;
- recruiting, hiring and training of qualified personnel;
- construction and development cost management;
- completing their construction activities on a timely basis;

- obtaining all necessary governmental licenses, permits and approvals and complying with local, state and federal laws and regulations to open, construct or remodel and operate our franchised restaurants;
- unforeseen engineering or environmental problems with the leased premises;
- avoiding the impact of adverse weather during the construction period; and
- other unanticipated increases in costs, delays or cost overruns.

As a result of these challenges, our franchisees may not be able to open new restaurants as quickly as planned or at all. Our franchisees have experienced, and expect to continue to experience, delays in restaurant openings from time to time and have abandoned plans to open restaurants in various markets on occasion. Any delays or failures to open new restaurants by our franchisees could materially and adversely affect our growth strategy and our results of operations.

***Negative publicity relating to one of our franchised restaurants could reduce sales at some or all of our other franchised restaurants.***

Our success is dependent in part upon our ability to maintain and enhance the value of our brands, consumers' connection to our brands and positive relationships with our franchisees. We may, from time to time, be faced with negative publicity relating to food quality, public health concerns, restaurant facilities, customer complaints or litigation alleging illness or injury, health inspection scores, integrity of our franchisees or their suppliers' food processing, employee relationships or other matters, regardless of whether the allegations are valid or whether or not the Company is held to be responsible. The negative impact of adverse publicity relating to one franchised restaurant may extend far beyond that restaurant or franchisee involved to affect some or all our other franchised 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 control a franchisee's operations and messaging, especially on a real-time basis. The considerable expansion in the use of social media over recent years can further amplify any negative publicity that could be generated by such incidents. A similar risk exists with respect to unrelated food service businesses, if consumers associate those businesses with our own or franchised operations. 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 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 of successful claims would have a material adverse effect on our business, financial condition and results of operations. Consumer demand for our products and our brands' value could diminish significantly if any such incidents or other matters create negative publicity or otherwise erode consumer confidence in us or our products, which would likely result in lower sales and could have a material adverse effect on our business, financial condition and results of operations.

***Our brands' value may be limited or diluted through franchisee and third-party activity.***

Although we monitor and regulate certain aspects of franchisee activities under the terms of our franchise agreements, franchisees or other third parties may refer to or make statements about our brands that do not make proper use of our trademarks or required designations, that improperly alter trademarks or branding, or that are critical of our brands or place our brands in a context that may tarnish our reputation. This may result in dilution of, or harm to, our intellectual property or the value of our brands. Franchisee noncompliance with the terms and conditions of our franchise agreements may reduce the overall goodwill of our brands, whether through the failure to meet health and safety standards, engage in quality control or maintain product consistency, or through the participation in improper or objectionable business practices. Moreover, unauthorized third parties may use our intellectual property to trade on the goodwill of our brands, resulting in consumer confusion or dilution of our brands' value. Any reduction of our brands' goodwill, consumer confusion, or reputational dilution is likely to impact sales, and could materially and adversely impact our business and results of operations.

**Risks Relating to Our Business and Operations**

***We have significant outstanding indebtedness under our whole-business securitization facilities, which require that we generate sufficient cash flow to satisfy the payment and other obligations under the terms of our debt and exposes us to the risk of default and lender remedies.***

We have financed our acquisitions and operations through the issuance of notes by four special purpose, wholly-owned financing subsidiaries, which own substantially all of our operations. The Company acts as the manager of each of these subsidiaries under a Management Agreement and performs management, franchising, distribution, intellectual property and operational functions on behalf of the subsidiaries for which it receives a management fee. The aggregate principal balance of



the indebtedness under our whole-business securitization facilities was \$1.0 billion as of December 25, 2022. Subject to contractual restrictions, we and our financing subsidiaries may incur additional indebtedness for various purposes, including to fund future acquisitions, the construction of company-owned restaurants and operational needs. The terms of our outstanding indebtedness provide for significant principal and interest payments, and subjects us to certain financial and non-financial covenants, including a debt service coverage ratio calculation, as defined in the applicable Indentures for these facilities. If certain covenants are not met, the indebtedness under these facilities may become partially or fully due and payable on an accelerated schedule. Our ability to meet the payment obligations under our debt depends on our ability to generate significant cash flow in the future. We cannot assure you that our business will generate cash flow from operations, or that other capital will be available to us, in amounts sufficient to enable us to meet our payment obligations under our Indentures and to fund our other liquidity needs. If we are not able to generate sufficient cash flow to service these obligations, we may need to refinance or restructure our debt, sell unencumbered assets (if any) or seek to raise additional capital. If we are unable to implement one or more of these options, we may not be able to meet these payment obligations, and the imposition of remedies by the note holders could materially and adversely affect our business, financial condition and liquidity.

***We may pursue opportunistic acquisitions of additional brands, and we may not find suitable acquisition candidates or successfully operate or integrate any brands that we may acquire.***

As part of our growth strategy, we may opportunistically acquire new brands and restaurant concepts. Although we believe that opportunities for future acquisitions may be available from time to time, competition for acquisition candidates may exist or increase in the future. Consequently, there may be fewer acquisition opportunities available to us as well as higher acquisition prices. There can be no assurance that we will be able to identify, acquire, manage or successfully integrate additional brands or restaurant concepts (including brands and concepts that we have already acquired) without substantial costs, delays or operational or financial problems.

The difficulties of integration include coordinating and consolidating geographically separated systems and facilities, integrating the management and personnel of the acquired brands, maintaining employee morale and retaining key employees, implementing our management information systems and financial accounting and reporting systems, establishing and maintaining effective internal control over financial reporting, and implementing operational procedures and disciplines to control costs and increase profitability.

In the event we are able to acquire additional brands or restaurant concepts, the integration and operation of such acquisitions may place significant demands on our management, which could adversely affect our ability to manage our existing restaurants. In addition, we may be required to obtain additional financing to fund future acquisitions, but there can be no assurance that we will be able to obtain additional financing on acceptable terms or at all.

***Health concerns arising from outbreaks of diseases, other than COVID-19, may have an adverse effect on our business.***

The outbreak of the COVID-19 pandemic in March 2020 had a number of adverse effects on our business and that of our franchisees, including temporary and permanent closures of restaurant locations, reduced or modified store operating hours, difficulties in staffing restaurants and supply chain disruptions. While the disruptions to our business from the COVID-19 pandemic have mostly subsided, the resurgence of COVID-19 or its variants, as well as an outbreak of other widespread health epidemics or pandemics, could cause a closure of restaurants and disrupt our operations and have a material adverse effect on our business, financial condition and results of operations.

Furthermore, since diseases may be transmitted through human contact, the risk of contracting diseases could cause employees or guests to avoid gathering in public places, which could adversely affect restaurant guest traffic or the ability to adequately staff our restaurants. We could also be adversely affected if jurisdictions in which our restaurants operate impose mandatory closures, seek voluntary closures or impose restrictions on operations of restaurants. Even if such measures are not implemented and a virus or other disease, the perceived risk of infection or health risk may adversely affect our business.

***Food safety and foodborne illness concerns may have an adverse effect on our business.***

Foodborne illnesses, such as E. coli, hepatitis A, trichinosis and salmonella, occur or may occur within our system from time to time. In addition, food safety issues such as food tampering, contamination and adulteration occur or may occur within our system from time to time. Any report or publicity linking one of our franchisee's restaurants, or linking our competitors or our industry generally, to instances of foodborne illness or food safety issues could adversely affect our brands and reputations as well as our revenues and profits, and possibly lead to product liability claims, litigation and damages. If a customer of one of our franchisees' restaurants becomes ill as a result of food safety issues, restaurants in our system may be temporarily closed, which would decrease our revenues. In addition, instances or allegations of foodborne illness or food safety issues, real or perceived, involving our franchised restaurants, restaurants of competitors, or suppliers or distributors (regardless



of whether we use or have used those suppliers or distributors), or otherwise involving the types of food served at our franchisees' restaurants, could result in negative publicity that could adversely affect our revenues or the sales of our franchisees. Additionally, allegations of foodborne illness or food safety issues could result in litigation involving us and our franchisees. The occurrence of foodborne illnesses or food safety issues could also adversely affect the price and availability of affected ingredients, which could result in disruptions in our supply chain and/or lower revenues and margins for us and our franchisees.

***The sale of alcoholic beverages at Twin Peaks Restaurants subjects us to additional regulations and potential liability.***

The Twin Peaks restaurants that we own and operate sell alcoholic beverages, and we are therefore required to comply with the alcohol licensing requirements of the federal government, states and municipalities where such 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 on the premises and to provide service for extended hours and on Sundays. Typically, the licenses are 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, storage and dispensing of alcoholic beverages. If we fail to comply with federal, state or local regulations, such licenses may be revoked and our Twin Peaks restaurants may be forced to terminate the sale of alcoholic beverages. Any termination of the sale of alcoholic beverages could have a significant negative impact on our revenues. Similarly, any reduction in state blood alcohol content limits on drivers, or laws relating to vehicle interlocking devices, could also have a significant negative impact on revenues of the Twin Peaks restaurants.

In certain states in which Twin Peaks restaurants are situated, we may be subject to dram shop statutes. These statutes generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated individual. Recent litigation against restaurant chains has resulted in significant judgments and settlements under dram shop statutes. Because these cases often seek punitive damages, which may not be covered by insurance, such litigation could have an adverse impact on our business, results of operations or financial condition. Regardless of whether any claims against us or our Twin Peaks operations are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from operations and hurt our financial performance. A judgment significantly in excess of insurance coverage or not covered by insurance could have a material adverse effect on our business, results of operations and financial condition. Adverse publicity resulting from these allegations may materially affect us and the Twin Peaks restaurants. In addition, it may not be possible to obtain adequate levels of insurance coverage in the future for alcohol related claims, and such coverage may not be available for reasonable insurance premiums.

***Our success depends substantially on our corporate reputation and on the value and perception of our brands.***

Our success depends in large part upon our and our franchisees' ability to maintain and enhance the value of our brands and our customers' loyalty to our brands. Brand value is based in part on consumer perceptions on a variety of subjective qualities. Business incidents, whether isolated or recurring, and whether originating from us, franchisees, competitors, suppliers or distributors, can significantly reduce brand value and consumer trust, particularly if the incidents receive considerable publicity or result in litigation. For example, our brands could be damaged by claims or perceptions about the quality or safety of our products or the quality or reputation of our suppliers, distributors or franchisees, regardless of whether such claims or perceptions are true. Similarly, entities in our supply chain may engage in conduct, including alleged human rights abuses or environmental wrongdoing, and any such conduct could damage our or our brands' reputations. Any such incidents (even if resulting from actions of a competitor or franchisee) could cause a decline directly or indirectly in consumer confidence in, or the perception of, our brands and/or our products and reduce consumer demand for our products, which would likely result in lower revenues and profits. Additionally, our corporate reputation could suffer from a real or perceived failure of corporate governance or misconduct by a company officer, or an employee or representative of us or a franchisee.

***Failure to protect our service marks or other intellectual property could harm our business.***

We regard our service marks and trademarks related to our franchise restaurant businesses, as having critical importance to our future operations and marketing efforts. We rely on a combination of protections provided by contracts, copyrights, patents, trademarks, service marks and other common law rights, such as trade secret and unfair competition laws, to protect our franchised restaurants and services from infringement. We have registered certain trademarks and service marks in the U.S. and foreign jurisdictions. However, from time to time we become aware of names and marks identical or confusingly similar to our service marks being used by other persons. Although our policy is to oppose any such infringement, further or unknown unauthorized uses or other misappropriation of our trademarks or service marks could diminish the value of our brands and adversely affect our business. In addition, effective intellectual property protection may not be available in every

country in which our franchisees have, or intend to open or franchise, a restaurant. There can be no assurance that these protections will be adequate and defending or enforcing our service marks and other intellectual property could result in the expenditure of significant resources. We may also face claims of infringement that could interfere with the use of the proprietary know how, concepts, recipes, or trade secrets used in our business. Defending against such claims may be costly, and we may be prohibited from using such proprietary information in the future or forced to pay damages, royalties, or other fees for using such proprietary information, any of which could negatively affect our business, reputation, financial condition, and results of operations.

***If our franchisees are unable to protect their customers' credit card data and other personal information, our franchisees could be exposed to data loss, litigation, and liability, and our reputation could be significantly harmed.***

Privacy protection is increasingly demanding, and the use of electronic payment methods and collection of other personal information expose our franchisees to increased risk of privacy and/or security breaches as well as other risks. The majority of our franchisees' restaurant sales are by credit or debit cards. In connection with credit or debit card transactions in-restaurant, our franchisees collect and transmit confidential information by way of secure private retail networks. Additionally, our franchisees collect and store personal information from individuals, including their customers and employees.

If a person is able to circumvent our franchisees' security measures or those of third parties, he or she could destroy or steal valuable information or disrupt our operations. Our franchisees may become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and our franchisees may also be subject to lawsuits or other proceedings relating to these types of incidents. Any such claim or proceeding could cause our franchisees to incur significant unplanned expenses, which could have an adverse impact on our financial condition, results of operations and cash flows. Further, adverse publicity resulting from these allegations could significantly harm our reputation and may have a material adverse effect on us and our franchisees' business.

***We and our franchisees rely on computer systems to process transactions and manage our business, and a disruption or a failure of such systems or technology could harm our ability to effectively manage our business.***

Network and information technology systems are integral to our business. We utilize various computer systems, including our franchisee reporting system, by which our franchisees report their weekly sales and pay their corresponding royalty fees and required advertising fund contributions. When sales are reported by a franchisee, a withdrawal for the authorized amount is initiated from the franchisee's bank on a set date each week based on gross sales during the week ended the prior Sunday. This system is critical to our ability to accurately track sales and compute royalties and advertising fund contributions and receive timely payments due from our franchisees. Our operations depend upon our ability to protect our computer equipment and systems against damage from physical theft, fire, power loss, telecommunications failure or other catastrophic events, as well as from internal and external security breaches, viruses, worms and other disruptive problems. Any damage or failure of our computer systems or network infrastructure that causes an interruption in our operations could have a material adverse effect on our business and subject us to litigation or actions by regulatory authorities. Despite the implementation of protective measures, our systems are subject to damage and/or interruption as a result of power outages, computer and network failures, computer viruses and other disruptive software, security breaches, catastrophic events, and improper usage by employees. Such events could result in a material disruption in operations, a need for a costly repair, upgrade or replacement of systems, or a decrease in, or in the collection of, royalties and advertising fund contributions paid to us by our franchisees. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability which could materially affect our results of operations. It is also critical that we establish and maintain certain licensing and software agreements for the software we use in our day-to-day operations. A failure to procure or maintain these licenses could have a material adverse effect on our business operations.

***Our business may be adversely affected by cybersecurity incidents, which result in unauthorized access, theft, modification or destruction of confidential information that is stored in our systems or by third parties on our behalf.***

Cybersecurity incidents or other unauthorized access to systems may result in disruption to our operations, corruption or theft of critical data, confidential information or intellectual property. As reliance on technology continues to grow and more business activities have shifted online, the risk associated with any cybersecurity incidents have grown. While we and our third-party vendors have implemented security systems and infrastructure to prevent, detect and/or mitigate the risk of unauthorized access to technology systems or platforms, there can be no assurance that these measures will be effective. Any cybersecurity or similar incident involving confidential information of our business, our franchisees or our restaurant customers could result in negative publicity, damage to our reputation, a loss of revenues, disruption of our business, litigation and regulatory actions. Additional capital investments might be required to remediate any problems, infringements, misappropriations or other third-party claims.

***The retail food industry in which we operate is highly competitive.***

The retail food industry in which we operate is highly competitive with respect to price and quality of food products, new product development, advertising levels and promotional initiatives, customer service, reputation, restaurant location, and attractiveness and maintenance of properties. If consumer or dietary preferences change, if our marketing efforts are unsuccessful, or if our franchisees' restaurants are unable to compete successfully with other retail food outlets in new and existing markets, our business could be adversely affected. We also face growing competition as a result of convergence in grocery, convenience, deli and restaurant services, including the offering by the grocery industry of convenient meals, including pizzas and entrees with side dishes. Competition from delivery aggregators and other food delivery services has also increased in recent years, particularly in urbanized areas. Increased competition could have an adverse effect on our sales, profitability or development plans, which could harm our financial condition and operating results.

***Supply chain shortages or interruptions in the availability and delivery of food and other supplies may increase costs or reduce revenues.***

The food products sold by our franchisees and in our company-owned restaurants, and the raw materials used in their these restaurants, are sourced from a variety of domestic and international vendors, suppliers and distributors. We, along with our franchisees, are also dependent upon third parties to make frequent deliveries of food products and supplies that meet our specifications at competitive prices. Shortages or interruptions in the supply of food items, raw materials and other supplies to our franchisees' restaurants could adversely affect the availability, quality and cost of items we use and the operations of our franchisees' and company-owned restaurants. If such shortages result in increased cost of food items and supplies, we and our franchisees may not be able to pass along all of such increased costs to restaurant customers.

Such shortages or disruptions could be caused by inclement weather, natural disasters, increased demand, problems in production or distribution, restrictions on imports or exports, the inability of vendors to obtain credit, political instability in the countries in which suppliers and distributors are located, the financial instability of suppliers and distributors, suppliers' or distributors' failure to meet our standards, product quality issues, inflation, the price of gasoline, other factors relating to the suppliers and distributors and the countries in which they are located, food safety warnings or advisories or the prospect of such pronouncements, the cancellation of supply or distribution agreements or an inability to renew such arrangements or to find replacements on commercially reasonable terms, or other conditions beyond our control or the control of our franchisees or us. 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. If inflation in food ingredients or supplies persists, our financial condition and business operations could be adversely impacted.

A shortage or interruption in the availability of certain food products, raw materials or supplies could increase costs and limit the availability of products critical to our franchisees' and company-owned restaurant operations, which in turn could lead to restaurant closures and/or a decrease in sales and therefore , and a reduction in our revenues and royalty fees paid to us. In addition, failure by a key supplier or distributor to our franchisees to meet its service requirements could lead to a disruption of service or supply until a new supplier or distributor is engaged, and any disruption could have an adverse effect on our franchisees and therefore our business. See "Business—Supply Chain Assistance."

***Climate change and the shift to more sustainable business practices could negatively affect our business or damage our reputation.***

Climate change may increase the risk of severe weather or the risk that those events happen more frequently, which could cause negatively affect restaurant sales volumes in some of the markets in which we operate and may result in decreased availability or less favorable pricing for certain commodities used in our products, such as beef, chicken and dairy. In addition, climate change may increase the frequency or severity of natural disasters and other extreme weather conditions, which could disrupt our supply chain generally or otherwise impact demand for our products. Also, concern over climate change and other sustainable business practices may result in new or increased legal and regulatory requirements or generally accepted business practices, which could significantly increase our costs. Legislative, regulatory or other efforts to combat climate change or other environmental concerns could result in future increases in the cost of raw materials, taxes, transportation and utilities, which could affect our results of operations and necessitate future investments in facilities and equipment. In addition, a failure to reduce our greenhouse gas emissions or adopt other sustainable business practices or the perception of a failure to act responsibly with respect to the environment or to effectively respond to regulatory requirements concerning climate change or

other sustainable business practices can lead to adverse publicity, diminish the value of our brands and result in an adverse effect on our business.

***Our business may be adversely impacted by changes in consumer discretionary spending, general economic conditions, or consumer behavior.***

Purchases at our franchisees' restaurants are generally discretionary for consumers and, therefore, our results of operations are susceptible to economic slowdowns and recessions. Our results of operations are dependent upon discretionary spending by customers of our franchisees' restaurants, which may be affected by general economic conditions globally or in one or more of the markets we serve. Some of the factors that impact discretionary consumer spending include unemployment rates, fluctuations in the level of disposable income, the price of gasoline, stock market performance, changes in the level of consumer confidence, and long-term changes in consumer behavior related to social distancing behaviors resulting from COVID-19 or other widespread health events. These and other macroeconomic factors could have an adverse effect on sales at our franchisees' restaurants, which could lead to an adverse effect on our profitability or development plans and harm our financial condition and operating results.

***Our expansion into international markets exposes us to a number of risks that may differ in each country where we have franchised restaurants.***

We currently have franchised restaurants in 40 countries, including 48 states within the United States, and we plan to continue to grow internationally. Expansion in international markets may be affected by local economic and market as well as geopolitical conditions. Therefore, as we expand internationally, our franchisees may not experience the operating margins we expect, and our growth and our results of operations and growth may be materially and adversely affected. Our financial condition and results of operations may be adversely affected if global markets in which our franchised restaurants compete are affected by changes in political, economic or other factors. These factors, over which neither our franchisees nor we have control, may include such issues as (but not limited to):

- recessionary or expansive trends in international markets;
- changing labor conditions and difficulties in staffing and managing our foreign operations;
- increases in the taxes we pay and other changes in applicable tax laws;
- legal and regulatory changes, and the burdens and costs of our compliance with a variety of foreign laws;
- changes in inflation rates;
- changes in exchange rates and the imposition of restrictions on currency conversion or the transfer of funds;
- difficulty in protecting our brand, reputation and intellectual property;
- difficulty in collecting our royalties and longer payment cycles;
- expropriation of private enterprises;
- increases in anti-American sentiment and the identification of our brands as American brands;
- political and economic instability; and
- other external factors.

***We depend on key executive management.***

We depend on the leadership and experience of our relatively small number of key executive management personnel. The loss of the services of any of our executive management members could have a material adverse effect on our business and prospects, as we may not be able to find suitable individuals to replace such personnel on a timely basis or without incurring increased costs, or at all. We do not maintain key person life insurance policies on any of our executive officers other than Andrew Wiederhorn. We believe that our future success will depend on our continued ability to attract and retain highly skilled and qualified personnel. There is a high level of competition for experienced, successful personnel in our industry. Our inability to meet our executive staffing requirements in the future could impair our growth and harm our business.

***Labor shortages or difficulty finding qualified employees could slow our growth, harm our business and reduce our profitability.***

Restaurant operations are highly service oriented, and our success depends in part upon our franchisees' and our ability to attract, retain and motivate a sufficient number of qualified employees, including restaurant managers and other crew members. The market for qualified employees in our industry is very competitive. Any future inability to recruit and retain qualified individuals may delay the planned openings of new restaurants by us and our franchisees and could adversely impact our existing franchised and company owned restaurants. Any such delays, material increases in employee turnover rate or widespread employee dissatisfaction could have a material adverse effect on our and our franchisees' business and results of operations.

In addition, strikes, work slowdowns or other job actions may become more common in the United States. Although none of the employees employed by our franchisees or by us are represented by a labor union or are covered by a collective bargaining agreement, in the event of a strike, work slowdown or other labor unrest, the ability to adequately staff our restaurants could be impaired, which could result in reduced revenue and customer claims, and may distract our management from focusing on our business and strategic priorities.

***Changes in labor and other operating costs could adversely affect our results of operations.***

An increase in the costs of employee wages, benefits and insurance (including workers' compensation, general liability, property and health) could result from government imposition of higher minimum wages or from general economic or competitive conditions. In addition, competition for qualified employees could compel our franchisees to pay higher wages to attract or retain key crew members, which could result in higher labor costs and decreased profitability. Any increase in labor expenses, as well as increases in general operating costs such as rent and energy, could adversely affect our franchisees' profit margins, their sales volumes and their ability to remain in business, which would adversely affect our results of operations.

**Risks Related to Government Regulation and Litigation**

***The Company faces risks related to pending government investigations.***

The government investigations mentioned below in Item 3, Legal Proceedings present certain risks. At this stage, we are not able to reasonably estimate the outcome or duration of these investigations, nor can we predict what consequences any investigation may have on us, including significant legal and accounting expenses. Moreover, there could be developments of which we are not aware, which could result in further proceedings against our Company, Mr. Wiederhorn and our other directors, officers and employees. These matters may also divert management's attention from other business concerns, or result in the loss of the services of Mr. Wiederhorn or our other directors, officers or employees, which could harm the business and could result in reputational damage. Any proceedings commenced against us or Mr. Wiederhorn by a regulatory agency could result in administrative orders, the imposition of penalties and/or fines, and the imposition of sanctions against us, Mr. Wiederhorn and other of our current or former officers, directors and employees.

These investigations, the results of the investigations or remedial actions that we have taken or may take as a result of such investigations may materially adversely affect our business, financial condition and reputation. If we are subject to adverse findings resulting from the U.S. Attorney or SEC investigations, or from our own independent investigations, we could be required to pay damages and/or penalties or have other remedies imposed on us, and the Company or our officers, directors or employees may be subject to additional civil litigation against the Company or our officers and directors regarding such matters.

We maintain director and officer liability insurance for losses or advancement of defense costs in the event legal actions are brought against the Company's directors, officers or employees for alleged wrongful acts in their capacity as directors, officers or employees. Such insurance contains certain customary exclusions that may make it unavailable to the Company or our directors and officers in the event it is needed; and, in any case, such insurance may not be adequate to fully protect the Company against liability for the conduct of its directors, officers or employees or the Company's indemnification obligations to its directors and officers.

***We are a party to stockholder litigation which could negatively impact our business, operating results and financial condition.***

We may incur additional costs in connection with the defense or settlement of existing and any future stockholder litigation, including the stockholder litigation that has been brought against us and certain of our directors. See "Part I, Item 3. Legal Proceedings" below. Subject to certain limitations, we are obligated to indemnify our directors in connection with the

litigation and any related litigation or settlement amounts, which may be time-consuming, result in significant expense and divert the attention and resources of our management away from our operating business matters. An unfavorable financial outcome that exceeds coverage provided under our insurance policies, could have an adverse effect on our financial condition and results of operations and could harm our reputation.

***We could be party to litigation that could adversely affect us by increasing our expenses, diverting management attention or subjecting us to significant monetary damages and other remedies.***

We may become involved in legal proceedings involving consumer, employment, real estate related, tort, intellectual property, breach of contract, securities, derivative and other litigation. Plaintiffs in these types of lawsuits often seek recovery of very large or indeterminate amounts, and the magnitude of the potential loss relating to such lawsuits may not be accurately estimated. Regardless of whether any such claims have merit, or whether we are ultimately held liable or settle, such litigation may be expensive to defend and may divert resources and management attention away from our operations and negatively impact reported earnings. With respect to insured claims, a judgment for monetary damages in excess of any insurance coverage could adversely affect our financial condition or results of operations. Any adverse publicity resulting from these allegations may also adversely affect our reputation, which in turn could adversely affect our results of operations.

***Our subsidiary Fog Cutter Acquisition, LLC is a party to environmental litigation which could result in significant legal expenses whether or not it is resolved favorably.***

As described in this Annual Report under “Item 3. Legal Proceedings”, our subsidiary Fog Cutter Capital Group Inc. (now known as Fog Cutter Acquisition, LLC), is a party to litigation entitled *Stratford Holding LLC v. Foot Locker Retail Inc.* for alleged environmental contamination stemming from dry cleaning operations on a property which was included in a lease portfolio managed by a former subsidiary of Fog Cutter. The property owners seek damages in the range of \$12 million to \$22 million in the aggregate from all defendants. The Company is unable to predict the ultimate outcome of this matter, and reserves have been recorded on the balance sheet relating to this litigation. There can be no assurance that Fog Cutter Acquisition, LLC will be successful in defending against this action, and an unfavorable outcome in excess of the reserves could have a material adverse effect on our financial condition and results of operations.

***Changes in, or noncompliance with, governmental regulations may adversely affect our business operations, growth prospects or financial condition.***

We and our franchisees are subject to numerous laws and regulations around the world. These laws change regularly and are increasingly complex. For example, we and our franchisees are subject to laws and regulations such as (but not limited to):

- Government orders regarding the response to health and other public safety concerns such as the various restrictions on business operations relating to the COVID-19 pandemic being experienced in 2020;
- The Americans with Disabilities Act in the U.S. and similar state laws that give civil rights protections to individuals with disabilities in the context of employment, public accommodations and other areas;
- The U.S. Fair Labor Standards Act, which governs matters such as minimum wages, overtime and other working conditions, as well as family leave mandates and a variety of similar state laws that govern these and other employment law matters;
- Laws and regulations in government mandated health care benefits such as the Patient Protection and Affordable Care Act;
- Laws and regulations relating to nutritional content, nutritional labeling, product safety, product marketing and menu labeling;
- Laws relating to state and local licensing;
- Laws relating to the relationship between franchisors and franchisees;
- Laws and regulations relating to health, sanitation, food, workplace safety, child labor, including laws prohibiting the use of certain “hazardous equipment” by employees younger than the age of 18 years of age, and fire safety and prevention;
- Laws and regulations relating to union organizing rights and activities;

- Laws relating to information security, privacy, cashless payments, and consumer protection;
- Laws relating to currency conversion or exchange;
- Laws relating to international trade and sanctions;
- Tax laws and regulations;
- Antibribery and anticorruption laws;
- Environmental laws and regulations; and
- Federal and state immigration laws and regulations in the U.S.

Compliance with new or existing laws and regulations could impact our operations. The compliance costs associated with these laws and regulations could be substantial. Any failure or alleged failure to comply with these laws or regulations by our franchisees or indirectly by us could adversely affect our reputation, international expansion efforts, growth prospects and financial results or result in, among other things, litigation, revocation of required licenses, internal investigations, governmental investigations or proceedings, administrative enforcement actions, fines and civil and criminal liability. Publicity relating to any such noncompliance could also harm our reputation and adversely affect our revenues.

In addition, if any governmental authority were to adopt and implement a broader standard for determining when two or more otherwise unrelated employers may be found to be a joint employer of the same employees under laws such as the National Labor Relations Act in a manner that is applied generally to franchise relationships (which broader standards in the past have been adopted by U.S. governmental agencies such as the National Labor Relations Board), this could cause us to be liable or held responsible for unfair labor practices and other violations of our franchisees. Further, a California law enacted in 2019 adopted an employment classification test to be used when determining employee or independent contractor status which establishes a high threshold to obtain independent contractor status. These laws and any similar laws enacted at the federal, state or local level, could increase our and our franchisees' labor costs and decrease profitability or could cause employees of our franchisees to be deemed to be our employees.

In January 2022, the California State Assembly passed Assembly Bill (AB) No. 257, the Fast Food Accountability and Standards Recovery Act (FAST Recovery Act), and Governor Gavin Newsom signed the bill into law on September 5, 2022. The FAST Recovery Act provides increased rights to the state's fast-food workers. The FAST Recovery Act is poised to create the Fast Food Sector Council within the California Department of Industrial Relations (DIR). Under the law, the Fast Food Sector Council will establish specific new minimum standards on wages, maximum working hours, and working conditions related to the health, safety, and welfare of fast-food restaurant workers at restaurants with at least 100 establishments nationwide. The FAST Recovery Act will also, among other things, institute statutory requirements aimed at expanding fast-food franchisors' liability for certain acts of its franchisees. In January 2023, the implementation of the FAST Recovery Act was enjoined by a court pending the results of a statewide effort to overturn the FAST Recovery Act through a referendum on the California ballot in November 2024. If and when the referendum challenging AB 257 qualifies for the ballot, the law will be put on hold until the vote in November 2024. If and when it is sustained and implemented in its current form, the FAST Recovery Act is likely to increase our franchisees' labor and compliance costs and decrease profitability at our California restaurants.

***Failure to comply with antibribery or anticorruption laws could adversely affect our business operations.***

The U.S. Foreign Corrupt Practices Act and other similar applicable laws prohibiting bribery of government officials and other corrupt practices are the subject of increasing emphasis and enforcement around the world. Although we have implemented policies and procedures designed to promote compliance with these laws, there can be no assurance that our employees, contractors, agents, franchisees or other third parties will not take actions in violation of our policies or applicable law, particularly as we expand our operations in emerging markets and elsewhere. Any such violations or suspected violations could subject us to civil or criminal penalties, including substantial fines and significant investigation costs, and could also materially damage our reputation, brands, international expansion efforts and growth prospects, business and operating results. Publicity relating to any noncompliance or alleged noncompliance could also harm our reputation and adversely affect our revenues and results of operations.

**Risks Related to Our Class A Common Stock and Organizational Structure**

***We are controlled by Fog Cutter Holdings LLC, whose interests may differ from those of our public stockholders.***



Fog Cutter Holdings LLC controls approximately 55.2% of the voting power of our Common Stock and has significant influence over our corporate management and affairs and is able to control virtually all matters requiring stockholder approval, including election of directors and significant corporate transactions. It is possible that the interests of Fog Cutter Holdings LLC may, in some circumstances, conflict with our interests and the interests of our other stockholders.

***The dual class structure of our Common Stock concentrates voting control with current holders of Class B Common Stock, and limits the ability of holders of our Class A Common Stock to influence corporate matters.***

Our Class B Common Stock has 2,000 votes per share, and our Class A Common Stock has one vote per share. The holders of Class B Common Stock collectively will likely be able to control all matters submitted to our stockholders for approval even if additional shares of Class A Common Stock are issued. This concentrated control will limit the ability of holders of our Class A Common Stock to influence corporate matters for the foreseeable future, and, as a result, the market price of our Class A Common Stock could be adversely affected.

We have not elected to take advantage of the “controlled company” exemption to the corporate governance rules for companies listed on The Nasdaq Capital Market.

***Our anti-takeover provisions could prevent or delay a change in control of our company, even if such change in control would be beneficial to our stockholders.***

Provisions of our amended and restated certificate of incorporation and bylaws as well as provisions of Delaware law could discourage, delay or prevent a merger, acquisition or other change in control of our company, even if such change in control would be beneficial to our stockholders. These provisions include:

- dual class structure of our Common Stock, which concentrates voting control with the current holders of Class B Common Stock;
- net operating loss protective provisions, which require that any person wishing to become a “5% shareholder” (as defined in our certificate of incorporation) must first obtain a waiver from our Board of Directors, and any person that is already a “5% shareholder” of ours cannot make any additional purchases of our stock without a waiver from our board of directors;
- authorizing the issuance of “blank check” preferred stock that could be issued by our Board of Directors to increase the number of outstanding shares and thwart a takeover attempt;
- limiting the ability of stockholders to call special meetings or amend our bylaws;
- requiring all stockholder actions to be taken at a meeting of our stockholders; and
- establishing advance notice and duration of ownership requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

These provisions could also discourage proxy contests and make it more difficult for minority stockholders to elect directors of their choosing and cause us to take other corporate actions they desire. In addition, because our Board of Directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team.

In addition, the Delaware General Corporation Law, or the DGCL, to which we are subject, prohibits us, except under specified circumstances, from engaging in any mergers, significant sales of stock or assets or business combinations with any stockholder or group of stockholders who owns at least 15% of our common stock.

***We may continue to issue shares of preferred stock in the future, which could make it difficult for another company to acquire us or could otherwise adversely affect holders of our Common Stock, which could depress the price of our Common Stock.***

Our amended and restated certificate of incorporation authorizes us to issue one or more series of preferred stock. Our board of directors has the authority to determine the preferences, limitations and relative rights of the shares of preferred stock and to fix the number of shares constituting any series and the designation of such series, without any further vote or action by our stockholders. We may authorize or issue shares of preferred stock with voting, liquidation, dividend and other rights superior to the rights of our Common Stock. To date we have authorized and outstanding shares of Series B Preferred Stock,



which have liquidation and dividend rights superior to the rights of our Common Stock. The potential issuance of preferred stock may also delay or prevent a change in control of us, discourage bids for our Common Stock at a premium to the market price, and materially and adversely affect the market price and the voting and other rights of the holders of our Common Stock.

***The provision of our certificate of incorporation requiring exclusive venue in the Court of Chancery in the State of Delaware for certain types of lawsuits may have the effect of discouraging lawsuits against our directors and officers.***

Our amended and restated certificate of incorporation requires, to the fullest extent permitted by law, that (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, (iii) any action asserting a claim against us arising pursuant to any provision of the DGCL or our amended and restated certificate of incorporation or the bylaws or (iv) any action asserting a claim against us governed by the internal affairs doctrine will have to be brought only in the Court of Chancery in the State of Delaware. Although we believe this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against our directors and officers.

***If our operating and financial performance in any given period does not meet the guidance that we provide to the public, our stock price may decline.***

We may provide public guidance on our expected operating and financial results for future periods. Any such guidance will be comprised of forward-looking statements subject to the risks and uncertainties described in our public filings and public statements. Our actual results may not always be in line with or exceed any guidance we have provided, especially in times of economic uncertainty. If our operating or financial results for a particular period do not meet any guidance we provide or the expectations of investment analysts or if we reduce our guidance for future periods, the market price of our Class A Common Stock or Class B Common Stock may decline as well.

***Our ability to pay regular dividends to our stockholders is subject to the discretion of our Board of Directors and may be limited by our holding company structure and applicable provisions of Delaware law.***

While we have paid cash or stock dividends to holders of our Common Stock in each fiscal year since 2018 and our Series B Preferred Stock since it was first issued, our board of directors may, in its sole discretion, decrease the amount or frequency of cash or stock dividends or discontinue the payment of dividends entirely. In addition, as a holding company, we will be dependent upon the ability of our operating subsidiaries to generate earnings and positive cash flows and distribute them to us so that we may pay cash dividends to our stockholders. Our ability to pay cash dividends will be subject to our consolidated operating results, cash assets and requirements and financial condition, the applicable provisions of Delaware law which may limit the amount of funds available for distribution to our stockholders, our compliance with covenants and financial ratios related to existing or future indebtedness, and our other agreements with third parties. In addition, each of the companies in the corporate chain must manage its assets, liabilities and working capital in order to meet all of its cash obligations, including the payment of dividends or distributions.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

#### **ITEM 2. PROPERTIES**

Our corporate headquarters, including our principal administrative, sales and marketing, customer support, and research and development operations, are located in Beverly Hills, California, comprising approximately 13,000 square feet of space, pursuant to a lease that expires on September 29, 2025, as well as an additional approximately 3,000 square feet of additional space pursuant to a lease amendment that expires on February 29, 2024.

Our subsidiary, GFG Management, LLC, leases an approximately 16,000 square foot warehouse location in Atlanta, GA under a lease expiring on May 31, 2024.

Our subsidiary, GAC Supply, LLC, owns and operates an approximately 40,000 square foot manufacturing and production facility in Atlanta, Georgia and the underlying real property, which supplies our franchisees with cookie dough, pretzel dry mix and other ancillary products.

Our subsidiary, Twin Restaurant Holding, LLC, leases offices in Dallas, TX comprising approximately 8,300 square feet under a lease expiring on April 30, 2025.

Our subsidiary, Fazoli's Holdings, LLC, leases offices located in Lexington, KY comprising approximately 19,200 square feet under a lease expiring on April 30, 2027.

Our subsidiary, Native Grill & Wings Franchising, LLC, leases offices located in Chandler, AZ comprising 5,825 square feet under a lease expiring on October 31, 2024. Such offices have been sub-leased for the duration of the remaining lease term.

In addition to the above locations, certain of our subsidiaries directly own and operate restaurant locations, substantially all of which are located in leased premises. As of December 25, 2022, we owned and operated 126 restaurant locations. The leases have remaining terms ranging from 1 month to 23.9 years.

We believe that our existing facilities are in good operating condition and adequate to meet our current and foreseeable needs.

### ITEM 3. LEGAL PROCEEDINGS

***James Harris and Adam Vignola, derivatively on behalf of FAT Brands, Inc. v. Squire Junger, James Neuhauser, Edward Rensi, Andrew Wiederhorn, Fog Cutter Holdings, LLC and Fog Cutter Capital Group, Inc., and FAT Brands Inc., nominal defendant (Delaware Chancery Court, Case No. 2021-0511)***

On June 10, 2021, plaintiffs James Harris and Adam Vignola ("Plaintiffs"), putative stockholders of the Company, filed a shareholder derivative action in the Delaware Court of Chancery nominally on behalf of the Company against the Company's directors (Squire Junger, James Neuhauser, Edward Rensi and Andrew Wiederhorn (the "Individual Defendants")), and the Company's majority stockholders, Fog Cutter Holdings, LLC and Fog Cutter Capital Group, Inc. (collectively with the Individual Defendants, "Defendants"). Plaintiffs assert claims of breach of fiduciary duty, unjust enrichment and waste of corporate assets arising out of the Company's December 2020 merger with Fog Cutter Capital Group, Inc. Defendants filed a motion to dismiss Plaintiffs' complaint, which the Court denied in an oral ruling on February 11, 2022 and subsequent written order on May 25, 2022. On April 7, 2022, the Court entered a Scheduling Order setting forth the key dates and deadlines that will govern the litigation, including a discovery cutoff of March 24, 2023 and trial date of February 5-9, 2024. To date, the parties have engaged in substantial written discovery, though no depositions have been taken. On February 3, 2023, the Company's board of directors appointed a Special Litigation Committee ("SLC"), which retained independent counsel and moved for a six-month stay of the action pending resolution of the SLC's investigation. On February 17, 2023, the Court granted the SLC's motion to stay. Defendants dispute the allegations of the lawsuit and intend to vigorously defend against the claims. We cannot predict the outcome of this lawsuit. This lawsuit does not assert any claims against the Company. However, subject to certain limitations, we are obligated to indemnify our directors in connection with defense costs for the lawsuit and any related litigation, which may exceed coverage provided under our insurance policies, and thus could have an adverse effect on our financial condition and results of operations. The lawsuit and any related litigation also may be time-consuming and divert the attention and resources of our management.

***James Harris and Adam Vignola, derivatively on behalf of FAT Brands, Inc. v. Squire Junger, James Neuhauser, Edward Rensi, Andrew Wiederhorn and Fog Cutter Holdings, LLC, and FAT Brands Inc., nominal defendant (Delaware Chancery Court, Case No. 2022-0254)***

On March 17, 2022, plaintiffs James Harris and Adam Vignola ("Plaintiffs"), putative stockholders of the Company, filed a shareholder derivative action in the Delaware Court of Chancery nominally on behalf of the Company against the Company's directors (Squire Junger, James Neuhauser, Edward Rensi and Andrew Wiederhorn (the "Individual Defendants")), and the Company's majority stockholder, Fog Cutter Holdings, LLC (collectively with the Individual Defendants, "Defendants"). Plaintiffs assert claims of breach of fiduciary duty in connection with the Company's June 2021 recapitalization transaction. On May 27, 2022, Defendants filed a motion to dismiss Plaintiff's complaint (the "Motion"). Argument on the Motion was heard on November 17, 2022 and again on February 23, 2023, and the Court took its decision under advisement. To date, the Court has not issued a ruling on the Motion, nor has the Court issued a scheduling order in this matter. Defendants dispute the allegations of the lawsuit and intend to vigorously defend against the claims. As this matter is still in the early stages, we cannot predict the outcome of this lawsuit. This lawsuit does not assert any claims against the Company. However, subject to certain limitations, we are obligated to indemnify our directors in connection with defense costs for the lawsuit and any related litigation, which may exceed coverage provided under our insurance policies, and thus could have an adverse effect on our financial condition and results of operations. The lawsuit and any related litigation also may be time-consuming and divert the attention and resources of our management.

***Robert J. Matthews, et al., v. FAT Brands, Inc., Andrew Wiederhorn, Ron Roe, Rebecca Hershinger and Ken Kuick (United States District Court for the Central District of California, Case No. 2:22-cv-01820)***

On March 18, 2022, plaintiff Robert J. Matthews, a putative investor in the Company, filed a putative class action lawsuit against the Company, Andrew Wiederhorn, Ron Roe, Rebecca Hershinger and Ken Kuick, asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended (the “1934 Act”), alleging that the defendants are responsible for false and misleading statements and omitted material facts in the Company’s reports filed with the SEC under the 1934 Act related to the LA Times story published on February 19, 2022 about the company and its management. The plaintiff alleges that the Company’s public statements wrongfully inflated the trading price of the Company’s common stock, preferred stock and warrants. On April 25, 2022, Kerry Chipman, a putative investor in the Company, filed a putative class action lawsuit against the Company, Andrew Wiederhorn, Ron Roe, Rebecca Hershinger and Ken Kuick in the United States District Court for the Central Division of California, asserting substantially the same claims as those made by Matthews in the above-referenced lawsuit. On May 2, 2022, the Court entered an order consolidating the actions filed by Matthews and Chipman under the caption *In re FAT Brands Inc. Securities Litigation*. On June 13, 2022, the Court appointed plaintiff Robert Matthews as lead plaintiff and The Rosen Law Firm, P.A., as lead counsel in the consolidated action. Plaintiffs filed their Consolidated Amended Complaint on June 27, 2022. On July 19, 2022, the parties entered into a stipulation to stay the litigation so that they could engage in voluntary mediation. In August 2022, after mediation, the Company reached an agreement in principle to settle this matter for a cash payment by the Company of \$2.5 million and issuance of \$0.5 million in Class A common stock. The Stipulation of Settlement and other documents pertinent to the settlement, along with a motion for preliminary approval thereof, were filed with the court on September 23, 2022. The Court granted the motion for preliminary approval on November 8, 2022, and on January 31, 2023, plaintiffs moved for final approval of the settlement and certification of the settlement class. The hearing on the motion for final approval is set for February 28, 2023, at 9:00 am PT. Upon final approval by the court, the settlement will provide a full release of all claims by the settlement class members against all defendants, including the Company and the named officers and directors, will expressly deny any liability, wrongdoing or responsibility by any of the defendants, and will result in the dismissal of the litigation with prejudice.

***Government Investigations***

In December 2021, the U.S. Attorney’s Office for the Central District of California (the “U.S. Attorney”) and the U.S. Securities and Exchange Commission (the “SEC”) informed the Company that they had opened investigations relating to the Company and our Chief Executive Officer, Andrew Wiederhorn, and were formally seeking documents and materials concerning, among other things, the Company’s December 2020 merger with Fog Cutter Capital Group Inc., transactions between those entities and Mr. Wiederhorn, as well as compensation, extensions of credit and other benefits or payments received by Mr. Wiederhorn or his family from those entities. Our Board of Directors has formed a Special Review Committee (the “SRC”) comprised of directors other than Mr. Wiederhorn to oversee a review of the issues raised by the U.S. Attorney and SEC investigations, reach findings and make a recommendation to the Board with respect to these matters. The SRC is authorized to review such documents and interview such persons, and retain legal counsel and other consultants on behalf of the Company, as the SRC deems necessary or appropriate to complete its review. The Company intends to cooperate with the U.S. Attorney and the SEC regarding these matters and is continuing to actively respond to inquiries and requests from the U.S. Attorney and the SEC. We believe that the Company is not currently a target of the U.S. Attorney’s investigation. At this stage, we are not able to reasonably estimate or predict the outcome or duration of either of the U.S. Attorney’s or the SEC’s investigations.

***Stratford Holding LLC v. Foot Locker Retail Inc. (U.S. District Court for the Western District of Oklahoma, Case No. 5:12-cv-00772-HE)***

In 2012 and 2013, two property owners in Oklahoma City, Oklahoma sued numerous parties, including Foot Locker Retail Inc. and our subsidiary Fog Cutter Capital Group Inc. (now known as Fog Cutter Acquisition, LLC), for alleged environmental contamination on their properties, stemming from dry cleaning operations on one of the properties. The property owners seek damages in the range of \$12 million to \$22 million. From 2002 to 2008, a former Fog Cutter subsidiary managed a lease portfolio, which included the subject property. Fog Cutter denies any liability, although it did not timely respond to one of the property owners’ complaints and several of the defendants’ cross-complaints and thus is in default. The parties are currently conducting discovery, and the matter is scheduled for trial for October 2023. The Company is unable to predict the ultimate outcome of this matter, however, reserves have been recorded on the balance sheet relating to this litigation. There can be no assurance that the defendants will be successful in defending against these actions.

***SBN FCCG LLC v FCCGI (Los Angeles Superior Court, Case No. BS172606)***

SBN FCCG LLC (“SBN”) filed a complaint against Fog Cutter Capital Group, Inc. (“FCCG”) in New York state court for an indemnification claim (the “NY case”) stemming from an earlier lawsuit in Georgia regarding a certain lease portfolio formerly managed by a former FCCG subsidiary, Fog Cap Retail Investors LLC (“Fog Cap”). In February 2018, SBN obtained

a final judgment in the NY case for a total of \$0.7 million, which included \$0.2 million in interest dating back to March 2012. SBN then obtained a sister state judgment in Los Angeles Superior Court, Case No. BS172606 (the “California case”), which included the \$0.7 million judgment from the NY case, plus additional statutory interest and fees, for a total judgment of \$0.7 million. In May 2018, SBN filed a cost memo, requesting an additional \$12,411 in interest to be added to the judgment in the California case, for a total of \$0.7 million. In May 2019, the parties agreed to settle the matter for \$0.6 million, which required the immediate payment of \$0.1 million, and the balance to be paid in August 2019. FCCG wired \$0.1 million to SBN in May 2019, but has not yet paid the remaining balance of \$0.5 million. The parties have not entered into a formal settlement agreement, and they have not yet discussed the terms for the payment of the remaining balance.

***SBN FCCG LLC v FCCGI (Supreme Court of the State of New York, County of New York, Index No. 650197/2023)***

On January 13, 2023, SBN filed another complaint against FCCG in New York state court for an indemnification claim stemming from a lawsuit in Oklahoma City regarding the same lease portfolio formerly managed by Fog Cap, and a bankruptcy proceedings involving Fog Cap. SBN alleges that under a February 2008 stock purchase agreement, Fog Cutter is required to indemnify SBN and its affiliates. According to the complaint, SBN has, at the time of filing the complaint, incurred costs subject to indemnification of approximately \$12 million. SBN has not yet served the complaint on FCCG. We are unable at this time to express any opinion as to the outcome of this matter or as to the possible range of loss, if any.

The Company is involved in other claims and legal proceedings from time-to-time that arise in the ordinary course of business, including those involving the Company’s franchisees. The Company does not believe that the ultimate resolution of these actions will have a material adverse effect on its business, financial condition, results of operations, liquidity or capital resources. As of December 25, 2022 and December 26, 2021, the Company had accrued an aggregate of \$5.1 million for the specific matters mentioned above and claims and legal proceedings involving franchisees as of that date.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

## PART II

### ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### Market Information

Our Class A Common Stock, par value \$0.0001 per share, is traded on the NASDAQ Capital Market under the ticker symbols "FAT" and our Class B Common Stock, par value \$0.0001 per share, is traded on the NASDAQ Capital Market under the ticker symbol "FATBB."

As of February 17, 2023, there were 45 stockholders of record for our Class A Common Stock and 42 stockholders of record for our Class B Common Stock. The number of record holders does not include persons who held such shares in nominee or "street name" accounts through brokers.

#### Dividends

The declaration and payment of future dividends, as well as the amount thereof, are subject to the discretion of our Board of Directors. The amount and size of any future dividends will depend upon our future results of operations, financial condition, capital levels, cash requirements and other factors. There can be no assurance that we will declare and pay dividends in future periods.

#### Equity Compensation Plan Information

Effective September 30, 2017, we adopted the 2017 Omnibus Equity Incentive Plan (the "Plan"). The Plan was amended in September 2021 to increase the maximum shares issuable under the Plan to 4,000,000 shares and amended in December 2022 to increase the maximum shares issuable under the Plan to 5,000,000 shares. The Plan is a comprehensive incentive compensation plan under which we can grant equity-based and other incentive awards to officers, employees and directors of, and consultants and advisers to, FAT Brands Inc. and its subsidiaries. The purpose of the Plan is to help attract, motivate and retain qualified personnel and thereby enhance stockholder value. Awards which lapse or are forfeited become available again for grant.

As of December 25, 2022, we have granted options to purchase 2,166,822 shares of Class A Common Stock to employees, 536,130 shares of Class A Common Stock to non-employee directors, and 45,954 shares of Class A Common Stock to non-employee consultants. Each grant is subject to a three-year vesting requirement, with one-third of the options vesting each year.

During the year ended December 25, 2022, the Company also granted an aggregate of 150,000 shares of its Class A Common Stock to five Board members (the "Grant Shares"). The Grant Shares vest one-third each year on the anniversary date of the grant. The grantees are entitled to any common dividends relating to the Grant Shares during the vesting period.

The information presented in the table below is as of December 25, 2022:

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders	2,748,906	\$ 10.06	2,101,094
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>2,748,906</b>	<b>\$ 10.06</b>	<b>2,101,094</b>

#### Issuer Purchases of Equity Securities

We do not have a program in place to repurchase our own Common Stock or preferred stock and as of December 25, 2022, we have not repurchased any of these securities except for the cancellation of shares issued under the Plan, and as set forth in the following paragraph.

On October 21, 2022, the Company entered into an Exchange Agreement with the sellers of Twin Peaks and redeemed 1,821,831 shares of the Company's 8.25% Series B Cumulative Preferred Stock at a price of \$23.69 per share, plus accrued and unpaid dividends to the date of redemption, in exchange for \$46.5 million aggregate principal amount of secured debt (\$43.2 million net of original issue discount). Prior to the redemption, the Twin Peaks sellers held 2,847,393 shares of Series B Cumulative Preferred Stock, which shares were issued to it on October 1, 2021 as partial consideration for the Company's acquisition of the Twin Peaks restaurant chain.

#### Recent Sales of Unregistered Securities

During the fiscal year ended December 25, 2022, we issued 4,761 shares of Class A Common Stock in a transaction that was not registered under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act and Rule 506 thereunder, and in reliance on similar exemptions under applicable state securities laws. Such shares were issued to a director who elected to receive cash compensation in the form of Class A Common Stock at market value at the time the election was made at a weighted average price per share of \$6.30.

#### **ITEM 6. [RESERVED].**

### **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

#### **COVID-19**

The outbreak of the COVID-19 pandemic in March 2020 had a number of adverse effects on our business and that of our franchisees, including temporary and permanent closures of restaurant locations, reduced or modified store operating hours, difficulties in staffing restaurants and supply chain disruptions. While the disruptions to our business from the COVID-19 pandemic have mostly subsided, the resurgence of COVID-19 or its variants, as well as an outbreak of other widespread health epidemics or pandemics, could cause a closure of restaurants and disrupt our operations and have a material adverse effect on our business, financial condition and results of operations.

## **Executive Overview**

### ***Business overview***

FAT Brands Inc. is a leading multi-brand restaurant franchising company that develops, markets, and acquires primarily quick-service, fast casual, casual dining and polished casual restaurant concepts around the world. As of December 25, 2022, the Company owned seventeen restaurant brands: Round Table Pizza, Fatburger, Marble Slab Creamery, Johnny Rockets, Fazoli's, Twin Peaks, Great American Cookies, Hot Dog on a Stick, Buffalo's Cafe & Express, Hurricane Grill & Wings, Pretzelmaker, Elevation Burger, Native Grill & Wings, Yalla Mediterranean and Ponderosa and Bonanza Steakhouses. At December 25, 2022, the Company had approximately 2,300 locations open or under construction, of which approximately 95% were franchised.

We generally do not own or operate restaurant locations, but rather generate revenue by charging franchisees an initial franchise fee as well as ongoing royalties. This asset light franchisor model provides the opportunity for strong profit margins and an attractive free cash flow profile while minimizing restaurant operating company risk, such as long-term real estate commitments or capital investments. Our scalable management platform enables us to add new stores and restaurant concepts to our portfolio with minimal incremental corporate overhead cost, while taking advantage of significant corporate overhead synergies. The acquisition of additional brands and restaurant concepts as well as expansion of our existing brands are key elements of our growth strategy.

Our revenues are derived primarily from two sales channels, franchised restaurants and company owned restaurants, which we operate as one segment. The primary sources of revenues are the sale of food and beverages at our company restaurants and the collection of royalties, franchise fees and advertising revenue from sales of food and beverages at our franchised restaurants.

## **Results of Operations**

We operate on a 52-week or 53-week fiscal year ending on the last Sunday of the calendar year. In a 52-week fiscal year, each quarter contains 13 weeks of operations. In a 53-week fiscal year, each of the first, second and third quarters includes 13 weeks of operations and the fourth quarter includes 14 weeks of operations, which may cause our revenue, expenses and other results of operations to be higher due to an additional week of operations. The 2022 and 2021 fiscal years were each 52-week years.

Results of Operations of FAT Brands Inc.

The following table summarizes key components of our consolidated results of operations for the fiscal years ended December 25, 2022 and December 26, 2021. Certain account balances from the prior period have been reclassified to conform to current period presentation.

<b>(In Thousands)</b>			
<b>For the Fiscal Years Ended</b>			
		<b>December 25, 2022</b>	<b>December 26, 2021</b>
<b>Consolidated statement of operations data:</b>			
Revenues			
Royalties	\$	87,921	\$ 42,658
Franchise fees		3,706	4,023
Advertising fees		37,997	16,728
Restaurant sales		241,001	41,563
Factory revenue		33,504	13,470
Management fees and other income		3,095	439
Total revenues		407,224	118,881
Costs and expenses			
General and administrative expense		113,313	41,775
Cost of restaurant and factory revenues		221,627	44,242
Depreciation and amortization		27,015	8,474
Impairment of goodwill and other intangible assets		14,000	1,037
Refranchising loss		4,178	314
Acquisition fees		383	4,242
Advertising expense		44,612	17,973
Total costs and expenses		425,128	118,057
(Loss) income from operations		(17,904)	824
Total other expense, net		(89,474)	(35,944)
Loss before income tax		(107,378)	(35,120)
Income tax provision (benefit)		18,810	(3,537)
Net loss	\$	(126,188)	\$ (31,583)

*Net Loss* - Net loss for the fiscal year ended December 25, 2022, totaled \$126.2 million consisting of revenues of \$407.2 million less costs and expenses of \$425.1 million, other expense of \$89.5 million, and income tax provision of \$18.8 million. Net loss for the fiscal year ended December 26, 2021, totaled \$31.6 million consisting of revenues of \$118.9 million less costs and expenses of \$118.1 million, other expense of \$35.9 million plus an income tax benefit of \$3.5 million.

*Revenues* - Revenues consist of royalties, franchise fees, advertising fees, restaurant sales, factory revenues, and other income. We earned revenues of \$407.2 million for the fiscal year ended December 25, 2022 compared to \$118.9 million for the fiscal year ended December 26, 2021. The increase of \$288.3 million reflects revenue from the 2021 Acquisitions and the continuing recovery from the negative effects of the COVID-19 pandemic on royalties from restaurant sales.



*Costs and Expenses* – Costs and expenses consist primarily of general and administrative costs and franchisee support, cost of restaurant and factory revenues, impairment of goodwill and other intangible assets, net refranchising (gains) losses, acquisition costs and advertising expense. Our costs and expenses increased from \$118.1 million in the 2021 fiscal year to \$425.1 million in the comparable period of 2022, primarily due to the 2021 Acquisitions.

General and administrative expenses increased \$71.5 million for the fiscal year ended December 25, 2022, compared to the prior year, primarily due to the 2021 Acquisitions, increased compensation costs reflecting the significant expansion of the organization and professional fees related to pending litigation and government investigations.

Cost of restaurant and factory revenues totaled \$221.6 million for the year ended December 25, 2022 and was related to the operations of the company-owned restaurant locations and the dough factory operated by GFG associated with the 2021 Acquisitions.

Depreciation and amortization increased \$18.5 million in fiscal year 2022 compared to fiscal year 2021, primarily due to depreciation of company-owned restaurant property and equipment and amortizing intangible assets related to the 2021 Acquisitions.

We recorded non-cash impairment charges for goodwill and other intangible assets of \$14.0 million and \$1.0 million during the fiscal years ended December 25, 2022 and December 26, 2021, respectively.

Refranchising net loss for the fiscal year ended December 25, 2022, was comprised of restaurant operating costs, net of food sales, of \$4.2 million. Refranchising net loss for the fiscal year ended December 26, 2021, was comprised of restaurant operating costs, net of food sales, of \$3.0 million, partially offset by \$2.7 million in net gains related to the sale or closure of refranchised restaurants.

Acquisition costs during the 2022 fiscal year totaled \$0.4 million. For the 2021 fiscal year acquisition costs totaled \$4.2 million and were related primarily to the 2021 acquisitions.

Advertising expense increased \$26.6 million for the fiscal year ended December 25, 2022, compared to the prior year. These expenses vary in relation to advertising revenues and reflect increases related to the 2021 Acquisitions and the increase in customer activity as the recovery from COVID continues.

Total other expense, net for the fiscal year ended December 25, 2022 was \$89.5 million and consisted primarily of net interest expense of \$94.8 million. Total other expense, net for the fiscal year ended December 26, 2021 was \$35.9 million and consisted primarily of net interest expense of \$29.1 million and net losses on extinguishment of debt in the amount of \$7.6 million.

Income tax provision (benefit) – We recorded an income tax provision of \$18.8 million for the year ended December 25, 2022, compared to an income tax benefit of \$3.5 million for the fiscal year ended December 26, 2021. These tax results were based on a net loss before taxes of \$107.4 million for fiscal year 2022 and \$35.1 million for fiscal year 2021.

## **Liquidity and Capital Resources**

Liquidity is a measurement of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund business operations, acquisitions, and expansion of franchised restaurant locations and for other general business purposes. Our primary sources of funds for liquidity during the fiscal year ended December 25, 2022 consisted of cash provided by borrowings and cash on hand at the beginning of the period.

We are involved in a world-wide expansion of franchise locations, which will require significant liquidity, primarily from our franchisees. If real estate locations of sufficient quality cannot be located and either leased or purchased, the timing of restaurant openings may be delayed. Additionally, if we or our franchisees cannot obtain capital sufficient to fund this expansion, the extent of or timing of restaurant openings may be reduced or delayed.

We also may acquire additional restaurant concepts. These acquisitions typically require capital investments in excess of our normal cash on hand. We would expect that future acquisitions will necessitate financing with additional debt or equity transactions. If we are unable to obtain acceptable financing, our ability to acquire additional restaurant concepts likely would be negatively impacted.

We have liabilities of \$91.8 million relating to put options exercised by others on our Series B Cumulative Preferred Stock. The Company has contractual options pursuant to the put/call agreements to extend this repayment via incremental interest payments and there are capital market options that the Company may consider. We believe that we have sufficient liquidity to meet our liquidity needs and capital resource requirements for at least the next twelve months primarily through currently available cash and cash equivalents, cash flows from operations and access to the capital markets.

As of December 25, 2022, we had cash and restricted cash totaling \$68.8 million.

### **Debt Issuances (Whole-Business Securitizations)**

We financed our acquisitions and operations through the issuance of notes by four special purpose, wholly-owned financing subsidiaries identified below, which own substantially all of our operations. The Company acts as the manager of each of these subsidiaries under a Management Agreement and performs management, franchising, distribution, intellectual property and operational functions on behalf of the subsidiaries and receives a management fee.

#### **FAT Brands Royalty I, LLC**

On April 26, 2021, FAT Brands Royalty I, LLC ("FB Royalty"), our special purpose, wholly-owned subsidiary, completed the Offering of three tranches of fixed rate senior secured notes (collectively, the "2021 FB Royalty Securitization Notes"). Net proceeds from the issuance of the 2021 FB Royalty Securitization Notes totaled \$140.8 million, which consisted of the combined face amount of \$144.5 million, net of debt offering costs of \$3.0 million and original issue discount of \$0.7 million. A portion of the proceeds of the 2021 FB Royalty Securitization Notes were used to repay and retire similar notes issued in 2020 under the Base Indenture (the "2020 Securitization Notes"). The payoff amount totaled \$83.7 million, which included principal of \$80.0 million, accrued interest of \$2.2 million and prepayment premiums of \$1.5 million. The remaining proceeds were available for working capital. FB Royalty owns the following brands: Fatburger, Johnny Rockets, Buffalo's Cafe and Buffalo's Express, Ponderosa Steakhouse, Bonanza Steakhouse, Hurricane Grill & Wings and Yalla Mediterranean.

On July 6, 2022, FB Royalty issued an additional \$76.5 million aggregate principal amount of three tranches of fixed rate senior secured notes as follows:

<b>Closing Date</b>	<b>Class</b>	<b>Seniority</b>	<b>Principal Balance</b>	<b>Coupon</b>	<b>Final Legal Maturity Date</b>
7/6/2022	A-2	Senior	\$42.7	4.75%	4/25/2051
7/6/2022	B-2	Senior Subordinated	\$14.2	8.00%	4/25/2051
7/6/2022	M-2	Subordinated	\$19.6	9.00%	4/25/2051

Of the \$76.5 million aggregate principal amount, \$30.0 million was sold privately during the third quarter of 2022, resulting in net proceeds of \$27.1 million (net of debt offering costs of \$0.6 million and original issue discount of \$2.3 million).

The remaining \$46.5 million in aggregate principal amount was sold privately on October 21, 2022 when the Company entered into an Exchange Agreement with the Twin Peaks sellers and redeemed 1,821,831 shares of the Company's 8.25% Series B Cumulative Preferred Stock at a price of \$23.69 per share, plus accrued and unpaid dividends to the date of redemption, in exchange for \$46.5 million aggregate principal amount of secured debt (\$43.2 million net of original issue discount). Prior to the redemption, the Twin Peaks sellers held 2,847,393 shares of Series B Cumulative Preferred Stock, which shares were issued to it on October 1, 2021 as partial consideration for the Company's acquisition of Twin Peaks.

Pursuant to the Exchange Agreement, (i) at any time prior to July 25, 2023, the Company may call from the Twin Peaks sellers all or a portion of the Class M-2 Notes at the outstanding principal balance multiplied by 0.86, plus any accrued plus unpaid interest thereon; (ii) at any time on or after the date of the Exchange Agreement, the Company may call from the Twin Peaks sellers, and at any time on or after July 25, 2023, the Twin Peaks sellers may put to the Company, all or a portion of the Class A-2 Notes and/or Class B-2 Notes at the outstanding principal balance multiplied by 0.94, plus any accrued plus unpaid interest thereon; and (iii) at any time on or after July 25, 2023, the Company may call from the Twin Peaks sellers, and the Twin Peaks sellers may put to the Company, all or a portion of the Class M-2 Notes at the outstanding principal balance multiplied by 0.91, plus any accrued plus unpaid interest thereon. If the Company does not remit the applicable call price or put

price upon a duly exercised call or put, as applicable, the amount owed by the Company will accrue interest at 10% per annum, which interest is due and payable in cash monthly by the Company.

#### **FAT Brands GFG Royalty I, LLC**

In connection with the acquisition of GFG, on July 22, 2021, FAT Brands GFG Royalty I, LLC ("GFG Royalty"), our special purpose, wholly-owned subsidiary, completed the issuance and sale in a private offering (the "GFG Offering") of three tranches of fixed rate senior secured notes (the "GFG Securitization Notes"). Net proceeds from the issuance of the GFG Securitization Notes totaled \$338.9 million, which consisted of the combined face amount of \$350.0 million, net of debt offering costs of \$6.0 million and original issue discount of \$5.1 million. Substantially all of the proceeds were used to acquire GFG. GFG Royalty owns our factory operations in Atlanta, GA and the following restaurant brands: Round Table Pizza, Marble Slab Creamery, Great American Cookies, Hot Dog on a Stick and Pretzelmaker.

On December 15, 2022, GFG Royalty authorized the issuance of an additional \$113.5 million aggregate principal amount of three tranches of fixed rate senior secured notes as follows:

Closing Date	Class	Seniority	Principal Balance	Coupon	Final Legal Maturity Date
12/13/2022	A-2	Senior	\$67.8	6.00%	7/25/2051
12/13/2022	B-2	Senior Subordinated	\$20.2	7.00%	7/25/2051
12/13/2022	M-2	Subordinated	\$25.5	9.50%	7/25/2051

Of the \$113.5 million aggregate principal amount, \$25.0 million was sold privately during the fourth quarter of 2022, resulting in net proceeds of \$22.3 million (net of debt offering costs of \$0.4 million and original issue discount of \$2.3 million). The remaining \$88.5 million in aggregate principal was issued to FAT Brands Inc., pending sale to third party investors, and has been eliminated in consolidation as of December 25, 2022. In January 2023, an additional \$40.0 million aggregate principal amount was sold privately, resulting in net proceeds of \$34.8 million net of debt offering costs and original issue discount.

#### **FAT Brands Twin Peaks I, LLC**

In connection with the acquisition of Twin Peaks, on October 1, 2021, we completed the issuance and sale in a private offering through our special purpose, wholly-owned subsidiary, FAT Brands Twin Peaks I, LLC, of an aggregate principal amount of \$250.0 million of Series 2021-1 Fixed Rate Secured Notes (the "Twin Peaks Securitization Notes"). Net proceeds from the issuance of the Twin Peaks Securitization Notes totaled \$236.9 million, which consisted of the combined face amount of \$250.0 million, net of debt offering costs of \$5.6 million and original issue discount of \$7.5 million. The proceeds were used to finance the cash portion of the purchase price for the acquisition of Twin Peaks Buyer, LLC and its direct and indirect subsidiaries. FAT Brands Twin Peaks I, LLC owns the Twin Peaks restaurant brand.

#### **FAT Brands Fazoli's Native I, LLC**

In connection with the acquisition of Fazoli's and Native Grill & Wings, on December 15, 2021, we completed the issuance and sale in a private offering through our special purpose, wholly-owned subsidiary, FAT Brands Fazoli's Native I, LLC, of an aggregate principal amount of \$193.8 million of Series 2021-1 Fixed Rate Secured Notes (the "Fazoli's-Native Securitization Notes"). Net proceeds from the issuance of the Fazoli's-Native Securitization Notes totaled \$180.6 million, which consisted of the combined face amount of \$193.8 million, net of debt offering costs of \$3.8 million and original issue discount

of \$9.4 million. The proceeds were used to close the acquisitions of Fazoli's and Native, and to provide working capital for the Company. FAT Brands Fazoli's Native I, LLC owns the Fazoli's and Native Grill & Wings restaurant brands.

We believe that we will be in compliance with our debt covenants and have sufficient sources of cash to meet our liquidity needs for the next twelve months.

### Equity Issuances

On June 22, 2021, we completed an underwritten public offering of 460,000 shares of our 8.25% Series B Cumulative Preferred Stock at a price of \$20.00 per share. The net proceeds of the offering totaled \$8.3 million (net of \$0.9 million in underwriting discounts and other offering expenses).

On November 1, 2021, we closed an additional underwritten public offering of 1,000,000 shares of our 8.25% Series B Cumulative Preferred Stock at a price of \$18.00 per share. The net proceeds of this offering totaled \$16.8 million (net of \$1.2 million in underwriting discounts and other offering expenses).

On November 14, 2022, we entered into an ATM Sales Agreement (the "Sales Agreement") with ThinkEquity LLC (the "Agent"), pursuant to which we may offer and sell from time to time through the Agent up to \$21,435,000 maximum aggregate offering price of shares of our Class A Common Stock and/or 8.25% Series B Cumulative Preferred Stock. During the fourth quarter and fiscal year 2022, pursuant to the Sales Agreement, (i) we sold and issued 1,648 shares of Class A Common Stock, at a weighted average share price of \$7.04, paid the Agent commissions of \$348 and received net proceeds of \$11,260 (net of fees and commissions) for such sales and (ii) we sold and issued 30,683 shares of Series B Cumulative Preferred Stock, at a weighted average share price of \$18.13, paid the Agent commissions of \$16,692 for such sales and received net proceeds of \$539,698 (net of fees and commissions) for such sales.

### Comparison of Cash Flows

Our cash and restricted cash balance was \$68.8 million as of December 25, 2022, compared to \$99.9 million as of December 26, 2021.

The following table summarizes key components of our audited consolidated cash flows for the fiscal years ended December 25, 2022, and December 26, 2021:

(In thousands) For the Fiscal Years Ended			<u>December 25, 2022</u>	<u>December 26, 2021</u>
Net cash (used in) provided by operating activities	\$	(47.4)	\$	0.7
Net cash used in investing activities		(12.5)		(723.2)
Net cash provided by financing activities		28.7		815.2
Net (decrease) increase in cash and restricted cash	\$	(31.2)	\$	92.7

### Operating Activities

Net cash used in operating activities increased by \$48.1 million in 2022 compared to 2021, primarily due to higher debt service costs associated with our securitizations and changes in working capital.

### Investing Activities

Net cash used in investing activities was \$12.5 million in fiscal year 2022, primarily related to purchases of property and equipment in connection with company-owned restaurants. Net cash used in investing activities was \$723.2 million in 2021, primarily related to the acquisition of GFG, Twin Peaks, Fazoli's and Native Grill & Wings.

### Financing Activities

Net cash provided by financing activities was \$28.7 million in 2022, primarily as a result of proceeds from borrowings, offset by dividends paid on our Class A and Class B Common Stock and our Series B Cumulative Preferred Stock. Net cash provided by financing activities was \$815.2 million in 2021, primarily as a result of the whole business securitization

transaction, the three securitization transactions relating to the acquisitions of GFG, Twin Peaks, Fazoli's and Native Grill & Wings and the issuance of Series B Cumulative Preferred Stock, net of repayments of borrowings of \$93.3 million.

### Dividends

The dividends declared on the Company's common stock by the Board of Directors during the fiscal year ended December 25, 2022 are as follows (in millions):

Declaration Date	Dividend Per Share	Record Date	Payment Date	Total Dividend (in millions)
January 11, 2022	\$ 0.13	February 15, 2022	March 1, 2022	\$ 2.2
April 12, 2022	\$ 0.13	May 16, 2022	June 1, 2022	\$ 2.1
July 12, 2022	\$ 0.14	August 16, 2022	September 1, 2022	\$ 2.3
October 25, 2022	\$ 0.14	November 15, 2022	December 1, 2022	\$ 2.3

The declaration and payment of future dividends, as well as the amount thereof, are subject to the discretion of our Board of Directors. The amount and size of any future dividends will depend upon our future results of operations, financial condition, capital levels, cash requirements and other factors. There can be no assurance that we will declare and pay dividends in future periods.

### Capital Expenditures

As of December 25, 2022, we do not have any material commitments for capital expenditures.

### Critical Accounting Policies and Estimates

**Franchise Fees:** The franchise arrangement is documented in the form of a franchise agreement. The franchise arrangement requires us to perform various activities to support the brand that do not directly transfer goods and services to the franchisee, but instead represent a single performance obligation, which includes the transfer of the franchise license. The services provided by us are highly interrelated with the franchise license and are considered a single performance obligation. Franchise fee revenue from the sale of individual franchises is recognized over the term of the individual franchise agreement on a straight-line basis. Unamortized non-refundable deposits collected in relation to the sale of franchises are recorded as deferred franchise fees.

The franchise fee may be adjusted at management's discretion or in a situation involving store transfers between franchisees. Deposits are non-refundable upon acceptance of the franchise application. In the event a franchisee does not comply with their development timeline for opening franchise stores, the franchise rights may be terminated, at which point the franchise fee revenue is recognized in the amount of the non-refundable deposits.

**Royalties:** In addition to franchise fee revenue, we collect a royalty calculated as a percentage of net sales from our franchisees. Royalties range from 0.75% to 7.0% and are recognized as revenue when the related sales are made by the franchisees. Royalties collected in advance of sales are classified as deferred income until earned.

**Advertising:** We require advertising payments from franchisees based on a percent of their net sales. We also receive, from time to time, payments from vendors that are to be used for advertising. Advertising funds collected are required to be spent for specific advertising purposes. Advertising revenue and associated expense is recorded on the consolidated statement of operations. Assets and liabilities associated with the related advertising fees are reflected in the Company's consolidated balance sheets.

**Goodwill and other intangible assets:** Goodwill and other intangible assets with indefinite lives, such as trademarks, are not amortized but are reviewed for impairment annually, or more frequently if indicators arise, as was done in 2022 and 2021. The Company recorded impairment charges of \$14.0 million and \$1.0 million relating to goodwill and other intangible assets during the fiscal years ended December 25, 2022 and December 26, 2021, respectively.

**Assets classified as held-for-sale:** Assets are classified as held-for-sale when we commit to a plan to sell the asset, the asset is available for immediate sale in its present condition and an active program to locate a buyer at a reasonable price has been initiated. The sale of these assets is generally expected to be completed within one year. The combined assets are valued at the lower of their carrying amount or fair value, net of costs to sell and included as current assets on the Company's

consolidated balance sheet. Assets classified as held-for-sale are not depreciated. However, interest attributable to the liabilities associated with assets classified as held-for-sale and other expenses continue to be recorded as expenses in the Company's consolidated statements of operations.

*Income taxes:* We account for income taxes under the asset and liability method. Under this method, deferred tax assets and liabilities are determined based on the differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Realization of deferred tax assets is dependent upon future earnings, the timing and amount of which are uncertain.

We utilize a two-step approach to recognize and measure uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained upon tax authority examination, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon the ultimate settlement.

*Share-based compensation:* We have a stock option plan which provides for options to purchase shares of our common stock. For grants to employees and directors, we recognize an expense for the value of options granted at their fair value at the date of grant over the vesting period in which the options are earned. Cancellations or forfeitures are accounted for as they occur. Fair values are estimated using the Black-Scholes option-pricing model. (See Note 14 in our consolidated financial statements for more details on our share-based compensation.)

*Use of estimates:* The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the reported periods. Actual results could differ from those estimates.

#### Recently Issued Accounting Standards

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments-Credit Losses (Topic 326)-Measurement of Credit Losses on Financial Instruments*, and later amended the ASU in 2019, as described below. This guidance replaces the current incurred loss impairment methodology. Under the new guidance, on initial recognition and at each reporting period, an entity is required to recognize an allowance that reflects its current estimate of credit losses expected to be incurred over the life of the financial instrument based on historical experience, current conditions and reasonable and supportable forecasts.

In November 2019, the FASB issued ASU No. 2019-10, *Financial Instruments-Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates ("ASU 2019-10")*. The purpose of this amendment is to create a two-tier rollout of major updates, staggering the effective dates between larger public companies and all other entities. This granted certain classes of companies, including Smaller Reporting Companies ("SRCs"), additional time to implement major FASB standards, including ASU 2016-13. Larger public companies will have an effective date for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. All other entities are permitted to defer adoption of ASU 2016-13, and its related amendments, until fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Under the current SEC definitions, the Company meets the definition of an SRC and is adopting the deferral period for ASU 2016-13. The guidance requires a modified retrospective transition approach through a cumulative-effect adjustment to retained earnings as of the beginning of the period of adoption. The Company does not expect the adoption of this standard will have a material impact on its condensed consolidated financial statements.

In March 2022, the Financial Accounting Standards Board (the "FASB") issued ASU No. 2022-02, *Financial Instruments-Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures*. The purpose of this amendment is to enhance disclosure requirements for certain loan refinancings and restructurings by creditors when a borrower is experiencing financial difficulty. It requires that an entity disclose current-period gross writeoffs by year of origination for financing receivables and net investments in leases. The amendments should be applied prospectively and are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Early adoption of the amendments is permitted if an entity has adopted the amendments in ASU 2016-13 described above, including adoption in an interim period. The Company will evaluate ASC No. 2022-02 and does not expect the adoption of this standard will have a material impact on its condensed consolidated financial statements.

## Off-Balance Sheet Arrangements

As of December 25, 2022, we did not have any off-balance sheet arrangements.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not required.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See Item 15 of Part IV of this Annual Report on Form 10-K.

## ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

There has been no change of accountants or any disagreements with accountants on any matter of accounting principles or practices, or financial statement disclosure required to be reported under this item.

## ITEM 9A. CONTROLS AND PROCEDURES

### Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

### Management’s Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act.

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting also includes those policies and procedures that:

- (a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company;
- (b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and
- (c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision of the Audit Committee of the Board of Directors and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting using the criteria established in Internal Control Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on our assessment and those criteria, our Chief Executive Officer and Chief Financial Officer concluded that our internal control over financial reporting was effective as of December 25, 2022.

Because we are a non-accelerated filer, we are not required to include an attestation report by our independent registered public accounting firm regarding the effectiveness of our internal control over financial reporting in this annual report as of December 25, 2022.

*Changes in Internal Control over Financial Reporting*

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 25, 2022, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

On February 21, 2023, the Board of Directors approved an amendment to Section 3.05 of the Company's Bylaws to replace the words "next election of the class for which such director shall have been chosen" with the words "next annual meeting of stockholders." This was a technical amendment to the language describing the term of directors elected to fill vacancies or newly created directorships, in order to properly reflect the declassification of the Board of Directors which occurred in December 2022. The foregoing description of the Bylaws amendment is qualified in its entirety by reference to the complete text of the Amended and Restated Bylaws, which is filed herewith as Exhibit 3.6 and incorporated herein by this reference.

**ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.**

Not applicable.



**PART III****ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE****Executive Officers and Directors**

Below is a list of the names and ages, as of December 25, 2022, of our directors and executive officers, and a description of the business experience of each of them.

Name	Age	Position
Andrew A. Wiederhorn	56	President and Chief Executive Officer, Director
James Neuhauser	64	Executive Chairman of the Board of Directors
Kenneth J. Anderson	68	Director
Lynne L. Collier	55	Director
Amy V. Forrestal	57	Director
Edward H. Rensi	78	Director
Kenneth J. Kuick	54	Chief Financial Officer
Thayer D. Wiederhorn	34	Chief Operating Officer
Taylor A. Wiederhorn	34	Chief Development Officer
Robert G. Rosen	56	Executive Vice President of Capital Markets
Allen Z. Sussman	58	Executive Vice President and General Counsel, Secretary
Ron Roe	45	Senior Vice President of Finance

*Andrew A. Wiederhorn* has served as the President and Chief Executive Officer of FAT Brands Inc. and our principal operating subsidiaries since our inception in March 2017. He also served as the Chairman and Chief Executive Officer of our former parent company, Fog Cutter Capital Group Inc., since its formation in 1997. Mr. Wiederhorn previously founded and served as the Chairman Chief Executive Officer of Wilshire Financial Services Group Inc. and Wilshire Credit Corporation. Mr. Wiederhorn received his B.S. degree in Business Administration from the University of Southern California in 1987, with an emphasis in Finance and Entrepreneurship. He previously served on the Board of Directors of Fabricated Metals, Inc., The Boy Scouts of America Cascade Pacific Council, The Boys and Girls Aid Society of Oregon, University of Southern California Associates, Citizens Crime Commission of Oregon, and Economic Development Council for the City of Beverly Hills Chamber of Commerce. Mr. Wiederhorn was also featured as the Fatburger CEO on the CBS television program “Undercover Boss” in 2013.

*James Neuhauser* has served on our Board of Directors since our inception in 2017, and became Executive Chairman of the Board in July 2022. He previously served as a Senior Managing Director in the Private Capital Markets Group of Stifel Nicolas & Company from May 2017 until July 2022. Mr. Neuhauser also serves as a managing member of Turtlerock Capital, LLC, a private company that finances and invests in real estate development projects. Mr. Neuhauser previously held senior positions at FBR & Co. over 24 years, including Chief Investment Officer, Head of Investment Banking, Head of the Commitment Committee and a member of the firm's Executive Committee. Prior to joining FBR, Mr. Neuhauser was a Senior Vice President of Trident Financial Corporation for seven years, where he specialized in managing stock offerings for mutual to stock conversions of thrift institutions. Before joining Trident, he worked in commercial banking with The Bank of New England. Mr. Neuhauser is a CFA charter holder and a member of the Society of Financial Analysts. He received a Bachelor of Arts from Brown University and an M.B.A. from the University of Michigan.

*Kenneth J. Anderson* has served on our Board of Directors since October 2021, and was a director of our former parent company, Fog Cutter Capital Group Inc., until December 2020. Mr. Anderson has more than 35 years of experience in advising families, corporate executives and business owners, providing financial strategies related to taxes, estate planning, investments, insurance and philanthropy. Mr. Anderson currently serves as the CEO of the investment firm, Cedar Tree Capital, where he provides strategic planning to high-net-worth family groups with a focus on public equities and alternative investments. Prior to Cedar Tree Capital, was a founder and client service director at a leading independent wealth management firm, Aspiriant, where he also was a member of the Board of Directors. Mr. Anderson was a client service director at myCFO until its sale in 2002 and prior to that a Tax Partner at Arthur Andersen LLP for 20 years. In addition to his decades of professional experience, Mr. Anderson is a certified public accountant and licensed attorney.

*Lynne L. Collier* has served on our Board of Directors since July 2022. Ms. Collier is an experienced capital markets professional, with nearly 30 years of experience in public capital markets and a focus on the restaurant industry. Ms. Collier

currently serves as Head of Consumer Discretionary for Water Tower Research, LLC, and previously served as a Managing Director in the Investor Relations Division of ICR Inc. from April 2021 to June 2022. Prior to that, Ms. Collier had a 25-year career in equity research as a sell-side Consumer Analyst, including for Loop Capital, Canaccord Genuity and Sterne Agee. Ms. Collier received a bachelor's degree in finance from Baylor University and an M.B.A. in finance from Texas Christian University.

*Amy V. Forrestal* has served on our Board of Directors since October 2021. Ms. Forrestal is a seasoned executive and investment banker for companies in the restaurant and franchising industries. Ms. Forrestal serves as Managing Director of Brookwood Associates, an investment banking firm based in Atlanta, GA. Ms. Forrestal established Brookwood's Restaurant and Hospitality Group and spearheaded noteworthy deals for brands such as Beef O' Brady's, Fuddruggers, Rita's Italian Ice, Quiznos, Zoes Kitchen and The Habit Burger Grill. Prior to joining Brookwood, Ms. Forrestal was a Managing Director in Banc of America Securities' Mergers and Acquisitions group. Over her 15 years at Banc of America Securities and its predecessor organizations, including NationsBanc Montgomery Securities, Ms. Forrestal advised senior management teams, boards of directors and business owners in a variety of strategic and financial transactions, including acquisitions, leveraged buyouts, exclusive sales, divestitures, ESOPs, public equity and debt offerings and private equity and debt placements. Ms. Forrestal received a Bachelor of Arts degree in math and economics from Duke University.

*Edward H. Rensi* has served on the Board of Directors since our inception in March 2017, and became Chairman of the Board in October 2017. In July 2022, Mr. Rensi transitioned to the role of Vice-Chairman of the Board and Lead Independent Director. Mr. Rensi is the retired president and chief executive officer of McDonald's USA. Prior to his retirement in 1997, Mr. Rensi devoted his entire professional career to McDonald's, joining the company in 1966 as a "grill man" and part-time manager trainee in Columbus, Ohio. Mr. Rensi became president and chief operating officer of McDonald's USA in 1984, and was named chief executive officer in 1991, overseeing all domestic company-owned and franchisee operations, in addition to providing direction relative to sales, profits, operations and service standards, customer satisfaction, product development, personnel and training. During his 13-year term as president, McDonald's U.S. sales doubled to more than \$16 billion, the number of U.S. restaurants grew from nearly 6,600 to more than 12,000, and the number of U.S. franchisees grew from 1,600 to more than 2,700. Since his retirement, Mr. Rensi has held consulting positions. From January 2014 to July 2015, Mr. Rensi served as director and interim CEO of Famous Dave's of America, Inc. Mr. Rensi received his B.S. in Business Education from The Ohio State University in Columbus, Ohio.

*Kenneth J. Kuick* has served as the Chief Financial Officer since May 31, 2021. Prior to joining the Company, Mr. Kuick served as Chief Financial Officer of Noodles & Company, a national fast-casual restaurant concept, from November 2018 to August 2020, where he was responsible for leading the Company's finance, accounting and supply chain operations. Prior to that, Mr. Kuick served as Chief Accounting Officer of VICI Properties Inc., a real estate investment trust specializing in casino properties, from October 2017 to August 2018, where he was responsible for accounting, consolidated financial operations, capital markets transactions, treasury, internal audit, tax, information technology and external reporting. Prior to that, Mr. Kuick served as Chief Accounting Officer of Caesars Entertainment Operating Company, a subsidiary of Caesars Entertainment Corporation, and as Vice President, Assistant Controller for Caesars Entertainment Corporation. Mr. Kuick is a Certified Public Accountant and earned his Bachelor of Science degree in Accounting and Business Systems from Taylor University.

*Thayer D. Wiederhorn* has served as the Chief Operating Officer since November 2021 where he is responsible for day-to-day business operations and providing leadership to management to ensure short-term and long-term business strategies are implemented and executed and that the organization's capabilities are optimized. Prior to that, Mr. Wiederhorn served as Chief Marketing Officer since March 2017 where he oversaw global branding and marketing for over 2,000 franchise-owned restaurants. Mr. Wiederhorn served as Vice President - Marketing of Fatburger North America Inc. and Buffalo's Franchise Concepts Inc. From June 2012 through March 2017 and as Director of Marketing of Fatburger North America Inc. from July 2011 through June 2012. Additionally, he served as Marketing Coordinator from April 2011 through June 2011 and Brand Development Agent from October 2010 through April 2011. Mr. Wiederhorn started his career working in Fatburger restaurants and food-trucks. Mr. Wiederhorn received his Bachelor of Science degree in Business Administration, with an emphasis in Finance Business Economics, from the University of Southern California.

*Taylor A. Wiederhorn* has served as the Chief Development Officer since October 2017. Previously, Mr. Wiederhorn served as Vice President - Franchise Marketing and Development for Fatburger North America from September 2011 until October 2017. Mr. Wiederhorn graduated from the USC Marshall School of Business with a Bachelor of Science degree in Business Administration with a concentration in corporate Finance.

*Robert G. Rosen* has served as the Executive Vice President of Capital Markets since April 2021. Prior to joining the company, he had been the Managing Member of Kodiak Financial Group LLC since 2004. Kodiak invests in credit classes of

ABS and MBS securities, purchases individual real estate loans and portfolios, purchases and manages real estate developments and invests in private equity transactions as well as venture capital transactions. Mr. Rosen began his career in commercial banking, focusing on direct lending for Fleet Bank (then Fleet Norstar Bank) in Albany NY after completing their extensive management training program. This was followed in 1990 by a career on Wall Street, working for Bankers Trust (now Deutsche Bank) and Kidder Peabody in structured finance and investment banking focusing primarily on credit derivatives including securitizations, asset-based lending as well as financing and banking commercial banks and other originators of securitizable assets. After Kidder, Mr. Rosen joined Black Diamond Advisors and Black Diamond Securities (and ultimately Black Diamond Capital Management). He served as a Director and FINOP of the Black Diamond entities, with a continued focus on structured finance transactions and credit as well as portfolio management (banking, sales and trading) and servicing. Mr. Rosen continued his career at Bank of Tokyo Mitsubishi and several buy side firms. He continues to be a long-term consultant to Black Diamond Capital Management and serves on multiple advisory boards and committees of Black Diamond. Mr. Rosen holds an MBA and a BA degree from Union College in Managerial Economics.

*Allen Z. Sussman* has served as the General Counsel and Executive Vice President for Corporate Development and our Corporate Secretary since March 2021. Prior to that time, Mr. Sussman was a partner at the law firm of Loeb & Loeb LLP in Los Angeles, California, specializing in corporate and securities law, and served as the primary outside corporate and securities counsel of FAT Brands. Prior to private practice, in the early 1990s Mr. Sussman served as an attorney with the Division of Enforcement of the U.S. Securities and Exchange Commission in Washington, DC. Mr. Sussman holds a B.S. degree in Industrial and Labor Relations from Cornell University and a J.D. degree from Boston University School of Law.

*Ron Roe* currently serves as the Senior Vice President of Finance. Prior to August 16, 2018, Mr. Roe served as the Chief Financial Officer since 2009 and served as the Vice President of Finance from 2007 to 2009. Prior to 2007, Mr. Roe was an acquisitions associate for Fog Cutter Capital Group Inc. He began his career as an investment banking analyst with Piper Jaffray. Mr. Roe attended the University of California, Berkeley, where he earned a Bachelor of Arts degree in Economics.

### **Family Relationships**

The following family members of Andrew Wiederhorn are employed by the Company in the capacities indicated below:

- Thayer Wiederhorn, son of Andrew Wiederhorn, serves as Chief Operating Officer of the Company. During fiscal 2022, Thayer Wiederhorn received total cash compensation from the Company of approximately \$1,600,000, participated in the general welfare and benefit plans of the Company and vested in stock options to purchase 33,334 shares of the Company's common stock granted in previous years. Andrew Wiederhorn does not have a material interest in Thayer Wiederhorn's employment, nor do they share a household.
- Taylor Wiederhorn, son of Andrew Wiederhorn, serves as Chief Development Officer of the Company. During fiscal 2022, Taylor Wiederhorn received total cash compensation from the Company of approximately \$1,660,000, participated in the general welfare and benefit plans of the Company and vested in stock options to purchase 33,334 shares of the Company's common stock granted in previous years. Andrew Wiederhorn does not have a material interest in Taylor Wiederhorn's employment, nor do they share a household.
- Mason Wiederhorn, son of Andrew Wiederhorn, serves as Creative Director of the Company. During fiscal 2021, Mason Wiederhorn received total cash compensation from the Company of approximately \$1,275,000, participated in the general welfare and benefit plans of the Company and vested in stock options to purchase 25,000 shares of the Company's common stock granted in previous years. Andrew Wiederhorn does not have a material interest in Mason Wiederhorn's employment, nor do they share a household.

### **Delinquent Section 16(a) Reports**

Based solely on a review of Forms 3, 4 and 5 and amendments thereto furnished to us for the year ended December 25, 2022, our directors, officers, or beneficial owners of more than 10% of our common stock timely furnished reports on all Forms 3, 4 and 5, except that (i) Squire Junger filed one late Form 4 for two transactions, (ii) Taylor Wiederhorn filed one late Form 4 for one transaction, (iii) Kenneth Anderson filed one late Form 4 for one transaction and (iv) Lynne Collier filed one late Form 3.

### **Code of Ethics**

We have adopted a written code of business ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. We have posted a current copy of the code under the Corporate Governance section of our website at <https://>

[ir.fatbrands.com](#). In addition, we intend to post on our website all disclosures that are required by law or the NASDAQ listing standards concerning any amendments to, or waivers from, any provision of the code.

## Board Committees

During fiscal 2022, our Board of Directors held 43 meetings. Each director attended at least 75% of the aggregate number of meetings of the Board of Directors and meetings of the committees of the Board of Directors on which he or she serves.

The following table sets forth the three standing committees of our Board and the members of each committee as of December 25, 2022 and the number of meetings held by our Board of Directors and the committees during 2022:

Director	Board of Directors	Audit Committee	Compensation Committee	Nominating and Corporate Governance Committee
James Neuhauser	Executive Chairman			
Edward Rensi	Vice-Chairman/Lead Independent Director		Chair	Chair
Kenneth J. Anderson	X	Chair	X	
Lynne L. Collier	X	X	X	
Amy V. Forrestal	X	X		X
Andrew Wiederhorn	X			
Meetings in 2022:	43	6	4	4

To assist it in carrying out its duties, the Board of Directors has delegated certain authority to an Audit Committee, a Compensation Committee and a Nominating and Governance Committee, the functions of which are described below.

## Audit Committee

The Audit Committee is responsible for, among other matters:

- appointing, compensating, retaining, evaluating, terminating and overseeing our independent registered public accounting firm;
- discussing with our independent registered public accounting firm their independence from management;
- reviewing with our independent registered public accounting firm the scope and results of their audit;
- approving all audit and permissible non-audit services to be performed by our independent registered public accounting firm;
- overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC;
- reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements; and
- establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters.

Our Board of Directors has determined that each member of the Audit Committee meets the definition of “independent director” for purposes of serving on an audit committee under Rule 10A-3 and NASDAQ rules. In addition, our Board of Directors has determined that each of Mr. Anderson, Ms. Collier and Ms. Forrestal qualifies as an “audit committee financial expert,” as such term is defined in Item 407(d)(5) of Regulation S-K.

The Board of Directors adopted a charter for the Audit Committee on October 19, 2017. A copy of the Audit Committee charter is available in the Corporate Governance section of our website at <https://ir.fatbrands.com>. The Audit Committee reviews and reassesses the adequacy of the charter on an annual basis.

## Compensation Committee

The Compensation Committee is responsible for assisting our Board of Directors in discharging its responsibilities relating to the compensation of our Chief Executive Officer, other executive officers and outside directors, as well as

administering stock incentive plans. During the fiscal year ended December 25, 2022, there were no employee directors on the Compensation Committee and no Compensation Committee interlocks.

The Compensation Committee is responsible for the following, among other matters, as required from time to time:

- reviewing and recommending to our board of directors the compensation of our Chief Executive Officer and other executive officers and the outside directors;
- conducting a performance review of our Chief Executive Officer;
- administering the Company's incentive-compensation plans and equity-based plans as in effect or as adopted from time to time by the Board of Directors;
- approving any new equity compensation plan or material change to an existing plan where stockholder approval has not been obtained;
- reviewing our compensation policies; and
- if required, preparing the report of the Compensation Committee for inclusion in our annual proxy statement.

The Board of Directors has adopted a charter for the Compensation Committee on October 19, 2017. A copy of the Compensation Committee charter is available in the Corporate Governance section of our website at <https://ir.fatbrands.com>. The Compensation Committee reviews and reassesses the adequacy of the charter on an annual basis.

#### **Nominating and Corporate Governance Committee**

The Nominating and Corporate Governance Committee is responsible for the following, among other matters, as required from time to time:

- identify qualified individuals to serve as members of the Company's board of directors;
- review the qualifications and performance of incumbent directors;
- review and consider director candidates who may be suggested by any director or executive officer or by any stockholder of the Company; and
- review considerations relating to board composition, including size of the board, term, and the criteria for membership on the board.

The Board of Directors has adopted a charter for the Nominating and Corporate Governance Committee on October 19, 2017. A copy of the Compensation Committee charter is available in the Corporate Governance section of our website at <https://ir.fatbrands.com>. The Nominating and Corporate Governance Committee reviews and reassesses the adequacy of the charter on an annual basis.

#### **ITEM 11. EXECUTIVE COMPENSATION**

The following table sets forth the compensation for the fiscal years ended December 25, 2022 and December 26, 2021 awarded to, earned by, or paid to our principal executive officer and our other two most highly compensated executive officers. We refer to the individuals included in the Summary Compensation Table as our "named executive officers."

# SUMMARY COMPENSATION TABLE

Name and Principal Position	Fiscal Year	Salary (\$)	Bonus (\$)	Stock Awards <sup>(1)</sup> (\$)	Option Awards <sup>(1)</sup> (\$)	All other Compensation <sup>(2)</sup> (\$)	Total (\$)
Andrew A. Wiederhorn	2022	750,000	2,250,000	—	—	551,040	3,551,040
Chief Executive Officer	2021	546,615	1,500,000	—	607,000	221,294	2,874,909
Robert G. Rosen	2022	550,000	1,650,000	—	—	—	2,200,000
EVP, Capital Markets	2021	395,866	480,000	857,000	607,000	—	2,339,866
Taylor A. Wiederhorn	2022	550,000	1,110,000	—	—	—	1,660,000
Chief Development Officer	2021	480,000	480,000	—	607,000	—	1,567,000

## Explanatory Notes:

- (1) Amounts shown represent the aggregate grant date fair value computed in accordance with Accounting Standards Codification 718. Assumptions used in the calculation of this amount for fiscal year ended December 25, 2022 are included in footnote 13 to the Company's audited consolidated financial statements for the fiscal year ended December 25, 2022, included in Part IV of this Annual Report on Form 10-K.
- (2) The amount disclosed for Mr. Andrew Wiederhorn reflects the aggregate incremental cost to the Company of providing him with certain personal use of leased aircraft pursuant to his employment agreement. This cost is calculated based on the applicable hourly rate charged to the Company for leased aircraft.

## Executive Employment Agreements

There are no written employment agreements between the Company and any of its employees, other than Andrew A. Wiederhorn.

On November 18, 2021, the Company entered into an Employment Agreement (the "Employment Agreement") with Andrew A. Wiederhorn, who has served as the Company's Chief Executive Officer since its inception. Pursuant to the Employment Agreement, Mr. Wiederhorn's term as Chief Executive Officer will continue for a period of three years from July 1, 2021, the effective date of the Employment Agreement, unless earlier terminated as provided in the Employment Agreement, and will be automatically extended for additional terms of successive two year periods unless the Company or Mr. Wiederhorn gives written notice of the termination of his employment at least 180 days prior to the expiration of the then current termination date.

Pursuant to the Employment Agreement, Mr. Wiederhorn's annual base salary is \$750,000, subject to an annual merit-based increases in the sole discretion of the Board of Directors of the Company (the "Board"). Mr. Wiederhorn will also be eligible for an annual discretionary bonus in the sole discretion of the Board, with a target annual discretionary Bonus of up to 100% of base salary and a maximum of 300% of base salary for exceptional performance in the sole discretion of the Board. Mr. Wiederhorn's eligibility to receive a bonus for any particular calendar year is subject to the achievement by him and the Company, as applicable, of personal and Company-wide targets to be established by the Company in the discretion of the Board.

Pursuant to the Employment Agreement, Mr. Wiederhorn will be eligible to receive awards of equity from time to time in the form of stock options, stock purchase rights and/or restricted stock awards. Such awards will be subject to the achievement by Mr. Wiederhorn and the Company, as applicable, of personal and Company-wide targets to be established by the Company, on such terms and subject to such conditions as the Board shall determine as of the date of any such grant. In the event of a change in control (as defined in the Employment Agreement), Mr. Wiederhorn's continuous employment is involuntarily terminated without "cause" (as defined in the Employment Agreement), or Mr. Wiederhorn resigns from continuous employment for "good reason" (as defined in the Employment Agreement), and in any case other than as a result of his death or disability, then 100% of the equity awards that are then unvested will become fully vested. In addition, in the event that Mr. Wiederhorn's employment is terminated by the Company without "cause" or by Mr. Wiederhorn for "good reason", Mr. Wiederhorn will be entitled to receive severance of 12 months of base salary payable on the Company's regular payroll schedule.

The Employment Agreement also entitles Mr. Wiederhorn to participate in the benefit plans or programs that the Company may make available to employees and their families from time to time. The Employment Agreement also provides for certain other ancillary benefits, including the reimbursement of all reasonable business expenses and, for security purposes, use at the Company's expense of private aircraft transportation for all business-related travel. The Company will also bear expenses for Mr. Wiederhorn's personal use of private aircraft transportation that does not exceed 100 hours of flight time in any calendar year. In addition, Mr. Wiederhorn is entitled to 25 days of paid time off during each twelve-month period of employment.

#### OUTSTANDING EQUITY AWARDS AT FISCAL 2022 YEAR END

The following table summarizes the outstanding equity award holdings of our named executive officers as of December 25, 2022.

Name	Option Awards				Stock Awards	
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)
Andrew A. Wiederhorn	15,318	—	10.68	10/20/2027	—	—
Chief Executive Officer	15,318	—	4.80	12/10/2028	—	—
	33,334	66,666	11.43	11/16/2031	—	—
Robert G. Rosen	33,334	66,666	11.43	11/16/2031	100,000	552,000
EVP, Capital Markets					—	—
Taylor A. Wiederhorn	15,318	—	10.68	10/20/2027	—	—
Chief Development Officer	15,318	—	4.80	12/10/2028	—	—
	33,334	66,666	11.43	11/16/2031	—	—

#### Option Exercises and Stock Vested

None of the named executives acquired shares of the Company's stock through exercise of options during the year ended December 25, 2022.

#### DIRECTOR COMPENSATION

The Company uses a combination of cash and stock-based incentive compensation to attract and retain qualified candidates to serve on the Board of Directors. In setting director compensation, the Company considers the significant amount of time that our directors expend in fulfilling their duties to the Company as well as the skill-level required by the Company of members of the Board of Directors.

We pay each non-employee director serving on our Board of Directors \$80,000 in annual cash compensation, an additional \$40,000 in annual cash compensation for service on Board committees and an annual equity award of stock options to acquire 30,636 shares of common stock. The stock options issued to directors are awarded under our 2017 Omnibus Equity Incentive Plan. During fiscal 2022, we also issued our directors a one-time award of 10,000 restricted shares of Class A Common Stock vesting over two years in equal annual installments on the anniversary date of the grant. The non-employee director compensation policy may be amended, modified or terminated at any time by our Board of Directors or Compensation Committee.

At various times upon the quarterly payment dates of the cash component of director compensation, the Board has allowed each independent director to elect to receive his or her cash compensation in the form of Class A common stock of the Company at market value at the time the election is made. Under such arrangement, during fiscal 2022, the independent

directors elected to acquire an aggregate of 4,761 shares of Class A common stock in 2022 at a weighted average price per share of \$6.30.

The terms of the equity award described above are set forth in the 2017 Omnibus Equity Incentive Plan (the “Plan”). The Plan is a comprehensive incentive compensation plan under which we can grant equity-based and other incentive awards to officers, employees and directors of, and consultants and advisers to, FAT Brands and its subsidiaries. The Plan, as amended, provides for a maximum of 5,000,000 shares available for grant and is administered by the Compensation Committee of the Board of Directors.

The following table sets forth a summary of the compensation we paid or accrued to our non-employee directors and our executive chairman for the fiscal year ended December 25, 2022:

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$ (1))	Total (\$)
Edward H. Rensi	120,000	88,500	88,982	297,482
Kenneth A. Anderson	90,000	88,500	88,982	267,482
Lynne L. Collier (2)	60,000	88,500	88,982	237,482
Amy V. Forrestal	120,000	88,500	88,982	297,482
Squire Junger (3)	120,000	88,500	88,982	297,482
James Neuhauser (4)	807,500	853,500	—	1,661,000

**Explanatory Notes:**

- (1) Amounts shown represent the grant date fair value calculated in accordance with Accounting Standards Codification 718. Assumptions used in the calculation of this amount are included in footnote 14 to the Company’s audited consolidated financial statements included in Part IV of this Annual Report on Form 10-K. During 2022, the directors were each granted options to purchase 30,636 shares of common stock.
- (2) Ms. Collier was appointed to the Board of Directors effective as of July 12, 2022.
- (3) Mr. Junger was removed from the Board of Directors effective as of December 20, 2022.
- (4) Mr. Neuhauser was appointed Executive Chairman effective as of July 13, 2022. This table includes Mr. Neuhauser’s compensation as a non-executive Director prior to July 13, 2022 and as Executive Chairman beginning on July 13, 2022.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

**PRINCIPAL STOCKHOLDERS**

**Common Stock**

The following table sets forth information, as of February 23, 2023, with respect to the beneficial ownership of our Class A common stock and our Class B common stock by:

- each person known by us to beneficially own more than 5% of our Class A common stock or Class B common stock;
- each of our directors;
- each of our named executive officers; and
- all of our executive officers and directors as a group.

The number of shares beneficially owned by each stockholder is determined under rules issued by the SEC and includes voting power (if applicable) or investment power with respect to securities. Under these rules, beneficial ownership includes any shares as to which the individual or entity has sole or shared voting power (if applicable) or investment power. In computing the number of shares beneficially owned by an individual or entity and the percentage ownership of that person, shares subject to options, or other rights held by such person that are currently exercisable or will become exercisable within 60 days of the effective date of the disclosure, are considered outstanding, although these shares are not considered outstanding for



purposes of computing the percentage ownership of any other person. Unless otherwise indicated, the address of all listed stockholders is c/o FAT Brands Inc., 9720 Wilshire Blvd., Suite 500, Beverly Hills, California 90212. Each of the stockholders listed below has sole voting power (if applicable) and sole investment power with respect to the shares beneficially owned by such stockholder unless noted otherwise, subject to community property laws where applicable.

As of February 23, 2023, there were issued and outstanding 15,316,920 shares of Class A common stock and 1,270,805 shares of Class B common stock.

	Class A Common Stock Beneficially Owned		Class B Common Stock Beneficially Owned		Percent of Total Voting Power †
Name of beneficial owner	Number	%	Number	%	
<b><i>Greater than 5% Stockholders</i></b>					
Fog Cutter Holdings LLC	7,033,397 <sup>(1)</sup>	45.9 %	706,514	55.6 %	55.5 %
HOT GFG LLC	2,259,594 <sup>(2)</sup>	14.8 %	—	*	*
Geode Capital Holdings LLC	—	*	77,586	6.1 % <sup>(3)</sup>	6.1 %
Gregory Fortunoff and certain persons	1,024,939 <sup>(4)</sup>	6.6 %	—	*	*
<b><i>Named Executive Officers and Directors</i></b>					
Andrew A. Wiederhorn	226,449 <sup>(5)</sup>	1.5 %	5,333	*	*
Robert G. Rosen	133,333 <sup>(6)</sup>	*	10,000	*	*
Taylor A. Wiederhorn	220,678 <sup>(7)</sup>	1.4 %	14,989	1.2 %	1.2 %
Kenneth J. Anderson	176,620 <sup>(8)</sup>	1.2 %	16,353	1.3 %	1.3 %
Lynne L. Collier	10,000 <sup>(9)</sup>	*	—	0.0 %	*
Amy V. Forrestal	24,113 <sup>(8)</sup>	*	—	*	*
James Neuhauser	294,627 <sup>(10)</sup>	1.9 %	8,803	*	*
Edward Rensi	120,132 <sup>(11)</sup>	*	3,354	*	*
All directors and executive officers as a group (12 persons)	1,901,878 <sup>(12)</sup>	16.2 %	111,136	8.7 %	8.8 %

† Represents the voting power with respect to all shares of our Class A Common Stock and Class B Common Stock, voting as a single class, beneficially owned by the holder. Each share of Class A Common Stock is entitled to one vote per share and each share of Class B Common Stock is entitled to 2,000 votes per share.

\* Represents beneficial ownership of less than 1% of the class.

(1) Based on a Schedule 13D filed by Fog Cutter Holdings LLC, a limited liability company controlled by a board of managers comprised of Andrew A. Wiederhorn, Taylor A. Wiederhorn, Thayer D. Wiederhorn and Mason A. Wiederhorn. Includes warrants to purchase 19,148 shares of Class A Common Stock. The address of Fog Cutter Holdings, LLC is 9720 Wilshire Blvd., Suite 500, Beverly Hills, CA 90212.

(2) Based on a Schedule 13G filed on March 8, 2022 jointly by HOT GFG LLC and Ms. Rachel Serruya. Ms. Serruya is the sole Director and President of HOT GFG LLC, and may be deemed to have voting and investment power over these shares. Ms. Serruya disclaims beneficial ownership of such securities except to the extent of her indirect pecuniary interest therein, if any. The address provided by HOT GFG LLC is 210 Shields Court, Markham, Ontario, Canada L3R8V2.

(3) Based on a Schedule 13G filed on February 9, 2022 jointly by Geode Capital Holdings LLC and Geode Capital Management, LLC. The address provided by Geode is 100 Summer Street, 12th Floor, Boston, MA 02110.

(4) Includes warrants to purchase 158,000 shares of Class A Common Stock. Based in part on a Schedule 13D/A filed jointly on August 25, 2022 by Gregory Fortunoff with an address at 49 West 37th Street, New York, NY 10018. Mr. Fortunoff expressly disclaims beneficial ownership for all purposes of the shares beneficially owned by other persons.

(5) Includes 23,332 shares of Class A Common Stock, options to purchase an additional 63,969 shares of Class A Common Stock that have vested or will vest within 60 days of the effective date of the disclosure, and warrants that are exercisable for an additional 120,000 shares of Class A Common Stock, including warrants for 100,000 shares owned by Mr. Wiederhorn's spouse, to which he disclaims beneficial ownership except to the extent of his pecuniary interest therein. Does not include unvested options to purchase an additional 66,667 shares of Class A Common Stock.

- (6) Includes options to purchase 33,333 shares of Class A Common Stock that have vested or will vest within 60 days of the effective date of the disclosure. Does not include unvested options to purchase an additional 66,667 shares of Class A Common Stock.
- (7) Includes options to purchase 63,969 shares of Class A Common Stock that have vested or will vest within 60 days of the effective date of the disclosure. Does not include unvested options to purchase an additional 66,667 shares of Class A Common Stock.
- (8) Includes options to purchase 10,212 shares of Class A Common Stock that have vested or will vest within 60 days of the effective date of the disclosure. Does not include unvested options to purchase an additional 51,060 shares of Class A Common Stock.
- (9) Does not include unvested options to purchase an additional 30,636 shares of Class A Common Stock.
- (10) Includes options to purchase 76,590 shares of Class A Common Stock that have vested or will vest within 60 days of the effective date of the disclosure. Does not include unvested options to purchase an additional 30,636 shares of Class A Common Stock.
- (11) Includes options to purchase 76,590 shares of Class A Common Stock that have vested or will vest within 60 days of the effective date of the disclosure. Does not include unvested options to purchase an additional 61,272 shares of Class A Common Stock.
- (12) Includes aggregate options to purchase 526,782 shares of Class A Common Stock that have vested or will vest within 60 days of the effective date of the disclosure. Does not include aggregate unvested options to purchase an additional 624,666 shares of Class A Common Stock. Includes warrants to purchase 140,000 shares of Class A Common Stock, 100,000 of which are owned by Mr. Wiederhorn's spouse, to which he disclaims beneficial ownership except to the extent of his pecuniary interest therein.

## Preferred Stock

The following table sets forth information, as of February 23, 2023, with respect to the beneficial ownership of our non-voting Series B Cumulative Preferred Stock (the "Series B Preferred Stock") by each of our directors, each of our named executive officers, and all of our executive officers and directors as a group. As of February 23, 2023, were 7,380,229 issued and outstanding shares of Series B Preferred Stock.

Name of beneficial owner	Series B Preferred Stock Beneficially Owned	
	Shares	%
<b><i>Named Executive Officers and Directors</i></b>		
Andrew A. Wiederhorn	—	*
Robert G. Rosen	232	*
Taylor A. Wiederhorn	—	*
Kenneth J. Anderson	11,681 <sup>(1)</sup>	*
Lynne L. Collier	—	*
Amy V. Forrestal	—	*
James Neuhauser	—	*
Edward Rensi	7,781	*
All directors and executive officers as a group (12 persons)	25,189	*

\* Represents beneficial ownership of less than 1% of the class.

- (1) Mr. Anderson also has voting and investment authority over 478,199 shares of Series B Preferred Stock and a warrant to acquire 100,000 shares of Class A Common Stock held by Trojan Investments, LLC.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE****Parent Company**

As disclosed above under "Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters," Fog Cutter Holdings, LLC beneficially holds approximately 55.5% of the voting power with respect to all shares of our common stock.

**Family Relationships**

The information set forth above under "Item 10. Directors, Executive Officers and Corporate Governance - Family Relationships" is incorporated by reference herein.

**Director Independence**

The Board has determined that each of the current directors, except Mr. Wiederhorn and Mr. Neuhauser, is independent within the meaning of the applicable rules and regulations of the SEC and the director independence standards of The NASDAQ Stock Market, Inc. ("NASDAQ"), as currently in effect. Furthermore, the Board has determined that each of the members of each of the committees of the Board is "independent" under the applicable rules and regulations of the SEC and the director independence standards of NASDAQ applicable to each such committee, as currently in effect.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

Baker Tilly US, LLP, Los Angeles, California, currently serves as our independent registered public accounting firm. The aggregate accounting fees for the years ended December 25, 2022 and December 26, 2021 are as follows (dollars in thousands):

	December 25, 2022	December 26, 2021
Audit fees	\$ 1,068	\$ 1,128
Audit related fees	\$ 215	\$ 418
Other fees	\$ —	\$ —

*Audit Committee Pre-Approval Policies and Procedures.* The Audit Committee reviews the independence of our independent registered public accounting firm on an annual basis and has determined that Baker Tilly US, LLP is independent. In addition, the Audit Committee pre-approves all work (and the related estimated fees) that is to be performed by our independent registered public accounting firm.

**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

**(a) Financial Statements**

**FAT Brands Inc.**

**Audited Consolidated Financial Statements**

<a href="#">Report of Independent Registered Public Accounting Firm (PCAOB ID 32)</a>	F-1
<a href="#">Consolidated Balance Sheets as of December 25, 2022 and December 26, 2021</a>	F-3
<a href="#">Consolidated Statements of Operations for the Fiscal Years Ended December 25, 2022 and December 26, 2021</a>	F-5
<a href="#">Consolidated Statements of Changes in Stockholders' Deficit for the Fiscal Years Ended December 25, 2022 and December 26, 2021</a>	F-6
<a href="#">Consolidated Statements of Cash Flows for the Fiscal Years Ended December 25, 2022 and December 26, 2021</a>	F-8
<a href="#">Notes to Consolidated Financial Statements</a>	F-10

**(b) Exhibits** – See Exhibit Index immediately following the signature pages.

## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of FAT Brands Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of FAT Brands Inc. and its subsidiaries (the "Company") as of December 25, 2022 and December 26, 2021, the related consolidated statements of operations, stockholders' deficit, and cash flows for the years then ended, and the related notes and Schedule II to the consolidated financial statements (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 25, 2022 and December 26, 2021, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

### Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

### Goodwill and Intangible Asset Impairment Assessment

#### *Critical Audit Matter Description*

As discussed in Note 2 of the consolidated financial statements, goodwill and intangible assets are tested for impairment at least annually on the reporting unit level, and more frequently if the Company believes indicators of impairment exist. The Company determined that three of the reporting units' (Great American Cookie, Pretzel Maker and Marble Slab Company) intangible assets were impaired and the Company recorded related impairment losses of approximately \$14 million for the year ended December 25, 2022. The determination of the fair value of the reporting units and related intangibles requires significant estimates and assumptions. Changes in these assumptions could have a significant impact on either the fair value of the reporting units and intangibles, the amount of any goodwill impairment charge, or both.

We identified the impairment assessment of goodwill and intangibles as a critical audit matter. Auditing management's judgements regarding forecasts of future revenue and operating margin, and the discount rate to be applied involved a high degree of subjectivity.

#### *How the Critical Audit Matter Was Addressed in Our Audit*

The primary procedures we performed to address this critical audit matter included:

- Obtaining an understanding of management's process for determining goodwill and intangible asset impairment;
- Obtaining and reviewing management's goodwill and intangibles impairment analysis including the fair value of reporting units and intangible balances tested;
- Comparing the actual sales to those forecasted by the Company in previous years in order to assess the historical accuracy of management's forecasting;
- Utilizing a valuation specialist to assist in evaluating the valuation methodologies utilized by the Company for goodwill and intangibles by comparing the methodologies to those utilized by other companies holding similar assets, compared management's assumption inputs to information from external sources and available economic forecasts and data;
- Evaluating the estimated fair value of the reporting units to the Company's market capitalization and evaluating whether any variances from the projections or changes in market capitalization were indicative of potential impairment of the goodwill and identifiable intangible assets; and
- Evaluating whether the assumptions used in the goodwill and intangibles impairment analysis were reasonable by considering the past performance of reporting units and third-party market data, and whether such assumptions were consistent with evidence obtained in other areas of the audit.

*/s/ Baker Tilly US, LLP*

We have served as the Company's auditor since 2019.

Los Angeles, California  
February 24, 2023

FAT BRANDS INC.  
CONSOLIDATED BALANCE SHEETS  
(dollars in thousands, except share data)

	December 25, 2022	December 26, 2021
<b>Assets</b>		
Current assets		
Cash	\$ 28,668	\$ 56,656
Restricted cash	25,375	24,740
Accounts receivable, net	23,880	20,084
Inventory	6,925	5,927
Assets classified as held-for-sale	4,767	5,476
Other current assets	6,086	6,156
Total current assets	95,701	119,039
Non-current restricted cash	14,720	18,525
Operating lease right-of-use assets	101,114	98,552
Goodwill	293,282	295,128
Other intangible assets, net	625,294	652,788
Property and equipment, net	79,189	80,501
Other assets	4,003	5,499
Total assets	\$ 1,213,303	\$ 1,270,032
<b>Liabilities and Stockholders' Deficit</b>		
<b>Liabilities</b>		
Current liabilities		
Accounts payable	\$ 18,328	\$ 27,527
Accrued expenses and other liabilities	52,800	46,295
Deferred income, current portion	2,019	2,636
Accrued advertising	14,819	10,853
Accrued interest payable	13,241	10,678
Dividend payable on preferred shares	1,467	1,574
Liabilities related to assets classified as held- for-sale	4,084	4,780
Current portion of operating lease liability	14,815	14,341
Current portion of redeemable preferred stock	91,836	67,500
Current portion of long-term debt	49,611	631
Current portion of acquisition purchase price payable	4,000	4,173
Other current liabilities	—	7,500
Total current liabilities	267,020	198,488
Deferred income, net of current portion	21,698	17,662
Deferred income tax liabilities, net	27,181	12,921
Operating lease liability, net of current portion	95,620	92,920
Long-term debt, net of current portion	958,630	904,265
Other liabilities	2,332	976
Total liabilities	1,372,481	1,227,232

Commitments and contingencies (Note 16)		
Redeemable preferred stock	—	64,455
Stockholders' deficit		
Preferred stock: \$0.0001 par value; 15,000,000 shares authorized; 3,252,154 shares issued and outstanding at December 25, 2022 and 3,221,471 shares issued and outstanding at December 26, 2021; liquidation preference \$25 per share	45,504	55,661
Class A and Class B common stock and additional paid-in capital as of December 25, 2022: \$0.0001 par value per share; 51,600,000 shares authorized (Class A 50,000,000, Class B 1,600,000); 16,571,675 shares issued and outstanding (Class A 15,300,870, Class B 1,270,805). Common stock and additional paid-in capital as of December 26, 2021: \$0.0001 par value; 51,600,000 shares authorized (Class A 50,000,000, Class B 1,600,000); 16,380,552 shares issued and outstanding (Class A 15,109,747, Class B 1,270,805)	(26,015)	(24,837)
Accumulated deficit	(178,667)	(52,479)
Total stockholders' deficit	(159,178)	(21,655)
Total liabilities and stockholders' deficit	\$ 1,213,303	\$ 1,270,032

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



FAT BRANDS INC.  
CONSOLIDATED STATEMENTS OF OPERATIONS  
(dollars in thousands, except share data)

For the Fiscal Years Ended December 25, 2022 and December 26, 2021

	2022	2021
Revenue		
Royalties	\$ 87,921	\$ 42,658
Restaurant sales	241,001	41,563
Advertising fees	37,997	16,728
Factory revenues	33,504	13,470
Franchise fees	3,706	4,023
Management fees and other income	3,095	439
Total revenue	407,224	118,881
Costs and expenses		
General and administrative expense	113,313	41,775
Cost of restaurant and factory revenues	221,627	44,242
Depreciation and amortization	27,015	8,474
Impairment of goodwill and other intangible assets	14,000	1,037
Refranchising loss	4,178	314
Acquisition costs	383	4,242
Advertising fees	44,612	17,973
Total costs and expenses	425,128	118,057
(Loss) income from operations	(17,904)	824
Other (expense) income, net		
Interest expense, net	(78,477)	(26,864)
Interest expense related to preferred shares	(16,372)	(2,193)
Loss on extinguishment of debt	—	(7,637)
Other income, net	5,375	750
Total other expense, net	(89,474)	(35,944)
Loss before income tax	(107,378)	(35,120)
Income tax provision (benefit)	18,810	(3,537)
Net loss	(126,188)	(31,583)
Basic and diluted loss per common share	\$ (7.66)	\$ (2.15)
Basic and diluted weighted average shares outstanding	16,476,090	14,656,880
Cash dividends declared per common share	\$ 0.54	\$ 0.52

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

FAT BRANDS INC.  
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT  
*(dollars in thousands, except share data)*  
For the Fiscal Year Ended December 25, 2022

	Common Stock						Preferred Stock				Accumulated Deficit	Total
	Class A Shares	Class B Shares	Class A Par Value	Class B Par Value	Additional Paid-In Capital	Total Common Stock	Shares	Par Value	Additional Paid-In Capital	Total Preferred Stock		
Balance at December 26, 2021	15,109,747	1,270,805	\$ 2	\$ —	\$ (24,839)	\$ (24,837)	3,221,471	\$ —	\$ 55,661	\$ 55,661	\$ (52,479)	\$ (21,655)
Net loss	—	—	—	—	—	—	—	—	—	—	(126,188)	(126,188)
Issuance of common and preferred stock	36,362	—	—	—	108	108	30,683	—	586	586	—	694
Share-based compensation	150,000	—	—	—	7,619	7,619	—	—	—	—	—	7,619
Dividends paid on common stock	—	—	—	—	(8,905)	(8,905)	—	—	—	—	—	(8,905)
Issuance of common stock in lieu of cash - director fees	4,761	—	—	—	—	—	—	—	—	—	—	—
Dividends paid on Series B preferred stock	—	—	—	—	—	—	—	—	(6,636)	(6,636)	—	(6,636)
Exercise of Series B preferred stock put option	—	—	—	—	—	—	—	—	(4,107)	(4,107)	—	(4,107)
Balance at December 25, 2022	15,300,870	1,270,805	\$ 2	\$ —	\$ (26,017)	\$ (26,015)	3,252,154	\$ —	\$ 45,504	\$ 45,504	\$ (178,667)	\$ (159,178)

For the Fiscal Year Ended December 26, 2021

	Common Stock						Preferred Stock				Accumulated Deficit	Total
	Class A Shares	Class B Shares	Class A Par Value	Class B Par Value	Additional Paid-In Capital	Total Common Stock	Shares	Par Value	Additional Paid-In Capital	Total Preferred Stock		
Balance at December 27, 2020	11,926,264	—	\$ 1	\$ —	\$ (42,776)	\$ (42,775)	1,183,272	\$ —	\$ 21,788	\$ 21,788	\$ (20,896)	\$ (41,883)
Net loss	—	—	—	—	—	—	—	—	—	—	(31,583)	(31,583)
Issuance of common stock through exercise of warrants	559,988	—	—	—	2,091	2,091	—	—	475	475	—	2,566
Issuance of preferred stock	—	—	—	—	—	—	1,560,000	—	26,732	26,732	—	26,732
Share-based compensation	300,000	—	—	—	1,642	1,642	—	—	—	—	—	1,642
Measurement period adjustment in accordance with ASU 2015-16	—	—	—	—	(1,381)	(1,381)	—	—	—	—	—	(1,381)
Stock contracted for issue in payment of debt	63,901	—	—	—	831	831	—	—	—	—	—	831
Dividends declared on common stock	—	—	—	—	(7,442)	(7,442)	—	—	—	—	—	(7,442)
Dividends declared on Series B preferred stock	—	—	—	—	—	—	—	—	(4,084)	(4,084)	—	(4,084)
Issuance of common stock in connection with acquisition of LS GFG Holdings Inc.	1,964,865	—	—	—	22,537	22,537	—	—	0	—	—	22,537
Stock dividend of Class B Shares	294,729	1,270,805	1	—	(26)	(25)	—	—	0	—	—	(25)
Issuance costs related to common equity	—	—	—	—	(315)	(315)	—	—	0	—	—	(315)
Series A Preferred shares retired through issuance of Series B Preferred shares	—	—	—	—	—	—	478,199	—	10,750	10,750	—	10,750
Balance at December 26, 2021	15,109,747	1,270,805	\$ 2	\$ —	\$ (24,839)	\$ (24,837)	3,221,471	\$ —	\$ 55,661	\$ 55,661	\$ (52,479)	\$ (21,655)

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

FAT BRANDS INC.  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(dollars in thousands)

For the Fiscal Years Ended December 25, 2022 and December 26, 2021

	2022	2021
Cash flows from operating activities		
Net loss	\$ (126,188)	\$ (31,583)
Adjustments to reconcile net loss to net cash (used in) provided by operations:		
Deferred income taxes	17,463	(5,337)
Net loss on extinguishment of debt	—	6,087
Depreciation and amortization	27,015	8,474
Share-based compensation	7,619	1,642
Change in operating right-of-use assets	7,021	3,851
Accretion of loan fees and interest	10,771	2,787
Adjustments to purchase price liability	(1,140)	95
Gain on sale of refranchised assets	—	(2,681)
Impairment of goodwill and other intangible assets	14,000	1,037
Change in provision for bad debts	20,720	1,843
Other	(500)	301
Change in:		
Accounts receivable	(24,516)	(4,705)
Other current assets	29	(1,533)
Accounts payable	(9,199)	5,374
Accrued expense and other liabilities	6,501	3,002
Deferred income	3,419	768
Accrued advertising	3,966	1,894
Accrued interest payable	2,563	8,831
Dividend payable on preferred shares	(107)	1,188
Other current and non-current liabilities	(6,836)	(653)
Total adjustments	78,789	32,265
Net cash (used in) provided by operating activities	(47,399)	682
Cash flows from investing activities		
Acquisitions, net of cash acquired	(1,022)	(721,382)
Acquisition of intangible assets	(1,750)	—
Payments received on loans receivable	1,762	212
Net proceeds from sale of refranchised restaurants	—	2,692
Proceeds from sale of property and equipment	9,934	4,233
Purchases of property and equipment	(21,421)	(10,422)
Purchase deposits received on refranchised restaurants	—	1,500
Other	—	(33)
Net cash used in investing activities	(12,497)	(723,200)
Cash flows from financing activities		
Proceeds from borrowings, net of issuance costs	55,220	897,215
Repayments of borrowings	(4,874)	(93,279)
Issuance of preferred shares, net	—	26,732
Change in operating lease liabilities	(5,699)	(3,595)

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Payments made on acquisition purchase price liability	—	(1,075)
Exercise of warrants	694	2,567
Dividends paid on redeemable preferred stock	(1,062)	(2,283)
Dividends paid on common shares	(8,905)	(7,468)
Dividends paid on preferred shares	(6,636)	(3,559)
Other	—	(27)
Net cash provided by financing activities	<u>28,738</u>	<u>815,228</u>
Net (decrease) increase in cash and restricted cash	(31,158)	92,710
Cash and restricted cash at beginning of the period	<u>99,921</u>	<u>7,211</u>
Cash and restricted cash at end of the period	<u>\$ 68,763</u>	<u>\$ 99,921</u>
Supplemental disclosures of cash flow information:		
Cash paid for interest	<u>\$ 66,851</u>	<u>\$ 14,978</u>
Cash paid for income taxes	<u>\$ 1,029</u>	<u>\$ 842</u>
Supplemental disclosure of non-cash financing and investing activities:		
Director fees converted to common stock	<u>\$ 30</u>	<u>\$ 15</u>
Issuance of preferred stock in lieu of cash preferred dividends payable	<u>\$ —</u>	<u>\$ 1,564</u>

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

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### NOTE 1. ORGANIZATION AND RELATIONSHIPS

#### *Organization and Nature of Business*

FAT Brands Inc. (the “Company”) is a leading multi-brand restaurant franchising company that develops, markets and acquires primarily quick-service, fast casual, casual and polished casual dining restaurant concepts around the world. Organized in March 2017 as a wholly-owned subsidiary of Fog Cutter Capital Group, Inc. (“FCCG”), the Company completed its initial public offering on October 20, 2017 and issued additional shares of common stock representing 20 percent of its ownership upon completion of the offering. During the fourth quarter of 2020, the Company completed a transaction in which FCCG merged into a wholly-owned subsidiary of the Company, and the Company became the parent of FCCG.

As of December 25, 2022, the Company owned seventeen restaurant brands: Round Table Pizza, Fatburger, Marble Slab Creamery, Johnny Rockets, Fazoli’s, Twin Peaks, Great American Cookies, Hot Dog on a Stick, Buffalo’s Cafe & Express, Hurricane Grill & Wings, Pretzelmaker, Elevation Burger, Native Grill & Wings, Yalla Mediterranean and Ponderosa and Bonanza Steakhouses. As of December 25, 2022, the Company had approximately 2,300 locations open and under construction, of which approximately 95% were franchised.

Each franchising subsidiary licenses the right to use its brand name and provides franchisees with operating procedures and methods of merchandising. Upon signing a franchise agreement, the franchisor is committed to provide training, some supervision and assistance, and access to operations manuals. As needed, the franchisor will also provide advice and written materials concerning techniques of managing and operating the restaurants.

The Company’s operations have historically been comprised primarily of franchising a growing portfolio of restaurant brands. This growth strategy is centered on expanding the footprint of existing brands and acquiring new brands through a centralized management organization which provides substantially all executive leadership, marketing, training and accounting services. As part of these ongoing franchising efforts, the Company will, from time to time, make opportunistic acquisitions of operating restaurants and may convert them to franchise locations. During the refranchising period, the Company may operate the restaurants and classifies the operational activities as refranchising gains or losses and the assets and associated liabilities as held-for sale. Through recent acquisitions, the Company also operates “company owned” restaurant locations of certain brands. Our revenues are derived primarily from two sales channels, franchised restaurants and company owned restaurants, which we operate as one segment.

#### COVID-19

The outbreak of the COVID-19 pandemic in March 2020 had a number of adverse effects on our business and that of our franchisees, including temporary and permanent closures of restaurant locations, reduced or modified store operating hours, difficulties in staffing restaurants and supply chain disruptions. While the disruptions to our business from the COVID-19 pandemic have mostly subsided, the resurgence of COVID-19 or its variants, as well as an outbreak of other widespread health epidemics or pandemics, could cause a closure of restaurants and disrupt our operations and have a material adverse effect on our business, financial condition and results of operations.

#### Liquidity

The Company recognized loss from operations of \$17.9 million during fiscal year 2022 and income from operations of \$0.8 million during fiscal year 2021. The Company has a history of net losses and an accumulated deficit of \$178.7 million as of December 25, 2022. Additionally, as of December 25, 2022, the Company had negative working capital of \$171.3 million. Of this amount, \$91.8 million represents the current portion of redeemable preferred stock as discussed in Note 12. Since the Company did not deliver the applicable cash proceeds at the related due dates the amount accrues interest until the payments are completed. The Company had \$28.7 million of unrestricted cash as of December 25, 2022, has received \$34.8 million in debt financing subsequent to that date and plans on the combination of cash flows from operations and cash on hand to be sufficient to cover any working capital requirements for the next twelve months from the date of this report. If the Company does not achieve its operating plan, additional forms of financing may be required through the issuance of debt or equity. Although management believes it will have access to financing, no assurances can be given that such financing will be available on acceptable terms, in a timely manner or at all.

### NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

*Nature of operations* – The Company operates on a 52-week calendar and its fiscal year ends on the last Sunday of the calendar year. Consistent with the industry practice, the Company measures its stores’ performance based upon 7-day work weeks.

Using the 52-week cycle ensures consistent weekly reporting for operations and ensures that each week has the same days, since certain days are more profitable than others. The use of this fiscal year means a 53<sup>rd</sup> week is added to the fiscal year every 5 or 6 years, as will be the case in fiscal year 2023. In a 52-week year, all four quarters are comprised of 13 weeks. In a 53-week year, one extra week is added to the fourth quarter. Both fiscal years 2022 and 2021 were 52-week years. Our revenues are derived from two sales channels, franchised restaurants and company owned locations, which we operate as one reportable segment.

*Principles of consolidation* – The accompanying consolidated financial statements include the accounts of the Company and its subsidiaries. Newly-acquired subsidiaries are included from the date of acquisition. Intercompany accounts have been eliminated in consolidation.

*Use of estimates in the preparation of the consolidated financial statements* – The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates include the determination of fair values of goodwill and other intangible assets, the allocation of basis between assets acquired, sold or retained, allowances for uncollectible notes receivable and accounts receivable, and the valuation allowance related to deferred tax assets. Estimates and assumptions also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

*Financial statement reclassification* – Certain account balances from prior periods have been reclassified in these consolidated financial statements to conform to current period classifications.

*Credit and depository risks* – Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and accounts receivable. Management evaluates each of its franchisee’s financial condition prior to entry into a franchise or other agreement, as well as periodically through the term of the agreement, and believes that it has adequately provided for any exposure to potential credit losses. As of December 25, 2022 and December 26, 2021, accounts receivable, net of allowance for doubtful accounts, totaled \$23.9 million and \$20.1 million, respectively, with no franchisee representing more than 10% of that amount.

*Restricted cash* – The Company has restricted cash consisting of funds required to be held in trust in connection with its securitized debt. The current portion of

restricted cash was \$25.4 million and \$24.7 million as of December 25, 2022 and December 26, 2021, respectively. Non-current restricted cash of \$14.7 million and \$18.5 million as of December 25, 2022 and December 26, 2021, respectively, represents interest reserves required to be set aside for the duration of the securitized debt.

*Accounts receivable* – Accounts receivable are recorded at the invoiced amount and are stated net of an allowance for doubtful accounts. The allowance for doubtful accounts is the Company's best estimate of the amount of probable credit losses in existing accounts receivable. The allowance is based on historical collection data and current franchisee information. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. As of December 25, 2022 and December 26, 2021 accounts receivable was stated net of an allowance for doubtful accounts of \$24.2 million and \$3.5 million, respectively.

On March 27, 2020, the U.S. government enacted the Coronavirus Aid, Relief and Security Act (the "CARES Act") to provide certain relief as a result of the COVID-19 pandemic. The CARES Act provides tax relief, along with other stimulus measures, including a provision for an Employee Retention Credit ("ERC"). As there is no authoritative guidance under U.S. GAAP on accounting for government assistance to for-profit business entities, the Company accounts for the ERC by analogy to International Accounting Standard, Accounting for Government Grants and Disclosure of Government Assistance ("IAS 20"). During 2022 the Company filed with the Internal Revenue Service credits totaling \$22.0 million and, in accordance with IAS 20, fully reserved the amounts claimed until such time when it is determined that the Company has reasonable assurance that the credits will be realized.

*Inventories* – Inventories are carried at the lower of cost or net realizable value and consist primarily of raw materials used in the Company's dough manufacturing facility in Atlanta, Georgia, and finished goods which consist primarily of food, beverages and supplies for Company restaurants. Inventory costs are included in "Cost of restaurant and factory revenues" in the Consolidated Statements of Operations.

*Assets classified as held-for-sale* – Assets are classified as held-for-sale when the Company commits to a plan to sell the asset, the asset is available for immediate sale in its present condition, and an active program to locate a buyer at a reasonable price has been initiated. The sale of these assets is generally expected to be completed within one year. The combined assets are valued at the lower of their carrying amount or fair value, net of costs to sell, and included as current assets on the Company's

consolidated balance sheet. Assets classified as held-for-sale are not depreciated. However, interest attributable to the liabilities associated with assets classified as held-for-sale and other related expenses are recorded as expenses in the Company's consolidated statement of operations.

*Goodwill and other intangible assets* – Intangible assets are stated at the estimated fair value at the date of acquisition and include goodwill, trademarks, and franchise agreements. Goodwill and other intangible assets with indefinite lives, such as trademarks, are not amortized but are reviewed for impairment annually or more frequently if indicators arise. All other intangible assets are amortized over their estimated weighted average useful lives, which range from 4.9 years to 15.3 years. Management assesses potential impairments to intangible assets at least annually, or when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset may not be recovered. Judgments regarding the existence of impairment indicators and future cash flows related to intangible assets are based on operational performance of the acquired businesses, market conditions and other factors.

*Fair value measurements* - The Company determines the fair market values of its financial assets and liabilities, as well as non-financial assets and liabilities that are recognized or disclosed at fair value on a recurring basis, based on the fair value hierarchy established in U.S. GAAP. As necessary, the Company measures its financial assets and liabilities using inputs from the following three levels of the fair value hierarchy:

- Level 1 - Inputs are quoted prices in active markets for identical assets or liabilities.
- Level 2 - Inputs are observable for the asset or liability, either directly or indirectly, including quoted prices in active markets for similar assets or liabilities.
- Level 3 - Inputs are unobservable and reflect the Company's own assumptions.

The Company does not have a material amount of financial assets or liabilities that are required to be measured at fair value on a recurring basis under U.S. GAAP. None of the Company's non-financial assets or non-financial liabilities are required to be measured at fair value on a recurring basis.

*Income taxes* – The Company accounts for income taxes under the asset and liability method. Under this method, deferred tax assets and liabilities are determined based on the differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Realization of deferred tax assets is dependent upon future earnings, the timing and amount of which are uncertain. A valuation allowance is recognized when the realization of our deferred tax assets is expected to be less than our carrying amounts.

A two-step approach is utilized to recognize and measure uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained upon tax authority examination, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon the ultimate settlement.

*Franchise fees* - The franchise arrangement is documented in the form of a franchise agreement. The franchise arrangement requires the Company to perform various activities to support the brand that do not directly transfer goods and services to the franchisee, but instead represent a single performance obligation, which includes the transfer of the franchise license. The services provided by the Company are highly inter-related with the franchise license and are considered a single performance obligation. Franchise fee revenue from the sale of individual franchises is recognized over the term of the individual franchise agreement on a straight-line basis. Unamortized non-refundable deposits collected in relation to the sale of franchises are recorded as deferred income.

The franchise fee may be adjusted from time to time at management's discretion. Deposits are non-refundable upon acceptance of the franchise application. In the event a franchisee does not comply with their development timeline for opening franchise stores, the franchise rights may be terminated, at which point the franchise fee revenue is recognized for non-refundable deposits.

*Royalties* – In addition to franchise fee revenue, the Company collects a royalty calculated as a percentage of net sales from our franchisees. Royalties typically range from 0.75% to 7.0% and are recognized as revenue when the related sales are made by the franchisees. Royalties collected in advance of sales are classified as deferred income until earned.

*Company-owned restaurant revenue* - Company-owned restaurant revenue is recognized at the point in time when food and beverage products are sold. Company restaurant sales are presented net of sales-related taxes collected from customers and remitted to governmental taxing authorities.

*Advertising* – The Company requires advertising fee payments from franchisees based on a percent of net sales. The Company also receives, from time to time, payments from vendors that are to be used for advertising. Advertising funds collected are required to be spent for specific advertising purposes. Advertising revenue and the associated expense are recorded gross on the Company's consolidated statement of operations. Assets and liabilities associated with the related advertising fees are reflected in the Company's consolidated balance sheet.

*Share-based compensation* – The Company has a stock option plan which provides for options to purchase shares of the Company's common stock. Options issued under the plan may have a variety of terms as determined by the Board of Directors including the option term, the exercise price and the vesting period. Options granted

to employees and directors are valued at the date of grant and recognized as an expense over the vesting period in which the options are earned. Cancellations or forfeitures are accounted for as they occur. Stock options issued to non-employees as compensation for services are accounted for based upon the estimated fair value of the stock option. The Company recognizes this expense over the period in which the services are provided. Management utilizes the Black-Scholes option-pricing model to determine the fair value of the stock options issued by the Company. See Note 14 for more details on the Company's share-based compensation.

*Earnings per share* – The Company reports basic earnings or loss per share in accordance with FASB ASC 260, “*Earnings Per Share*”. Basic earnings per share is computed using the weighted average number of common shares outstanding during the reporting period. Diluted earnings per share is computed using the weighted average number of common shares outstanding plus the effect of dilutive securities during the reporting period. Any potentially dilutive securities that have an anti-dilutive impact on the per share calculation are excluded. During periods in which the Company reports a net loss, diluted weighted average shares outstanding are equal to basic weighted average shares outstanding because the effect of the inclusion of all potentially dilutive securities would be anti-dilutive. As of December 25, 2022, and December 26, 2021, there were no potentially dilutive securities considered in the calculation of diluted loss per common share due to net losses for each period.

#### Recently Issued Accounting Standards

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments-Credit Losses (Topic 326)-Measurement of Credit Losses on Financial Instruments*, and later amended the ASU in 2019, as described below. This guidance replaces the current incurred loss impairment methodology. Under the new guidance, on initial recognition and at each reporting period, an entity is required to recognize an allowance that reflects its current estimate of credit losses expected to be incurred over the life of the financial instrument based on historical experience, current conditions and reasonable and supportable forecasts.

In November 2019, the FASB issued ASU No. 2019-10, *Financial Instruments-Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates (“ASU 2019-10”)*. The purpose of this amendment is to create a two-tier rollout of major updates, staggering the effective dates between larger public companies and all other entities. This granted certain classes of companies, including Smaller Reporting Companies (“SRCs”), additional time to implement major FASB standards, including ASU 2016-13. Larger public companies will have an effective date for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. All other entities are permitted to defer adoption of ASU 2016-13, and its related amendments, until fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Under the current SEC definitions, the Company meets the definition of an SRC and is adopting the deferral period for ASU 2016-13. The guidance requires a modified retrospective transition approach through a cumulative-effect adjustment to retained earnings as of the beginning of the period of adoption. The Company does not expect the adoption of this standard will have a material impact on its condensed consolidated financial statements.

In March 2022, the Financial Accounting Standards Board (the “FASB”) issued ASU No. 2022-02, *Financial Instruments-Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures*. The purpose of this amendment is to enhance disclosure requirements for certain loan refinancings and restructurings by creditors when a borrower is experiencing financial difficulty. It requires that an entity disclose current-period gross write-offs by year of origination for financing receivables and net investments in leases. The amendments should be applied prospectively and are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Early adoption of the amendments is permitted if an entity has adopted the amendments in ASU 2016-13 described above, including adoption in an interim period. The Company will evaluate ASC No. 2022-02 and does not expect the adoption of this standard will have a material impact on its condensed consolidated financial statements.



### NOTE 3. MERGERS AND ACQUISITIONS

#### Nestle Toll House Cafe by Chip

On May 24, 2022, the Company agreed to acquire the royalty stream related to the chain of stores known as Nestlé® Toll House® Café by Chip® from Crest Foods, Inc., consisting of all royalties generated under the Nestlé® Toll House® Café by Chip® brand, and the franchisor has agreed to cause the network to rebrand the stores as Great American Cookies, subject to the cooperation of the individual franchisees. Nestlé® Toll House® Café by Chip® is a franchised chain of stores with approximately 85 cafés across the United States. The Company paid an initial installment of the purchase price of \$1.8 million. The final purchase price will be calculated on or before January 31, 2024.

#### Acquisition of Fazoli's

On December 15, 2021, the Company completed the acquisition of Fazoli's for a total cash purchase price of \$138.1 million.

Founded in 1988 in Lexington, KY, Fazoli's owns and operates nearly 210 restaurants in 26 states, making it the largest premium quick service restaurant Italian chain priding itself on serving premium quality Italian food, fast, fresh and friendly. Menu offerings include freshly prepared pasta entrees, Submarinos® sandwiches, salads, pizza and desserts – along with its unlimited signature breadsticks.

#### Acquisition of Native Grill & Wings

On December 15, 2021, the Company completed the acquisition of Native Grill & Wings (“Native”) for a total cash purchase price of \$20.1 million.

Based in Chandler, Arizona, Native Grill & Wings is a family-friendly, polished sports grill with 22 franchised locations throughout Arizona, Illinois, and Texas. Native serves over 20 award-winning wing flavors that guests can order by the individual wing, as well as an extensive menu of pizza, burgers, sandwiches, salads and more.

#### Acquisition of Twin Peaks

On October 1, 2021, the Company completed the acquisition of Twin Peaks Buyer, LLC (“Twin Peaks”) from Twin Peaks Holdings, LLC (the “Seller”). Twin Peaks is the franchisor and operator of a chain of sports lodge themed restaurants. The purchase price totaled \$310.3 million. See Note 10 for more details of the purchase price consideration.

#### Acquisition of GFG Franchise Group

On July 22, 2021, the Company completed the acquisition of LS GFG Holdings Inc. (“GFG”) for a total purchase price of \$444.9 million.

GFG is a franchisor of five restaurant brands. GFG's brands (Great American Cookies, Marble Slab Creamery, Pretzelmaker, Hot Dog on a Stick and Round Table Pizza) are in the quick service restaurant industry. The franchise network, across all of the Company's brands, consists of approximately 1,415 retail stores in 8 countries. GFG also operates a dough manufacturing facility which supplies dough to certain of the GFG brands.

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The allocation of the consideration to the valuation of net tangible and intangible assets acquired in the transactions described above is presented in the following table (in millions). The allocations relating to Fazoli's, Native Grill & Wings, Twin Peaks and GFG are as follows:

	Fazoli's	Native Grill & Wings	Twin Peaks	GFG
Cash	\$ 9.6	\$ 0.2	\$ 14.9	\$ 8.7
Accounts receivable	3.3	0.3	1.6	7.3
Prepays and other current assets	1.8	0.1	2.8	3.8
Notes receivable	—	—	1.5	—
Other intangible assets, net	83.3	14.7	165.4	348.3
Goodwill	53.4	5.3	105.1	120.2
Right-of-use assets	43.1	0.2	43.7	6.5
Property, plant and equipment	22.0	0.1	46.8	8.4
Deferred tax asset, net	—	—	0.2	—
Other assets	0.3	—	0.5	1.2
Accounts payable	(5.8)	—	(5.2)	(2.4)
Accrued expenses	(7.4)	(0.3)	(6.4)	(10.1)
Accrued advertising	—	(0.1)	(3.5)	(3.2)
Deferred income	(1.5)	(0.2)	(3.6)	(3.2)
Operating lease liability	(48.8)	(0.2)	(44.7)	(8.7)
Deferred tax liability, net	(14.7)	—	—	(31.4)
Other liabilities	(0.5)	—	(8.8)	(0.5)
Total net identifiable assets	<u>\$ 138.1</u>	<u>\$ 20.1</u>	<u>\$ 310.3</u>	<u>\$ 444.9</u>

### Pro Forma Information

The table below presents the combined pro forma revenue and net loss of the Company and Fazoli's, Twin Peaks and GFG (the "Material Acquired Entities") for the year December 26, 2021, assuming the acquisition of the Material Acquired Entities had occurred on December 28, 2020 (the beginning of the Company's 2021 fiscal year), pursuant to ASC 805-10-50 (in millions). Actual consolidated results are presented in the pro forma information for any period in which a Material Acquired Entity was actually a consolidated subsidiary of the Company. This pro forma information does not purport to represent what the actual results of operations of the Company would have been had the acquisition of the Material Acquired Entities occurred on this date nor does it purport to predict the results of operations for future periods.

	Year Ended December 26, 2021
Revenue	\$ 347.9
Net loss	\$ 28.8

#### NOTE 4. REFRANCHISING

As part of its ongoing franchising efforts, the Company may, from time to time, make opportunistic acquisitions of operating restaurants in order to convert them to franchise locations or acquire existing franchise locations to resell to another franchisee across all of its brands.

The following assets used in the operation of certain restaurants meet all of the criteria requiring that they be classified as held- for-sale, and have been classified accordingly on the accompanying audited consolidated balance sheets as of December 25, 2022 and December 26, 2021 (in millions):

	December 25, 2022	December 26, 2021
Property, plant and equipment	\$ 0.7	\$ 0.8
Operating lease right-of-use assets	4.1	4.7
Total	<u>\$ 4.8</u>	<u>\$ 5.5</u>

Operating lease liabilities related to the assets classified as held-for-sale in the amount of \$4.1 million and \$4.8 million, have been classified as current liabilities on the accompanying audited consolidated balance sheets as of December 25, 2022 and December 26, 2021, respectively.

The following table highlights the operating results of the Company's refranchising program during 2022 and 2021 (in millions):

	Twelve Months Ended December 25, 2022	Twelve Months Ended December 26, 2021
Restaurant costs and expenses, net of revenue	\$ (4.2)	\$ (3.0)
Gains on store sales or closures	—	2.7
Refranchising loss	<u>\$ (4.2)</u>	<u>\$ (0.3)</u>

#### NOTE 5. PROPERTY AND EQUIPMENT, NET

Property and equipment consists primarily of real estate (including land, buildings and tenant improvements) and equipment.

As of December 25, 2022 and December 26, 2021, the Company's gross carrying value of property and equipment and accumulated depreciation balances were (in millions):

	Total	
	2022	2021
Real estate	\$ 67.7	\$ 60.5
Equipment	26.5	22.9
Total property and equipment, gross	94.2	83.4
Less: accumulated depreciation	(15.0)	(2.9)
Total property and equipment, net	<u>\$ 79.2</u>	<u>\$ 80.5</u>

Depreciation expense for the fiscal years ended December 25, 2022 and December 26, 2021 was \$12.1 million and \$2.6 million, respectively.

On an annual basis the Company assesses its property and equipment for impairment. For the fiscal year ended December 25, 2022 the company recognized impairment expense of \$0.5 million which is included in General and administrative expense on

the Consolidated Statements of Operations. The Company recognized no impairment expense for the fiscal year ended December 26, 2021.

Upon retirement or other disposal of property and equipment, the cost and related amounts of accumulated depreciation are eliminated from the asset and accumulated depreciation accounts, respectively. The difference, if any, between the net asset value and the proceeds, is recorded in earnings.

#### NOTE 6. GOODWILL AND OTHER INTANGIBLE ASSETS, NET

The following table reflects the changes in carrying amounts of goodwill for the fiscal years ended December 25, 2022 and December 26, 2021 (in millions):

	December 25, 2022	December 26, 2021
Gross goodwill:		
Balance, beginning of year	\$ 296.8	\$ 12.4
Acquired	1.2	285.9
Adjustment to preliminary purchase price allocation	(3.0)	(1.5)
Balance, end of year	<u>295.0</u>	<u>296.8</u>
Accumulated impairment:		
Balance, beginning of year	(1.7)	(1.4)
Impairment	—	(0.3)
Balance, end of year	<u>(1.7)</u>	<u>(1.7)</u>
Net carrying value	<u>\$ 293.3</u>	<u>\$ 295.1</u>

When considering the available facts, assessments and judgments, the Company recorded goodwill impairment charges of \$0.0 million and \$0.3 million for the fiscal years ended December 25, 2022 and December 26, 2021, respectively.

Because of the risks and uncertainties related to the COVID-19 pandemic events, the negative effects on the operations of the Company's franchisees could prove to be worse than currently estimated and result in the need to record additional goodwill impairment charges in future periods.

Other intangible assets consist primarily of trademarks, franchise agreements and customer relationships that were classified as identifiable intangible assets at the time of the brands' acquisition by the Company, or at the time they were acquired by FCCG prior to FCCG's contribution of the brands to the Company in connection with the initial public offering. Franchise agreements and customer relationships are amortized over the useful life of the asset. Trademarks are considered to have an indefinite useful life and are not amortized.

### Changes in Carrying Value of Other Intangible Assets

The changes in carrying value of other intangible assets for the fiscal years ended December 25, 2022 and December 26, 2021 are as follows (in millions):

	Amortizing		Non-Amortizing		Total	
	2022	2021	2022	2021	2022	2021
Balance, beginning of year	\$ 175.6	\$ 12.6	\$ 477.2	\$ 35.1	\$ 652.8	\$ 47.7
Impairment	—	—	(14.0)	(0.8)	(14.0)	(0.8)
Amortization expense	(14.9)	(6.0)	—	—	(14.9)	(6.0)
Acquisitions	1.7	169.0	—	442.9	1.7	611.9
Adjustment to preliminary purchase price allocation	(0.3)	—	—	—	(0.3)	—
Balance, end of year	<u>\$ 162.1</u>	<u>\$ 175.6</u>	<u>\$ 463.2</u>	<u>\$ 477.2</u>	<u>\$ 625.3</u>	<u>\$ 652.8</u>

### Gross Carrying Value and Accumulated Amortization of Other Intangible Assets

The carrying value of amortizing other intangible assets is as follows as of December 25, 2022 and December 26, 2021 (in millions):

	December 25, 2022			December 26, 2021		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Amortizing intangible assets						
Franchise agreements	\$ 109.2	\$ (14.8)	\$ 94.4	\$ 109.4	\$ (5.7)	\$ 103.7
Customer relationships	73.9	(8.1)	65.8	73.9	(2.4)	71.5
Other	2.1	(0.2)	1.9	0.4	—	0.4
Balance, end of year	<u>\$ 185.2</u>	<u>\$ (23.1)</u>	<u>\$ 162.1</u>	<u>\$ 183.7</u>	<u>\$ (8.1)</u>	<u>\$ 175.6</u>

When considering the available facts, assessments and judgments, including increased interest rates, the Company recorded impairment of trademarks in the amount of \$14.0 million and \$0.8 million for the fiscal years ended December 25, 2022 and December 26, 2021, respectively.

The expected future amortization of the Company's amortizable intangible assets is as follows (in millions):

Fiscal year:	
2023	\$ 15.0
2024	14.7
2025	14.5
2026	14.5
2027	14.4
Thereafter	89.0
Total	<u>\$ 162.1</u>

## NOTE 7. DEFERRED INCOME

Deferred income is as follows (in millions):

	December 25, 2022	December 26, 2021
Deferred franchise fees	\$ 23.5	\$ 19.8
Deferred royalties	—	0.2
Deferred vendor incentives	0.2	0.3
Total	<u>\$ 23.7</u>	<u>\$ 20.3</u>

## NOTE 8. INCOME TAXES

Components of the income tax provision (benefit), net are as follows (in millions):

	Fiscal Year Ended December 25, 2022	Fiscal Year Ended December 26, 2021
Current		
Federal	\$ —	\$ —
State	0.4	1.0
Foreign	1.0	0.8
	<u>1.4</u>	<u>1.8</u>
Deferred		
Federal	8.2	(5.1)
State	9.2	(0.2)
	<u>17.4</u>	<u>(5.3)</u>
Total income tax provision (benefit)	<u>\$ 18.8</u>	<u>\$ (3.5)</u>

Income tax provision (benefit) related to continuing operations differ from the amounts computed by applying the statutory income tax rate to pretax income as follows (in millions):

	Fiscal Year Ended December 25, 2022	Fiscal Year Ended December 26, 2021
Tax benefit at statutory rate	\$ (22.5)	\$ (7.4)
State and local income taxes	(0.7)	0.6
State and federal valuation allowances	36.4	1.5
162(m) limitation	1.3	0.2
Foreign taxes	0.8	0.6
Tax credits	0.5	0.5
Nondeductible interest expense	2.2	0.5
Other	0.8	—
Total income tax provision (benefit)	<u>\$ 18.8</u>	<u>\$ (3.5)</u>

As of December 25, 2022, the Company's subsidiaries' annual tax filings for the prior three years are open for audit by Federal and for the prior four years for state tax agencies. The Company is the beneficiary of indemnification agreements from the prior owners of the subsidiaries for tax liabilities related to periods prior to its ownership of the subsidiaries. Management evaluated the Company's overall tax positions and has determined that no provision for uncertain income tax positions is necessary as of December 25, 2022.

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Deferred taxes reflect the net effect of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the amounts used for calculating taxes payable. Significant components of the Company's deferred tax assets and liabilities are as follows (in millions):

	December 25, 2022	December 26, 2021
Deferred tax assets (liabilities), net		
Net federal and state operating loss carryforwards	\$ 47.9	\$ 43.8
Deferred revenue	4.9	4.1
Intangibles	(92.6)	(86.2)
Deferred state income tax	1.8	0.6
Reserves and accruals	6.6	7.3
Interest expense carryforward	43.9	22.4
Tax credits	0.1	0.1
Share-based compensation	2.8	0.9
Fixed assets	(4.4)	(2.9)
Operating lease right-of-use assets	(26.0)	(23.9)
Operating lease liabilities	28.5	26.1
Valuation allowance	(40.6)	(5.2)
Other	(0.1)	—
Total	<u>\$ (27.2)</u>	<u>\$ (12.9)</u>

Deferred tax assets are reduced by a valuation allowance if, based on the weight of available evidence, it is more likely than not (a likelihood of more than fifty percent) that some portion or all of the deferred tax assets will not be realized. As of December 25, 2022 and December 26, 2021, the Company recorded a valuation allowance against its deferred tax assets in the amount of \$40.6 million and \$5.2 million, respectively, as it determined that these amounts would not likely be realized. Realization of our deferred tax assets is dependent upon future earnings, the timing and amount of which, if any, are uncertain. The valuation allowance increased by \$35.4 million and \$4.7 million during the fiscal years ended December 25, 2022 and December 26, 2021, respectively.

The Company had federal net operating loss carryforwards ("NOLs") of approximately \$176.9 million and \$159.3 million as of December 25, 2022 and December 26, 2021, respectively. The Company's State NOLs were approximately \$133.5 million and \$134.1 million as of December 25, 2022 and December 26, 2021, respectively. The NOLs begin to expire in 2037. Utilization of some of the federal and state net operating loss and credit carryforwards are subject to annual limitations due to the "change in ownership" provisions of the Internal Revenue Code of 1986 and similar state provisions. The annual limitations may result in the expiration of net operating losses and credits before utilization. The Company also had certain federal tax credits totaling approximately \$0.1 million and \$0.1 million as of December 25, 2022 and December 26, 2021 respectively. The credits will begin to expire in 2028.

Under Section 382 and 383 of the Internal Revenue Code, if an ownership change occurs with respect to a "loss corporation", as defined, there are annual limitations on the amount of the NOLs and certain other deductions and credits which are available to the Company. The portion of the NOLs and other tax benefits accumulated by Johnny Rockets, GFG and Fazoli's prior to the Acquisition are subject to this annual limitation.

## NOTE 9. LEASES

As of December 25, 2022, the Company has recorded 136 operating leases for corporate offices and for certain owned restaurant properties, some of which are in the process of being refranchised. The leases have remaining terms ranging from 1 month to 23.9 years. The Company recognized lease expense of \$18.8 million and \$6.3 million for the fiscal years ended December 25, 2022 and December 26, 2021, respectively. The weighted average remaining lease term of the operating leases as of December 25, 2022 was 15.9 years.

Operating lease right-of-use assets and operating lease liabilities are as follows (in millions):

	December 25, 2022	December 26, 2021
Operating lease right-of-use assets	\$ 101.1	\$ 98.6
Right of use assets classified as held-for-sale	4.1	4.7
Total right-of-use assets	<u>\$ 105.2</u>	<u>\$ 103.3</u>
Operating lease liabilities	\$ 110.4	\$ 107.3
Lease liabilities related to assets held-for-sale	4.1	4.8
Total operating lease liabilities	<u>\$ 114.5</u>	<u>\$ 112.1</u>

The operating lease right-of-use assets and operating lease liabilities include obligations relating to the optional term extensions available on certain restaurant leases based on management's intention to exercise the options. The weighted average discount rate used to calculate the carrying value of the right-of-use assets and lease liabilities was 9.4% which is based on the Company's incremental borrowing rate at the time the lease is acquired.

The contractual future maturities of the Company's operating lease liabilities as of December 25, 2022, including anticipated lease extensions, are as follows (in millions):

Fiscal year:	
2023	\$ 17.1
2024	16.1
2025	15.5
2026	14.1
2027	13.9
Thereafter	162.8
Total lease payments	<u>239.5</u>
Less imputed interest	125.0
Total	<u>\$ 114.5</u>

Supplemental cash flow information for the fiscal years ended December 25, 2022 and December 26, 2021 related to leases is as follows (in millions):

	2022	2021
Cash paid for amounts included in the measurement of operating lease liabilities:		
Operating cash flows from operating leases	<u>\$ 16.4</u>	<u>\$ 5.7</u>
Operating lease right-of-use assets obtained in exchange for new lease obligations:		
Operating lease liabilities	<u>\$ 7.7</u>	<u>\$ 105.6</u>



**NOTE 10. DEBT**

Long-term debt consisted of the following (in millions):

	December 25, 2022					December 26, 2021
	Final Maturity	Anticipated Call Date	Rate	Face Value	Book Value	Book Value
<b>Senior Debt</b>						
FB Royalty Securitization	4/25/2051	7/25/2023	4.75%	\$ 139.8	\$ 135.3	\$ 95.4
GFG Royalty Securitization	7/25/2051	7/25/2023	6.00%	234.0	228.9	205.6
Twin Peaks Securitization	7/25/2051	7/25/2023	7.00%	150.0	147.5	146.8
Fazoli's/Native Securitization	7/25/2051	7/25/2023	6.00%	128.8	124.8	122.8
<b>Senior Subordinated Debt</b>						
FB Royalty Securitization	4/25/2051	7/25/2023	8.00%	46.6	45.2	31.8
GFG Royalty Securitization	7/25/2051	7/25/2023	7.00%	84.0	82.0	81.5
Twin Peaks Securitization	7/25/2051	7/25/2023	9.00%	50.0	47.3	46.6
Fazoli's/Native Securitization	7/25/2051	7/25/2023	7.00%	25.0	23.5	22.7
<b>Subordinated Debt</b>						
FB Royalty Securitization	4/25/2051	7/25/2023	9.00%	34.6	32.1	14.1
GFG Royalty Securitization	7/25/2051	7/25/2023	9.50%	57.0	53.5	52.6
Twin Peaks Securitization	7/25/2051	7/25/2023	10.00%	50.0	45.5	44.2
Fazoli's/Native Securitization	7/25/2051	7/25/2023	9.00%	40.0	37.0	35.2
Total Securitized Debt				1,039.8	1,002.6	899.3
Elevation Note	7/19/2026	N/A	6.00%	4.3	3.9	5.6
Equipment Notes	5/5/2027 to 3/7/2029	N/A	7.99% to 8.49%	1.3	1.3	—
Twin Peaks Construction Loan	8/5/2023 with One Six-Month Extension	N/A	8.00%	0.4	0.4	—
Total debt				\$ 1,045.8	1,008.2	904.9
Current portion of long-term debt					(49.6)	(0.6)
Long-term debt					\$ 958.6	\$ 904.3

**Terms of Outstanding Debt**
**FB Royalty Securitization**

On April 26, 2021, FAT Brands Royalty I, LLC ("FB Royalty"), a special purpose, wholly-owned subsidiary of FAT Brands, completed the Offering of three tranches of fixed rate senior secured notes. Net proceeds totaled \$140.8 million, which consisted of the combined face amount of \$144.5 million, net of debt offering costs of \$3.0 million and original issue discount of \$0.7 million. A portion of the proceeds was used to repay and retire notes issued in 2020 under the Base Indenture (the "2020 Securitization Notes"). The payoff amount totaled \$83.7 million, which included principal of \$80.0 million, accrued interest of \$2.2 million and prepayment premiums of \$1.5 million. The Company recognized a loss on extinguishment of debt of \$7.8

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million in connection with the refinance as well as interest expense on the 2020 Securitization Notes in the amount of \$2.6 million for the year ended December 26, 2021.

On July 6, 2022, FB Royalty issued an additional \$76.5 million aggregate principal amount of three tranches of fixed rate senior secured notes (in millions):

Closing Date	Class	Seniority	Principal Balance	Coupon	Final Legal Maturity Date
7/6/2022	A-2	Senior	\$42.7	4.75%	7/25/2051
7/6/2022	B-2	Senior Subordinated	\$14.2	8.00%	7/25/2051
7/6/2022	M-2	Subordinated	\$19.6	9.00%	7/25/2051

Of the \$76.5 million aggregate principal amount, \$30.0 million was sold privately during the third quarter of 2022, resulting in net proceeds of \$27.1 million (net of debt offering costs of \$0.6 million and original issue discount of \$2.3 million). The remaining \$46.5 million in aggregate principal was sold privately on October 21, 2022, when the Company entered into an Exchange Agreement with the Twin Peaks sellers and redeemed 1,821,831 shares of the Company's 8.25% Series B Cumulative Preferred Stock at a price of \$23.69 per share, plus accrued and unpaid dividends to the date of redemption, in exchange for \$46.5 million aggregate principal amount of secured debt (\$43.2 million net of debt offering costs and original issue discount).

Prior to the redemption, the Twin Peaks sellers held 2,847,393 shares of Series B Cumulative Preferred Stock, which shares were issued to it on October 1, 2021 as partial consideration for the Company's acquisition of Twin Peaks.

Pursuant to the Exchange Agreement, (i) at any time prior to July 25, 2023, the Company may call from the Twin Peaks sellers all or a portion of the Class M-2 Notes at the outstanding principal balance multiplied by 0.86, plus any accrued plus unpaid interest thereon; (ii) at any time on or after the date of the Exchange Agreement, the Company may call from the Twin Peaks sellers, and at any time on or after July 25, 2023, the Twin Peaks sellers may put to the Company, all or a portion of the Class A-2 Notes and/or Class B-2 Notes at the outstanding principal balance multiplied by 0.94, plus any accrued plus unpaid interest thereon; and (iii) at any time on or after July 25, 2023, the Company may call from the Twin Peaks sellers, and the Twin Peaks sellers may put to the Company, all or a portion of the Class M-2 Notes at the outstanding principal balance multiplied by 0.91, plus any accrued plus unpaid interest thereon. If the Company does not remit the applicable call price or put price upon a duly exercised call or put, as applicable, the amount owed by the Company will accrue interest at 10% per annum, which interest is due and payable in cash monthly by the Company.

As of December 25, 2022, the carrying value of the FB Royalty Securitization Notes was \$212.7 million (net of debt offering costs of \$2.5 million and original issue discount of \$5.8 million). The Company recognized interest expense on the FB Royalty Securitization Notes of \$11.3 million for the year ended December 25, 2022, respectively, which includes \$0.6 million for amortization of debt offering costs, and \$0.6 million for amortization of the original issue discount. The average annualized effective interest rate of the FB Royalty Securitization Notes, including the amortization of debt offering costs and original issue discount, was 6.3% for the time the debt was outstanding during the year ended December 25, 2022.

The FB Royalty Securitization Notes are generally secured by a security interest in substantially all the assets of FB Royalty and its subsidiaries.

#### GFG Royalty Securitization

In connection with the acquisition of GFG, on July 22, 2021, FAT Brands GFG Royalty I, LLC ("GFG Royalty"), a special purpose, wholly-owned subsidiary of the Company, completed the issuance and sale in a private offering (the "GFG Offering") of three tranches of fixed rate senior secured notes. Net proceeds totaled \$338.9 million, which consisted of the combined face amount of \$350.0 million, net of debt offering costs of \$6.0 million and original issue discount of \$5.1 million. Substantially all

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of the proceeds were used to acquire GFG. Immediately following the closing of the acquisition of GFG, the Company contributed the franchising subsidiaries of GFG to GFG Royalty, pursuant to a Contribution Agreement.

On December 15, 2022, GFG Royalty issued an additional \$113.5 million aggregate principal amount of three tranches of fixed rate senior secured notes as follows (in millions):

Closing Date	Class	Seniority	Principal Balance	Coupon	Final Legal Maturity Date
12/13/2022	A-2	Senior	\$67.8	6.00%	7/25/2051
12/13/2022	B-2	Senior Subordinated	\$20.2	7.00%	7/25/2051
12/13/2022	M-2	Subordinated	\$25.5	9.50%	7/25/2051

Of the \$113.5 million aggregate principal amount, \$25.0 million was sold privately during the fourth quarter, resulting in net proceeds of \$22.3 million (net of debt offering costs of \$0.4 million and original issue discount of \$2.3 million). The remaining \$88.5 million in aggregate principal was issued to FAT Brands Inc. and has been eliminated in consolidation. In January 2023, an additional \$40.0 million aggregate principal amount was sold privately, resulting in net proceeds of \$34.8 million.

As of December 25, 2022, the carrying value of the GFG Securitization Notes was \$364.4 million (net of debt offering costs of \$4.7 million and original issue discount of \$5.9 million). The Company recognized interest expense on the GFG Securitization Notes of \$26.1 million for fiscal year ended December 25, 2022, which includes \$1.2 million for amortization of debt offering costs and \$1.1 million for amortization of the original issue discount. The average annualized effective interest rate of the GFG Securitization Notes, including the amortization of debt offering costs and original issue discount, was 7.5% during the fiscal year ended December 25, 2022.

The GFG Securitization Notes are generally secured by a security interest in substantially all the assets of GFG Royalty and its subsidiaries.

#### Twin Peaks Securitization

In connection with the acquisition of Twin Peaks, on October 1, 2021, the Company completed the issuance and sale in a private offering through its special purpose, wholly-owned subsidiary, FAT Brands Twin Peaks I, LLC, of an aggregate principal amount of \$250.0 million. The net proceeds from the sale of the Notes were used by the Company to finance the cash portion of the purchase price for the acquisition of Twin Peaks Buyer, LLC and its direct and indirect subsidiaries. Net proceeds totaled \$236.9 million, which consisted of the combined face amount of \$250.0 million, net of debt offering costs of \$5.6 million and original issue discount of \$7.5 million. Substantially all of the proceeds were used to acquire Twin Peaks. Immediately following the closing of the acquisition of Twin Peaks, the Company contributed the franchising subsidiaries of Twin Peaks to FAT Brands Twin Peaks I, LLC, pursuant to a Contribution Agreement.

As of December 25, 2022, the carrying value of the Twin Peaks Securitization Notes was \$240.4 million (net of debt offering costs of \$4.2 million and original issue discount of \$5.5 million). The Company recognized interest expense on the Twin Peaks Securitization Notes of \$22.8 million for year ended December 25, 2022, which includes \$1.6 million for amortization of debt offering costs and \$1.1 million for amortization of the original issue discount. The effective interest rate of the Twin Peaks Securitization Notes, including the amortization of debt offering costs and original issue discount, was 9.1% during the year ended December 25, 2022.

The Twin Peaks Securitization Notes are generally secured by a security interest in substantially all the assets of FAT Brands Twin Peaks I, LLC, and its subsidiaries.

#### Fazoli's / Native Securitization

In connection with the acquisition of Fazoli's and Native Grill & Wings, on December 15, 2021, the Company completed the issuance and sale in a private offering through its special purpose, wholly-owned subsidiary, FAT Brands Fazoli's Native I, LLC, of an aggregate principal amount of \$193.8 million. Net proceeds totaled \$180.6 million, which consisted of the combined face amount of \$193.8 million, net of debt offering costs of \$3.8 million and original issue discount of \$9.4 million. The proceeds were used to close the acquisitions of Fazoli's and Native, and to provide working capital for the Company. Immediately following the closing of the acquisition of Fazoli's and Native, the Company contributed the franchising subsidiaries of these entities to FAT Brands Fazoli's Native I, LLC, pursuant to a Contribution Agreement. The Fazoli's-Native

Securitization Notes are generally secured by a security interest in substantially all the assets of FAT Brands Fazoli's Native I, LLC and its subsidiaries.

As of December 25, 2022, the carrying value of the Fazoli's-Native Securitization Notes was \$185.2 million (net of debt offering costs of \$2.5 million and original issue discount of \$6.0 million). The Company recognized interest expense on the Fazoli's-Native Securitization Notes of \$17.6 million for the fiscal year ended December 25, 2022, which includes \$1.2 million for amortization of debt offering costs and \$3.4 million for amortization of the original issue discount. The effective interest rate of the Fazoli's-Native Securitization Notes, including the amortization of debt offering costs and original issue discount, was 9.1% during the year ended December 25, 2022.

The Fazoli's-Native Securitization Notes are generally secured by a security interest in substantially all the assets of FAT Brands Fazoli's Native I, LLC and its subsidiaries.

#### Terms and Debt Covenant Compliance

The 2021 FAT Royalty Securitization Notes, the 2021 GFG Royalty Securitization Notes, the 2021 Twin Peaks Securitization Notes, and the 2021 Fazoli's/Native Securitization Notes (collectively, the "Securitization Notes"), require that the principal (if any) and interest obligations be segregated to ensure appropriate funds are reserved to pay the quarterly principal and interest amounts due. The amount of monthly cash flow that exceeds the required monthly interest reserve is generally remitted to the Company. Interest payments are required to be made on a quarterly basis and, unless repaid on or before July 25, 2023, additional interest equal to 1.0% per annum will accrue on the then outstanding principal balance of each tranche. Principal payments, with an amount equal to 0.5% of the initial principal amount, will be made on the scheduled quarterly payment date on and following the anticipated call date, starting in October 2023.

The material terms of the Securitization Notes contain covenants which are standard and customary for these types of agreements, including the following financial covenants: (i) debt service coverage ratio, (ii) leverage ratio, and (iii) senior leverage ratio. As of December 25, 2022, the Company was in compliance with these covenants.

#### Elevation Note

On June 19, 2019, the Company completed the acquisition of Elevation Burger. A portion of the purchase price included the issuance to the Seller of a convertible subordinated promissory note (the "Elevation Note") with a principal amount of \$7.5 million, bearing interest at 6.0% per year and maturing in July 31, 2026. The Elevation Note is convertible under certain circumstances into shares of the Company's common stock at \$12.00 per share. In connection with the valuation of the acquisition of Elevation Burger, the Elevation Note was recorded on the financial statements of the Company at \$6.1 million, net of a loan discount of \$1.3 million and debt offering costs of \$0.1 million.

As of December 25, 2022, the carrying value of the Elevation Note was \$3.9 million which is net of the loan discount of \$0.4 million and debt offering costs of \$35,329. In June 2022, pursuant to the claw-back provision of the purchase agreement, the balance of the Elevation Note was reduced by \$1.0 million to \$6.5 million. The Company recognized interest expense relating to the Elevation Note during the fiscal year ended December 25, 2022 in the amount of \$0.6 million, which included amortization of the loan discount of \$0.2 million and amortization of \$10,191 in debt offering costs. The Company recognized interest expense relating to the Elevation Note during the year ended December 26, 2021 in the amount of \$0.7 million, which included amortization of the loan discount of \$0.3 million and amortization of \$10,000 in debt offering costs. The effective interest rate for the Elevation Note during the year ended December 25, 2022 was 20.2%.

The Elevation Note is a general unsecured obligation of Company and is subordinated in right of payment to all indebtedness of the Company arising under any agreement or instrument to which Company or any of its Affiliates is a party that evidences indebtedness for borrowed money that is senior in right of payment.

#### Equipment Financing (Twin Peaks)

During fiscal year 2022, an indirect subsidiary of the Company entered into certain equipment financing arrangements to borrow up to \$1.0 million, the proceeds of which will be used to purchase certain equipment for a new Twin Peaks restaurant and to retrofit existing restaurants with equipment (the "Equipment Financing"). The Equipment Financing has maturity dates ranging from May 5, 2027 and March 7, 2029, and bear interest at fixed rates between 7.99% and 8.49% per annum. The Equipment Financing is secured by certain equipment of the Twin Peaks restaurant.

*Construction Loan Agreement (Twin Peaks)*

On July 12, 2022, an indirect subsidiary of the Company entered into a construction loan agreement, the proceeds of which were used for a new corporate Twin Peaks in Northlake, TX. The loan was paid in full in December 2022.

On December 5, 2022, an indirect subsidiary of the Company entered into a construction loan agreement to borrow up to \$4.5 million, the proceeds of which will be used for a new corporate Twin Peaks restaurant (the "Construction Loan"). The Construction Loan has an initial maturity of August 5, 2023, with an optional six-month extension, bearing interest at the greater of the 3-month Secured Overnight Financing Rate (SOFR) plus 360 basis points, or 8% per year, and is secured by land and building.

*Paycheck Protection Program Loans*

During 2020, the Company received loan proceeds in the amount of approximately \$1.5 million under the Paycheck Protection Program Loans (the "PPP Loans") and Economic Injury Disaster Loan Program (the "EIDL Loans"). The Paycheck Protection Program, established as part of the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), provides for loans to qualifying businesses for amounts up to 2.5 times of the average monthly payroll expenses of the qualifying business. The loans and accrued interest are forgivable after eight weeks as long as the borrower uses the loan proceeds for eligible purposes, including payroll, benefits, rent and utilities, and maintains its payroll levels. The amount of loan forgiveness will be reduced if the borrower terminates employees or reduces salaries during the eight-week period.

At inception, the PPP Loans and EIDL Loans related to FAT Brands Inc. and five restaurant locations that were part of the Company's refranchising program. During 2021, the Company received confirmation that the entire balance remaining on the PPP Loans, plus accrued interest, had been forgiven under the terms of the program. The Company recognized interest expense of \$4,000 and a gain on extinguishment of debt in the amount of \$1.2 million relating to the PPP Loans and EIDL Loans during the fiscal year ended December 26, 2021.

*Scheduled Principal Maturities*

Scheduled principal maturities of long-term debt and redemptions of redeemable preferred stock (Note 12) for the next five fiscal years are as follows (in millions):

Fiscal Year	Long-Term Debt	Redeemable Preferred Stock (Note 12)
2023	\$ 49.6	\$ 91.8
2024	\$ 21.2	\$ —
2025	\$ 21.4	\$ —
2026	\$ 21.0	\$ —
2027	\$ 20.2	\$ —

**NOTE 11. PREFERRED STOCK***Series B Cumulative Preferred Stock*

On July 13, 2020, the Company entered into an underwriting agreement (the "Underwriting Agreement") to issue and sell, in a public offering (the "Offering"), 360,000 shares of 8.25% Series B Cumulative Preferred Stock ("Series B Preferred Stock") and 1,800,000 warrants, plus 99,000 additional warrants pursuant to the underwriter's overallotment option (the "2020 Series B Offering Warrants"), to purchase common stock at \$5.00 per share.

In connection with the Offering, on July 15, 2020 the Company filed an Amended and Restated Certificate of Designation of Rights and Preferences of Series B Cumulative Preferred Stock with the Secretary of State of Delaware, designating the terms of the Series B Preferred Stock (the "Certificate of Designation").

The Certificate of Designation amends and restates the terms of the Series B Cumulative Preferred Stock issued in October 2019 (the "Original Series B Preferred"). At the time of the Offering, there were 57,140 shares of the Original Series B

Preferred outstanding, together with warrants to purchase 34,284 shares of the Company's common stock at an exercise price of \$8.50 per share (the "Series B Warrants").

Holders of Series B Cumulative Preferred Stock do not have voting rights and are entitled to receive, when declared by the Board, cumulative preferential cash dividends at a rate per annum equal to the 8.25% multiplied by \$25.00 per share stated liquidation preference of the Series B Preferred Stock. The dividends shall accrue without interest and accumulate, whether or not earned or declared, on each issued and outstanding share of the Series B Preferred Stock from (and including) the original date of issuance of such share and shall be payable monthly in arrears on a date selected by the Company each calendar month that is no later than twenty days following the end of each calendar month.

If the Company fails to pay dividends on the Series B Preferred Stock in full for any twelve accumulated, accrued and unpaid dividend periods, the dividend rate shall increase to 10.0% until the Company has paid all accumulated accrued and unpaid dividends on the Series B Preferred Stock in full and has paid accrued dividends during the two most recently completed dividend periods in full, at which time the 8.25% dividend rate shall be reinstated.

The Company may redeem the Series B Preferred Stock, in whole or in part, at the option of the Company, for cash, at the following redemption price per share, plus any unpaid dividends:

- i. After July 16, 2022 and on or prior to July 16, 2023: \$26.50 per share.
- ii. After July 16, 2023 and on or prior to July 16, 2024: \$26.00 per share.
- iii. After July 16, 2024 and on or prior to July 16, 2025: \$25.50 per share.
- iv. After July 16, 2025: \$25.00 per share.

As a result of the amended and restated terms of the Series B Cumulative Preferred Stock, the Company classified the Series B Preferred Stock as equity as of July 15, 2020.

In addition to the shares issued in the Offering, The Company concurrently engaged in the following transactions:

- The holders of the outstanding 57,140 shares of Original Series B Preferred became subject to the new terms of the Certificate of Designation. At the time of the amendment and restatement of the Certificate of Designation, the adjusted basis of the Original Series B Preferred on the Company's books was \$1.1 million, net of unamortized debt discounts and debt offering costs. As a result of the amendment and restatement of the Certificate of Designation, the recorded value of the new Series B Stock was \$1.1 million with \$0.3 million allocated to the 2020 Series B Offering Warrants, resulting in an aggregate loss on the exchange of \$0.3 million. The original holders were also issued 3,537 shares of new Series B Preferred Shares in payment of \$0.1 million accrued and outstanding dividends relating to the Original Series B Preferred at a price of \$25.00 per share.
- The Company entered into an agreement to exchange 15,000 shares of Series A Fixed Rate Cumulative Preferred Stock owned by FCCG for 60,000 shares of Series B Preferred Stock valued at \$1.5 million, pursuant to a Settlement, Redemption and Release Agreement. At the time of the exchange, the adjusted basis of the Series A Preferred on the Company's books was \$1.5 million, net of unamortized debt discounts and debt offering costs, and the Company recognized a loss on the exchange in the amount of \$11,000. The Company also agreed to issue 14,449 shares of Series B Preferred Stock valued at \$0.4 million as consideration for accrued dividends due to FCCG.
- The Company entered into an agreement to exchange all of the outstanding shares of Series A-1 Fixed Rate Cumulative Preferred Stock for 168,001 shares of Series B Preferred Stock valued at \$4.2 million, pursuant to a Settlement, Redemption and Release Agreement with the holders of such shares. At the time of the exchange, the adjusted basis of the Series A-1 Preferred Stock on the Company's books was \$4.4 million, net of unamortized debt discounts and debt offering costs, and the Company recognized a gain on the exchange in the amount of \$0.2 million.

On June 22, 2021, the Company closed a second underwritten public offering of 460,000 shares of 8.25% Series B Cumulative Preferred Stock at a price of \$20.00 per share. The net proceeds to the Company totaled \$8.3 million (net of \$0.9 million in underwriting discounts and other offering expenses).

On August 25, 2021, the Company redeemed the final 80,000 shares of outstanding Series A Preferred Stock held by Trojan Investments, LLC, with a redemption value of \$8.0 million, plus accrued dividends thereon in the amount of \$1.6 million, in exchange for 478,199 shares of Series B Preferred Stock valued at \$10.8 million. The Company recognized a loss on extinguishment of debt in the amount of \$1.2 million resulting from the redemption of the Series A Preferred Stock. The loss on extinguishment of debt was recognized during the fourth quarter of 2021 and was deemed by the Company to be immaterial to the third quarter 2021 financial statements. Following this transaction, the Company no longer has outstanding shares of its

Series A Preferred Stock and has cancelled all shares. The Company had accounted for the Series A Preferred Stock as debt and recognized interest expense on the Series A Preferred Stock of \$0.7 million for the fiscal year ended December 26, 2021.

On November 1, 2021, the Company closed an additional underwritten public offering of 1,000,000 shares of 8.25% Series B Cumulative Preferred Stock at a price of \$18.00 per share. The net proceeds to the Company totaled \$16.8 million (net of \$1.2 million in underwriting discounts and other offering expenses).

As of December 25, 2022, the Series B Preferred Stock consisted of 3,252,154 shares outstanding with a balance of \$45.5 million. The Company declared preferred dividends to the holders of the Series B Preferred Stock totaling \$6.6 million during the fiscal year ended December 25, 2022. As of December 26, 2021, the Series B Preferred Stock consisted of 3,221,471 shares outstanding with a balance of \$55.7 million. The Company declared preferred dividends to the holders of the Series B Preferred Stock totaling \$4.1 million during the fiscal year ended December 26, 2021. These amounts do not include 5,936,638 shares of Series B Preferred Stock classified as redeemable preferred stock due to associated put options granted to the holders by the Company (see Note 12).

## **NOTE 12. REDEEMABLE PREFERRED STOCK**

### GFG Preferred Stock Consideration

On July 22, 2021, the Company completed the acquisition of GFG (Note 3). A portion of the consideration paid included 3,089,245 newly issued shares of the Company's Series B Cumulative Preferred Stock valued at \$67.3 million (the "GFG Preferred Stock Consideration"). Additionally, on July 22, 2021, the Company entered into a put/call agreement with the GFG sellers, pursuant to which the Company may purchase, or the GFG Sellers may require the Company to purchase, the GFG Preferred Stock Consideration for \$67.5 million plus any accrued but unpaid dividends on or before August 20, 2022 (extended from the original date of April 22, 2022), subject to the other provisions of the Put/Call Agreement. Since the Company did not deliver the applicable cash proceeds to the GFG Sellers by that date, the amount accrues interest at the rate of 5% per annum until repayment is completed. On March 22, 2022, the Company received a put notice on the GFG Preferred Stock Consideration and reclassified the GFG Preferred Stock Consideration from redeemable preferred stock to current liabilities on its consolidated balance sheet. As of December 25, 2022, the carrying value of the redeemable preferred stock was \$67.5 million.

On September 16, 2022, the Company entered into an agreement with one of the GFG sellers who held 1,544,623 put preferred shares. Pursuant to the agreement, the closing date of the redemption was extended from April 22, 2022 to July 23, 2023 and, effective August 23, 2022, the interest rate applicable to such holder's 1,544,623 put shares was increased from 5% to 10% per annum, payable monthly in arrears. In the fiscal year ended December 25, 2022, the Company paid \$1.7 million for the accrued interest.

### Twin Peaks Preferred Stock Consideration

On October 1, 2021, the Company completed the acquisition of Twin Peaks. A portion of the consideration paid included 2,847,393 shares of the Company's Series B Cumulative Preferred Stock (the "Twin Peaks Preferred Stock Consideration") valued at \$67.5 million.

On October 1, 2021, the Company and the Twin Peaks Seller entered into a Put/Call Agreement (the "Put/Call Agreement") pursuant to which the Company was granted the right to call from the Twin Peaks Seller, and the Twin Peaks Seller was granted the right to put to the Company, the Initial Put/Call Shares at any time until March 31, 2022 for a cash payment of \$42.5 million, and the Secondary Put/Call Shares at any time until September 30, 2022 for a cash payment of \$25.0 million (the Initial Put/call Shares together with the Secondary Put/Call Shares total \$67.5 million), plus any accrued but unpaid dividends on such shares. Unpaid balances, when due, accrue interest at a rate of 10.0% per annum until repayment is completed. On October 7, 2021, the Company received a put notice on the Initial Put/Call Shares and the Secondary Put/Call Shares.

On October 21, 2022, the Company entered into an Exchange Agreement with the Twin Peaks Seller and redeemed 1,821,831 shares of the Company's 8.25% Series B Cumulative Preferred Stock at a price of \$23.69 per share, plus accrued and unpaid dividends to the date of redemption in exchange for \$46.5 million aggregate principal amount of secured debt (\$43.2 million net of debt offering costs and original issue discount) as discussed in Note 10.

As of December 25, 2022, the carrying value of the Twin Peaks Preferred Stock Consideration totaled \$24.3 million. The Company recognized interest expense relating to the Twin Peaks Preferred Stock Consideration in the amount of \$3.2 million during the year ended December 25, 2022.



### NOTE 13. STOCKHOLDERS' EQUITY AND DIVIDENDS ON COMMON STOCK

On August 16, 2021, the Company filed its Second Amended and Restated Certificate of Incorporation (the "Amended Certificate") with the Secretary of State of the State of Delaware, which among other things, (i) authorized 50,000,000 shares of Class A Common Stock and 1,600,000 shares of Class B Common Stock, and (ii) reclassified the Company's outstanding shares of Common Stock as Class A Common Stock as of such date (the "Recapitalization"). Prior to the Recapitalization, the Company's authorized common shares totaled 51,600,000 in a single class.

The terms of the Amended Certificate require equal or better treatment for the Class A Common Stock to the Class B Common Stock in transactions such as distributions, mergers, dissolution or recapitalization. Generally, each holder of shares of Class A Common Stock shall be entitled to 1 vote for each share of Class A Common Stock held as of the applicable date on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation, while each holder of shares of Class B Common Stock shall be entitled to 2,000 votes for each share of Class B Common Stock held as of the applicable date on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation. The foregoing is qualified in its entirety by reference to the full text of the Amended Certificate, which is filed as Exhibit 3.1 on the Current Report on Form 8-K, filed with the Securities and Exchange Commission on August 19, 2021 and incorporated by reference herein.

On October 15, 2021, the Board of Directors of the Company approved an amendment and restatement (the "Amendment") of the Company's Bylaws, effective as of the same date. The Amendment revised the stockholder voting provisions of the Bylaws to reflect the dual class common stock structure adopted by the Company in August 2021. In addition, the Amendment revised the provisions in the Bylaws for stockholder voting by written consent and the procedure for fixing the size of the Board of Directors and made certain other conforming changes.

As of December 25, 2022 and December 26, 2021, the total number of authorized shares of Class A and Class B common stock was 51,600,000. There were 15,300,870 shares of Class A common stock and 1,270,805 shares of Class B common stock outstanding at December 25, 2022, and 15,109,747 shares of Class A common stock and 1,270,805 shares of Class B common stock issued and outstanding at December 26, 2021.

Below are the changes to the Company's common stock during the fiscal year ended December 25, 2022:

- Warrants to purchase 36,362 shares of Class A common stock were exercised during the year ended December 25, 2022. The proceeds to the Company from the exercise of the warrants totaled \$0.7 million.
- The Company granted 150,000 restricted shares of Class A common stock to Board members. The shares vest over 3 years in equal installments at the anniversary date of grant. The value of the restricted stock grant was \$1.2 million and will be amortized as compensation expense over the vesting period.
- On January 11, 2022, the Board of Directors declared a cash dividend of \$0.13 per share of Class A and Class B common stock, payable on March 1, 2022 to stockholders of record as of February 15, 2022, for a total of \$2.2 million.
- On April 12, 2022, the Board of Directors declared a cash dividend of \$0.13 per share of Class A and Class B common stock, payable on June 1, 2022 to stockholders of record as of May 16, 2022, for a total of \$2.1 million.
- On July 12, 2022, the Board of Directors declared a cash dividend of \$0.14 per share of Class A and Class B common stock, payable on September 1, 2022 to stockholders of record as of August 16, 2022, for a total of \$2.3 million.
- On October 25, 2022, the Board of Directors declared a cash dividend of \$0.14 per share of Class A and Class B common stock, payable on December 1, 2022 to stockholders of record as of November 15, 2022, for a total of \$2.3 million.
- On May 3, 2022, one non-employee member of the Board of Directors elected to receive a portion of his compensation in shares of the Company's Class A common stock in lieu of cash. As such, the Company issued a total of 4,761 shares of Class A common stock with a value of \$30,000 to the electing director as consideration for accrued director's fees.



#### NOTE 14. SHARE-BASED COMPENSATION

Effective September 30, 2017, the Company adopted the 2017 Omnibus Equity Incentive Plan (the “Plan”). The Plan was amended on December 20, 2022 to increase the number of shares available for issuance under the Plan. The Plan is a comprehensive incentive compensation plan under which the Company can grant equity-based and other incentive awards to officers, employees and directors of, and consultants and advisers to, FAT Brands Inc. and its subsidiaries. The Plan provides a maximum of 5,000,000 shares available for grant.

The Company has periodically issued stock options under the Plan. All of the stock options issued by the Company to date have included a vesting period of three years, with one-third of each grant vesting annually. The Company’s stock option activity for fiscal year ended December 25, 2022 can be summarized as follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)
Stock options outstanding at December 26, 2021	2,791,785	\$ 10.50	9.1
Grants	243,180	\$ 7.09	7.1
Forfeited	(286,059)	\$ 11.66	6.2
Expired	—	\$ —	—
Stock options outstanding at December 25, 2022	2,748,906	\$ 10.06	8.3
Stock options exercisable at December 25, 2022	1,208,004	\$ 7.75	7.8

The range of assumptions used in the Black-Scholes valuation model to value to options granted in 2022 are as follows:

Expected dividend yield	4.6% - 7.8%
Expected volatility	84.2 %
Risk-free interest rate	1.3% - 4.0%
Expected term (in years)	6.0

During the year ended December 25, 2022 the Company granted a total of 150,000 restricted shares of its common stock to five Board members. During the year ended December 26, 2021 the Company granted a total of 300,000 restricted shares of its common stock to three employees (collectively, the “Grant Shares”). The Grant Shares vest one-third each year on the anniversary date of the grant. The grantees are entitled to any common dividends relating to the Grant Shares during the vesting period. The Grant Shares were valued at \$1.2 million and \$2.8 million as of the date of grant, respectively. The related compensation expense will be recognized over the vesting period.

The Company recognized share-based compensation expense in the amount of \$7.7 million and \$1.6 million during the fiscal years ended December 25, 2022 and December 26, 2021, respectively. As of December 25, 2022, there remains \$6.8 million of share-based compensation expense relating to non-vested grants, which will be recognized over the remaining vesting period, subject to future forfeitures.

#### NOTE 15. WARRANTS

As of December 25, 2022, the Company had issued outstanding warrants to purchase shares of its Class A common stock as follows:

Issue Date	Number of Warrants Outstanding	Commencement Date	Termination Date	Exercise Price	Value at Grant Date (in thousands)
06/07/2018	102,125	06/07/2018	06/07/2023	\$ 7.12	\$ 87
06/27/2018	25,530	06/27/2018	06/27/2023	\$ 7.12	\$ 25
07/03/2018	57,439	07/03/2018	07/03/2023	\$ 7.12	\$ 58
07/03/2018	22,230	07/03/2018	07/03/2023	\$ 6.54	\$ 26
06/19/2019	46,875	12/24/2020	06/19/2024	\$ 7.27	N/A (1)
10/03/2019	60	10/03/2019	10/03/2024	\$ 7.73	\$ —

07/16/2020	1,318,349	12/24/2020	07/16/2025	\$	3.76	\$	1,163
07/16/2020	18,648	12/24/2020	07/16/2025	\$	3.76	\$	64
	<u>1,591,256</u>						

(1) Values were not calculated at the issue date because the warrants were only exercisable in the event of a merger involving the Company and FCCG.

In addition to the warrants to purchase common stock described above, the Company has also granted warrants issued on July 16, 2020, to purchase 3,600 shares of the Company's Series B Preferred Stock at an exercise price of \$24.95 per share, exercisable beginning on the earlier of one year from the date of issuance, or the consummation of a merger or other similar business combination transaction involving the Company and FCCG, and will expire on July 16, 2025.

The Company's activity in warrants to purchase Class A common stock for the fiscal year ended December 25, 2022 was as follows:

	Number of Shares	Weighted Average Exercise Price (1)	Weighted Average Remaining Contractual Life (Years)
Warrants outstanding at December 26, 2021	1,707,670	\$ 4.72	3.2
Grants	—	\$ —	—
Exercised	(34,714)	\$ 3.57	2.6
Cancelled	(81,700)	\$ 13.35	—
Warrants outstanding at December 25, 2022	<u>1,591,256</u>	\$ 3.88	2.4
Warrants exercisable at December 25, 2022	<u>1,591,256</u>	\$ 3.88	2.4

(1) Exercise price adjusted due to cash dividends and Class B stock dividend.

The Company's warrant activity for the fiscal year ended December 26, 2021 was as follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)
Warrants outstanding at December 27, 2020	2,273,533	\$ 5.68	4.3
Grants	8,184	\$ 3.76	3.6
Exercised	(571,198)	\$ 3.85	3.5
Cancelled	(2,849)	\$ 3.76	3.6
Warrants outstanding at December 26, 2021	<u>1,707,670</u>	\$ 4.72	3.2
Warrants exercisable at December 26, 2021	<u>1,707,670</u>	\$ 4.72	3.2

During the fiscal year ended December 25, 2022, a total of 34,714 warrants were exercised in exchange for 36,362 shares of common stock with net proceeds to the Company of \$0.7 million.

The range of assumptions used to establish the initial value of the warrants using the Black-Scholes valuation model were as follows:

	Warrants
Expected dividend yield	4.00% - 6.63%
Expected volatility	30.23% - 31.73%
Risk-free interest rate	0.99% - 1.91%
Expected term (in years)	3.8 - 5.0

## NOTE 16. COMMITMENTS AND CONTINGENCIES

### Litigation and Investigations

***James Harris and Adam Vignola, derivatively on behalf of FAT Brands, Inc. v. Squire Junger, James Neuhauser, Edward Rensi, Andrew Wiederhorn, Fog Cutter Holdings, LLC and Fog Cutter Capital Group, Inc., and FAT Brands Inc., nominal defendant (Delaware Chancery Court, Case No. 2021-0511)***

On June 10, 2021, plaintiffs James Harris and Adam Vignola (“Plaintiffs”), putative stockholders of the Company, filed a shareholder derivative action in the Delaware Court of Chancery nominally on behalf of the Company against the Company’s directors (Squire Junger, James Neuhauser, Edward Rensi and Andrew Wiederhorn (the “Individual Defendants”)), and the Company’s majority stockholders, Fog Cutter Holdings, LLC and Fog Cutter Capital Group, Inc. (collectively with the Individual Defendants, “Defendants”). Plaintiffs assert claims of breach of fiduciary duty, unjust enrichment and waste of corporate assets arising out of the Company’s December 2020 merger with Fog Cutter Capital Group, Inc. Defendants filed a motion to dismiss Plaintiffs’ complaint, which the Court denied in an oral ruling on February 11, 2022 and subsequent written order on May 25, 2022. On April 7, 2022, the Court entered a Scheduling Order setting forth the key dates and deadlines that will govern the litigation, including a discovery cutoff of March 24, 2023 and trial date of February 5-9, 2024. To date, the parties have engaged in substantial written discovery, though no depositions have been taken. On February 3, 2023, the Company’s board of directors appointed a Special Litigation Committee (“SLC”), which retained independent counsel and moved for a six-month stay of the action pending resolution of the SLC’s investigation. On February 17, 2023, the Court granted the SLC’s motion to stay. Defendants dispute the allegations of the lawsuit and intend to vigorously defend against the claims. We cannot predict the outcome of this lawsuit. This lawsuit does not assert any claims against the Company. However, subject to certain limitations, we are obligated to indemnify our directors in connection with the lawsuit and any related litigation or settlements amounts, which may be time-consuming, result in significant expense and divert the attention and resources of our management. An unfavorable outcome may exceed coverage provided under our insurance policies, could have an adverse effect on our financial condition and results of operations and could harm our reputation.

***James Harris and Adam Vignola, derivatively on behalf of FAT Brands, Inc. v. Squire Junger, James Neuhauser, Edward Rensi, Andrew Wiederhorn and Fog Cutter Holdings, LLC, and FAT Brands Inc., nominal defendant (Delaware Chancery Court, Case No. 2022-0254)***

On March 17, 2022, plaintiffs James Harris and Adam Vignola (“Plaintiffs”), putative stockholders of the Company, filed a shareholder derivative action in the Delaware Court of Chancery nominally on behalf of the Company against the Company’s directors (Squire Junger, James Neuhauser, Edward Rensi and Andrew Wiederhorn (the “Individual Defendants”)), and the Company’s majority stockholder, Fog Cutter Holdings, LLC (collectively with the Individual Defendants, “Defendants”). Plaintiffs assert claims of breach of fiduciary duty in connection with the Company’s June 2021 recapitalization transaction. On May 27, 2022, Defendants filed a motion to dismiss Plaintiff’s complaint (the “Motion”). Argument on the Motion was heard on November 17, 2022 and again on February 23, 2023, and the Court took its decision under advisement. To date, the Court has not issued a ruling on the Motion, nor has the Court issued a scheduling order in this matter. Defendants dispute the allegations of the lawsuit and intend to vigorously defend against the claims. As this matter is still in the early stages, we cannot predict the outcome of this lawsuit. This lawsuit does not assert any claims against the Company. However, subject to certain limitations, we are obligated to indemnify our directors in connection with the lawsuit and any related litigation or settlements amounts, which may be time-consuming, result in significant expense and divert the attention and resources of our management. An unfavorable outcome may exceed coverage provided under our insurance policies, could have an adverse effect on our financial condition and results of operations and could harm our reputation.

***Robert J. Matthews, et al., v. FAT Brands, Inc., Andrew Wiederhorn, Ron Roe, Rebecca Hershinger and Ken Quick (United States District Court for the Central District of California, Case No. 2:22-cv-01820)***

On March 18, 2022, plaintiff Robert J. Matthews, a putative investor in the Company, filed a putative class action lawsuit against the Company, Andrew Wiederhorn, Ron Roe, Rebecca Hershinger and Ken Quick, asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended (the “1934 Act”), alleging that the defendants are responsible for false and misleading statements and omitted material facts in the Company’s reports filed with the SEC under the 1934 Act related to the LA Times story published on February 19, 2022 about the company and its management. The plaintiff alleges that the Company’s public statements wrongfully inflated the trading price of the Company’s common stock, preferred stock and warrants. On April 25, 2022, Kerry Chipman, a putative investor in the Company, filed a putative class action lawsuit against the Company, Andrew Wiederhorn, Ron Roe, Rebecca Hershinger and Ken Quick in the United States District Court for the Central Division of California, asserting substantially the same claims as those made by Matthews in the above-referenced lawsuit. On May 2, 2022, the Court entered an order consolidating the actions filed by Matthews and

Chipman under the caption *In re FAT Brands Inc. Securities Litigation*. On June 13, 2022, the Court appointed plaintiff Robert Matthews as lead plaintiff and The Rosen Law Firm, P.A., as lead counsel in the consolidated action. Plaintiffs filed their Consolidated Amended Complaint on June 27, 2022. On July 19, 2022, the parties entered into a stipulation to stay the litigation so that they could engage in voluntary mediation. In August 2022, after mediation, the Company reached an agreement in principle to settle this matter for a cash payment by the Company of \$2.5 million and issuance of \$0.5 million in Class A common stock. The Stipulation of Settlement and other documents pertinent to the settlement, along with a motion for preliminary approval thereof, were filed with the court on September 23, 2022. The Court granted the motion for preliminary approval on November 8, 2022, and on January 31, 2023, plaintiffs moved for final approval of the settlement and certification of the settlement class. The hearing on the motion for final approval is set for February 28, 2023, at 9:00 am PT. Upon final approval by the court, the settlement will provide a full release of all claims by the settlement class members against all defendants, including the Company and the named officers and directors, will expressly deny any liability, wrongdoing or responsibility by any of the defendants, and will result in the dismissal of the litigation with prejudice.

#### ***Government Investigations***

In December 2021, the U.S. Attorney's Office for the Central District of California (the "U.S. Attorney") and the U.S. Securities and Exchange Commission (the "SEC") informed the Company that they had opened investigations relating to the Company and our Chief Executive Officer, Andrew Wiederhorn, and were formally seeking documents and materials concerning, among other things, the Company's December 2020 merger with Fog Cutter Capital Group Inc., transactions between those entities and Mr. Wiederhorn, as well as compensation, extensions of credit and other benefits or payments received by Mr. Wiederhorn or his family from those entities. Our Board of Directors has formed a Special Review Committee (the "SRC") comprised of directors other than Mr. Wiederhorn to oversee a review of the issues raised by the U.S. Attorney and SEC investigations, reach findings and make a recommendation to the Board with respect to these matters. The SRC is authorized to review such documents and interview such persons, and retain legal counsel and other consultants on behalf of the Company, as the SRC deems necessary or appropriate to complete its review. The Company intends to cooperate with the U.S. Attorney and the SEC regarding these matters and is continuing to actively respond to inquiries and requests from the U.S. Attorney and the SEC. We believe that the Company is not currently a target of the U.S. Attorney's investigation. At this stage, we are not able to reasonably estimate or predict the outcome or duration of either of the U.S. Attorney's or the SEC's investigations.

#### ***Stratford Holding LLC v. Foot Locker Retail Inc. (U.S. District Court for the Western District of Oklahoma, Case No. 5:12-cv-772-HE)***

In 2012 and 2013, two property owners in Oklahoma City, Oklahoma sued numerous parties, including Foot Locker Retail Inc. and our subsidiary Fog Cutter Capital Group Inc. (now known as Fog Cutter Acquisition, LLC), for alleged environmental contamination on their properties, stemming from dry cleaning operations on one of the properties. The property owners seek damages in the range of \$12.0 million to \$22.0 million. From 2002 to 2008, a former Fog Cutter subsidiary managed a lease portfolio, which included the subject property. Fog Cutter denies any liability, although it did not timely respond to one of the property owners' complaints and several of the defendants' cross-complaints and thus is in default. The parties are currently conducting discovery, and the matter is scheduled for trial for October 2023. The Company is unable to predict the ultimate outcome of this matter, however, reserves have been recorded on the balance sheet relating to this litigation. There can be no assurance that the defendants will be successful in defending against these actions.

#### ***SBN FCCG LLC v FCCGI (Los Angeles Superior Court, Case No. BS172606)***

SBN FCCG LLC ("SBN") filed a complaint against Fog Cutter Capital Group, Inc. ("FCCG") in New York state court for an indemnification claim (the "NY case") stemming from an earlier lawsuit in Georgia regarding a certain lease portfolio formerly managed by a former FCCG subsidiary. In February 2018, SBN obtained a final judgment in the NY case for a total of \$0.7 million, which included \$0.2 million in interest dating back to March 2012. SBN then obtained a sister state judgment in Los Angeles Superior Court, Case No. BS172606 (the "California case"), which included the \$0.7 million judgment from the NY case, plus additional statutory interest and fees, for a total judgment of \$0.7 million. In May 2018, SBN filed a cost memo, requesting an additional \$12,411 in interest to be added to the judgment in the California case, for a total of \$0.7 million. In May 2019, the parties agreed to settle the matter for \$0.6 million, which required the immediate payment of \$0.1 million, and the balance to be paid in August 2019. FCCG wired \$0.1 million to SBN in May 2019, but has not yet paid the remaining balance of \$0.5 million. The parties have not entered into a formal settlement agreement, and they have not yet discussed the terms for the payment of the remaining balance.

The Company is involved in other claims and legal proceedings from time-to-time that arise in the ordinary course of business, including those involving the Company's franchisees. The Company does not believe that the ultimate resolution of these actions will have a material adverse effect on its business, financial condition, results of operations, liquidity or capital

resources. As of December 25, 2022, the Company had accrued an aggregate of \$5.1 million for the specific matters mentioned above and claims and legal proceedings involving franchisees as of that date.

Operating Leases (See Also Note 9)

The Company's headquarters, including its principal administrative, sales and marketing, customer support, and research and development operations, are located in Beverly Hills, California, comprising approximately 13,000 square feet of space, pursuant to a lease that expires on September 29, 2025, as well as an additional approximately 3,000 square feet of space pursuant to a lease amendment that expires on February 29, 2024.

Our subsidiary, GFG Management, LLC, leases offices in Atlanta, Georgia comprising approximately 9,000 square feet under a lease expiring on March 1, 2023, and an approximately 16,000 square foot warehouse location under a lease expiring on May 31, 2024.

Our subsidiary, GAC Supply, LLC, owns and operates an approximately 40,000 square foot manufacturing and production facility in Atlanta, Georgia, which supplies our franchisees with cookie dough, pretzel dry mix and other ancillary products.

Our subsidiary, Twin Restaurant Holding, LLC, leases offices in Dallas, TX comprising approximately 8,300 square feet under a lease expiring on April 30, 2025.

Our subsidiary, Fazoli's Holdings, LLC, leases offices located in Lexington, KY comprising approximately 19,200 square feet under a lease expiring on April 30, 2027.

Our subsidiary, Native Grill & Wings Franchising, LLC, leases offices located in Chandler, AZ comprising 5,825 square feet under a lease expiring on October 31, 2024.

In addition to the above locations, certain of our subsidiaries directly own and operate restaurant locations, substantially all of which are located in leased premises. As of December 25, 2022, we owned and operated approximately 130 restaurant locations.

The Company believes that its existing facilities are in good operating condition and adequate to meet current and foreseeable needs. Additional information related to the Company's operating leases are disclosed in Note 9.

**NOTE 17. GEOGRAPHIC INFORMATION AND MAJOR FRANCHISEES**

Revenues by geographic area are as follows (in millions):

	Fiscal Year Ended December 25, 2022	Fiscal Year Ended December 26, 2021
United States	\$ 397.4	\$ 108.6
Other countries	9.8	10.3
Total revenues	\$ 407.2	\$ 118.9

Revenues are shown based on the geographic location of our licensee restaurants. All of our owned restaurant assets are located in the United States.

During the fiscal years ended December 25, 2022 and December 26, 2021, no individual franchisee accounted for more than 10% of the Company's revenues.

**NOTE 18. SUBSEQUENT EVENTS**

In January 2023, the Company sold \$40.0 million aggregate principal amount of secured debt as disclosed in Note 10.

FAT BRANDS INC.

SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS

FOR THE FISCAL YEAR ENDED DECEMBER 25, 2022

	Dollars In Millions			
	Balance at Beginning of Period	Charged to Costs and Expenses	Deductions/ Recoveries/Acquisitions	Balance at End of Period
Allowance for:				
Trade notes and accounts receivable	\$ 4.4	20.7	\$ —	\$ 25.1

**ITEM 16. FORM 10-K SUMMARY**

Not applicable.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### FAT BRANDS INC.

By: /s/ Andrew A. Wiederhorn  
Andrew A. Wiederhorn  
Chief Executive Officer

The undersigned directors and officers of FAT Brands Inc. do hereby constitute and appoint Andrew A. Wiederhorn and Kenneth J. Kuick, and each of them, with full power of substitution and resubstitution, as their true and lawful attorneys and agents, to do any and all acts and things in our name and behalf in our capacities as directors and officers and to execute any and all instruments for us and in our names in the capacities indicated below, which said attorney and agent, may deem necessary or advisable to enable said corporation to comply with the Securities Exchange Act of 1934, as amended and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with this Annual Report on Form 10-K, including specifically but without limitation, power and authority to sign for us or any of us in our names in the capacities indicated below, any and all amendments (including post-effective amendments) hereto, and we do hereby ratify and confirm all that said attorneys and agents, or either of them, shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>DATE</u>	<u>NAME AND TITLE</u>
February 24, 2023	<u>/s/ Andrew A. Wiederhorn</u> Andrew A. Wiederhorn Chief Executive Officer and Director (Principal Executive Officer)
February 24, 2023	<u>/s/ Kenneth J. Kuick</u> Kenneth J. Kuick Chief Financial Officer (Principal Financial and Accounting Officer)
February 24, 2023	<u>/s/ Edward Rensi</u> Edward Rensi, Director
February 24, 2023	<u>/s/ Kenneth J. Anderson</u> Kenneth J. Anderson, Director
February 24, 2023	<u>/s/ Lynne Collier</u> Lynne Collier, Director
February 24, 2023	<u>/s/ Amy V. Forrestal</u> Amy V. Forrestal, Director
February 24, 2023	<u>/s/ James Neuhauser</u> James Neuhauser, Executive Chairman



**EXHIBIT INDEX**

Exhibit Number	Description	Incorporated By Reference to			Filed Herewith
		Form	Exhibit	Filing Date	
3.1	<a href="#">Second Amended and Restated Certificate of Incorporation, filed on August 16, 2021</a>	8-K	3.1	08/19/2021	
3.2	<a href="#">Certificate of Amendment to Second Amended and Restated Certificate of Incorporation, filed on August 24, 2021</a>	8-K	3.1	08/30/2021	
3.3	<a href="#">Certificate of Increase of Series B Cumulative Preferred Stock, filed on September 15, 2021</a>	8-K	3.1	09/16/2021	
3.4	<a href="#">Certificate of Increase of Series B Cumulative Preferred Stock, filed on October 28, 2021</a>	8-K	3.1	10/28/2021	
3.5	<a href="#">Certificate of Amendment to Second Amended and Restated Certificate of Incorporation, filed with the Delaware Secretary of State on December 20, 2022</a>	8-K	3.1	12/23/2022	
3.6	<a href="#">Amended and Restated Bylaws, effective as of February 21, 2023</a>				X
4.1	<a href="#">Warrant Agency Agreement, dated July 16, 2020, between the Company and VStock Transfer, LLC, to act as the Warrant Agent (including the form of Warrant Certificate)</a>	8-K	10.1	07/16/2020	
4.2	<a href="#">Warrant to Purchase Common Stock, dated June 7, 2018, issued to Trojan Investments, LLC</a>	10-Q	4.1	08/15/2018	
4.3	<a href="#">Warrant to Purchase Common Stock, dated June 27, 2018, issued to Fog Cutter Capital Group, Inc.</a>	10-Q	4.2	08/15/2018	
4.4	<a href="#">Form of Warrants to Purchase Common Stock, dated July 3, 2018, issued to sellers of Hurricane AMT, LLC</a>	8-K	4.1	07/10/2018	
4.5	<a href="#">Warrant to Purchase Common Stock, dated July 3, 2018, issued to FB Lending, LLC</a>	8-K	4.2	07/10/2018	
4.6	<a href="#">Base Indenture, dated March 6, 2020, and amended and restated as of April 26, 2021, by and between FAT Brands Royalty I, LLC and UMB Bank, N.A., as trustee and securities intermediary</a>	8-K	4.1	04/26/2021	
4.7	<a href="#">Series 2021-1 Supplement to the Base Indenture, dated April 26, 2021, by and between FAT Brands Royalty I, LLC and UMB Bank, N.A., as trustee</a>	8-K	4.2	04/26/2021	
4.8	<a href="#">Series 2022-1 Supplement to the Base Indenture, dated July 6, 2022, by and between FAT Brands Royalty I, LLC and UMB Bank, N.A., as trustee and securities intermediary</a>	8-K	4.2	10/25/2022	
4.9	<a href="#">Base Indenture, dated July 22, 2021, by and between FAT Brands GFG Royalty I, LLC, and UMB Bank, N.A., as trustee and securities intermediary</a>	8-K	4.1	07/26/2021	

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4.10	<a href="#">Series 2021-1 Supplement to the Base Indenture, dated July 22, 2021, by and between FAT Brands GFG Royalty I, LLC, and UMB Bank, N.A., as trustee and securities intermediary</a>	8-K	4.2	07/26/2021	
4.11	<a href="#">Series 2022-1 Supplement to the Base Indenture, dated December 15, 2022, by and between FAT Brands GFG Royalty I, LLC, and UMB Bank, N.A., as trustee and securities intermediary</a>	8-K	4.2	01/31/2023	
4.12	<a href="#">Base Indenture, dated October 1, 2021, by and between FAT Brands Twin Peaks I, LLC, and UMB Bank, N.A., as trustee and securities intermediary</a>	8-K	4.1	10/06/2021	
4.13	<a href="#">Series 2021-1 Supplement to the Base Indenture, dated October 1, 2021, by and between FAT Brands Twin Peaks I, LLC, and UMB Bank, N.A., as trustee and securities intermediary</a>	8-K	4.2	10/06/2021	
4.14	<a href="#">Base Indenture, dated December 15, 2021, by and among FAT Brands Fazoli's Native I, LLC, and UMB Bank, N.A., as trustee and securities intermediary</a>	8-K	4.1	12/16/2021	
4.15	<a href="#">Series 2021-1 Supplement to Base Indenture, dated December 15, 2021, by and among FAT Brands Fazoli's Native I, LLC, and UMB Bank, N.A., as trustee and securities intermediary</a>	8-K	4.2	12/16/2021	
4.16	<a href="#">Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934</a>				X
10.1	<a href="#">Form of Indemnification Agreement, dated October 20, 2017, between the Company and each director and executive officer</a>	1-A	6.3	09/06/2017	
10.2*	<a href="#">Amended and Restated 2017 Omnibus Equity Incentive Plan</a>	Schedule 14A (proxy statement)	Appendix A	09/09/2021	
10.3*	<a href="#">Amendment to 2017 Omnibus Equity Incentive Plan</a>	Schedule 14A (proxy statement)	Appendix B	11/28/2022	
10.4	<a href="#">Amended and Restated Office Lease, dated November 18, 2019, by and among Duesenberg Investment Company, LLC, Fatburger North America, Inc., Fog Cutter Capital Group Inc., and Fatburger Corporation</a>	10-K	10.12	04/28/2020	
10.5	<a href="#">Management Agreement, dated March 6, 2020, and amended and restated as of April 26, 2021, by and among FAT Brands Inc., FAT Brands Royalty I, LLC, each of the Securitization Entities named therein, and UMB Bank, N.A., as Trustee</a>	8-K	10.2	04/26/2021	
10.6	<a href="#">Management Agreement, dated July 22, 2021, by and among FAT Brands Inc., FAT Brands GFG Royalty I, LLC, each of the Franchise Entities named therein, and UMB Bank, N.A., as trustee</a>	8-K	10.2	07/26/2021	

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10.7	<a href="#">Management Agreement, dated October 1, 2021, by and among FAT Brands Inc., FAT Brands Twin Peaks I, LLC, each of the Securitization Entities named therein, and UMB Bank, N.A., as trustee</a>	8-K	10.2	10/06/2021	
10.8	<a href="#">Management Agreement, dated December 15, 2021, by and among FAT Brands Inc., FAT Brands Fazoli's Native I, LLC, each of the Guarantors named therein and UMB Bank, N.A., as trustee</a>	8-K	10.2	12/16/2021	
10.9	<a href="#">Back-Up Management and Consulting Agreement, dated December 15, 2021, by and among FAT Brands Inc., FAT Brands Fazoli's Native I, LLC, each of the Guarantors named therein, UMB Bank, N.A., as trustee, and FTI Consulting, Inc., as back-up manager</a>	8-K	10.3	12/16/2021	
10.10	<a href="#">Guarantee and Collateral Agreement, dated April 26, 2021, by and among each of the Securitization Entities named therein, as Guarantors, in favor of UMB Bank, N.A., as Trustee</a>	8-K	10.1	04/26/2021	
10.11	<a href="#">Guarantee and Collateral Agreement, dated July 22, 2021, by and among the Guarantors named therein in favor of UMB Bank, N.A., as trustee</a>	8-K	10.1	07/26/2021	
10.12	<a href="#">Guarantee and Collateral Agreement, dated October 1, 2021, by and among the Guarantors named therein in favor of UMB Bank, N.A., as trustee</a>	8-K	10.1	10/06/2021	
10.13	<a href="#">Guarantee and Collateral Agreement, dated December 15, 2021, by and among the Guarantors named therein in favor of UMB Bank, N.A., as trustee</a>	8-K	10.1	12/16/2021	
10.14	<a href="#">Put/Call Agreement, dated July 22, 2021, by and between FAT Brands Inc. and LS Global Franchise L.P.</a>	8-K	10.3	07/26/2021	
10.15	<a href="#">Put/Call Agreement, dated October 1, 2021, by and between FAT Brands Inc. and Twin Peaks Holdings, LLC</a>	8-K	10.3	10/06/2021	
10.16	<a href="#">Exchange Agreement, dated October 21, 2022, by and between FAT Brands Inc. and Twin Peaks Holdings, LLC</a>	8-K	10.1	10/25/2022	
10.17*	<a href="#">Employment Agreement, dated as of November 18, 2021, by and between FAT Brands Inc. and Andrew A. Wiederhorn</a>	8-K	10.1	11/24/2021	
10.18*	<a href="#">Letter Agreement, dated March 30, 2022, by and between FAT Brands Inc. and Kenneth J. Kuick</a>	8-K	10.1	04/05/2022	
10.19	<a href="#">ATM Sales Agreement, dated November 14, 2022, by and between FAT Brands Inc. and ThinkEquity LLC</a>	8-K	10.1	11/14/2022	
21.1	<a href="#">Significant Subsidiaries</a>				X
23.1	<a href="#">Consent of Independent Registered Public Accounting Firm</a>				X
31.1	<a href="#">Chief Executive Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				X

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31.2	<a href="#">Chief Financial Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>	X
32.1	<a href="#">Certifications of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>	X
101.INS	XBRL Instance Document	X (Furnished)
101.SCH	XBRL Taxonomy Extension Schema Document	X (Furnished)
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	X (Furnished)
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	X (Furnished)
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	X (Furnished)
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	X (Furnished)

- Indicates management contract or compensatory plan or arrangement.

**BYLAWS OF  
FAT BRANDS INC.**

**(Effective February 21, 2023)**

**ARTICLE I  
OFFICES**

SECTION 1.01 Registered Office. The registered office and registered agent of FAT Brands Inc. (the “Corporation”) shall be as set forth in the Amended and Restated Certificate of Incorporation (as defined below). The Corporation may also have offices in such other places in the United States or elsewhere (and may change the Corporation’s registered agent) as the Board of Directors of the Corporation (the “Board of Directors”) may, from time to time, determine or as the business of the Corporation may require as determined by any officer of the Corporation.

**ARTICLE II  
MEETINGS OF STOCKHOLDERS**

SECTION 2.01 Annual Meetings. Annual meetings of stockholders may be held at such place, if any, either within or without the State of Delaware, and at such time and date as the Board of Directors shall determine and state in the notice of meeting. The Board of Directors may, in its sole discretion, determine that meetings of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as described in Section 2.11 of these Bylaws in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “DGCL”). The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

SECTION 2.02 Special Meetings. Special meetings of the stockholders may only be called in the manner provided in the Corporation’s amended and restated certificate of incorporation as then in effect (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “Amended and Restated Certificate of Incorporation”) and may be held at such place, if any, either within or without the State of Delaware and at such time and date as the Board of Directors or the Chairman of the Board of Directors shall determine and state in the notice of meeting. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors or the Chairman of the Board of Directors.

SECTION 2.03 Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Corporation’s notice of meeting (or any supplement thereto) delivered pursuant to Section 2.04 of Article II of these Bylaws, (b) by or at the direction of the Board of Directors or any authorized committee thereof or (c) by any stockholder of the Corporation who is entitled to vote at the meeting, who complied with the notice procedures set forth in paragraphs (A)(2) and (A)(3) of this Section 2.03 and who was a stockholder of record at the time such notice is delivered to the Secretary of the Corporation (the “Secretary”).

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 2.03, the stockholder must have given timely notice thereof in writing to the Secretary, and, in the case of business other than nominations of persons for election to the Board of Directors, such other business must constitute a proper matter for stockholder action. To be timely, a stockholder’s notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred and twenty (120) days prior to the first anniversary of the preceding year’s annual meeting (which date shall, for purposes of the Corporation’s first annual meeting of stockholders are first publicly traded, be deemed to have occurred on June 15, 2017); *provided, however*, that in the event that the date of the annual meeting is advanced by more than thirty (30) days, or delayed by more than seventy (70) days, from the anniversary date of the previous year’s meeting, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than one hundred and twenty (120) days prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting and the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. Public announcement of an adjournment or postponement of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a stockholder’s notice. Notwithstanding anything in this Section 2.03(A)(2) to the contrary, if the number of directors to be elected to the Board of Directors at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least one hundred (100) calendar days prior to the first

anniversary of the prior year's annual meeting of stockholders, then a stockholder's notice required by this Section shall be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by the Secretary not later than the close of business on the tenth (10th) calendar day following the day on which such public announcement is first made by the Corporation.

(3) Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books and records, and of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation that are owned, directly or indirectly, beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder is a holder of record of the stock of the Corporation at the time of the giving of the notice, will be entitled to vote at such meeting and will appear in person or by proxy at the meeting to propose such business or nomination, (iv) a representation whether the stockholder or the beneficial owner, if any, will be or is part of a group that will (x) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (y) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination, (v) a certification regarding whether such stockholder and beneficial owner, if any, have complied with all applicable federal, state and other legal requirements in connection with the stockholder's and/or beneficial owner's acquisition of shares of capital stock or other securities of the Corporation and/or the stockholder's and/or beneficial owner's acts or omissions as a stockholder of the Corporation and (vi) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder; (d) a description of any agreement, arrangement or understanding with respect to the nomination or proposal and/or the voting of shares of any class or series of stock of the Corporation between or among the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made, any of their respective affiliates or associates and/or any others acting in concert with any of the foregoing (collectively, "proponent persons"); and (e) a description of any agreement, arrangement or understanding (including any contract to purchase or sell, the acquisition or grant of any option, right or warrant to purchase or sell or any swap or other instrument) to which any proponent person is a party, the intent or effect of which may be (i) to transfer to or from any proponent person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation, (ii) to increase or decrease the voting power of any proponent person with respect to shares of any class or series of stock of the Corporation and/or (iii) to provide any proponent person, directly or indirectly, with the opportunity to profit or share in any profit derived from, or to otherwise benefit economically from, any increase or decrease in the value of any security of the Corporation. A stockholder providing notice of a proposed nomination for election to the Board of Directors or other business proposed to be brought before a meeting (whether given pursuant to this paragraph (A)(3) or paragraph (B) of this Section 2.03) shall update and supplement such notice from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct (x) as of the record date for determining the stockholders entitled to notice of the meeting and (y) as of the date that is fifteen (15) days prior to the meeting or any adjournment or postponement thereof, *provided* that if the record date for determining the stockholders entitled to vote at the meeting is less than fifteen (15) days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date. Any such update and supplement shall be delivered in writing to the Secretary at the principal executive offices of the Corporation not later than five (5) days after the record date for determining the stockholders entitled to notice of the meeting (in the case of any update and supplement required to be made as of the record date for determining the stockholders entitled to notice of the meeting), not later than ten (10) days prior to the date for the meeting or any adjournment or postponement thereof (in the case of any update or supplement required to be made as of fifteen (15) days prior to the meeting or adjournment or postponement thereof) and not later than five (5) days after the record date for determining the stockholders entitled to vote at the meeting, but no later than the date prior to the meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of a date less than fifteen (15) days prior to the date of the meeting or any adjournment or postponement thereof). The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence of such director under the Exchange Act and rules and regulations thereunder and applicable stock exchange rules.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting by or at the direction of the Board of Directors or any committee thereof by any stockholder of the Corporation who is entitled to vote at the meeting, who complies with the notice procedures set forth in this Section 2.03 and who is a stockholder of record at the time such notice is delivered to the Secretary. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting if the stockholder's notice as required by paragraph (A)(2) of this Section 2.03 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting and the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 2.03 shall be eligible to serve as directors and only such business shall be conducted at an annual or special meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section. Except as otherwise provided by law, the Amended and Restated Certificate of Incorporation or these Bylaws, the chairman of the meeting shall, in addition to making any other determination that may be appropriate for the conduct of the meeting, have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall be disregarded. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include the following: (i) the establishment of an agenda or order of business for the meeting, (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants and on stockholder approvals. Notwithstanding the foregoing provisions of this Section 2.03, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.03, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meeting of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(2) Whenever used in these Bylaws, "public announcement" shall mean disclosure (a) in a press release released by the Corporation, *provided* that such press release is released by the Corporation following its customary procedures, is reported by the Dow Jones News Service, Bloomberg, Associated Press or comparable national news service or is generally available on internet news sites or (b) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Section 2.03, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.03; *provided, however*, that, to the fullest extent permitted by law, any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to these Bylaws (including paragraphs (A)(1)(c) and (B) hereof), and compliance with

paragraphs (A)(1)(c) and (B) of this Section 2.03 shall be the exclusive means for a stockholder to make nominations or submit other business. Nothing in these Bylaws shall be deemed to affect any rights of the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation to elect directors under specified circumstances.

**SECTION 2.04 Notice of Meetings.** Whenever stockholders are required or permitted to take any action at a meeting, a timely notice in writing or by electronic transmission, in the manner provided in Section 232 of the DGCL, of the meeting, which shall state the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purposes for which the meeting is called, shall be mailed to or transmitted electronically by the Secretary to each stockholder of record entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting. Unless otherwise provided by law, the Amended and Restated Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

**SECTION 2.05 Quorum.** Unless otherwise required by law, the Amended and Restated Certificate of Incorporation or the rules of any stock exchange upon which the Corporation's securities are listed, the holders of record of a majority of the voting power of the issued and outstanding shares of capital stock of the Corporation entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, a majority in voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on that matter. Once a quorum is present to organize a meeting, it shall not be broken by the subsequent withdrawal of any stockholders.

**SECTION 2.06 Voting.** Each stockholder entitled to vote at any meeting of stockholders shall be entitled to such number of votes for each share of stock held by such stockholder that has voting power upon the matter in question as is set forth in the Amended and Restated Certificate of Incorporation. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy in any manner provided by applicable law, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or a new proxy bearing a later date. Unless required by the Amended and Restated Certificate of Incorporation or applicable law, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there be such proxy. When a quorum is present or represented at any meeting, the vote of the holders of a majority of the voting power of the shares of stock present in person or represented by proxy and entitled to vote on the subject matter shall decide any question brought before such meeting, unless the question is one upon which, by express provision of applicable law, of the rules or regulations of any stock exchange applicable to the Corporation, of any regulation applicable to the Corporation or its securities, of the Amended and Restated Certificate of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding the foregoing sentence and subject to the Amended and Restated Certificate of Incorporation, all elections of directors shall be determined by a plurality of the votes cast in respect of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

**SECTION 2.07 Chairman of Meetings.** The Chairman of the Board of Directors, if one is elected, or, in his or her absence or disability, a person designated by the Board of Directors shall be the chairman of the meeting and, as such, preside at all meetings of the stockholders.

**SECTION 2.08 Secretary of Meetings.** The Secretary shall act as secretary at all meetings of the stockholders. In the absence or disability of the Secretary, the chairman of the meeting shall appoint a person to act as secretary at such meetings.

**SECTION 2.09 Consent of Stockholders in Lieu of Meeting.** Unless otherwise provided in the Amended and Restated Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing or in an electronic transmission setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize



or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and such consent or consents are delivered to the Corporation in the manner provided in Section 228 of the DGCL.

**SECTION 2.10 Adjournment.** At any meeting of stockholders of the Corporation, if less than a quorum be present, the chairman of the meeting or stockholders holding a majority in voting power of the shares of stock of the Corporation, present in person or by proxy and entitled to vote thereat, shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present. Any business may be transacted at the adjourned meeting that might have been transacted at the meeting originally noticed. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for the determination of stockholders entitled to vote at the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date so fixed for notice of such adjourned meeting.

**SECTION 2.11 Remote Communication.** If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

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

*provided that*

- (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder;
- (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and
- (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

**SECTION 2.12 Inspectors of Election.** The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (b) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and (e) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

### **ARTICLE III BOARD OF DIRECTORS**

**SECTION 3.01 Powers.** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by the DGCL or the Amended and Restated Certificate of Incorporation directed or required to be exercised or done by the stockholders.

**SECTION 3.02 Number and Term; Chairman.** The number of directors constituting the entire Board of Directors shall be fixed from time to time by resolution adopted by a majority of the directors present at a meeting at

which a quorum is present. The term of each director shall be as set forth in the Amended and Restated Certificate of Incorporation. Directors need not be stockholders. The Board of Directors shall elect a Chairman of the Board of Directors, who shall have the powers and perform such duties as provided in these Bylaws and as the Board of Directors may from time to time prescribe. The Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which he or she is present. If the Chairman of the Board of Directors is not present at a meeting of the Board of Directors, a majority of the directors present at such meeting shall elect one (1) of their members to preside.

**SECTION 3.03 Resignations.** Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer of the Corporation or the Secretary. The resignation shall take effect at the time specified therein, and if no time is specified, at the time of its receipt. The acceptance of a resignation shall not be necessary to make it effective unless otherwise expressly provided in the resignation.

**SECTION 3.04 Removal.** Directors of the Corporation may be removed in the manner provided in the Amended and Restated Certificate of Incorporation and applicable law.

**SECTION 3.05 Vacancies and Newly Created Directorships.** Except as otherwise provided by applicable law, vacancies occurring in any directorship (whether by death, resignation, retirement, disqualification, removal or other cause) and newly created directorships resulting from any increase in the number of directors shall be filled in accordance with the Amended and Restated Certificate of Incorporation. Any director elected to fill a vacancy or newly created directorship shall hold office until the next annual meeting of stockholders and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

**SECTION 3.06 Meetings.** Regular meetings of the Board of Directors may be held at such places and times as shall be determined from time to time by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors or as provided by the Amended and Restated Certificate of Incorporation and shall be called by the Chief Executive Officer or the Secretary if directed by the Board of Directors, and shall be at such places and times as they or he or she shall fix. Notice need not be given of regular meetings of the Board of Directors. At least twenty four (24) hours before each special meeting of the Board of Directors, either written notice, notice by electronic transmission or oral notice (either in person or by telephone) of the time, date and place of the meeting shall be given to each director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

**SECTION 3.07 Quorum, Voting and Adjournment.** Subject to the requirements of the Amended and Restated Certificate of Incorporation, a majority of the total number of directors shall constitute a quorum for the transaction of business. Except as otherwise provided by law, the Amended and Restated Certificate of Incorporation or these Bylaws, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of such adjourned meeting need not be given if the time and place of such adjourned meeting are announced at the meeting so adjourned.

**SECTION 3.08 Committees; Committee Rules.** The Board of Directors may designate from time to time one or more committees, including an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any Bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum unless the committee shall consist of one or two members, in which event one member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present at a meeting of the committee at which a quorum is present. Unless otherwise provided in such a resolution, and subject to the Amended and Restated Certificate of Incorporation, in the event that a member and that member's alternate, if alternates are designated by the Board of Directors, of such committee is or are absent or disqualified, the member

or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 3.09 Action Without a Meeting. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or any committee thereof, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed in the minutes of proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form or shall be in electronic form if the minutes are maintained in electronic form.

SECTION 3.10 Remote Meeting. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting by means of conference telephone or other communications equipment in which all persons participating in the meeting can hear each other. Participation in a meeting by means of conference telephone or other communications equipment shall constitute presence in person at such meeting.

SECTION 3.11 Compensation. The Board of Directors shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

SECTION 3.12 Reliance on Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

#### **ARTICLE IV OFFICERS**

SECTION 4.01 Number. The officers of the Corporation shall include a Chief Executive Officer (who shall also be President for the purpose of the DGCL, unless otherwise determined by the Board of Directors), a Chief Financial Officer, a Chief Legal Officer or General Counsel and a Secretary, each of whom shall be elected by the Board of Directors and who shall hold office for such terms as shall be determined by the Board of Directors and until their successors are elected and qualify or until their earlier resignation or removal. In addition, the Board of Directors may elect one or more Vice Presidents, including one or more Executive Vice Presidents, Senior Vice Presidents, a Treasurer and one or more Assistant Treasurers and one or more Assistant Secretaries, who shall hold their office for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. Any number of offices may be held by the same person.

SECTION 4.02 Other Officers and Agents. The Board of Directors may appoint such other officers and agents as it deems advisable, who shall hold their office for such terms and shall exercise and perform such powers and duties as shall be determined from time to time by the Board of Directors. The Board of Directors may appoint one or more officers called a Vice Chairman, each of whom does not need to be a member of the Board of Directors.

SECTION 4.03 Chief Executive Officer. The Chief Executive Officer shall have general executive charge, management and control of the properties and operations of the Corporation in the ordinary course of its business, with all such powers with respect to such properties and operations as may be reasonably incident to such responsibilities.

SECTION 4.04 President/Vice Presidents. The President, each Vice President, if any are elected (of whom one or more may be designated an Executive Vice President or Senior Vice President), shall have such powers and shall perform such duties as shall be assigned to him or her by the Chief Executive Officer or the Board of Directors.

SECTION 4.05 Chief Financial Officer. The Chief Financial Officer shall have such powers and shall perform such duties as shall be assigned to him or her by the Chief Executive Officer or the Board of Directors.

SECTION 4.06 Chief Legal Officer/General Counsel. The Chief Legal Officer or General Counsel shall have such powers and shall perform such duties as shall be assigned to him or her by the Chief Executive Officer or the Board of Directors.

SECTION 4.07 Treasurer. The Treasurer shall have custody of the corporate funds, securities, evidences of indebtedness and other valuables of the Corporation and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation. He or she shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors or its designees selected for such purposes. The Treasurer shall disburse the funds of the Corporation, taking proper vouchers therefor. He or she shall render to the Chief Executive Officer and the Board of Directors, upon their request, a report of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board of Directors shall prescribe.

In addition, the Treasurer shall have such further powers and perform such other duties incident to the office of Treasurer as from time to time are assigned to him or her by the Chief Executive Officer or the Board of Directors.

SECTION 4.08 Secretary. The Secretary shall: (a) cause minutes of all meetings of the stockholders and directors to be recorded and kept properly; (b) cause all notices required by these Bylaws or otherwise to be given properly; (c) see that the minute books, stock books and other nonfinancial books, records and papers of the Corporation are kept properly; and (d) cause all reports, statements, returns, certificates and other documents to be prepared and filed when and as required. The Secretary shall have such further powers and perform such other duties as prescribed from time to time by the Chief Executive Officer or the Board of Directors.

SECTION 4.09 Assistant Treasurers and Assistant Secretaries. Each Assistant Treasurer and each Assistant Secretary, if any are elected, shall be vested with all the powers and shall perform all the duties of the Treasurer and Secretary, respectively, in the absence or disability of such officer, unless or until the Chief Executive Officer or the Board of Directors shall otherwise determine. In addition, Assistant Treasurers and Assistant Secretaries shall have such powers and shall perform such duties as shall be assigned to them by the Chief Executive Officer or the Board of Directors.

SECTION 4.10 Corporate Funds and Checks. The funds of the Corporation shall be kept in such depositories as shall from time to time be prescribed by the Board of Directors or its designees selected for such purposes. All checks or other orders for the payment of money shall be signed by the Chief Executive Officer, a Vice President, the Treasurer or the Secretary or such other person or agent as may from time to time be authorized and with such countersignature, if any, as may be required by the Board of Directors.

SECTION 4.11 Contracts and Other Documents. The Chief Executive Officer, the Secretary and such other officer or officers as may from time to time be authorized by the Chief Executive Officer, the Board of Directors or any other committee given specific authority by the Board of Directors during the intervals between the meetings of the Board of Directors to authorize such action, shall each have the power to sign and execute on behalf of the Corporation deeds, conveyances, contracts and any and all other documents requiring execution by the Corporation.

SECTION 4.12 Ownership of Securities of Another Entity. Unless otherwise directed by the Board of Directors, the Chief Executive Officer, a Vice President, the Treasurer or the Secretary, or such other officer or agent as shall be authorized by the Board of Directors, shall have the power and authority, on behalf of the Corporation, to attend and to vote at any meeting of securityholders of any entity in which the Corporation holds securities or equity interests and may exercise, on behalf of the Corporation, any and all of the rights and powers incident to the ownership of such securities or equity interests at any such meeting, including the authority to execute and deliver proxies and consents on behalf of the Corporation.

SECTION 4.13 Delegation of Duties. In the absence, disability or refusal of any officer to exercise and perform his or her duties, the Board of Directors may delegate to another officer such powers or duties.

SECTION 4.14 Resignation and Removal. Any officer of the Corporation may be removed from office for or without cause at any time by the Board of Directors. Any officer may resign at any time in the same manner prescribed under Section 3.03.

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

## ARTICLE V STOCK

SECTION 5.01 Shares With Certificates. The shares of stock of the Corporation shall be represented by certificates, *provided* that the Board of Directors may provide by resolution or resolutions that some or all of any or

all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock in the Corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by, (a) the Chairman of the Board of Directors, any Vice Chairman of the Board of Directors, the President or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, certifying the number and class of shares of stock of the Corporation owned by such holder. Any or all of the signatures on the certificate may be a facsimile. The Board of Directors shall have the power to appoint one or more transfer agents and/or registrars for the transfer or registration of certificates of stock of any class and may require stock certificates to be countersigned or registered by one or more of such transfer agents and/or registrars.

SECTION 5.02 Shares Without Certificates. If the Board of Directors chooses to issue shares of stock without certificates, the Corporation, if required by the DGCL, shall, within a reasonable time after the issue or transfer of shares without certificates, send the stockholder a written statement of the information required by the DGCL. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, *provided* the use of such system by the Corporation is permitted in accordance with applicable law.

SECTION 5.03 Transfer of Shares. Shares of stock of the Corporation shall be transferable upon its books by the holders thereof, in person or by their duly authorized attorneys or legal representatives, upon surrender to the Corporation by delivery thereof (to the extent evidenced by a physical stock certificate) to the person in charge of the stock and transfer books and ledgers. Certificates representing such shares, if any, shall be cancelled and new certificates, if the shares are to be certificated, shall thereupon be issued. Shares of capital stock of the Corporation that are not represented by a certificate shall be transferred in accordance with applicable law. A record shall be made of each transfer. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented, both the transferor and transferee request the Corporation to do so. The Board of Directors shall have power and authority to make such rules and regulations as it may deem necessary or proper concerning the issue, transfer and registration of certificates for shares of stock of the Corporation.

SECTION 5.04 Lost, Stolen, Destroyed or Mutilated Certificates. A new certificate of stock or uncertificated shares may be issued in the place of any certificate previously issued by the Corporation alleged to have been lost, stolen or destroyed, and the Corporation may, in its discretion, require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond, in such sum as the Corporation may direct, in order to indemnify the Corporation against any claims that may be made against it in connection therewith. A new certificate or uncertificated shares of stock may be issued in the place of any certificate previously issued by the Corporation that has become mutilated upon the surrender by such owner of such mutilated certificate and, if required by the Corporation, the posting of a bond by such owner in an amount sufficient to indemnify the Corporation against any claim that may be made against it in connection therewith.

SECTION 5.05 List of Stockholders Entitled To Vote. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (a) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of meeting, or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 5.05 or to vote in person or by proxy at any meeting of stockholders.

SECTION 5.06 Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the

date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the Amended and Restated Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

SECTION 5.07 Registered Stockholders. Prior to the surrender to the Corporation of the certificate or certificates for a share or shares of stock or notification to the Corporation of the transfer of uncertificated shares with a request to record the transfer of such share or shares, the Corporation may treat the registered owner of such share or shares as the person entitled to receive dividends, to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner of such share or shares. To the fullest extent permitted by law, the Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

## ARTICLE VI NOTICE AND WAIVER OF NOTICE

SECTION 6.01 Notice. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

SECTION 6.02 Waiver of Notice. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting (in person or by remote communication) shall constitute waiver of notice except attendance for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

## ARTICLE VII INDEMNIFICATION

SECTION 7.01 Indemnification of Directors and Officers. Each current or former director or officer of the Corporation (hereinafter an "indemnitee") who was or is a party, is threatened to be made a party to, or is otherwise involved in, as a witness or otherwise, any threatened, pending or completed action, suit or proceeding (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative or investigative and whether formal or informal, including any and all appeals, by reason of the fact that he or she is or was a director or an

officer of the Corporation or, while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent (which, for purposes hereof, shall include a trustee, fiduciary, partner or manager or similar capacity) of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, or by reason of any action alleged to have been taken or omitted by indemnitee in any such capacity or in any other capacity while serving as a director, officer, employee or agent (hereinafter an “indemnifiable proceeding”), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the DGCL permitted the Corporation to provide prior to such amendment), from and against all loss and liability suffered and expenses (including attorneys’ fees, costs and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of indemnitee in connection with such action, suit or proceeding, including any appeals; *provided, however*, that, except as provided in Section 7.03 with respect to proceedings to enforce rights to indemnification or advancement of expenses or with respect to any compulsory counterclaim brought by such indemnitee, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors; *provided, further*, that the Corporation shall not be obligated under this Section 7.01: (a) to indemnify indemnitee under these Bylaws for any amounts paid in settlement of any indemnifiable proceeding unless the Corporation consents to such settlement, which consent shall not be unreasonably withheld, delayed or conditioned, or (b) to indemnify indemnitee for any disgorgement of profits made from the purchase or sale by indemnitee of securities of the Corporation under Section 16(b) of the Exchange Act.

In addition, subject to Section 7.04, the Corporation shall not be liable under this Article VII to make any payment of amounts otherwise indemnifiable hereunder (including, without limitation, judgments, fines and amounts paid in settlement) if and to the extent that the indemnitee has otherwise actually received such payment under this Article VII or any insurance policy, contract, agreement or otherwise.

**SECTION 7.02 Right to Advancement of Expenses.** In addition to the right to indemnification conferred in Section 7.01, an indemnitee shall also have the right, to the fullest extent permitted by the DGCL, to be paid by the Corporation the expenses (including attorney’s fees, costs and expenses) incurred by the indemnitee in appearing at, participating in or defending, or otherwise arising out of or related to, any indemnifiable proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article VII pursuant to Section 7.03 (hereinafter an “advancement of expenses”); *provided, however*, that,

(a) if the DGCL so requires or in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement, an advancement of expenses shall be made solely upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay any amounts so advanced (without interest) if and to the extent that it is determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified or entitled to advancement of expenses under Sections 7.01 and 7.02 or otherwise;

(b) the Corporation’s obligation to make an advancement of expenses pursuant to this Section 7.02 shall be subject to the limitations on indemnification provided in Section 7.01, except that the Corporation shall advance expenses to defend an indemnifiable proceeding alleging a claim under Section 16(b) of the Exchange Act; and

(c) with respect to any indemnifiable proceeding for which the indemnitee requests advancement of expenses under this Section 7.02, the Corporation shall be entitled to assume the defense of such action, suit or proceeding, with counsel reasonably acceptable to indemnitee, upon the delivery to indemnitee of written notice of its election to do so.

**SECTION 7.03 Right of Indemnitee to Bring Suit.** If a claim for indemnification or advancement of expenses is not paid in full within ninety (90) days after receipt by the Corporation of a request therefor, the indemnitee shall be entitled to an adjudication in any court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses, as applicable. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense (including attorneys’ fees, costs and expenses) of prosecuting or defending such suit. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or the Corporation’s stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or the Corporation’s stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought

by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Further, the Corporation shall be entitled to recover advanced expenses upon a final adjudication that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the Corporation.

#### SECTION 7.04 Indemnification Not Exclusive.

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

(b) Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnitee as a director and/or officer of the Corporation at the request of the indemnitee-related entities (as defined below), the Corporation shall be fully and primarily responsible for payments to the indemnitee in respect of indemnification or advancement of expenses in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article VII, irrespective of any right of recovery the indemnitee may have from the indemnitee-related entities. Under no circumstance shall the Corporation be entitled to any right of subrogation or contribution by the indemnitee-related entities, and no right of advancement or recovery the indemnitee may have from the indemnitee-related entities shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation hereunder. In the event that any of the indemnitee-related entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation, and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the indemnitee-related entities effectively to bring suit to enforce such rights. Each of the indemnitee-related entities shall be third-party beneficiaries with respect to this Section 7.04(b) and entitled to enforce this Section 7.04(b).

For purposes of this Section 7.04(b), the following terms shall have the following meanings:

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

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

SECTION 7.05 Nature of Rights. The rights conferred upon indemnitees in this Article VII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal. In addition, the rights conferred upon indemnitees in this Article VII shall extend to any broader indemnification rights permitted by any amendment to the DGCL.

SECTION 7.06 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or



other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL. Subject to Section 7.04, in the event of any payment by the Corporation under this Article VII, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee with respect to any insurance policy or any other indemnity agreement covering the indemnitee. The indemnitee shall execute all papers required and take all reasonable action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights in accordance with the terms of such insurance policy. The Corporation shall pay or reimburse all expenses actually and reasonably incurred by the indemnitee in connection with such subrogation.

SECTION 7.07 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation, and may, to the extent authorized from time to time by the Board of Directors, enter agreements with any director, officer, employee, or agent of the Corporation that grant rights to indemnification and to the advancement of expenses in excess of those granted in the provisions of this Article VII.

## **ARTICLE VIII MISCELLANEOUS**

SECTION 8.01 Electronic Transmission. For purposes of these Bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

SECTION 8.02 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

SECTION 8.03 Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall consist of the twelve (12) month period ending on the last Sunday in December.

SECTION 8.04 Construction; Section Headings. For purposes of these Bylaws, unless the context otherwise requires, (i) references to “Articles” and “Sections” refer to articles and sections of these Bylaws and (ii) the term “include” or “includes” means includes, without limitation, and “including” means including, without limitation. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

SECTION 8.05 Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Amended and Restated Certificate of Incorporation, the DGCL or any other applicable law, such provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

## **ARTICLE IX AMENDMENTS**

SECTION 9.01 Amendments. The Board of Directors is authorized to make, alter, amend, repeal and rescind, in whole or in part, these Bylaws without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or the Amended and Restated Certificate of Incorporation. Notwithstanding any other provisions of these Bylaws or any provision of law that might otherwise permit a lesser vote of the stockholders, in addition to any vote of the holders of any class or series of capital stock of the Corporation required by the Amended and Restated Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock (as defined in the Amended and Restated Certificate of Incorporation), these Bylaws or applicable law, the affirmative vote of the holders of at least seventy-five percent (75%) in voting power of all the then outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to make, alter, amend, repeal or rescind, in whole or in part, any provision of these Bylaws (including this Section 9.01) or to adopt any provision inconsistent herewith.

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**DESCRIPTION OF SECURITIES REGISTERED  
PURSUANT TO SECTION 12 OF  
THE SECURITIES EXCHANGE ACT OF 1934**

As of February 24, 2023, FAT Brands Inc., a Delaware corporation (“we”, “us”, “our” or the “Company”), has registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the following classes of securities:

- Class A Common Stock, par value \$0.0001 per share (“Class A Common Stock”)
- Class B Common Stock, par value \$0.0001 per share (“Class B Common Stock”, and together with the Class A Common Stock, “Common Stock”)
- Series B Cumulative Preferred Stock, par value \$0.0001 per share (“Series B Preferred Stock”)
- Warrants to purchase Class A Common Stock issued on July 16, 2020 (“Warrants”).

The following description of these securities is a summary and does not purport to be complete. The description is subject to and qualified in its entirety by reference to our (i) Second Amended and Restated Certificate of Incorporation, filed on August 16, 2021, and Certificate of Amendment thereto filed on August 24, 2021 (collectively, the “Certificate of Incorporation”), (ii) Certificates of Increase filed on September 15, 2021 and October 28, 2021, which increased the designated shares of Series B Preferred Stock, (iii) Warrant Agency Agreement, dated July 16, 2020, establishing the terms of the Warrants, and (iv) Amended and Restated Bylaws (the “Bylaws”), each of which is filed or incorporated by reference as exhibits to our Annual Report on Form 10-K of which this Exhibit 4.16 is a part.

**Description of Class A Common Stock and Class B Common Stock**

*Voting Rights.* Holders of the Class A Common Stock are entitled to cast one vote per share of Class A Common Stock, and holders of the Class B Common Stock are entitled to cast 2,000 votes per share of Class B Common Stock, on all matters that are submitted to a vote or for the consent of the stockholders of the Company. Holders of Class A Common Stock and the holders of Class B Common Stock will at all times vote together as a single class, and holders of the Common Stock are not entitled to cumulate their votes in the election of directors. Generally, all matters to be voted on by stockholders must be approved by a majority (or, in the case of election of directors, by a plurality) of the votes entitled to be cast by all stockholders present in person or represented by proxy, voting together as a single class. Except as otherwise provided by law, amendments to the Certificate of Incorporation must be approved by a majority or, in some cases, a super-majority of the combined voting power of all shares entitled to vote, voting together as a single class.

*Dividend Rights.* Holders of Common Stock are entitled share ratably (based on the number of shares of Common Stock held) if and when any dividend is declared by the Board of Directors of the Company out of funds legally available therefor, subject to any statutory or contractual restrictions on the payment of dividends and to any restrictions on the payment of dividends imposed by the terms of any outstanding preferred stock. No dividend may be paid on one class of Common Stock unless a dividend is paid simultaneously on the other class of Common Stock.

*Liquidation Rights.* On our liquidation, dissolution or winding up, each holder of our Common Stock will be entitled to a pro rata distribution of any assets available for distribution to holders of our Common Stock, based on the number of shares of Common Stock held.

*Other Matters.* No shares of Common Stock are subject to redemption or have preemptive rights to purchase additional shares of Common Stock. The rights, preferences and privileges of the holders of our Common Stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of our preferred stock, including the Series B Preferred Stock, and any series of preferred stock which we may designate in the future. There are no redemption or sinking fund provisions applicable to the Common Stock. All outstanding shares of Common Stock are fully paid and nonassessable.

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*Authorized Shares.* The Certificate of Incorporation authorizes the issuance of up to (i) 50,000,000 shares of Class A Common, (ii) 1,600,000 shares of Class B Common Stock, and (iii) 15,000,000 shares of preferred stock, par value \$0.0001 per share.

*Listing.* The Class A Common Stock is listed for trading on The NASDAQ Stock Market LLC (“NASDAQ”) under the symbol “FAT”, and the Class B Common Stock is listed for trading on NASDAQ under the symbol “FATBB”.

*Transfer Agent.* VStock Transfer, LLC acts as the transfer agent and registrar of the Common Stock.

### **Description of Series B Cumulative Preferred Stock**

*Authorization.* We have authorized a total of 11,500,000 shares of Series B Preferred Stock.

*Dividends.* Holders of the Series B Preferred Stock are entitled to receive, when, as and if declared by our Board of Directors, cumulative cash dividends payable monthly in an amount per share of Series B Preferred Stock equal to \$2.0625 per share each year, which is equivalent to 8.25% per annum of the \$25.00 liquidation preference per share. Dividends on the Series B Preferred Stock are payable monthly in arrears, beginning with the month ending July 31, 2020. To the extent declared by our Board of Directors, dividends are payable not later than twenty (20) days after the end of each calendar month. Dividends on the Series B Preferred Stock accumulate whether or not we have earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared by our Board of Directors.

If the Company fails to make a cash dividend payment with respect to twelve (12) or more consecutive or non-consecutive monthly dividends, the dividend rate on the Series B Preferred Stock will increase to \$2.50 per share each year, which is equivalent to 10% of the \$25.00 liquidation preference per share.

*Right to Elect Two Directors Upon Nonpayment.* If the Company fails to make a cash dividend payment with respect to eighteen (18) or more consecutive or non-consecutive monthly dividends (a “**Dividend Nonpayment**”), the holders of the Series B Preferred Stock, voting as a separate class, are entitled to vote for the election of two additional directors to serve on our Board of Directors until all dividends that are owed have been paid. Under these provisions, the authorized number of directors on our Board of Directors shall, at the next annual meeting of stockholders or at a special meeting of stockholders as provided below, automatically be increased by two and holders of shares of Series B Preferred Stock, voting together as a single class, shall be entitled, at our next annual meeting of stockholders or at a special meeting of stockholders, to vote for the election of a total of two additional members of the Board of Directors (the “**Preferred Stock Directors**”); *provided* that the election of any such Preferred Stock Directors will not cause the Company to violate the corporate governance requirements of NASDAQ (or any other exchange or automated quotation system on which our securities may be listed or quoted) that requires listed or quoted companies to have a majority of independent directors; and *provided* further that such Preferred Stock Directors may not be subject to any “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a “**Disqualifying Event**”), except for a Disqualifying Event covered by Rule 506(d)(2) or (d)(3). In the event of a Dividend Nonpayment, the holders of at least 25% of the shares of Series B Preferred Stock may request that a special meeting of stockholders be called to elect such Preferred Stock Directors; *provided*, however, to the extent permitted by our bylaws, if the next annual or a special meeting of stockholders is scheduled to be held within 90 days of the receipt of such request, the election of such Preferred Stock Directors shall be included in the agenda for, and shall be held at, such scheduled annual or special meeting of stockholders. The Preferred Stock Directors shall stand for reelection annually, at each subsequent annual meeting of the stockholders, so long as the holders continue to have such voting rights. At any meeting at which the holders are entitled to elect Preferred Stock Directors, the holders of record of at least one-third of the then outstanding shares of Series B Preferred Stock, present in person or represented by proxy, shall constitute a quorum and the vote of the holders of record of a majority of such shares of Series B Preferred Stock so present or represented by proxy at any such meeting at which there shall be a quorum shall be sufficient to elect the Preferred Stock Directors. If and when all accumulated and unpaid dividends on Series B Preferred Stock have been paid in full (a “**Nonpayment Remedy**”), the holders shall immediately and, without any further action by us, be divested of the voting rights described in this section, subject to the revesting of such rights in the event of each subsequent Dividend Nonpayment. If such voting rights for the holders shall have terminated, the term of office of each Preferred Stock Director so elected shall terminate at such time and the authorized number of directors on the Board of Directors

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shall automatically decrease by two. Any Preferred Stock Director may be removed at any time, with or without cause, by the holders of a majority in voting power of the outstanding shares of Series B Preferred Stock then outstanding when they have the voting rights described in this section. In the event that a Dividend Nonpayment shall have occurred and there shall not have been a Nonpayment Remedy, any vacancy in the office of a Preferred Stock Director (other than prior to the initial election of Preferred Stock Directors after a Dividend Nonpayment) may be filled by the written consent of the Preferred Stock Director remaining in office, except in the event that such vacancy is created as a result of such Preferred Stock Director being removed or if no Preferred Stock Director remains in office, such vacancy may be filled by a vote of the holders of a majority in voting power of the outstanding shares of Series B Preferred Stock then outstanding when they have the voting rights described above; *provided* that the election of any such Preferred Stock Directors to fill such vacancy will not cause the Company to violate the corporate governance requirements of NASDAQ (or any other exchange or automated quotation system on which our securities may be listed or quoted) that requires listed or quoted companies to have a majority of independent directors. The Preferred Stock Directors shall each be entitled to one vote per director on any matter that shall come before the Board of Directors for a vote.

*Voting Rights.* In addition to the voting rights discussed above, so long as any shares of Series B Preferred Stock are outstanding and remain unredeemed, the Company may not, without the vote or consent of the holders of a majority of the Series B Preferred Stock: (i) engage in a merger, consolidation or share exchange that materially and adversely affects the rights, preferences or voting power of the Series B Preferred Stock, unless shares of Series B Preferred Stock are converted into or exchanged for (A) cash equal to or greater than the applicable redemption price per share or (B) preferred shares of the surviving entity having rights, preferences and privileges that are materially the same as those of the Series B Preferred Stock; (ii) amend the provisions of the Certificate of Incorporation establishing the Series B Preferred Stock to materially and adversely affect the rights, preferences or voting power of Series B Preferred Stock; or (iii) declare or pay any junior dividends or repurchase any junior securities during any time that all dividends on the Series B Preferred Stock have not been paid in full in cash.

*Call Feature.* We may, at our option, redeem the Series B Preferred Stock, in whole or in part, by paying \$25.00 per share, plus any accrued and unpaid dividends to the date of redemption and a redemption premium. The redemption premium will initially be set at 10% of the \$25.00 liquidation preference per share, and will decrease by two percentage points per year on each anniversary of the initial issuance date until it terminates on the five-year anniversary of the initial issuance date (July 16, 2025).

*Liquidation Preference of Series B Preferred Stock.* If we liquidate, dissolve or wind up, or undergo a “change of control” (as defined below), holders of the Series B Preferred Stock will have the right to receive \$25.00 per share, plus all accumulated, accrued and unpaid dividends (whether or not earned or declared) to and including the date of payment, before any payments are made to the holders of our Common Stock or to the holders of equity securities the terms of which provide that such equity securities will rank junior to the Series B Preferred Stock. The rights of holders of Series B Preferred Stock to receive their liquidation preference also are subject to the proportionate rights of our Series A Fixed Rate Cumulative Preferred Stock and any other class or series of our capital stock ranking in parity with the Series B Preferred Stock as to liquidation. For purposes of these provisions, a “change of control” shall mean: (i) any sale, lease, or transfer, exclusive license or other dispositions (or series of sales, leases, transfers, exclusive licenses or other dispositions) of all or substantially all of the assets of the Company and its subsidiaries; (ii) any sale, transfer or issuance (or series of sales, transfers or issuances) of capital stock by the Company or the holders of Common Stock (or other voting stock of the Company) that results in the inability of the beneficial holders of Common Stock (or other voting stock of the Company) immediately prior to such sale, transfer or issuance to designate or elect a majority of the Board of Directors (or its equivalent) of the Company; or (iii) any merger, consolidation, recapitalization or reorganization of the Company with or into another Person (whether or not the Company is the surviving corporation) that results in the inability of the beneficial holders of Common Stock (or other voting stock of the Company) immediately prior to such merger, consolidation, recapitalization or reorganization to designate or elect a majority of the Board of Directors (or its equivalent) of the resulting entity or its parent company; *provided*, that a “change of control” shall not include a change in the beneficial or record holders of Common Stock or voting rights in the Company resulting or arising from one or more transactions by which the owners of any entity that is a stockholder of the Company directly receive or are issued Common Stock of the Company in lieu of their ownership in such entity, whether upon dissolution, liquidation or reorganization of such entity, or by merger, acquisition or other business combination transaction involving such entity and the Company or any of its subsidiaries.

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*Ranking.* The Series B Preferred Stock, with respect to dividend rights and rights upon our voluntary or involuntary liquidation, dissolution or winding up, ranks:

- senior to our Common Stock and any other class of equity securities the terms of which provide that such equity securities will rank junior to the Series B Preferred Stock;
- junior to any equity securities the terms of which provide that such equity securities will rank senior to the Series B Preferred Stock, and to all of our existing and future debt, including, prior to conversion of such debt, any debt convertible into our equity securities; and
- on a parity with any equity securities the terms of which provide that such equity securities will rank without preference or priority over the other.

*Exchange Listing.* The Series B Preferred Stock is listed for trading on NASDAQ under the symbol “FATBP.”

*Information Rights.* During any period in which we are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and any shares of our Series B Preferred Stock are outstanding, we will (i) transmit by mail to all holders of the Series B Preferred Stock, copies of the annual reports and quarterly reports that we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act if we were subject to those sections (other than any exhibits that would have been required) and (ii) promptly upon written request, make available copies of such reports to any prospective holder of Series B Preferred Stock. We will mail the reports to the holders of Series B Preferred Stock within 15 days after the respective dates by which we would have been required to file the reports with the SEC if we were subject to Section 13 or 15(d) of the Exchange Act.

*Transfer and Dividend Paying Agent.* VStock Transfer, LLC acts as the transfer and dividend payment agent and registrar in respect of the Series B Preferred Stock.

## **Description of Warrants**

*Form.* The Warrants were issued under a Warrant Agency Agreement between the Company and VStock Transfer, LLC, as warrant agent (the “Warrant Agent”). The material terms and provisions of the Warrants are summarized below, but the following description is subject to, and qualified in its entirety by, the Warrant Agency Agreement and form of Warrant.

*Exercisability.* The Warrants are currently exercisable and may be exercised at any time up to five (5) years from the date of original issuance, at the option of each holder, in whole or in part by delivering to us a duly executed exercise notice accompanied by payment in full for the number of shares of Class A Common Stock purchased upon such exercise (except in the case of a cashless exercise as discussed below). No fractional shares of Class A Common Stock will be issued in connection with the exercise of a Warrant. In lieu of fractional shares, we will, at our option, either (i) pay the holder an amount in cash equal to the fractional amount multiplied by the market value of a share of Class A Common Stock or (ii) round up to the next whole share. The holder will not have the right to exercise any portion of the Warrant if the holder (together with its affiliates) would beneficially own in excess of 4.99% or 9.99% of the number of shares of our Class A Common Stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Warrants.

*Cashless Exercise.* If, at any time during the term of the Warrants, the issuance of shares of our Class A Common Stock upon exercise of the Warrants is not covered by an effective registration statement, the holder is permitted to effect a cashless exercise of the Warrants (in whole or in part) by having the holder deliver to us a duly executed exercise notice, canceling a portion of the Warrant in payment of the purchase price payable in respect of the number of shares of our Class A Common Stock purchased upon such exercise.

*Failure to Timely Deliver Shares.* If we fail to deliver to the investor a certificate representing shares issuable upon exercise of a Warrant by the third trading day after the exercise date as required by the Warrant, and if the investor purchases the shares of our Class A Common Stock after that third trading day to deliver in satisfaction of a sale by the investor of the underlying Warrant shares that the investor anticipated receiving from us, then, within three trading days of receipt of the investor’s request, we, at the investor’s option, will either (i) pay cash to the investor in an amount equal to the investor’s total purchase price (including brokerage commissions, if any) for

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the shares of Class A Common Stock purchased less the exercise price (as described below), or the buy-in price, at which point our obligation to deliver the Warrant (and to issue the underlying Class A Common Stock) will terminate, (ii) reinstate the portion of the Warrant and equivalent number of Warrant shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or (iii) promptly honor our obligation to deliver to the investor a certificate or certificates representing the underlying Class A Common Stock and pay cash to the investor in an amount equal to the excess (if any) of the buy-in price over the product of (A) the number of shares of Class A Common Stock, times (B) the per share closing price of our Class A Common Stock on the date of the event giving rise to our obligation to deliver the certificate.

*Exercise Price.* Each Warrant represents the right to purchase one share of Class A Common Stock at an exercise price which was originally set at \$5.00 per share, subject to adjustment as described below. The exercise price is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our Class A Common Stock, and upon any distributions of assets, including cash, stock or other property to our stockholders, in each case occurring after the date of issuance of the Warrants. As of February 24, 2023, the Warrant exercise price, as adjusted, was \$3.1359 per share.

*Exchange Listing.* The Warrants are listed for trading on NASDAQ under the symbol “FATBW.” The shares of Class A Common Stock underlying the Warrants are listed for trading on NASDAQ under the symbol “FAT.”

*Rights as a Stockholder.* Except as otherwise provided in the Warrants or by virtue of such holder’s ownership of shares of our Class A Common Stock, the holder of a Warrant does not have the rights or privileges of a holder of our Class A Common Stock, including any voting rights, until the holder exercises the Warrant.

*Governing Law and Jurisdiction.* The Warrant Agency Agreement provides that the validity, interpretation, and performance of the Warrants and the Warrant Agency Agreement will be governed by the laws of the State of New York, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. In addition, the Warrant Agency Agreement provides that any action, proceeding or claim against the Company arising out of or relating to the Warrants or the Warrant Agency Agreement must be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York. However, we do not intend that the foregoing provisions would apply to actions arising under the Securities Act of 1933, as amended, or the Exchange Act.

*Warrant Agent.* VStock Transfer, LLC acts as our Warrant Agent and transfer agent for the Warrants.

### Subsidiaries of the Registrant

The following are the subsidiaries of FAT Brands Inc., a Delaware corporation, as of December 25, 2022. Pursuant to Item 601(b)(21)(ii) of Regulation S-K, the list omits (i) certain subsidiaries which, considered in the aggregate, would not constitute a significant subsidiary, and (ii) consolidated subsidiaries that are wholly-owned and carrying on the same line of business (franchising, ownership and operation of restaurants). The number in parentheses following the name of certain subsidiaries indicates the number of wholly-owned multiple subsidiaries of the parent subsidiary which carry on the same line of business as the parent subsidiary. All of the omitted subsidiaries operate in the United States.

1. FAT Brands Royalty I, LLC, a Delaware limited liability company
2. Buffalo's Franchise Concepts Inc., a Delaware corporation
3. Ponderosa Franchising Company LLC, a Delaware limited liability company
4. Ponderosa International Development Inc., a Delaware corporation
5. Puerto Rico Ponderosa Inc., a Delaware corporation
6. Hurricane AMT, LLC, a Delaware limited liability company
7. EB Franchises LLC, a Delaware limited liability company
8. Johnny Rockets Licensing Canada LLC, a Delaware limited liability company
9. Fatburger North America, Inc., a Delaware corporation
10. Bonanza Restaurant Company LLC, a Delaware limited liability company
11. Yalla Mediterranean Franchising LLC, a Delaware limited liability company
12. Yalla Acquisition LLC, a Delaware limited liability company (7)
13. Johnny Rockets Licensing LLC, a Delaware limited liability company
14. FAT Virtual Restaurants LLC, a Delaware limited liability company
15. FAT Brands Management, LLC, a Delaware limited liability company
16. Fog Cutter Acquisition LLC, a Delaware limited liability company
17. The Johnny Rockets Group, Inc., a Delaware corporation
18. GFG Management, LLC, a Delaware limited liability company
19. Round Table Development Company, a California corporation
20. Round Table Pizza Nevada, LLC, a Delaware limited liability company
21. HDOS Acquisition, LLC, a Delaware limited liability company
22. Global Franchise Group, LLC, a Delaware limited liability company
23. FAT Brands GFG Royalty I, LLC, a Delaware limited liability company
24. HDOS Franchise Brands, LLC, a Delaware limited liability company (3)
25. Marble Slab Franchise, LLC, a Delaware limited liability company (3)
26. GAC Franchise Brands, LLC, a Delaware limited liability company (3)
27. PM Franchise Brands, LLC, a Delaware limited liability company (3)
28. GAC Manufacturing, LLC, a Delaware limited liability company
29. GAC Supply, LLC, a Delaware limited liability company
30. PT Franchise Brands, LLC, a Delaware limited liability company (2)
31. Round Table Pizza, Inc., a Delaware corporation (2)
32. FAT Brands Twin Peaks I, LLC, a Delaware limited liability company (2)
33. Twin Restaurant, LLC, a Delaware limited liability company (27)
34. Twin Restaurant Development, LLC, a Texas limited liability company (30)
35. Twin Restaurant Franchise, LLC, a Delaware limited liability company (1)
36. Twin Restaurant RE, LLC, a Texas limited liability company (4)
37. FAT Brands Fazoli's Native I, LLC, a Delaware limited liability company
38. Native Grill and Wings Franchising, LLC, a Delaware limited liability company
39. Fazoli's Holdings, LLC, a Delaware limited liability company (5)
40. Fazoli's Joint Venture, Ltd., a Kentucky limited partnership
41. Fazoli's Franchising Systems, LLC, a Delaware limited liability company

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statements of FAT Brands Inc. on Form S-1 (No. 333-239032), Form S-3 (No. 333-261371), Form S-3 (No. 333-261365), Form S-3 (No. 333-256342), Form S-8 (No. 333-239031) and Form S-8 (No. 333-261362) of FAT Brands Inc. of our report dated February 24, 2023 relating to the consolidated financial statements of FAT Brands Inc. as of December 25, 2022 and December 26, 2021, and for the years then ended and the related notes and financial statement Schedule II which appears in this annual report on Form 10-K for the year ended December 25, 2022.

*/s/ Baker Tilly US, LLP*  
Los Angeles, CA  
February 24, 2023



## CERTIFICATION

I, Andrew A. Wiederhorn, Chief Executive Officer of FAT Brands Inc. certify that:

1. I have reviewed this Annual Report on Form 10-K of FAT Brands Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2023

/s/ Andrew A. Wiederhorn

Andrew A. Wiederhorn  
Chief Executive Officer

## CERTIFICATION

I, Kenneth J. Kuick, Chief Financial Officer of FAT Brands Inc. certify that:

1. I have reviewed this Annual Report on Form 10-K of FAT Brands Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2023

/s/ Kenneth J. Kuick

Kenneth J. Kuick  
Chief Financial Officer

**CERTIFICATIONS OF THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER****PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Each of the undersigned hereby certifies, in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in their capacity as an officer of FAT Brands Inc., that, to their knowledge, the Annual Report of FAT Brands Inc. on Form 10-K for the period ended December 25, 2022 fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operation of the company.

February 24, 2023

By /s/ Andrew A. Wiederhorn  
Andrew A. Wiederhorn  
President and Chief Executive Officer  
(Principal Executive Officer)

February 24, 2023

By /s/ Kenneth J. Kuick  
Kenneth J. Kuick  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906 has been provided to FAT Brands Inc. and will be retained by FAT Brands Inc. and furnished to the Securities and Exchange Commission or its staff upon request.