

FRANCHISE DISCLOSURE DOCUMENT



BENIHANA NATIONAL CORP.

A Delaware corporation

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Denver, Colorado 80202

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Benihana National Corp., as franchisor, offers franchises for the operation of restaurants known as BENIHANA® Restaurants, which specialize in the hibachi or teppanyaki style of Japanese cooking, in which food is prepared on a grill which forms a part of the table on which it is served. Sushi is also typically served at BENIHANA Restaurants.

The total investment necessary to begin operation of a full-sized BENIHANA Restaurant is \$3,405,200 to \$6,250,000, assuming a lease of the underlying land. The total investment necessary to begin operation of a Concession Model BENIHANA Restaurant is \$616,000 to \$1,090,000, which assumes leased real estate. Both investment estimates include \$40,000 that must be paid to the franchisor or an affiliate.

This disclosure document summarizes certain provisions of your Franchise Agreement and other information in plain English. Read the disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payments to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss availability of disclosures in different formats, contact Alex Tabolsky (Alex.Tabolsky@togrp.com), Benihana National Corp., 1624 Market Street, Suite 311, Denver, Colorado 80202, (305) 702-2805.

The terms of your franchise agreement will govern your franchise relationship. Don't rely on the disclosure document alone to understand your franchise agreement. Read all of your franchise agreement carefully. Show your agreement and this disclosure document to an advisor, like a lawyer or accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "[A Consumer's Guide to Buying a Franchise](#)," which can help you understand how to use this disclosure document is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC's home page at www.ftc.gov for additional information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

THE ISSUANCE DATE OF THIS DISCLOSURE DOCUMENT IS OCTOBER 1, 2024.

How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
How much can I earn?	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others like current and former franchisees. You can find their names and contact information in Item 20 or Exhibits C and D.
How much will I need to invest?	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
Does the franchisor have the financial ability to provide support to my business?	Item 21 or Exhibit E includes financial statements. Review these statements carefully.
Is the franchise system stable, growing, or shrinking?	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
Will my business be the only BENIHANA® business in my area?	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
Does the franchisor have a troubled legal history?	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
What's it like to be a BENIHANA® franchisee?	Item 20 provides information about franchised restaurants and Exhibit C lists current franchisees. You can contact them to ask about their experience.
What else should I know?	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the Table of Contents.

What You Need To Know About Franchising *Generally*

Continuing responsibility to pay fees. You may have to pay royalties and other fees even if you are losing money.

Business model can change. The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

Supplier restrictions. You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

Operating restrictions. The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

Competition from franchisor. Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

Renewal. Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

When your franchise ends. The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

Some States Require Registration

Your state may have a franchise law or other laws that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit A.

Your state also may have laws that require special disclosure or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda.

Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration, and/or litigation only in Florida. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Florida than in your own state.

Certain states may require other risks to be highlighted. Check the “State Specific Addenda” (if any) to see whether your state requires other risks to be highlighted.

NOTICE MANDATED BY SECTION 8 OF
MICHIGAN'S FRANCHISE INVESTMENT ACT

The following is applicable to you if you are a Michigan resident or your franchise will be located in Michigan.

The state of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against you.

- (a) A prohibition on the right of a franchisee to join an association of franchisees.
- (b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if:
 - (i) The term of the franchise is less than 5 years and
 - (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:
 - (i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.

- (ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.
 - (iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
 - (iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.
- (h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).
- (i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

The fact that there is a notice of this offering on file with the attorney general does not constitute approval, recommendation, or endorsement by the attorney general.

If the franchisee has any questions regarding this notice, those questions should be directed to the Michigan Department of Attorney General, Consumer Protection Division, Attn.: Franchise, 525 West Ottawa Street, Lansing, Michigan 48909, telephone: (517) 373-7117.

**BENIHANA NATIONAL CORP.
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ITEM 1. THE FRANCHISOR, ITS PARENTS, PREDECESSORS, AND AFFILIATES

The Franchisor and its Predecessor

Benihana National Corp. (referred to in this Disclosure Document as “we,” “us,” “our,” or “BNC”) was formed as a Delaware corporation in December 1982. In this Disclosure Document, we refer to the person or entity that will be signing the Franchise Agreement (defined below) as “you” or “your,” which, if you are a corporation, partnership, or other entity, includes all franchise owners, members, or partners (“Principals”).

Our principal place of business is 1624 Market Street, Suite 311, Denver, Colorado 80202. We are a wholly-owned subsidiary of Benihana, Inc., a Delaware corporation formerly traded publicly on the NASDAQ exchange until August 2012, when the stock of Benihana, Inc. was acquired by Safflower Holdings Corp., a privately owned Delaware corporation. In May 2024, Safflower Holdings Corp. was acquired by TOG Kaizen Acquisition, LLC, a Delaware limited liability company and wholly-owned subsidiary of The ONE Group Hospitality, Inc., a Delaware corporation traded on NASDAQ, each with a principal business address at 1624 Market Street, Suite 311, Denver, Colorado 80202.

We, directly and through wholly-owned subsidiaries, own and operate BENIHANA Restaurants that specialize in the hibachi or teppanyaki style of Japanese cooking, in which the food is prepared on a grill that forms a part of the table on which it is served. Sushi is also typically served at BENIHANA Restaurants.

We are the successor in interest to a portion of the business formerly conducted in the continental United States by Benihana of Tokyo, Inc., a privately owned New York corporation (“BOT”) that maintains its principal place of business at 445 Fifth Avenue, #30H, New York, NY 10016-0133. In May 1995, we entered into a Reorganization Agreement with BOT pursuant to which we acquired 21 domestic BENIHANA OF TOKYO® restaurants from BOT and, except as noted in the next sentence, acquired all of the rights to the BENIHANA® System, including without limitation, BOT’s trademarks in the continental United States, Central and South America, excluding Mexico, and the Caribbean Islands (the “Territory”). In connection with the Reorganization Agreement, BOT was granted a license to own and operate BENIHANA Restaurants in the State of Hawaii that we terminated in February 2017.

We have entered into an agreement to transfer ownership of our trademarks used in connection with BENIHANA® Restaurants to our affiliate, Noodle Time, Inc. (“Noodle Time”), the current registered owner of the trademarks. Noodle Time has granted us a perpetual license to use the marks and to sublicense them to our affiliates or third-parties.

We, directly and through wholly-owned subsidiaries, currently own and operate 69 BENIHANA Restaurants in the United States. In addition, as of the issuance date of this Disclosure Document, we have licensed and franchised unaffiliated parties to operate a total of 11 open and operating BENIHANA Restaurants, seven in the United States and four in international locations. We have also signed franchise agreements for one additional location in the United States that has not yet opened for business and that we anticipate will open in the current fiscal year. Also, as of the date of this Disclosure Document, we have signed concession licenses allowing the sale of BENIHANA branded products at five

event-based locations at stadiums and arenas in the United States discussed in more detail below.

Our predecessor in interest, BOT, operated BENIHANA Restaurants since the entity was formed in 1963, and from time to time BOT has licensed others to operate these restaurants. BOT, or its successor, may continue to operate, or license others to operate BENIHANA Restaurants outside of the Territory.

We were incorporated for the purpose of operating BENIHANA Restaurants and doing other business using the BENIHANA trade names and trademarks pursuant to a license, and we are not the successor to any other business. Our predecessor in interest BOT entered the first franchise agreement with a third party in or about August 1969. We began offering franchises following the Reorganization Agreement in May 1995.

Our agents for service of process are listed in Exhibit A.

We have entered into agreements with licensees and concessionaires for the operation of BENIHANA® branded facilities in non-traditional venues such as sports stadiums, arenas, shopping centers with limited menu offerings and no catering or delivery outside of the venue (“Non-Traditional Locations”). As of the date of this Disclosure Document, there are five Non-Traditional Locations in operation in stadiums and arenas the United States. We also have signed two other franchise agreements for a “Concession Model” location at retail and entertainment venues in Miami, Florida, as more fully described below, and we may continue to offer such franchise opportunities in the future.

Certain of our subsidiaries own and operate the RA® Sushi (“RA SUSHI”) restaurant concept, which offers sushi and a full menu of Pacific Rim dishes in an environment targeting a younger demographic and featuring upbeat design elements. RA SUSHI restaurants may compete with the BENIHANA concept and with your franchised restaurant. RA SUSHI restaurants we operate may compete with you by offering for delivery or take-out only BENIHANA menu items offered at BENIHANA Restaurants. As of the date of this Disclosure Document, there are twenty RA SUSHI restaurants in operation in the United States. The RA SUSHI concept is not franchised, but it may be in the future. Our subsidiary formerly operated two HARU® restaurants offering Japanese fusion dishes in an urban atmosphere in densely populated cities. We do not as of the date of this Disclosure Document operate any HARU restaurants.

One of our subsidiaries operates one teppanyaki style restaurant in Miami, Florida under the name SAMURAI®.

Our ultimate parent entity, The ONE Group Hospitality, Inc. (“The ONE Group”) is a global hospitality company that develops and operates upscale and polished casual, high-energy restaurants and lounges and provides hospitality management services for hotels, casinos and other high-end venues both nationally and internationally. The ONE Group’s focus is to be the global leader in Vibe Dining, and its primary restaurant brands are STK, a modern twist on the modern steakhouse, and Kona Grill, a polished casual, bar centric brand featuring American favorites, award-winning sushi, and specialty cocktails in an upscale casual atmosphere. ONE Hospitality, The ONE Group’s food and beverage hospitality services business, provides the development, management, and operations for

premier restaurants and turn-key food and beverage services within high-end hotels and casinos.

We have never offered franchises for any other business.

The Franchised Business

We are offering franchises in the fifty United States and in Washington, D.C. (and elsewhere in the Territory) for operating BENIHANA Restaurants, either full-size restaurants under the Restaurant Model or limited-menu locations under the Concession Model, that specialize in the hibachi or Teppanyaki style of Japanese cooking, and in which, under the Restaurant Model, food is prepared on a grill that forms a part of the table on which it is served (“BENIHANA Restaurants”). BENIHANA Restaurants offer casual dining in a distinctive Japanese atmosphere enhanced under the Restaurant Model by unique entertainment provided by highly-skilled chefs that prepare fresh steak, chicken, and seafood at the center of the guest table. BENIHANA Restaurants operate under the mark BENIHANA® and use other trademarks, trade names, logos, emblems, and indicia of origin as we designate, including those identified in Item 13 (the “Marks” or “Proprietary Marks”).

BENIHANA Restaurants offer distinctive products and services utilizing a distinctive business format, including color schemes, designs, signage, equipment, layouts, operating systems, methods, procedures, standards, techniques, proprietary information, and marketing and advertising standards and formats, all of which have been and may be modified, amended, supplemented, or further developed from time to time (the “BENIHANA System”). As part of the BENIHANA System, we have and continue to establish specific operating standards for various aspects of BENIHANA Restaurants, including: location; physical characteristics; operating procedures and business processes; menu and products sold; product specifications; supplier qualifications; qualifications, organization, and training of restaurant personnel, including franchisees and their personnel; marketing of products and the BENIHANA Marks; and all other things affecting the experience of consumers who patronize BENIHANA Restaurants (the “BENIHANA Standards”).

Franchise Agreement

We offer the right to establish and operate a BENIHANA Restaurant under the terms of a franchise agreement (“Franchise Agreement”), in the form of Exhibit B-1 (for the Restaurant Model) and Exhibit B-2 (for the Concession Model) to this Disclosure Document. You may be an individual, corporation, limited liability company, partnership, or other form of legal entity. If you are a legal entity, your Principals must sign personal guaranty agreements agreeing to be individually bound by your obligations under the Franchise Agreement.

The BENIHANA Restaurant we offer you may be a limited-menu Concession Model that offers a limited menu and does not feature the hibachi or Teppanyaki style of Japanese cooking in which food is prepared on a grill that forms a part of the table on which it is served. We have limited experience with the Concessional Model other than in captive locations such as sports stadiums.

Market and Competition

The service and products offered at a BENIHANA Restaurant are sold to the general public, appealing to both local residents and visitors. There is a well-developed and competitive market for this type of restaurant. You will compete with other businesses offering similar products and services, including most national and regional restaurant chains, as well as other concepts our ultimate parent corporation or affiliates may own, operate, or franchise. We also may sell certain products through alternative distribution channels, such as through the Internet, grocery or convenience stores, catalog sales, telemarketing, or direct marketing, and such sales may compete with your BENIHANA Restaurant. Your BENIHANA Restaurant could face competition from branded restaurants operated by our affiliates.

Industry Regulations

Many laws, rules, and regulations that apply to businesses generally will apply to your BENIHANA Restaurant. You must comply with all federal, state, and local laws applicable to the operation and licensing of a restaurant/food service business, including applicable public health codes, permit requirements, inspection, and approval processes.

You, your managers, and certain of your employees must be “ServSafe” Certified Professional Food Managers or its equivalent. The United States Food and Drug Administration, United States Department of Agriculture, and state and local health departments administer and enforce regulations governing food preparation, service, and sanitation conditions. State and local agencies inspect restaurants to ensure compliance with these laws and regulations.

The Federal Clean Air Act and various state laws require certain state and local areas to meet national air quality standards limiting emissions of ozone, carbon monoxide, and particulate matters, including caps on emissions from commercial food preparation. Some state and local governments have adopted laws that regulate indoor air quality, including the limitation or prohibition of smoking tobacco products in public places, including restaurants. State and local governments may also regulate grease disposal by restaurants.

The Americans with Disability Act of 1990 (“ADA”) requires readily accessible accommodation for disabled persons and, if applicable to the construction of your Restaurant, the ADA may affect your building, construction, site elements, entrance ramps, bathrooms, exit and entrance ramps, etc. Many state and local governments also have enacted laws and regulations requiring access for disabled persons that meet or exceed ADA requirements. You should consider these laws and regulations when evaluating whether to enter into a Franchise Agreement for the operation of a BENIHANA Restaurant.

In addition, various federal and state labor laws will govern your operations and your relationships with your employees, including matters such as health insurance, minimum wages, other benefits, worker safety, working conditions, and work authorization requirements.

We strongly advise that you consult with your attorney and a business advisor for a complete understanding of all laws, rules, and regulations that will apply to your business.

END OF ITEM 1

ITEM 2: BUSINESS EXPERIENCE

Chief Executive Officer: Emanuel “Manny” Hilario

Mr. Hilario, our CEO, has served as President and Chief Executive Officer of The One Group Hospitality, Inc. (referred to as “The ONE Group” in this Item 2) since October 30, 2017, and he has served as a member of its board of directors since April 2017. Prior to joining The One Group, Mr. Hilario served in both financial and operational roles at restaurant platform Sizzling Platter, Einstein Noah Restaurant Group, Inc., McCormick & Schmick’s Seafood Restaurants, Inc., Angelo and Maxie’s, Inc., and at McDonald’s Corporation.

Chief Financial Officer: Nicole Thaung

Ms. Thaung serves as our Chief Financial Officer and has held that position since August 2018. Previously, Ms. Thaung served as our Vice President and Controller from October 2016 through August 2018 and as our Controller from September 2014 until October 2016. Prior to that, Ms. Thaung was our Senior Director of Financial Reporting and Accounting from August 2012 through September 2014.

Brand Marketing Leader: Micah Zammit

Micah Zammit is Brand Marketing Leader for The ONE Group (for BENIHANA North America and STK Steakhouse International). Mr. Zammit joined The ONE Group in July 2023 as Director of International Marketing, and he assumed responsibility for our strategic marketing in May 2024. Prior to joining The ONE Group, Mr. Zammit spent four years in marketing roles at privately-owned global restaurant group Aqua Restaurant Group.

Treasurer: Tyler Loy

Mr. Loy is our Treasurer. He has served as the Chief Financial Officer of The ONE Group since April 1, 2019. He previously served as that company’s Vice President of Strategy from September 24, 2018, until April 1, 2019. Before joining The ONE Group, Mr. Loy was Vice President of Finance at a franchisee with approximately 300 TACO BELL® and BUFFALO WILD WINGS® restaurants, and he held several finance and sales leadership roles at Einstein Noah Restaurant Group, Inc.

Secretary: Christi Hing

Ms. Hing, Secretary of BNC, has been with The ONE Group since October 2019 and currently serves as Chief Accounting Officer and Corporate Secretary of overseeing accounting and financial reporting. Prior to that role, she held various positions at Kona Grill, Inc., which was acquired by The ONE Group in October 2019, including seven years as the Chief Financial Officer of Kona Grill.

Vice President, Legal: Alex Tabolsky

Alex Tabolsky has served as Vice President, Legal of The ONE Group since May 28, 2024. He oversees all legal activities associated with the company and its affiliates, including BNC, and he provides strategic and practical legal advice on a broad range of corporate, real estate, leasing, licensing, management and contractual issues. Mr.

Tabolsky served as The ONE Group's Assistant Vice President, Legal from November 2022 until May 28, 2024. Prior to that, he was in private practice with a Los Angeles law firm from 2017 to 2022.

Chief Operating Officer: Mark Leach

Mr. Leach has served as our Chief Operating Officer since May 2019. From October 1996 to May 2019, Mr. Leach was Vice President of Operations for Morton's The Steakhouse/Mastro's Restaurants. He has over thirty-five years of restaurant experience in key roles with several leading brands.

Vice President Benihana Operations: Kathryn L. Pendergast

Ms. Pendergast serves as our Vice President Benihana Operations and has held this position since March 2018. She joined the Company in 2014 and served as Senior Director and then as Vice President – East Region before assuming her current position.

Regional Director – East Region: Daniel Tintsman

Mr. Tintsman serves as our Regional Director – East Region and has held that position since April 2018. He previously served as a Regional Manager from April 2009 to April 2018.

Regional Director –West Region: Sang D. Lee

Mr. Lee serves as our Regional Director – West Region and has held that position since April 2018. Mr. Lee previously served as a Regional Manager from March 2009 until April 2018.

Director of Culinary Training/Kitchen Operations/R&D: Arturo Garzon

Mr. Garzon serves as our Director of Culinary Training/Kitchen Training/R&D and has held that position since January 2014. From January 2013 through December 2013, Mr. Garzon served as our Director of Operations.

END OF ITEM 2

ITEM 3: LITIGATION

CONCLUDED LITIGATION

1. Benihana National Corp. and Noodle Time, Inc. v. Benihana of Tokyo, Inc., Keiko Aoki and Takanori Yoshimoto, Case No. 11-15372-CA40 (Circuit Court, Eleventh Judicial Circuit in and for Miami-Dade County, Florida) (filed May 18, 2011). Franchisor and Noodle Time sued Benihana of Tokyo, Inc. (“BOT”) alleging breach of contract, civil conspiracy, injury to business reputation, violation of the Florida Deceptive and Unfair Trade Practices Act, tortious interference, and unfair competition arising out of BOT’s deceptive, unfair, and unlawful conduct relating to their disparagement of Plaintiffs. On August 1, 2011, Defendants filed a motion to dismiss for *forum non conveniens*, or alternatively to stay the lawsuit pending the outcome of two lawsuits in the United States District Court for the District of Delaware. The trial court denied the motion to dismiss or to stay, but, on January 2, 2014, Florida’s Third District Court of Appeal granted a writ of certiorari staying the lawsuit pending the outcome of the Delaware cases. The case was voluntarily dismissed without prejudice on February 10, 2017.

2. Benihana of Tokyo, Inc. v. Benihana, Inc. and Noodle Time, Inc. Case No. 10-cv-01051 (United States District Court, District of Delaware) (filed December 03, 2010). BOT sued Benihana, Inc. and Noodle Time (together, “the Company”) asserting claims relating to the BENIHANA trademark (the “Mark”) and Benihana Inc.’s attempt to register rights in the Mark in Iceland, Iran, Monaco, Singapore, Ukraine, Vietnam, and Zambia. BOT sought (a) a preliminary and permanent injunction against the Company’s continued actions to seek ownership of the Mark outside of the United States, Central America, South America, and the Caribbean (the “Territory”); (b) an unspecified amount as compensatory damages; and (c) a declaration that BOT is the owner of the Mark outside the Territory. On December 13, 2011, the court issued an order partially dismissing the claims and granting BOT leave to amend the complaint. On January 9, 2012, BOT filed a Second Amended Complaint asserting claims for breach of contract, specific performance, conversion, false designation of origin (or false advertising), and declaratory judgment, arising generally from BOT’s allegation that it was harmed when the Company filed (and withdrew) trademark registration applications in certain foreign countries. On February 15, 2013, the Company filed an Amended Answer, Affirmative Defenses, and Counterclaims to the Second Amended Complaint, asserting counterclaims for breach of contract. BOT answered the Company’s counterclaims on March 11, 2013. On February 14, 2014, the court entered summary judgment in favor of the Company. BOT appealed to the United States Court of Appeals for the Third Circuit, and that court, on August 11, 2015, affirmed the district court’s grant of summary judgment for the Company.

3. Benihana of Tokyo, LLC v. Benihana, Inc., American Arbitration Association Claim No. 13 517 00053 14 (filed January 13, 2014). On January 13, 2014, BOT filed a demand for arbitration with the American Arbitration Association, seeking a declaratory judgment that prior noticed defaults of the Hawaii License Agreement between BOT and Benihana, Inc. (“BI”) were not defaults, and, if they were, requesting additional time to cure the defaults. On February 5, 2014, BI served its answer and counterclaims, seeking a declaratory judgment that the prior noticed defaults were defaults under the Hawaii License Agreement, that the defaults satisfied the contractual standard for termination of the

agreement, and that a February 5, 2014, notice of termination served on BOT was reasonable. An evidentiary hearing was held before a three-member arbitral panel on June 2-6, 2015, in New York City, and the parties submitted post hearing briefs. The arbitration panel issued a split decision. Although the majority declined to terminate the Hawaii License Agreement, the entire panel found that BI was the “prevailing party,” awarded BI more than \$1.1 million in attorneys’ fees, and ordered that a Southern District of New York preliminary injunction should be permanent. BOT paid the attorneys’ fees and did not challenge the permanent injunction. BI challenged the denial of termination in the Southern District of New York, as discussed below.

4. Benihana, Inc. v. Benihana of Tokyo, LLC, Case No. 15-cv-07428-PAE (United States District Court, Southern District of New York). In 2015, BI filed a petition to partially confirm and partially vacate the arbitration award. BI moved to confirm the award of \$1.1 million in attorney’s fees and the permanent injunction, which BOT did not oppose. BI also moved to vacate the arbitrators’ decision to not terminate the Hawaii License Agreement. After several months of briefing and oral argument, the federal court entered an order on July 15, 2016, confirming the award to BI of \$1.1 million in attorney’s fees. The court also entered a permanent injunction prohibiting BOT from selling unauthorized food items or using unauthorized advertisements in connection with the Hawaii restaurant that was the subject of the Hawaii License Agreement. On January 9, 2017, BI filed a motion seeking to hold BOT in civil contempt for multiple violations of the permanent injunction. After a two-day evidentiary hearing, the Court granted BI’s motion, and, on June 14, 2017, the court issued an opinion from the bench that found BOT in contempt. The court imposed a regime of sanctions against BOT, including awarding BI \$634,680 in attorney’s fees and costs.

5. Benihana of Tokyo, LLC v. Benihana, Inc., American Arbitration Association Claim No. 01 16 0001 3078 (filed April 13, 2016). On April 13, 2016, BOT filed a demand for arbitration with the American Arbitration Association asserting that BI breached the Hawaii License Agreement by unreasonably withholding approval for BOT’s menu and advertisements for the Hawaii restaurant. BI answered the demand on May 16, 2016, and denied all claims. Subsequently, on February 27, 2017, BI served BOT with written Notice of Termination of the Hawaii License Agreement based on BOT’s various breaches. Accordingly, on March 17, 2017, BI filed an Amended Answer and Counterclaim seeking a determination that the Notice of Termination was reasonable. On June 23, 2017, BOT filed an Amended Demand, asserting an additional claim for breach of the Hawaii License Agreement based on BI’s purported failure to approve BOT’s request to open a second restaurant in Hawaii. In March 2018, the parties took part in a four-day arbitration hearing and the arbitration panel issued an award in favor of BI in all respects, including upholding BI’s termination of the Hawaii License Agreement. The Award was confirmed by the United States District Court for the Southern District of New York in January 2019.

Other than these actions, no litigation is required to be disclosed in this Item 3.

END OF ITEM 3

ITEM 4: BANKRUPTCY

No bankruptcy information is required to be disclosed in this Item.

END OF ITEM 4

ITEM 5. INITIAL FEES

All franchisees purchasing a franchise under this Disclosure Document will pay to us a non-refundable franchise fee (the “Franchise Fee”) of Forty Thousand Dollars (\$40,000), which is due upon signing the Franchise Agreement.

END OF ITEM 5

ITEM 6. OTHER FEES**OTHER FEES**

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
Royalty (1)	5% of Gross Sales	Payable monthly on the 15th day of the next month	Gross Sales include all revenue from the sale of products and services, and all other income of every kind and nature related to the Restaurant, whether for cash, trade or barter, by redemption of gift certificates or cards, credit transactions or otherwise, regardless of collection. Gross Sales do not include sales tax or other taxes collected from customers and paid to the appropriate taxing authority.
Ongoing Training (1)	Cost of training	As incurred	We may require you to attend additional training programs at either our principal place of business, at your BENIHANA Restaurant, or at a designated BENIHANA Restaurant. You will be responsible for all expenses incurred, including the cost of salaries or wages, transportation, lodging and meals for our employees conducting the training. If we decide to conduct any Ongoing Training at your BENIHANA Restaurant, you must reimburse us for the reasonable out-of-pocket expenses incurred by our training instructors in providing Ongoing Training, including travel expenses, food and lodging, and auto rental.
Advertising Contributions (1)	2% of gross sales	Payable monthly on the 15th day of the next month	We are not required to apply the Advertising Contribution in any specific manner.

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
Local Advertising Spend	2% of Gross Sales	As incurred	You must expend not less than 2% of Gross Sales for local print, radio, digital and television and/or billboard display advertising and local marketing and promotion.
Audit (1)	Cost of audit plus 18% interest on the underpayment from the date of underpayment	As Incurred	18% interest is due on all past due amounts. Audit costs are payable only if audit shows 3% or more understatement of Gross Sales in any report.
Transfer (1)	\$10,000 (for controlling interest) / \$1,000 for non-controlling interest	Prior to consummation of transfer	Payable on sale or transfer of interest in franchise.
Successor Franchise Agreement Fee (1)	20% of the then current franchise fee	On signing of Successor Franchise Agreement	Non-Refundable
Interest, Costs & Attorneys' Fees	Lump Sum	As Incurred	If any payment is overdue, you must pay to us, in addition to the overdue amount, interest on the overdue amount of 18% per annum, or the maximum rate of interest permitted by law, whichever is less. In any legal actions between the parties, we can recover any amount due or in default, with interest, and the costs of the action, including reasonable attorneys' fees.
Indemnification	Will vary depending on circumstances	As Incurred	You must pay to us all costs, losses, damages, expenses, claims, demands, and liabilities that we incur directly or indirectly from, as a result of, or related to the construction, operation, condition, use or occupancy of the Restaurant.
Insurance	Cost of insurance plus 5%	As Incurred	If you do not pay your insurance premiums for any insurance required under the Franchise

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
			Agreement, we have the right to pay them for you and you must reimburse us for the cost of the insurance purchased plus a 5% administrative fee.
Termination Fee	Aggregate royalties paid during your three fiscal years immediately before the termination date, plus all damages, costs and expenses, including reasonable attorneys' fees	Date of termination	If the Franchise Agreement is terminated as a result of any default under the Franchise Agreement.
Inspection & Testing	Cost of inspection and cost of test	On demand	If you request us to evaluate a product or supplier that we have not previously approved, you must pay us an inspection fee of \$350 plus the costs of shipping the proposed product sample to us.

NOTES:

(1) Except as noted in the above charts, all fees are imposed by and are payable to us. All fees are non-refundable. You must participate in our electronic funds transfer program, which authorizes us to utilize a pre-authorized bank draft system. You must sign and deliver to us an unconditional, irrevocable authorization to enable our financial institution to debit bank accounts at your bank in order to pay us any Royalties, Advertising Contributions, and other amounts that you may owe us under the Franchise Agreement or any other agreement between you and us. All Royalties, Advertising Contributions, and other amounts due to us must be received by us or credited to our account by pre-authorized bank debit before 5:00 p.m. on the day each such payment is due.

(2) Interest, payable upon demand, begins from the date of the non-payment or underpayment to the date of payment at a rate of 18% per annum or the maximum rate allowed by applicable law, if that maximum legal is less than 18% per annum.

END OF ITEM 6

ITEM 7. ESTIMATED INITIAL INVESTMENT

We estimate that you will incur initial investment costs in the ranges described below, depending on whether you are developing either a full-size or Concession Model BENIHANA® Restaurant.

YOUR ESTIMATED INITIAL INVESTMENT (FULL-SIZE RESTAURANT MODEL)

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee	\$40,000	Lump Sum	At signing of franchise agreement	Us
Travel and Living Expenses while Training	\$25,000 to \$100,000	As incurred	During Training	Airlines, hotels, and restaurants
Real Estate Improvements (Excluding Purchase Real Estate)	\$2,500,000 to \$4,500,000 (Note 1)	(Note 1)	(Note 1)	(Note 1)
Equipment, Furniture & Fixtures	\$500,000 to \$700,000 (Note 2)	Lump Sum	Prior to Opening	Vendors
Opening Inventory	\$40,000 to \$60,000 (Note 3)	Lump Sum	Prior to Opening	Vendors
Liquor License	\$200 to \$300,000 (Note 4)	Lump Sum	Prior to Opening	State Liquor Authority and/or owner of License
Insurance	\$50,000 (Note 5)	Lump Sum	Prior to Opening	Insurance carrier
Additional Funds	\$250,000 to \$500,000 (Note 6)	As Incurred	As Incurred	Employees, utilities, suppliers
TOTAL MINIMUM	\$3,405,200 to \$6,250,000 (Note 7)			

NOTES:

(1) Real Estate and Real Estate Improvements: You must lease or purchase land and a building for the operation of the Restaurant. The typical BENIHANA Restaurant is composed of a building having an area of approximately 6,000-8,000 square feet situated on approximately 1-1/2 acres of land, located in a restaurant row or commercial area with

residential areas in close proximity. A BENIHANA Restaurant may be either a stand-alone unit, part of a commercial retail center, or located in an office building, hotel, or other commercial facility. The estimate of \$2,500,000 to \$4,500,000 is for the design and construction of a typical freestanding restaurant building and improvements. The cost of purchasing real estate is not included in the Real Estate Improvements estimate and varies significantly from location to location. It is estimated that the land purchased for a typical restaurant building will cost from \$1,400,000 to \$2,000,000.

If the entire improved premises can be leased, you may not have to incur some portion of the initial costs for real estate improvements. Rent will vary significantly from location to location. Many landlords require payment of the greater of a fixed base rent and a percentage rent based upon gross sales. Percentage rent normally ranges between 5% and 8% of gross sales. Rent will vary depending upon the location, age, condition of the building, and other factors. If you lease land, you may still have to pay for improvements and building construction. If a building can be rented, certain tenant improvements will have to be made in order to adapt the building for use as a BENIHANA Restaurant. Shopping center or hotel leases usually contain provisions that affect the operations of the Restaurant (i.e., hours, signage restrictions, advertising budget, etc.). Some landlords will agree to build a building to the tenant's necessary plans and specifications and then rent the building to the tenant. In such cases, the rent will be higher to reflect the landlord's expense for construction of the restaurant building.

You should be aware that we have limited experience in converting an existing building to a BENIHANA Restaurant. Historically, whenever establishing a company-owned BENIHANA Restaurant, we have built from "ground-up" and as a result we do not have sufficient information upon which to base our cost estimate for conversion of an existing facility to a BENIHANA Restaurant. Because conversion costs are influenced by the age, condition, composition and former use of the structure, such costs can differ greatly from building to building.

(2) You must equip the BENIHANA Restaurant with all equipment, fixtures, signage, smallwares, glassware, plateware, and uniforms ("FF&E") necessary for the opening and operation of the BENIHANA Restaurant. The aggregate cost of such FF&E typically is estimated to be between \$500,000 and \$700,000. Depending upon the size of the BENIHANA Restaurant, the existing supplies of FF&E items and the number of vendors then selling FF&E items may vary. You will have to negotiate delivery, payment, and refund terms with suppliers.

You agree to purchase and install, at your expense, a point-of-sale data processing system (the "POS System"), including the software specified in the Manual (as defined in Item 8 of this Disclosure Document) provided by us or otherwise specified in writing. Presently, the required POS System is an ALOHA® system. See Item 11 for initial and ongoing costs of the POS System. The POS System shall consist of a PC-based cash register, register tape printer, magnetic stripe reader, credit card devices that accept EMV chip cards, cash drawer, our defined polling and register software and telecommunications equipment, and any other state-of-the-art devices that may be required by us. The POS System shall contain a device that records accumulated sales and cannot be turned back or reset, and a back-up power system for memory storage in the event of power loss. The POS

System will provide a record of products sold, a menu mix report and other reports we require. We have the right to retrieve such data and information directly from your computer as we deem necessary. You will be responsible for the telephonic or transmission costs of such retrieval. You agree to participate in BENIHANA's current online order platform, which may change from time to time, at our discretion. You will install any new or upgraded software programs and equipment whenever we adopt new or upgraded programs to ensure full operational efficiency and communications capability, at your sole cost and expense.

(3) In order to open the BENIHANA Restaurant, you will be required to purchase an initial inventory of food, beverages (alcoholic and otherwise), linen, paper supplies, etc. The inventory items, quantity, and price may vary based upon building size, availability of supplies, the number of vendors selling such items, etc. The estimated aggregate cost of the initial inventory is \$40,000. Payment terms for such items are usually cash on delivery or payment within a specified number of days (usually no more than 30 days) after delivery.

(4) Depending upon the state in which the BENIHANA Restaurant is located, you may have to purchase a liquor license. In many jurisdictions, the liquor license is issued by a governmental body at the state level and only an annual fee is payable. Other jurisdictions may require city and/or county liquor licenses. Annual license fees may be as little as \$200 or as much as \$300,000 depending upon the jurisdiction.

(5) You are obligated under the Franchise Agreement to obtain and keep in effect insurance (both for your and our benefit) as may be required by law or as we may designate. You must obtain and maintain through the term of the Franchise Agreement: (i) comprehensive general liability insurance (with products, completed operations, and contractual liability and independent contractors and escalators coverage) and comprehensive motor vehicle insurance (for owned and non-owned vehicles) against claims for bodily and personal injury, death, and property damage caused by or occurring in conjunction with the operation of the BENIHANA Restaurant (or otherwise in conjunction with your conduct of business under the Franchise Agreement) under one or more policies of insurance, each on an occurrence basis, with single-limit coverage for personal and bodily injury, death and property damage of at least \$5,000,000 (or such other amount as we reasonably require); (ii) all-risk building and contents insurance including fire, flood and earthquake, vandalism, and theft insurance for the replacement value of the BENIHANA Restaurant and its contents; (iii) business interruption insurance for a period adequate to reestablish normal business operations; (iv) builders' risk insurance on a completed value non-reporting basis during the period of any remodeling of the BENIHANA Restaurant; and (v) workers' compensation insurance in such amount as may be required by applicable statute or rule. The aggregate annual premiums for insurance are estimated to be \$50,000. You will need to negotiate payment terms directly with the insurance carriers. You must have us listed as an additional insured on all liability insurance policies.

(6) The additional funds estimate is only the funds needed for opening expenses and working capital to operate for three months after opening. This estimate on our management's business experience, our operating history, and that of our predecessors and

affiliates. The actual amount of additional funds you will need depends on a variety of factors, including: your management skill, experience, and business acumen; local economic conditions; the local market for the goods and services provided; the number of customers served and other variable expenses. The estimate of additional funds does not include any allowance for an owner's draw or operating losses after the initial phase. You may have to put additional cash into the business, but we cannot estimate or promise when or whether your Restaurant or any other BENIHANA Restaurant will achieve positive cash flow or profits. You must have additional sums available, whether in cash or through credit lines, or have other assets that you may liquidate or borrow against to cover personal living expenses and any operating losses after the initial phase of operations.

(7) We do not offer you or other franchisees any financing, directly or indirectly, in connection with the initial investment.

(8) You should review these figures carefully with a business advisor and develop a business plan and financial projections before making any decision to purchase a franchise for a BENIHANA Restaurant.

**YOUR ESTIMATED INITIAL INVESTMENT (CONCESSION MODEL
RESTAURANT)**

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee	\$40,000	Lump Sum	At signing of franchise agreement	Us
Travel and Living Expenses while Training	\$25,000 to \$50,000	As incurred	During Training	Airlines, hotels, and restaurants
Real Estate and Improvements (Leased)	\$176,000 to \$415,000	(Note 1)	(Note 1)	(Note 1)
Equipment, Furniture & Fixtures	\$185,000 to \$295,000 (Note 2)	Lump Sum	Prior to Opening	Vendors
Opening Inventory	\$40,000 (Note 3)	Lump Sum	Prior to Opening	Vendors
Liquor License	\$0 (Note 4)	N/A	N/A	Owner of License
Insurance	\$50,000 (Note 5)	Lump Sum	Prior to Opening	Insurance carrier
Additional Funds	\$100,000 to \$200,000 (Note 6)	As Incurred	As Incurred	Employees, utilities, suppliers
TOTAL MINIMUM	\$616,000 to \$1,090,000 (Note 7)			

NOTES:

(1) Real Estate and Improvements: The current Concession Model contemplates that you will lease the premises at which you will operate the BENIHANA Restaurant. A typical Concession Model BENIHANA Restaurant will be located in premises of approximately 750-2,000 square feet located in a retail shopping, entertainment district, or other commercial facility. Certain tenant improvements, in the form of new construction or conversion of an existing location to a BENIHANA Restaurant, will be required to adapt the premises for use as a BENIHANA Restaurant. The amount of the initial costs for real estate and improvements, which includes architectural plans, permits, and construction or buildout costs, that you will incur will depend on the terms of your lease. Rent will vary significantly from location to location. Many landlords require payment of the greater of a fixed base rent and a percentage rent based upon gross sales. Percentage rent normally ranges between 5% and 8% of gross sales. Rent will vary depending upon the location of the premises and other factors. Some landlords will agree to build a location to the tenant's plans and specifications or contribute to the cost of any buildout; in such cases, the rent may be higher to reflect the landlord's expense for construction of the restaurant premises.

You should be aware that we have limited experience with the Concession Model franchised BENIHANA Restaurant. As of the date of this disclosure document, construction has begun and advanced only on one such BENIHANA Restaurant; thus, our cost estimates (of \$176,000 to \$415,000) for the construction of, or conversion to, a Concession Model BENIHANA Restaurant are based on very limited information. Both construction and conversion costs are influenced by the age, condition, composition, and any former use of the premises, and such costs can vary greatly by location. Thus, you must investigate independently the local market conditions before making any decision to proceed with a Franchise Agreement for a Concession Model BENIHANA Restaurant.

(2) You must equip the BENIHANA Restaurant with all equipment, fixtures, signage, smallwares, glassware, plateware, and uniforms ("FF&E") necessary for the opening and operation of the BENIHANA Restaurant. The aggregate cost of such FF&E for a Concession Model BENIHANA Restaurant is estimated to be between \$185,000 and \$295,000. Depending upon the size of the BENIHANA Restaurant, the availability of such FF&E items and the number of vendors then selling FF&E may vary. You will have to negotiate delivery, payment, and refund terms with suppliers.

You agree to purchase and install, at your expense, a point-of-sale data processing system (the "POS System"), including the software specified in the Manual (as defined in Item 8 of this Disclosure Document) provided by us or otherwise specified in writing. Presently, the required POS System is an ALOHA® system. See Item 11 for initial and ongoing costs of the POS System. The POS System shall consist of a PC-based cash register, register tape printer, magnetic stripe reader, credit card devices that accept EMV chip cards, cash drawer, our defined polling and register software and telecommunications equipment, and any other state-of-the-art devices that may be required by us. The POS System shall contain a device that records accumulated sales and cannot be turned back or reset, and a back-up power system for memory storage in the event of power loss. The POS System will provide a record of products sold, a menu mix report and other reports we require. We have the right to retrieve such data and information directly from your

computer as we deem necessary. You will be responsible for the telephonic or transmission costs of such retrieval. You agree to participate in BENIHANA's current online order platform, which may change from time to time, at our discretion. You will install any new or upgraded software programs and equipment whenever we adopt new or upgraded programs to ensure full operational efficiency and communications capability, at your sole cost and expense.

(3) In order to open the BENIHANA Restaurant, you will be required to purchase an initial inventory of food, beverages (alcoholic and otherwise), linen, paper supplies, etc. The inventory items, quantity, and price may vary based upon building size, availability of supplies, the number of vendors selling such items, etc. The estimated aggregate cost of the initial inventory is \$40,000. Payment terms for such items are usually cash on delivery or payment within a specified number of days (usually no more than 30 days) after delivery.

(4) Because the Concession Model will be operated within a larger venue, any liquor or alcoholic beverage license will be obtained by the property owner and will not require an initial capital outlay by You.

(5) You are obligated under the Franchise Agreement to obtain and keep in effect insurance (both for your and our benefit) as may be required by law or as we may designate. You must obtain and maintain through the term of the Franchise Agreement: (i) comprehensive general liability insurance (with products, completed operations, and contractual liability and independent contractors and escalators coverage) and comprehensive motor vehicle insurance (for owned and non-owned vehicles) against claims for bodily and personal injury, death, and property damage caused by or occurring in conjunction with the operation of the BENIHANA Restaurant (or otherwise in conjunction with your conduct of business under the Franchise Agreement) under one or more policies of insurance, each on an occurrence basis, with single-limit coverage for personal and bodily injury, death and property damage of at least \$5,000,000 (or such other amount as we reasonably require); (ii) all-risk building and contents insurance including fire, flood and earthquake, vandalism, and theft insurance for the replacement value of the BENIHANA Restaurant and its contents; (iii) business interruption insurance for a period adequate to reestablish normal business operations; (iv) builders' risk insurance on a completed value non-reporting basis during the period of any remodeling of the BENIHANA Restaurant; and (v) workers' compensation insurance in such amount as may be required by applicable statute or rule. The aggregate annual premiums for insurance are estimated to be \$50,000. You will need to negotiate payment terms directly with the insurance carriers. You must have us listed as an additional insured on all liability insurance policies.

(6) The additional funds estimate is only the funds needed for opening expenses and working capital to operate for three months after opening. This estimate on our management's business experience, our operating history, and that of our predecessors and affiliates. The actual amount of additional funds you will need depends on a variety of factors, including: your management skill, experience, and business acumen; local economic conditions; the local market for the goods and services provided; the number of customers served and other variable expenses. The estimate of additional funds does not

include any allowance for an owner's draw or operating losses after the initial phase. You may have to put additional cash into the business, but we cannot estimate or promise when or whether your Restaurant or any other BENIHANA Restaurant will achieve positive cash flow or profits. You must have additional sums available, whether in cash or through credit lines, or have other assets that you may liquidate or borrow against to cover personal living expenses and any operating losses after the initial phase of operations.

(7) We do not offer you or other franchisees any financing, directly or indirectly, in connection with the initial investment.

(8) You should review these figures carefully with a business advisor and develop a business plan and financial projections before making any decision to purchase a franchise for a BENIHANA Restaurant.

END OF ITEM 7

ITEM 8. RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

Compliance with BENIHANA Standards

You must construct, improve, and operate your BENIHANA Restaurant in accordance with the BENIHANA System and the BENIHANA Standards. You must, at your expense, purchase or lease, install, and use all fixtures, signage, furnishings, improvements, supplies, other products, and equipment (including point of sales, computer hardware, and software), décor items, and related items we require, all of which must conform to the BENIHANA Standards. In many cases, you must obtain these items from approved suppliers.

You may not install or permit to be installed at the BENIHANA Restaurant premises any fixtures, furnishings, equipment, décor items, signs, games, vending machines or other items without our written consent or that do not comply with the BENIHANA Standards.

You must maintain in sufficient supply and use and sell at all times only those food and beverage items, ingredients, products, materials, packaging, supplies and paper goods that meet the BENIHANA Standards. Most food, paper, promotional items, and packaging, and many cleaning tools and other supplies you use in the BENIHANA Restaurant must meet the BENIHANA Standards and you must purchase them from approved suppliers or distributors. All menu items must be prepared in accordance with the recipes and procedures specified in the Manual or other written materials.

You may not deviate from the BENIHANA Standards in any way without obtaining our written consent first. You must sell and offer for sale only those menu items, products and services that we have expressly approved for sale in writing. You must offer for sale all products and services required by us in the manner and style we require. You must discontinue offering for sale any items, products and services we may disapprove in writing at any time.

We make the BENIHANA Standards available to you in the Manual (as defined below) and in other forms of communications. The term “Manual” Or “Operations Manual” as used in the Franchise Agreement”) means the BENIHANA University website, all written manuals or training or instruction materials for use by BENIHANA System franchisees or restaurant operators, and all product, service and facility specifications and standards we issue, all of which may be supplemented or modified by us in our sole discretion at any time. We can, and expect to, modify the BENIHANA Standards as we deem necessary. We will provide you notice in the Manual or other methods (such as by email) of any changes.

Authorized Suppliers

You must obtain all food and beverage items, ingredients, supplies, materials, fixtures, furnishings, equipment (including point of sale, computer hardware and software), and other products used or offered for sale at the BENIHANA Restaurant solely from suppliers who demonstrate, to our continuing reasonable satisfaction, the ability to meet our then-current standards, or otherwise in accordance with our standards and specifications. We do not make our supplier evaluation criteria available to you or any supplier. We will provide you with a list of approved suppliers, and our list of approved suppliers is subject to change over time.

If you wish to purchase, lease or use any products or other items from an unapproved supplier, you must submit a written request for approval, or must request the supplier to do so. We must approve any product or supplier in writing before you make any purchases of that product or from that supplier. Your written request must: (a) identify the name and address of the proposed supplier, (b) contain all information we request (which may include reasonable financial, operational and economic information regarding the supplier's business), and (c) identify the authorized products desired to be purchased from the supplier. We may also require that samples from the supplier be delivered to us or to a designated independent testing laboratory for testing prior to approval and use. You must pay us a fee to cover all costs of the test (see Item 6). Our supplier approval procedure does not obligate us to approve any particular supplier. However, we will notify you within 45 days after we complete the inspection and evaluation process of our approval or disapproval of any proposed supplier.

We are not required to make available to you or to any supplier our criteria for product or supplier approval. We have and may continue to develop for use in the BENIHANA System certain products that are prepared from confidential, proprietary recipes and other proprietary products bearing the Marks. Because of the importance of quality and uniformity of production and the significance of those products in the BENIHANA System, it is to your and our benefit that we closely oversee information related to the production and distribution of those products. Therefore, you will use only our proprietary recipes and other proprietary products, and you will purchase solely from us or from a source designated by us all of your requirements for those products.

Purchasing Arrangements

We may negotiate purchase arrangements, including price terms, with designated and approved suppliers on behalf of the BENIHANA System. These arrangements may include preferred vendor programs with suppliers that are willing to supply some products, equipment, or services to some or all of the BENIHANA Restaurants in the BENIHANA System. If we do establish those types of programs or arrangements, we may limit the number of approved suppliers with whom you may deal, we may designate sources that you must use for some or all products, equipment and services, and we may refuse to approve proposals from franchisees to add new suppliers if we believe that approval would not be in the best interests of the BENIHANA System. We or our affiliates may negotiate supply contracts with our suppliers under which we are able to purchase, or have available for franchisees to purchase, products, equipment, supplies, services and other items at prices that will benefit us or our franchisees.

As of the issuance date of this Disclosure Document, we have arrangements with approved suppliers of certain unique, proprietary products. You must purchase these items directly from the designated suppliers.

Our Right to Derive Revenue on Account of Franchisee Purchases

We may derive revenue, compensation, payments, or other material benefits in consideration of purchases by you or other BENIHANA Restaurants of the System and on account of any suppliers' dealings with us, you, or other BENIHANA Restaurants in the System. These benefits may include, by way of example, rebates, commissions, or other forms of compensation.

We sometimes negotiate arrangements with certain vendors to pay rebates or apply price discounts on account of purchases by company-owned and franchised restaurants. As of the issuance date of this Disclosure Document, certain approved suppliers make payments to us based in part on franchisee purchases. Some suppliers make payments to us on a per-unit basis, ranging from \$0.50 to \$5.50 per unit purchased, depending on the supplier, the specific product, and the total unit volume purchased that. Another supplier provides payments in the nature of rebates of 5.0% of net purchases. During our fiscal year ending March 31, 2024, we received \$29,709.25 from these suppliers on account of franchisee purchases. We remitted to franchisees 100% of those payments made by suppliers on account of franchisee purchases. We are not contractually obligated to remit any payments to franchisees and reserve the right to retain all such payments in the future.

During the fiscal year ending March 31, 2024, franchisees purchased supplies from us in the amount of \$11,707.81. Franchisees are not currently required to purchase any supplies from us. Occasionally, franchisees do so because, given the number of company restaurants we operate, we are able to negotiate more favorable prices based on a higher volume of purchases.

During the fiscal year that ended March 31, 2024, we had no revenues from franchisee purchases or leases of required products or services.

We and our affiliates receive no other payments from any supplier or any special discount on purchases from any supplier for ourselves or themselves, in connection with purchases by our franchisees, other than what is described above.

Purchasing Cooperatives

We have the right, in our discretion, to designate any geographical area for purposes of establishing a purchasing program (“Purchasing Program”). If a Purchasing Program is established in the area encompassing your BENIHANA Restaurant at the time you open for business, or a Purchasing Program is established during the term of your Franchise Agreement, you must immediately participate in the Purchasing Program.

None of our officers owns an interest in any approved supplier.

Other than as disclosed above, we have not established any purchasing arrangements with designated suppliers and do not receive payments based on required franchisee purchases.

Advertising, Marketing & Promotional Materials

All advertising, marketing and promotional materials, signs, decorations, paper goods (including menus and all forms and stationery used in the Restaurant) and other items we designate must bear the Marks (see Item 13) in the form, color, location and manner we prescribe. All of your advertising, marketing and promotion in any medium must be conducted in a dignified manner and must conform to the BENIHANA Standards. You must obtain our approval before using any advertising, marketing, or promotional materials and plans before their proposed use. Any advertising and promotional materials you submit to us for our review will become our property.

Site Approval

You must obtain our approval of the site for your BENIHANA Restaurant before you acquire the site. You must also obtain our approval of any contract of sale or lease for the BENIHANA Restaurant before you sign the contract or lease. At our request, you and your landlord must sign a Collateral Assignment of Lease with us (Exhibit D to the Franchise Agreement) which assigns your lease to us under certain circumstances, including if your Franchise Agreement is terminated.

Insurance

Before you open your BENIHANA Restaurant, you must obtain the insurance coverage we require. Our current insurance requirements are described below. We may modify our insurance requirements during the term of your Franchise Agreement, and any modifications will be communicated to you in our Manual or otherwise in writing. You must comply with any changes we require. This insurance coverage must be maintained during the term of the Franchise Agreement and must be obtained from a responsible, duly licensed carrier or carriers acceptable to us. All insurance must be on an “occurrence” basis. The required insurance is:

- (a) comprehensive general liability insurance (with products, completed operations and contractual liability and independent contractors and escalators coverage) and comprehensive motor vehicle insurance (for owned and non-owned vehicles) against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Restaurant (or otherwise in conjunction with your conduct of business) under one or more policies of insurance, each on an occurrence basis, with single-limit coverage for personal and bodily injury, death and property damage of at least \$5,000,000;

- (b) All-risk building and contents insurance including fire, flood and earthquake, vandalism and theft insurance for the replacement value of the Restaurant and its contents;

- (c) business interruption insurance for a period adequate to reestablish normal business operations;

- (d) builders’ risk insurance on a completed value non-reporting basis during the period of any remodeling of the Restaurant; and

- (e) workers’ compensation insurance in such amount as may be required by applicable statute or rule.

All liability insurance policies must name us, and any of our affiliates that we specify, and our respective officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them, as additional named insureds and must include a waiver of subrogation in favor of all those parties.

You must construct, improve and operate your BENIHANA Restaurant in accordance with BNC's standards and specifications. You must use fixtures, signage, improvements, decor, supplies, other products and equipment, including computer and point of sale hardware and software that meet BNC's standards and specifications. In most cases, these

items must meet BNC requirements and, in many cases, you must obtain these items from approved suppliers. Most food, paper, promotional items, and packaging, and many cleaning tools and other supplies you use in the Restaurant must meet BNC's standards and specifications and you must purchase them from approved suppliers or distributors. We estimate that the purchases from approved suppliers or those that meet our specifications represent approximately 65% to 90% of the costs to establish a BENIHANA Restaurant and approximately 30% to 55% of the non-occupancy expenses to operate a BENIHANA Restaurant.

Except as stated in this Item 8, there are no goods, services, supplies, equipment, computer hardware and software or real estate which you must purchase or lease from us or our designee, or from suppliers approved by us.

END OF ITEM 8

ITEM 9. FRANCHISEE'S OBLIGATIONS

This table lists your principal obligations under the Franchise Agreement and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this Disclosure Document.

	<u>Obligation</u>		<u>Section in Agreement</u>		<u>Item in Disclosure Document</u>
a.	Site selection and acquisition/lease		Article 2		7, 8 and 11
b.	Pre-opening purchases/leases		Articles 2 & 3		7 and 8
c.	Site development and other pre-opening requirements		Articles 2, 3 & 5		6, 7 and 11
d.	Licenses and Permits		Article 2 & Section 3.17		7
e.	Initial and ongoing training		Article 5		11
f.	Opening		Sections 2.9 - 2.11		11
g.	Fees		Article 7 & Section 17.2.7		5 and 6
h.	Compliance with standards and policies/Operating Manual		Articles 1, 3, 9 & 10		11
i.	Trademarks and proprietary information		Articles 6 & 18		13 and 14
j.	Restrictions on products/ services offered		Articles 3 & 13		16
k.	Warranty and customer service requirements		Not applicable		Not applicable
l.	Territorial development and sales quota		Not applicable		Not applicable
m.	Ongoing product/service purchases		Article 3		8

<u>Obligation</u>		<u>Section in Agreement</u>	<u>Item in Disclosure Document</u>
n.	Maintenance, appearance and remodeling requirements	Articles 2 & 3	8
o.	Advertising	Articles 6 & 9	6, 8, 11
p.	Indemnification	Article 12	6
q.	Management/Chef Training	Article 5	11
r.	Records/reports	Article 8	6
s.	Inspections/audits	Articles 8 & 10	6
t.	Assignment	Article 11	17
u.	Renewal	Article 17	17
v.	Post-termination obligations	Articles 14 & 18	17
w.	Non-competition/ Non-solicitation or employment covenants	Article 18	17
x.	Dispute resolution	Article 15	17

END OF ITEM 9

ITEM 10. FINANCING

We do not offer direct or indirect financing. We do not guarantee your note, lease, or any other of your monetary obligations.

END OF ITEM 10

ITEM 11. FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING

Except as listed below, we are not required to provide you with any assistance.

Pre-Opening Obligations

Before you open the BENIHANA Restaurant, we will:

1. provide you with access to the Manual for use during the franchise term. (Franchise Agreement, Section 4.1);
2. provide to you our then-current initial training program ("Initial Training"). (Franchise Agreement, Section 4.2, Article 5);
3. provide pre-opening and opening assistance and training of additional employees of yours (other than those trained at the Initial Training) at the BENIHANA Restaurant ("In-Restaurant Training") as we deem appropriate. (Franchise Agreement, Sections 4.3, 5.3); and
4. make our personnel available to you to consult in the planning, design, construction, and build-out of the BENIHANA Restaurant. (Franchise Agreement, Sections 2.3, 2.4).

Post-Opening Obligations

During the operation of your BENIHANA Restaurant we will provide the following assistance and services:

1. visits to and evaluations of the Restaurant, as we deem necessary, to ensure your compliance with the BENIHANA Standards (Franchise Agreement, Article 10.1).
2. ongoing training regarding operation of the BENIHANA Restaurant as we deem necessary and subject to our availability (Franchise Agreement, Sections 4.4, 5.5).
3. at your request, additional In-Restaurant Training. You must pay a training fee for each trainer provided and reimburse our expenses (Franchise Agreement, Section 5.3.2).

Site Selection

If you have not secured a location approved by us before you sign your Franchise Agreement, you must do so and construct and open the BENIHANA Restaurant for business within 18 months from the date you sign the Franchise Agreement. (Franchise Agreement, Article 2). If you do not find an approved location, construct it in accordance with the BENIHANA Standards and the requirements in the Franchise Agreement, and open the BENIHANA Restaurant for business within 18 months from the date you sign the Franchise Agreement, we have the right to immediately terminate the Franchise Agreement. (Franchise Agreement, Section 13.2.1).

We do not select your site. However, your location must be approved by us in advance. In approving your site, we consider the general location, size of the property, neighborhood, population, spending habits, food and beverage sales of existing restaurants, traffic pattern, other demographics, other physical characteristics of the site and the lease or purchase terms. At your request, we may assist you in finding an approved location. Our assistance will in no way constitute an assurance, representation or warranty of any kind

as to the suitability of the location of the BENIHANA Restaurant, or for any other purpose. (Franchise Agreement, Section 2.2).

You must buy or lease the Location at your expense. If you lease the Location, you must obtain our prior written approval before entering into a lease agreement, and you must also provide us with a copy of your fully executed lease agreement immediately after signing. (Franchise Agreement, Section 2.11). We are not required and have no obligation to negotiate the terms of your lease. We may require the inclusion of certain provisions in the lease, including, but not limited to:

(a) The requirement that you and your landlord sign and deliver to us a collateral assignment of your rights under the lease in the form attached to the Franchise Agreement as Exhibit D, under which you must, at our option, assign all of your rights under the lease to us or our designee upon termination or expiration of the Franchise Agreement.

(b) A provision restricting the use of the premises solely to the operation of the BENIHANA Restaurant.

(c) A provision which prohibits you from subleasing or assigning all or any part of your occupancy rights, or extending the term of or renewing the lease, without our prior written consent.

(d) A provision giving us the right to enter the premises to make modifications necessary to protect the Marks or the BENIHANA System, or to cure any default under the Franchise Agreement.

(e) A provision requiring the landlord to provide us with written notice of any defaults by you under the lease simultaneously with the issuance of any such notices to you. (Franchise Agreement, Section 2.11).

Build-Out and Construction of the BENIHANA Restaurant

We will provide you with our then-current prototypical plans for a typical BENIHANA Restaurant. You must at your own expense employ architects, designers, engineers, and others as necessary to complete, adapt, modify, or substitute the sample plans and specifications and submit them to us for review and approval. We will review the plans and specifications promptly and approve or provide you with comments on the plans and specifications. You may not begin construction of the BENIHANA Restaurant until we approve, in writing, the final plans and specifications to be used in constructing the BENIHANA Restaurant. Once final plans are approved, you must cause the BENIHANA Restaurant to be completed in full compliance with the plans. (Franchise Agreement, Section 2.4)

Other than as set forth above, we are not bound to provide any other supervision, assistance, or services to you during the operation of the business.

Estimated Opening Time Period

Franchisees typically open their BENIHANA Restaurants within 18 months after signing the Franchise Agreement, and within 12 months after the site is approved by us. The factors affecting this time include the ability to locate a suitable site, negotiate a purchase or lease arrangement, obtain financing or building permits, compliance with

zoning and local ordinances, construction schedules, obtaining all required licenses, weather conditions, shortages, and delayed installation of equipment, fixtures, and signs.

Computer System

You must purchase, install, and maintain at your expense the ALOHA® POS System (see Item 7 Note 2). The POS System must contain a device that records accumulated sales and cannot be turned back or reset, and a back-up power system for memory storage in the event of power loss. The POS System will provide a record of products sold, a menu mix report, and other reports we require. We will have the right to retrieve the data and information directly from your POS System as we deem necessary. There are no contractual limitations on our right to access your computer information. You will be responsible for the telephonic or transmission costs of any retrieval. (Franchise Agreement, Section 3.8).

You must install any new or upgraded software programs and equipment if and when we adopt new programs for all franchisees to ensure full operational efficiency and communications capability at your sole cost and expense. You must update and upgrade the POS System as we designate. We may require you to enter into a separate maintenance agreement for the POS System at any time. Except as provided by manufacturer's warranties, neither we, nor any third party, has a contractual obligation to provide ongoing support, repairs, upgrades, or updates to your hardware or software. (Franchise Agreement, Section 3.8).

The current POS System shall consist of a PC-based cash register, register tape printer, magnetic stripe reader, credit card devices that accept EMC chip cards, cash drawer, our defined polling and register software and telecommunications equipment, and any other state-of-the-art devices that we require. The POS System must contain a device that records accumulated sales and cannot be turned back or reset, and a back-up power system for memory storage in the event of power loss. The POS System will provide a record of products sold, a menu mix report and other reports we require. We have the right to retrieve all data and information directly from your computer as we deem necessary.

The costs associated with purchasing your computer system ranges from \$40,000 to \$65,000. Please refer to Item 7 for more information. There are no contractual limitations on the frequency and cost of upgrading or updating your computer system. We estimate that you will incur up to \$20,000 to \$30,000 for annual ongoing updates, repairs, or upgrades to your computer system.

You must comply with Payment Card Industry Data Security Standards Requirements ("PCI DSS"), and any other requirements we specify, at all times. We have the right to request proof of PCI Compliance annually.

Advertising, Marketing & Promotional Activities

We have not created, and do not presently intend to create, a national advertising fund. We are not obligated to conduct any advertising. We do collect an Advertising Contribution from you in the amount of 2% of your Gross Sales each month. All franchisees who purchase a franchise under this offering are required to pay the Advertising Contribution of 2% of Gross Sales to us on the same basis. Company-owned restaurants are not required to pay the Advertising Contribution. The Advertising Contributions paid by you may be

co-mingled with our general funds and nothing in this Disclosure Document or the Franchise Agreement shall be interpreted to mean that receipt by us of any Advertising Contributions constitutes a trust fund or any other fund dedicated exclusively for advertising or promotion. We do not have any specific obligations to apply Advertising Contributions in any specific manner other than in our sole and absolute discretion, we intend as a general matter to use Advertising Contributions for expenses related to brand advertising, public relations, and in-store, local, national or regional advertising placed by us. We have no obligation to make expenditures for you that are equivalent or proportionate to Advertising Contributions paid by you under this Agreement or to insure that you benefit directly or on a pro rata basis from expenditures of Advertising Contributions. As of the date of this Disclosure Document, in our last fiscal year, our expenses for marketing, advertising, trademark maintenance, and public relations exceed the amount of Advertising Contributions we received from franchisees. We do not make available for review specific financial information related to Advertising Contribution expenditures, and you will not receive a periodic accounting of Advertising Contribution expenditures. We may, in our sole discretion, use the Advertising Contributions principally to solicit new franchise sales.

In addition to the Advertising Contribution paid to us, you must spend in each of your fiscal years an amount (“Local Spend”) that is not less than 4% of Gross Sales for local marketing and promotion.

Local Spend may consist of advertising via: television; radio; digital media; magazines or newspapers; direct mail; billboards; promotional brochures and literature; point-of-sale materials; or other approved advertising. All advertising, marketing, and promotional activities must be conducted in a dignified manner and must conform to our standards and requirements. You may not use any advertising, marketing or promotional plans or materials as part of your Local Spend unless and until you have received written approval from us. If you do not receive written disapproval from us within fifteen days of the date of our receipt of such samples or materials, we shall be deemed to have approved them. We may revoke our approval of any such plans or materials at any time effective upon written notice to you.

You are not permitted to solicit customers and/or advertise outside of the Restaurant Area, by using specific price points or discount offering, unless we specifically approve doing so. We may condition our authorization upon your agreement to offer other BENIHANA franchisees operating BENIHANA Restaurants in the area encompassed by the circulation base of the proposed advertising, the opportunity to participate in, and share the expense of such solicitation and/or advertising.

Training

We provide you with our pre-opening training program before you open your BENIHANA Restaurant. The schedule and activities of the pre-opening training program as of the end of our most recently concluded fiscal year are described below:

TRAINING PROGRAM FOR RESTAURANT MODEL

SUBJECT	CLASSROOM TRAINING HOURS	ON THE JOB TRAINING HOURS	LOCATION
CONCEPT History of BENIHANA concept and its ethnic foundation BENIHANA's differentiating elements. Mission Statement	2 hours		Our Office (Aventura, FL)
MARKETING Brand equity Brand promotions Guest profile Identified customer profile of local market Competitors Promotions Public Relations Collateral Materials Opening Support National promotion	4 hours		Our Office (Aventura, FL)
BEVERAGE STANDARDS Specialty drinks Recipes Glassware Standard portions Specifications Sake and Sho-Chu Responsible Service Beverage Menu	4 hours	36 hours	Corporate or franchised restaurant (as we designate)
HIBACHI FOOD STANDARDS Cooking Basics Food definition Food specifications National procurement program Yield test and portioning Recipes and chef's service procedures Standard Cooking All sauces and dressings Key points of food handling Chef entertainment	8 hours	112 hours	Corporate or franchised restaurant (as we designate)

SUBJECT	CLASSROOM TRAINING HOURS	ON THE JOB TRAINING HOURS	LOCATION
BENIHANA SUSHI STANDARDS Sushi food specifications Sushi Awasezu & Sushi rice Standard menu items and their recipes “Specialty” rolls Happy Hour/LTOs Hibachi Food	4 hours	112 hours	Corporate or franchised restaurant (as we designate)
GUEST SAFETY AND SECURITY PROTOCOL Safety of facility in compliance with applicable regulations and EcoSure standards; ServSafe (or equivalent) certification; Vendor selection; “Approved Source”; “Safety First” in sushi; Chef safety protocol for a guest	8 hours		Corporate or franchised restaurant (as we designate)
STANDARD EQUIPMENT, TOOLS, AND UTENSILS Facility Kitchen Sushi Bar Bar	2 hours		Our Office (Aventura, FL)
STANDARD SERVICE Steps of Service Host, Bar, Lounge Sushi bar dining room Chefs Management in Dining Room Reservation Management Special Occasion celebration Guest Relations and Recovery Delivery and take out	40 hours	80 hours	Corporate or franchised restaurant (as we designate)
STANDARD SUPPLIES & UNIFORMS Dinnerware Mugs Uniforms (Host, Servers, Chefs, Server Assistant)	2 hours		Our Office (Aventura, FL)

SUBJECT	CLASSROOM TRAINING HOURS	ON THE JOB TRAINING HOURS	LOCATION
INSPECTIONS EcoSure Inspections Franchisor's Consultation (announced & unannounced) Auditor's inspection by local authority	4 hours		Corporate or franchise store (as we designate)
STANDARD STAFF Minimum requirements for Chief Chef, Sushi Chef, and Chief Bartender to qualify for training	2 hours		Corporate or franchised restaurant (as we designate)

TRAINING PROGRAM FOR CONCESSION MODEL

SUBJECT	HOURS OF CLASSROOM TRAINING	HOURS OF ON THE JOB TRAINING	LOCATION
CONCEPT History of BENIHANA concept and its ethnic foundation BENIHANA's differentiating elements. Mission Statement	2 hours		Our Office (Aventura, FL)
MARKETING Brand equity Brand promotions Guest profile Identified customer profile of local market Competitors Promotions Public Relations Collateral Materials Opening Support National promotion	4 hours		Our Office (Aventura, FL)
BEVERAGE STANDARDS Specialty drinks Recipes Glassware Standard portions Specifications Sake and Sho-Chu Responsible Service Beverage Menu	4 hours	36 hours	Corporate or Franchise Location (as we designate)

SUBJECT	HOURS OF CLASSROOM TRAINING	HOURS OF ON THE JOB TRAINING	LOCATION
HIBACHI FOOD STANDARDS Cooking Basics Food definition Food specifications National procurement program Yield test and portioning Recipes Standard Cooking All sauces and dressings Key points of food handling	4 hours	36 hours	Corporate or Franchise Location (as we designate)
BENIHANA SUSHI STANDARDS Sushi food specifications Sushi Awasezu & Sushi rice Standard menu items and their recipes	4 hours	28 hours	Corporate or Franchise Location (as we designate)
GUEST SAFETY AND SECURITY PROTOCOL Safety of facility in compliance with applicable regulations EcoSure standards ServSafe (or equivalent) certification; Vendor selection; “Approved Source;” “Safety First” in sushi	8 hours		Corporate or Franchise Location (as we designate)
STANDARD EQUIPMENT, TOOLS, AND UTENSILS Facility Kitchen Sushi Bar Bar	2 hours		Our Office (Aventura, FL)
STANDARD CASHIER SERVICE Concession Setup Cash Change Charges Voids and Comps Vouchers and Certificates Cashier Reconciliation Food Service	4 hours		Franchise Location

SUBJECT	HOURS OF CLASSROOM TRAINING	HOURS OF ON THE JOB TRAINING	LOCATION
STANDARD SUPPLIES & UNIFORMS Plates, Bowls and Plasticware Uniforms (Cashier, Cooks, Prep Cook)	2 hours		Franchise Location
INSPECTIONS EcoSure Inspections Franchisor's Consultation (announced & unannounced) Auditor's inspection by local authority	4 hours		Franchise Location
STANDARD STAFF Minimum requirements for Cooks, Sushi Chef, and Cashiers to qualify for training	1 hour		Corporate or Franchise Location (as we designate)

Our Director of Culinary Training/Kitchen Training/R&D, whose experience is listed in Item 2 of this Disclosure Document, will oversee training. We may also draw on the experience of other employees in conducting Restaurant operations training. The instructional materials used in the initial training will include the Manual as defined in this Disclosure Document as well as other beverage, food, sushi, and management manuals.

Manual/Operations Manual

We will permit you, upon your signing a confidentiality agreement, to view our Manual (as defined in Section 4.1 of the Franchise Agreement) in our facility before signing the Franchise Agreement and purchasing the franchise; but you will not be given a copy of our Manual or other proprietary materials until you sign the Franchise Agreement. You must immediately return to us the Manual, and all components of it, at your expense, following termination, transfer, or expiration of the Franchise Agreement.

You must complete the pre-opening training program to our satisfaction. The pre-opening training program, which is subject to change as we determine, generally consists of two components, "Initial Training" and "In Restaurant" training. The Initial Training requires each trainee to work in a BENIHANA Restaurant for a period of eight to 12 weeks, or until the trainee is properly trained to our reasonable satisfaction. If you and your required trainees do not complete the pre-opening training program to our satisfaction, we will postpone the opening of your BENIHANA Restaurant until the trainee completes the program to our satisfaction. No postponements for training will extend the time period in which you must open your BENIHANA Restaurant.

Presently, you have the right, at no additional fee, to bring up to five chefs, one restaurant manager, and if we require, or if you request and subject to availability of space,

one of your Principals if you are a legal entity, to the Initial Training. You must obtain our prior written approval before bringing any additional employees to the Initial Training, and you must pay us our then-current training fee, which may include salaries of our employees providing the training, for each additional employee we agree to train. You must complete the Initial Training before you open the BENIHANA Restaurant.

In-Restaurant Training will be for a period we deem necessary to prepare for the opening of the BENIHANA Restaurant. There will be no additional fee for the In-Restaurant Training. You will be responsible, however, for all travel, living and lodging expenses for our personnel providing the In-Restaurant Training. At your request, we will, subject to our prior approval and availability, provide the assistance of additional personnel in connection with the In-Restaurant Training, provided that you reimburse us for the salaries and wages of all such additional personnel. If you request that the In-Restaurant Training be provided for more than 20 working days, you must pay all salaries, wages, and travel, living and lodging expenses of our personnel during the extending In-Restaurant Training period.

You must pay all expenses you incur in connection with the Initial Training and In-Restaurant Training, including the costs of your employee's wages, travel, lodging, living, meals and other expenses of your employees.

Initial Training will be offered at various times during the year depending on the number of franchisees entering the System, replacement general managers and other personnel needing training, the number of new BENIHANA Restaurants being opened, and the timing of the scheduled openings of BENIHANA Restaurants. All pre-opening training programs will be at the times and places we designate. Currently, the Initial Training is held at our principal place of business and the In-Restaurant Training is held at your BENIHANA Restaurant. If we decide to conduct any training programs at any other location, you must reimburse us for the reasonable out-of-pocket expenses incurred by our training instructors, including wages, travel expenses, food and lodging, and auto rental.

The entire pre-opening training program is subject to change due to updates in materials, methods, the Manual, and personnel without notice to you. The subjects and time periods allocated to the subjects actually taught to a specific franchisee and its personnel may vary based on the experience or needs of those persons being trained.

We have the right to require you and certain of your employees to attend continuing courses, seminars, and other training programs ("Ongoing Training") as we may require from time to time. We may require you or your employees to attend additional training programs at either our principal place of business, at your BENIHANA Restaurant, or at a designated BENIHANA Restaurant, as we determine in its sole discretion. You will be responsible for all expenses incurred in connection with Ongoing Training, including, without limitation, the cost of salaries or wages, transportation, lodging and meals for our employees conducting the training. If we decide to conduct any Ongoing Training at your BENIHANA Restaurant, you must reimburse us for the reasonable out-of-pocket expenses incurred by our training instructors in providing Ongoing Training, including but not limited to travel expenses, food and lodging, and auto rental.

You cannot use the Marks to advertise or sell products or services through the mail or by any electronic or other medium, including the Internet, without our prior written

approval. You are not permitted to develop, create, generate, own, license, lease or use, in any manner, any computer medium or electronic medium (including, without limitation, any Internet page, domain names, website, web-page, bulletin board, newsgroup, or other Internet-related medium) which in any way uses or displays the Marks, or any of them, or any words, symbols, or terms confusingly similar to the Marks, without our prior written consent, and then, only in the manner and in accordance with the procedures, policies, standards, and specifications as we may establish. If consent is granted, we reserve the right to revoke the consent effective upon written notice to you. We have the sole right to establish an Internet “home page” using any of the Marks, and to regulate the establishment and use of linked home pages by you and all other franchisees. We have the right, at any time, to establish procedures, limitations, and regulations regarding the operation of any websites. If established, you must immediately comply with all such procedures, limitations, and regulations.

END OF ITEM 11

ITEM 12. TERRITORY

Except as expressly provided in this Item 12, we do not offer you an exclusive or protected territory.

During the term of your franchise agreement, if you are in full compliance with the Franchise Agreement, we will not operate or license any person or entity other than you to operate a BENIHANA Restaurant at any location that is within the “Restaurant Area” identified in the Contract Data Sheet attached to your Franchise Agreement. For franchises offered under this Disclosure Document, the restaurant area granted may be a zero to three-mile radius from the franchisee’s BENIHANA Restaurant, depending on market circumstances. You may face competition from other BENIHANA franchisees and company-owned restaurants located outside of the Restaurant Area, from businesses that we own, from other channels of distribution, and from competitive brands operated or controlled by us or our affiliates or parents.

As described previously in this Disclosure Document, we and BOT have established BENIHANA Restaurants and franchises using the Marks in various locations in the United States and elsewhere. We will continue to open and operate company-owned restaurants and to license others to operate franchises. You do not receive the right to acquire additional franchises within your Restaurant Area. We and our affiliates may operate, or license third parties the right to operate, other types of restaurants within the Restaurant Area (i.e., other than those featuring the teppanyaki or hibachi style of cooking) including, without limitation, Asian-style fast food and sushi restaurants, RA SUSHI restaurants, and bars, or other businesses which may use our trademarks or trade names (but not the names BENIHANA or “BENIHANA OF TOKYO”) and may sell or license others to sell food products using such trademarks or trade names on a wholesale or retail basis in the Restaurant Area.

You must operate the BENIHANA Restaurant only from the approved location listed in your Franchise Agreement. You are solely responsible for selecting the location for your Restaurant and negotiating the terms of your lease.

You do not have the right to relocate your BENIHANA Restaurant. You have no options, rights of first refusal or similar rights to acquire additional franchises.

There are no minimum sales quotas, sales volume, level of market penetration or other similar contingencies you must meet in order to maintain your Restaurant Area. You maintain rights to your Restaurant Area even if the population increases. As long as the Franchise Agreement is in effect, we will not modify or alter your Restaurant Area.

You are not permitted to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing to make sales of services or products to customers. You may not maintain a website with respect to your BENIHANA Restaurant without our prior written consent. We have the right to condition our approval on the terms we determine are necessary, such as requiring that your domain name and home page belong to us and be licensed to you for your use during the term of your Franchise Agreement.

We and our affiliates have the right to: (i) own and operate, or license others the right to own and operate, competing restaurants other than a BENIHANA Restaurant at any location, regardless of the proximity to your Restaurant, including but not limited to restaurants using the trademarks RA SUSHI and HARU; (ii) own and operate, or license others the right to own and operate, BENIHANA Restaurants outside the Restaurant Area, even if these BENIHANA Restaurants might compete with the Restaurant or draw customers from the Restaurant Area; (iii) engage, directly or indirectly, at wholesale, retail, or otherwise, in the production, distribution, license, and/or sale of any product or service under the Marks, or other marks, anywhere, regardless of the proximity to, or the competitive impact on, your Restaurant, through alternative channels of distribution (by way of example only, grocery stores, conveniences stores, internet sales, catalog sales, telemarketing, or other direct marketing); (iv) license others to use the BENIHANA System and the Marks for the operation of BENIHANA Restaurants within Special Distribution Opportunities (as defined below); (v) advertise and promote the BENIHANA System within the Restaurant Area; and (vi) purchase, acquire, be acquired by, merge or affiliate with, or engage in any transaction with other businesses (whether or not these businesses are competitive with the Restaurant), including competing franchise systems with units operating in the Restaurant Area, and to convert and operate, or license others the right to operate, these units under the Marks and the BENIHANA System.

“Special Distribution Opportunities” mean captive venue locations, generally available only in connection with third-party food service provision contracts, including, without limitation, airports and other public transportation facilities, turnpikes and toll-roads, entertainment and sports complexes, hotels, casinos, convention centers, and military facilities.

We are not required to pay you if we exercise any of the rights specified above in your Restaurant Area.

As disclosed in Item 1, certain of our subsidiaries operate restaurants offering similar goods and services under the RA SUSHI trademark. We also operate one competing business in Miami, Florida under the trademark SAMURAI®. The RA SUSHI concept offers sushi and a full menu of Pacific Rim dishes targeting a younger demographic in an environment featuring upbeat design elements. RA SUSHI restaurants may compete with BENIHANA Restaurants and with your Restaurant, may be located in your Restaurant Area, and may solicit or accept orders within your Restaurant Area. There are currently twenty RA SUSHI restaurants operating in the United States as of the date of this Disclosure Document. Neither we, nor our affiliates, currently plan to offer franchises for RA SUSHI or SAMURAI restaurants, or any other branded restaurant. However, we expressly reserve the right to do so in the future. There is no mechanism for resolving any conflicts that may arise between your BENIHANA Restaurant and franchised or company-owned RA SUSHI or SAMURAI restaurants. Any resolution of conflicts regarding location, customers, support, or services will be entirely within our business judgment.

Except as disclosed in this Item, neither we, nor our affiliates, currently plan to operate or franchise a business under a different trademark that will sell goods or services similar to those you will offer in the operation of your franchised business. We may, however, do so in the future.

END OF ITEM 12

ITEM 13. TRADEMARKS

The Franchise Agreement grants you the right to use the trademarks, service marks, trade names, logotypes, and other commercial symbols designated by us, including the red flower design and the words BENIHANA® or BENIHANA OF TOKYO® (the “Marks”). The Marks may only be used in the manner we authorize and only for the operation of your BENIHANA Restaurant.

You may not use the Marks as part of your corporate or other legal name, and you must comply with our instructions in filing and maintaining trade name or fictitious name registrations. You must sign any documents we require to protect the Marks or to maintain their continued validity and enforceability. You may not directly or indirectly contest the validity of our ownership of or our rights in and to the Marks.

The following chart lists information regarding the registration of the Marks with the U.S. Patent and Trademark Office all of which are registered in the Principal Register:

Mark	Registration Number	Registration Date
 FLOWER Design	937,781	07/11/1972
BENIHANA	1,230,609	03/08/1993
BENIHANA	1,371,624	11/19/1985
BENIHANA	1,412,570	10/07/1986
 FLOWER Design	1,426,792	01/27/1987
 FLOWER Design	2,030,592	01/14/1997

 Japanese Characters Design	2,983,575	08/09/2005
BENIHANA	3,784,161	05/04/2010
 THE CHEF'S TABLE Design	3,843,673	09/07/2010
 FLOWER Design	3,928,723	03/08/2011
BENIHANA	3,928,737	03/08/2011
KABUKI KIDS	4,030,722	09/27/2011
 KABUKI KIDS + Design	4,030,723	09/27/2011
THE CHEF'S TABLE	4,221,563	10/09/2012
EXPERIENCE THE ORIGINAL	4,320,373	04/16/2013
 FLOWER Design	5,150,349	02/28/2017
BENIHANA	5,150,351	02/28/2017

 BENIHANA (Stylized)	5,150,352	02/28/2017
ROCKY'S CHOICE	5,552,519	08/28/2018
BENIHANA THE JAPANESE STEAKHOUSE	5,603,096	11/06/2018
BENIHANA	5,603,401	11/06/2018
BENIHANA	5,702,279	03/19/2019
CREATING GREAT GUEST MEMORIES!	5,702,278	03/19/2019
BENIHANA	5,734,805	04/23/2019
CREATING GREAT GUEST MEMORIES!	5,814,996	07/23/2019
BENIHANA ORIGINAL YUM YUM SAUCE	5,863,612	09/17/2019
 BENIHANA ORIGINAL YUM YUM SAUCE (Stylized)	5,863,789	09/17/2019
BENIHANA	5,883,204	10/15/2019
HIBACHI SUPREME	5,905,592	11/05/2019
SPLASH 'N MEADOW	5,931,625	12/10/2019
LAND 'N SEA	5,931,624	12/10/2019
SAMURAI TREAT	5,936,981	12/17/2019
EMPEROR'S FEAST	5,936,980	12/17/2019
DELUXE TREAT	5,936,979	12/17/2019
BENIHANA	6,042,643	04/28/2020

	6,042,644	04/28/2020
Flower Design		
BENIHANA ORIGINAL GARLIC SAUCE	6,230,011	12/22/2020
	6,258,436	01/26/2021
Chef Outfit Design		
RED FLOWER	6,541,821	11/02/2021
BENIHANA	6,754,303	06/07/2022
HIBACHI KO	6,981,928	02/14/2023
	6,981,931	02/14/2023
BENIHANA	6,982,203	02/14/2023
BENIHANA AT HOME	7,243,174	12/12/2023
BENIHANA	7,255,845	12/26/2023

The following chart lists information regarding the applications for registration of the Marks on the Principal Register of the U.S. Patent and Trademark Office:

Mark	Serial Number	Filing Date
HIBACHI KO	90/746,880	06/01/2021
BENIHANA TO GO	97/648,224	10/26/2022
BENIHANA TO GO	97/648,864	10/26/2022
RED FLOWER	90/772,912	06/14/2021
 HIBACHI KO THE PLACE FOR FRIED RICE, WINGS, RIBS & RAMEN and Design	90/811,532	07/05/2021
SAMURAI KO	97/287,870	02/28/2022

All federal registrations of the Marks are owned by our affiliate, Noodle Time, Inc. (“Noodle Time”). We entered into a license agreement with Noodle Time in July 2010, under which we were granted the right and license to use the Marks for our business operations, and to license use of the Marks to our franchisees (the “License Agreement”). Our rights apply retroactively to any licenses we granted under earlier franchise agreements. The License Agreement is for a perpetual term. Noodle Time has the right to terminate the License Agreement if we commit a default and do not cure the default within the specified time period. If the License Agreement is terminated, Noodle Time will continue to license the Marks to you on the terms in your Franchise Agreement.

As disclosed in Item 1 of this Disclosure Document, our predecessor, BOT, had a perpetual, royalty-free, exclusive license to own and operate BENIHANA Restaurants in the State of Hawaii that was terminated in February 2017. We had no financial interest in any location in Hawaii operated under that license agreement, and, as of the date of this Disclosure Document, no BENIHANA Restaurant is operated either by us or under a franchise agreement in Hawaii. We may operate a restaurant in Hawaii in the future or enter a franchise agreement allowing a franchise to do so.

There are no currently effective determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court, no pending infringement, opposition or cancellation proceedings and no pending litigation involving any of the Marks that may significantly affect the ownership or use of any Mark listed above.

We are not obligated by the Franchise Agreement to protect any rights granted to you to use the Marks or to protect you against claims of infringement or unfair competition with respect to them. We have the right, but not the obligation, under the Franchise

Agreement to protect you against claims of infringement or unfair competition arising out of your use of the Marks. You must notify us of the use of, or claims of rights to, a trademark identical to or confusingly similar to the Marks. We are not obligated to indemnify you against or to reimburse you for any damages for which you may be held liable in any proceeding arising out of the use of the names or Marks or any costs incurred in the defense of any such claim.

We may require you, at your sole expense, to discontinue or modify your use of any of the Marks or to use one or more additional or substitute trade names, service marks, trademarks, symbols, logos, emblems and indicia of origin if we determine that an addition or substitution will benefit the BENIHANA System.

The license to use the Marks granted to you under the Franchise Agreement is non-exclusive to you. We have and retain certain rights in the Marks including the following:

1. To grant other licenses for use of the Marks in addition to those licenses already granted to existing franchisees;
2. To develop and establish other systems using the Marks or other names or marks and to grant licenses or franchises in those systems without providing any rights to you; and
3. To engage, directly or indirectly, at wholesale, retail or otherwise, in (a) the production, distribution, license and sale of products and services and (b) the use of the Marks and all trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs, and other identifying characteristics we may develop for that purpose.

END OF ITEM 13

ITEM 14. PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION

You do not receive the right to use any item covered by a patent or copyright, but you must use the proprietary information contained in our Manual and that you receive in training. The Manual and the specifics on your use of the Manual are described in the Franchise Agreement. Although we are in the process of filing applications and have filed applications for copyright registration, we claim copyright protection for the Manual, software, and other materials we give you for your use or for public dissemination, other proprietary information and publications we own or have acquired under license from a third party, and everything concerning operating procedures. All of this is our proprietary intellectual property. The following chart lists information regarding the registration of copyrights registered with the U.S. Copyright Office:

<u>Name</u>	<u>Full Title</u>	<u>Copyright Number</u>	<u>Date</u>
Noodle Time, Inc.	BENIHANA -- Hear Banner Ad.	VA0001996590	2015
Noodle Time, Inc.	BENIHANA -- See Banner Ad.	VA0001996588	2015
Noodle Time, Inc.	BENIHANA -- Taste Banner Ad.	VA0001996586	2015
Noodle Time, Inc.	BENIHANA -- Touch Banner Ad.	VA0001996584	2015
Noodle Time, Inc.	BENIHANA I HEART FRIED RICE SNAPCHAT FILTER	VA0001992563	2015
Noodle Time, Inc.	BENIHANA Menu.	TX0008182886	2015
Noodle Time, Inc.	BENIHANA Snapchat Geofilter for Fried Rice Heart.	VA0002005011	2015
Noodle Time, Inc.	Sense a Crave Pre Roll Video 001.	VA0001995474	2015
Noodle Time, Inc.	Sense a Crave Pre Roll Video 002.	VA0001996575	2015
Noodle Time, Inc.	Sense a Crave Pre Roll Video 003.	VA0001996578	2015
Noodle Time, Inc.	Sense a Crave Pre Roll Video 004.	VA0001996579	2015
Noodle Time, Inc.	BENIHANA Website.	VA0002019577	2016
Noodle Time, Inc.	Benihana - Hear Banner Ad & 15 other titles.	V9960D392	2018
Noodle Time, Inc.	Benihana Website (2021)	VA0002249088	2020

There presently are no patents material to the franchise. We claim copyright protection in the Manual and related materials and advertisement and promotional materials, although these materials have not been registered with the United States Registrar of Copyrights.

These materials are considered our proprietary and confidential property and you may use them only as provided in the Franchise Agreement.

Currently there are no effective determinations of the Copyright Office (Library of Congress) or any court regarding any of the copyrighted materials. There are no agreements in effect which significantly limit our right to use or license the copyrighted materials. There are no infringing uses actually known to us which could materially affect your use of the copyrighted materials in any state. We are not required by any agreement to protect or defend copyrights.

You must treat the Manual, any other manuals or materials created for or approved for use in the operation of the BENIHANA Restaurant, and the information contained in them as confidential, and you must use all reasonable efforts to maintain this information as secret and confidential. You must not copy, duplicate, record, or otherwise reproduce these materials or otherwise make them available to any unauthorized person. The Manual will remain our sole property and must be kept in a secure location at your place of business.

Our electronic version of the Manual supersedes any printed version. We may revise the contents of the Manual, and you must comply with each new or changed standard. You must keep the Manual current at all times. In the event of any disputes as to the contents of the Manual, the terms of the master copy maintained by us at our home office or via our Intranet will be controlling.

We will disclose to you certain confidential or proprietary information and trade secrets. Except as is necessary for the operation of your BENIHANA Restaurant and as we approve, you may not, during the term or at any time after the expiration or termination of the Franchise Agreement, regardless of the cause of termination, directly or indirectly, use for your own benefit or communicate or divulge to or use for the benefit of any other person or entity, any trade secrets, confidential information, knowledge or know-how concerning the services, advertising, marketing, designs, plans, or methods of operation of the BENIHANA Restaurant or the BENIHANA System. You may disclose to your employees only that confidential, proprietary or trade secret information as is necessary to operate the business and then only while the Franchise Agreement is in effect. All information, knowledge, or know-how, including materials, equipment, marketing, electronic technology, and other data that we designate as secret or confidential, will be deemed secret and confidential for purposes of the Franchise Agreement.

All personnel having access to any of our Confidential Information must maintain the confidentiality of information they receive in connection with their employment by you. You may be required to have such personnel sign agreements or covenants in a form satisfactory to us, including specific identification of us as a third-party beneficiary of the covenants with the independent right to enforce them, prior to disclosing Confidential Information to them.

You must also promptly tell us when you learn about the unauthorized use of any Confidential Information or any other proprietary information. We are not obligated to take any action, but we will respond to your notification of unauthorized use as we think appropriate.

END OF ITEM 14

ITEM 15. OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS

The Franchise Agreement does not require your Principals to personally manage or operate the BENIHANA Restaurant. When you sign your Franchise Agreement, you must designate and retain in your employment at all times an individual to serve as the “General Manager.” If you are an individual, we recommend that you be the General Manager. You must also retain other personnel as are needed to operate and manage the BENIHANA Restaurant. The General Manager must satisfy our educational and business criteria as provided to you in the Manual or other written instructions and must be individually acceptable to us. In addition, the General Manager must be responsible for the supervision and management of the BENIHANA Restaurant and must devote full time and best efforts to this activity. The General Manager also must satisfy our applicable training requirements. If you are a legal entity, the General Manager may, but is not required to, have an ownership interest in you. If you no longer employ the General Manager, you must promptly designate another person as General Manager, and that person must meet all criteria for a General Manager and be acceptable and approved by us.

You must also obtain covenants not to compete, including covenants applicable on the termination of the person’s relationship with you, from your General Manager and any of your other personnel who have received or will have access to our training before employment, and any holder of a beneficial interest in you (except for any limited partners). You must have all your management personnel sign covenants to maintain the confidentiality of information they receive or have access to based on their relationship with you (see Item 14). We reserve the right, in our discretion, to decrease the period of time or geographic scope of the non-competition covenants contained in the attachments or eliminate the non-competition covenants altogether for any party that must sign an agreement as described in this paragraph. (See Item 17.)

As described in Item 1, we have identified certain persons under the Franchise Agreement that we refer to in this Disclosure Document as your Principals. Your Principals may include a spouse, if any Principal is a married individual. Your Principals as to a business entity include those officers and directors (including the officers and directors of your owners, if applicable) we designate as your Principals, all holders of an ownership interest in you and in any entity that directly or indirectly controls you, and any other person or entity controlling, controlled by, or under common control with you. If we designate certain of your Principals as Controlling Principals, they must sign the Agreement and agree to be individually bound by certain obligations under the Agreements, including confidentiality and non-competition covenants, and they must personally guarantee your performance under the Franchise Agreement. We typically designate your principal equity owners and executive officers, as well as any other affiliated entities that operate Restaurants, as Controlling Principals.

END OF ITEM 15

ITEM 16. RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

You must sell or offer for sale all menu items, food products, and other products and services we require, in the manner and style we require. You must sell and offer for sale only those menu items and other products and services that we have expressly approved in writing. You must not deviate from our standards and specifications without first obtaining our written consent. You must discontinue selling and offering for sale any menu items, products or services that we may disapprove in writing at any time. We have the right to change the types of menu items, products and services offered by you at the BENIHANA Restaurant at any time, and there are no limits on our right to make those changes.

You must maintain in sufficient supply and use and sell only the food and beverage items, ingredients, products, materials, supplies, and paper goods that conform to our standards and specifications. You must prepare all menu items with our recipes and procedures for preparation contained in the Manual or other written instructions, including the measurements of ingredients. You must not deviate from our standards and specifications by the use or offer of nonconforming items or differing amounts of any items, without first obtaining our written consent.

You must keep the BENIHANA Restaurant very clean and maintain it in good repair and condition. You must make any additions, alterations, repairs and replacements, including repainting or replacement of obsolete signs, furnishings, equipment, and décor, as we may reasonably direct. You must not make any changes to the Restaurant or premises without our prior written consent. You must, at your expense, obtain and pay for any new or additional equipment, including a POS System, computer hardware and software, fixtures, supplies and other products and materials that you must have to offer and sell new menu items from the BENIHANA Restaurant or to provide services at the BENIHANA Restaurant by alternative means, such as through carryout, catering or delivery arrangements.

We may offer guidance concerning the selling price for the goods, products and services offered from your BENIHANA Restaurant, and we may set certain prices, but we make no guarantees or warranties that offering the products or merchandise at the recommended or required price will enhance your sales or profits.

We do not impose any other restrictions in the Franchise Agreement or otherwise, as to the goods or services that you may offer or sell or as to the customers to whom you may offer or sell, except as described in Item 12.

END OF ITEM 16

ITEM 17. RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this Disclosure Document.

THE FRANCHISE RELATIONSHIP

Provision		Section in Franchise Agreement	Summary
a.	Length of the Franchise Term	Section 1.3	Term is 15 years.
b.	Renewal or extension of the term (“Successor Franchise Agreement”)	Article 17	The Franchise Agreement does not renew upon the expiration of the Franchise Term. You have an option, subject to meeting certain requirements, to acquire a new franchise agreement (“Successor Franchise Agreement”) to operate the Restaurant at the Location for an additional period equal to the standard period of time offered to our franchisees at the time of the expiration of the Franchise Term.
c.	Requirements for you to renew or extend	Section 17.2	At the expiration of the Franchise Term, You must (a) not be in default, or have been in default in the twenty-four (24) months before expiration, in the performance of any obligation under the Franchise Agreement; (b) have re-modeled or contracted to re-model the Restaurant to the extent we require; (c) submit to us a written application for a Successor Franchise Agreement at least 365 days before the Franchise Term expires, and sign and return to us for final approval and execution a Successor Franchise Agreement at least 30 days before the Franchise Term expires; (d) meet all of our then-existing legal, financial, and operational standards applicable to new franchisees in the then-current form of franchise agreement and the then-current operating standards for the BENIHANA System; (e) submit to us

Provision		Section in Franchise Agreement	Summary
			all other information and documentation we reasonably request; (f) pay us an administrative fee equal to 20% of the Franchise Fee in existence on the date of the expiration of the Term; (g) sign a general release, in the form we require substantially similar to Exhibit G hereto, of all claims in existence against us and our affiliates, successors, and assigns, and their respective officers, directors, agents and employees; and (h) satisfy all monetary obligations owed by you to us and our affiliates.
d.	Termination by franchisee	Not applicable	Not applicable
e.	Termination by Franchisor without cause	Not applicable	Not applicable
f.	Termination by Franchisor with “cause”	Article 13	We can terminate only if you default.
g.	“Cause” defined – curable defaults	Section 13.2 (all subsections other than those listed immediately below as “non-curable” defaults)	We may terminate you for cause if you fail to cure certain defaults, including: if you fail to (a) open for business within 18 months after signing; (b) construct the premises in accordance with the Agreement; (c) perform any condition or obligation required under your lease; (d) pay when due any money owed to us, including royalties, within ten-days after notice; (e) submit reports within 30 days after notice; (f) fail to pay any monies owed to us, or our affiliates or vendors, and do not cure within five days after notice (or longer period required); (g) operate the restaurant in accordance with our standards and do not cure within five days after notice; (h) offer products for sale at the Restaurant specified by us and do not cure within five days after notice; or (i) maintain insurance and do not cure within ten days after notice.

Provision		Section in Franchise Agreement	Summary
h.	“Cause” Defined – Non-curable Defaults	Sections 13.2.1, 13.2.2, 13.2.4, 13.2.9, 13.2.11, 13.2.22, 13.2.23, 13.2.25, 13.2.26	Non-curable defaults: bankruptcy, insolvency, appointment of receiver or custodian, knowing submission of false reports, failure to immediately rectify hazardous situations, misuse of Confidential Information or the Marks, assignment in violation of Franchise Agreement, the commission of three or more defaults within a consecutive 12-month period, and felony conviction or any offense for which a material element is fraud, dishonesty, or moral turpitude.
i.	Franchisee’s obligations on termination/non-renewal	Article 14	Obligations include immediately ceasing operation of Restaurant, immediately and permanently ceasing all use of the Marks, no longer identifying yourself as our franchisee or former franchisee, immediately ceasing use of Confidential Information and the BENIHANA System, returning the Manual, selling all Restaurant assets to us at our option, completely de-identifying the location as a BENIHANA Restaurant, paying amounts due and, in certain instances, paying a “Termination Fee”.
j.	Assignment of contract by Franchisor	Section 11.1	No restriction on our right to assign, provided transferee assumes all of our obligations under Franchise Agreement.
k.	“Transfer” of “Disposition” by Franchisee - defined	Sections 11.2-11.6	Includes sale, assignment, conveyance, pledge, mortgage, or other encumbrance of any interest in the Franchise Agreement, the Restaurant or you (if you are not a natural person).
l.	Franchisor approval of transfer by Franchisee	Sections 11.2 – 11.8	You must obtain our consent before transferring any interest. We will not unreasonably withhold our consent provided certain conditions are met.

Provision		Section in Franchise Agreement	Summary
m.	Conditions for Franchisor approval of transfer	Sections 11.3 – 11.6, 11.8	(1) we have not exercised our right of first refusal; (2) you release all claims you have against us in a form we require substantially similar to Exhibit G hereto; (3) you agree to remain obligated under the non-competition and confidentiality covenants; (4) you remain liable under the Franchise Agreement; (5) you or the transferee pays us an assignment fee of \$10,000; (6) the transferee meets our then-current criteria; (7) execution of an assignment agreement acceptable to us; (8) you provide copies of all documents restricting transfer as imposed by the Franchise Agreement; and (9) the transferee or an approved manager completes our initial training to our satisfaction.
n.	Franchisor's right of first refusal to acquire franchisee's business	Section 11.5	Within 30 days after notice, we may exercise our option to purchase the transferred interest on the same terms and conditions.
o.	Franchisor's option to purchase Franchisee's business	Not applicable	Not applicable.
p.	Death or disability of franchisee	Section 11.7	Franchise must be assigned by your estate to an approved buyer within six months.
q.	Non-competition covenants during the term of the franchise	Sections 18.4 and 18.5	No involvement in a Competing Business (as defined in the Franchise Agreement).
r.	Non-Competition covenants after the franchise is terminated or expires	Section 18.5	No involvement in a Competing Business (as defined in the Franchise Agreement) for two years at the location or within five miles of any other BENIHANA Restaurant, or any restaurant owned, operated, or franchised by an Affiliated Company (as defined in the Franchise Agreement).

Provision		Section in Franchise Agreement	Summary
s.	Modification of the agreement	Section 20.6	No modifications of Franchise Agreement are effective unless they are in writing and signed by you and us. We may, however, change the Manual at any time without your written consent, and those change become binding on you under the Franchise Agreement.
t.	Integration/merger clause	Section 20.1	Franchise Agreement contains entire agreement between you and us with respect to the franchise, and only the terms of the Franchise Agreement are binding (subject to applicable state laws). You should not rely on any other promises or statements and such statements may not be enforceable. Nothing in the Franchise Agreement or in any related agreement is intended to disclaim the representations made to you in this Disclosure Document.
u.	Dispute resolution by arbitration or mediation	Article 15	All disputes, with the exception of claims based upon or arising under the Lanham Act, the Sherman Act, the Clayton Act (or other federal or state antitrust statute), related to obtaining possession of the Restaurant or Location, related to breaches of Article 18 of the Franchise Agreement, or for monies due to us, are to be arbitrated in Miami, Florida before a three member panel under the Rules of the American Arbitration Association. The arbitrators are not authorized to award punitive damages or attorneys' fees, and an arbitration will be conducted on an individual, and not a class-wide, basis.
v.	Choice of forum	Section 15.6	In connection with matters not subject to arbitration, litigation must be in the United States District Court for the Southern District of Florida, or, if that court lacks jurisdiction, the 11th Judicial Circuit in and for Miami-Dade County, Florida.
w.	Choice of law	Section 20.8	Florida law applies.

Reinstatements and Extensions. If any termination or expiration of the Franchise Agreement would violate any applicable law, we may reinstate or extend the term of the Franchise Agreement for the purpose of complying with applicable law, for the duration we state in a written notice to you. Any such reinstatement or extension will not waive any of our rights under the Franchise Agreement, or otherwise modify the Franchise Agreement. To the extent reinstatements or extensions are permitted by us or required by applicable law, you will be required to sign our then-current form of franchise agreement, which may contain materially different terms and conditions than your prior agreement.

END OF ITEM 17

ITEM 18. PUBLIC FIGURES

We presently do not use any public figure to promote the BENIHANA System.

END OF ITEM 18

ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance of a particular location or under particular circumstances.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Alex Tabolsky, c/o 1624 Market Street, Suite 311, Denver, Colorado 80202 (email: Alex.Tabolsky@togrp.com), the Federal Trade Commission, and the appropriate state regulatory agencies.

END OF ITEM 19

ITEM 20.
OUTLETS AND FRANCHISEE INFORMATION
LIST OF OUTLETS

TABLE NO. 1
SYSTEMWIDE OUTLET SUMMARY
FOR FISCAL YEARS 2022 to 2024*

OUTLET TYPE	YEAR	OUTLETS AT THE START OF THE YEAR	OUTLETS AT THE END OF THE YEAR	NET CHANGE* (+ or -)
Franchised	2022	6	6	0
	2023	6	7	1
	2024	7	8*	1
Company-Owned	2022	66	66	0
	2023	66	67	1
	2024	67	69	2
Total	2022	72	72	0
	2023	72	74	2
	2024	74	77*	3*

*One franchised outlet in Michigan closed after the end of FY 2024 and before the issuance of this Disclosure Document. That outlet is included in the FY 2024 totals in Tables No. 1 and 3.

TABLE NO. 2
TRANSFER OF OUTLETS FROM FRANCHISEES TO NEW OWNERS (OTHER THAN FRANCHISOR OR AN AFFILIATE)
FOR FISCAL YEARS 2022 – 2024

STATE/COUNTRY	YEAR	NUMBER OF TRANSFERS
Total Outlets	2022	0
	2023	0
	2024	0

TABLE NO. 3
STATUS OF DOMESTIC FRANCHISED OUTLETS
FOR FISCAL YEARS 2022-2024**

STATE	YEAR	OUTLETS AT START OF YEAR	OUTLETS OPENED	TERMINATIONS	NON- RENEWALS	REACQUIRED BY FRANCHISOR	CEASED OPERATIONS- OTHER REASONS	OUTLETS AT END OF THE YEAR
Arkansas	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
	2024	1	0	0	0	0	0	1
California	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
	2024	1	0	0	0	0	0	1
Florida	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
	2024	1	1	0	0	0	0	2
Michigan	2022	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	1
	2024	1	0	0	0	0	0	1*
Nevada	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
	2024	1	0	0	0	0	0	1
New Jersey	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
	2024	1	0	0	0	0	0	1
Wisconsin	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
	2024	1	0	0	0	0	0	1
Total Outlets	2022	6	0	0	0	0	0	6
	2023	6	1	0	0	0	0	7
	2024	7	1	0	0	0	0	8*

* One franchised outlet in Michigan closed after the end of FY 2024 and before the issuance of this Disclosure Document. That outlet is included in the FY 2024 totals in Tables No. 1 and 3.

** The data in Table Nos. 1 and 3 of this Item 20 do not include five agreements we have entered for Non-Traditional Locations granting licenses for the sale of a limited menu of BENIHANA branded products at event-based locations that presently include stadiums and arenas in the United States. Those five agreements for Non-Traditional Locations in effect as of the date of this Disclosure Document are in the nature of concession license agreements and are subject to the other party's rights and obligations under concession agreements with the stadium or arena. As of the date of this Disclosure Document, we had agreements in place for the following event-based Non-Traditional Locations: the Footprint Center in Phoenix, AZ; Dignity Health Sports Park in Carson, CA; Hard Rock Stadium in Miami Gardens, FL; the T-Mobile Center in Kansas City, MO; and Yankee Stadium in the Bronx, NY.

TABLE NO. 4
STATUS OF COMPANY OWNED OUTLETS
FOR FISCAL YEARS 2022-2024

STATE	YEAR	OUTLETS AT START OF YEAR	OUTLETS OPENED	OUTLETS REACQUIRED FROM FRANCHISEES	OUTLETS CLOSED	OUTLETS SOLD TO FRANCHISEES	OUTLETS AT END OF THE YEAR
Alaska	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
	2024	1	0	0	0	0	1
Arizona	2022	2	0	0	0	0	2
	2023	2	0	0	0	0	2
	2024	2	0	0	0	0	2
California	2022	15	0	0	0	0	15
	2023	15	0	0	0	0	15
	2024	15	1	0	0	0	16
Colorado	2022	2	0	0	0	0	2
	2023	2	0	0	0	0	2
	2024	2	0	0	0	0	2
Florida	2022	10	0	0	0	0	10
	2023	10	0	0	0	0	10
	2024	10	0	0	0	0	10
Georgia	2022	2	0	0	0	0	2
	2023	2	0	0	0	0	2
	2024	2	0	0	0	0	2
Illinois	2022	4	0	0	0	0	4
	2023	4	0	0	0	0	4
	2024	4	0	0	0	0	4
Indiana	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
	2024	1	0	0	0	0	1
Maryland	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
	2024	1	0	0	0	0	1
Michigan	2022	3	0	0	0	0	3
	2023	3	0	0	0	0	3
	2024	3	0	0	0	0	3
Minnesota	2022	3	0	0	0	0	3
	2023	3	0	0	0	0	3
	2024	3	0	0	0	0	3
Nevada	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
	2024	1	0	0	0	0	1
New Jersey	2022	2	0	0	0	0	2
	2023	2	0	0	0	0	2
	2024	2	0	0	0	0	2
New York	2022	3	0	0	0	0	3
	2023	3	0	0	0	0	3
	2024	3	0	0	0	0	3
Ohio	2022	3	0	0	0	0	3
	2023	3	0	0	0	0	3
	2024	3	0	0	0	0	3
Oregon	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1

	2024	1	0	0	0	0	1	
Pennsylvania	2022	2	0	0	0	0	2	
	2023	2	0	0	0	0	2	
	2024	2	0	0	0	0	2	
Tennessee	2022	1	0	0	0	0	1	
	2023	1	0	0	0	0	1	
	2024	1	0	0	0	0	1	
Texas	2022	7	0	0	0	0	7	
	2023	7	1	0	0	0	8	
	2024	7	1	0	0	0	9	
Utah	2022	1	0	0	0	0	1	
	2023	1	0	0	0	0	1	
	2024	1	0	0	0	0	1	
Virginia	2022	1	0	0	0	0	1	
	2023	1	0	0	0	0	1	
	2024	1	0	0	0	0	1	
Total Outlets	2022	66	0	0	0	0	66	
	2023	66	1	0	0	0	67	
	2024	67	2	0	0	0	69***	

***The Company Owned Outlet data in Table Nos. 1 and 4 include one teppanyaki-style restaurant we operate under the SAMURAI® brand that is similar in appearance and customer experience to a BENIHANA restaurant.

Also, an affiliate of BNC operates 16 RA® Sushi restaurants in the United States. Those restaurants offer for delivery or takeout only a limited menu of items served at a traditional BENIHANA Restaurant. Those “virtual locations” are not included in the Company Owned Outlet Data in Tables Nos. 1, 4, or 5.

TABLE NO. 5
PROJECTED DOMESTIC OPENINGS in FY 2024
(AS OF MARCH 31, 2024)

STATE	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlet in the Next Fiscal Year	Projected New Company-Owned Outlets in the Current Fiscal Year
California	0	0	1
Florida	1	0	0
Total Outlets	1	0	1

A list of the names of all contact persons for franchisees and the addresses and telephone numbers of their franchised restaurant are provided in Exhibit C to this Disclosure Document.

A list of franchisees who had a franchise terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement during the most recently completed fiscal year or who have not communicated with us within 10 weeks of the issuance date of this Disclosure Document is attached to this Disclosure Document as Exhibit D.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system. During the last three fiscal years, we have had franchisees sign confidentiality provisions that would restrict their ability to speak openly about their experience with the BENIHANA System.

There are no trademark-specific organizations formed by our franchisees that are associated with the BENIHANA System.

END OF ITEM 20

ITEM 21. FINANCIAL STATEMENTS

Our parent corporation, The ONE Group Hospitality, Inc., a Delaware corporation traded on NASDAQ, with a principal business address at 1624 Market Street, Suite 311, Denver, Colorado 80202 (“The ONE Group”), absolutely and unconditionally guarantees BNC’s duties and obligations under any Franchise Agreement entered into with a franchisee buying a franchise pursuant to this Disclosure Document. Attached to this Disclosure Document as Exhibit E are the audited consolidated balance sheets of The ONE Group as of for the fiscal years ended December 31, 2023, December 31, 2022, and December 31, 2021; and the related consolidated statements of earnings, stockholder’s equity, and cash flow of The ONE Group for the fiscal years ended December 31, 2023, December 31, 2022, and December 31, 2021. A copy of the guarantee of The One Group Hospitality, Inc. is included as Exhibit H.

END OF ITEM 21

ITEM 22. CONTRACTS

Attached as Exhibits to this Disclosure Document are the following contracts and their respective attachments:

**Exhibit B to
Disclosure Document**

Franchise Agreement

Exhibit A Contract Data Sheet

Exhibit B Personal Guaranty

Exhibit C Conditional Assignment of Telephone Numbers

Exhibit D Collateral Assignment of Lease

Exhibit E Assignment & Assumption Agreement

Exhibit F Confidentiality and Restrictive Covenant
Agreement

Exhibit G Authorization to Honor Charges Drawn By and
Payable To Benihana National Corp.

**Exhibit F to
Disclosure Document**

Statement of Prospective Franchisee

**Exhibit G to
Disclosure Document**

General Release Form

END OF ITEM 22

ITEM 23

RECEIPTS

The Receipts are the last 2 pages of this Disclosure Document. You must sign both copies of the Receipt. You should retain one copy for your records and you must send the other signed copy to us to the attention of: Alex Tablosky, Benihana National Corp., 1624 Market Street, Suite 311, Denver, Colorado 80202; or email to Alex.Tabolsky@togrp.com.

ADDENDUM TO BENIHANA NATIONAL CORP. DISCLOSURE DOCUMENT
FOR THE STATE OF WISCONSIN

The following information applies to franchises and franchisees subject to the Wisconsin Fair Dealership law. Item numbers correspond to those in the main body:

1. Item 17.

For all franchises sold in the State of Wisconsin, we will provide you at least 90 days' prior written notice of termination, cancellation, or substantial change in competitive circumstances. The notice will state all the reasons for termination, cancellation, or substantial change in competitive circumstances and will provide that you have 60 days in which to cure any claimed deficiency. If this deficiency is cured within 60 days, the notice will be void. If the reason for termination, cancellation, or substantial change in competitive circumstances is nonpayment of sums due under the franchise, you will have 10 days to cure the deficiency.

2. Item 17.

For Wisconsin franchisees, ch. 135, Stats., the Wisconsin Fair Dealership Law, supersedes any provisions of the Franchise Agreement or a related contract which is inconsistent with the Law.

EXHIBIT A
TO BENIHANA NATIONAL CORP. FRANCHISE DISCLOSURE DOCUMENT

Agents for Service of Process and Regulatory Authorities

CALIFORNIA

California Commissioner of Financial Protection & Innovation
Department of Financial Protection & Innovation
2101 Arena Boulevard
Sacramento, California 95834

ILLINOIS

Attorney General State of Illinois
500 South Second Street
Springfield, Illinois 62706

INDIANA

Agent to Receive Process
Indiana Secretary of State
201 State House
200 W. Washington Street
Indianapolis, Indiana 46204

State Administrator

Indiana Securities Commissioner
302 W. Washington, Room E-111
Indianapolis, Indiana 46204

MARYLAND

Agent to Receive Process
Securities Commissioner
Division of Securities
200 St. Paul Place
Baltimore, Maryland 21202

State Administrator

Office of the Attorney General Securities Division
200 St. Paul Place
Baltimore, Maryland 21202-2020

MICHIGAN

Michigan Department of Attorney General
Consumer Protection Division
Attention: Franchise Section
G. Mennen Williams Building, First Floor
525 West Ottawa Street
Lansing, MI 48933

MINNESOTA

Commissioner of Commerce Minnesota Department
of Commerce 85 7th Place East, Suite 280
St. Paul, Minnesota 55101

NEW YORK

Agent to Receive Process

Attention: New York Secretary of State
New York Department of State
One Commerce Plaza,
99 Washington Avenue, 6th Floor
Albany, NY 12231-0001

State Administrator

Office of the New York State Attorney General
Investor Protection Bureau
Franchise Section
28 Liberty Street, 21st Floor
New York, NY 10005

NORTH DAKOTA

North Dakota Securities Department
600 East Boulevard Avenue
State Capitol-5th Floor Bismarck, ND 58505-0510

RHODE ISLAND

Rhode Island Department of Business Regulation
Securities Division
John O. Pastore Complex – Building 69-1
1511 Pontiac Avenue
Cranston, RI 02920

VIRGINIA

Agent to Receive Process

Clerk of the State Corporation Commission
1300 E. Main Street, First Floor
Richmond, VA 23219

State Administrator

State Corporation Commission
Division of Securities and Retail Franchising
1300 E. Main Street, Ninth Floor
Richmond, VA 23219

WASHINGTON

Department of Financial Institutions (for service of
process)
Securities Division
150 Israel Rd S.W. Tumwater, WA 98501

Department of Financial Institutions (mailing
address)
Securities Division
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8760

WISCONSIN

Department of Financial Institutions

Division of Securities

4822 Madison Yards Way, North Tower

Madison, WI 53705

EXHIBIT B-1
TO BENIHANA NATIONAL CORP. FRANCHISE DISCLOSURE DOCUMENT

FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT (“Agreement”) made and entered as of this ____ day of _____, 20____ by and between Benihana National Corp. (“BNC”), a Delaware corporation, whose principal office address is 1624 Market Street, Suite 311, Denver, Colorado 80202 and _____, a _____ having its principal place of business at _____ (“Franchisee”).

INTRODUCTION

A. BNC is the exclusive licensee in the United States of America, including its territories and possessions (collectively, the “Territory”) of all proprietary and property rights and interests in certain trade names, service marks, and trademarks, including BENIHANA®, BENIHANA OF TOKYO®, and the “Flower” symbol (collectively, the “Marks”).

B. Noodle Time, Inc., the registered owner of the Marks, has granted BNC an exclusive, perpetual license to use the Marks and to sublicense them to BNC’s affiliates or third parties in the Territory.

C. BNC owns, operates, sponsors, franchises, and licenses the Marks for use in restaurants operating under the name BENIHANA (“BENIHANA Restaurants”); and BENIHANA Restaurants offer distinctive products and services using a distinctive business format that includes: color schemes, designs, signage, equipment, layouts, operating systems, methods, procedures, standards, techniques, and proprietary information, and marketing and advertising standards and formats, all of which have been and may be modified, amended, or further developed from time to time (the “BENIHANA System”); and

D. BNC has and continues to establish specific operating standards for various aspects of the BENIHANA System, including: the location, physical characteristics, operating procedures, and business processes of BENIHANA Restaurants; employee uniforms and customer service protocols; the products sold and product specifications; qualifications, organization, and training of franchisees and their personnel; qualifications of suppliers; marketing of BENIHANA Restaurants and the BENIHANA System; and all other things affecting the consumer experience at BENIHANA Restaurants (the “BENIHANA Standards”).

E. BNC has expended time, effort, and money to acquire develop experience and skill in the elements, implementation, and updating of the BENIHANA System and the BENIHANA Standards, and BNC continues to develop, use, and control the use of the Marks to identify to the public the source of services and products marketed and offered at BENIHANA Restaurants and to represent the high standards of quality, cleanliness, appearance, and service that are part of the BENIHANA System.

F. Franchisee understands and acknowledges the importance of the BENIHANA System and the BENIHANA Standards relating to product quality, cleanliness, appearance, and customer service that are a critical part of the BENIHANA System, and Franchisee acknowledges the necessity of operating the BENIHANA Restaurant franchised under this Agreement in conformity with the BENIHANA System, including the BENIHANA Standards.

G. Franchisee seeks a license to use the Marks and the BENIHANA System in connection with the operation of a BENIHANA Restaurant at a single location specified in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. GRANT OF FRANCHISE AND FRANCHISE TERM

1.1 The INTRODUCTION paragraphs set forth above are hereby incorporated in this Article 1 by reference as if set forth fully herein.

1.2 BNC grants to Franchisee, and Franchisee accepts, a non-exclusive franchise license to operate a single BENIHANA Restaurant (the “Restaurant”) at the specific location approved by BNC and identified in the Contract Data Sheet attached as Exhibit A hereto (the “Location”), using the Marks and the BENIHANA System in accordance with the BENIHANA Standards and the terms of this Agreement. Franchisee expressly acknowledges that the franchise license granted under this Agreement is non-exclusive and that any geographic limitation on BNC’s rights to use or license the Marks under this Agreement relates solely to the operation of a BENIHANA Restaurant at the Location.

1.3 Unless sooner terminated under with the provisions of this Agreement, the franchise license granted to Franchisee will begin on the Effective Date set forth in the Contract Data Sheet and end fifteen (15) years from the date the Restaurant opens for business to the public (the

“Franchise Term”). Franchisee agrees to operate the Restaurant in accordance with this Agreement at the Location for the entire Franchise Term.

1.4 The grant of a franchise license under this Agreement is specifically limited to operating the Restaurant at the Location, and it does not grant, or imply the grant of, rights regarding any other BENIHANA Restaurant at any other location. Other than with respect to the Restaurant at the Location, Franchisee has no right under this Agreement or otherwise to use, license, sublicense, or franchise others to use the Marks or the BENIHANA System, and Franchisee is not granted any options, rights of first refusal or development opportunities.

1.5 During the Franchise Term, if Franchisee is in full compliance with the provisions and conditions of this Agreement, and subject to BNC’s rights set forth in Section 1.6 of this Agreement, BNC will not operate or license any person or entity other than Franchisee to operate, a BENIHANA Restaurant at any location within the “Restaurant Area” specified in the Contract Data Sheet attached to this Agreement.

1.6 Nothing in this Agreement limits in any way any rights of BNC or its affiliates to: (i) own, operate, or license to others the right to own and operate, competing restaurants other than a BENIHANA Restaurant at any location, including within the Restaurant Area, including but not limited to restaurants using the trademarks RA® SUSHI or HARU®; (ii) own, operate, or license to others the right to own and operate, BENIHANA Restaurants outside the Restaurant Area, even if those BENIHANA Restaurants compete with the Restaurant or draw customers from the Restaurant Area; (iii) directly or indirectly, produce, distribute, sell (at wholesale, retail or otherwise), or license the sale of any product or service using the Marks, or other marks, through alternative channels of distribution (including, by way of example only, grocery stores, convenience stores, internet sales, catalog sales, telemarketing or other direct marketing) regardless of the proximity to, or the competitive impact on, the Restaurant; (iv) license others to use the BENIHANA System and the Marks for the operation of BENIHANA Restaurants within Special Distribution Opportunities (as defined below), including within the Restaurant Area; (v) advertise and promote the BENIHANA System within the Restaurant Area; or (vi) purchase, acquire, be acquired by, merge or affiliate with, or engage in any transaction with other businesses (whether or not these businesses are competitive with the Restaurant), including competing franchise systems with units operating in the Restaurant Area, and to convert and operate, or license others the right to operate these units under the Marks and the BENIHANA System.

1.6.1 For purposes of this Agreement, “Special Distribution Opportunities” means captive venue locations often available only in connection with third-party food service provision contracts, including, without limitation, restaurants or other retail locations at: airports and other public transportation facilities; motorways, turnpikes and toll-roads; shopping malls; entertainment and sports complexes; hotels or casinos; convention centers; health-care or corporate campuses; and military facilities.

ARTICLE 2. SITE SELECTION AND CONSTRUCTION OF THE RESTAURANT

2.1 Franchisee must construct the Restaurant in accordance with this Agreement at the Location approved by BNC under its then-existing site selection processes, and Franchisee will not relocate the Restaurant without BNC’s prior written consent.

2.2 If Franchisee has not secured an approved location as of the Effective Date, BNC may, at Franchisee’s request and subject to BNC’s availability, assist Franchisee in identifying a site for the Location and the Restaurant in accordance with BNC’s then-existing site selection processes. Franchisee acknowledges, however, that Franchisee will make the final decision whether to construct the Restaurant at any specific site approved by BNC, or at the Location. Franchisee acknowledges that BNC's approval of the Location is not an assurance, representation, warranty, promise, or guarantee by BNC that the Restaurant operated at the Location will be profitable or otherwise successful.

2.3 BNC personnel will consult with Franchisee in the planning, design, construction, and build-out of the Restaurant. Unless otherwise agreed, all consultations will be at BNC’s offices in Aventura, Florida (or other offices designated by BNC). If Franchisee requests, and BNC agrees, that any consultation under this Section 2.3 be held at a location other than BNC’s offices, Franchisee will pay all travel, lodging, living, and other expenses incurred by BNC personnel as part of any consultation away from BNC’s offices. Nothing contained in this Section 2.3 means that BNC or any of its employees are authorized to or will act as construction managers or will, in any other capacity, actually supervise the design, construction, or build-out of the Restaurant.

2.4 BNC will, as applicable, provide Franchisee with BNC’s then-current prototypical plans for a typical BENIHANA Restaurant most applicable to the Restaurant. Franchisee must, at Franchisee’s sole expense, employ architects, designers, engineers, and others as necessary to complete, adapt, modify, or substitute the sample plans and specifications, and Franchisee must any modified plans to BNC for review and approval. BNC will review promptly all submitted

plans and specifications and will approve or provide comments to Franchisee on the plans and specifications. Franchisee must not begin construction of the Restaurant until BNC approves, in writing, the final plans and specifications for constructing the Restaurant. Once BNC approves the final plans, Franchisee will be responsible for causing the Restaurant to be completed in full accordance with such plans.

2.5 Franchisee must provide BNC access to the Restaurant during construction, and, if BNC determines that the Restaurant is not being built, or (after construction) was not built, in accordance with the final plans, BNC will have the right to require Franchisee to make all alterations or modifications of the Restaurant that BNC deems necessary.

2.6 BNC will consult with Franchisee, to the extent BNC deems necessary, on the construction and equipping of the Restaurant; it is, however, Franchisee's sole responsibility to diligently design, construct, equip and otherwise ready and open the Restaurant. Franchisee is responsible for obtaining all zoning classifications, permits, clearances, certificates of occupancy, center clearances, or other required governmental approvals. BNC is not responsible for any delays in construction, equipping, or decoration of the Restaurant or for any loss resulting from the Restaurant design or construction.

2.7 Franchisee must use only licensed and qualified general contractors, designers, and architects in performing construction work at the Restaurant.

2.8 BNC expressly disclaims any warranty of the quality or merchantability of any goods or services provided by architects, contractors, or any other persons or entities to which it may refer Franchisee.

2.9 Franchisee may not open the Restaurant for business without having first obtained BNC's written authorization to do so and BNC's acknowledgement that the requirements of this Article 2 have been satisfied.

2.10 Franchisee must, within eighteen (18) months from the Effective Date, open to the public the Restaurant constructed, furnished, and equipped in accordance with this Agreement.

2.11 Franchisee must acquire or lease the Location at Franchisee's expense. If Franchisee leases the Location, Franchisee must obtain BNC's prior written approval before entering into a lease agreement. Franchisee must provide BNC with a copy of Franchisee's fully executed lease agreement immediately after signing. BNC has no obligation to negotiate the terms of Franchisee's

lease. BNC may, however, require that Franchisee's lease include certain provisions, including, but not limited to:

(a) a requirement that Franchisee and Franchisee's landlord sign and deliver to BNC a collateral assignment to BNC of Franchisee's leasehold rights under in the form attached to this Agreement as Exhibit D, under which, upon termination or expiration of this Agreement, at BNC's option, all of Franchisee's rights under the lease will be assigned to BNC or its designee;

(b) a provision restricting the use of the premises solely to the operation of a BENIHANA Restaurant;

(c) a provision prohibiting Franchisee, without BNC's prior written consent, from subleasing or assigning any of Franchisee's occupancy rights or renewing or otherwise extending the lease term;

(d) a provision giving BNC the right to enter the premises to make modifications necessary to protect the Marks or the BENIHANA System or to cure any default under this Agreement;

(e) a provision requiring the landlord to give BNC written notice of Franchisee's defaults by Franchisee simultaneously with the issuance of any default notice sent to Franchisee.

ARTICLE 3. COMPLIANCE WITH BENIHANA SYSTEM AND BENIHANA STANDARDS

3.1 BNC will make the BENIHANA Standards available to Franchisee in the Operations Manual (as defined in Section 4.1 of this Agreement) and in other forms of communications that BNC, in its sole discretion, may modify at any time during the Franchise Term.

3.2 Franchisee must comply with the BENIHANA System and operate the Restaurant in accordance with the BENIHANA Standards. Franchisee acknowledges that compliance with the BENIHANA System, the BENIHANA Standards, and the provisions of the Operations Manual are reasonable requirements necessary to promote the goodwill associated with the BENIHANA System and the Marks to the mutual benefit of BNC, Franchisee, and other franchisees of BENIHANA Restaurants. Franchisee further acknowledges that complete uniformity may not always be possible or practical throughout all BENIHANA Restaurants, and BNC may, from time to time, permit certain deviations from the BENIHANA System or the BENIHANA Standards by Franchisee or other franchisees, as BNC deems appropriate in its sole discretion.

3.3 Franchisee will use the Location solely for the operation of the Restaurant, and Franchisee must not, during the Franchise Term conduct, or permit others to conduct, any business activity at the Restaurant or the Location other than the operation of a BENIHANA Restaurant.

3.3.1 Franchisee will not operate, permit, or grant any concession or license to operate at the Restaurant or the Location any vending machines, video or entertainment machines, games of skill, games of chance, or other similar device, without the specific and prior written consent of BNC.

3.4 The Restaurant must be open for, at a minimum, the hours and days specified or approved by BNC in writing, which hours may be changed from time to time by BNC.

3.5 Franchisee must designate, and retain in its employment, a person to serve as the “General Manager” of the Restaurant; and the General Manager must be responsible for, and devote his or her full time and best efforts to, supervision and management of the Restaurant. Franchisee also must otherwise staff the Restaurant with a sufficient number of employees trained in the BENIHANA System as required by BNC.

3.5.1 The General Manager must satisfy BNC’s educational and business criteria and applicable training requirements and be individually approved by BNC. If the General Manager ceases to be employed by Franchisee or is otherwise unavailable to manage the Restaurant, Franchisee must promptly, and in no event more than 120 days later, designate another person as General Manager, and that person must meet all criteria for a General Manager and be acceptable to and approved by BNC.

3.6 Franchisee must, at its expense, continuously during the Franchise Term, maintain the Restaurant in good condition and repair in accordance with the BENIHANA Standards. The required maintenance, includes, but is not limited to, the replacement of worn carpeting or flooring, repainting and repair of walls, floors, wood trims, or ceilings, as needed, or the repair, refurbishment, or replacement of any damaged or worn fixtures, furniture, or decorative items, including all components of BNC’s trade dress.

3.7 Franchisee may use in the Restaurant only those brands, types, and models of signs displaying the Marks, equipment, or fixtures approved by BNC and that meet all BNC specifications Franchisee must purchase approved brands, types, and models of equipment, fixtures, and signs only from approved suppliers, unless otherwise agreed in writing by BNC.

3.8 Franchisee must purchase, install, and maintain, at its expense, a point of sale data processing system and software as designated or approved from time to time by BNC (the “POS System”). The POS System must contain a device that records accumulated sales that cannot be turned back or reset, and it must include a back-up power system for memory storage in the event of power loss. The POS System must provide a record of products sold, a menu mix report, and other reports required by BNC.

3.8.1 BNC has the right to retrieve all data and information directly from Franchisee’s POS System as BNC deems necessary. Franchisee is responsible for the telephonic or transmission costs of such retrieval.

3.8.2 Franchisee must update, upgrade, or, as necessary, install new hardware or software programs and equipment whenever BNC implements such new hardware or software requirements for franchisees. BNC may in its sole discretion require Franchisee to enter into a separate maintenance agreement for the POS System.

3.9 Franchisee may use only advertising and promotional materials or items approved by BNC in advance of Franchisee’s use. Franchisee must not use any menus, publicity, signs, decorations, furnishings, equipment, or other material using or displaying the Marks without BNC’s prior written approval.

3.10 Franchisee must use or offer for sale at the Restaurant only those food and paper products, services, supplies, and packaging that BNC designates or approves in writing. All such products and services, including the method and manner of sale, distribution, and delivery of such products, must meet the BENIHANA Standards. Franchisee must maintain at all times a sufficient supply of approved products to meet the demand of Franchisee’s customers at the Restaurant.

3.10.1 Franchisee must discontinue offering for sale any product, or using any supplies, paper products, or packaging, that BNC at any time and in its sole discretion, no longer approves for sale or use at the Restaurant.

3.11 Franchisee must, unless BNC specifically agrees otherwise in writing, acquire all products, supplies, equipment, and materials used for operating the Restaurant from suppliers designated or approved by BNC in writing. Franchisee acknowledges that BNC may designate itself as a supplier of any item.

3.11.1 If Franchisee wishes to purchase items from a supplier not previously approved by BNC, Franchisee must first submit to BNC a written request for approval of the

proposed supplier. The request must: (a) provide the name and address of the supplier; (b) provide all other information BNC may request (which may include reasonable financial, operational, and economic information regarding the supplier's business); and (c) identify the authorized products Franchisee wishes to purchase from such supplier.

3.11.2 In considering the request for approval, BNC may require that the supplier: (a) allow BNC to inspect the facility at which the supplier would produce or manufacture the product at issue; and (b) provide product samples to BNC or to a designated independent testing laboratory for testing prior to approval and use. Franchisee or the supplier will pay all costs of any product testing.

3.12 BNC's standards, specifications, and other criteria for supplier approval are subject to change at any time in BC's discretion and are part of the BENIHANA Confidential Information. BNC does not, under its standard operating procedures, disclose such standards, specifications or other criteria to franchisees, proposed suppliers, or approved suppliers except as is necessary under the circumstances.

3.13 Nothing in this Agreement requires BNC to approve any specific supplier, and BNC may revoke its approval of any supplier or product at any time, effective upon written notice to Franchisee. If BNC provided written notice of disapproval of a supplier or a product, Franchisee must immediately discontinue ordering products manufactured by the disapproved supplier and immediately cease offering for sale any disapproved product.

3.14 BNC has the right to derive revenue and other material benefits in consideration of purchases by Franchisee or other franchisees of BNC, including payments of other financial concessions from designated or approved suppliers.

3.15 BNC has the right, in its discretion, to designate any geographical area for purposes of establishing a purchasing program ("Purchasing Program"). Franchisee must participate in any Purchasing Program existing in the area encompassing the Restaurant when Franchisee opens for business or that is established during the Franchise Term.

3.16 If Franchisee develops any new modification, concept, process, improvement, or slogan in the operation or promotion of the Restaurant (a "Business Improvement"), or relating to the BENIHANA System, the Business Improvement will be deemed a work made for hire. Franchisee must promptly notify BNC of, and provide BNC with all necessary information regarding the Business Improvement. Franchisee acknowledges that any Business Improvement is

BNC's sole and exclusive property, and BNC may, without compensation to Franchisee, use the same in connection with the BENIHANA System or the operation or franchising of other BENIHANA Restaurants.

3.17 Franchisee must operate the Restaurant in compliance with all applicable local, state, and federal laws, and compliance with those laws is a requirement of compliance with the BENIHANA Standards and the BENIHANA System. Franchisee must provide to BNC, within five (5) business days of receipt by Franchisee, all reports of any governmental agency related to the Restaurant, specifically including, but not limited to, reports of inspections by any health department or any agency with regulatory or supervisory jurisdiction over the Restaurant.

3.18 Franchisee must at all times during the Franchise Term comply with Payment Card Industry Data Security Standards Requirements ("PCI DSS"), and any other similar requirements or specifications designated by BNC.

ARTICLE 4. SERVICES AVAILABLE TO FRANCHISEE

4.1 BNC will provide Franchisee with access to the Operations Manual during the Franchise Term. For purposes of this Agreement, "Operations Manual" means the BENIHANA University website, all written manuals for use by franchisees or operators of BENIHANA Restaurants, and all product, service, and facility specifications and standards issued by BNC. All parts of the Operations Manual may be supplemented or modified by BNC in its sole discretion at any time.

4.2 BNC will provide to Franchisee BNC's then-current initial training program before Franchisee opens the Restaurant ("Initial Training"). The Initial Training provided by BNC will be subject to the terms set forth in Article 5 of this Agreement, and, unless otherwise specified by BNC, may take place in whole, or in part, at a location designated within the United States.

4.3 BNC will provide pre-opening and opening assistance and training of additional employees of Franchisee (other than those trained at the Initial Training) at the Restaurant ("In-Restaurant Training") as deemed appropriate by BNC in its discretion. The In-Restaurant Training provided by BNC is subject to the terms set forth in Article 5 of this Agreement.

4.4 BNC in its discretion will provide additional on-going training after the opening of the Restaurant, for chefs, general managers, and other restaurant personnel, subject to BNC's availability and openings for such training.

ARTICLE 5. TRAINING

5.1 Franchisee must, unless specifically excused by BNC based on prior experience, attend and complete to BNC's satisfaction all Initial Training and In-Restaurant Training before opening of the Restaurant. Franchisee agrees that a General Manager, Chief Chef, and Chief Sushi Chef, and all other persons required by BNC, will attend, participate in, and successfully complete Initial Training and In-Restaurant Training at locations designated by BNC, which Franchisee acknowledges may include locations within the United States of America.

5.2 The Initial Training, which may be modified by BNC in its sole discretion, generally consists of each trainee working in a BENIHANA Restaurant for a period of eight (8) to twelve (12) weeks, or until the trainee is properly trained to BNC's reasonable satisfaction.

5.2.1 Franchisee has the right, at no additional fee, to bring up to five (5) chefs, a General Manager, and, if required by BNC or requested by Franchisee, and subject to availability of space, one principal of Franchisee, to the Initial Training. Franchisee must obtain BNC's prior written consent before bringing any additional employees to the Initial Training, and Franchisee must pay to BNC its then-current training fee, which may include salaries of all BNC employees providing such training, for each additional employee BNC agrees to train.

5.2.2 Unless otherwise agreed by BNC, Initial Training commences approximately four (4) months before the expected opening date of the Restaurant.

5.3 The nature and scope of In-Restaurant Training will be based upon the experience of Franchisee and Franchisee's employees, the type of facility at the Location, sales volume of the Restaurant as projected by Franchisee, and other factors considered by BNC in its discretion.

5.3.1 In-Restaurant Training will be for a period BNC deems necessary to prepare for opening the Restaurant. There will be no additional fee for In-Restaurant Training, but Franchisee will be responsible for all travel, living, and lodging expenses for BNC's personnel providing In-Restaurant Training.

5.3.2 At Franchisee's request and subject to BNC's prior approval and availability, additional BNC personnel may be made available to assist with In-Restaurant Training, provided that Franchisee reimburses BNC for the salaries and wages of such additional personnel. Additionally, if Franchisee requests that In-Restaurant Training be provided for more than twenty (20) working days, Franchisee will pay all salaries, wages, travel expenses, and living and lodging expenses of BNC's personnel during the extended In-Restaurant Training Period.

5.4 All training programs will be at such times and places designated by BNC. If, at Franchisee's request, BNC in its discretion conducts Initial Training other than at BNC's principal office location, Franchisee will reimburse BNC for the reasonable out-of-pocket expenses incurred by BNC's training instructors, including but not limited to wages, travel expenses, food and lodging, and auto rental.

5.5 Franchisee and other employees of Franchisee designated by BNC will also be required to attend continuing courses, seminars, and other training programs ("Ongoing Training") that BNC may require from time to time.

5.5.1 Ongoing Training may, in BNC's sole discretion, be held at either BNC's principal place of business, at the Restaurant, or at a designated BENIHANA Restaurant. Franchisee will be responsible for all expenses incurred in connection with Ongoing Training, including, without limitation, salaries or wages, transportation, lodging, and meals of Franchisee's employees.

5.5.2 If BNC agrees to conduct any Ongoing Training at the Location, Franchisee will reimburse BNC for the reasonable out-of-pocket expenses incurred by BNC's training instructors in providing such Ongoing Training, including but not limited to travel expenses, food and lodging, and auto rental.

5.6 Franchisee will provide to its employees, at Franchisee's expense, all training-related materials BNC may require in any other form, including web-based training, video-conferencing, or any other training that may be provided without face-to-face instruction.

ARTICLE 6. THE MARKS AND CONFIDENTIAL INFORMATION

6.1 BNC represents that its wholly-owned subsidiary, Noodle Time, Inc, a corporation formed under Florida law and having its principal office at 1624 Market Street, Suite 311, Denver, Colorado 80202, owns all rights and interests in and to the Marks in the United States and elsewhere. BNC also represents that, under a Master License Agreement dated March 31, 1997 ("Master License") and an Addendum to Master License Agreement dated May 8, 2009, both executed by BNC and Noodle Time, Inc., BNC is the exclusive licensee of the Marks in the United States and elsewhere, with rights of enforcement, development, and publicizing of the Marks and the goodwill associated with and symbolized by them, including the right to use and sublicense the Marks in the United States. Thus, BNC covenants that it has the right and authority to sublicense the Marks to Franchisee under this Agreement.

6.2 Franchisee acknowledges that the Marks are valid and subsisting and that Franchisee had no part in the creation or development of the Marks. Franchisee disclaims any and all right, title, or ownership interest in the Marks or the goodwill associated with them. Any goodwill arising from Franchisee's use of the Marks will inure solely and exclusively to the owner of the Marks, and Franchisee specifically acknowledges and agrees that, upon expiration or termination of this Agreement, Franchisee has no goodwill associated with its prior uses of the Marks or the BENIHANA System.

6.3 Franchisee will use only the Marks BNC designates and only in the manner and to the extent specifically permitted in this Agreement or otherwise by BNC in writing. Franchisee may use and display such Marks only in connection with the operation of the Restaurant and in compliance with the BENIHANA Standards. Any unauthorized use of the Marks is an infringement of BNC's rights and a breach of this Agreement.

6.4 All advertising, publicity, signs, decorations, furnishings, equipment, or other materials employing any of the Marks must be submitted to BNC for its approval prior to publication or use.

6.5 Franchisee may not use the Marks or anything confusingly similar as part of Franchisee's corporate or other legal name, or as part of any e-mail address, domain name, or other identification of Franchisee or Franchisee's business in any medium.

6.5.1 Franchisee must display at the Restaurant, and include on business forms such as letterhead, invoices, order forms, receipts and contracts, a written statement that the Restaurant and Franchisee's business are "independently owned and operated" as a franchisee of BNC.

6.6 Franchisee may not, without BNC's prior written approval, use the Marks to advertise or sell products or services through the mail or by any electronic or other medium, including the Internet.

6.6.1 Franchisee must obtain BNC's express prior written consent before developing, creating, generating, owning, licensing, or using in any manner any medium (including, without limitation, an internet page, domain name, website, web-page, bulletin board, newsgroup, or other Internet-related medium) using or displaying the Marks, or any of them, or any words, symbols or terms confusingly similar to the Marks. BNC's approval of any such use will be given only in accordance with procedures, policies, standards, and specifications that BNC

may establish from time to time. Any approval granted by BNC may be revoked upon written notice to Franchisee.

6.6.2 BNC has the sole right to establish an Internet “home page” using any of the Marks, and to regulate the establishment and use of linked home pages by Franchisee and all other BENIHANA franchisees.

6.6.3 BNC has the right, at any time, to establish procedures, limitations and regulations regarding the operation of any websites, and Franchisee will immediately comply with all such procedures, limitations and regulations.

6.7 Franchisee must not do anything, directly or indirectly, to infringe upon, harm, or contest BNC’s rights in the Marks or in any other symbols, logos, marks, or names that incorporate the Marks.

6.7.1 Franchisee must not take any action to apply for the registration of the Marks.

6.7.2 Franchisee must execute any documents BNC deems necessary to obtain protection for the Marks or to maintain their continued validity and enforceability.

6.8 Franchisee must immediately notify BNC of any known claim to or infringement of the Marks, or any claim of unfair competition or other challenge to Franchisee’s right to use any Marks. BNC has the sole and exclusive right, in BNC’s sole discretion, at BNC’s own cost and expense, and for BNC’s own use and benefit, to initiate suit or take other action BNC deems proper to restrain any infringement or defend any other such claim. Franchisee agrees to cooperate with BNC in the prosecution of any such suit.

6.9 BNC may, in its sole discretion, require that Franchisee discontinue, modify, or substitute any of the Marks in connection with any pending or threatened litigation involving Franchisee’s use of the Marks.

6.10 BNC reserves the right to modify the Marks and to substitute different Marks for use in identifying the BENIHANA System and the BENIHANA Restaurant, and Franchisee must comply with all such modifications and/or substitutions.

**ARTICLE 7. FRANCHISE FEE, ROYALTIES,
AND ADVERTISING CONTRIBUTIONS**

7.1 Franchisee must pay to BNC in full upon BNC's acceptance and execution of this Agreement an initial non-refundable franchise fee ("Franchise Fee") of Forty Thousand United States Dollars (\$40,000).

7.2 During the Franchise Term, Franchisee must pay to BNC on a monthly basis a recurring, non-refundable royalty for the use of the Marks ("Royalties") in the amount of five percent (5.0%) of Gross Sales (as defined in this Agreement) of the Restaurant.

7.3 During the Franchise Term, Franchisee must pay to BNC on a monthly basis as a recurring, non-refundable advertising fee for the use of the Marks ("Advertising Contributions") of two percent (2.0%) of Gross Sales (as defined in this Agreement) of the Restaurant.

7.4 Royalties and Advertising Contributions are due and must be paid by Franchisee to BNC on the fifteenth (15th) day of each calendar month based upon Gross Sales at the Restaurant for the preceding calendar month. If the fifteenth day of any month is a Saturday, Sunday, or national holiday, Royalties and Advertising Contributions will be due and payable on the first business day following the fifteenth day of the month.

7.5 Each obligation of Franchisee not discharged by payment in accordance with this Agreement is due as a separate and independent obligation and will continue in full force until discharged as provided herein.

7.6 Franchisee agrees to participate in BNC's specified program or procedure for sales reporting and payment of fees that are due, whether it is electronic fund transfer or some successor program. Franchisee agrees to assume the costs associated with maintaining Franchisee's capability to report sales and transfer funds to BNC.

7.6.1 Franchisee agrees to sign and deliver to BNC an authorization in the form attached as Exhibit G hereto and all other documents necessary to unconditionally and irrevocably authorize BNC to debit automatically by bank draft or other recognized method Franchisee's business operating account for payment on the due dates for Royalties, Advertising Contributions, and any other amounts due under this Agreement. Franchisee agrees that adequate funds will be available for withdrawal by electronic transfer on each due date from the business operating account to be debited.

7.7 In this Agreement, "Gross Sales" means all revenue from the sale of products and services and all other income of every kind and nature related to the Restaurant, whether for cash, trade or barter, by redemption of gift certificates or cards, credit transactions, or otherwise,

regardless of collection, including, without limitation, all revenues derived from catering services, guest parking charges, receipts from mail or telephone orders received at or filled from the Restaurant, deposits not refunded to purchasers, orders taken at the Restaurant that may be filled elsewhere, and payments to Franchisee by any concessionaire, franchisee, or person otherwise in the Restaurant with BNC's approval. "Gross Sales" does not include sales taxes collected by Franchisee from customers for payment to the appropriate taxing authority.

7.8 If Franchisee fails to send to BNC a Gross Sales Statement in any month, BNC will, to the extent permitted by applicable law, be entitled to debit Franchisee's business operating account for one hundred twenty percent (120%) of the most recent Royalty and Advertising Contributions paid under this Agreement. If the Royalty and Advertising Contributions debited are less than the Royalty and Advertising Contributions actually owed to BNC (once Franchisee's actual Gross Sales have been determined), Franchisee must pay, and BNC is authorized to debit Franchisee's account for, the balance due. If the Royalty and Advertising Contributions debited are more than the Royalty and Advertising Contributions actually owed to BNC (once Franchisee's actual Gross Sales have been determined), BNC will credit the excess amount debited against the amount BNC otherwise would debit from Franchisee's account during the following month.

7.9 Any payment not received by BNC when due under this Agreement will bear interest from the due date until payment at a rate of interest (calculated on a daily basis based upon a 365-day year) equal to the lesser of 18% per annum or the maximum allowed by law (as of the date of non-payment).

ARTICLE 8. BOOKS, RECORDS, AND REPORTS

8.1 Franchisee must, on the fifteenth (15th) day of each month (or the next business day if the fifteenth day is Saturday, Sunday, or holiday), deliver to BNC a written statement of Gross Sales for the preceding calendar month ("Gross Sales Statement"). The Gross Sales Statement must be certified as accurate by Franchisee, a financial officer of Franchisee, or Franchisee's principal accountant responsible for overseeing the Restaurant's books and records.

8.2 Franchisee must, at its expense, submit to BNC in the form prescribed by BNC, and maintain readily available for BNC's inspection, review and/or auditing, the following additional reports, financial statements, and other data:

(a) a profit and loss statement and POS sales reports for each month during the Franchise Term, due within thirty (30) days after the end of each month;

(b) within ninety (90) days following the end of each fiscal year during the Franchise Term, an unaudited financial statement for the preceding fiscal year with such detail and in a format as specified by BNC, together with a certificate executed by Franchisee certifying that such financial statement is true and accurate;

(c) copies of Franchisee's operating reports submitted to Franchisee's landlord if required under Franchisee's lease, simultaneously with Franchisee's submission of such reports to Franchisee's landlord;

(d) copies of Franchisee's local, state or federal income tax returns and any local, state, or federal sales tax returns; and

(e) such other forms, reports, records, information, and data as BNC may reasonably designate.

8.3 Along with each report required under this Article 8, Franchisee must submit a certificate signed by Franchisee certifying that the financial or other information provided is true and accurate.

8.4 Franchisee must keep full, complete, and accurate books of account and records with respect to Gross Sales and operation of the Restaurant and retain those books and records for at least five (5) years from the dates of their preparation.

8.4.1 If an audit, review, or inspection of Franchisee's books and records is in progress, or a controversy should arise between the parties hereto regarding the Royalties or Advertising Contributions paid or due, Franchisee must retain all books and records for any relevant period until such audit, review, inspection, or controversy is concluded or otherwise resolved.

8.4.2 All books and records relating to Gross Sales or operation of the Restaurant must be maintained at the Restaurant or, with BNC's prior written consent, at Franchisee's main offices.

8.5 BNC has at all reasonable times a right to inspect, audit, photocopy, or examine Franchisee's books, financial records, and tax returns, including without limitation, Franchisee's general ledger, balance sheets, profit and loss statements, and stockholder's registry book. BNC also has the right, at any time, to have an independent audit made of Franchisee's books and records.

8.5.1 If any inspection, review, or audit reveals that Franchisee understated any

payments due in any report submitted to BNC, then Franchisee will pay, and BNC will have the independent right to immediately debit from Franchisee's bank account, the payments due to BNC, with interest from the date each amount was due until it was debited or paid, at the rate of 18% per annum, or the maximum rate permitted by law, whichever is less.

8.5.2 If an inspection, review, or audit discloses an understatement in any report of 3% or more, Franchisee must also pay, and BNC independently may debit from Franchisee's bank account, an amount to reimburse BNC for all costs and expenses incurred by BNC in connection with the inspection, review, or audit, including, without limitation, travel, lodging, wages, and reasonable accounting and legal costs.

8.5.3 The foregoing remedies are in addition to any other remedies BNC may have under this Agreement.

ARTICLE 9. ADVERTISING, MARKETING, AND PROMOTION

9.1 Franchisee acknowledges the value of advertising the Marks and the importance of advertising, marketing, and promotion to the development and maintenance of goodwill and public awareness and a positive image of the Marks, BENIHANA Restaurants, and the BENIHANA System.

9.2 Franchisee acknowledges and agrees that the Advertising Contributions paid by Franchisee under this Agreement may be commingled with BNC's general funds and nothing in this Agreement will be interpreted to mean that BNC's receipt of any Advertising Contributions constitutes a trust fund or any other fund dedicated exclusively for advertising or promotion.

9.2.1 Without creating any specific obligations on BNC to apply Advertising Contributions in any specific manner other than in BNC's sole and absolute discretion, BNC intends as a general matter to use Advertising Contributions for expenses related to brand advertising, public relations, and in-store, local, national, or regional advertising placed by BNC.

9.2.2 BNC undertakes no obligation to make expenditures for Franchisee that are equivalent or proportionate to Advertising Contributions paid by Franchisee under this Agreement or to insure that Franchisee benefits directly or on a pro rata basis from any expenditures of Advertising Contributions.

9.3 In addition to Advertising Contributions to be paid to BNC under Section 7.3 of this Agreement, Franchisee must spend in each of Franchisee's fiscal years an amount ("Local Spend") that is not less than two percent (2%) of Gross Sales (as defined in this Agreement) in the

prior fiscal year. Local Spend is intended to and may be used for local television, radio, digital, magazine, newspaper advertising, direct mail, billboard advertising, coupons, promotional brochures and literature, point-of-sale advertising materials, and other marketing specific to the Restaurant (“Local Advertising”).

9.4 All Local Advertising must be approved in advance in writing by BNC and conducted in a dignified manner that conforms to all standards and requirements BNC may specify. If Franchisee submits Local Advertising materials to BNC and does not receive written disapproval from BNC within 15 days of the date of receipt by BNC of such samples or materials, BNC will be deemed to have approved them. BNC may revoke its approval of any such plans or materials at any time effective upon written notice to Franchisee.

9.5 Franchisee will submit to BNC from time to time, but in no event less frequently than quarterly, evidence reasonably satisfactory to BNC demonstrating Franchisee’s compliance with its Local Spend and Local Advertising obligations.

9.6 Franchisee is not permitted to offer specific discounts or price points to customers outside of the Restaurant Area, except to the extent that Franchisee has received BNC’s prior written authorization.

ARTICLE 10. INSPECTIONS

10.1 BNC representatives have the right to enter and inspect the Restaurant, and examine and test food products and supplies, to determine whether Franchisee is operating the Restaurant in accordance with this Agreement. Inspections will be conducted during normal business hours.

10.2 BNC will notify Franchisee of any deficiencies observed during an inspection and Franchisee must promptly and diligently correct any such deficiencies. If Franchisee fails to correct any deficiency within a reasonable time as determined by BNC or as provided under this Agreement, BNC will have the right and authority (without any obligation to do so) to correct such deficiencies and to charge Franchisee a reasonable fee for BNC’s expenses in doing so. Franchisee will pay the expenses upon demand. The foregoing remedy is in addition to all other remedies BNC may have, including the right to declare Franchisee in default under this Agreement.

ARTICLE 11. TRANSFER OF INTEREST

11.1 BNC may assign its rights under this Agreement to any person, firm, association, or corporation (“BNC Transferee”) provided the BNC Transferee agrees in writing to assume BNC’s obligations under this Agreement. Upon any assignment by BNC and assumption by a

BNC Transferee of BNC's obligations under this Agreement, BNC will have no further obligations or liabilities under this Agreement.

11.2 Franchisee acknowledges that Franchisee's rights and duties under this Agreement are personal to Franchisee and that BNC has granted entered this Agreement in reliance on Franchisee's business skill, financial capacity, and personal character. Accordingly, neither Franchisee, any immediate or remote successor to Franchisee's interest in this franchise, nor any individual, partnership, corporation, limited liability company or other legal entity that directly or indirectly owns an interest in the franchise license granted in this Agreement or in Franchisee (if Franchisee is a corporation, limited liability company or partnership) may, without BNC's prior written consent as provided in this Agreement, sell, assign, transfer, convey, or give away any direct or indirect interest in the franchise license or in Franchisee (a "Disposition"). Any purported Disposition, by operation of law or otherwise, made without BNC's written consent required by this Section 11.2 is null and void.

11.3 If Franchisee is an entity, any assignment, sale, pledge, or transfer of any ownership interest in Franchisee ("Ownership Interest") will be a Disposition requiring BNC's prior written consent. Unless otherwise agreed by BNC, any new owner of an Ownership Interest will be required to personally guarantee Franchisee's obligations under this Agreement by signing a Personal Guaranty in the form attached hereto as Exhibit B.

11.4 BNC will not unreasonably withhold its consent to a Disposition of any Ownership Interest held by an owner of less than fifty percent (50%) of Franchisee (a "Minority Ownership Interest") provided that all of the following conditions are met:

- (a) Franchisee's monetary obligations to BNC have been satisfied in full;
- (b) the seller of the Minority Ownership Interest releases all claims against BNC, agrees to remain obligated under the non-competition and non-disclosure of confidential information covenants in this Agreement, and expressly agrees to remain primarily liable under this Agreement for two years after the transfer;
- (c) BNC is paid an assignment fee of \$1,000;
- (d) Franchisee provides BNC with copies of all relevant corporate or partnership documents that, among other things, evidence the restrictions on further transfer imposed by this Agreement;

(e) any new owner of the Minority Ownership Interest: (i) is of good moral character and reputation; (ii) meets BNC's then-current criteria for minority owners of Franchisees, including any regulatory requirements imposed on BNC by any governmental authority; (iii) executes and delivers to BNC a written agreement assuming the all obligations of the seller(s) of the Minority Ownership Interest; and (iv) signs a personal guaranty of Franchisee's obligations as BNC requires in its sole discretion.

11.4.1 If any of the foregoing conditions are not met to BNC's satisfaction, BNC will have the unfettered right to refuse to consent to the Disposition of the Minority Ownership Interest.

11.5 If Franchisee decides to accept a bona fide offer from a third-party purchaser ("Proposed Transferee") to purchase the franchise license rights granted under this Agreement, the Restaurant, or any other interest that will result in a transfer of fifty percent (50%) or more of Franchisee (a "Controlling Ownership Interest") (collectively, a "Third-Party Disposition"), Franchisee must, before consummating the Third-Party Disposition, notify BNC in writing of each such offer and provide all information and documentation relating to the offer as BNC may require. BNC will have the right and option to acquire the Controlling Ownership Interest on the same terms and conditions offered by the Proposed Transferee.

11.5.1 Any offer by a Proposed Transferee for a Controlling Ownership Interest presented to BNC under this Article 11 must be in writing and include a signed copy of the agreement between Franchisee and the Proposed Transferee and a description of, and information concerning, the Proposed Transferee and any principals, including financial statements and relevant restaurant operating experience, if any.

11.5.2 BNC has thirty (30) days after receipt from Franchisee of the written offer in which to accept the offer or waive its right of first refusal ("ROFR Decision"). BNC will communicate its ROFR Decision in writing delivered to Franchisee. If BNC does not communicate its ROFR Decision with such thirty (30) day period, BNC will be deemed to have waived its right of first refusal.

11.5.3 If BNC exercises its right of first refusal and accepts the offer, closing on such purchase will be on a date specified by BNC in the notice of exercise, which date will be the later of the date of closing specified in the agreement between Franchisee and the Proposed Transferee or forty-five (45) days from BNC's acceptance.

11.5.4 If BNC waives its right of first refusal, BNC will, within fifteen (15) days after the expiration of the thirty-day period set forth in Subsection 11.5.2 above, advise Franchisee whether BNC consents to the Third-Party Disposition. If BNC consents to the Third-Party Disposition, then Franchisee may conclude the sale to the Proposed Transferee on the terms and conditions of the written agreement submitted to BNC.

11.5.5 A change of any material terms of an agreement for a Third-Party Disposition, including but not limited to price, payment terms, interest being transferred by Franchisee, or the identity of the Proposed Transferee or any holder of any Ownership Interest in the Proposed Transferee, is deemed a new offer, subject to BNC's right of first refusal contained herein.

11.6 BNC agrees not to unreasonably withhold its consent to any Third-Party Disposition of a Controlling Ownership Interest provided: (a) BNC has not exercised its right of first refusal granted under Section 11.5; (b) all of Franchisee's monetary obligations to BNC have been satisfied in full; (c) Franchisee releases all claims it may have against BNC and agrees to remain obligated under the non-competition and non-disclosure of confidential information covenants in this Agreement; (d) Franchisee expressly agrees to remain primarily liable under this Agreement for three (3) years after the Third-Party Disposition; (e) BNC is paid an assignment fee of \$10,000; and (f) the Proposed Transferee: (i) is of good moral character and reputation; (ii) meets BNC's then current criteria for new franchisees, including completion of all required training; (iii) executes and delivers to BNC a written agreement assuming all of Franchisee's obligations under this Agreement; (iv) provides to BNC personal guaranties signed by all principals of the Proposed Transferee BNC designates as required guarantors; (v) has a General Manager who has completed the training required by BNC; and (vi) has provided BNC with copies of all relevant corporate or partnership documents that, among other things, evidencing the restrictions on transfer imposed by this Agreement.

11.6.1 Unless all of the foregoing conditions are satisfied to BNC's satisfaction, BNC has the unfettered right in its sole discretion to refuse to consent to the Third-Party Disposition of a Controlling Ownership Interest.

11.7 Upon the death or mental incapacity of any person with a 25% or more ownership interest in the franchise license or in Franchisee (if Franchisee is a corporation, limited liability company or partnership), the executor, administrator, or personal representative of such person

must transfer his or her interest to a third party approved by BNC within six (6) months after such death or mental incapacity (the “Transfer Period”). Any transfer under this Section 11.7 by devise or inheritance will be subject to the same conditions as an *inter vivos* transfer.

11.7.1 In the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions of ownership in this Article 11, the personal representative of the deceased person will have an additional period of up to six (6) months from the date such individual is disapproved by BNC (the “Extension Period”) to dispose of the deceased’s interest in the franchise license or in Franchisee.

11.7.2 Notwithstanding the foregoing, the following conditions must be met during the Transfer Period and any Extension Period: (i) the executor, administrator, or personal representative, as applicable, must provide BNC with documentation reasonably satisfactory to BNC evidencing the authority to receive an assignment or to dispose of the deceased’s interest; (ii) the Restaurant remains open and operating in compliance with this Agreement; and (iii) a General Manager approved by BNC who has completed the training required by BNC is designated to operate the Restaurant during the Transfer Period or Extension Period, as applicable.

11.7.3 BNC in no way assumes any liability in connection with the legal authority of the deceased’s executor, administrator, heir, beneficiary, or personal representative to receive an assignment or to dispose of the deceased’s interest in the franchise license or in Franchisee.

11.7.4 If a General Manager acceptable to BNC has not been designated to operate the Restaurant during the Transfer Period or any Extension Period, BNC will have the right, at its option, to step in and itself, or through a third party designated by BNC, operate the Restaurant during such period(s). BNC or its designee will be entitled to a reasonable fee for such services, in addition to compensation for all costs and expenses incurred in providing such services.

11.7.5 If the foregoing conditions are not satisfied, or if the deceased’s interest is not transferred or disposed of before the expiration of the Transfer Period or Extension Period, if applicable, BNC may immediately terminate this Agreement.

11.8 Notwithstanding any other provision of this Article 11, BNC will consent to an assignment of this Agreement by an individual franchisee to an entity that is wholly-owned by the same individual (or by more than one individual franchisee to an entity owned in the same proportions as the individual ownership) provided that both the individual assignor(s) and the

entity assignee sign an Assignment and Assumption Agreement in the form attached as Exhibit E hereto.

11.9 BNC's consent to a transfer of any interest in the franchise license granted herein or in Franchisee will not be a waiver of any claims BNC may have against the transferring party or a waiver of BNC's right to demand exact compliance by the transferee with any terms of this Agreement.

ARTICLE 12. INSURANCE AND INDEMNIFICATION

12.1 Franchisee must obtain and maintain throughout the Franchise Term insurance coverage (including without limitation, broad form comprehensive general liability coverage, products liability coverage, business interruption coverage, and employers' liability insurance) as required under this Agreement or applicable law. Franchisee must obtain BNC's approval of all insurance contracts before entering into any such contracts.

12.2 Each insurance policy obtained by Franchisee must name BNC and any affiliates designated by BNC as additional insureds. BNC will have the right to reasonably consent to the types and amounts of insurance coverage and the issuing companies. Insurance maintained by Franchisee must include, at a minimum, the following:

(a) comprehensive general liability insurance (with products, completed operations and contractual liability and independent contractors and escalators coverage) and comprehensive motor vehicle insurance (for owned and non-owned vehicles) against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Restaurant (or otherwise in conjunction with Franchisee's conduct of business pursuant to this Agreement) under one (1) or more policies of insurance, each on an occurrence basis, with single-limit coverage for personal and bodily injury, death and property damage in the amount of at least five million dollars (\$5,000,000) (or such other amount as BNC reasonably requires);

(b) All-risk building and contents insurance including fire, flood and earthquake, vandalism and theft insurance for the replacement value of the Restaurant and its contents;

(c) business interruption insurance for a period adequate to reestablish normal business operations; and

(d) builders' risk insurance on a completed value non-reporting basis during the period of any remodeling of the Restaurant. Franchisee will only be required to obtain and maintain the insurance specified under this subsection 12.2(d) during the period in which any construction and/or remodeling work is being performed.

12.3 Franchisee must provide to BNC certificates of insurance for all issued insurance policies Franchisee is required to obtain under Article 12 immediately after issuance. Franchisee must also provide to BNC copies of all amendments, notices of cancellations, or cancellations of such policies.

12.3.1 If Franchisee fails to obtain or maintain in force any insurance required under this Agreement, BNC has the right, but not the obligation, to purchase such insurance and, if BNC does so, Franchisee must promptly pay to BNC upon demand 105% of the cost of the insurance purchased by BNC to reimburse BNC for the insurance cost and its administrative expense related to Franchisee's failure to comply with Article 12.

12.4 Franchisee agrees, during and after the Franchise Term, to indemnify, defend, and hold harmless BNC and its affiliates and their respective stockholders, members, agents, officers and directors, from and against any and all losses, costs, damages, expenses, claims, demands, proceedings, suits, and liabilities, including attorneys' fees and costs, arising directly or indirectly from, as a result of, or in connection with the construction, operation, condition, use or occupancy of the Restaurant.

12.4.1 If the indemnity provided herein arises in connection with a claim made by a third party ("Third-Party Claim") in respect of a Material Claim (as defined below), BNC has the right, but not the obligation, to take any action it may deem necessary, in its sole discretion, to protect or defend itself and the persons and entities indemnified against any such Third-Party Claim, without regard to the expense, forum, or other parties that may be involved.

12.4.2 BNC also has the right, but not the obligation, to exercise sole and exclusive control over the defense of any Third-Party Claim arising in respect of a Material Claim, and over the settlement, compromise or other disposition thereof, as well as the right to be represented by counsel of its own choosing.

12.4.3 Franchisee's obligations hereunder include the cost of BNC's defense of any Third-Party Claim, the amount of any final judgment (including interest through the date of payment) which may be rendered against BNC, and any settlement reasonably agreed to by BNC.

12.4.4 For purposes hereof, a "Material Claim" means any Third-Party Claim that: (i) has any legal or factual merit whatsoever, as supported by an opinion of a reputable counsel selected by BNC; (ii) involves a claim or subject matter creating any material risk of adverse publicity or potential damage to the Marks, the BENIHANA brand, or the reputation of BNC, the

Marks, or the BENIHANA brand; or (iii) could result in a judgment against BNC for an amount in excess of \$500,000.

12.5 The indemnification referred to in Section 12.4 does not include claims, demands, proceedings, suits, losses, damages, or liabilities arising directly or indirectly from, as a result of, or in connection with BNC's registration of the Marks.

12.6 Notwithstanding anything contained in Section 12.4 to the contrary, Franchisee's obligation to indemnify (but not its obligation to defend) BNC, or any other person or entity under Section 12.4, does not apply to the extent any loss or damage is adjudged by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from BNC's negligence or willful misconduct and was not, in any amount whatsoever, caused by the acts, errors, omissions, negligence or misconduct of Franchisee, Franchisee's employees, agents, contractors or affiliates.

12.6.1 Franchisee may not rely on any exception to its indemnity obligation under Section 12.6.1 if the claims are asserted against BNC or any other party covered by Section 12.4 on the basis of: (i) imputed or secondary liability for the acts of Franchisee or its employees, such as vicarious liability, agency, or apparent agency; or (ii) any failure by BNC to compel Franchisee to comply with the provisions of this Agreement, including compliance with the BENIHANA standards, applicable laws, or other requirements.

ARTICLE 13. DEFAULT AND TERMINATION

13.1 If Franchisee commits an act of default under this Agreement and fails to cure the default after any required notice and within the applicable cure period, this Agreement will terminate automatically with no requirement of further notice by BNC or to Franchisee. The cure period applicable to any act of default is set forth below

13.1.1 If a cure period for an act of default is not specifically set forth in this Agreement, it will be thirty (30) days from the date of BNC's notice to Franchisee.

13.1.2 No cure period is allowed for certain acts of default specified below.

13.1.3 If applicable law requires a longer notice period or a longer cure period than provided in this Agreement, then the period required by law will be substituted for time period provided below.

13.2 The following acts are each a material act of default under this Agreement and are good cause for termination:

13.2.1 If the Restaurant does not open for business to the public within eighteen

(18) months from the date of this Agreement, or such later date as approved by BNC in writing. There is no cure period for an act of default under this provision.

13.2.2 Franchisee does not begin the design, construction, equipping, and process of opening the Restaurant within six (6) months of the date of this Agreement, or such later date approved by BNC in writing. There is no cure period for an act of default under this provision.

13.2.3 Franchisee files a petition or application seeking relief under any federal or state bankruptcy, insolvency or similar law, or a third party files a petition or application under any federal or state bankruptcy, insolvency or similar laws seeking to have Franchisee adjudicated a bankrupt, and the petition is not dismissed within ninety (90) days after it is filed. Subject to, and to the fullest extent allowed by, applicable law, this Agreement will terminate without notice or cure period upon the occurrence of this act of default as if the date of filing were the expiration date, and Franchisee expressly consents to BNC being granted relief from the automatic stay of proceedings against Franchisee. Franchisee further agrees not to seek an injunctive order from any court in any jurisdiction relating to insolvency, reorganization, or arrangement proceedings that would have the effect of staying or avoiding this provision.

13.2.4 Franchisee becomes insolvent, a receiver or custodian (permanent or temporary) of Franchisee's property or any part thereof is appointed by a court of competent authority, or Franchisee makes a general assignment for the benefit of creditors. There is no cure period for an act of default under this provision.

13.2.5 A final judgment against Franchisee remains unsatisfied of record for thirty (30) days or longer (unless a supersedeas or other appeal bond is filed), execution is levied against Franchisee's business or property at the Location, or a suit to foreclose any lien or mortgage against the Restaurant premises or any furniture, fixtures, or equipment at the Restaurant is filed against Franchisee and not dismissed within thirty (30) days. The cure period for an act of default under this provision is five (5) days after notice by BNC following expiration of any other period set forth in the provision.

13.2.6 Franchisee fails to performance any material term, condition, or obligation of payment to Franchisee's suppliers or others arising out of the purchase or lease of products, furniture, fixtures, or equipment in connection with the Restaurant.

13.2.7 Franchisee fails to pay when due any Royalties, Advertising Contributions, or other amounts due and payable to BNC under this Agreement. The cure period for an act of

default under this provision is ten (10) days after notice by BNC to Franchisee.

13.2.8 Franchisee fails to submit any Gross Sales Statement or other financial report required under this Agreement, or unintentionally files an inaccurate Gross Sales Statement or other financial report required under this Agreement. The cure period for an act of default under this provision is thirty (30) days after notice by BNC to Franchisee.

13.2.9 Franchisee knowingly submits to BNC a false Gross Sales Statement or any other false financial report required under this Agreement. There is no cure period for an act of default under this provision.

13.2.10 Franchisee fails to operate the Restaurant in accordance with the BENIHANA Standards as to cleanliness, safety, health, and sanitation. The cure period for an act of default under this provision is five (5) days after notice by BNC.

13.2.11 Franchisee fails to rectify immediately, upon notice to Franchisee by BNC or any other governmental agency or authorized private food safety inspector, a hazardous situation, or immediately remove from the Restaurant any hazardous product. For purposes of the foregoing sentence, “hazardous situations” are those situations or conditions that have the potential to cause injury, illness, or death, and a “hazardous product” is any product unfit for human consumption or that has the potential to cause injury, illness, or death. There is no cure period for an act of default under this provision.

13.2.12 Franchisee sells at the Restaurant products not approved by BNC for sale at the Restaurant, or sells products that do not conform to the product specifications established by BNC. The cure period for an act of default under this provision is five (5) days after notice by BNC to Franchisee.

13.2.13 Franchisee fails to sell or offer for sale at the Restaurant any product BNC requires to be sold or offered for sale at the Restaurant. The cure period for an act of default under this provision is ten (10) days after notice by BNC to Franchisee.

13.2.14 Franchisee fails to use at the Restaurant any furniture, fixtures, equipment or signage BNC requires to be used at the Restaurant.

13.2.15 Franchisee uses at the Restaurant any furniture, fixtures, equipment or signage not approved by BNC for use at the Restaurant.

13.2.16 Franchisee fails to repair and maintain the Restaurant, or the furniture, fixtures, equipment, or signage at the Restaurant to the standards required by BNC.

13.2.17 Franchisee fails to operate the Restaurant in accordance with any BENIHANA Standards (other than those as to cleanliness, safety, health and sanitation) as to operating procedures or system and methods of operation (including, without limitation, standards related to quality and quantity of food products served).

13.2.18 Franchisee fails to obtain and maintain all insurance required under Article 12 of this Agreement, with all required terms and policy provisions required by this Agreement. The cure period for an act of default under this provision is ten (10) days after notice by BNC to Franchisee.

13.2.19 Franchisee violates any governmental law, ordinance, rule, or regulation in connection with operating the Restaurant, and Franchisee fails to correct the violation within twenty (20) days after notification by the governmental body or authority. The cure period for an act of default under this provision is five (5) days from notice by BNC to Franchisee, after expiration of the twenty (20) days from notification by the governmental body or authority; provided, however, the five (5) day cure period will be stayed if Franchisee raises a bona fide dispute as to the validity of the alleged violation of the legality of the law, ordinance, rule, or regulation at issue, and Franchisee takes action in an appropriate court or other forum to address the dispute.

13.2.20 Franchisee vacates, abandons, ceases to occupy, or loses its right to possession of the Restaurant or the Location. The cure period for an act of default under this provision is five (5) days after notice by BNC to Franchisee.

13.2.21 Franchisee abandons the franchise relationship with BNC. It is an abandonment of the franchise relationship with BNC if Franchisee ceases to do business at the Restaurant. The cure period for an act of default under this provision is five (5) days after notice by BNC to Franchisee.

13.2.22 Franchisee fails to comply with the restrictions on BENIHANA Confidential Information, or any covenants set forth in Article 6 or Article 18 of this Agreement, Franchisee misuses or makes any unauthorized use of the Marks or any other identifying characteristics of the BENIHANA System, or Franchisee otherwise materially impairs the goodwill associated the Marks or BNC's rights in the Marks. There is no cure period for an act of default under this provision.

13.2.23 Franchisee or its principals sell, assign, transfer, encumber, or license any

interest in Franchisee, in this Agreement, in the franchise license, or in the Restaurant without BNC's prior written consent and otherwise as permitted under this Agreement. There is no cure period for an act of default under this provision.

13.2.24 Franchisee violates any other obligation, provision, or condition of this Agreement not specifically identified in this Article 13.

13.2.25 Franchisee commits three (3) or more acts of default under this Agreement within any consecutive twelve (12) month period, even if Franchisee cures any of the three acts of default. There is no cure period under this provision, so that if two prior defaults occur within a twelve (12) month period, this Agreement will terminate immediately upon the occurrence of a third act of default and a notice of default and termination delivered by BNC to Franchisee.

13.2.26 Franchisee, or any individual with an Ownership Interest in Franchisee, is convicted in a court of competent jurisdiction of: (i) an offense punishable by a term of imprisonment in excess of one (1) year; or (ii) any offense for which a material element is fraud, dishonesty, or moral turpitude. There is no cure period for an act of default under this provision.

ARTICLE 14. OBLIGATIONS UPON TERMINATION OR EXPIRATION

14.1 Upon termination or expiration of this Agreement for any reason, all rights granted to Franchisee under this Agreement will immediately terminate, and Franchisee must strictly comply with the following obligations:

14.1.1 Franchisee must immediately cease operating the Restaurant or using the fixtures, displays, decorations, stationery, forms, advertising materials, and other articles used in connection with the Restaurant.

14.1.2 Franchisee must immediately and permanently cease using in any manner whatsoever: (i) any Confidential Information; (ii) the BENIHANA System, and any of BNC's methods, procedures, and techniques associated with the BENIHANA System; and (iii) the BENIHANA trade dress and distinctive forms, slogans, signs, symbols and devices associated with the BENIHANA System.

14.1.3 Franchisee must, within five (5) days of expiration or termination, deliver to BNC all manuals, including the Manual, and all other records, correspondence, and instructions containing Confidential Information, or other information relating to the operation of the Restaurant, all of which are acknowledged to be BNC's property, and Franchisee will not keep any copy or record of any of the foregoing, with the exception of Franchisee's copy of this

Agreement, any correspondence between the parties, and any other documents Franchisee reasonably needs for compliance with any provision of law.

14.1.4 Franchisee must immediately and permanently cease using in any manner the Marks, or any confusingly similar trademark, service mark, trade name, or insignia.

14.1.5 Franchisee must not directly or indirectly identify itself in any manner as a franchisee, or former franchisee, of BNC or as an authorized user of the BENIHANA System or the Marks.

14.1.6 Franchisee must furnish BNC with evidence satisfactory to BNC of Franchisee's compliance with Franchisee's obligations under Sections 14.1.3, 14.1.4, and 14.1.5 within seven (7) days after termination or expiration of this Agreement.

14.1.7 Franchisee must immediately make or cause to be made modifications and alterations to the Restaurant to distinguish the appearance of the Restaurant from that of other BENIHANA Restaurants, including all specific changes BNC may request for that purpose. Franchisee must furnish BNC with evidence satisfactory to BNC of Franchisee's compliance with this obligation within seven (7) days after termination or expiration of this Agreement.

14.1.7.1 If Franchisee fails to comply with the requirements of this Section 14.1.7, in addition to any other rights BNC has under this Agreement, BNC has the right to enter upon the premises where the Restaurant was operated, without being guilty of trespass or any other tort, for the purpose of making or causing to be made, at Franchisee's expense, the changes required by this Agreement.

14.1.8 Franchisee must promptly pay all sums owing to BNC and its subsidiaries and affiliates.

14.1.9 Franchisee must take all actions necessary to cancel any assumed names or equivalent registrations containing any of the Marks.

14.1.10 Franchisee must: (i) at BNC's option, assign to BNC, or its designee, any interest Franchisee has in any lease for the Location and the Restaurant; and (ii) take all steps necessary to assign to BNC or its designee the telephone numbers used in connection with operating the Restaurant as provided in the Conditional Assignment of Telephone Numbers attached as Exhibit C hereto.

14.2 If Franchisee continues to operate, or subsequently begins to operate any other business at the Location, Franchisee must not use any reproduction, counterfeit, copy, or colorable

imitation of the Marks or the BENIHANA trade dress, either in connection with such other business or the promotion thereof, and Franchisee must not use any designation of origin or description or representation that falsely suggests or represents an association or connection with BNC constituting unfair competition.

14.3 If this Agreement is terminated based on any default by Franchisee, Franchisee will be liable to BNC for all damages, costs, and expenses, including reasonable attorneys' fees, incurred by BNC as a result of Franchisee's default and termination; Franchisee's obligation under this subsection will give rise to and remain, until paid in full, a lien in favor of BNC against any and all personal property, furnishings, equipment, signs, fixtures, and inventory related to the operation of the Restaurant.

14.4 Franchisee will pay to BNC all damages, costs, and expenses, including reasonable attorneys' fees, incurred by BNC subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement.

14.5 BNC has the option, which it can exercise within thirty (30) days after expiration or termination, to purchase from Franchisee any or all of Franchisee's furnishings, equipment, signs, fixtures, supplies, or inventory related to the operation of the Restaurant, at a price equal to Franchisee's cost or fair market value, whichever is less.

14.5.1 If the parties cannot agree on a fair market value within a reasonable time, BNC will designate an independent appraiser, whose determination will be binding.

14.5.2 If BNC elects to exercise its purchase option under this subsection, BNC has a right to set off against the purchase price all amounts due from Franchisee and the cost of the appraisal.

14.6 Franchisee must comply with all obligations which by their nature survive the termination or expiration of this Agreement, including, without limitation, the covenants contained in Article 18 of this Agreement.

ARTICLE 15. DISPUTE RESOLUTION

15.1 Except as provided in Section 15.3 of this Agreement, all controversies, disputes, or claims between BNC and Franchisee, any other signatory to this Agreement, or BNC's and Franchisee's subsidiaries, affiliates, shareholders, officers, directors, agents, or employees arising out of or related to this Agreement or any other agreement between Franchisee and BNC will be

settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with the AAA Rules for Commercial Disputes.

15.1.1 The place of arbitration will be Miami, Florida, where the award will be rendered.

15.1.2 The arbitration panel will consist of three members, one appointed by BNC, one appointed by Franchisee, and one chosen by the two arbitrators appointed by the parties.

15.1.3 The arbitrators are not authorized to award punitive or exemplary damages, and any award including such damages will not be enforceable by any court.

15.1.4 Franchisee and BNC agree that any arbitration will be conducted only on an individual, and not a class-wide, basis. No arbitration proceeding between Franchisee and BNC may be consolidated with any other arbitration proceeding involving BNC and any other person or entity.

15.1.5 Except as otherwise provided, each party will bear its own attorneys’ fees, expert witness fees, and other court or arbitration costs incurred in connection with any arbitration between BNC and Franchisee.

15.2 BNC and Franchisee agree that this Agreement evidences a transaction involving interstate commerce and that the enforcement of this arbitration provision and the confirmation of any award issued to either party by reason of an arbitration conducted pursuant to this arbitration provision is governed by the United States Federal Arbitration Act, codified at 9 U.S.C. § 1, *et seq.* (the “FAA”). The parties also agree that any such award is eligible for and subject to confirmation by a court in accordance with applicable law and procedure.

15.3 Any other provision of this Agreement notwithstanding, the following claims and matters expressly are excluded from the coverage of the arbitration provision in Section 15.1 of this Agreement:

15.3.1 Injunctive or Extraordinary Remedies. Notwithstanding the provisions of Section 15.1 above, BNC may bring an action in any court of competent jurisdiction for injunctive or other extraordinary relief, as BNC deems necessary or appropriate: (i) prohibiting violations of Franchisee’s obligations under Article 6 and Article 18 of this Agreement; (ii) prohibiting the use or display of the Marks; or (iii) compelling Franchisee to take steps reasonably necessary to preserve BNC’s reputation, goodwill and proprietary rights, including removal of any displays of the Marks or otherwise distinguishing any business at the Location from a BENIHANA

Restaurant.

15.3.2 Franchisee and BNC acknowledge and agree that the United States District Court for the Southern District of Florida (“Southern District of Florida”) shall be the venue and exclusive proper forum in which to adjudicate any case or controversy arising, either directly or indirectly, under or in connection with this Agreement that is subject to Section 15.3 of this Agreement. Franchisee and BNC agree that they are subject to personal jurisdiction in the Southern District of Florida and that, in the event of litigation brought as provided in Section 15.3, they will not contest or challenge the in personam jurisdiction or venue of the Southern District of Florida. If and only if the Southern District of Florida lacks subject matter jurisdiction over any matter litigated under this Agreement, then the Circuit Court for the 11th Judicial Circuit (or its successor) in and for Miami-Dade County, Florida (“11th Judicial Circuit”) shall be the venue and exclusive proper forum for such litigation. Franchisee and BNC agree that they are subject to personal jurisdiction in the 11th Judicial Circuit, and, in any litigation brought in that court under this Section 15, Franchisee and BNC agree they will not contest or challenge the in personam jurisdiction or venue of the 11th Judicial Circuit.

15.3.3 Franchisee acknowledges that Franchisee’s failure to comply fully with any of the terms of this Agreement respecting Franchisee’s obligations to cease, upon termination or expiration of this Agreement, any use of or affiliation with the Marks or the BENIHANA System would cause irreparable damage to BNC and BNC’s other franchisees, and that BNC has the immediate right to seek a preliminary order or injunction enforcing those obligations during the pendency of all arbitration or other proceedings, based on the posting of a bond in the amount of Five Thousand Dollars (\$5,000.00). This covenant is independent, severable, and enforceable notwithstanding any other rights or remedies BNC may have.

ARTICLE 16. INDEPENDENT CONTRACTOR

16.1 Franchisee acknowledges and agrees it is an independent contractor and is not an agent, partner, joint venturer, joint employer, or employee of BNC or any BNC affiliate, and no fiduciary relationship exists between the parties.

16.2 Franchisee will be the sole and exclusive employer of its employees, with the sole right to hire, discipline, discharge and establish wages, hours, benefits, employment policies, and other terms and conditions of employment for its employees without consultation or approval from

BNC. BNC will have no control over the terms and conditions of employment of Franchisee's employees.

16.3 Franchisee will have no right to bind or obligate BNC, Benihana, Inc., or Benihana of Tokyo in any way; nor may Franchisee represent that it has any right to do so.

16.4 In all public records and in Franchisee's relationships with other persons, including on stationery, business forms, and checks, Franchisee will indicate independent ownership of the Restaurant and that Franchisee operates the Restaurant under a franchise license granted by BNC.

16.5 Franchisee must exhibit at the franchised Restaurant, in such places as may be designated by BNC, a notification that the Restaurant is operated by Franchisee as an independent contractor and not by BNC, Benihana, Inc., or Benihana of Tokyo.

ARTICLE 17. ADDITIONAL FRANCHISE TERM AT EXPIRATION

17.1 This Agreement will not automatically renew upon the expiration of the Franchise Term.

17.2 Franchisee will have an option to acquire a franchise agreement ("Successor Franchise Agreement") with respect to the Location for an additional period equal to the standard period of time offered to new BNC franchisees at the time of the expiration of the Franchise Term. Franchisee's right to enter a Successor Franchise Agreement will exist if, and only if, each of the following terms and conditions has been met to BNC's reasonable satisfaction:

17.2.1 Franchisee submits to BNC a written application for a Successor Franchise Agreement at least three hundred sixty-five (365) days before expiration of the Franchise Term;

17.2.2 Franchisee signs and returns to BNC for final approval and signing a Successor Franchise Agreement at least thirty (30) days before expiration of the Franchise Term. Any Successor Franchise Agreement issued to Franchisee will be the then-current form of Franchise Agreement being offered to franchisees as of the date of the expiration of the Franchise Term. The Successor Franchise Agreement may contain provisions, terms, and conditions substantially different from those contained herein, including without limitation, different or increased Royalties, Advertising Contributions, operating standards, training or equipment requirements, duration or renewal terms;

17.2.3 Franchisee, at the expiration of the Franchise Term and within the twenty-four (24) months prior thereto, is not and was not in default in the performance of any obligation under this Agreement, whether or not any notice of default was provided to Franchisee;

17.2.4 Franchisee submits to BNC all information and documentation as reasonably requested by BNC as a prerequisite for the issuance of a franchise agreement as of the date of the expiration of the Franchise Term;

17.2.5 Franchisee meets all of BNC's then-existing legal, financial, and operational standards applicable to new franchisees contained in the then-current form of franchise agreement and the then-current operating standards in effect for the BENIHANA System;

17.2.6 Franchisee re-models or contracts to re-model the Restaurant, including building, signs, equipment, furnishings, and décor, to the extent required and approved by BNC to reflect the then-current image of BENIHANA Restaurants;

17.2.7 Franchisee tenders to BNC, in lieu of the Franchisee Fee specified in the Successor Franchisee Agreement, an administrative fee equal to twenty percent (20%) of the Franchise Fee in existence on the date of the expiration of the Franchise Term;

17.2.8 Franchisee executes a general release, in the form BNC requires, of any and all claims against BNC and its affiliates, successors, and assigns, and their respective officers, directors, agents and employees; and

17.2.9 Franchisee satisfies all monetary obligations owed to BNC by Franchisee and Franchisee's affiliates.

ARTICLE 18. TRADE SECRETS; RESTRICTIVE COVENANTS

18.1 Franchisee acknowledges and agrees that it will receive valuable and specialized training, including operations training in the BENIHANA System, beyond Franchisee's present skills, experience, and knowledge and that of Franchisee's principals or employees. Franchisee further acknowledges that Franchisee will receive access to BNC's Confidential Information (as defined in this Agreement) that will provide a competitive advantage to Franchisee.

18.2 As a condition of training Franchisee, sharing the Confidential Information with Franchisee, and granting Franchisee a franchise license to operate the Restaurant under the BENIHANA System and use BNC's intellectual property, BNC requires the covenants set forth in this Article 18 as protection for BNC's legitimate business interests and the interests of other franchisees in the BENIHANA System.

18.3 Franchisee covenants that during the Franchise Term, except as BNC otherwise approves in writing, Franchisee will devote full time, energy, and best efforts to the management and operation of the Restaurant.

18.4 Franchisee will not, during the Franchise Term or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, association, limited liability company or corporation any confidential information, proprietary information, knowledge, or know-how concerning the Restaurant and the BENIHANA System, including, without limitation, recipes, products, proprietary formulations, technology, operational details, advertising techniques and any and all information, knowledge, know-how and techniques BNC designates as confidential, including the Operations Manual, the BENIHANA Standards and the BENIHANA System, which may be communicated to Franchisee or of which Franchisee may be apprised by virtue of Franchisee's training and/or operation of the Restaurant ("Confidential Information").

18.4.1 Confidential Information does not include information Franchisee can demonstrate came to Franchisee's attention before BNC's disclosure; or which, at or after the time of disclosure by BNC to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others.

18.4.2 Franchisee will divulge Confidential Information only to such of Franchisee's employees as must have access to it in order to operate the Restaurant.

18.4.3 As a condition of employment, Franchisee must require Franchisee's General Manager, any other personnel employed by Franchisee who has received or will receive training from BNC, and any personnel having access to any Confidential Information to execute covenants that they will maintain the confidentiality of information they receive in connection with their employment at the Restaurant. At BNC's option, BNC may require that such confidentiality and restrictive covenant agreements be in the form attached to this Agreement as Exhibit F, which form includes specific identification of BNC as a third-party beneficiary of such covenants with the independent right to enforce them. Franchisee must provide BNC with a copy of all executed covenants within five (5) days after hiring any such General Manager or other employees.

18.5 Franchisee and its principals covenant that, during the Franchise Term and for a period of two (2) years after the expiration or termination hereof, neither Franchisee nor any principal will directly or indirectly:

(a) divert or attempt to divert any business or customer of the Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks and the BENIHANA System;

(b) employ or seek to employ any person (or induce such person to leave his or her employment) who is, or has within the one (1) year prior to such expiration or termination been, employed by BNC, any of its affiliates, including, without limitation HARU® or RA SUSHI® Restaurants (“Affiliated Company”), or any other franchisee operating under the BENIHANA System;

(c) own, maintain, operate, or have any direct or indirect interest in any restaurant or food service business that is or holds itself out to the public as a Japanese teppanyaki style or sushi restaurant or food service (a “Competing Business”) within 150 kilometers of the Location; or

(d) own, maintain, operate, or have any direct or indirect interest in any Competing Business which business is, or is intended to be, located within a ten (10) kilometer radius of any BENIHANA Restaurant, or any other restaurant which is owned, operated, or franchised by BNC, Benihana of Tokyo, Benihana, Inc., or any Affiliated Company.

18.6 Franchisee understands and acknowledges that BNC has the right, in its sole discretion, to reduce the scope of any covenant set forth in Section 18.5, or any portion thereof, without Franchisee’s consent, effective immediately upon Franchisee’s receipt of written notice thereof; and Franchisee agrees that it will comply forthwith with any covenant as so modified.

18.7 Franchisee acknowledges and agrees that any failure to comply with the covenants and agreements in this Article 18, or with the covenants and agreements in Article 6 with respect to the Marks, will result in irreparable injury to BNC for which no adequate remedy at law may be available, and, therefore, BNC will be entitled, in addition to any other remedies BNC may have at law or in equity, to obtain specific performance of, or an injunction against the violation of, the requirements of this Article 18 and such requirements of Article 6, without showing actual or threatened damage and without the necessity of posting bond.

18.7.1 Franchisee agrees to pay all court costs and reasonable attorney's fees incurred by BNC in obtaining specific performance of, or an injunction against violation of, the requirements of this Article 18 or Article 6.

18.8 Franchisee expressly agrees that no claim Franchisee may have or assert against BNC, whether or not arising from this Agreement, will constitute a defense to the enforcement by BNC of the covenants in this Article 18.

18.9 Franchisee acknowledges and agrees that the length and term of the geographical restrictions in Section 18.5 are fair and reasonable and do not impose a greater restraint than is necessary to protect the goodwill associated with the Marks or other business interests of BNC.

18.10 Franchisee agrees that Franchisee's full, uninhibited, and faithful observance of each of the covenants contained in this Article 18 will not cause any undue hardship, financial or otherwise, and that the enforcement of each of the covenants in this Article 18 will not impair Franchisee's ability to obtain employment commensurate with Franchisee's abilities and on terms fully acceptable to Franchisee or otherwise to obtain income required for the comfortable support of Franchisee, Franchisee's family, and the satisfaction of Franchisee's creditors.

18.11 Franchisee agrees that Franchisee's use or exploitation of the special knowledge of the business of a BENIHANA Restaurant (and anyone acquiring knowledge from Franchisee) in competition with BNC or BNC franchisees would cause BNC and other BNC franchisees irreparable injury and loss.

18.12 If, following expiration, termination, or transfer of this Agreement, Franchisee violates the post-term covenants set forth in this Article 18, Franchisee acknowledges and agrees that the post-term period of two (2) years will be extended to begin on the date Franchisee first complies with such covenants so as to provide BNC with the full benefit of the post-term covenant period uninterrupted by Franchisee's interference.

ARTICLE 19: CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP

19.1 If Franchisee is a corporation or limited liability company, the following requirements apply:

19.1.1 Franchisee will be newly organized, and Franchisee's charter will at all times provide that Franchisee's activities are confined exclusively to operating the Restaurant identified in this Agreement.

19.1.2 If Franchisee is a corporation, limited liability company, or other entity, copies of Franchisee's Articles of Incorporation, By-laws, Certificate of Organization, Operating Agreement, partnership agreement, or other applicable governing documents, and any amendments thereto, including any resolution of directors or managers authorizing the signing of this Agreement must be provided to BNC before either Franchisee or BNC signs the Agreement.

19.1.3 Franchisee must maintain stop-transfer instructions against the transfer on Franchisee's records of any equity securities; membership interests, or partnership interests; and

each stock certificate, membership interest or other ownership document, as applicable, must have conspicuously endorsed upon its face a statement in a form satisfactory to BNC that it is held subject to, and that any assignment or transfer thereof is subject to, all restrictions imposed upon assignments by this Agreement; provided, however, that the requirements of this Section 19.1.3 will not apply to a publicly-held corporation.

19.1.4 Franchisee must maintain a current list of all owners of record and all beneficial owners of any stock, membership. General or limited partnership interests, or other ownership interests in Franchisee, and Franchisee must furnish the list to BNC upon request.

19.1.5 All shareholders, members, managers, partners, or other owners of Franchisee must jointly and severally guarantee Franchisee's performance under this Agreement and bind themselves to the terms of this Agreement; provided, however, that the requirements of this Section 19.1.5 will not apply to a publicly-held corporation.

19.2 Without limiting the foregoing, the parties acknowledge and agree that _____ will personally guarantee Franchisee's performance under this Agreement and agree to be personally bound by the terms of this Agreement.

ARTICLE 20. MISCELLANEOUS

20.1 This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and no representations, inducements, promises or agreements, oral or otherwise, between the parties not contained in this Agreement will be of any force or effect. Notwithstanding the foregoing, nothing in this Agreement is intended to disclaim the representations BNC made in the franchise disclosure document BNC furnished to Franchisee.

20.2 No delay or failure by BNC to exercise any right or power under this Agreement, delay or failure by BNC to insist upon strict compliance by Franchisee with any obligation hereunder, or custom or practice of the parties at variance with the provisions of this Agreement, will be a waiver of BNC's right to exercise any such rights or powers or to demand strict and exact performance by Franchisee of all provisions of this Agreement.

20.3 This Agreement is binding upon and inures to the benefit of the parties and their permitted successors and assigns.

20.4 Neither BNC nor Franchisee is liable to perform any obligations under this Agreement if such failure to perform is due to strikes, lockouts, stoppages, accidents, transportation delays, war, government regulations, acts of God, or other causes beyond the

reasonable control of BNC or Franchisee, and the happening of any such cause of delays will extend the time of performance by the time occasioned by any such cause of delay.

20.4.1 Notwithstanding any other provision of this Agreement, no delay referred to in Section 20.4 will operate to extend the Franchise Term beyond its otherwise scheduled expiration date.

20.5 If any provision of this Agreement is invalid or incapable of being enforced by reason of any rule of law or public policy, all other provisions of this Agreement will nevertheless remain in full force and effect, and no provision of this Agreement is deemed dependent upon any other provision unless expressly stated in this Agreement.

20.6 This Agreement may be changed, modified, or amended only by an instrument in writing signed by BNC and Franchisee.

20.7 All notices required or permitted to be given hereunder must be in writing, sent by certified or registered mail, return receipt requested, or by Express Mail, Federal Express or equivalent overnight delivery service, as follows:

20.7.1 If to BNC, addressed to BNC at the address set forth at the head of this Agreement, to the attention of BNC's General Counsel; and

20.7.2 If to Franchisee, addressed to it at the address set forth in the Contract Data Schedule attached to this Agreement.

20.7.3 Either party may change its address for receipt of notices, from time to time, by written notice to the other as set forth herein. Notices are deemed given when delivered or when first refused (as evidenced by the receipt or delivery records of the delivery agent).

20.8 This Agreement is governed by and construed in accordance with the laws of the State of Florida, USA, without regard to the conflict of law principles thereof.

20.9 This Agreement may be executed in any number of counterparts, each of which when signed and delivered will be deemed an original, but such counterparts together will constitute but one and the same instrument.

20.10 All terms and words used in this Agreement, regardless of the number or gender in which they are used, will be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of the Agreement may require, as if such words had been fully and properly written in the appropriate number and gender.

20.11 The various titles of the Articles herein are used solely for convenience and will not be used for interpreting or construing any word, clause, paragraph, or section of this Agreement.

ARTICLE 21: ACKNOWLEDGMENTS

21.1 Franchisee acknowledges that Franchisee has conducted an independent investigation of the franchised business licensed hereunder.

21.2 Franchisee recognizes that the business venture contemplated by this Agreement involves business risks, and its success will be largely dependent upon Franchisee's ability as an independent businessperson.

21.3 BNC expressly disclaims the making of, and Franchisee acknowledges that Franchisee has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

21.4 Franchisee acknowledges that Franchisee received BNC's Franchise Disclosure Document at least ten (10) calendar days before the date on which Franchisee signed this Agreement.

21.5 Franchisee acknowledges that Franchisee has read and understood this Agreement, the attachments hereto and all agreements relating thereto, if any, and that BNC has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

21.6 Except as set forth in any disclosure document, Franchisee acknowledges that Franchisee is relying solely on BNC and not on any affiliated entity or parent company related to BNC with regard to BNC's financial and other obligations under this Agreement.

21.7 Anti-Terrorist Activities and Representations. Franchisee certifies and warrants that neither Franchisee, nor any of Franchisee's owners, principals, employees, or associates (including all shareholders, members or partners., as applicable) is: (i) a person or entity designated by the U.S. Government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List"), as maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") at <http://www.ustreas.gov/offices/enforcement/ofac/sdn>, with which a U.S. person or entity cannot deal with or otherwise engage in business transactions; (ii) a person or entity otherwise the target of U.S. economic sanctions or trade embargoes enforced and administered by OFAC, such that a U.S. person or entity cannot deal or otherwise engage in

business transactions with Franchisee or Franchisee's shareholders, members or partners; (iii) wholly or partly owned or controlled by any person or entity on the SDN List, including, without limitation by virtue of such person being a director or owning voting shares or interests in an entity on the SDN List; (iv) a person or entity acting, directly or indirectly, for or on behalf of any person or entity on the SDN List; or (v) a person or entity acting, directly or indirectly, for or on behalf of a foreign government that is the target of the OFAC sanctions regulations such that the entry into this Agreement would be prohibited under U.S. law.

21.8 Franchisee must comply with, and assist to the fullest extent possible BNC's efforts to comply with, the Anti-Terrorism Laws (as defined below). Franchisee will not hire or otherwise deal with any person listed on the SDN List, as it may be modified from time to time. Franchisee is solely responsible for determining actions Franchisee must take to comply with all Anti-Terrorism Laws. Franchisee specifically acknowledges and agrees that Franchisee's indemnification obligations under this Agreement apply to Franchisee's obligations under Section 21.7 and this Section 21.8. Any misrepresentation by Franchisee under this Section 21.8, or any violation of any Anti-Terrorism Laws by Franchisee, Franchisee's owners, principals or employees, will constitute grounds for immediate termination without opportunity to cure of this Agreement and any other agreement between Franchisee and BNC or BNC's affiliates.

21.9 As used herein, "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT ACT, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, The United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed
on this [day] day of month , 202 at [place of signing] .

ATTEST:

BENIHANA NATIONAL CORP.

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:

[FRANCHISEE]

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Title: _____

Date: _____

ADDENDUM TO
BENIHANA NATIONAL CORP.
FRANCHISE AGREEMENT FOR THE
STATE OF WISCONSIN

This Addendum pertains to franchises sold in the State of Wisconsin and is for the purpose of complying with Wisconsin statutes and regulations. Notwithstanding anything that may be contained in the body of the Franchise Agreement to the contrary, the Agreement is amended as follows:

1. Notwithstanding anything that may be contained in the body of the Franchise Agreement to the contrary, Article 13 of the Agreement pertaining to “Default and Termination” is amended as follows:

For all franchises sold in the State of Wisconsin, we will provide you at least 90 days’ prior written notice of termination, cancellation, or substantial change in competitive circumstances. The notice will state all the reasons for termination, cancellation, or substantial change in competitive circumstances and will provide that you have 60 days in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice will be void. If the reason for termination, cancellation, or substantial change in competitive circumstances is nonpayment of sums due under the franchise, you will be entitled to written notice of such default, and will have not less than 10 days in which to remedy such default from the date of delivery or posting of such notice.

2. Ch. 135, Stats., the Wisconsin Fair Dealership Law, supersedes any provisions of this Agreement or a related document between Franchisor and Licensee inconsistent with the Law.

3. In all other respects, the Franchise Agreement will be construed and enforced according to its terms.

Each of the undersigned hereby acknowledges having read and understood this Addendum and consents to be bound by all of its terms.

BENIHANA NATIONAL CORP.

By: _____

Its: _____

YOU: _____

By: _____

Its: _____

EXHIBIT A

**BENIHANA NATIONAL CORP. FRANCHISE AGREEMENT
CONTRACT DATA SHEET**

A. Franchisee: _____

B. Approved Location: _____

C. Restaurant Area: _____

[If any radius is used in defining the Restaurant Area, it will be calculated by measuring the distance between the Restaurant and any other BENIHANA Restaurant on a straight line from the principal entrance front door of the Restaurant to the principal entrance front door of the other BENIHANA Restaurant]

D. Address for notice to Franchisee shall be at the Restaurant, unless another address is inserted here: _____

Initials

EXHIBIT B

PERSONAL GUARANTY BY SHAREHOLDERS OF A CORPORATION, MEMBERS OF A LIMITED LIABILITY COMPANY, OR PARTNERS OF A LIMITED PARTNERSHIP

NAME OF FRANCHISEE: _____ **DATE:** _____

You, the undersigned Guarantor(s) (hereinafter collectively and individually referred to as "GUARANTOR"), represent and warrant that you constitute [check whichever statement applies]:

[] the shareholders of one hundred percent (100%) of the originally issued and outstanding capital stock of the above FRANCHISEE, a corporation

[] one hundred percent (100%) of the members of the above FRANCHISEE limited liability company ("LLC")

[] one hundred percent (100%) of the partners of the above FRANCHISEE limited or general partnership

This Guaranty is incorporated and made a part of a Franchise Agreement between FRANCHISEE and Benihana National Corp., a Delaware corporation, whose principal office address is 21500 Biscayne Boulevard, Suite 900, Aventura, Florida 33180 (hereinafter referred to as "FRANCHISOR") on the date specified above, and it will be attached to the Franchise Agreement.

1. Acknowledgments. GUARANTOR acknowledges and agrees that FRANCHISOR has entered into the Franchise Agreement with FRANCHISEE solely on the condition that each owner of FRANCHISEE be personally obligated and jointly and severally liable with FRANCHISEE (and with each other owner of FRANCHISEE) for the performance of each and every obligation of FRANCHISEE (and its owners) under the Franchise Agreement, any amendments or modifications to the Franchise Agreement, any extensions or renewals of the Franchise Agreement, and under each and every agreement ancillary to the Franchise Agreement, including any lease, that has been or hereafter may be entered by FRANCHISEE with FRANCHISOR (all of the aforementioned agreements are collectively referred to as the "BENIHANA Agreements").

2. GUARANTOR's Covenants, Representations and Guaranty. In consideration of and as an inducement to the execution of the Franchise Agreement by FRANCHISOR, Guarantor hereby personally, irrevocably and unconditionally:

- (a) represents and warrants to FRANCHISOR that the exhibits/attachments to the Franchise Agreement are accurate and complete;
- (b) agrees to guarantee the prompt payment and performance of all of FRANCHISEE's Obligations (as hereinafter defined) to FRANCHISOR and FRANCHISOR's successors and assigns; and
- (c) agrees to be personally bound by, and personally liable for the breach of each and every provision in the Franchise Agreement and each and every provision in any of the BENIHANA Agreements, as if GUARANTOR were the FRANCHISEE.

The term "Obligations" means the payment of all of FRANCHISEE's debts, liabilities, and obligations to FRANCHISOR arising under the BENIHANA Agreements, whether direct, indirect, absolute, contingent, matured or unmatured, extended or renewed, wherever and however incurred, together with all costs of collection, compromise and enforcement, including reasonable attorney's fees, and the prompt performance of each and every covenant, agreement, and condition set forth in any of the BENIHANA Agreements.

3. Waivers by GUARANTOR. GUARANTOR hereby waives:

- (a) acceptance and notice of acceptance by FRANCHISOR of the foregoing Guaranty;
- (b) notice of demand for payment of FRANCHISEE's indebtedness or nonperformance of any of the Obligations;
- (c) presentment or protest of any instrument and notice thereof or any notice of default or intent to accelerate with respect to the indebtedness or nonperformance of any of the Obligations;
- (d) any right GUARANTOR may have to require that an action be brought against FRANCHISEE or any other person as a condition of GUARANTOR's liability;
- (e) the defense of the statute of limitations in any action for the enforcement, performance, or collection of any Obligation;
- (f) any and all rights to payments, indemnities, and claims for reimbursement or subrogation that GUARANTOR may have against FRANCHISEE arising from GUARANTOR'S execution of and performance under this Guaranty;
- (g) any defense based on any irregularity or defect in the creation of any of the Obligations or modification of the terms and conditions of performance thereof;
- (h) any defense based on the failure of FRANCHISOR or any other party to take, protect, perfect, or preserve any right against and/or security granted by the FRANCHISEE or any other party;
- (i) any and all other notices and legal or equitable defenses to which GUARANTOR may be entitled.

4. Further Agreements and Understandings. GUARANTOR hereby consents and agrees that:

- (a) GUARANTOR's direct and immediate liability under this Guaranty will be joint and several with FRANCHISEE and any other GUARANTOR;
- (b) The death or incapacity of any GUARANTOR will not modify, amend, or terminate this Guaranty;
- (c) If GUARANTOR should die, become incapacitated, become insolvent or make a general assignment for the benefit of creditors, or if a proceeding under the United States Bankruptcy Code or any similar law affecting the rights of creditors generally shall be

- filed or commenced by, against, or in respect of any GUARANTOR, all obligations of the GUARANTOR shall, at FRANCHISOR's option, immediately become due and payable without notice;
- (d) If any payment or transfer to FRANCHISOR which has been credited against any Obligation is voided or rescinded or required to be returned by FRANCHISOR, whether or not in connection with any event or proceeding described in Section 4(c), this Guaranty will continue in effect or be reinstated as though such payment transfer or recovery had not been made;
 - (e) GUARANTOR will render any payment or performance required under the Franchise Agreement and/or any of the BENIHANA Agreements upon demand if FRANCHISEE fails or refuses punctually to do so;
 - (f) GUARANTOR'S liability under this Guaranty is and will be construed as absolute, unconditional, continuing and unlimited without regard to the regularity, validity, or enforceability of any Obligations, and without regard to whether any Obligation is limited, modified, voided, released, or discharged in any proceeding under the United States Bankruptcy Code or any similar law affecting the rights of creditors generally;
 - (g) GUARANTOR'S liability under this Guaranty is not be contingent or conditioned upon FRANCHISOR's pursuit or enforcement of any remedies against FRANCHISEE or any other person;
 - (h) This Guaranty will continue in full force and effect for and as to any extension or modification or amendment to the Franchise Agreement or any other of the BENIHANA Agreements, and GUARANTOR waives notice of any and all such extensions, modifications, or amendments;
 - (i) GUARANTOR'S liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence, or any waiver FRANCHISOR may from time to time grant to FRANCHISEE or to any other person, including without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims (including the release of other owners or Guarantors), or FRANCHISOR taking any action that may have the effect of increasing GUARANTOR'S obligations. None of those actions or occurrences will in any way modify or amend this Guaranty, which will be continuing and irrevocable during the term of the Franchise Agreement and so long as FRANCHISEE's performance is or may be owed under any of the BENIHANA Agreements and so long as FRANCHISOR may have any cause of action against FRANCHISEE or its owners;
 - (j) All present and future debts and Obligations of FRANCHISEE to GUARANTOR or any other GUARANTORS are hereby subordinated to the full payment and performance of the Obligations.

5. Choice of Law; Jurisdiction and Venue. This Guaranty, and any claims related thereto, shall be governed by and construed in accordance with the laws of the State of Florida. GUARANTOR hereby irrevocably submits to the jurisdiction of the United States District Court for the Southern District of Florida ("Southern District of Florida"), which shall be the venue and exclusive proper

forum in which to adjudicate any case or controversy arising, either directly or indirectly, under or in connection with this Guaranty, except to the extent otherwise provided in this Guaranty. GUARANTOR agrees that it is subject to personal jurisdiction in the Southern District of Florida, and GUARANTOR further agrees that, in the event of litigation arising out of or in connection with this Guaranty, GUARANTOR will not contest or challenge the in personam jurisdiction or venue of the Southern District of Florida. If and only if the Southern District of Florida lacks subject matter jurisdiction over any matter litigated under this Guaranty, then the Circuit Court for the Eleventh Judicial Circuit (or its successor) in and for Miami-Dade County, Florida ("11th Judicial Circuit") shall be the venue and exclusive proper forum for such litigation. GUARANTOR agrees that GUARANTOR is subject to personal jurisdiction in the 11th Judicial Circuit, and, in any litigation brought in that court under this Section, GUARANTOR agrees that GUARANTOR will not contest or challenge the 11th Judicial Circuit's jurisdiction over GUARANTOR. GUARANTOR hereby irrevocably waives, to the fullest extent GUARANTOR may effectively do so, the defense of an inconvenient forum to the maintenance of any action or proceeding and any right to jurisdiction on account of GUARANTOR's place of residence or domicile. GUARANTOR agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

6. Waiver of Right to Jury Trial. GUARANTOR expressly waives the right to trial by jury of any claims relating directly or indirectly to this Guaranty and/or the BENIHANA Agreements, the negotiation of the Guaranty and/or the BENIHANA Agreements, or the business relationship relating to or arising out of the Guaranty and/or the BENIHANA Agreements.

7. Severability. If any provision contained in this Guaranty shall be invalid, illegal, or unenforceable in any respect under the laws of any jurisdiction, the validity, legality and enforceability of the remaining provisions of the Guaranty will not in any way be affected or impaired thereby.

GUARANTOR now executes this Guaranty on the date shown above:

GUARANTOR(S):

By:_____

By:_____

Print Name:_____

Print Name:_____

Date:_____

Date:_____

By:_____

By:_____

Print Name:_____

Print Name:_____

Date:_____

Date:_____

EXHIBIT C

CONDITIONAL ASSIGNMENT OF TELEPHONE NUMBERS

This Conditional Assignment of Telephone Numbers is incorporated and made a part of a Franchise Agreement between _____ (“Assignor”) and Benihana National Corp., a Delaware corporation, whose principal office address is 21500 Biscayne Boulevard, Suite 900, Aventura, Florida 33180 (hereinafter referred to as “BNC”) concurrently with the Franchise Agreement.

1. In accordance with the terms of the Franchise Agreement between Assignor and BNC, and in exchange for valuable consideration provided by BNC, receipt of which is hereby acknowledged, Assignor hereby conditionally assigns to BNC all of Assignor’s right, title and interest in and to those certain telephone numbers, facsimile numbers, regular, classified or other telephone directory listings, URLs, domain names and email addresses and accounts (collectively, “Franchisee Listings”) associated with BNC’s trademarks and service marks used in connection with Assignor’s operation of a BENIHANA restaurant located at _____(the “Restaurant”).

2. The conditional agreement will become effective, at BNC’s option, automatically upon termination or expiration of the Franchise Agreement entered into by and between Assignor and BNC for the operation of the Restaurant. Upon the occurrence of either condition, Assignor must do all things required by the telephone company to assure the effectiveness of the assignment of telephone numbers as if the BNC had been originally issued such telephones, telephone numbers, telephone listings and the usage thereof.

3. Assignor agrees to pay the listing company on or before the effective date of assignment all amounts owed for the use of the Franchisee’s Listings, including, without limitation, Yellow Pages advertising. Assignor further agrees to indemnify BNC for any sums BNC must pay any listing company to effectuate this Assignment and agrees to fully cooperate with the listing companies and BNC in effectuating this Assignment.

4. Without limiting the generality of the foregoing, Assignor agrees and acknowledges that as between BNC and Assignor, upon termination or expiration of the Franchise Agreement, BNC will have the sole right to and interest in the Franchisee’s Listings, and Assignor appoint BNC as its true and lawful attorney-in-fact to direct the listing agencies to assign the same to BNC, and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event, Assignor will immediately notify the listing agencies to assign the Listings to BNC; Assignor also agrees not to utilize any call forwarding messages referring to another number. If Assignor fails to promptly direct the listing agencies to assign the Franchisee Listings to BNC, BNC will direct the listing agencies to effectuate the assignment contemplated under this Agreement, to BNC.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as witnessed by their signatures below.

ASSIGNOR:

ATTEST

BY: _____

Title: _____

BENIHANA NATIONAL CORP.:

ATTEST

BY: _____

Title: _____

EXHIBIT D

COLLATERAL ASSIGNMENT OF LEASE

THIS COLLATERAL ASSIGNMENT OF LEASE is made as of the last date below written by and among the following parties:

LANDLORD:

TENANT:

FRANCHISOR ("BNC"):

Benihana National Corp.
21500 Biscayne Boulevard, Suite 900
Aventura, Florida 33180

RECITALS

A. Under the terms of the lease agreement attached hereto as Exhibit A (the "Lease"), Landlord has agreed to lease to Tenant certain premises (the "Premises") located at the following street address:

B. BNC has accepted the Premises for Tenant's BENIHANA Restaurant, subject to the provisions of the Franchise Agreement entered into by and between Tenant and BNC (the "Franchise Agreement").

C. As a condition to BNC entering into the Franchise Agreement, BNC has required that Tenant assign its right, title and interest in the Lease, with the right to reassign (as provided therein), as security for Tenant's obligations and BNC's rights under the Franchise Agreement.

D. In order to induce BNC to enter into the Franchise Agreement, Tenant has agreed to assign its right, title and interest in the Lease, with the right to reassign (as provided therein), as security for Tenant's obligations and BNC's rights under the Franchise Agreement.

AGREEMENT

NOW THEREFORE, in consideration for the foregoing premises and the mutual promises contained herein and in the Franchise Agreement, and in order to secure Tenant's obligations and BNC's rights under the Franchise Agreement, Tenant does hereby collaterally assign, transfer and set

over unto BNC, with the right to reassign or sublet, all of its right, title and interest in and to the Lease and in and to the Premises; it being nevertheless expressly understood and agreed that this assignment is made and is consented to by the Landlord contingent upon the following terms, covenants, limitations and conditions:

1. Use of the Premises. Tenant shall use the Premises only for the operation of a “BENIHANA” Restaurant pursuant to its Franchise Agreement with BNC and for no other purpose whatsoever.

2. Signage. Landlord hereby consents to Tenant’s use and display on the Premises of such exterior and interior signs, posters, promotional materials, and equipment, furnishings, and décor as required by BNC under the Franchise Agreement. Landlord further agrees not to unreasonably withhold its consent to Tenant’s compliance with any changes to such items required by BNC during the term of the Franchise Agreement.

3. Assignment. Landlord acknowledges that Tenant has agreed under the Franchise Agreement that if the Franchise Agreement is terminated or expires, or if Tenant default’s under the Lease, Tenant shall, at BNC’s option, assign to BNC any and all interest Tenant has in the Lease, including any renewal rights. Landlord hereby consents to such assignment subject to the following conditions: (i) BNC shall notify Landlord in writing within thirty (30) days after termination or expiration of the Franchise Agreement or Franchisor’s receipt of any notice of default by Tenant under the Lease if BNC elects to accept assignment of the Lease; BNC’s failure to accept assignment of the Lease upon any default of Tenant under the Lease shall not be deemed a waiver of BNC’s future right to accept such assignment in the event of any future default by Tenant; (ii) If BNC elects to accept assignment of the Lease, BNC shall execute and deliver to Landlord a lease containing the same terms and conditions (including rental rates) as the Lease; provided, however, that BNC’s leasehold interest shall not be subject to any default claims that may exist between Landlord and Tenant; and (iii) If BNC elects to accept assignment of the Lease, BNC shall take possession of the Premises within thirty (30) days after notice of such election to Landlord, and BNC shall commence payment of rent upon taking possession of the Premises. Nothing herein shall affect Landlord’s right to recover from Tenant any and all amounts due under the Lease or to exercise any rights of Landlord against Tenant as provided under the Lease.

4. Assignment to Third Party. At any time after giving notice of its election to accept assignment of the Lease, BNC may request to assign the Lease, or sublease the Premises, to a third party. Landlord agrees not to unreasonably withhold its consent to any such assignment or sublease on the same terms as the Lease provided however, that if Landlord refuses to consent to such assignment or sublease by BNC, BNC shall have no further obligations under the Lease.

5. BNC’s Right to Enter the Premises. Landlord and Tenant hereby acknowledge that BNC has the right, under the Franchise Agreement, to enter the BENIHANA Restaurant operated by Tenant at the Premises at any time for the purpose of conducting inspections, to protect BNC’s proprietary marks and information, and to correct any deficiencies under the Franchise Agreement. Landlord and Tenant agree not to interfere with or prevent such entry by BNC.

6. De-Identification. Landlord and Tenant hereby acknowledge that in the event the Franchise Agreement expires or is terminated, Tenant is obligated under the Franchise Agreement to take certain steps to de-identify the Premises as a “BENIHANA” Restaurant. Landlord agrees to cooperate fully with BNC in enforcing such provisions of the Franchise Agreement against Tenant, including allowing BNC, its employees and agents to enter and remove signs, décor and materials

bearing or displaying any marks, designs or logos of Franchisor; provided, however, that Landlord shall not be required to bear any expenses thereof. Tenant agrees that if Tenant fails to de-identify the Premises promptly upon termination or expiration as required under the Franchise Agreement, BNC may cause all required de-identification to be completed at Tenant's expense.

7. Binding Agreement. This Agreement shall be binding upon the parties hereto and their successors, assigns, heirs, executors, and administrators. The rights and obligations herein contained shall continue notwithstanding changes in the persons or entities that may hold any leasehold or ownership in the land or building. Any party hereto may record this Agreement or a memorandum hereof.

8. Equitable Relief. Any party hereto may seek equitable relief, including, without limitation, injunctive relief or specific performance, for actual threatened violation or nonperformance of this Agreement by any other party. Such remedies shall be in addition to all other rights provided for under this or other agreements between any of the parties. The prevailing party in any action shall be entitled to recover its legal fees together with court costs and expenses of litigation.

9. Miscellaneous. Nothing contained in this Agreement shall affect any term or condition in the Franchise Agreement between Tenant and BNC. Nothing herein shall be deemed to constitute a guaranty or endorsement by BNC of the terms and conditions of the Lease between Landlord and Tenant. If BNC, in its sole discretion, determines not to accept assignment of the Lease as permitted hereunder, neither Landlord nor Tenant shall have any claims against BNC. No terms or conditions contained in the Lease shall be binding on BNC unless and until it elects to accept assignment of the Lease as provided in this Collateral Assignment of Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Collateral Assignment of Lease this _____ day of _____, ____.

TENANT:

ATTEST

BY: _____

Title: _____

FRANCHISOR:

ATTEST

BY: _____

Title: _____

LANDLORD:

ATTEST

BY: _____

Title: _____

EXHIBIT E

ASSIGNMENT & ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the “Assignment”) is entered into as of this _____ day of _____, _____, by and between _____ *[franchisee]* (“Assignor”), _____, a _____ organized under the laws of the state of _____ (“Assignee”), and Benihana National Corp., a Delaware corporation, whose principal office address is 21500 Biscayne Boulevard, Suite 900, Aventura, Florida 33180 (“BNC”).

BACKGROUND

A. BNC and Assignor entered into a certain Franchise Agreement dated _____ (the “Franchise Agreement”) under which Assignor was granted the right and undertook the obligation to operate a BENIHANA Restaurant at the location identified in the Franchise Agreement (the “Franchised Business”);

B. Assignor has formed Assignee for the convenience and purpose of owning and operating the Franchised Business;

C. Assignor desires to assign his or her rights and obligations under the Franchise Agreement to Assignee pursuant to and in accordance with the provisions of the Franchise Agreement; and

D. BNC is willing to consent to the assignment of the Franchise Agreement to Assignee, subject to the terms and conditions of this Assignment, including without limitation, Assignor’s agreement to guarantee the performance by Assignee of its obligations under the Franchise Agreement and to continue to be bound by all of the provisions of the Franchise Agreement.

AGREEMENT

In consideration of the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the parties agree as follows:

1. Assignor hereby assigns and transfers over to Assignee all of Assignor’s rights, title, and interest in and to the Franchise Agreement, effective as of the date of this Assignment.

2. Assignee hereby assumes all of Assignor’s obligations, assignments, commitments, duties, and liabilities under the Franchise Agreement, and agrees to be bound by and observe and faithfully perform all obligations, assignments, commitments and duties of the franchisee under the Franchise Agreement with the same force and effect as if the Franchise Agreement was originally written with Assignee as franchisee.

3. Assignor agrees that Assignor will continue to be bound by all terms and conditions of the Franchise Agreement, including, without limitation, all non-competition, confidentiality, and indemnification obligations, and nothing contained in this Assignment will or does relieve Assignor of any of Assignor’s obligations contained in the Franchise Agreement. Assignor further agrees to, and by this instrument does hereby, guarantee the performance by Assignee of all of its obligations,

commitments, duties and liabilities under the Franchise Agreement. Without limiting the foregoing, Assignor irrevocably and unconditionally guarantees to BNC (i) that Assignee will pay all amounts to be paid and otherwise comply with all provisions of the Franchise Agreement and any other agreement between Assignor and BNC or its affiliates concerning the operation of the Franchised Business, and (ii) that if Assignee defaults in making any such payments or complying with any such provisions, Assignor shall pay forthwith upon demand all amounts due and owing BNC and all damages that may arise as a result of any such non-compliance.

4. In the enforcement of any of its rights against Assignor, BNC may proceed as if Assignor was the primary obligor under the Franchise Agreement. Assignor waives any right to require BNC to first proceed against Assignee or to proceed against or exhaust any security (if any) held by BNC or to pursue any other remedy available to it before proceeding against Assignor. No dealing between BNC and Assignee shall exonerate, release, discharge or in any way reduce the obligations of Assignor hereunder, in whole or in part, and in particular and without limiting the generality of the foregoing, BNC may modify or amend the Franchise Agreement, grant any indulgence, release, postponement or extension of time, waive any term or condition of the Franchise Agreement, or any obligation of Assignee, take or release any securities or other guarantees for the performance by Assignee of any of its obligations, and otherwise deal with Assignee as BNC may see fit without affecting, lessening or limiting in any way the liability of Assignor. Notwithstanding any assignment for the general benefit of creditors, bankruptcy, or other act of insolvency by Assignee, and notwithstanding any rejection, disaffirmance, or disclaimer of this Assignment or the Franchise Agreement, Assignor shall continue to be fully liable.

5. This Assignment is entered into in the State of Florida and shall be construed and interpreted in accordance with its laws, which laws shall control in the event of any conflict of law.

6. This Assignment shall be binding and inure to the benefit of the parties and their respective heirs, successors, and assigns.

7. Assignor and Assignee acknowledge and agree they are bound by the dispute resolution provisions of the Franchise Agreement. Assignor and Assignee further agree they have and will continue to have a substantial relationship with BNC at its offices in Miami, Florida, and with the exception of BNC's right to seek injunctive relief in any appropriate jurisdiction as set forth below, any action by or against either Assignor or Assignee arising out of or relating to this Assignment may be commenced, litigated, and concluded only in a state or federal court of general jurisdiction in the State of Florida. Assignor and Assignee agree that Florida represents the most convenient forum for the parties to litigate any disputes between them. Accordingly, Assignor and Assignee irrevocably submit to the jurisdiction of such courts and waive any objection they may have to either the jurisdiction or venue of such court. Assignor and Assignee further waive any objection that such court is an inconvenient forum. BNC has the option, at its sole discretion, of bringing any action seeking equitable relief to enforce the terms of this Assignment in any court of competent jurisdiction in order to prevent real or threatened harm, and Assignor and Assignee consent to the entry of injunctive relief, including, without limitation, temporary restraining orders and/or preliminary and permanent injunctions without the requirement of bond, according to the usual equity rules in the jurisdiction in which such relief is sought.

8. The Franchise Agreement and this Assignment constitute the entire integrated agreement of assignment between the parties with respect to the subject matter contained herein and neither may be changed, modified, or amended without the a subsequent agreement signed by all parties.

9. If it becomes necessary for BNC to retain legal counsel to enforce the terms of this Assignment, BNC will be entitled to recover all costs and expenses, including reasonable attorney's fees, expenses, and expert and investigative fees, incurred in enforcing the terms of this Assignment.

10. Each party acknowledges that it has read and fully understands the terms of this Assignment and it voluntarily accepts those terms after having a reasonable opportunity to retain and confer with legal counsel. This Assignment is entered into after a full investigation by the parties, and the parties are not relying upon any statements or representations not contained in this Assignment.

11. The persons executing this Assignment on behalf of Assignee acknowledge their authority to do so.

12. The obligations of Assignor and Assignee under this Assignment are joint and several.

I HAVE READ THE ABOVE AGREEMENT AND UNDERSTAND ITS TERMS. I WOULD NOT SIGN THIS AGREEMENT IF I DID NOT UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS.

IN WITNESS WHEREOF, the undersigned have affixed their signatures hereto as of the day and date first above written.

ASSIGNOR:

ATTEST

BY: _____

Print Name: _____

Title: _____

ASSIGNEE:

ATTEST

BY: _____

Print Name: _____

Title: _____

BENIHANA NATIONAL CORP.:

ATTEST

BY: _____

Print Name: _____

Title: _____

EXHIBIT F

CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT

(for trained employees, officers, directors, general partners, members and managers of Franchisee)

In consideration of receiving an offer of employment from _____ (the "Franchisee"), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be bound hereby, I hereby acknowledge and agree that:

1. Benihana National Corp. ("BNC") is the exclusive licensee in the United States of America, including its territories and possessions of all proprietary and other property rights and interests in and to certain trade names, service marks and/or trademarks, including BENIHANA®, BENIHANA OF TOKYO®, and the "Flower" symbol (collectively, the "Marks"). BNC owns, operates, sponsors, franchises, and licenses the Marks for use at, a system of restaurants utilizing the Marks and operating under the name BENIHANA (the "BENIHANA Restaurants"). The BENIHANA Restaurants offer distinctive products and services utilizing a distinctive business format, including color schemes, designs, signage, equipment, layouts, operating systems, methods, procedures, standards, techniques and proprietary information, and marketing and advertising standards and formats, all of which have been and may be modified, amended, supplemented, or further developed from time to time (the "BENIHANA System").

2. Franchisee has acquired the right and license from BNC to operate a BENIHANA Restaurant (the "Restaurant") and the right to use the Marks in the operation of the Restaurant.

3. Because I am employed by Franchisee, BNC and Franchisee may disclose the Confidential Information to me in furnishing to me a training program, in subsequent ongoing training, and for general assistance and instruction during my employment with Franchisee.

4. I will not acquire any interest in the Confidential Information, other than the right to utilize it in on behalf of Franchisee in its the operation of the Restaurant, and the use or duplication of the Confidential Information for any use other than on behalf of the Franchisee in its operation of the Restaurant, would constitute an unfair method of competition.

5. The Confidential Information is non-public, proprietary, involves trade secrets, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I will hold in confidence all Confidential Information and all other information designated by Franchisee or BNC as confidential. Unless BNC otherwise agrees in writing, I will disclose or use the Confidential Information only in connection with my duties to Franchisee, and I will continue not to disclose any such information even after I cease employment and will not use any Confidential Information even after I cease employment.

6. For purposes of this Agreement, "Confidential Information" means information, knowledge, know-how and techniques related to the Restaurant, BNC, Franchisee, the products Franchisee or BNC sells, the BENIHANA Restaurants, the BENIHANA System, which is communicated to me or learned by me in the course of training or working for Franchisee, including, without limitation, information of a confidential and proprietary nature concerning the operations of Franchisee, or BNC, as well as any product recipe, pricing or other information provided to Franchisee by BNC or its suppliers and vendors. Confidential Information shall not include any information that (i) is or

becomes available to the public other than as a consequence of a breach by a person of any fiduciary duty or obligation of confidentiality, including, without limitation, catalogues, product descriptions and sales literature that BNC, Franchisee, or any franchisees or licensees of BNC or its affiliates have distributed to the public generally; or (ii) is disclosed as required by a final, unappealable court order and no suitable protective order, or equivalent remedy, is available, or (iii) I was aware of prior to its disclosure to me in the course and scope of my employment with Franchisee from a source not bound by a confidential obligation.

7. Except as otherwise approved in writing by BNC and Franchisee or on behalf of or in connection with a BENIHANA Restaurant, I will not, while in the employment of the Franchisee, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or limited liability company, own, maintain, engage in, be employed by, or have any interest in any Competing Business. For purposes of this Agreement, a "Competing Business" shall mean a Japanese teppanyaki style or sushi restaurant or food service business.

8. I agree that I will not, for a period of two years following the date on which I cease to be employed by Franchisee, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or limited liability company, own maintain, engage in, be employed by, or have any interest in any Competing Business, which business is located within a five (5) mile radius of any BENIHANA Restaurant location in existence as of the date of such termination, transfer or expiration.

9. I agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which BNC or Franchisee is a party, I expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

10. I understand and acknowledge that BNC will have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without my consent, effective immediately upon receipt by me of written notice thereof; and I agree to comply forthwith with any covenant as so modified.

11. BNC is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement may cause BNC and the Franchisee irreparable harm; therefore, I acknowledge and agree that the Franchisee and/or BNC may apply for the issuance of an injunction preventing me from violating this Agreement, and I agree to pay the Franchisee and BNC all the costs it/they incur(s), including, without limitation, legal fees and expenses, if this Agreement is enforced against me.

12. If a dispute between the parties arises under this Agreement that results in any legal action, the prevailing party will be entitled to recover from any non-prevailing party reasonable attorney's fees and costs. Any controversy, claim, or dispute arising out of or relating to this Agreement, either during the existence of the employment relationship or afterwards, between the parties hereto, shall be litigated solely in state or federal court in Miami-Dade County, Florida. Because of the importance of this Agreement to the Franchisee and BNC, I agree that any claim I have against the Franchisee or BNC is a separate matter, and does not entitle me to violate, or justify any violation of this Agreement, and must be raised in a separate lawsuit or claim.

13. This Agreement shall be construed under the laws of the State of Florida. The only way this Agreement may be amended or changed is in writing signed by both the Franchisee and me and approved, in writing, by BNC.

[INSERT POSITION]

Witness

Name: _____

EXHIBIT G

AUTHORIZATION TO HONOR CHARGES DRAWN BY AND PAYABLE TO BENIHANA NATIONAL CORP.

Franchisee: _____

Date: _____

Franchisee hereby authorizes Benihana National Corp. (hereinafter "BNC"), any financial institution acting on behalf of BNC (hereinafter "BNC's Bank"), and Franchisee's financial institution which is identified below (hereinafter "Franchisee's Bank") to process debit entries on Franchisee's bank account identified below on a monthly basis for payment which is or will become due by Franchisee (or any entity or individual affiliated or related to Franchisee) to BNC under the Franchise Agreement between BNC and Franchisee dated _____ (the "Franchise Agreement"), including monthly royalty fees, advertising fees and other fees due under the Franchise Agreement.

Franchisee acknowledges that BNC, BNC's Bank and Franchisee's Bank must comply with the National Automated Clearing House Association rules. BNC, BNC's Bank and Franchisee's Bank are authorized to make any necessary debits or credits to correct duplicate or erroneous entries. The Franchisee hereby agrees to hold BNC, BNC's Bank, Franchisee's Bank and their agents, successors and assigns harmless from all direct, indirect, special or consequential damages and/or all losses, costs, claims or expenses arising out of or related to the use of this automatic payment service.

Franchisee represents that the account identified below is and shall be maintained at Franchisee's Bank and will contain sufficient funds to cover the automatic debit entries authorized hereunder. Franchisee hereby agrees that in the event BNC, BNC's Bank or Franchisee's Bank is unable to process any debit entry authorized hereunder, Franchisee shall forward payment in the form of a check to BNC at BNC's address, as provided in Franchise Agreement. Franchisee further acknowledges and agrees that if any debit from Franchisee's account is dishonored, whether with or without cause and whether intentionally or inadvertently, Franchisee's Bank shall be under no liability whatsoever. This authorization is effective as of the date indicated below and shall remain in full force until the expiration or earlier termination of the Franchise Agreement. The automatic payment process is subject to modification or cancellation at any time by BNC without notice to Franchisee.

Franchisee's Bank:

Bank Name: _____ Branch: _____

City: _____ State: _____ Zip Code: _____

Account Name (as shown on bank's records): _____

Account Number: _____

ABA/Transit Routing Number: _____ (9 Digits)

Check One: ☐ Savings Account ☐ Checking Account

Franchisee Authorization:

Name: _____
(Please type or print)

Name: _____
(Please type or print)

Sign: _____

Sign: _____

Date: _____

Date: _____

NOTE: A separate Authorization Agreement is required for each bank account, even if all accounts are within the same banking institution. Please attach a voided check or deposit slip to this authorization.

EXHIBIT B-2
TO BENIHANA NATIONAL CORP. FRANCHISE DISCLOSURE DOCUMENT

FRANCHISE AGREEMENT (CONCESSION MODEL)

This FRANCHISE AGREEMENT (the "Agreement") made and entered as of this ____ day of _____ 20__ by and between Benihana National Corp. ("BNC"), a Delaware corporation, whose principal office address is 1624 Market Street, Suite 311, Denver, Colorado 80202 and _____, a _____, having its principal business address at _____ ("Franchisee").

INTRODUCTION

A. BNC is the exclusive licensee in the United States of America, including its territories and possessions (collectively, the "Territory") of all proprietary and other property rights and interests in and to certain trade names, service marks and/or trademarks, including BENIHANA®, BENIHANA OF TOKYO®, and the "Flower" symbol (collectively, the "Marks").

B. BNC owns, operates, sponsors, franchises, and licenses the Marks for use at a system of restaurants utilizing the Marks and operating under the name BENIHANA (the "BENIHANA Restaurants"); and the BENIHANA Restaurants offer distinctive products and services utilizing a distinctive business format, including color schemes, designs, signage, equipment, layouts, operating systems, methods, procedures, standards, techniques and proprietary information, and marketing and advertising standards and formats, all of which have been and may be modified, amended, supplemented or further developed from time to time (the "BENIHANA System"); and

C. As part of the BENIHANA System, BNC has and continues to establish specific operating standards for various aspects of the BENIHANA System, including the location, physical characteristics and operating procedures and business processes of BENIHANA Restaurants; the BENIHANA menu; products sold; product specifications; qualifications of suppliers; qualifications, organization and training of franchisees and their personnel; marketing of products and the BENIHANA System in use at BENIHANA Restaurants; and all other things affecting the experience of consumers who patronize BENIHANA Restaurants (the "BENIHANA Standards").

D. BNC has expended time, effort and money to acquire experience and skill in the development of the BENIHANA System and the BENIHANA Standards, and BNC continues to develop, use and control the use of the Marks in order to identify for the public the source of services and products marketed and offered at BENIHANA Restaurants, and to represent the high standards of quality, cleanliness, appearance and service that are part of the BENIHANA System as represented by the BENIHANA Standards.

E. Franchisee understands and acknowledges the importance of the BENIHANA Standards

relating to product quality, cleanliness, appearance and customer service that are part of the BENIHANA System, and Franchisee acknowledges the necessity of operating the BENIHANA Restaurant franchised under this Agreement in conformity with all requirements of the BENIHANA System, including the BENIHANA Standards.

F. Franchisee desires to acquire a license to use the Marks and the BENIHANA System in connection with the operation of a BENIHANA Restaurant at a single location specified in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1. GRANT OF FRANCHISE; FRANCHISE TERM

1.1 The Introduction paragraphs set forth above are hereby incorporated in this Article 1 by reference as if set forth fully herein.

1.2 BNC hereby grants to Franchisee and Franchisee accepts a non-exclusive license to operate a single quick-service retail food location, with a limited menu and requiring limited equipment, branded as a BENIHANA® outlet (the “Restaurant”) at the location identified in the accompanying Contract Data Sheet attached as Exhibit A hereto (the “Location”), using the Marks and the BENIHANA System solely in accordance with the BENIHANA Standards and the particular terms of this Agreement.

1.3 Unless sooner terminated in accordance with the provisions of this Agreement, this Agreement and the franchise and license granted hereunder shall be for a period ending fifteen (15) years from the date the Restaurant opens for business to the public (the “Franchise Term”). Franchisee agrees to operate the Restaurant in accordance with this Agreement at the Location for the entire Franchise Term.

1.3.1 Notwithstanding anything in Section 1.3 above, after the first five years of the Franchise Term, BNC will have the option, on ten (10) days’ notice, to terminate the Franchise Agreement if average monthly sales for any prior six-month period are below \$400,000.

1.4 The grant of this franchise does not grant, or imply the grant of, rights with regard to any other BENIHANA Restaurant at any other Location. Franchisee shall have no right whatsoever under this Agreement or otherwise to use, license, sublicense, or franchise others to use the Marks or the BENIHANA System. Franchisee acknowledges that Franchisee is not granted any options, rights of first refusal or development opportunities.

1.5 During the Franchise Term, if and only if Franchisee is in full compliance with the terms and conditions of this Agreement, and subject to BNC’s rights set forth in Section 1.7 of this Agreement, BNC shall not operate or license any person or entity other than Franchisee to operate, a BENIHANA Restaurant at any location that is within the “Restaurant Area” specified in the Contract Data Sheet attached

to this Agreement.

1.6 Franchisee expressly acknowledges that the franchise granted under this Agreement is non-exclusive and that any geographic limitation on BNC's rights to use or license the Marks under this Agreement relates solely to the operation of a BENIHANA Restaurant at the Location.

1.7 Nothing in this Agreement is intended to or shall limit in any way any rights of BNC or its affiliates to: (i) own and operate, or license others the right to own and operate, competing restaurants other than a BENIHANA Restaurant at any location, regardless of the proximity to the Restaurant, including but not limited to restaurants using the trademark RA® Sushi; (ii) own and operate, or license others the right to own and operate, BENIHANA Restaurants, including another business similar to the Restaurant outside the Restaurant Area, even if such BENIHANA Restaurants compete with the Restaurant or draw customers from the Restaurant Area; (iii) engage, directly or indirectly, at wholesale, retail or otherwise, in the production, distribution, license and/or sale of any product or service under the Marks, or other marks, anywhere, regardless of the proximity to, or the competitive impact on, the Restaurant, through alternative channels of distribution (by way of example only, grocery stores, conveniences stores, internet sales, catalog sales, telemarketing or other direct marketing); (iv) license others to use the BENIHANA System and the Marks for the operation of BENIHANA Restaurants within Special Distribution Opportunities (as defined below); (v) advertise and promote the BENIHANA System within the Restaurant Area; and (vi) purchase, acquire, be acquired by, merge or affiliate with or engage in any transaction with other businesses (whether or not these businesses are competitive with the Restaurant), including competing franchise systems with units operating in the Restaurant Area, and to convert and operate, or license others the right to operate these units under the Marks and the BENIHANA System.

1.8 For purposes of this Agreement, "Special Distribution Opportunities" shall mean captive venue locations, generally available only in connection with third-party food service provision contracts, including, without limitation, restaurants or other retail locations at airports and other public transportation facilities, turnpikes and toll-roads, entertainment and sports complexes, hotels, casinos, convention centers, and military facilities.

ARTICLE 2. SITE SELECTION AND CONSTRUCTION OF THE RESTAURANT

2.1 Franchisee shall construct the Restaurant in accordance with the provisions of this Agreement at the Location, and Franchisee shall not relocate the Restaurant without BNC's prior written consent.

2.2 Franchisee shall acquire or lease the Location at Franchisee's expense. If Franchisee leases the Location, Franchisee must obtain BNC's prior written approval before entering into a lease agreement. Franchisee shall provide BNC with a copy of Franchisee's fully executed lease agreement immediately after signing. BNC is not required and has no obligation to negotiate the terms of Franchisee's lease. BNC

may require the inclusion of certain provisions in the lease, including, but not limited to:

(a) The requirement that Franchisee and Franchisee's landlord execute and deliver to BNC a collateral assignment of Franchisee's rights under the lease in the form attached to this Agreement as Exhibit D, pursuant to which Franchisee must, at BNC's option, assign all of Franchisee's rights under the lease to BNC or its designee upon termination or expiration of this Agreement.

(b) A provision which restricts the use of the premises solely to the operation of a BENIHANA Restaurant.

(c) A provision which prohibits Franchisee from subleasing or assigning all or any part of Franchisee's occupancy rights, or extending the term of or renewing the lease, without BNC's prior written consent.

(d) A provision giving BNC the right to enter the premises to make modifications necessary to protect the Marks or the BENIHANA System, or to cure any default under this Agreement.

(e) A provision requiring the landlord to provide BNC with written notice of any defaults by Franchisee under the lease simultaneously with the issuance of any such notices to Franchisee.

2.3 BNC shall make available BNC personnel to consult with Franchisee in the planning, design, construction, and build-out of the Restaurant. Unless otherwise agreed, all consultations will be at BNC's offices in Miami, Florida (or other offices designated by BNC). If Franchisee requests that any consultation under this Section 2.3 be held at a location other than BNC's offices, and BNC agrees to any other requested consultation, Franchisee shall pay all travel, lodging, and living and other expenses incurred by BNC personnel as part of any consultation away from BNC's offices. Nothing contained in this Section 2.3 shall be interpreted to require or suggest that BNC or any of its employees are authorized to or will, as construction managers or in any other capacity, actually supervise the design, construction, or build-out of the Restaurant.

2.4 Franchisee acknowledges that the Restaurant is a distinct format that generally has not been used previously by BNC or any franchisee, and that there are no current prototypical plans for the Restaurant. Franchisee shall, at Franchisee's sole expense, employ architects, designers, engineers, and others as may be necessary to complete, adapt, modify, or substitute the sample plans and specifications and shall submit them to BNC for review and approval. BNC will review the plans and specifications promptly and will approve or provide comments to Franchisee on the plans and specifications. Franchisee shall not commence construction of the Restaurant until BNC approves, in writing, the final plans and specifications to be used. Once final plans are approved, Franchisee shall cause the Restaurant to be completed in full accordance with such plans.

2.5 If BNC determines that the Restaurant is not being built, or was not built, in full accordance with the final plans, BNC shall have the right to require Franchisee to cause to be made all alterations or

modifications that BNC deems necessary.

2.6 Both parties understand and acknowledge that the Restaurant will operate with a limited amount of equipment as compared to a standard-format full-service BENIHANA Restaurant. BNC will consult with Franchisee, to the extent BNC deems necessary, on the construction and equipping of the Restaurant, but it shall be and remain Franchisee's sole responsibility to diligently design, construct, equip, and otherwise ready and open the Restaurant. Franchisee will be responsible for obtaining all zoning classifications, permits, clearances, certificates of occupancy and center clearances, which may be required by governmental authorities.

2.7 Franchisee shall use licensed general contractors, designers, and architects in performing construction work at the Restaurant, and will comply with all requirements under a lease for the Restaurant.

2.8 BNC expressly disclaims any warranty of the quality or merchantability of any goods or services provided by architects, contractors or any other persons or entities to which it may refer Franchisee. BNC is not responsible for delays in the construction, equipping or decoration of the Restaurant or for any loss resulting from the Restaurant design or construction, because BNC has no control over the landlord or the numerous design, construction, or relate problems that could occur and delay the opening of the Restaurant.

2.9 BNC shall have access to the Restaurant while work is in progress and may require such reasonable alterations or modifications of the construction that BNC deems necessary.

2.10 Franchisee may not open the Restaurant for business without having first obtained BNC's written authorization and acknowledgement that the requirements set forth in this Article 2 have been satisfied.

2.11 Franchisee shall commence operation of the Restaurant within twelve (12) months from the date of this Agreement. Franchisee will be deemed to have commenced operation of the Restaurant on the date Franchisee opens to the public the Restaurant constructed, furnished, and equipped in accordance with this Agreement.

ARTICLE 3. COMPLIANCE WITH BENIHANA SYSTEM; BENIHANA STANDARDS

3.1 BNC will make the BENIHANA Standards available to Franchisee in the Operations Manual and in other forms of communications, all of which BNC may modify in its sole discretion at any time during the Franchise Term.

3.2 Franchisee acknowledges that Franchisee's adherence to the BENIHANA System, the BENIHANA Standards, and the provisions of the Operations Manual are reasonably necessary, and essential to BNC, to Franchisee and to other franchisees of BENIHANA Restaurants, in order to promote the goodwill associated with the BENIHANA System and the Marks. Notwithstanding that the parties acknowledge that many of the BENIHANA Standards will be inapplicable to the design, format, operation,

and products sold at the Restaurant, Franchisee shall comply with all applicable BENIHANA Standards and operate the Restaurant in accordance with the BENIHANA System as applicable to the Restaurant. SCHEDULES 1-A, 1-B, and 1-C to this Agreement will set forth modifications to the BENIHANA System as to menu, equipment, and training that the parties agree will apply to the operation of the Restaurant.

3.2.1 Franchisee further acknowledges that complete uniformity may not always be possible or practical throughout all BENIHANA Restaurants, and BNC may, from time to time, permit certain deviations from the BENIHANA System or the BENIHANA Standards as BNC deems appropriate in its sole discretion. The parties agree and acknowledge that the service format of the Restaurant will necessarily require certain deviations from the BENIHANA System or the BENIHANA Standards as approved by BNC in its sole discretion.

3.3 Franchisee shall use the Location solely for the operation of the Restaurant in strict accordance with the applicable BENIHANA Standards. The Restaurant shall be open and in operation for such minimum hours and days specified or approved by BNC in writing, which hours may be changed from time to time by BNC.

3.4 Franchisee must designate and retain in its employment at all times a person to serve as the “General Manager” of the Restaurant. Franchisee shall at all times otherwise staff the Restaurant with a sufficient number of employees trained in the BENIHANA System as required by BNC. The General Manager must satisfy BNC’s educational and business criteria and must be individually acceptable to BNC. In addition, the General Manager must be responsible for the supervision and management of the Restaurant, and must devote full time and best efforts to this activity. The General Manager also must satisfy BNC’s applicable training requirements. If the General Manager ceases to be employed by Franchisee and available to manage the Restaurant, Franchisee must promptly, and in no event more than 120 days later, designate another person as General Manager, and that person must meet all criteria for a General Manager and be acceptable and approved by BNC.

3.5 During the entire Franchise Term, Franchisee shall not carry on or conduct, or permit others to carry on or conduct, any other business activity or operation at the Restaurant or the Location other than the operation of the Restaurant permitted under this Agreement.

3.6 Franchisee shall not operate, permit or grant any concession or license to operate at the Restaurant or the Location any vending machines, video or entertainment machines, games of skill, games of chance, or other similar device, without the prior written consent of BNC in each instance.

3.7 Franchisee shall, at its expense, continuously throughout the Franchise Term, maintain the Restaurant in good condition and repair in accordance with the BENIHANA Standards. Such maintenance shall include, without limitation, the repainting of walls, floors, flooring, or ceilings, as needed, or the repair, refurbishment, or replacement of any damaged or worn fixtures, furniture, equipment, or decorative

items or components of BNC's trade dress.

3.8 Franchisee shall use in the Restaurant only those brands, types and models of signs displaying the Marks, equipment, or fixtures that are approved by BNC and meet all specifications established by BNC. Franchisee must purchase approved brands, types, and models of equipment, fixtures, and signs which meet BNC's specifications only from approved suppliers, unless otherwise agreed in writing by BNC.

3.9 Franchisee agrees to purchase, install, and maintain, at its expense, a point of sale data processing system and software as designated or approved from time to time by BNC (the "POS System"). The POS System shall contain a device to record accumulated sales that cannot be turned back or reset, and a back-up power system for memory storage in the event of power loss. The POS System will provide a record of products sold, a menu mix report, and other reports required by BNC. BNC shall have the right to retrieve such data and information directly from Franchisee's POS System as BNC shall deem necessary. Franchisee shall be responsible for the telephonic or transmission costs of such retrieval. Franchisee will install any new or upgraded software programs and equipment whenever BNC adopts such new programs for all franchisees to ensure full operational efficiency and communications capability. Franchisee shall update and upgrade the POS System as designated by BNC. BNC may require Franchisee to enter into a separate maintenance agreement for the POS System at any time.

3.10 Franchisee will only use advertising and promotional materials or items that are authorized and approved in writing by BNC in advance of their use by Franchisee.

3.11 Franchisee shall use or offer for sale at the Restaurant only those food and paper products, services, supplies, and packaging designated or approved by BNC in writing. The parties agree that the products offered at the Restaurant will be those products listed on SCHEDULE 1-A to this Agreement. The parties agree to consult regarding changes to the products to be offered at the Restaurant, and Franchisee agrees that BNC retains the sole and unfettered discretion to determine what products may be offered at the Restaurant. All products and services, including the sale, distribution and delivery of such products, must meet the BENIHANA Standards. Franchisee further agrees to discontinue offering for sale any product (even if listed on SCHEDULE 1), or using any supplies, paper products or packaging that BNC may, at any later time, in its sole discretion, no longer approve for sale or use at the Restaurant. Franchisee shall maintain at all times a sufficient supply of approved products to meet customer demand at the Restaurant.

3.11.1 The parties expressly acknowledge and agree that, in addition to the BENIHANA products to be served at the Restaurant, Franchisee will offer for sale products to be agreed upon by the parties under the RA® SUSHI name and trademarks (and listed on SCHEDULE 1-A to this Agreement). This provision will require Franchisee to execute a license agreement ("RA® Sushi License Agreement") with RA Sushi Holding Corp., or its successor or assign, in a form to be agreed to by the parties. Franchisee

agrees to do so, and Franchisor will use all its best reasonable efforts to cause RA Sushi Holding Corp. to execute the RA® Sushi License Agreement with Franchisee.

3.12 Unless specifically agreed otherwise in writing by BNC, Franchisee shall purchase all products, supplies, equipment, and materials used in operating the Restaurant from suppliers designated or approved by BNC in writing. Franchisee acknowledges that BNC may designate itself as a supplier of any item.

3.13 If Franchisee wishes to purchase any items from any supplier not previously approved by BNC, Franchisee shall submit to BNC a written request for approval of the proposed supplier. The notice shall (a) identify the name and address of such supplier, (b) contain such information as may be requested by BNC (which may include reasonable financial, operational and economic information regarding its business), and (c) identify the authorized products desired to be purchased from such supplier. BNC may require that samples from the supplier be delivered to BNC or to a designated independent testing laboratory for testing prior to approval and use. Franchisee shall pay BNC a fee to cover all costs of the test.

3.14 BNC's standards, specifications, and other criteria for supplier approval, which are subject to change at any time, are part of the BENIHANA Confidential Information and BNC does not under its standard operating procedure disclose such standards, specifications, or other criteria to franchisees, proposed suppliers, or approved suppliers except as is necessary under the circumstances.

3.15 Nothing in this Agreement shall require BNC to approve any specific supplier. BNC may revoke its approval of any supplier or product at any time, effective upon written notice to Franchisee. Upon receipt of such written notice of disapproval of a supplier or product, Franchisee shall immediately discontinue ordering products manufactured by the disapproved supplier and shall immediately cease offering for sale any disapproved product.

3.16 Franchisee acknowledges and agrees that BNC reserves the right to derive revenue and other material benefits in consideration of purchases by Franchisee or other franchisees of BNC, including from designated or approved suppliers.

3.17 BNC shall have the right, in its discretion, to designate any geographical area for purposes of establishing a purchasing program ("Purchasing Program"). If a Purchasing Program is established in the area encompassing the Restaurant when Franchisee opens for business, or is established during the Franchise Term, Franchisee shall immediately participate in the Purchasing Program.

3.18 Any new modification, concept, process, improvement, or slogan ("Work Improvement") Franchisee develops as to the operation or promotion of the Restaurant or to the BENIHANA System shall be deemed a work made for hire, and Franchisee shall promptly notify BNC of, and provide BNC with all necessary information, regarding such Work Improvement. Franchisee acknowledges that any Work Improvement shall, without compensation to Franchisee, become BNC's sole and exclusive property. BNC

may use or allow other franchisees to use any Work Improvement in connection with the BENIHANA System or the operation of BENIHANA Restaurants.

3.19 Franchisee must operate the Restaurant in compliance with all applicable local, state, and federal laws, and compliance with those laws is a requirement of compliance with the BENIHANA Standards and the BENIHANA System. Franchisee must provide to BNC, with five (5) business days of receipt by Franchisee, all reports of any governmental agency related to the Restaurant, specifically including, but not limited to, reports of inspections by any health department or any agency with regulatory or supervisory jurisdiction over the Restaurant.

3.20 Franchisee must comply with Payment Card Industry Data Security Standards Requirements ("PCI DSS"), and any other data-related requirements or specifications designated by BNC, at all times during the Franchise Term.

ARTICLE 4. SERVICES AVAILABLE TO FRANCHISEE

4.1 BNC will provide Franchisee access to the "Operations Manual" during the Franchise Term. For purposes of this Agreement, "Operations Manual" means the BENIHANA University website, all written manuals for use by BENIHANA System franchisees, and all product, service, and facility specifications and standards issued by BNC. All parts of the Operations Manual may be supplemented or modified by BNC in its sole discretion at any time. BNC and Franchisee will also confer regarding which parts of the Operations Manual may be inapplicable to the operation of the Restaurant, provided that the decision as to what provisions apply is within BNC's sole discretion.

4.2 BNC will provide Franchisee with all or part of BNC's then-current initial training program applicable to operating the Restaurant before Franchisee opens the Restaurant ("Initial Training"). The Initial Training provided by BNC shall be subject to the terms set forth in Article 5 of this Agreement.

4.3 BNC shall also provide pre-opening and opening assistance and training of additional employees of Franchisee (other than those trained at the Initial Training) at the Restaurant ("In-Restaurant Training") as deemed appropriate to the operation of the Restaurant by BNC in its discretion. The In-Restaurant Training provided by BNC shall be subject to the terms set forth in Article 5 of this Agreement.

4.4 BNC in its discretion will provide additional on-going training after the opening of the Restaurant, as applicable, for chefs, general managers, and other restaurant personnel, subject to BNC's availability and openings for such training.

ARTICLE 5. TRAINING

5.1 The pre-opening Initial Training and In-Restaurant Training will be agreed to by the parties and set forth on SCHEDULE 1-C to this Agreement.

5.2 Franchisee shall pay all expenses incurred in connection with the Initial Training and In-Restaurant Training, including, without limitation, the costs of wages, travel, lodging, living, meals, and

other expenses of Franchisee's employees.

5.3 All training programs shall be at such times and places designated by BNC. Currently, the Initial Training is held at BNC's principal place of business and the In-Restaurant Training is held at another BENIHANA Restaurant. If BNC determines to conduct any training programs at any other Location, Franchisee shall reimburse BNC for the reasonable out-of-pocket expenses incurred by BNC's training instructors, including but not limited to wages, travel expenses, food and lodging, and auto rental.

5.4 Franchisee and such other employees of Franchisee designated by BNC shall also be required to attend continuing courses, seminars, and other training programs ("Ongoing Training") as BNC may require from time to time. BNC may require Franchisee or its employees to attend additional training programs at either BNC's principal place of business, at the Restaurant, or at a designated BENIHANA Restaurant, as BNC determines in its sole discretion. Franchisee shall be responsible for any and all expenses incurred in connection with Ongoing Training, including, without limitation, salaries or wages, transportation, lodging and meals. If BNC determines to conduct any Ongoing Training at the Location, Franchisee shall reimburse BNC for the reasonable out-of-pocket expenses incurred by BNC's training instructors in providing such Ongoing Training, including but not limited to travel expenses, food and lodging, and auto rental.

5.5 Franchisee shall provide to its employees, at Franchisee's expense, all training-related materials that BNC may require in any other form, including web-based training, video-conferencing or any other training that may be provided without face-to-face instruction.

ARTICLE 6. THE MARKS AND CONFIDENTIAL INFORMATION

6.1 BNC is the exclusive licensee of the Marks with rights of enforcement, development and publicizing of the Mark and the goodwill associated with and symbolized by them. Franchisee acknowledges that the Marks are valid and subsisting and that Franchisee has had no part in the creation or development of the Marks, and Franchisee disclaims any and all right, title or interest in the Marks or the goodwill associated with them. Any and all goodwill arising from Franchisee's use of the Marks shall inure solely and exclusively to the owner of the Marks and upon expiration or termination of this Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of the Marks or the BENIHANA System.

6.1.1 The RA® SUSHI Marks will be subject to a separate license agreement between Franchisee and RA Sushi Holding Corp. as provided in Section 3.11.1.

6.2 Franchisee will use only the Marks BNC designates and only in the manner and to the extent specifically permitted in this Agreement or otherwise by BNC in writing. Franchisee may use and display such Marks only in connection with the operation of the Restaurant and in compliance with the

BENIHANA Standards. Any unauthorized use of the Marks shall constitute an infringement of BNC's rights.

6.3 Any and all advertising, publicity, signs, decorations, furnishings, equipment, or other matter employing in any way whatsoever any of the Marks shall be submitted to BNC for its approval prior to publication or use. Franchisee shall also ensure that any use or depiction of the Marks in any advertising or other material prepared by the Landlord, if any, is approved in advance by BNC in order to confirm the proper use of the Marks.

6.4 Franchisee may not use the Marks or anything confusingly similar as part of Franchisee's corporate or other legal name, or as part of any e-mail address, domain name, or other identification of Franchisee or Franchisee's business, in any medium. Franchisee must include a written statement that the Restaurant and Franchisee's business is "independently owned and operated" in all approved uses of the Marks on business forms such as letterhead, invoices, order forms, receipts and contracts, and as BNC may otherwise designate.

6.5 Franchisee may not use the Marks to advertise or sell products or services through the mail or by any electronic or other medium, including the Internet, without BNC's prior written approval. Franchisee shall not develop, create, generate, own, license, lease or use, in any manner, any computer medium or electronic medium (including, without limitation, any Internet page, domain names, website, web-page, bulletin board, newsgroup or other Internet-related medium) which in any way uses or displays the Marks, or any of them, or any words, symbols or terms confusingly similar thereto, without BNC's prior written consent, and then, only in such manner and in accordance with such procedures, policies, standards and specifications as BNC may establish from time to time. If consent is granted, BNC reserves the right to revoke such consent effective upon written notice to Franchisee. BNC has the sole right to establish an Internet "home page" using any of the Marks, and to regulate the establishment and use of linked home pages by Franchisee and all other BENIHANA franchisees. BNC has the right, at any time, to establish procedures, limitations, and regulations regarding the operation of any websites. If established, Franchisee shall immediately comply with all such procedures, limitations, and regulations.

6.6 Franchisee shall not in any way do anything, directly or indirectly, to infringe upon, harm or contest the rights of BNC in the Marks or in any other symbols, logos, trademarks, or names that incorporate the Marks. Franchisee shall not take any action to apply for the registration of the Marks. Franchisee shall execute any documents BNC deems necessary to obtain protection for the Marks or to maintain their continued validity and enforceability.

6.7 If Franchisee learns of any claim or infringement of any of the Marks or any claim of unfair competition or other challenge to Franchisee's right to use any Marks, Franchisee shall immediately notify BNC. BNC shall have the sole and exclusive right, in its sole discretion, at its own cost and expense and

for its own use and benefit, to institute suit or take such other action as it may deem proper to restrain any such infringement and defend any other such claim, and Franchisee agrees to cooperate with BNC in the prosecution of any such claim.

6.8 BNC has the right to require, in its sole discretion, that Franchisee discontinue, modify, or substitute any of the Marks in connection with any pending or threatened litigation involving Franchisee's use of the Marks.

6.9 BNC reserves the right to modify the Marks and to substitute different Marks for use in identifying the BENIHANA System and BENIHANA Restaurants. Franchisee shall comply with all such modifications and/or substitutions.

ARTICLE 7. ROYALTIES AND ADVERTISING CONTRIBUTIONS TO BNC

7.1 Franchisee shall pay to BNC in full upon the acceptance and execution of this Agreement by BNC an initial non-refundable franchise fee ("Franchise Fee") in the amount of Forty Thousand Dollars (\$40,000).

7.2 During the Franchise Term, Franchisee will pay to BNC on a monthly basis for the use of the Marks a recurring, non-refundable royalty of five percent (5%) of Gross Sales (as defined below) of the Restaurant ("Royalties"). Royalties are due and payable by Franchisee on the fifteenth (15th) day of each calendar month based upon Gross Sales at the Restaurant for the preceding month. If the 15th day of any month is a Saturday, Sunday, or national holiday, Royalties will be due and payable on the first business day following the 15th day of the month.

7.3 During the Franchise Term, Franchisee will pay to BNC for the use of the Marks a recurring, non-refundable advertising fee ("Advertising Contributions") of two percent (2%) of Gross Sales. Advertising Contributions are due and payable on the fifteenth (15th) day of each calendar month based upon Gross Sales at the Restaurant for the preceding month. If the 15th day of any month is a Saturday, Sunday, or national holiday, Advertising Contributions will be due and payable on the first business day following the 15th day of the month.

7.4 Franchisee agrees to participate in BNC's specified program or procedure for sales reporting and payment of Royalties, Advertising Contributions, and other fees, whether it is electronic fund transfer or some successor program. Franchisee agrees to assume the costs associated with maintaining Franchisee's capability to report sales and transfer funds to BNC. Franchisee agrees to sign and deliver to BNC all documents necessary to unconditionally and irrevocably authorize BNC to debit by bank draft or other recognized method Franchisee's business operating account for payment on the due dates for Royalties, Advertising Contributions and any other amounts due under this Agreement, and Franchisee agrees that adequate funds will be available for withdrawal by electronic transfer on each due date from the business operating account to be debited.

7.5 As used in this Agreement, “Gross Sales” shall mean all revenue from the sale of all products and services and all other income of every kind and nature related to the Restaurant, whether for cash, trade or barter, by redemption of gift certificates or cards, credit transactions or otherwise, regardless of collection, including, without limitation, all revenues derived from catering services, guest parking charges, receipts from mail or telephone orders received at or filled from the Restaurant, deposits not refunded to purchasers, orders taken at the Restaurant that are filled elsewhere, and payments to Franchisee by any concessionaire, franchisee, or person otherwise in the Restaurant with BNC's approval. “Gross Sales” does not include sales taxes or other taxes Franchisee collects from customers that are paid to the appropriate taxing authority.

7.6 If Franchisee fails to send to BNC a “Gross Sales Statement” (as defined below) in any month, BNC will be entitled to debit Franchisee’s business operating account for one hundred twenty percent (120%) of the previous month’s Royalties and Advertising Contributions paid under this Agreement. If the Royalties and Advertising Contributions debited are less than the Royalties and Advertising Contributions actually owed to BNC (once Franchisee’s actual Gross Sales have been determined), BNC is authorized to debit Franchisee’s account for the balance due. If the Royalties and Advertising Contributions debited are more than the Royalties and Advertising Contributions actually owed to BNC (once Franchisee’s actual Gross Sales have been determined), BNC will credit the excess amount against the amount BNC otherwise would debit from Franchisee’s account during the following month.

7.7 Any payments due hereunder not received by BNC on the due date will bear interest at the rate of interest (calculated on a daily basis based upon a 360-day year) equal to the lesser of 18% per annum or the maximum interest rate allowed by law beginning on the first business day after the due date until the date of payment.

ARTICLE 8. BOOKS, RECORDS & REPORTS

8.1 On the fifteenth (15th) day of each month Franchisee must deliver to BNC a written statement of Gross Sales for the preceding calendar month (“Gross Sales Statement”). The Gross Sales Statement must be certified as accurate by Franchisee, a financial officer of Franchisee, or by Franchisee's principal accountant responsible for overseeing the books and records of the Restaurant.

8.2 Franchisee shall, at its expense, submit to BNC in the form prescribed by BNC, and maintain readily available for BNC’s inspection, review and/or auditing, the following additional reports, financial statements and other data:

(a) a profit and loss statement and POS sales reports for each month during the Franchise Term, due within thirty (30) days after the end of each month;

(b) within ninety (90) days following the end of each fiscal year during the Franchise Term, an unaudited financial statement for the preceding fiscal year with such detail and in a format as specified by BNC, together with a certificate executed by Franchisee certifying that such financial statement

is true and accurate;

(c) copies of Franchisee's operating reports submitted to Franchisee's landlord if required under Franchisee's lease, simultaneously with Franchisee's submission of such reports to Franchisee's landlord;

(d) copies of Franchisee's state and federal income tax returns and state sales tax returns; and

(e) such other forms, reports, records, information and data as BNC may reasonably designate.

8.3 Along with each report required under this Article 8, Franchisee shall submit a certificate executed by Franchisee certifying that the financial statement is true and accurate and such other information in such form as BNC may reasonably require.

8.4 Franchisee shall keep full, complete, and accurate books of account and records of Gross Sales and operation of the Restaurant and must retain such books and records for at least five (5) years from the dates they are prepared; or, if an audit, review or inspection is in progress or a controversy should arise between the parties hereto regarding Royalties or Advertising Contributions, until such audit, review, inspection or controversy is terminated. All books and records relating to operation of the Restaurant shall be maintained at the Restaurant or, with BNC's prior written consent, at Franchisee's main offices.

8.5 BNC or its authorized representative at all reasonable times shall have the right to inspect, audit, photocopy and/or examine all of Franchisee's books, records and tax returns, including without limitation, Franchisee's general ledger, its balance sheets, its profit and loss statements and its stockholder's registry book. BNC shall also have the right, at any time, to have an independent audit made of Franchisee's books and records. If any inspection, review or audit reveals that Franchisee understated any payments in any report submitted to BNC, then BNC shall have the right to immediately debit from Franchisee's bank account or require Franchisee to immediately pay the amount understated to BNC, as well as interest from the date such amount was due until debited or paid, at the rate of 18% per annum, or the maximum rate permitted by law, whichever is less. If an inspection, review or audit discloses an understatement in any report of 3% or more, BNC may, in addition to repayment of monies owed with interest, debit from Franchisee's bank account or require Franchisee to reimburse BNC for any and all costs and expenses incurred by BNC in connection with the inspection, review or audit, including, without limitation, travel, lodging, wages and reasonable accounting and legal costs. The foregoing remedies shall be in addition to any other remedies BNC may have under this Agreement.

ARTICLE 9 ADVERTISING, MARKETING & PROMOTION

9.1 Franchisee recognizes the value of advertising of the Marks and the importance of advertising, marketing, and promotion to the development and maintenance of goodwill and the public awareness and positive image of the Marks, the Restaurant, BENIHANA Restaurants, and the BENIHANA

System.

9.2 Franchisee acknowledges and agrees that the Advertising Contributions paid by Franchisee under this Agreement may be co-mingled with BNC's general funds and nothing in this Agreement shall be interpreted to mean that receipt by BNC of any Advertising Contributions constitutes a trust fund or any other fund dedicated exclusively for advertising or promotion. Without creating any specific obligations on BNC to apply Advertising Contributions in any specific manner other than in BNC's sole and absolute discretion, BNC intends as a general matter to use Advertising Contributions for expenses related to brand advertising, in-store, local, national or regional advertising placed by BNC, or public relations. BNC undertakes no obligation to make expenditures for Franchisee that are equivalent or proportionate to Advertising Contributions Franchisee pays under this Agreement or to insure that Franchisee benefits directly or on a pro rata basis from BNC's use of Advertising Contributions.

9.3 In addition to the Advertising Contributions to be paid to BNC under Section 7.3 of this Agreement, Franchisee must spend in each of Franchisee's fiscal years an amount ("Local Spend") that is not less than two percent (2%) of Gross Sales in that fiscal year for local print, radio, digital, and television and/or billboard display advertising and local marketing and promotion ("Local Advertising").

9.4 Local Advertising may consist of: television, radio, digital, magazine, or newspaper advertising; direct mail; billboard advertising; promotional brochures and literature; point-of-sale advertising materials; and other appropriate location-based marketing. All Local Advertising must be approved in advance by BNC and must be conducted in a dignified manner and shall conform to standards and requirements as BNC may specify. Franchisee shall not use any advertising, marketing, or promotional plans or materials unless and until Franchisee has received written approval from BNC. If Franchisee does not receive written disapproval from BNC within fifteen (15) days after BNC receives any samples or materials, BNC will be deemed to have approved the Local Advertising material. BNC may revoke its approval of any such plans or materials at any time effective upon written notice to Franchisee.

9.5 [INTENTIONALLY OMITTED]

9.6 Franchisee shall submit to BNC from time to time, but in no event less frequently than quarterly after the first year of the Franchise Term, evidence reasonably satisfactory to BNC establishing Franchisee's compliance with its obligations with respect to Local Spend and Local Advertising.

9.7 Franchisee is not permitted to offer customers discounts or to advertise promotions or pricing that purports to apply to any other BENIHANA Restaurant, except to the extent that Franchisee has received BNC's prior written authorization.

ARTICLE 10. INSPECTIONS

10.1 BNC, or its authorized representatives, shall have the right to enter and inspect the Restaurant and examine and test food products and supplies for the purpose of ascertaining that Franchisee

is operating in accordance with the terms of this Agreement. Inspections will be conducted during normal business hours. BNC will notify Franchisee of any deficiencies detected during inspection, and Franchisee must promptly and diligently correct any such deficiencies. Should Franchisee, for any reason, fail to correct any deficiencies within a reasonable time as determined by BNC, BNC shall have the right and authority (without, however, any obligation to do so) to correct such deficiencies and to charge Franchisee a reasonable fee for BNC's expenses in so acting, payable by Franchisee upon demand. The foregoing right to correct deficiencies will be in addition to any other remedies that BNC may have.

ARTICLE 11. TRANSFER OF INTEREST

11.1 BNC has the right to and may assign its rights under this Agreement to any person, firm, association or corporation ("BNC Transferee") provided that the BNC Transferee agrees in writing to assume all of BNC's obligations under this Agreement. Upon any assignment by BNC and assumption by the BNC Transferee of BNC's obligations under this Agreement, BNC shall have no further obligations or liabilities under this Agreement.

11.2 Franchisee understands and acknowledges that its rights and duties under this Agreement are personal to Franchisee and that BNC has entered into this Agreement in reliance on Franchisee's business skill, financial capacity, and personal character. Accordingly, neither Franchisee nor any individual, partnership, corporation, limited liability company or other legal entity that directly or indirectly owns any interest in the franchise granted in this Agreement, or in Franchisee if Franchisee is a corporation, limited liability company or partnership, shall sell, assign, transfer, convey, or give away any direct or indirect interest in the franchise granted under this Agreement or in any legal entity that owns such franchise rights (a "Disposition") without BNC's prior written consent. Any purported assignment or transfer, by operation of law or otherwise, not having the written consent of BNC required by this Section 11.2 shall be null and void.

11.2.1 Notwithstanding the foregoing, BNC's prior written consent is not required for a transfer of less than a 5% interest in a corporation registered under the Securities Exchange Act of 1934 ("publicly-held corporation").

11.3 A Disposition requiring BNC's prior written consent will also be deemed to occur upon any assignment, sale, pledge, or transfer of any fractional portion of: (a) any partnership ownership interest if Franchisee is a partnership; (b) any membership interest, if Franchisee is a limited liability company; or (c) Franchisee's voting stock, or any increase in the number of outstanding shares of Franchisee's voting stock that results in a change of ownership, if Franchisee is a corporation ("Ownership Interest"). Any new partner, shareholder, member or manager (if Franchisee is a limited liability company), as applicable, will be required to personally guarantee Franchisee's obligations under this Agreement by signing a Personal Guaranty substantially in the form of Exhibit B hereto.

11.4 BNC agrees not to unreasonably withhold its consent to any Disposition provided: (a) BNC has not exercised its right of first refusal granted in Section 11.5; (b) all of Franchisee's monetary obligations to BNC have been satisfied in full; (c) Franchisee releases any and all claims it may have against BNC, agrees to remain obligated under the non-competition and non-disclosure of confidential information covenants contained herein, and expressly agrees to remain primarily liable under this Agreement after the transfer for a period of three (3) years (or for the period in which Franchisee receives payment from the Transferee, if longer than three years); (d) BNC is paid an assignment fee of \$10,000; (e) the Transferee (i) meets BNC's then-current criteria for new Franchisees, (ii) executes a written agreement assuming all of the Franchisee's obligations under this Agreement and a duplicate original thereof is delivered to BNC, (iii) is of good moral character and reputation, (iv) has a General Manager (who need not be a principal of the Transferee) who has completed the training course then in effect for prospective Franchisees, and (v) has provided BNC with copies of all relevant corporate or partnership documents which shall, among other things, evidence the restrictions on transfer imposed by this Agreement. If any of the foregoing conditions are not met to BNC's satisfaction, BNC shall have the unfettered right in its sole discretion to refuse to consent to the Disposition.

11.5 If Franchisee desires to accept a bona fide offer from a third-party purchaser ("Proposed Transferee") to purchase the franchise rights granted under this Agreement, the Restaurant or any portion thereof or interest therein, or any Ownership Interest of Franchisee, (collectively, a "Third Party Disposition"), Franchisee will, before consummating the Third Party Disposition, notify BNC in writing of each such offer and shall provide to BNC such information and documentation relating to the offer as BNC may require. BNC shall have the right and option to acquire the interest offered to be sold in the Third Party Disposition on the same terms and conditions offered by the Proposed Transferee.

11.5.1 Any offer from a Proposed Transferee presented to BNC under this Section shall be in writing and shall include a signed copy of the agreement between Franchisee and the Proposed Transferee, a description of and information concerning the Proposed Transferee and its principals, including financial statements and relevant restaurant operating experience, if any.

11.5.2 BNC shall have thirty (30) days after BNC receives from Franchisee a copy of the written offer in which to accept the offer or waive its right of first refusal ("ROFR Decision"). BNC will communicate its ROFR Decision to Franchisee in writing. If BNC does not communicate its ROFR Decision before the expiration of such thirty (30) day period, BNC shall be deemed to have waived its right of first refusal.

11.5.3 If BNC exercises its right of first refusal and accepts the offer, closing on such purchase shall occur on a date specified by BNC in the notice of acceptance, which date shall be the date of closing specified in the agreement between Franchisee and the Proposed Transferee, or forty-five (45)

days from BNC's acceptance, whichever is later.

11.5.4 If BNC waives its right of first refusal and rejects the offer, BNC shall, within fifteen (15) days after the expiration of the thirty-day period set forth in subsection 11.5 (a) above, advise Franchisee whether BNC consents to the Third Party Disposition. If BNC consents to the Third Party Disposition, then Franchisee may conclude the sale to the Proposed Transferee on and subject to the terms and conditions of the agreement submitted to BNC.

11.5.5 Any change of any material term of the agreement, including but not limited to price, payment terms, interest being transferred by Franchisee, or the identity of the Proposed Transferee or any holder of any Ownership Interest in the Proposed Transferee, shall be deemed to be a new offer, subject to the right of first refusal contained herein.

11.6 Upon the death or mental incapacity of any person with an interest in the franchise or in Franchisee (if Franchisee is a corporation, limited liability company or partnership), the executor, administrator, or personal representative of such person shall transfer his or her interest to a third party approved by BNC within six (6) months after such death or mental incapacity (the "Transfer Period"). Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as an *inter vivos* transfer.

11.6.1 In the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions in this Section 11.6, the personal representative of the deceased person shall have an additional period of up to six (6) months from the date such individual is disapproved by BNC (the "Extension Period") to dispose of the deceased's interest in the franchise.

11.6.2 Notwithstanding the foregoing, the following conditions shall be met during the Transfer Period and any Extension Period: (i) the executor, administrator, or personal representative, as applicable, has provided BNC with documentation reasonably satisfactory to BNC evidencing such person's authority to receive an assignment or to dispose of the deceased's interest in the franchise; (ii) the Restaurant remains open and operating in accordance with all terms and conditions of this Agreements at all times; and (iii) a General Manager who has been approved by BNC and who has completed BNC's Initial Training Program, or In-Restaurant Training, as required by BNC, to BNC's satisfaction is designated to operate the Restaurant during the Transfer Period and/or Extension Period, as applicable.

11.6.3 BNC shall in no way assume any liability in connection with the legal authority of the deceased's executor, administrator, heir, beneficiary or personal representative to receive an assignment or to dispose of the deceased's interest in the franchise.

11.6.4 In the event a General Manager acceptable to BNC has not been designated to operate the Restaurant during the Transfer Period and, if applicable, Extension Period, BNC shall have the right, at its option, to step in and either itself, or through a third party designated by BNC, operate the

Restaurant during such period. BNC or its designee shall be entitled to a reasonable fee for such services, in addition to compensation for all costs and expenses incurred in providing such services.

11.6.5 If the foregoing conditions are not satisfied, or if the deceased's interest in the franchise is not transferred or disposed of before the expiration of the Transfer Period or Extension Period, if applicable, BNC shall have the right to immediately terminate this Agreement.

11.7 BNC's consent to a transfer of any interest in the franchise granted herein shall not constitute a waiver of any claims BNC may have against the transferring party, nor shall it be deemed a waiver of BNC's right to demand exact compliance with any of the terms of this Agreement by the transferee.

11.8 Notwithstanding any other provision of this Article 11, BNC will consent to an assignment of this Agreement by an individual franchisee to an entity that is wholly-owned by the same individual (or by more than one individual franchisee to an entity owned in the same proportions as the individual ownership) provided that both the individual assignor(s) and the entity assignee sign an Assignment and Assumption Agreement in the form attached as Exhibit E hereto.

ARTICLE 12. INSURANCE; INDEMNIFICATION

12.1 Franchisee shall obtain and maintain throughout the Franchise Term insurance coverage (including without limitation, broad form comprehensive general liability coverage, products liability coverage, broad form contractual liability coverage, business interruption coverage, workers' compensation or employers' liability insurance) as required under this Agreement or applicable law.

12.2 Each insurance policy carried by Franchisee shall name BNC and any affiliates designated by BNC as additional insureds. BNC shall have the right to reasonably consent to the types and amounts of insurance coverage and the issuing companies. Insurance maintained by Franchisee shall include, at a minimum, the following:

(a) comprehensive general liability insurance (with products, completed operations and contractual liability and independent contractors and escalators coverage) and comprehensive motor vehicle insurance (for owned and non-owned vehicles) against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Restaurant (or otherwise in conjunction with Franchisee's conduct of business pursuant to this Agreement) under one (1) or more policies of insurance, each on an occurrence basis, with single-limit coverage for personal and bodily injury, death and property damage of at least five million dollars (\$5,000,000) (or such other amount as BNC reasonably requires);

(b) All-risk building and contents insurance including fire, flood and earthquake, vandalism and theft insurance for the replacement value of the Restaurant and its contents;

(c) business interruption insurance for a period adequate to reestablish normal business operations;

(d) builders' risk insurance on a completed value non-reporting basis during the period of any remodeling of the Restaurant; and

(e) workers' compensation insurance in such amount as may be required by applicable statute or

rule.

12.3 Every insurance policy issued to Franchisee shall be endorsed so as to require the insurance company to give at least thirty (30) days written notice by registered or certified mail to BNC before changing or canceling the policy, and a certificate of such insurance issued by the insurance companies shall be furnished to BNC. If Franchisee fails to obtain or maintain in force any insurance required under this Agreement, BNC shall have the right, but not the obligation, to purchase such insurance and, if BNC does so, Franchisee shall promptly pay to BNC upon demand 105% of the cost of the insurance purchased by BNC to reimburse BNC for the insurance cost and its administrative expense related to Franchisee's failure to comply with this Section 12.3.

12.4 Franchisee agrees, during and after the Franchise Term, to indemnify, defend and hold harmless BNC and its affiliates and their respective stockholders, members, agents, officers and directors, from and against any and all losses, costs, damages, expenses, claims, demands, proceedings, suits, and liabilities, including attorneys' fees and costs, arising directly or indirectly from, as a result of, or in connection with the construction, operation, condition, use or occupancy of the Restaurant. If the indemnity provided herein arises in connection with a claim made by a third-party ("Third-Party Claim"), BNC shall have the right independently to take any action it may deem necessary, in its sole discretion, to protect or defend itself and the persons and entities indemnified against any the Third-Party Claim, without regard to the expense, forum or other parties that may be involved. BNC shall have sole and exclusive control over the defense of any Third-Party Claim, and over the settlement, compromise or other disposition thereof, as well as the right to be represented by counsel of its own choosing. Franchisee's obligations hereunder shall include the cost of BNC's defense of any Third-Party Claim, the amount of any final judgment (including interest through the date of payment) which may be rendered against BNC, and any settlement reasonably agreed to by BNC. At the request of BNC, Franchisee shall enter into a separate indemnification agreement based on the foregoing terms directly with any of the persons or entities indemnified hereunder.

ARTICLE 13. DEFAULT; TERMINATION

13.1 If Franchisee commits any act of default under this Agreement, and Franchisee fails to cure the default after any required notice and within the applicable cure period, then this Agreement shall terminate automatically without any requirement of further notice by BNC or to Franchisee. The cure period applicable to any act of default is set forth below; if a cure period for an act of default is not specifically set forth, it shall be thirty (30) days. No cure period is allowed for certain acts of default described below. If any applicable law requires a longer notice period or a longer cure period than is provided in this Agreement, then the period required by law shall be substituted for time period provided below.

13.2 The following acts are each a material act of default under this Agreement and shall be good cause for termination:

(a) If the Restaurant does not open for business to the public by the date that is twelve (12) months from the date of this Agreement, or such later date as approved by BNC in writing.

(b) Franchisee's failure to commence the design, construction, equipping and process of opening Restaurant with due diligence, or otherwise in accordance with time established by BNC at the time of execution of this Agreement.

(c) Franchisee files a petition or application seeking any type of relief under United States Bankruptcy Code or any state insolvency or similar law, or a third-party files a petition or application under United States bankruptcy laws or any state insolvency or similar laws seeking to have Franchisee adjudicated a bankrupt, and the petition is not dismissed within ninety (90) days after it is filed. Subject to applicable law, this Agreement shall terminate without notice or cure period upon the occurrence of this act of default as if that date were the expiration date and Franchisee expressly and knowingly waives any rights that Franchisee may have under the provisions of the United States Bankruptcy Code and consents to the termination of this Agreement or any other relief which may be sought in a Complaint filed by BNC to lift the provisions of the automatic stay of the United States Bankruptcy Code. Additionally, Franchisee agrees not to seek an injunctive order from any court in any jurisdiction relating to insolvency, reorganization or arrangement proceedings which would have the effect of staying or enjoining this provision.

(d) Franchisee becomes insolvent, a receiver or custodian (permanent or temporary) of Franchisee's property or any part thereof is appointed by a court of competent authority, or Franchisee makes a general assignment for the benefit of creditors. There shall be no cure period for an act of default under this provision.

(e) A final judgment against Franchisee remains unsatisfied of record for thirty (30) days or longer (unless a supersedeas or other appeal bond is filed), execution is levied against Franchisee's business or property at the Location, or a suit to foreclose any lien or mortgage against the Restaurant premises or any furniture, fixtures or equipment at the Restaurant is filed against Franchisee and not dismissed within thirty (30) days. The cure period for an act of default under this provision is five (5) days after notice by BNC following expiration of any other period set forth in the provision.

(f) Franchisee defaults in the performance of any term, condition, or obligation of payment of any indebtedness to Franchisee's suppliers or others arising out of the purchase or lease of equipment in connection with the Restaurant.

(g) Franchisee fails to pay when due any Royalties, Advertising Contributions, or other amounts due and payable to BNC under this Agreement. The cure period for an act of default under this provision is ten (10) days after notice by BNC.

(h) Franchisee fails to submit any Gross Sales Statement or other financial report required under this Agreement, or unintentionally files an inaccurate Gross Sales Statement or other financial report required under this Agreement. The cure period for an act of default under this provision is thirty (30) days after notice by BNC as provided herein.

(i) Franchisee knowingly submits any false Gross Sales Statement or other financial report required under this Agreement. There shall be no cure period for an act of default under this provision.

(j) Franchisee fails to operate the Restaurant in accordance with the BENIHANA Standards as to cleanliness, safety, health, and sanitation. The cure period for an act of default under this provision is five (5) days after notice by BNC.

(k) Franchisee fails to immediately rectify all hazardous situations, and immediately remove and destroy any and all hazardous products. For purposes of the foregoing sentence, “hazardous situations” are those which have the potential to cause injury, illness or death, and “hazardous products” are products which are unfit for human consumption or which have the potential to cause injury, illness or death. There shall be no cure period for an act of default under this provision.

(l) Franchisee sells products at the Restaurant that are not approved by BNC for sale at the Restaurant or sells products that do not conform to the product specifications established by BNC. The cure period for an act of default under this provision is five (5) days after notice by BNC.

(m) Franchisee fails to sell or offer for sale at the Restaurant any product that is required by BNC to be sold or offered for sale at the Restaurant. The cure period for an act of default under this provision is five (5) days after notice by BNC.

(n) Franchisee fails to use at the Restaurant any furniture, fixtures, equipment, or signage required by BNC to be used at the Restaurant.

(o) Franchisee uses at the Restaurant any furniture, fixtures, equipment, or signage not approved by BNC for use at the Restaurant.

(p) Franchisee fails to repair and maintain the Restaurant, or the furniture, fixtures, equipment or signage at the Restaurant to the standards required by BNC.

(q) Franchisee fails to operate the Restaurant in accordance with any BENIHANA Standards (other than those as to cleanliness, safety, health and sanitation) as to operating procedures or system and methods of operation (including, without limitation, standards related to quality and quantity of food products served).

(r) Franchisee fails to obtain and maintain all insurance required under Article 12 of this Agreement, with all required terms and policy provisions as required by this Agreement. The cure period for an act of default under this provision is ten (10) days after notice by BNC.

(s) Franchisee violates any law, ordinance, rule or regulation of a governmental body or

authority in connection with the operation of the Restaurant, and Franchisee fails to correct the violation within twenty (20) days after notification by the governmental body or authority. The cure period for an act of default under this provision is five (5) days from notice by BNC after expiration of the twenty (20) days from notification by the governmental body or authority; provided, however, that the five (5) day cure period shall be stayed if there is a bona fide dispute as to the violation or the legality of the law, ordinance, rule or regulation at issue, and Franchisee takes action in an appropriate court or other forum to contest such violation or legality.

(t) Franchisee vacates, abandons, ceases to occupy, or loses its right to possession of the Restaurant or the Location. The cure period for an act of default under this provision is five (5) days after notice by BNC.

(u) Franchisee abandons the franchise and franchise relationship with BNC. It shall be an abandonment of the franchise and franchise relationship with BNC if Franchisee ceases to do business at the Restaurant. The cure period for an act of default under this provision is five (5) days after notice by BNC.

(v) Franchisee fails to comply with the restrictions on BENIHANA Confidential Information, or any covenants set forth in Article 18 or Article 6 of this Agreement, or if Franchisee misuses or make any unauthorized use of the Marks or any other identifying characteristics of the BENIHANA System, or otherwise materially impairs the goodwill associated therewith or BNC's rights therein. There shall be no cure period for an act of default under this provision.

(w) Franchise sells, assigns, transfers, encumbers, or licenses any interest in this Agreement or in the franchise or Restaurant without the prior written consent of BNC and otherwise as permitted under this Agreement. There shall be no cure period for an act of default under this provision.

(x) Franchisee violates any other obligation, provision, or condition of this Agreement, not specifically identified in this Article 13.

(y) Franchisee commits three (3) or more acts of default under this Agreement within any consecutive twelve (12) month period, even if any of the three acts of default are cured by Franchisee. There shall be no cure period under this provision, so that if two prior defaults occur within a twelve (12) month period, this Agreement shall immediately terminate upon the occurrence of an a third act of default, and a notice of default delivered by BNC.

(z) Franchisee, or any individual with an Ownership Interest in Franchisee, is convicted in a court of competent jurisdiction of (i) an offense punishable by a term of imprisonment in excess of one (1) year, or (ii) any offense for which a material element is fraud, dishonesty or moral turpitude. There shall be no cure period for an act of default under this provision.

ARTICLE 14. OBLIGATIONS UPON TERMINATION OR EXPIRATION

14.1 Upon termination or expiration of this Agreement for any reason, all rights granted under this Agreement to Franchisee shall immediately terminate, and Franchisee shall strictly comply with the following obligations:

- (a) Franchisee shall immediately cease to operate the Restaurant.
- (b) Franchisee shall immediately and permanently cease to use in any manner the Marks, including, without limitation, the service marks "BENIHANA", "Benihana of Tokyo" and the "flower" symbol, or any confusingly similar trademark, service mark, trade name or insignia.
- (c) Franchisee shall not thereafter directly or indirectly identify itself in any manner as a franchisee of the BENIHANA System or former BNC licensee or franchisee.
- (d) Franchisee shall immediately and permanently cease to use in any manner whatsoever, any Confidential Information, the BENIHANA System, and any of BNC's methods, procedures and techniques associated with the BENIHANA System; the BENIHANA trade dress and distinctive forms, slogans, signs, symbols and devices associated with the BENIHANA System. Without limiting the generality of the foregoing, Franchisee shall cease to use all fixtures, displays, decorations, stationery, forms, advertising materials and other articles used in connection with Franchisee's operation of the Restaurant.
- (e) Franchisee shall immediately make or cause to be made such modifications and alterations to the Location and the Restaurant to distinguish the appearance of the Location and Restaurant from other BENIHANA Restaurants and shall make such specific additional changes thereto as BNC may request for that purpose. If Franchisee fails or refuses to comply with the requirements of this Section 14.1 (e), in addition to any other rights BNC has under this Agreement, BNC shall have the right to enter upon the premises where the Restaurant was operated, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at Franchisee's expense, which expense Franchisee agrees to pay upon demand.
- (f) Franchisee shall take all actions necessary to cancel any assumed names or equivalent registrations containing any of the Marks.
- (g) Franchisee shall: (i) at BNC's option, assign to BNC, or its designee, any interest Franchisee has in any lease for the Location and the Restaurant; and (ii) assign to BNC or its designee the telephone numbers used in connection with the operation of the Restaurant by signing a Conditional Assignment of Telephone Numbers substantially in the form attached as Exhibit C hereto. Franchisee shall complete all forms and approvals and perform all acts reasonably necessary to effectuate such assignments.
- (h) Franchisee agrees, if Franchisee continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, copy or colorable imitation of the Marks or the BENIHANA trade dress, either in connection with such other business or the promotion

thereof, and Franchisee further agrees not to use any designation of origin or description or representation which falsely suggests or represents an association or connection with BNC constituting unfair competition.

(i) Franchisee shall promptly pay all sums owing to BNC and its subsidiaries and affiliates.

(j) If this Agreement is terminated as a result of any default under this Agreement, Franchisee shall promptly pay to BNC the Termination Fee (as defined in this Section) in addition to all damages, costs and expenses, including reasonable attorneys' fees, incurred by BNC as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in favor of BNC against any and all of the personal property, furnishings, equipment, signs, fixtures and inventory related to the operation of the Restaurant. The "Termination Fee" shall be equal to the aggregate Royalties paid during Franchisee's three (3) fiscal years immediately before the termination date. If Franchisee has not operated the Restaurant for three (3) fiscal years immediately before the termination date, the Termination Fee shall be equal to the Royalties paid for all full fiscal years completed prior to the termination date divided by the number of such full fiscal years and the result thereof multiplied by three (3).

(k) Franchisee shall pay to BNC all damages, costs, and expenses, including reasonable attorneys' fees, incurred by BNC after termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement.

(l) Franchisee shall immediately deliver to BNC all manuals, including the Manual, and all other records, correspondence, and instructions containing Confidential Information, or information relating to the operation of the Restaurant, all of which are acknowledged to be the property of BNC, and shall retain no copy or record of any of the foregoing, with the exception of Franchisee's copy of this Agreement, any correspondence between the parties, and any other documents which Franchisee reasonably needs for compliance with any provision of law.

(m) BNC shall have the option, to be exercised within thirty (30) days after termination, to purchase from Franchisee any or all of Franchisee's furnishings, equipment, signs, fixtures, supplies, or inventory related to the operation of the Restaurant, at a price equal to Franchisee's cost or fair market value, whichever is less. If the parties cannot agree on a fair market value within a reasonable time, BNC will designate an independent appraiser, whose determination shall be binding. If BNC elects to exercise any option to purchase herein provided, it shall have the right to set off all amounts due from Franchisee, and the cost of the appraisal, if any, against any payment therefor.

(n) Franchisee shall comply with all obligations which by their nature survive the termination or expiration of this Agreement, including, without limitation, the covenants contained in Section 18 of this Agreement.

(o) Franchisee shall furnish BNC with evidence satisfactory to BNC of Franchisee's

compliance with this obligation within five (5) days after termination or expiration of this Agreement.

(p) In the event of termination or expiration of this Agreement for any reason, the extent of all damage which BNC has suffered shall be and remain a lien in favor of BNC against any and all of the personal property, machinery, fixtures and equipment used in connection with the operation of the Restaurant.

ARTICLE 15. DISPUTE RESOLUTION

15.1 Except as provided in Section 15.5 and 15.6 of this Agreement, all controversies, disputes or claims between BNC and Franchisee, or any the subsidiaries, affiliates, shareholders, officers, directors, agents, or employees of BNC or Franchisee, arising out of or related to this Agreement or any other agreement between Franchisee and BNC shall be settled by arbitration administered by the American Arbitration Association ("AAA") office in Miami, Florida, in accordance with the Commercial Arbitration Rules of the AAA. Judgment upon an award rendered by the arbitrators acting under this provision may be entered in any court having jurisdiction over a proceeding to confirm the arbitration award. The arbitration panel shall consist of three (3) members, one (1) appointed by BNC, one (1) appointed by Franchisee, and one (1) chosen by the two arbitrators appointed by the parties (the "Panel").

15.2 BNC and Franchisee agree that this Agreement evidences a transaction involving interstate commerce and that the enforcement of this arbitration provision and the confirmation of any award issued to either party by reason of an arbitration conducted pursuant to this arbitration provision is governed by the Federal Arbitration Act, codified at 9 U.S.C. § 1, et seq. (the "FAA")

15.3 The Panel is not authorized to award punitive or exemplary damages and any such award shall not be enforceable or enforced by any court. Except as otherwise provided, each party shall bear its own attorneys' fees, expert witness fees, and other court or arbitration costs incurred in connection with any legal action or arbitration between BNC and Franchisee.

15.4 Franchisee and BNC agree that any arbitration will be conducted only on an individual, and not a class-wide, basis. An arbitration proceeding between Franchisee and BNC will not be consolidated with any other arbitration proceeding involving BNC and any other person or entity.

15.5 Any other provision of this Agreement notwithstanding, the following claims and matters expressly are excluded from the coverage of the arbitration provision in Section 15.1 of this Agreement: (i) disputes or controversies arising from the Sherman Act, the Clayton Act or any other federal or state antitrust law; (ii) disputes or controversies based upon or arising under the Lanham Act, as now or hereafter amended; (iii) disputes or controversies relating to actions to obtain possession of the Restaurant or Location under a lease or sublease; (iv) claims for monetary amounts due under this Agreement; and (iv) any claims arising under Article 6 or Article 18 of this Agreement.

15.6 Franchisee and BNC acknowledge and agree that the United States District Court for the

Southern District of Florida (“Southern District of Florida”) shall be the venue and exclusive proper forum in which to adjudicate any case or controversy arising, either directly or indirectly, under or in connection with this Agreement, except to the extent otherwise provided in this Agreement. Franchisee and BNC agree that they are subject to personal jurisdiction in the Southern District of Florida, and Franchisee and BNC further agree that, in the event of litigation arising out of or in connection with this Agreement, they will not contest or challenge the in personam jurisdiction or venue of the Southern District of Florida. If and only if the Southern District of Florida lacks subject matter jurisdiction over any matter litigated under this Agreement, then the Circuit Court for the 11th Judicial Circuit (or its successor) in and for Miami-Dade County, Florida (“11th Judicial Circuit”) shall be the venue and exclusive proper forum for such litigation. Franchisee and BNC agree that they are subject to personal jurisdiction in the 11th Judicial Circuit, and, in any litigation brought in that court under this Section, Franchisee and BNC agree that they will not contest or challenge the in personam jurisdiction or venue of the 11th Judicial Circuit.

15.7 Nothing herein contained shall bar BNC’s right to obtain injunctive relief, without posting bond or security, against conduct or threatened conduct that will cause it loss or harm, under the usual equity rules, including the applicable rules for obtaining restraining orders, preliminary and permanent injunctions, and orders of specific performance enforcing the provisions of this Agreement. Additionally, and without limited the generality of the foregoing, BNC shall have the right to seek injunctive relief to prohibit any act or omission by Franchisee or Franchisee’s employees that constitutes a violation of any applicable law, is dishonest or misleading to the public, or which may impair the goodwill associated with the Marks or the BENIHANA System.

ARTICLE 16. INDEPENDENT CONTRACTOR

16.1 Franchisee acknowledges and agrees that it is an independent contractor and is not an agent, partner, joint venturer, joint employer, or employee of BNC or any affiliate of BNC, and no fiduciary relationship exists between the parties. Franchisee shall be the sole and exclusive employer of its employees with the sole right to hire, discipline, discharge and establish wages, hours benefits, employment policies, and other terms and conditions of employment for its employees without consultation or approval from BNC. BNC shall have no control over the terms and conditions of employment of Franchisee’s employees. Franchisee shall have no right to bind or obligate BNC, Benihana, Inc., or Benihana of Tokyo in any way nor shall it represent that it has any right to do so.

16.2 In all public records and in Franchisee’s relationships with other persons, on stationery, business forms and checks, Franchisee shall indicate independent ownership of the Restaurant and that it operates under a franchise granted by BNC.

16.3 Franchisee shall exhibit at the Restaurant, in such places as may be designated by BNC, a notification that the Restaurant is operated as an independent contractor and not by BNC, Benihana, Inc. or

Benihana of Tokyo.

ARTICLE 17. EXPIRATION OF FRANCHISE TERM

17.1 This Agreement shall not automatically renew upon the expiration of the Franchise Term.

17.2 Franchisee shall have an option to acquire a new franchise agreement ("Successor Franchise Agreement") with respect to the Location for an additional period equal to the standard period of time offered to BNC franchisees at the time of the expiration of the Franchise Term. Franchisee's right to enter a Successor Franchise Agreement shall exist if, and only if, each of the following terms and conditions has been met to the reasonable satisfaction of BNC:

(a) Franchisee, at the expiration of the Franchise Term and within the twenty-four (24) months prior thereto, shall not be or have been in default in the performance of any obligation under this Agreement whether or not any notice of default was provided to Franchisee;

(b) Franchisee shall have re-modeled or contracted to re-model the Restaurant, including building, signs, equipment, furnishings and décor, to an extent approved by BNC to reflect the then-current image of BENIHANA Restaurants;

(c) Franchisee shall have submitted a written application to BNC for a Successor Franchise Agreement at least three hundred and sixty-five (365) days prior to the expiration of the Franchise Term and shall have executed and returned to BNC for final approval and execution a Successor Franchise Agreement at least thirty (30) days prior to the expiration of the Franchise Term. Any Successor Franchise Agreement issued to Franchisee shall be the then-current form of Franchise Agreement being offered to franchisees as of the date of the expiration of the Franchise Term. The Successor Franchise Agreement may contain provisions, terms and conditions substantially different from those contained herein, including without limitation, different or increased Royalties, Advertising Contributions, operating standards, training or equipment requirements, duration or renewal terms;

(d) Franchisee meets all of BNC's then-existing legal, financial and operational standards applicable to new franchisees contained in the then-current form of franchise agreement and the then-current operating standards in effect for the BENIHANA System;

(e) Franchisee shall have submitted to BNC all information and documentation as reasonably requested by BNC as a prerequisite for the issuance of a franchise agreement as of the date of the expiration of the Franchise Term;

(f) Franchisee shall have tendered to BNC, in lieu of the Franchisee Fee specified in the Successor Franchise Agreement, an administrative fee equal to twenty percent (20%) of the Franchise Fee in existence on the date of the expiration of the Franchise Term;

(g) Franchisee shall execute a general release, in the form BNC requires, of any and all claims in existence against BNC and its affiliates, successors and assigns, and their respective officers, directors,

agents and employees; and

(h) Franchisee shall have satisfied all monetary obligations owed by Franchisee to BNC and its affiliates.

ARTICLE 18. TRADE SECRETS; RESTRICTIVE COVENANTS

18.1 Franchisee acknowledges and agrees that it will receive valuable, specialized training, including operations training, in the BENIHANA System, that is beyond the present skills, experience and knowledge of Franchisee and any of Franchisee's principals or employees. Franchisee further acknowledges that Franchisee will receive access to BNC's Confidential Information (as defined in this Agreement), which will provide a competitive advantage to Franchisee. As a condition of training Franchisee, sharing the Confidential Information with Franchisee and granting Franchisee a license to operate the Restaurant under the BENIHANA System and use BNC's intellectual property, BNC requires the covenants set forth in this Article 18 in order to protect BNC's legitimate business interests and the interests of other franchisees in the BENIHANA System.

18.2 Franchisee covenants that during the Franchise Term, except as BNC otherwise approves in writing, Franchisee shall devote full time, energy, and best efforts to the management and operation of the Restaurant.

18.3 Franchisee shall not, during the Franchise Term or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, association, limited liability company or corporation any confidential information, proprietary information, knowledge, or know-how concerning the Restaurant and the BENIHANA System, including, without limitation, recipes, products, proprietary formulations, technology, operational details, advertising techniques and any and all information, knowledge, know-how and techniques BNC designates as confidential, including the Operations Manual, the BENIHANA Standards and the BENIHANA System, which may be communicated to Franchisee or of which Franchisee may be apprised by virtue of Franchisee's training and/or operation of the Restaurant ("Confidential Information").

(a) Confidential Information shall not include information which Franchisee can demonstrate came to Franchisee's attention before BNC's disclosure; or which, at or after the time of disclosure by BNC to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others. Franchisee shall divulge the Confidential Information only to such of Franchisee's employees as must have access to it in order to operate the Restaurant.

(b) As a condition of employment, Franchisee shall require Franchisee's General Manager and any personnel having access to any Confidential Information to execute covenants that they will maintain the confidentiality of information they receive in connection with their employment at the Restaurant. Such covenants shall be in the form attached to this Agreement as Exhibit F, which form includes specific

identification of BNC as a third party beneficiary of such covenants with the independent right to enforce them. Franchisee shall provide BNC with a copy of all executed covenants within five days after hiring any such General Manager and/or employees.

18.4 Franchisee covenants that, during the Franchise Term and for a period of two (2) years after the expiration or termination hereof, Franchisee shall not, directly or indirectly:

(a) divert or attempt to divert any business or customer of the Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks and the BENIHANA System;

(b) employ or seek to employ any person (or induce such person to leave his or her employment) who is, or has within the one (1) year prior to any such expiration or termination been, employed by BNC, any of its affiliates, including, without limitation the "Haru," or "RA" Restaurants ("Affiliated Company"), or any other franchisee operating under the BENIHANA System;

(c) own, maintain, operate or have any direct or indirect interest in any restaurant or food service business that is or holds itself out to the public as a Japanese teppanyaki style or sushi restaurant or food service (a "Competing Business") in the same county in which the Restaurant is or was located; or

(d) own, maintain, operate or have any direct or indirect interest in any Competing Business which business is, or is intended to be, located within a five (5) mile radius of any BENIHANA Restaurant, or any other restaurant which is owned, operated, or franchised by BNC, Benihana of Tokyo, Benihana, Inc. or any Affiliated Company.

18.5 Franchisee understands and acknowledges that BNC shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Section 18.4, or any portion thereof, without Franchisee's consent, effective immediately upon Franchisee's receipt of written notice thereof; and Franchisee agree that Franchisee shall comply forthwith with any covenant as so modified.

18.6 Franchisee acknowledges and agrees that any failure to comply with the covenants and agreements in this Article 18, or with the covenants and agreements in Article 6 hereof with respect to the Marks, shall result in irreparable injury to BNC for which no adequate remedy at law may be available, and, therefore, BNC shall be entitled, in addition to any other remedies which it may have hereunder, at law or in equity, to obtain specific performance of, or an injunction against the violation of, the requirements of this Article 18 and such requirements of Article 6, without the necessity of showing actual or threatened damage and without the necessity of posting bond. Franchisee agrees to pay all court costs and reasonable attorney's fees incurred by BNC in obtaining specific performance of, or an injunction against violation of, the requirements of this Article 18 or Article 6.

18.7 Franchisee expressly agrees that the existence of any claim which it may have against BNC, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by BNC of

the covenants in this Article 18.

18.8 Franchisee shall require and obtain execution of a restrictive covenant agreement in the form attached to this Agreement as Exhibit F which includes covenants similar to those set forth in this Article 18 (including covenants applicable upon the termination of a person's relationship with Franchisee) from Franchisee's General Manager and any other personnel employed by Franchisee who has received or will receive training from BNC. Every covenant required by this Section 18.8 shall include a specific identification of BNC as a third party beneficiary of such covenants with the independent right to enforce them.

18.9 Franchisee acknowledges and agrees that the length and term of the geographical restrictions contained in Section 18.4 are fair and reasonable and do not impose a greater restraint than is necessary to protect the goodwill associated with the Marks or other business interests of BNC. Franchisee agrees that Franchisee's full, uninhibited and faithful observance of each of the covenants contained in this Article 8 will not cause any undue hardship, financial or otherwise, and that the enforcement of each of the covenants in this Article 18 will not impair Franchisee's ability to obtain employment commensurate with Franchisee's abilities and on terms fully acceptable to Franchisee or otherwise to obtain income required for the comfortable support of Franchisee, Franchisee's family and the satisfaction of Franchisee's creditors. Franchisee agrees that Franchisee's special knowledge of the business of a BENIHANA Restaurant (and anyone acquiring knowledge from Franchisee) would cause BNC and other BENIHANA System franchisees serious injury and loss if Franchisee (or anyone acquiring knowledge from Franchisee) were to use this knowledge to the benefit of a competitor or were to compete with BNC or any BENIHANA System franchisees.

18.10 If Franchisee violates the post-term covenant set forth in Section 18.4 above following expiration, termination or transfer of this Agreement, Franchisee acknowledges and agrees that the post-term covenant period of two (2) years shall be extended to commence on the date Franchisee first complies with such covenant so as to provide BNC with the full benefit of the post-term covenant period uninterrupted by Franchisee's interference.

ARTICLE 19: CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP

19.1 If Franchisee is a corporation or limited liability company, the following requirements shall also apply:

(a) Franchisee shall be newly organized and Franchisee's charter shall at all times provide that Franchisee's activities are confined exclusively to operating the business franchised herein.

(b) If Franchisee is a corporation, copies of Franchisee's Articles of Incorporation, Bylaws, and other governing documents, and any amendments thereto, including the resolution of the Board of

Directors authorizing entry into this Agreement shall be promptly furnished to BNC. If Franchisee is a limited liability company, copies of Franchisee's Certificate of Organization, Operating Agreement and other governing documents, any amendments thereto, including any resolutions authorizing entry into this Agreement shall be promptly furnished to BNC.

(c) Franchisee shall maintain stop-transfer instructions against the transfer on Franchisee's records of any equity securities or membership interests; and each stock certificate or membership interest, as applicable, shall have conspicuously endorsed upon its face a statement in a form satisfactory to BNC that it is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon assignments by this Agreement; provided, however, that the requirements of this Section 19.1 (c) shall not apply to a publicly-held corporation.

(d) Franchisee shall maintain a current list of: (i) all owners of record and all beneficial owners of any class of voting securities, if Franchisee is a corporation; or (ii) all members or beneficial owners of any interest, if Franchisee is a limited liability company, and Franchisee shall furnish the list to BNC upon request.

(e) All shareholders, if Franchisee is a corporation, or all members and managers, if Franchisee is a limited liability company, shall jointly and severally guarantee Franchisee's performance under this Agreement and shall bind themselves to the terms of this Agreement by signing a Personal Guaranty in the form attached hereto as Exhibit B hereto; provided, however, that the requirements of this Section 19.1(e) shall not apply to a publicly-held corporation.

19.2 If Franchisee is a partnership, Franchisee shall comply, except as otherwise approved in writing by BNC, with the following requirements throughout the term of this Agreement:

(a) Franchisee shall furnish BNC with Franchisee's partnership agreement as well as such other documents as BNC may reasonably request, and any amendments thereto.

(b) Franchisee shall prepare and furnish to BNC, upon request, a list of all general and limited partners.

ARTICLE 20. MISCELLANEOUS

20.1 This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Notwithstanding the foregoing, nothing in this Agreement is intended to disclaim the representations BNC made in the franchise disclosure document BNC furnished to Franchisee.

20.2 No delay or failure by BNC to exercise any right or power under this Agreement, or delay or failure by BNC to insist upon strict compliance by Franchisee with any obligation hereunder, or custom or practice of the parties at variance with the provisions of this Agreement, shall constitute a waiver of

BNC's right to exercise any such rights or powers or to demand strict and exact performance by Franchisee of all provisions of this Agreement.

20.3 This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

20.4 Neither BNC nor Franchisee shall be liable to perform any of its obligations under this Agreement if such failure to perform is due to strikes, lockouts, stoppages, accidents, transportation delays, war, government regulations, acts of God or other causes beyond the reasonable control of BNC or Franchisee and the happening of any such cause of delays shall extend the time of performance by the time occasioned by any such cause of delay, provided, that no such delay shall operate to extend the term of this Agreement beyond its otherwise scheduled expiration date.

20.5 If any provision of this Agreement is invalid, or incapable of being enforced, by reason of any rule of law or public policy, all other provisions of this Agreement shall nevertheless remain in full force and effect, and no provision of this Agreement shall be deemed dependent upon any provision unless expressly stated in this Agreement.

20.6 This Agreement may be changed, modified, amended, discharged or terminated only by an instrument in writing signed by BNC and Franchisee.

20.7 All notices required or permitted to be given hereunder shall be in writing, sent by certified or registered mail, return receipt requested, or by Express Mail, Federal Express or equivalent overnight delivery service, as follows:

(a) if to BNC, addressed to it at the address set forth at the head of this Agreement, to the attention of BNC's General Counsel; and

(b) if to Franchisee, addressed to it at the address set forth in the Contract Data Schedule attached to this Agreement.

Either party may change its address for receipt of notices, from time to time, by written notice to the other as set forth herein. Notices shall be deemed given when delivered or when first refused (as evidenced by the receipt or delivery records of the delivery agent).

20.8 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to the conflict of law principles thereof.

20.9 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

20.10 All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause

herein may require, as if such words had been fully and properly written in the appropriate number and gender.

20.11 The various titles of the Articles herein are used solely for convenience and shall not be used for interpreting or constructing any word, clause, paragraph or section of this Agreement.

ARTICLE 21. ACKNOWLEDGMENTS

21.1 Franchisee acknowledges that Franchisee has conducted an independent investigation of the franchised business licensed hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and acknowledges that Franchisee's success will be largely dependent upon Franchisee's ability as an independent businessperson. BNC expressly disclaims the making of, and Franchisee acknowledges that Franchisee has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

21.2 Franchisee acknowledges that Franchisee received BNC's Franchise Disclosure Document at least 14 calendar days prior to the date on which this Agreement was executed.

21.3 Franchisee acknowledges that Franchisee has read and understood this Agreement, the attachments hereto and all agreements relating thereto, if any, and that BNC has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

21.4 Franchisee acknowledges that Franchisee is relying solely on BNC and not on any affiliated entity or parent company related to BNC regarding BNC's financial and other obligations under this Agreement, and no employee or other person speaking on behalf of, or otherwise representing BNC has made any statement or promise to the effect that any affiliated entities or parent companies guarantee BNC's performance or financially back BNC.

21.5 Anti-Terrorist Activities and Representations. Franchisee certifies and warrants that neither Franchisee, nor any of Franchisee's owners, principals, employees or associates (including all shareholders, members or partners (as applicable)), are: (i) a person or entity designated by the U.S. Government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List"), maintained at <http://www.ustreas.gov/offices/enforcement/ofac/sdn> by the U.S. Treasury Department Office of Foreign Assets Control ("OFAC"), with which a U.S. person or entity cannot deal or otherwise engage in business transactions; (ii) a person or entity who is otherwise the target of U.S. economic sanctions and trade embargoes enforced and administered by OFAC, such that a U.S. person or entity cannot deal or otherwise engage in business transactions with Franchisee or Franchisee's shareholders, members or partners; (iii) either wholly or partly owned or partly controlled by any person or entity on the SDN List, including, without limitation by virtue of such person being a director or owning voting shares or interests in an entity on the SDN List; (iv) a person or entity acting, directly or indirectly, for or on behalf of any person or entity

on the SDN List; or (v) a person or entity acting, directly or indirectly, for or on behalf of a foreign government that is the target of the OFAC sanctions regulations such that the entry into this Agreement would be prohibited under U.S. law.

21.6 Franchisee shall comply with and assist BNC to the fullest extent possible in BNC's efforts to comply with the Anti-Terrorism Laws (as defined below). Franchisee shall not hire nor have any dealings with any person listed on the SDN List, as it may be modified from time to time. Franchisee is solely responsible specifically acknowledges and agrees that Franchisee's indemnification obligations under this Agreement pertain to Franchisee's obligations under this Section 21.6. Any misrepresentation by Franchisee under this Section 21.6, or any violation of any Anti-Terrorism Laws by Franchisee, Franchisee's owners, principals or employees, shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee has entered into with BNC or its affiliates. As used herein, "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT ACT, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, The United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above-written.

ATTEST:

BENIHANA NATIONAL CORP.

By: _____

By: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____

ATTEST:

[FRANCHISEE]

By: _____

By: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____

ADDENDUM TO
BENIHANA NATIONAL CORP.
FRANCHISE AGREEMENT FOR THE
STATE OF WISCONSIN

This Addendum pertains to franchises sold in the State of Wisconsin and is for the purpose of complying with Wisconsin statutes and regulations. Notwithstanding anything that may be contained in the body of the Franchise Agreement to the contrary, the Agreement is amended as follows:

1. Notwithstanding anything that may be contained in the body of the Franchise Agreement to the contrary, Article 13 of the Agreement pertaining to “Default and Termination” is amended as follows:

For all franchises sold in the State of Wisconsin, we will provide you at least 90 days’ prior written notice of termination, cancellation, or substantial change in competitive circumstances. The notice will state all the reasons for termination, cancellation, or substantial change in competitive circumstances and will provide that you have 60 days in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice will be void. If the reason for termination, cancellation, or substantial change in competitive circumstances is nonpayment of sums due under the franchise, you will be entitled to written notice of such default, and will have not less than 10 days in which to remedy such default from the date of delivery or posting of such notice.

2. Ch. 135, Stats., the Wisconsin Fair Dealership Law, supersedes any provisions of this Agreement or a related document between Franchisor and Licensee inconsistent with the Law.

3. In all other respects, the Franchise Agreement will be construed and enforced according to its terms.

Each of the undersigned hereby acknowledges having read and understood this Addendum and consents to be bound by all of its terms.

BENIHANA NATIONAL CORP.

By: _____

Its: _____

YOU: _____

By: _____

Its: _____

SCHEDULE 1-A TO BENIHANA FRANCHISE AGREEMENT (CONCESSION MODEL)

[LIMITED MENU ITEMS – TO BE DETERMINED BASED ON LOCATION SPECIFICS; SIMILAR TO THE MENU BELOW]





"RA"CKIN FRIED RICE (660 Cal.) 9.75
Our original classic. Grilled chicken, rice, egg and chopped vegetables with garlic flavored butter

HIBACHI BOWLS

SERVED ON A BED OF HIBACHI VEGETABLE RICE

HIBACHI STEAK (785 Cal.) 18.00
Grilled New York strip steak* and mushrooms

HIBACHI SHRIMP (775 Cal.) 16.00
Hibachi shrimp grilled to perfection

HIBACHI CHICKEN (815 Cal.) 16.00
Chicken breast and mushrooms grilled with butter and sesame seeds

CHOICE OF HOMEMADE SAUCE
GINGER (10 Cal.) OR MUSTARD (110 Cal.)

YAKISOBA BOWLS

JAPANESE SAUTÉED NOODLES AND MIXED VEGETABLES IN OUR SPECIAL SAUCE AND SPRINKLED WITH SESAME SEEDS

STEAK (640 Cal.) 17.49 | **SHRIMP** (635 Cal.) 17.49 | **CHICKEN** (660 Cal.) 17.49

BEVERAGES

RED FLOWER SPECIAL EDITION SAKE (170 Cal.) 10.00
TYKU sake crafted to complement grilled seafood and meat

CANNED BEER (180-300 Cal.) 8.25

CRAFT BEER (130-410 Cal.) 9.75

BOTTLED SOFT DRINKS (240 Cal.) 4.50

BOTTLED WATER (0 Cal.) 4.25



SHAREABLE

EDAMAME (265 Cal.) 9.75
Sprinkled with sea salt.

POPCORN (270 Cal.) 7.00



MAKI ROLLS

CALIFORNIA ROLL (410 Cal.) 11.00
Crab* mix, cucumber and avocado rolled in seaweed and rice

AVOCADO ROLL (370 Cal.) 11.00
Slices of creamy avocado rolled in seaweed and rice

SPICY TUNA ROLL* (310 Cal.) 11.00
Fresh tuna mixed with spicy mayo and Sriracha, combined with cucumber and rolled in seaweed and rice



POKE BOWLS

Served on a bed of rice

SPICY TUNA* (680 Cal.) 16.00
Ahi tuna, cucumber and avocado in poke sauce, topped with sesame seeds

SPICY SALMON* (760 Cal.) 16.00
Salmon, cucumber and avocado in poke sauce, topped with sesame seeds

*We are required by the Health Department to inform you that the items indicated contain raw fish and consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions. *Kani kama crab & kani kama tuna are not eaten in isolation only.

2,000 calories a day is used for general nutrition advice, but calorie needs vary. Additional nutritional information available upon request.

SCHEDULE 1-B TO BENIHANA FRANCHISE AGREEMENT (CONCESSION MODEL)

[EQUIPMENT AND SMALLWARES LISTS – TO BE DETERMINED BASED ON LOCATION SPECIFICS; SIMILAR TO THE ITEMS BELOW]

Bayside Recommended Equipment List	Quantity
48" Hoodless Teppan tables or 48" Flat Top Grills under exhaust hoods	2 each
Two Door reach-in refrigerators	2 each
Two Door reach-in freezer	1 each
Neta Case 3 feet length	1 each
Under counter reach-in refrigerators	2 each
Gas rice cookers	2 each
Electric rice warmers	4 each
Sushi rice holders	2 each
Three compartment sink	1 each
Electric Steam Well	1 each
Electric Pass Through Warmer	1 each
Miscellaneous Smallwares	

SCHEDULE 1-C TO BENIHANA FRANCHISE AGREEMENT (CONCESSION MODEL)

[BOH TRAINING LAYOUT TO BE DETERMINED, BUT SEE THE TRAINING
PROGRAM FOR CONCESSION MODEL TABLE IN ITEM 11 OF THE
FRANCHISE DISCLOSURE DOCUMENT]

EXHIBIT A

**BENIHANA NATIONAL CORP. FRANCHISE AGREEMENT
CONTRACT DATA SHEET**

A. Franchisee: _____

B. Approved Location: _____

C. Restaurant Area: _____

[If any radius is used in defining the Restaurant Area, it will be calculated by measuring the distance between the Restaurant and any other BENIHANA Restaurant on a straight line from the principal entrance front door of the Restaurant to the principal entrance front door of the other BENIHANA Restaurant]

D. Address for notice to Franchisee shall be at the Restaurant, unless another address is inserted here: _____

Initials

EXHIBIT B

PERSONAL GUARANTY BY SHAREHOLDERS OF A CORPORATION, MEMBERS OF A LIMITED LIABILITY COMPANY, OR PARTNERS OF A LIMITED PARTNERSHIP

NAME OF FRANCHISEE: _____ **DATE:** _____

You, the undersigned Guarantor(s) (hereinafter collectively and individually referred to as "GUARANTOR"), represent and warrant that you constitute [check whichever statement applies]:

[] the shareholders of one hundred percent (100%) of the originally issued and outstanding capital stock of the above FRANCHISEE, a corporation

[] one hundred percent (100%) of the members of the above FRANCHISEE limited liability company ("LLC")

[] one hundred percent (100%) of the partners of the above FRANCHISEE limited or general partnership

This Guaranty is incorporated and made a part of a Franchise Agreement between FRANCHISEE and Benihana National Corp., a Delaware corporation, whose principal office address is 21500 Biscayne Boulevard, Suite 900, Aventura, Florida 33180 (hereinafter referred to as "FRANCHISOR") on the date specified above, and it will be attached to the Franchise Agreement.

1. Acknowledgments. GUARANTOR acknowledges and agrees that FRANCHISOR has entered into the Franchise Agreement with FRANCHISEE solely on the condition that each owner of FRANCHISEE be personally obligated and jointly and severally liable with FRANCHISEE (and with each other owner of FRANCHISEE) for the performance of each and every obligation of FRANCHISEE (and its owners) under the Franchise Agreement, any amendments or modifications to the Franchise Agreement, any extensions or renewals of the Franchise Agreement, and under each and every agreement ancillary to the Franchise Agreement, including any lease, that has been or hereafter may be entered by FRANCHISEE with FRANCHISOR (all of the aforementioned agreements are collectively referred to as the "BENIHANA Agreements").

2. GUARANTOR's Covenants, Representations and Guaranty. In consideration of and as an inducement to the execution of the Franchise Agreement by FRANCHISOR, Guarantor hereby personally, irrevocably and unconditionally:

- (a) represents and warrants to FRANCHISOR that the exhibits/attachments to the Franchise Agreement are accurate and complete;
- (b) agrees to guarantee the prompt payment and performance of all of FRANCHISEE's Obligations (as hereinafter defined) to FRANCHISOR and FRANCHISOR's successors and assigns; and
- (c) agrees to be personally bound by, and personally liable for the breach of each and every provision in the Franchise Agreement and each and every provision in any of the BENIHANA Agreements, as if GUARANTOR were the FRANCHISEE.

The term "Obligations" means the payment of all of FRANCHISEE's debts, liabilities, and obligations to FRANCHISOR arising under the BENIHANA Agreements, whether direct, indirect, absolute, contingent, matured or unmatured, extended or renewed, wherever and however incurred, together with all costs of collection, compromise and enforcement, including reasonable attorney's fees, and the prompt performance of each and every covenant, agreement, and condition set forth in any of the BENIHANA Agreements.

3. Waivers by GUARANTOR. GUARANTOR hereby waives:

- (a) acceptance and notice of acceptance by FRANCHISOR of the foregoing Guaranty;
- (b) notice of demand for payment of FRANCHISEE's indebtedness or nonperformance of any of the Obligations;
- (c) presentment or protest of any instrument and notice thereof or any notice of default or intent to accelerate with respect to the indebtedness or nonperformance of any of the Obligations;
- (d) any right GUARANTOR may have to require that an action be brought against FRANCHISEE or any other person as a condition of GUARANTOR's liability;
- (e) the defense of the statute of limitations in any action for the enforcement, performance, or collection of any Obligation;
- (f) any and all rights to payments, indemnities, and claims for reimbursement or subrogation that GUARANTOR may have against FRANCHISEE arising from GUARANTOR'S execution of and performance under this Guaranty;
- (g) any defense based on any irregularity or defect in the creation of any of the Obligations or modification of the terms and conditions of performance thereof;
- (h) any defense based on the failure of FRANCHISOR or any other party to take, protect, perfect, or preserve any right against and/or security granted by the FRANCHISEE or any other party;
- (i) any and all other notices and legal or equitable defenses to which GUARANTOR may be entitled.

4. Further Agreements and Understandings. GUARANTOR hereby consents and agrees that:

- (a) GUARANTOR's direct and immediate liability under this Guaranty will be joint and several with FRANCHISEE and any other GUARANTOR;
- (b) The death or incapacity of any GUARANTOR will not modify, amend, or terminate this Guaranty;
- (c) If GUARANTOR should die, become incapacitated, become insolvent or make a general assignment for the benefit of creditors, or if a proceeding under the United States Bankruptcy Code or any similar law affecting the rights of creditors generally shall be

- filed or commenced by, against, or in respect of any GUARANTOR, all obligations of the GUARANTOR shall, at FRANCHISOR's option, immediately become due and payable without notice;
- (d) If any payment or transfer to FRANCHISOR which has been credited against any Obligation is voided or rescinded or required to be returned by FRANCHISOR, whether or not in connection with any event or proceeding described in Section 4(c), this Guaranty will continue in effect or be reinstated as though such payment transfer or recovery had not been made;
 - (e) GUARANTOR will render any payment or performance required under the Franchise Agreement and/or any of the BENIHANA Agreements upon demand if FRANCHISEE fails or refuses punctually to do so;
 - (f) GUARANTOR'S liability under this Guaranty is and will be construed as absolute, unconditional, continuing and unlimited without regard to the regularity, validity, or enforceability of any Obligations, and without regard to whether any Obligation is limited, modified, voided, released, or discharged in any proceeding under the United States Bankruptcy Code or any similar law affecting the rights of creditors generally;
 - (g) GUARANTOR'S liability under this Guaranty is not be contingent or conditioned upon FRANCHISOR's pursuit or enforcement of any remedies against FRANCHISEE or any other person;
 - (h) This Guaranty will continue in full force and effect for and as to any extension or modification or amendment to the Franchise Agreement or any other of the BENIHANA Agreements, and GUARANTOR waives notice of any and all such extensions, modifications, or amendments;
 - (i) GUARANTOR'S liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence, or any waiver FRANCHISOR may from time to time grant to FRANCHISEE or to any other person, including without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims (including the release of other owners or Guarantors), or FRANCHISOR taking any action that may have the effect of increasing GUARANTOR'S obligations. None of those actions or occurrences will in any way modify or amend this Guaranty, which will be continuing and irrevocable during the term of the Franchise Agreement and so long as FRANCHISEE's performance is or may be owed under any of the BENIHANA Agreements and so long as FRANCHISOR may have any cause of action against FRANCHISEE or its owners;
 - (j) All present and future debts and Obligations of FRANCHISEE to GUARANTOR or any other GUARANTORS are hereby subordinated to the full payment and performance of the Obligations.

5. Choice of Law; Jurisdiction and Venue. This Guaranty, and any claims related thereto, shall be governed by and construed in accordance with the laws of the State of Florida. GUARANTOR hereby irrevocably submits to the jurisdiction of the United States District Court for the Southern District of Florida ("Southern District of Florida"), which shall be the venue and exclusive proper

forum in which to adjudicate any case or controversy arising, either directly or indirectly, under or in connection with this Guaranty, except to the extent otherwise provided in this Guaranty. GUARANTOR agrees that it is subject to personal jurisdiction in the Southern District of Florida, and GUARANTOR further agrees that, in the event of litigation arising out of or in connection with this Guaranty, GUARANTOR will not contest or challenge the in personam jurisdiction or venue of the Southern District of Florida. If and only if the Southern District of Florida lacks subject matter jurisdiction over any matter litigated under this Guaranty, then the Circuit Court for the Eleventh Judicial Circuit (or its successor) in and for Miami-Dade County, Florida ("11th Judicial Circuit") shall be the venue and exclusive proper forum for such litigation. GUARANTOR agrees that GUARANTOR is subject to personal jurisdiction in the 11th Judicial Circuit, and, in any litigation brought in that court under this Section, GUARANTOR agrees that GUARANTOR will not contest or challenge the 11th Judicial Circuit's jurisdiction over GUARANTOR. GUARANTOR hereby irrevocably waives, to the fullest extent GUARANTOR may effectively do so, the defense of an inconvenient forum to the maintenance of any action or proceeding and any right to jurisdiction on account of GUARANTOR's place of residence or domicile. GUARANTOR agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

6. Waiver of Right to Jury Trial. GUARANTOR expressly waives the right to trial by jury of any claims relating directly or indirectly to this Guaranty and/or the BENIHANA Agreements, the negotiation of the Guaranty and/or the BENIHANA Agreements, or the business relationship relating to or arising out of the Guaranty and/or the BENIHANA Agreements.

7. Severability. If any provision contained in this Guaranty shall be invalid, illegal, or unenforceable in any respect under the laws of any jurisdiction, the validity, legality and enforceability of the remaining provisions of the Guaranty will not in any way be affected or impaired thereby.

GUARANTOR now executes this Guaranty on the date shown above:

GUARANTOR(S):

By:_____

By:_____

Print Name:_____

Print Name:_____

Date:_____

Date:_____

By:_____

By:_____

Print Name:_____

Print Name:_____

Date:_____

Date:_____

EXHIBIT C

CONDITIONAL ASSIGNMENT OF TELEPHONE NUMBERS

This Conditional Assignment of Telephone Numbers is incorporated and made a part of a Franchise Agreement between _____ (“Assignor”) and Benihana National Corp., a Delaware corporation, whose principal office address is 21500 Biscayne Boulevard, Suite 900, Aventura, Florida 33180 (hereinafter referred to as “BNC”) concurrently with the Franchise Agreement.

1. In accordance with the terms of the Franchise Agreement between Assignor and BNC, and in exchange for valuable consideration provided by BNC, receipt of which is hereby acknowledged, Assignor hereby conditionally assigns to BNC all of Assignor’s right, title and interest in and to those certain telephone numbers, facsimile numbers, regular, classified or other telephone directory listings, URLs, domain names and email addresses and accounts (collectively, “Franchisee Listings”) associated with BNC’s trademarks and service marks used in connection with Assignor’s operation of a BENIHANA restaurant located at _____(the “Restaurant”).

2. The conditional agreement will become effective, at BNC’s option, automatically upon termination or expiration of the Franchise Agreement entered into by and between Assignor and BNC for the operation of the Restaurant. Upon the occurrence of either condition, Assignor must do all things required by the telephone company to assure the effectiveness of the assignment of telephone numbers as if the BNC had been originally issued such telephones, telephone numbers, telephone listings and the usage thereof.

3. Assignor agrees to pay the listing company on or before the effective date of assignment all amounts owed for the use of the Franchisee’s Listings, including, without limitation, Yellow Pages advertising. Assignor further agrees to indemnify BNC for any sums BNC must pay any listing company to effectuate this Assignment and agrees to fully cooperate with the listing companies and BNC in effectuating this Assignment.

4. Without limiting the generality of the foregoing, Assignor agrees and acknowledges that as between BNC and Assignor, upon termination or expiration of the Franchise Agreement, BNC will have the sole right to and interest in the Franchisee’s Listings, and Assignor appoint BNC as its true and lawful attorney-in-fact to direct the listing agencies to assign the same to BNC, and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event, Assignor will immediately notify the listing agencies to assign the Listings to BNC; Assignor also agrees not to utilize any call forwarding messages referring to another number. If Assignor fails to promptly direct the listing agencies to assign the Franchisee Listings to BNC, BNC will direct the listing agencies to effectuate the assignment contemplated under this Agreement, to BNC.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as witnessed by their signatures below.

ASSIGNOR:

ATTEST

BY: _____

Title: _____

BENIHANA NATIONAL CORP.:

ATTEST

BY: _____

Title: _____

EXHIBIT D

COLLATERAL ASSIGNMENT OF LEASE

THIS COLLATERAL ASSIGNMENT OF LEASE is made as of the last date below written by and among the following parties:

LANDLORD:

TENANT:

FRANCHISOR ("BNC"):

Benihana National Corp.
21500 Biscayne Boulevard, Suite 900
Aventura, Florida 33180

RECITALS

A. Under the terms of the lease agreement attached hereto as Exhibit A (the "Lease"), Landlord has agreed to lease to Tenant certain premises (the "Premises") located at the following street address:

B. BNC has accepted the Premises for Tenant's BENIHANA Restaurant, subject to the provisions of the Franchise Agreement entered into by and between Tenant and BNC (the "Franchise Agreement").

C. As a condition to BNC entering into the Franchise Agreement, BNC has required that Tenant assign its right, title and interest in the Lease, with the right to reassign (as provided therein), as security for Tenant's obligations and BNC's rights under the Franchise Agreement.

D. In order to induce BNC to enter into the Franchise Agreement, Tenant has agreed to assign its right, title and interest in the Lease, with the right to reassign (as provided therein), as security for Tenant's obligations and BNC's rights under the Franchise Agreement.

AGREEMENT

NOW THEREFORE, in consideration for the foregoing premises and the mutual promises contained herein and in the Franchise Agreement, and in order to secure Tenant's obligations and BNC's rights under the Franchise Agreement, Tenant does hereby collaterally assign, transfer and set

over unto BNC, with the right to reassign or sublet, all of its right, title and interest in and to the Lease and in and to the Premises; it being nevertheless expressly understood and agreed that this assignment is made and is consented to by the Landlord contingent upon the following terms, covenants, limitations and conditions:

1. Use of the Premises. Tenant shall use the Premises only for the operation of a “BENIHANA” Restaurant pursuant to its Franchise Agreement with BNC and for no other purpose whatsoever.

2. Signage. Landlord hereby consents to Tenant’s use and display on the Premises of such exterior and interior signs, posters, promotional materials, and equipment, furnishings, and décor as required by BNC under the Franchise Agreement. Landlord further agrees not to unreasonably withhold its consent to Tenant’s compliance with any changes to such items required by BNC during the term of the Franchise Agreement.

3. Assignment. Landlord acknowledges that Tenant has agreed under the Franchise Agreement that if the Franchise Agreement is terminated or expires, or if Tenant default’s under the Lease, Tenant shall, at BNC’s option, assign to BNC any and all interest Tenant has in the Lease, including any renewal rights. Landlord hereby consents to such assignment subject to the following conditions: (i) BNC shall notify Landlord in writing within thirty (30) days after termination or expiration of the Franchise Agreement or Franchisor’s receipt of any notice of default by Tenant under the Lease if BNC elects to accept assignment of the Lease; BNC’s failure to accept assignment of the Lease upon any default of Tenant under the Lease shall not be deemed a waiver of BNC’s future right to accept such assignment in the event of any future default by Tenant; (ii) If BNC elects to accept assignment of the Lease, BNC shall execute and deliver to Landlord a lease containing the same terms and conditions (including rental rates) as the Lease; provided, however, that BNC’s leasehold interest shall not be subject to any default claims that may exist between Landlord and Tenant; and (iii) If BNC elects to accept assignment of the Lease, BNC shall take possession of the Premises within thirty (30) days after notice of such election to Landlord, and BNC shall commence payment of rent upon taking possession of the Premises. Nothing herein shall affect Landlord’s right to recover from Tenant any and all amounts due under the Lease or to exercise any rights of Landlord against Tenant as provided under the Lease.

4. Assignment to Third Party. At any time after giving notice of its election to accept assignment of the Lease, BNC may request to assign the Lease, or sublease the Premises, to a third party. Landlord agrees not to unreasonably withhold its consent to any such assignment or sublease on the same terms as the Lease provided however, that if Landlord refuses to consent to such assignment or sublease by BNC, BNC shall have no further obligations under the Lease.

5. BNC’s Right to Enter the Premises. Landlord and Tenant hereby acknowledge that BNC has the right, under the Franchise Agreement, to enter the BENIHANA Restaurant operated by Tenant at the Premises at any time for the purpose of conducting inspections, to protect BNC’s proprietary marks and information, and to correct any deficiencies under the Franchise Agreement. Landlord and Tenant agree not to interfere with or prevent such entry by BNC.

6. De-Identification. Landlord and Tenant hereby acknowledge that in the event the Franchise Agreement expires or is terminated, Tenant is obligated under the Franchise Agreement to take certain steps to de-identify the Premises as a “BENIHANA” Restaurant. Landlord agrees to cooperate fully with BNC in enforcing such provisions of the Franchise Agreement against Tenant, including allowing BNC, its employees and agents to enter and remove signs, décor and materials

bearing or displaying any marks, designs or logos of Franchisor; provided, however, that Landlord shall not be required to bear any expenses thereof. Tenant agrees that if Tenant fails to de-identify the Premises promptly upon termination or expiration as required under the Franchise Agreement, BNC may cause all required de-identification to be completed at Tenant's expense.

7. Binding Agreement. This Agreement shall be binding upon the parties hereto and their successors, assigns, heirs, executors, and administrators. The rights and obligations herein contained shall continue notwithstanding changes in the persons or entities that may hold any leasehold or ownership in the land or building. Any party hereto may record this Agreement or a memorandum hereof.

8. Equitable Relief. Any party hereto may seek equitable relief, including, without limitation, injunctive relief or specific performance, for actual threatened violation or nonperformance of this Agreement by any other party. Such remedies shall be in addition to all other rights provided for under this or other agreements between any of the parties. The prevailing party in any action shall be entitled to recover its legal fees together with court costs and expenses of litigation.

9. Miscellaneous. Nothing contained in this Agreement shall affect any term or condition in the Franchise Agreement between Tenant and BNC. Nothing herein shall be deemed to constitute a guaranty or endorsement by BNC of the terms and conditions of the Lease between Landlord and Tenant. If BNC, in its sole discretion, determines not to accept assignment of the Lease as permitted hereunder, neither Landlord nor Tenant shall have any claims against BNC. No terms or conditions contained in the Lease shall be binding on BNC unless and until it elects to accept assignment of the Lease as provided in this Collateral Assignment of Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Collateral Assignment of Lease this _____ day of _____, ____.

TENANT:

ATTEST

BY: _____

Title: _____

FRANCHISOR:

ATTEST

BY: _____

Title: _____

LANDLORD:

ATTEST

BY: _____

Title: _____

EXHIBIT E

ASSIGNMENT & ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the “Assignment”) is entered into as of this _____ day of _____, _____, by and between _____ *[franchisee]* (“Assignor”), _____, a _____ organized under the laws of the state of _____ (“Assignee”), and Benihana National Corp., a Delaware corporation, whose principal office address is 21500 Biscayne Boulevard, Suite 900, Aventura, Florida 33180 (“BNC”).

BACKGROUND

A. BNC and Assignor entered into a certain Franchise Agreement dated _____ (the “Franchise Agreement”) under which Assignor was granted the right and undertook the obligation to operate a BENIHANA Restaurant at the location identified in the Franchise Agreement (the “Franchised Business”);

B. Assignor has formed Assignee for the convenience and purpose of owning and operating the Franchised Business;

C. Assignor desires to assign his or her rights and obligations under the Franchise Agreement to Assignee pursuant to and in accordance with the provisions of the Franchise Agreement; and

D. BNC is willing to consent to the assignment of the Franchise Agreement to Assignee, subject to the terms and conditions of this Assignment, including without limitation, Assignor’s agreement to guarantee the performance by Assignee of its obligations under the Franchise Agreement and to continue to be bound by all of the provisions of the Franchise Agreement.

AGREEMENT

In consideration of the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the parties agree as follows:

1. Assignor hereby assigns and transfers over to Assignee all of Assignor’s rights, title, and interest in and to the Franchise Agreement, effective as of the date of this Assignment.

2. Assignee hereby assumes all of Assignor’s obligations, assignments, commitments, duties, and liabilities under the Franchise Agreement, and agrees to be bound by and observe and faithfully perform all obligations, assignments, commitments and duties of the franchisee under the Franchise Agreement with the same force and effect as if the Franchise Agreement was originally written with Assignee as franchisee.

3. Assignor agrees that Assignor will continue to be bound by all terms and conditions of the Franchise Agreement, including, without limitation, all non-competition, confidentiality, and indemnification obligations, and nothing contained in this Assignment will or does relieve Assignor of any of Assignor’s obligations contained in the Franchise Agreement. Assignor further agrees to, and by this instrument does hereby, guarantee the performance by Assignee of all of its obligations,

commitments, duties and liabilities under the Franchise Agreement. Without limiting the foregoing, Assignor irrevocably and unconditionally guarantees to BNC (i) that Assignee will pay all amounts to be paid and otherwise comply with all provisions of the Franchise Agreement and any other agreement between Assignor and BNC or its affiliates concerning the operation of the Franchised Business, and (ii) that if Assignee defaults in making any such payments or complying with any such provisions, Assignor shall pay forthwith upon demand all amounts due and owing BNC and all damages that may arise as a result of any such non-compliance.

4. In the enforcement of any of its rights against Assignor, BNC may proceed as if Assignor was the primary obligor under the Franchise Agreement. Assignor waives any right to require BNC to first proceed against Assignee or to proceed against or exhaust any security (if any) held by BNC or to pursue any other remedy available to it before proceeding against Assignor. No dealing between BNC and Assignee shall exonerate, release, discharge or in any way reduce the obligations of Assignor hereunder, in whole or in part, and in particular and without limiting the generality of the foregoing, BNC may modify or amend the Franchise Agreement, grant any indulgence, release, postponement or extension of time, waive any term or condition of the Franchise Agreement, or any obligation of Assignee, take or release any securities or other guarantees for the performance by Assignee of any of its obligations, and otherwise deal with Assignee as BNC may see fit without affecting, lessening or limiting in any way the liability of Assignor. Notwithstanding any assignment for the general benefit of creditors, bankruptcy, or other act of insolvency by Assignee, and notwithstanding any rejection, disaffirmance, or disclaimer of this Assignment or the Franchise Agreement, Assignor shall continue to be fully liable.

5. This Assignment is entered into in the State of Florida and shall be construed and interpreted in accordance with its laws, which laws shall control in the event of any conflict of law.

6. This Assignment shall be binding and inure to the benefit of the parties and their respective heirs, successors, and assigns.

7. Assignor and Assignee acknowledge and agree they are bound by the dispute resolution provisions of the Franchise Agreement. Assignor and Assignee further agree they have and will continue to have a substantial relationship with BNC at its offices in Miami, Florida, and with the exception of BNC's right to seek injunctive relief in any appropriate jurisdiction as set forth below, any action by or against either Assignor or Assignee arising out of or relating to this Assignment may be commenced, litigated, and concluded only in a state or federal court of general jurisdiction in the State of Florida. Assignor and Assignee agree that Florida represents the most convenient forum for the parties to litigate any disputes between them. Accordingly, Assignor and Assignee irrevocably submit to the jurisdiction of such courts and waive any objection they may have to either the jurisdiction or venue of such court. Assignor and Assignee further waive any objection that such court is an inconvenient forum. BNC has the option, at its sole discretion, of bringing any action seeking equitable relief to enforce the terms of this Assignment in any court of competent jurisdiction in order to prevent real or threatened harm, and Assignor and Assignee consent to the entry of injunctive relief, including, without limitation, temporary restraining orders and/or preliminary and permanent injunctions without the requirement of bond, according to the usual equity rules in the jurisdiction in which such relief is sought.

8. The Franchise Agreement and this Assignment constitute the entire integrated agreement of assignment between the parties with respect to the subject matter contained herein and neither may be changed, modified, or amended without the a subsequent agreement signed by all parties.

9. If it becomes necessary for BNC to retain legal counsel to enforce the terms of this Assignment, BNC will be entitled to recover all costs and expenses, including reasonable attorney's fees, expenses, and expert and investigative fees, incurred in enforcing the terms of this Assignment.

10. Each party acknowledges that it has read and fully understands the terms of this Assignment and it voluntarily accepts those terms after having a reasonable opportunity to retain and confer with legal counsel. This Assignment is entered into after a full investigation by the parties, and the parties are not relying upon any statements or representations not contained in this Assignment.

11. The persons executing this Assignment on behalf of Assignee acknowledge their authority to do so.

12. The obligations of Assignor and Assignee under this Assignment are joint and several.

I HAVE READ THE ABOVE AGREEMENT AND UNDERSTAND ITS TERMS. I WOULD NOT SIGN THIS AGREEMENT IF I DID NOT UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS.

IN WITNESS WHEREOF, the undersigned have affixed their signatures hereto as of the day and date first above written.

ASSIGNOR:

ATTEST

BY: _____

Print Name: _____

Title: _____

ASSIGNEE:

ATTEST

BY: _____

Print Name: _____

Title: _____

BENIHANA NATIONAL CORP.:

ATTEST

BY: _____

Print Name: _____

Title: _____

EXHIBIT F

CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT

(for trained employees, officers, directors, general partners, members and managers of Franchisee)

In consideration of receiving an offer of employment from _____ (the "Franchisee"), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be bound hereby, I hereby acknowledge and agree that:

1. Benihana National Corp. ("BNC") is the exclusive licensee in the United States of America, including its territories and possessions of all proprietary and other property rights and interests in and to certain trade names, service marks and/or trademarks, including BENIHANA®, BENIHANA OF TOKYO®, and the "Flower" symbol (collectively, the "Marks"). BNC owns, operates, sponsors, franchises, and licenses the Marks for use at, a system of restaurants utilizing the Marks and operating under the name BENIHANA (the "BENIHANA Restaurants"). The BENIHANA Restaurants offer distinctive products and services utilizing a distinctive business format, including color schemes, designs, signage, equipment, layouts, operating systems, methods, procedures, standards, techniques and proprietary information, and marketing and advertising standards and formats, all of which have been and may be modified, amended, supplemented, or further developed from time to time (the "BENIHANA System").

2. Franchisee has acquired the right and license from BNC to operate a BENIHANA Restaurant (the "Restaurant") and the right to use the Marks in the operation of the Restaurant.

3. Because I am employed by Franchisee, BNC and Franchisee may disclose the Confidential Information to me in furnishing to me a training program, in subsequent ongoing training, and for general assistance and instruction during my employment with Franchisee.

4. I will not acquire any interest in the Confidential Information, other than the right to utilize it in on behalf of Franchisee in its the operation of the Restaurant, and the use or duplication of the Confidential Information for any use other than on behalf of the Franchisee in its operation of the Restaurant, would constitute an unfair method of competition.

5. The Confidential Information is non-public, proprietary, involves trade secrets, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I will hold in confidence all Confidential Information and all other information designated by Franchisee or BNC as confidential. Unless BNC otherwise agrees in writing, I will disclose or use the Confidential Information only in connection with my duties to Franchisee, and I will continue not to disclose any such information even after I cease employment and will not use any Confidential Information even after I cease employment.

6. For purposes of this Agreement, "Confidential Information" means information, knowledge, know-how and techniques related to the Restaurant, BNC, Franchisee, the products Franchisee or BNC sells, the BENIHANA Restaurants, the BENIHANA System, which is communicated to me or learned by me in the course of training or working for Franchisee, including, without limitation, information of a confidential and proprietary nature concerning the operations of Franchisee, or BNC, as well as any product recipe, pricing or other information provided to Franchisee by BNC or its suppliers and vendors. Confidential Information shall not include any information that (i) is or

becomes available to the public other than as a consequence of a breach by a person of any fiduciary duty or obligation of confidentiality, including, without limitation, catalogues, product descriptions and sales literature that BNC, Franchisee, or any franchisees or licensees of BNC or its affiliates have distributed to the public generally; or (ii) is disclosed as required by a final, unappealable court order and no suitable protective order, or equivalent remedy, is available, or (iii) I was aware of prior to its disclosure to me in the course and scope of my employment with Franchisee from a source not bound by a confidential obligation.

7. Except as otherwise approved in writing by BNC and Franchisee or on behalf of or in connection with a BENIHANA Restaurant, I will not, while in the employment of the Franchisee, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or limited liability company, own, maintain, engage in, be employed by, or have any interest in any Competing Business. For purposes of this Agreement, a "Competing Business" shall mean a Japanese teppanyaki style or sushi restaurant or food service business.

8. I agree that I will not, for a period of two years following the date on which I cease to be employed by Franchisee, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or limited liability company, own maintain, engage in, be employed by, or have any interest in any Competing Business, which business is located within a five (5) mile radius of any BENIHANA Restaurant location in existence as of the date of such termination, transfer or expiration.

9. I agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which BNC or Franchisee is a party, I expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

10. I understand and acknowledge that BNC will have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without my consent, effective immediately upon receipt by me of written notice thereof; and I agree to comply forthwith with any covenant as so modified.

11. BNC is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement may cause BNC and the Franchisee irreparable harm; therefore, I acknowledge and agree that the Franchisee and/or BNC may apply for the issuance of an injunction preventing me from violating this Agreement, and I agree to pay the Franchisee and BNC all the costs it/they incur(s), including, without limitation, legal fees and expenses, if this Agreement is enforced against me.

12. If a dispute between the parties arises under this Agreement that results in any legal action, the prevailing party will be entitled to recover from any non-prevailing party reasonable attorney's fees and costs. Any controversy, claim, or dispute arising out of or relating to this Agreement, either during the existence of the employment relationship or afterwards, between the parties hereto, shall be litigated solely in state or federal court in Miami-Dade County, Florida. Because of the importance of this Agreement to the Franchisee and BNC, I agree that any claim I have against the Franchisee or BNC is a separate matter, and does not entitle me to violate, or justify any violation of this Agreement, and must be raised in a separate lawsuit or claim.

13. This Agreement shall be construed under the laws of the State of Florida. The only way this Agreement may be amended or changed is in writing signed by both the Franchisee and me and approved, in writing, by BNC.

[INSERT POSITION]

Witness

Name: _____

EXHIBIT G

AUTHORIZATION TO HONOR CHARGES DRAWN BY AND PAYABLE TO BENIHANA NATIONAL CORP.

Franchisee: _____

Date: _____

Franchisee hereby authorizes Benihana National Corp. (hereinafter "BNC"), any financial institution acting on behalf of BNC (hereinafter "BNC's Bank"), and Franchisee's financial institution which is identified below (hereinafter "Franchisee's Bank") to process debit entries on Franchisee's bank account identified below on a monthly basis for payment which is or will become due by Franchisee (or any entity or individual affiliated or related to Franchisee) to BNC under the Franchise Agreement between BNC and Franchisee dated _____ (the "Franchise Agreement"), including monthly royalty fees, advertising fees and other fees due under the Franchise Agreement.

Franchisee acknowledges that BNC, BNC's Bank and Franchisee's Bank must comply with the National Automated Clearing House Association rules. BNC, BNC's Bank and Franchisee's Bank are authorized to make any necessary debits or credits to correct duplicate or erroneous entries. The Franchisee hereby agrees to hold BNC, BNC's Bank, Franchisee's Bank and their agents, successors and assigns harmless from all direct, indirect, special or consequential damages and/or all losses, costs, claims or expenses arising out of or related to the use of this automatic payment service.

Franchisee represents that the account identified below is and shall be maintained at Franchisee's Bank and will contain sufficient funds to cover the automatic debit entries authorized hereunder. Franchisee hereby agrees that in the event BNC, BNC's Bank or Franchisee's Bank is unable to process any debit entry authorized hereunder, Franchisee shall forward payment in the form of a check to BNC at BNC's address, as provided in Franchise Agreement. Franchisee further acknowledges and agrees that if any debit from Franchisee's account is dishonored, whether with or without cause and whether intentionally or inadvertently, Franchisee's Bank shall be under no liability whatsoever. This authorization is effective as of the date indicated below and shall remain in full force until the expiration or earlier termination of the Franchise Agreement. The automatic payment process is subject to modification or cancellation at any time by BNC without notice to Franchisee.

Franchisee's Bank:

Bank Name: _____ Branch: _____

City: _____ State: _____ Zip Code: _____

Account Name (as shown on bank's records): _____

Account Number: _____

ABA/Transit Routing Number: _____ (9 Digits)

Check One: ☐ Savings Account ☐ Checking Account

Franchisee Authorization:

Name: _____
(Please type or print)

Name: _____
(Please type or print)

Sign: _____

Sign: _____

Date: _____

Date: _____

NOTE: A separate Authorization Agreement is required for each bank account, even if all accounts are within the same banking institution. Please attach a voided check or deposit slip to this authorization.

EXHIBIT C
TO BENIHANA NATIONAL CORP. FRANCHISE DISCLOSURE DOCUMENT

List of Current Franchisees

Arkansas

FF Hotels, Inc.
(Tom Roy)
5922 Warden Road
Sherwood, Arkansas 72120
501-374-8081

California

Mitsufumi and Rumi Okabe
136 Olivier Street
Monterey, CA 93940
831-644-9007

Florida

Horay Restaurant Group, LLC
(Darren M. Horan & William J. Lay)
3593 South Roosevelt Boulevard
Key West, FL 33040
305-294-4585

Passo Investment Group, LLC
(Erick Passo)
168 SE 1st Street, Store 1A
Miami, Florida 33149
305-989-3026

Nevada

Westgate Las Vegas Resort & Casino
3000 Paradise Road
Las Vegas, NV 89109
702-732-5334

New Jersey

Akaibana Restaurant Inc.
(Hassan Halani)
18 Mark Circle
Metuchen, NJ 08840
732-744-0660

Wisconsin

V&V Partners, LLC
(Vic Kairelis)
22158 Concorde Court
Kildeer, IL 60047
414-270-0890

EXHIBIT D
TO BENIHANA NATIONAL CORP. FRANCHISE DISCLOSURE DOCUMENT

List of Former Franchisees

The franchisees listed below had a franchise terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement during the most recently completed fiscal year, after the end of the prior fiscal year but before the Effective Date of this Disclosure Document, or have not communicated with us within 10 weeks of the issuance date of this Disclosure Document.

Genji Saginaw, Inc.
3780 Bay Road
Saginaw, MI 48603
Fu Hai “Henry” Pi, President
henry.pi@companypi.com

Genji Midland, Inc. [BENIHANA Restaurant never opened under signed franchise agreement]
2929 Saginaw Road
Midland, MI 48640
Fu Hai “Henry” Pi, President
henry.pi@companypi.com

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

EXHIBIT E
TO BENIHANA NATIONAL CORP. FRANCHISE DISCLOSURE DOCUMENT

[See attached financial statements]

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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 31, 2021

OR

- ☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from _____ to _____

Commission File Number 001-37379**The ONE Group Hospitality, Inc.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

14-1961545

(I.R.S. Employer Identification No.)

1624 Market Street, Suite 311, Denver, Colorado

(Address of principal executive offices)

80202

Zip Code

646-624-2400

(Registrant's telephone number, including area code)

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

Title of each class	Title of each class	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	STKS	The NASDAQ Stock Market LLC

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 Section 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 (§ 232.405 of this chapter) 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, a 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 ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☒ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided 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 Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant computed by reference to the price at which the common equity was last sold, as of the last business day of the registrant's most recently completed second fiscal quarter, was \$233,409,937.

Number of shares of Common Stock outstanding as of February 28, 2022: 32,183,371

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's proxy statement for its 2022 annual meeting of stockholders are incorporated by reference in Part III of this Form 10-K.

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[Table of Contents](#)**Cautionary Note Regarding Forward-Looking Statements:**

This Annual Report on Form 10-K and certain information incorporated herein by reference contain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Section 27A of the Securities Act of 1933, as amended (the "Securities Act"). Forward-looking statements speak only as of the date thereof, and involve risks and uncertainties that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. These risk and uncertainties include, but are not limited to, the risk factors discussed under Item 1A. "Risk Factors" of this Annual Report on Form 10-K. Factors that might cause actual events or results to differ materially from those indicated by these forward-looking statements include matters such as future economic performance, general economic conditions, consumer preferences and spending, costs, competition, new product execution, restaurant openings or closings, operating margins, the availability of acceptable real estate locations, the sufficiency of our cash balances and cash generated from operations and financing activities for our future liquidity and capital resource needs, the impact on our business of Federal and State legislation and local regulation, future litigation, the execution of our growth strategy and other matters. We have attempted to identify forward-looking statements by terminology including "anticipates," "believes," "can," "continue," "ongoing," "could," "estimates," "expects," "intends," "may," "appears," "suggests," "future," "likely," "goal," "plans," "potential," "projects," "predicts," "should," "targets," "would," "will" and similar expressions that convey the uncertainty of future events or outcomes. You should not place undue reliance on any forward-looking statement. We do not undertake any obligation to update or revise any forward-looking statements to reflect events or circumstances after the date of this report or to reflect the occurrence of unanticipated events, except as may be required under applicable law.

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PART I

As used in this report, the terms “Company,” “we,” “our,” or “us,” refer to The ONE Group Hospitality, Inc. and its consolidated subsidiaries, taken as a whole, unless the context otherwise indicates. The term “year ended” refers to the entire calendar year, unless the context otherwise indicates.

Item 1. Business

Description of the Business

We are a global hospitality company that develops, owns and operates, manages and licenses upscale and polished casual, high-energy restaurants and lounges and provides turn-key food and beverage (“F&B”) services and consulting service for hospitality venues including hotels, casinos and other high-end locations. Turn-key F&B services are food and beverage services that can be scaled, customized and implemented by us for the client at a particular hospitality venue. Our vision is to be a global market leader in the hospitality industry by melding high-quality service, ambiance, high-energy and cuisine into one great experience that we refer to as “Vibe Dining”. We design all our restaurants, lounges and F&B services to create a social dining and high-energy entertainment experience within a destination location. We believe that this design and operating philosophy separates us from more traditional restaurant and foodservice competitors.



Our primary restaurant brands are STK, a multi-unit steakhouse concept that combines a high-energy, social atmosphere with the quality and service of a traditional upscale steakhouse, and Kona Grill, a polished casual bar-centric grill concept featuring American favorites, award-winning sushi, and specialty cocktails in a polished casual atmosphere. Our F&B hospitality management services are marketed as ONE Hospitality and include developing, managing and operating restaurants, bars, rooftop lounges, pools, banqueting and catering facilities, private dining rooms, room service and mini bars tailored to the specific needs of high-end hotels and casinos. We also provide hospitality advisory and consulting services to certain clients. Our F&B hospitality clients operate global hospitality brands such as the W Hotel, ME Hotels, Hippodrome Casino, and Curio Collection by Hilton.

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We opened our first restaurant in January 2004 in New York, New York. We currently own, operate, manage or license 60 venues including 23 STKs and 24 Kona Grills in major metropolitan cities in North America, Europe and the Middle East and 13 F&B venues in seven hotels and casinos in the United States and Europe. We intend to open thirteen new STK and F&B venues in 2021 and 2022, of which seven are currently open, and three to five Kona Grill locations in 2022. There are currently two Company-owned STK restaurants (San Francisco, CA and Dallas, TX), one Company-owned Kona Grill restaurant (Riverton, UT) and one managed STK restaurant (Stratford, UK) under construction.

Brands and Locations

The table below reflects our venues by restaurant brand and geographic location:

	Venues			Total
	STK ⁽¹⁾	Kona Grill	ONE Hospitality ⁽²⁾	
Domestic				
Owned	11	24	2	37
Managed	2	—	1	3
Licensed	1	—	—	1
Total domestic	14	24	3	41
International				
Owned	—	—	—	—
Managed	4	—	10	14
Licensed	5	—	—	5
Total international	9	—	10	19
Total venues	23	24	13	60

- (1) Locations with an STK and STK Rooftop are considered one venue location. This includes the STK Rooftop in San Diego, CA, which is a licensed location.
- (2) Includes concepts under the Company's F&B hospitality management agreements and other venue brands such as ANGEL, Bao Yum, Heliot, Hideout, Marconi, Radio and Rivershore Bar & Grill. Effective January 1, 2022, our agreement with the Hippodrome Casino was amended and extended for five years whereby the Company changed from manager to consultant for the Heliot Steak House and F&B Hospitality services for the casino.

We expect to continue expanding our operations domestically and internationally primarily through a mix of owned, licensed and managed restaurants using a disciplined and targeted site selection process. We refer to this as our “capital light strategy” because it requires significantly less capital than expansion through owned restaurants only. Refer to Item 2 – Properties for additional details regarding the domestic and international locations in which we operate.

STK

STK is a global steakhouse restaurant concept with locations in major metropolitan cities. STK artfully blends the modern steakhouse and a chic lounge, offering a high-energy, fine dining experience in a social atmosphere with the quality and service of a traditional upscale steakhouse. Each STK location features a large, open restaurant and bar area with a DJ playing music throughout the restaurant, offering our customers a high-energy, fun “destination” environment that encourages social interaction. We believe this Vibe Dining concept truly differentiates us from other upscale steakhouses. Our menu provides a variety of portion sizes and signature options to appeal to a broad customer demographic.

We operate eleven owned, six managed and six licensed STK restaurants in North America, Europe and the Middle East. Our STK restaurants average approximately 9,000 to 10,000 square feet, and we typically target locations that range in size from 8,000 to 10,000 square feet. In 2021, the average domestic restaurant revenues and average domestic check per person for owned and managed STK restaurants that have been open 18 months at December 31, 2021 were \$14.8 million and \$114, respectively.

We are focused on expanding our global STK footprint. We believe that the locations of our STK restaurants are critical to our long-term success, and we devote significant time and resources to analyzing prospective restaurant sites. We intend to continue our focus on (i) metropolitan areas with demographic and discretionary spending profiles that favor our high-end concept and (ii) finding partners with excellent

track records and brand recognition. We also consider factors such as traffic patterns, proximity to high-end shopping areas and office buildings, hotels and convention centers, area restaurant competition, accessibility and visibility. We have identified over 75 additional major metropolitan areas

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across the globe where we could grow our STK brand to 200 restaurants over the foreseeable future. We expect to open as many as five to six STKs annually.

Kona Grill

Kona Grill is a bar-centric grill concept featuring American favorites, award-winning sushi, and specialty cocktails in a polished casual atmosphere. Kona Grill offers freshly prepared food and attentive service in an upscale, contemporary ambiance that creates an exceptional dining experience that we believe exceeds many traditional casual dining restaurants. Menu items are prepared from scratch at each restaurant location, creating memorable flavor profiles that appeal to a wide range of customers. The diverse menu is complemented by a full-service bar offering a broad assortment of wines, craft cocktails, and beers. We believe that the Kona Grill brand is complementary to our other brands and enables us to capture market share in the Vibe Dining segment.

We own and operate 24 Kona Grill restaurants within 17 states in the United States. Our Kona Grill restaurants average approximately 7,000 to 8,000 square feet. In 2021, the average restaurant revenues were \$5.1 million and average check per person was \$33. We believe we can grow the Kona Grill brand to 200 restaurants over the foreseeable future. We expect to open as many as three to five Kona Grills annually.

ONE Hospitality

Our ONE Hospitality platform is composed of our F&B hospitality management agreements with hotels, casinos, and other high-end locations as well as our other brands and venue concepts, which are described below:

- *ANGEL*. ANGEL Rooftop bar and Dining is a sophisticated Southern-Mediterranean restaurant with two indoor and outdoor bars, a floral garden patio, and a plunge pool located within the Hotel Calimala in Florence, Italy.
- *Bao Yum*. A fast-casual concept that offers a whimsical twist on classic bao. Bao Yum serves breakfast, lunch, dinner and dessert bao along with a variety of salads, soups, sandwiches and snacks. Bao Yum currently operates within the Westminster Curio Hotel in London.
- *Heliot*. Heliot Steak House is an award-winning steakhouse and bar within the Hippodrome Casino in London that offers impressive views of the main casino gambling floor.
- *Hideout*. The Hideout by STK is an outdoor, poolside restaurant and bar within the W Hotel in Westwood, California, which complements our owned STK and F&B hospitality services also offered within the W Hotel in Westwood.
- *Marconi*. The Marconi Lounge is a stylish and sophisticated lounge bar that we manage within the ME London hotel that offers an extensive cocktail menu in an upbeat atmosphere.
- *Radio*. Radio Rooftop is a premier rooftop restaurant and lounge bar concept boasting striking city views with two signature locations on top of the ME London and ME Milan hotels.
- *Rivershore Bar & Grill*. Rivershore Bar & Grill celebrates the end of the Oregon Trail with a beautiful river view, American favorites and friendly, professional service in Oregon City, Oregon.
- *F&B Services*. Our F&B services for hospitality venues provide attractive and comprehensive tailored food and beverage solutions to our hospitality clients. Our fee-based hospitality food and beverage solutions include developing, managing and operating restaurants, bars, rooftops, pools, banquet and catering services, private dining rooms, in-room dining services and mini bars on a contract basis. Currently, we operate six venues pursuant to F&B hospitality management agreements with hotels and casinos in the United States and in Europe. Historically, our clients have provided the majority of the capital required for the development of the facilities we manage on their behalf.

Our F&B hospitality contracts generate revenues for us through management fees, which are typically calculated as a percentage of the operation's revenues, and we earn additional milestone and incentive fees based on the operation's profitability. We typically target F&B hospitality service opportunities where we believe we can generate at least \$500,000 of annual pre-tax income.

We expect our F&B hospitality services business to be an important driver of our growth and profitability, enabling us to generate management fee income with minimal capital expenditures. We believe we are well positioned to leverage the strength of our brands and the relationships we have developed with global hospitality providers to drive the continued growth of our F&B hospitality business. We continue to receive inbound inquiries regarding new

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opportunities globally, and we continue to work with existing hospitality clients to identify and develop additional opportunities in their venues. We expect to enter into one to two new F&B hospitality agreements annually.

Sourcing and Supply Chain

We seek to ensure that consistently high-quality food and beverages are served at all of our properties through the coordination and cooperation of our purchasing and culinary departments. Our culinary and purchasing teams establish product specifications on a global basis, which are then disseminated to all locations through recipe books for all dishes served at our properties.

We maintain consistent pricing standards and procedures for all top-volume purchases at our restaurants. Suppliers are selected and pricing is negotiated on a national level in each country where one or more of our restaurants operate. We test new suppliers on a regional basis for an extended period before using them on a national basis. We periodically review supplier consistency and satisfaction with our location chefs and continually research and evaluate products and supplies to ensure the meat, seafood and other menu ingredients that we purchase comply with our high-quality specifications. We believe we have strong relationships with national and regional foodservice distributors who can continue to supply us with our products on a consistent basis. Products are shipped directly to the restaurants from our suppliers.

Our corporate beverage program imposes guidelines for ordering beverage products at our properties. We provide beverage managers at each location with national guidelines for standardized products. Our concepts emphasize the bar as a driver of activity in the restaurants and in 2021, the sale of beverages accounted for approximately 25% of restaurant revenues.

On a company-wide basis, no supplier of food accounts for more than 30% of our total food and beverage purchases and no brand of alcohol accounts for more than 25% of our alcohol purchases. We believe that our food and beverage supplies are available from a significant number of alternate suppliers and that the loss of a supplier would not have a material adverse effect on our costs of supplies.

Advertising and Marketing

The primary focus of our advertising and marketing is to increase awareness of our brands and our overall reputation for quality, service and delivering a high-energy experience. Our marketing efforts are designed to strengthen our brand recognition in markets where we currently operate and to create brand awareness in new markets before opening a new location. We use digital/social media channels, targeted local media such as magazines, billboards and other out-of-home advertising, and a strong network of public relations teams to increase the frequency with which our existing customers visit our restaurants and to attract new customers. We conduct frequent promotional programs tailored to the city, brand and clientele of each location. We utilize a network of local and national public relations firms to support these promotional programs. Additional marketing functions include the use of our websites, www.STKsteakhouse.com and www.KonaGrill.com, to facilitate online reservations, to-go/delivery orders and gift card sales to drive revenue.

Competition

The restaurant and hospitality industries are intensely competitive with respect to price, quality of service, location, ambiance of facilities and type and quality of food. We experience competition from a variety of sources, including upscale steakhouse chains such as Ruth Chris, Del Frisco's, Fleming's, Mastro's and The Capital Grille, local upscale steakhouses and polished casual chains, such as The Cheesecake Factory, Bonefish and BJ's. There is also competition from other Vibe Dining restaurants such as Nobu, Lavo and Tao and other high-end hospitality services companies such as the Gerber Group, Lettuce Entertain You and ESquared Hospitality. To the extent that we operate lounges and similar venues in hotels and resorts, we are subject to our host venues being able to compete effectively in attracting customers who would frequent our establishments.

Seasonality

Our business is subject to fluctuations due to seasonality and adverse weather. Because of the seasonality of the business and the industry, results for any quarter are not necessarily indicative of the results that may be achieved for any

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other quarter or the full calendar year. Typically, our second and fourth quarters have higher sales volumes than other quarters in the year.

Intellectual Property

Our rights in our registered and unregistered intellectual property, including trademarks and service marks, are significant to our business. We own the U.S. federal registration rights to “STK,” “Kona Grill,” and several related word marks and design marks related to our brands. We depend on registered and unregistered trademarks and service marks to maintain the identity of our locations. We license the rights to use certain trademarks we own or license to our licensees in connection with their operations. We also own several other trademarks and service marks. It is our policy to defend our marks against encroachment by others.

Human Capital Resources

As of December 31, 2021, we employed approximately 64 corporate employees within our corporate offices and an aggregate of 243 full-time, salaried employees at all of our locations. We rely on hourly-wage employees for kitchen staff, servers, bussers, runners, polishers, hosts, bartenders, barbacks, reservationists, administrative support, and interns. The average headcount for employees in our domestic restaurants is 80. Combining full-time and part-time employees, we employ and manage directly approximately 3,364 persons and indirectly approximately 420 employees of ONE Hospitality worldwide. We have never experienced a work stoppage, and none of our employees are represented by a labor organization.

Our human capital objectives include attracting, developing, rewarding, and retaining our existing and new employees. We offer our employees online training courses and on-the-job training. Restaurant management trainees undergo training in order to understand all aspects of our restaurant operations. We provide our employees with cash-based performance bonuses. We also have an equity incentive compensation plan to provide certain management-level or other key employees with stock-based awards. We have implemented programs to attract and retain both restaurant managers and hourly employees. We monitor our progress with metrics such as employee performance measures, turnover rates and restaurant customer surveys.

The health and safety of our employees is our highest priority. In protecting our employees’ safety, we have invested in creating a safe work environment for our employees and guests. In response to COVID-19 concerns among guests and employees, we enhanced our cleaning protocols beginning in 2020, including implementing daily health and safety checklists and providing additional personal protective equipment and cleaning supplies. For all employees, we require masks to be worn in all restaurants and offices where required by local law and provide regular communication regarding the impact of the COVID-19 pandemic, including health and safety protocols and procedures.

Government Regulation

Our operations are subject to extensive federal, state and local governmental regulation, including health, safety, labor, sanitation, building and fire agencies in the state, county, municipality or jurisdiction in which the restaurant is located. In certain states, our restaurants are subject to “dram shop” statutes, which generally provides a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. We maintain the necessary restaurant, alcoholic beverage and retail licenses, permits and approvals. Federal and state labor laws govern our relationship with our employees and affect operating costs. The development and construction of new restaurants are also subject to compliance with applicable zoning, land use and environmental regulations. A failure to comply with one or more regulations could result in the imposition of sanctions, including the closing of restaurants for an indeterminate period of time, fines or third-party litigation.

Available Information

We are required to file reports with the SEC, including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K. The SEC maintains a website that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at www.sec.gov.

We maintain a website at www.togrp.com, including an investor relations section at ir.togrp.com, on which we routinely post information, such as webcasts of quarterly earnings calls and other investor events in which we participate and any related material. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-

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K, and amendments to those reports, as well as other reports relating to us that are filed with or furnished to the SEC can be accessed in the investor relations section of our website free of charge as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC.

We also make available on our website and in print to any stockholder who requests it, our Audit, Compensation, and Nominating and Corporate Governance Committee charters, as well as the Code of Conduct that applies to all directors, officers and associates of the Company. We do not incorporate any information found or accessible through our websites into this Annual Report on Form 10-K.

Item 1A. Risk Factors**RISK FACTORS**

Ownership of our common stock involves certain risks. Holders of our common stock and prospective investors should carefully consider the following risks and other information contained in this document, including our historical financial statements and related notes included herein. The following risk factors could materially adversely affect our business, financial condition and results of operations. This could cause the trading price of our common stock to decline, perhaps significantly, and you may lose part or all of your investment. The risks and uncertainties below are all those that we have identified as material but may not be the only risks and uncertainties facing us. Our business is subject to general risks and uncertainties that affect many other companies, including overall economic and industry conditions.

Health and Safety

The COVID-19 pandemic has had, and is expected to continue to have, a significant effect on our restaurant traffic and our business, financial condition and results of operations.

The COVID-19 pandemic has significantly affected on our business and results. Restaurants we own and manage have been subject to significant government-mandated operating restrictions, including temporarily shut down of all in-person dining in 2020. Restrictions eased in late 2020 and through 2021. Although all of our venues have reopened, we expect that our operations will continue to be affected by COVID-19, and those effects may be exacerbated by resurgences and the spread of variants of the coronavirus. It remains difficult to predict the full impact of the COVID-19 pandemic on the broader economy and how consumer behavior may change, and whether such change is temporary or permanent.

We have made operational changes to adhere to government requirements on safety and sanitation in our restaurants. However, we cannot guarantee that changes to our operational policies and training will be effective to keep our employees and customers safe from COVID-19. COVID-19 may impact the willingness of customers to dine outside of the home. While it is not possible at this time to estimate the full impact that COVID-19 could have on our business going forward, the continued spread of the virus and the measures taken by governments or by us in response could adversely impact our business, financial condition and results of operations.

Costs associated with mitigating the impact of COVID-19 are significant and will continue in the future. We incurred COVID-19 related costs of \$5.8 million and \$5.5 million in 2021 and 2020, respectively.

Health concerns arising from outbreaks of flu viruses or other diseases, or regional or global health pandemic could severely affect our business.

The United States and other countries have experienced, or may experience in the future, outbreaks of viruses, such as coronavirus, norovirus, Avian Flu or “SARS,” and H1N1 or “swine flu,” or other diseases such as bovine spongiform encephalopathy, commonly known as “mad cow disease.” If a virus is transmitted by human contact, our employees or customers may become infected, or may choose, or be advised, to avoid gathering in public places, any of which may adversely affect the guest traffic at our restaurants and the ability to adequately staff our restaurants, receive deliveries on a timely basis or perform functions at the corporate level. We also may be adversely affected if jurisdictions in which we

have restaurants impose mandatory closures, seek voluntary closures or impose restrictions on operations. Even if such measures are not implemented and a virus or other disease does not spread significantly, the perceived risk of infection or significant health risk may adversely affect our business.

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To the extent that a virus or disease is food-borne, or perceived to be food-borne, future outbreaks may adversely affect the price and availability of certain food products and cause our customers to eat less of a product. For example, health concerns relating to the consumption of beef or to specific events such as the outbreak of “mad cow disease” may adversely impact sales of our beef-related menu items. In addition, public concern over “avian flu” may cause fear about the consumption of chicken, eggs and other products derived from poultry. The inability to serve beef or poultry-based products would restrict our ability to provide a variety of menu items to our customers. If we change our menu in response to such concerns, we may lose customers who do not prefer the new menu, and we may not be able to sufficiently attract new customers to produce the revenue needed to restore the profitability of our restaurant operations. We also may generate different or additional competitors for our intended customers as a result of such a menu change and may not be able to successfully compete against such competitors.

Failure to protect food supplies and adhere to food safety standards could result in food borne illnesses and adversely affect our business.

Failure to protect our food supply or enforce food safety policies, such as proper food temperature and adherence to shelf-life dates, could result in food-borne illnesses to our guests. Also, our reputation of providing high-quality food is an important factor in our guests choosing our restaurants. Whether or not traced to our restaurants or those of our competitors, instances of food borne illness or other food safety issues could reduce the demand for certain or all of our menu offerings. If any of our guest become ill from consuming our products, the affected restaurants may be forced to close, and we may be subject to legal liability. An instance of food contamination from one of our restaurants or suppliers could have far-reaching effects, as the contamination, or the perception of contamination could affect any or all of our restaurants. Publicity related to either product contamination, recalls, or food-borne illness, including Bovine-Spongiform Encephalopathy, which is also known as BSE or mad cow disease, aphthous fever, which is also known as hoof and mouth disease, and hepatitis A, listeria, salmonella and e-coli may also injure our brand and may affect the selection of our restaurants by our guests or licensees based on fear of such illnesses. In addition, the occurrence of food-borne 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 margins for us and our licensees.

Economic Conditions and Competition

Our business is dependent on discretionary spending patterns, business travel and general economic conditions.

We depend on consumer discretionary spending, business travel and the overall economic environment. Disruptions in the economy, including recessions, high unemployment, foreclosures, bankruptcies, inflation and other economic impacts, could affect consumers’ ability and willingness to spend discretionary dollars. Reductions in business travel and dining, which we believe accounts for a majority of our weekday revenues at our hotel-based restaurants and food and beverage services operations, would adversely affect our revenues. Reductions in discretionary income and spending also would impact our casino-based restaurants and food and beverage services operations. If uncertain economic conditions were to persist for an extended period of time or worsen, consumers might make long-lasting changes to their discretionary spending behavior, including dining out less frequently. Adverse changes in consumer discretionary spending could be affected by many different factors that are out of our control, including international, national and local economic conditions, any of which could harm our business prospects, financial condition, operating results and cash flows. Continued uncertainty in or a worsening of the economy, generally or in a number of our markets, and our customers’ reactions to these trends could adversely affect our business and cause us to, among other things, reduce the number and frequency of new location openings, close locations and delay any re-modeling of existing locations. Our success will depend in part upon our ability to anticipate, identify and respond to changing economic and other conditions.

We have a limited number of venues, and we operate multiple venues in some cities and are therefore sensitive to economic and other trends and developments in these cities.

We have a relatively small number of restaurants and F&B service locations, and we operate multiple venues in some cities. We typically operate one to six venues in the cities where we operate. Accordingly, particularly in cities where we have multiple venues, our business is susceptible to adverse changes in these markets whether as a result of declining economic conditions, declining stock market performance, negative publicity, changes in customer preferences or for other reasons, and any such adverse changes may have a disproportionate effect on our overall results of operations compared to some of our competitors that may have less restaurant concentration or that do not operate in our markets. Any regional occurrences such as local labor strikes, natural disasters, prolonged inclement weather, acts of

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terrorism or other national emergencies, accidents, energy shortages, system failures or other unforeseen events in or around these cities could result in temporary or permanent closings of our venues, which could have a material adverse effect on our business, financial condition and results of operations as a whole.

Competition in the restaurant industry is intense.

The restaurant and hospitality industry is intensely competitive with respect to price, quality of service, location, ambiance of facilities and type and quality of food. The industry is also characterized by the continual introduction of new concepts and is subject to rapidly changing consumer preferences, tastes, trends and eating and purchasing habits. Our success depends in part on our ability to anticipate and respond quickly to changing consumer preferences, and other factors affecting the restaurant and hospitality industry, including new market entrants and demographic changes. Shifts in consumer preferences away from upscale steakhouses or beef in general, which are significant components of our concepts' menus and appeal, whether as a result of economic, competitive or other factors, could adversely affect our business and results of operations.

A substantial number of national and regional restaurant chains, as well as independently owned restaurants, compete with us for customers, restaurant locations and qualified management and other restaurant staff. There is also competition from non-steak but upscale and high-energy restaurants, and other high-end hospitality services companies and high-energy nightlife concepts. To the extent that our restaurants and F&B hospitality services operations are in hotels, casinos, resorts and similar client locations, we are subject to competition in the broader lodging and hospitality markets that could draw potential customers away from our locations.

Some of our competitors have greater financial, marketing and operating resources than we do, have been in business longer, have greater name recognition and are better established in the markets where our restaurants and F&B hospitality services operations are located or where we may expand. In addition, improved product offerings in the fast casual segment of the restaurant industry, combined with the effects of negative economic conditions and other factors, may lead consumers to choose less expensive alternatives. Our inability to compete successfully with other restaurants, other F&B hospitality services operations and other segments of the industry may harm our ability to maintain acceptable levels of revenue growth, limit our development of new restaurants or concepts, or force us to close one or more of our restaurants or F&B hospitality services operations.

We may also need to evolve our concepts to compete with popular new restaurant or F&B hospitality services operation formats, concepts or trends that emerge from time to time, and we cannot provide any assurance that any changes we make to any of our concepts in response will be successful or not adversely affect our profitability.

Strategy and Operations

Unsuccessful implementation of any or all of the initiatives of our business strategy, including opening new restaurants and attracting new F&B hospitality service opportunities, could negatively impact our operations.

Our success depends in part on our ability to understand and satisfy the needs of our guests and licensees. Our key strategies are to:

- Drive same store sales;
- Improve operational efficiency at our restaurants;
- Reduce corporate general and administrative expenses; and
- Grow our portfolio primarily through licensing and management deals.

Improving comparable location sales and restaurant-level margins depends in part on whether we are able to achieve revenue growth through increases in the average check and increases in customer traffic, and to further expand our private dining business at each location and delivery service business in markets where offered. We believe there are opportunities to increase the average check at our locations through

selective introduction of higher priced items and increases in menu pricing. We also believe that expanding and enhancing our private dining capacity will also increase our location sales, as our private dining business typically has a higher average check and higher overall margins than regular dining room business. We believe that expanding the markets in which we offer third-party delivery services will also result in incremental sales. We believe select price increases have not historically adversely impacted customer traffic; however, we expect that there is a price level at which point customer traffic would be adversely affected. It is

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also possible that these changes could cause our sales volume to decrease. If we are not able to increase our sales at existing locations for any reason, our profitability and results of operations could be adversely affected.

One key element of our growth strategy is opening new restaurants and F&B hospitality services locations. We believe there are opportunities to open approximately seven to twelve new locations (restaurants and/or hospitality services operations) annually, with a focus on operating under licensing or management agreements (referred to as our “capital light strategy”). However, there can be no assurance that we will be able to open new restaurants or F&B hospitality services locations at the rate that we currently expect.

Our success in growing our business through the opening of new restaurants and F&B hospitality locations is dependent upon a number of factors, including our ability to: cost-effectively operate in markets that we are not familiar with, find suitable license and food and beverage partners, find suitable locations, reach acceptable lease terms, have adequate capital, find acceptable contractors, obtain licenses and permits, manage construction and development costs, recruit and train appropriate staff and properly manage the new venue. Unanticipated costs or delays in the development or construction of future restaurants could impede our ability to open new restaurants timely and cost-effectively, which could have a negative impact on our business, financial condition and results of operations. Specifically, some of the factors that adversely affect the cost and time associated with the development and construction of our restaurants include: labor disputes, shortages of materials or skilled labor, adverse weather conditions, unforeseen engineering problems, environmental problems, construction or zoning problems, local government regulations, modifications in design, and other unanticipated increases in cost.

Additionally, our venues are expensive to build, and we, our managed unit partners and our licensees incur significant capital and pre-opening expense. Our business and profitability may be adversely affected if the “ramp-up” period for a new location lasts longer than we expect or if the profitability of a new location dips after our initial “ramp-up” marketing program ends. New locations may not be profitable, and their sales performance may not follow historical or projected patterns. If we are forced to close any new operations, we will incur losses for certain buildout costs and pre-opening expenses incurred in connection with opening such operations.

We face a variety of risks associated with doing business with licensees.

We rely in part on our licensees and the manner in which they operate the STK restaurants to develop and promote our business. As of December 31, 2021, we had six licensed STK restaurants. In 2021, one of our licensees permanently closed an STK restaurant in Dubai as a result of COVID-19 and the decision to consolidate operations into the remaining STK restaurant in Dubai.

Our licensees are required to operate our restaurants according to the specific guidelines we set forth, which are essential to maintaining brand integrity and reputation, as well as in accordance with all laws and regulations applicable to us, and all laws and regulations applicable in the countries in which we operate. We provide training to these licensees to integrate them into our operating strategy and culture. However, since we do not have day-to-day control over all of these restaurants, we cannot give assurance that there will not be differences in product and service quality, operations, labor law enforcement, marketing or profitability or that there will be adherence to all of our guidelines and applicable laws. In addition, if our licensees fail to make investments necessary to maintain or improve the restaurants, guest preference for our brand could suffer. Our licensees are subject to business risks similar to those we face such as competition; customer acceptance; fluctuations in the cost, quality and availability of raw ingredients; increased labor costs; difficulty obtaining acceptable site leases; and difficulty obtaining proper financing. Failure of licensed restaurants to operate effectively could adversely affect our cash flows from those operations or have a negative impact on our reputation and our business.

The success of our licensed operations depends on our ability to establish and maintain good relationships with our licensees. The value of our brand and the rapport that we maintain with our licensees are important factors for potential licensees considering doing business with us. If we are unable to maintain good relationships with licensees, we may be unable to renew license agreements and

opportunities for developing new relationships with additional licensees may be adversely affected. This, in turn, could have an adverse effect on our results of operations. Although we have developed criteria to evaluate and screen prospective developers and licensees, we cannot be certain that the developers and licensees we select will have the business acumen necessary to open and operate successful licensed restaurants in their licensing areas, or that the licensees, once selected, will be able to negotiate acceptable lease or purchase terms for prospective sites or to obtain the necessary approvals for such sites, or that financing will be available to construct and open new venues.

[Table of Contents](#)***To the extent that our operations are located in hotels, casinos or similar destinations, our results of operations and growth are subject to the risks facing such venues.***

Our ability to grow and realize profits from our operations in hotels, casinos and other branded or destination venues are dependent on the success of such venues' business. We are subject to the actions and business decisions of our clients and third parties, in which we may have little or no influence in the overall operation of the applicable venue and such actions and decisions could have an adverse effect on our business and operations.

Labor and Supplies***Changes to wage, immigration and labor laws could increase our costs substantially.***

Under the minimum wage laws in most domestic jurisdictions, we are permitted to pay certain hourly employees a wage that is less than the base minimum wage because these employees receive tips as a substantial part of their income. As of December 31, 2021, approximately 32% of our employees earn this lower minimum wage in their respective locations since tips constitute a substantial part of their income. If cities, states or the federal government change their laws to require all employees to be paid the general employee minimum base wage regardless of supplemental tip income, our labor costs would increase substantially. Certain states in which we operate restaurants also have adopted or are considering adopting minimum wage statutes that exceed the federal minimum wage. We may be unable or unwilling to increase our prices to pass these increased labor costs on to our customers, in which case, our business and results of operations could be adversely affected.

A restaurant company employer may claim a credit against the company's federal income taxes for FICA taxes paid on certain tip wages (the "FICA tip credit"). We utilize the federal FICA tip credit to reduce our federal income tax expense. Changes in the tax law could reduce or eliminate the FICA tip credit, which could negatively impact our results of operations and cash flows in future periods.

Further, the U.S. Congress and Department of Homeland Security may implement changes to federal immigration laws, regulations or enforcement programs. Some of these changes may increase our obligations for compliance and oversight, which could subject us to additional costs and make our hiring process more cumbersome or reduce the availability of potential employees. Even if we operate our restaurants in strict compliance with U.S. Immigration and Customs Enforcement and state requirements, some of our employees may not meet federal work eligibility or residency requirements, which could lead to a disruption in our work force. Although we require all of our new employees to provide us with the government-specified documentation evidencing their employment eligibility, some of our employees may, without our knowledge, be unauthorized workers. Unauthorized workers are subject to seizure and deportation and may subject us to fines, penalties or loss of our business license in certain jurisdictions. Additionally, a government audit could result in a disruption to our workforce or adverse publicity that could negatively impact our brand and our use of E-Verify and/or potential for receipt of letters from the Social Security Administration requesting information (commonly referred to as no-match letters) could make it more difficult to recruit and/or retain qualified employees.

Potential changes in labor laws or increased union recruiting activities could result in portions of our workforce being subjected to greater organized labor influence. Although we do not currently have any unionized employees, labor legislation could have an adverse effect on our business and financial results by imposing requirements that could potentially increase our costs, reduce our flexibility and impact our ability to service our customers. In addition, a labor dispute involving some or all of our employees could harm our reputation, disrupt our operations and reduce our revenues and resolution of disputes may increase our costs.

The loss of key personnel or difficulties recruiting and retaining qualified personnel could adversely affect our business and financial results.

Our success depends substantially on the contributions and abilities of key executives and other employees, and on our ability to recruit and retain high-quality employees to work in and manage our

restaurants. We must continue to recruit, retain and motivate management and other employees sufficient to maintain our current business and support our projected growth. A loss of key employees or a significant shortage of high-quality restaurant employees to maintain our current business and support our projected growth could adversely affect our business and financial results.

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We have been able to fully staff our restaurants in this challenging labor environment. There is no assurance that we will be able to continue to effectively manage our employee base and avoid a labor shortage.

We occupy most of our restaurants and some of our food and beverage hospitality services locations under long-term non-cancelable leases under which we may remain obligated to perform even if we close those operations, and we may be unable to renew leases at the end of their terms.

Most of our restaurants and some of our food and beverage hospitality operations are located in premises that we lease. Many of our current leases are non-cancelable and typically have terms ranging from 10 to 15 years with renewal options for terms ranging from 1 to 5 years. We believe that future leases that we enter into will be on substantially similar terms. Fixed payments and/or minimum percentage rent payments under our operating leases and management agreements account for a significant portion of our operating expenses. This may increase our vulnerability to general adverse economic and industry conditions, limit our ability to obtain additional financing, and limit our flexibility in planning for or reacting to changes in our business.

We primarily depend on cash flow from operations to pay our obligations and to fulfill our other cash needs. If our business does not generate sufficient cash flow from operating activities and sufficient funds are not otherwise available to us from borrowings under our credit facility or other sources, we may not be able to meet our operating lease and management agreement obligations, grow our business, respond to competitive challenges or fund our other liquidity and capital needs, which could adversely affect our business and results of operations.

If we were to close or fail to open a restaurant or other venue at a location we lease, we would generally remain committed to perform our obligations under the applicable lease, which could include, among other things, payment of the base rent for the balance of the lease term. Our obligation to continue making rental payments and fulfilling other lease obligations in respect of leases for closed or unopened restaurants could have a material adverse effect on our business and results of operations. Alternatively, at the end of the lease term and any renewal period for a restaurant, we may be unable to renew the lease without substantial additional cost, if at all. If we cannot renew such a lease we may be forced to close or relocate a restaurant, which could subject us to construction and other costs and risks.

Additionally, negative effects on our existing and potential landlords due to the inaccessibility of credit and other unfavorable economic factors may adversely affect our business and results of operations. If our landlords are unable to obtain financing or remain in good standing under their existing financing arrangements, they may be unable to provide construction contributions or satisfy other lease covenants to us. If any landlord files for bankruptcy protection, the landlord may be able to reject our lease in the bankruptcy proceedings. While we would under some circumstances have the option to retain our rights under the lease, we could not compel the landlord to perform any of its obligations and would be left with damages (which are subject to collectability risk) as our sole recourse. Our development of new locations may also be adversely affected by the negative financial situations of potential developers, landlords and host sites. Such parties may delay or cancel development projects or renovations of existing projects due to the instability in the credit markets and economic uncertainty. This could reduce the number of high-quality locations available that we would consider for our new operations or cause the quality of the sites in which the restaurants and food and beverage hospitality services operations are located to deteriorate. Any of these developments could have an adverse effect on our existing businesses or cause us to curtail new projects.

We depend upon frequent deliveries of food, alcohol and other supplies, which subjects us to the possible risks of shortages, interruptions and price fluctuations.

Our ability to maintain consistent quality throughout our locations depends in part upon our ability to acquire fresh, quality products, including beef, seafood, produce and related items, from reliable sources in accordance with our specifications. We currently purchase our food products from various suppliers. We have elected to purchase our beef from a limited number of suppliers. If there were any shortages, interruptions or significant price fluctuations in beef or seafood or if our suppliers were unable to perform

adequately or fail to distribute products or supplies to our restaurants, or terminate or refuse to renew any contract with us, this could cause a short-term increase of our costs or cause us to remove certain items from our menu, increase the price of certain offerings or temporarily close a location, which could adversely affect our business and results of operations.

In addition, we purchase beer, wine and spirits from distributors who own the exclusive rights to sell such alcoholic beverage products in the geographic areas in which our locations reside. Our continued ability to purchase certain brands of alcoholic beverages depends upon maintaining our relationships with those distributors, of which there can be no

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assurance. If any of our alcohol beverage distributors cease to supply us, we may be forced to offer brands of alcoholic beverage which have less consumer appeal or that do not match our brand image, which could adversely affect our business and results of operations.

Increases in commodity prices would adversely affect our results of operations.

Our profitability depends in part on our ability to anticipate and react to changes in commodity costs, which have a substantial effect on our total costs. The purchase of beef represents approximately 22% of our food and beverage costs. The market for beef is subject to extreme price fluctuations due to seasonal shifts, climate conditions, the price of feed, industry demand, energy demand and other factors. Our ability to forecast and manage our commodities could significantly affect our gross margins. Energy prices can also affect our operating results, because increased energy prices may cause increased transportation costs for beef and other commodities and supplies, and increased costs for the utilities required to run each location. Historically we have passed increased commodity and other costs on to our customers by increasing the prices of our menu items. While we believe these price increases have historically not affected customer traffic, there can be no assurance that additional price increases would not affect future customer traffic. If prices increase in the future and we are unable to anticipate or mitigate these increases, or if there are shortages for beef, our business and results of operations would be adversely affected.

Litigation and Brand Risk

We face the risk of adverse publicity in connection with our operations, including as a result of increased social media usage.

The quality of our food and our facilities are two of our competitive strengths. Therefore, adverse publicity, whether accurate or not, relating to food quality, public health concerns, illness, safety, injury or government or industry findings concerning our venues or those operated by others could negatively impact us. Any shifts in consumer preferences away from the kinds of food we offer, particularly beef, whether because of dietary or health concerns or otherwise, would make our locations less appealing and could reduce customer traffic and/or impose practical limits on pricing.

The use of social media platforms allows individuals to access a broad audience of consumers and other interested persons. Consumers value readily available information concerning goods and services that they have or plan to purchase and may act on such information without further investigation or authentication. Many social media platforms immediately publish content from their subscribers and participants, often without filters or checks on the accuracy of the content posted. Information concerning our company may be posted on such platforms at any time. If customers perceive or experience a reduction in our food quality, service or ambiance or in any way believe we have failed to deliver a consistently positive experience, this information can be immediately and broadly disseminated. This information may be adverse to our interests or may be inaccurate, each of which may harm our performance, prospects or business.

We face the risk of litigation in connection with our operations.

We are, from time to time, the subject of complaints or litigation from our consumers alleging, among other things, illness, injury or other food quality, health or operational concerns. The inappropriate use of social media by our employees or customers could lead to litigation and result in negative publicity that could damage our reputation. In addition, third party and employee claims against us based on, among other things, alleged discrimination, harassment or wrongful termination, or labor code violations may divert financial and management resources that would otherwise be used to benefit our future performance. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations. In addition, they may generate negative publicity, which could reduce customer traffic and sales. Although we maintain what we believe to be adequate levels of insurance commensurate with the nature and extent of our operations, insurance may not be available at all or in sufficient amounts to cover any liabilities with respect to these matters. A significant increase in the number of these claims or in the number of such claims that are successful could materially adversely affect our brand, financial condition or operating results. Like most employee

practices liability insurance policies, our policy does not provide protection against hour and wage claims, and therefore litigation in the area could adversely impact our financial condition.

[Table of Contents](#)***We may not be able to protect our brands, trademarks, service marks or other proprietary rights.***

We have registered, or have applications pending to register, the trademarks STK, Kona Grill and Konavore with the United States Patent and Trademark Office and in certain foreign countries in connection with restaurant services. Our brands, which include our trademarks, service marks and other intellectual property and proprietary rights, are important to our success and our competitive position. In that regard, we believe that our trade names, trademarks and service marks are valuable assets that are critical to our success. Accordingly, we devote substantial resources to the establishment and protection of our brands. However, the actions we take may be inadequate to prevent imitation of our products and concepts by others, to prevent various challenges to our registrations or applications or denials of applications for the registration of trademarks, service marks and proprietary rights in the U.S. or other countries, or to prevent others from claiming violations of their trademarks and proprietary marks. In addition, others may assert rights in our trademarks, service marks and other proprietary rights or may assert that we are infringing rights they have in their trademarks, service marks, patents or other proprietary rights. Any such disputes could force us to incur costs related to enforcing our rights. In addition, the use of trade names, trademarks or service marks similar to ours in some markets may keep us from entering those markets.

Each of our intellectual property marks is pledged as collateral securing our credit and guaranty agreement with Goldman Sachs Bank USA ("Goldman Sachs"). Default under these agreements could enable Goldman Sachs to sell (at auction or otherwise) our trademarks, which would have a material adverse effect on our ability to continue our business.

Other Risks***Our operations may be negatively impacted by seasonality, adverse weather conditions, natural disasters or acts of terror.***

Our business is subject to seasonal fluctuations, adverse weather conditions and natural disasters that may at times affect the regions in which our restaurants and F&B hospitality services operations are located, regions that supply or produce food products for our restaurants, or locations of our distribution network. As a result of the seasonality of our business due to weather, holiday events and other factors, our quarterly results for any one quarter or fiscal year may not be indicative of results to be expected for any other quarter or for any year.

In addition, if adverse weather conditions or natural disasters such as fires and hurricanes affect our restaurants, we could experience closures, repair and restoration costs, food spoilage, and other significant reopening costs, any of which would adversely affect our business. We could also experience shortages or delayed shipments at our restaurants if adverse weather or natural disasters affect our distribution network, which could adversely affect our restaurants and our business as a whole. Additionally, during periods of extreme temperatures (either hot or cold) or precipitation, we may experience a reduction in customer traffic, which could adversely affect our restaurants and our business as a whole. Weather conditions are impossible to predict as is the negative impact on our business that such conditions might cause. Catastrophic weather conditions are likely to affect the supply of and costs for food products. If we do not anticipate or react to changing food costs by adjusting our purchasing practices or menu prices, our operating margins would likely deteriorate.

Terrorism, including cyber-terrorism or efforts to tamper with food supplies, could have an adverse impact on our brand and results of operations.

Security breaches, loss of data and other disruptions could compromise sensitive information related to our business, prevent us from accessing critical information or expose us to liability, which could adversely affect our business and our reputation

We utilize information technology systems and networks to process, transmit and store electronic information in connection with our business activities. As the use of digital technologies has increased, cyber incidents, including deliberate attacks and attempts to gain unauthorized access to computer systems

and networks, have increased in frequency and sophistication. These threats pose a risk to the security of our systems and networks and the confidentiality, availability and integrity of our data, all of which are vital to our operations and business strategy. There can be no assurance that we will be successful in preventing cyber-attacks or successfully mitigating their effects.

We estimate that approximately 80% of our sales are by credit or debit cards. Other restaurants and retailers have experienced security breaches in which credit and debit card information has been stolen. We may in the future become

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subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and we may also be subject to lawsuits or other proceedings relating to these types of incidents. Further, in 2015, the major credit card networks shifted the liability associated with EMV (Europay/Mastercard/Visa) chip card technology to the merchants. With this liability shift, any restaurant or merchant that is not using an approved chip-and-pin point-of-sale device would be liable for counterfeit or fraudulent charges.

Despite the implementation of security measures (such as the employment of internal resources and external consultants to conduct auditing and testing for weaknesses in our informational technology environment), our internal computer systems and those of our third-party contractors and consultants are vulnerable to damage or disruption from hacking, computer viruses, software bugs, unauthorized access or disclosure, natural disasters, terrorism, war, and telecommunication, equipment and electrical failures. There can be no assurance that we will promptly detect any such disruption or security breach, if at all. Unauthorized access, loss or dissemination could disrupt our operations, our ability to process and prepare company financial information, and manage various general and administrative aspects of our business. To the extent that any such disruption or security breach results in a loss of or damage to our data or applications, or inappropriate disclosure or theft of confidential, proprietary or personal information, we could incur liability, suffer reputational damage or poor financial performance or become the subject of regulatory actions by state, federal or non-US authorities, any of which could adversely affect our business.

We are subject to numerous and changing U.S. federal and foreign government regulations. Failure to comply with or substantial changes in government regulations could negatively affect our sales, increase our costs or result in fines or other penalties against us.

Each of our venues is subject to licensing and regulation by the health, sanitation, safety, labor, building environmental (including disposal, pollution, and the presence of hazardous substances) and fire agencies of the respective states, counties, cities, and municipalities in which it is located, as well as under federal law. These regulations govern the preparation and sale of food, the sale of alcoholic beverages, the sale and use of tobacco, zoning and building codes, land use and employee, health, sanitation and safety matters. Alcoholic beverage control regulations govern various aspects of our locations' daily operations, including the minimum age of patrons and employees, hours of operation, advertising, wholesale purchasing and inventory control, handling and storage. Typically, our locations' licenses to sell alcoholic beverages must be renewed annually and may be suspended or revoked at any time for cause. A failure to comply with one or more regulations could result in the imposition of sanctions, including the closing of venues for an indeterminate period of time, or third-party litigation, any of which could have a material adverse effect on us and our results of operations.

Government regulation can also affect customer traffic at our locations. A number of states, counties and cities have enacted menu labeling laws requiring multi-unit restaurant operators to disclose certain nutritional information. For example, the Affordable Care Act establishes a uniform, federal requirement for restaurant chains with 20 or more locations operating under the same trade name and offering substantially the same menus to post nutritional information on their menus, including the total number of calories. The law also requires such restaurants to provide to consumers, upon request, a written summary of detailed nutritional information, including total calories and calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein in each serving size or other unit of measure, for each standard menu item. The Food and Drug Administration is also permitted to require additional nutrient disclosures, such as trans-fat content. Our compliance with the Affordable Care Act or other similar laws to which we may become subject could reduce demand for our menu offerings, reduce customer traffic and/or reduce average revenue per customer, which would have an adverse effect on our revenue. Any reduction in customer traffic related to these or other government regulations could affect revenues and adversely affect our business and results of operations.

Our foreign operations are subject to all of the same risks as our domestic restaurants and food and beverage hospitality services operations, and additional risks that include, among others, international economic and political conditions and the possibility of instability and unrest, differing cultures and

consumer preferences, diverse government regulations and tax systems, the ability to source fresh ingredients and other commodities in a cost-effective manner and the availability of experienced management.

We are subject to governmental regulation in the domestic and international jurisdictions where we operate, including antitrust and tax requirements, anti-boycott regulations, import/export/customs regulations and other international trade regulations, the USA PATRIOT Act and the Foreign Corrupt Practices Act. Any new regulatory or

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trade initiatives could impact our operations in certain countries. Failure to comply with any such legal requirements could subject us to monetary liabilities and other sanctions, which could harm our business, results of operations and financial condition.

We may not be able to comply with certain debt covenants on our debt.

Our credit agreement requires us to achieve specified financial and operating results and maintain compliance with specified financial ratios. Our ability to comply with these provisions may be affected by events beyond our control, including the effects on our business of COVID-19 and related government actions and consumer behavior. If we were to default under our covenants and such default were not cured or waived, our indebtedness could become immediately due and payable. If we breach these covenants and fail to comply with the credit agreement, and the lenders accelerate the amounts outstanding, our business and results of operations would be adversely affected.

In addition, our ability to borrow under our revolving credit facility depends on several factors, including compliance with specified leverage incurrence ratios. If we are not able to borrow under our revolving credit facility to bridge losses we incur while our operations are affected by the COVID-19 pandemic, and if alternative financing is not available to us on acceptable terms or at all, our business and results of operations would be adversely affected.

Failure of our internal controls over financial reporting could harm our business and financial results.

Our management is responsible for establishing and maintaining effective internal control over financial reporting. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with accounting principles generally accepted in the United States. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that we would prevent or detect a misstatement of our financial statements or fraud. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. A significant financial reporting failure or material weakness in internal control over financial reporting could cause a loss of investor confidence and decline in the market price of our stock.

We cannot be certain that we will be able to maintain adequate controls over our financial processes and reporting. Refer to Part II —Item 9A, “Controls and Procedures” of this Annual Report on Form 10-K for management’s assessment as of December 31, 2021. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. A significant financial reporting failure or material weakness in internal control over financial reporting could cause a loss of investor confidence and decline in the market price of our stock, and we could be subject to sanctions or investigation by regulatory authorities, such as the SEC or Nasdaq.

Insiders have substantial control over us, and they could delay or prevent a change in our corporate control even if our other stockholders wanted it to occur.

Our executive officers, directors, and principal stockholders hold a significant percentage of our outstanding common stock. Accordingly, these stockholders are able to control or have a significant impact on all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This could delay or prevent an outside party from acquiring or merging with us even if our other stockholders affirmed such action. In addition, such concentrated control may adversely affect the price of our common stock and sales by our insiders or affiliates, along with any other market transactions, could affect the market price of our common stock.

Provisions in our amended and restated certificate of incorporation, our bylaws and Delaware law may inhibit a takeover of us, which could limit the price investors might be willing to pay in the future for our common stock and could entrench management.

Our amended and restated certificate of incorporation and our bylaws contain provisions that may discourage unsolicited takeover proposals that stockholders may consider to be in their best interests. Our Board of Directors (the “Board”) is divided into three classes, each of which generally serve for a term of three years with only one class of directors being elected each year. As a result, at a given annual meeting, only a minority of the Board may be considered for election. Since our staggered Board may prevent our stockholders from replacing a majority of our Board at any given annual meeting, it may entrench management and discourage unsolicited stockholder proposals that may be in the best interests of stockholders.

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Moreover, our Board has the ability to designate the terms of and issue new series of preferred stock without stockholder approval. Under the terms of our amended and restated certificate of incorporation, our Board may authorize and issue up to 10,000,000 shares of one or more series or class of preferred stock with rights superior to those of holders of common stock in terms of liquidation and dividend preference, voting and other rights. The issuance of preferred stock would reduce the relative rights of holders of common stock vis-à-vis the holders of preferred stock without the approval of the holders of common stock. In addition, to the extent that such preferred stock is convertible into shares of common stock, its issuance would result in a dilution of the percentage ownership of holders of common stock on a fully diluted basis. In addition, the issuance of a series of preferred stock could be used as a method of discouraging, delaying or preventing a change in control of our company.

We are also subject to the anti-takeover provisions under Delaware law, which could delay or prevent a change of control. Together, these provisions may make the removal of management more difficult and may discourage transactions that otherwise could involve a payment of a premium over prevailing market prices for our securities.

The price of our common stock could be subject to volatility related or unrelated to our operations.

The trading price of our common stock could fluctuate significantly due to a number of factors, including market perception of our ability to meet our growth projections and expectations, quarterly operating results of other companies in the same industry, trading value in our common stock, changes in general conditions in the economy and the financial markets or other developments affecting our business and the business of others in the industry. In addition, the stock market itself is subject to extreme price and volume fluctuations. This volatility has had a significant effect on the market price of securities issued by many companies for reasons related and unrelated to their operating performance and could have the same effect on our common stock.

Item 1B. Unresolved Staff Comments

None

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Item 2. Properties

We do not own any real property. Each of our “owned” restaurants operates in premises leased by its operating subsidiary. We do not have a direct ownership interest in restaurants we operate under a management agreement (“managed”) or license agreement (“licensed”).

Our STK locations are as follows:

Venue	Hotel/Casino/Special Venue	Location	Type of Interest
STK Atlanta	—	Atlanta, Georgia	Owned
STK Bellevue	—	Bellevue, Washington	Owned
STK Chicago	—	Chicago, Illinois	Owned
STK Denver	—	Denver, Colorado	Owned
STK Doha	The Ritz-Carlton	Doha, Qatar	Licensed
STK Downtown ⁽¹⁾	—	New York, New York	Owned ⁽²⁾
STK Dubai	Jumeirah Beach Residence	Dubai, United Arab Emirates	Licensed
STK Ibiza	Ibiza Corso Hotel & Spa	Illes Balears, Spain	Licensed
STK Las Vegas	The Cosmopolitan	Las Vegas, Nevada	Managed
STK London	ME London	London, England	Managed
STK Los Cabos	Los Cabos Airport	Cabo San Lucas, Mexico	Licensed
STK Mexico City	—	Mexico City, Mexico	Licensed
STK Miami Beach	—	Miami Beach, Florida	Owned
STK Midtown	—	New York, New York	Owned
STK Milan	ME Milan	Milan, Italy	Managed
STK Nashville	—	Nashville, Tennessee	Owned
STK Orlando ⁽¹⁾	Disney Springs	Orlando, Florida	Owned
STK San Diego ⁽¹⁾	Andaz Hotel	San Diego, California	Owned
STK San Juan	Condado Vanderbilt Hotel	San Juan, Puerto Rico	Licensed
STK Scottsdale	—	Scottsdale, Arizona	Managed
STK Toronto	—	Toronto, Canada	Managed
STK Westminster	The Westminster London	London, England	Managed
STK Westwood	W Hotel	Los Angeles, California	Owned

(1) Location includes an owned rooftop lounge, except for the STK Rooftop San Diego which is a licensed location.

(2) Ownership in location is 64.81%.

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Our Kona Grill locations are as follows:

Venue	Hotel/Casino/Special Venue	Location	Type of Interest
Kona Grill Alpharetta	—	Alpharetta, Georgia	Owned
Kona Grill Baltimore	—	Baltimore, Maryland	Owned
Kona Grill Boca Park	—	Las Vegas, Nevada	Owned
Kona Grill Boise	—	Meridian, Idaho	Owned
Kona Grill Carmel	—	Carmel, Indiana	Owned
Kona Grill Cincinnati	—	Cincinnati, Ohio	Owned
Kona Grill Dallas	—	Dallas, Texas	Owned
Kona Grill Denver	—	Denver, Colorado	Owned
Kona Grill Eden Prairie	—	Eden Prairie, Minnesota	Owned
Kona Grill El Paso	—	El Paso, Texas	Owned
Kona Grill Gilbert	—	Gilbert, Arizona	Owned
Kona Grill Huntsville	—	Huntsville, Alabama	Owned
Kona Grill Kansas City	—	Kansas City, Missouri	Owned
Kona Grill Minnetonka	—	Minnetonka, Minnesota	Owned
Kona Grill North Star	—	San Antonio, Texas	Owned
Kona Grill Oak Brook	—	Oak Brook, Illinois	Owned
Kona Grill Omaha	—	Omaha, Nebraska	Owned
Kona Grill Plano	—	Plano, Texas	Owned
Kona Grill San Antonio	—	San Antonio, Texas	Owned
Kona Grill Sarasota	—	Sarasota, Florida	Owned
Kona Grill Scottsdale	—	Scottsdale, Arizona	Owned
Kona Grill Tampa	—	Tampa, Florida	Owned
Kona Grill Troy	—	Troy, Michigan	Owned
Kona Grill Woodbridge	—	Iselin, New Jersey	Owned

Our ONE Hospitality brands and F&B services locations are as follows:

Venue	Hotel/Casino/Special Venue	Location	Type of Interest
ANGEL	Hotel Calimala	Florence, Italy	Managed
	The Westminster		
Bao Yum	London	London, England	Managed
F&B Services - Westminster	The Westminster		
London	London	London, England	Managed
F&B Services - Hippodrome	Hippodrome Casino	London, England	Managed
F&B Services - ME London	ME London	London, England	Managed
F&B Services - ME Milan	ME Milan	Milan, Italy	Managed
F&B Services - W Hotel	W Hotel	Los Angeles, California	Owned
Heliot	Hippodrome Casino	London, England	Managed
Hideout	W Hotel	Los Angeles, California	Owned
Marconi	ME London	London, England	Managed
Radio Rooftop Bar	ME London	London, England	Managed
Radio Rooftop Bar	ME Milan	Milan, Italy	Managed
Rivershore Bar & Grill	Best Western Plus	Oregon City, Oregon	Managed

In addition to the locations above, we lease office space for support offices in Denver, Colorado; New York, New York; Scottsdale, Arizona; and London, England.

[Table of Contents](#)**Item 3. Legal Proceedings**

We are subject to claims common to our industry and in the ordinary course of our business. Companies in our industry, including us, have been and are subject to class action lawsuits, primarily regarding compliance with labor laws and regulations. Defending lawsuits requires significant management attention and financial resources and the outcome of any litigation is inherently uncertain. We believe that accruals for these matters are adequately provided for in our consolidated financial statements. We may have to make payments from time to time to settle or resolve legal matters. We do not believe the ultimate resolutions of these matters will have a material adverse effect on our consolidated financial position and results of operations. However, the resolution of lawsuits is difficult to predict. A significant increase in the number of these claims, or one or more successful claims under which we incur greater liabilities than is currently anticipated, could materially and adversely affect our consolidated financial statements.

For information regarding litigation refer to Note 15. "Commitments and Contingencies" in our consolidated financial statements included in Item 8. "Financial Statements and Supplementary Data." For more information about the impact of legal proceedings in our business, see Item 1A. "Risk Factors".

Item 4. Mine Safety Disclosures

Not applicable

[Table of Contents](#)**PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities****Market Information**

Our common stock is traded on the NASDAQ Capital Market under the symbol "STKS". As of February 28, 2022, there were 85 holders of record of our common stock.

Dividends

We have not declared or paid any cash dividends on our common stock and do not intend to declare or pay any cash dividend in the foreseeable future. The payment of dividends, if any, is within the discretion of our Board of Directors and will depend on our earnings, our capital requirements, compliance with debt covenants, overall financial condition and such other factors as the Board of Directors may consider. As a Delaware corporation, we are also limited by Delaware law as to the payment of dividends. We currently intend to retain our earnings to finance our growth.

Issuer Purchases of Equity Securities

None

Recent Sales of Unregistered Securities

None

Item 6. [Reserved]

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Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following management's discussion and analysis of our consolidated financial condition and results of operations should be read in conjunction with the consolidated financial statements and related notes to those statements included elsewhere in this Annual Report on Form 10-K.

Overview

We currently own, operate, manage or license 60 venues including 23 STKs and 24 Kona Grills in major metropolitan cities in North America, Europe and the Middle East and 13 F&B venues in seven hotels and casinos in the United States and Europe. We intend to open thirteen new STK and F&B venues in 2021 and 2022, of which seven are currently open, and three to five Kona Grill locations in 2022. The seven venues that were opened or added in 2021 are below:

- Managed STK restaurant in Scottsdale, Arizona;
- Licensed STK restaurant within the Los Cabos International Airport in San Jose del Cabo, Mexico;
- Managed STK restaurant at The Westminster London hotel in London, United Kingdom;
- Owned STK restaurant in Bellevue, Washington;
- Managed Bao Yum restaurant and F&B hospitality services at The Westminster London hotel in London, United Kingdom; and
- Managed Rivershore Bar & Grill restaurant in Oregon City, Oregon.

There are currently two Company-owned STK restaurants (San Francisco, CA and Dallas, TX), one Company-owned Kona Grill restaurant (Riverton, UT) and one managed STK restaurant (Stratford, UK) under construction. We are in ongoing discussions for additional owned, managed and licensed venues both in the U.S. and international.

The table below reflects our venues by restaurant brand and geographic location:

	Venues			Total
	STK ⁽¹⁾	Kona Grill	ONE Hospitality ⁽²⁾	
Domestic				
Owned	11	24	2	37
Managed	2	—	1	3
Licensed	1	—	—	1
Total domestic	14	24	3	41
International				
Owned	—	—	—	—
Managed	4	—	10	14
Licensed	5	—	—	5
Total international	9	—	10	19
Total venues	23	24	13	60

(1) Locations with an STK and STK Rooftop are considered one venue location. This includes the STK Rooftop in San Diego, CA, which is a licensed location.

(2) Includes concepts under the Company's F&B hospitality management agreements and other venue brands such as ANGEL, Bao Yum, Heliot, Hideout, Marconi, Radio and Rivershore Bar & Grill. Effective January 1, 2022, our agreement with the Hippodrome Casino was amended and extended for five years whereby the Company changed from manager to consultant for the Heliot Steak House and F&B Hospitality services for the casino.

Overview of the Impact of COVID-19

The COVID-19 pandemic has significantly impacted, and will continue to adversely affect operations and financial results for the foreseeable future. In response to COVID-19, we have taken significant steps to adapt our business to increase sales while providing a safe environment for guests and employees. Currently, all restaurants are open for in-person dining. Our continuation of normal dining operations is subject to events beyond our control, including the effectiveness of governmental efforts to halt the spread of COVID-19.

We are in regular contact with our major suppliers and have not experienced any significant disruption in our supply chain. We have implemented programs to attract and retain both restaurant managers and hourly employees. We have increased cleaning protocols, including the creation of a role which is focused on sanitation in high-touch and high-

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traffic areas, implemented daily health and safety checklists, provided additional personal protective equipment and cleaning supplies and engaged third party vendors to perform electrostatic cleaning of our restaurants.

2021 Financial Highlights

Total revenue increased \$135.3 million, or 95.3% to \$277.2 million for 2021 compared to \$141.9 million for 2020. The increase was primarily attributable to strong sales as state and local governments eased seating capacity restrictions in the markets in which we operate combined with strong execution of our sales initiatives. Same store sales increased 92.8% in 2021 compared to 2020 as seating capacity restrictions limited in-person restaurant dining in the prior year. On a two-year basis, same-store sales increased 34.2% for 2021 compared to 2019; STK same store sales increased 45.1% on a two-year basis while Kona Grill same store sales increased 23.2% reflecting the execution of our sales initiatives.

Restaurant Operating Profit increased \$36.8 million, or 235.9% to \$52.4 million for 2021 compared to \$15.6 million in 2020. Restaurant Operating Profit as a percentage of owned restaurant net revenue was 19.8% in 2021 compared to 11.4% in 2020.

Operating income increased \$33.1 million to \$19.4 million for 2021 from a loss of \$13.7 million for 2020. The increase in operating income was primarily driven by strong sales and better Restaurant Operating Profit.

Net income attributable to The ONE Group Hospitality, Inc was \$31.3 million in 2021 compared to a loss of \$12.8 million in 2020. We recognized an \$18.5 million gain on CARES Act Loan Forgiveness in 2021, partly offset by a \$0.6 million loss on early debt extinguishment related to the partial paydown of our credit facility.

Our Growth Strategies and Outlook

Our growth model is primarily driven by the following:

Expansion of STK. We expect to continue to expand our operations domestically and internationally through a mix of owned, licensed and managed STK restaurants using a disciplined and targeted site selection process. We have identified over 75 additional major metropolitan areas across the globe where we expect we could grow our STK brand to 200 restaurants over the foreseeable future. We expect to open as many as five to six STKs annually, primarily through company-owned locations and management or licensing agreements, provided that we have sufficient interest from prospective licensees, acceptable locations and quality restaurant managers available to support that pace of growth.

In 2021, we opened an owned STK restaurant in Bellevue, Washington, two managed STK restaurants located in Scottsdale, Arizona and London, United Kingdom and one licensed STK restaurant located at the Los Cabos International Airport in San Jose del Cabo, Mexico. Additionally, we have under construction owned STK restaurants in Dallas, Texas and San Francisco, California and a managed STK restaurant in Stratford, United Kingdom.

Expansion of Kona Grill. We expect to expand our operations domestically using a disciplined and targeted site selection process. We believe we could grow the Kona Grill brand to 200 restaurants over the foreseeable future. We expect to open as many as three to five Kona Grills annually, primarily through company-owned locations, provided that we have acceptable locations and quality restaurant managers available to support that pace of growth.

Expansion through New F&B Hospitality Projects. We expect our F&B hospitality services business to be an important contributor of our growth and profitability, enabling us to generate management fee income with minimal capital expenditures. We believe we are well positioned to leverage the strength of our brands and the relationships we have developed with global hospitality providers to drive the continued growth of our F&B hospitality business. We continue to receive inbound inquiries regarding new opportunities globally, and we continue to work with existing hospitality clients to identify and develop

additional opportunities in their venues. We expect to enter into at least one to two new F&B hospitality agreements annually. In 2021, we opened Bao Yum, a new brand under ONE Hospitality, and commenced management of certain F&B hospitality management services at The Westminster London Hotel in London, United Kingdom. We also entered into a management agreement with Rivershore Bar & Grill in Oregon City, Oregon during 2021.

Increase Same Store Sales and Increase Our Operating Efficiency. In addition to expanding into new cities and hospitality venues, we intend to continue to increase revenue and profits in our existing operations through continued

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focus on high-quality, high-margin food and beverage menu items. We believe that our operating margins will improve through growth in same store sales (“SSS”), as defined below in Key Performance Indicators, and a reduction of store-level operating expenses.

Acquisitions. We will continue to evaluate potential acquisition opportunities. On October 4, 2019, we acquired substantially all of the assets of Kona Grill. We have integrated Kona Grill by leveraging our corporate infrastructure, our bar-business knowledge and unique Vibe Dining program, to elevate the brand experience and drive improved performance.

As our footprint increases, we expect to benefit by leveraging system-wide operating efficiencies and best practices through the management of our general and administrative expenses as a percentage of overall revenue.

Key Performance Indicators

We use the following key performance indicators in evaluating our restaurants and assessing our business:

Same Store Sales (“SSS”). SSS represents total food and beverage sales at domestic owned and managed restaurants opened for at least a full 18-month period, which removes the impact of new restaurant openings in comparing the operations of existing restaurants. For STK SSS, this measure includes total revenue from our owned and managed STK locations, excluding revenues from our owned STK restaurant located in the W Hotel in Los Angeles, California due to the impact of the F&B hospitality management agreement with the hotel. Revenues from locations where we do not directly control the event sales force are excluded from this measure. We have presented two-year comparable sales to illustrate how sales at our restaurant base before the COVID-19 pandemic compare to sales as COVID-19 restrictions have eased and we have begun to recover lost sales.

Our comparable restaurant base for STK SSS consisted of ten domestic restaurants for the year ended December 31, 2021. For Kona Grill SSS all 24 domestic restaurants are included in the comparable restaurant base. STK and Kona Grill SSS increased 131.9% and 57.7%, respectively, for 2021 compared to the prior year. On a two-year basis, STK SSS increased 45.1% while Kona Grill SSS increased 23.2%.

Number of Restaurant Openings. Number of restaurant openings reflects the number of restaurants opened during a particular fiscal period. For each restaurant opening, we incur pre-opening costs, which are defined below. Typically, new restaurants open with an initial start-up period of higher than normalized sales volumes (also referred to in the restaurant industry as the “honeymoon” period), which decrease to a steady level approximately 18 to 24 months after opening. However, operating costs during this initial period are also higher than normal, resulting in restaurant operating margins that are generally lower during the start-up period of operation and increase to a steady level approximately 18 to 24 months after opening. Some new restaurants may experience a “honeymoon” period that is either shorter or longer than this time frame.

In 2021, we opened four STK restaurants through a mix of owned, managed and licensed venues and commenced management of three venues under F&B hospitality service agreements.

Average Check Per Person. Average check is calculated by dividing total restaurant sales by total entrees sold for a specified period. Our management team uses this indicator to analyze trends in customers’ preferences, customer expenditures and the overall effectiveness of menu changes and price increases. For our comparable STK restaurants, our average check was \$114 for both 2021 and 2020. The average check was \$33 for Kona Grill restaurants for 2021 compared to \$32 for 2020.

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Average Comparable Restaurant Revenue. Average comparable restaurant revenue consists of the average sales of our comparable restaurants over a certain period of time. This measure is calculated by dividing total comparable restaurant sales in a given period by the total number of comparable restaurants in that period. This indicator assists management in measuring changes in customer traffic, pricing and development of our brand. Our average comparable STK restaurant revenues were \$14.8 million, \$6.9 million and \$11.1 million for the years ended December 31, 2021, 2020 and 2019 respectively. Our average comparable Kona Grill restaurant revenues were \$5.1 million, \$3.3 million and \$4.2 million for the years ended December 31, 2021, 2020 and 2019, respectively.

Key Financial Terms and Metrics

We evaluate our business using a variety of key financial measures:

Segment reporting

Our reportable operating segments are as follows:

- *STK.* The STK segment consists of the results of operations from STK restaurant locations, competing in the full-service dining industry, as well as management, license and incentive fee revenue generated from the STK brand and operations of STK restaurant locations.
- *Kona Grill.* The Kona Grill segment includes the results of operations of Kona Grill restaurant locations.
- *ONE Hospitality.* The ONE Hospitality segment is comprised of the management, license and incentive fee revenue and results of operations generated from our other brands and venue concepts, which include ANGEL, Bao Yum, Heliot, Hideout, Marconi, Radio and Rivershore Bar & Grill. Additionally, this segment includes the results of operations generated from F&B hospitality management agreements with hotels, casinos and other high-end locations.
- *Corporate.* The Corporate segment consists of the following: general and administrative costs, stock-based compensation, lease termination expenses, transaction costs, COVID-19 related expenses and other income and expenses. This segment also includes STK Meat Market, an e-commerce platform that offers signature steak cuts nationwide, our major off-site events group, which supports all brands and venue concepts, and revenue generated from gift card programs.

See Note 13 to our consolidated financial statements for further information on our segment reporting.

Revenues

Owned restaurant net revenues. Owned restaurant net revenues consist of food and beverage sales by owned restaurants net of any discounts associated with each sale and of any ancillary F&B hospitality services at owned locations. Additionally, revenues from offsite banquets, our major off-site events group, and our gift card programs are included in owned restaurant net revenues. For the year ended December 31, 2021, beverage sales comprised 25% of food and beverage sales, and food sales comprised the remaining 75%. This indicator assists management in understanding the trends in gross margins of the restaurants.

Our primary owned restaurant brands are STK and Kona Grill. We specifically look at comparable sales from both owned and managed restaurants to understand customer count trends and changes in average check as it relates to our primary restaurant brands.

Management, license and incentive fee revenue. Management, license and incentive fee revenues include fees received pursuant to management and license agreements. Management agreements typically call for a management fee based on a percentage of revenue, a monthly marketing fee based on a percentage of revenues and an incentive fee based on a managed venue's net profits. Similarly, royalties from the licensee in license agreements are generally based on a percentage of the licensed restaurant's revenue. These management, license and incentive fees are recognized as revenue in the period the restaurant's sales occur. Initial licensing fees and upfront fees related to management and license agreements are recognized as revenue on a straight-line basis over the term of the agreement.

We evaluate the performance of our managed and licensed properties based on sales growth, a key driver for management and license fees, and on improvements in operating profitability margins, which, combined with sales, drives incentive fee growth.

[Table of Contents](#)*Cost and expenses*

Owned restaurant cost of sales. Owned restaurant cost of sales includes all owned restaurant food and beverage expenditures. We measure cost of goods as a percentage of owned restaurant net revenues. Owned restaurant cost of sales are generally influenced by the cost of food and beverage items, menu mix, discounting activity and restaurant level controls. See “Item 1A. Risk Factors — Increases in commodity prices would adversely affect our results of operations.”

Owned restaurant operating expenses. We measure owned restaurant operating expenses as a percentage of owned restaurant net revenues. Owned restaurant operating expenses include the following:

- *Payroll and related expenses.* Payroll and related expenses consist of manager salaries, hourly staff payroll and other payroll-related items, including taxes, insurance and fringe benefits. We measure our labor cost efficiency by tracking total labor costs as a percentage of owned restaurant net revenues.
- *Occupancy.* Occupancy comprises all occupancy costs, consisting of both fixed and variable rent, deferred rent expense, which is a non-cash adjustment included in our Adjusted EBITDA calculation as defined below, common area maintenance charges, real estate property taxes, utilities and other related occupancy costs and is measured by considering both the fixed and variable components of certain occupancy expenses.
- *Direct operating expenses.* Direct operating expenses consist of supplies, such as paper, smallwares, china, silverware and glassware, cleaning supplies, credit card fees and linen costs. Direct operating expenses are typically measured as a variable expense based on owned restaurant net revenues.
- *Outside services.* Outside services include music and entertainment costs, such as the use of live DJ's, promoter costs, security services, outside cleaning services and commissions paid to event staff for banquet sales and delivery service fees.
- *Repairs and maintenance.* Repairs and maintenance consist of general repair work to maintain our facilities, and computer maintenance contracts. We expect these costs to increase at each facility as they get older.
- *Marketing.* Marketing includes the cost of promoting our brands and, at times, can include the cost of goods used specifically for complementary purposes. Marketing costs will typically be higher during the first 18 months of a restaurant's operations.

General and administrative. General and administrative expenses are comprised of all corporate overhead expenses, including payroll and related benefits, stock-based compensation expense, professional fees, such as legal and accounting fees, insurance and travel expenses. Certain centrally managed general and administrative expenses are allocated specifically to restaurant locations and are reflected in owned restaurant operating expenses and include shared services such as reservations, events and marketing. We expect general and administrative expenses to be leveraged as we grow, become more efficient, and continue to focus on best practices and cost savings measures.

Depreciation and amortization. Depreciation and amortization expense consists principally of charges related to the depreciation of fixed assets including leasehold improvements, equipment and furniture and fixtures and the amortization of the intangible assets related to the Kona Grill tradename.

Pre-opening expenses. Pre-opening expenses consist of costs incurred prior to opening an owned or managed STK restaurant at either a leased or F&B location. Pre-opening expenses are comprised principally of manager salaries and relocation costs, employee payroll, training costs for new employees and lease costs incurred prior to opening. Pre-opening expenses have varied from location to location depending on a number of factors, including the proximity of our existing restaurants; the amount of rent expensed during the construction and in-restaurant training periods; the size and physical layout of each location; the number of management and hourly employees required to operate each restaurant; the relative difficulty of the restaurant staffing process; the cost of travel and lodging for different metropolitan areas; the timing of the restaurant opening; and the extent of unexpected delays, if any, in obtaining necessary licenses and permits to open the restaurant.

Other Items

EBITDA, Adjusted EBITDA and Restaurant Operating Profit. We present EBITDA, Adjusted EBITDA and Restaurant Operating Profit to supplement other measures of financial performance. EBITDA, Adjusted EBITDA and Restaurant Operating Profit are not required by, or presented in accordance with, accounting principles generally

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accepted in the United States of America (“GAAP”). We define EBITDA as net income before interest expense, provision for income taxes and depreciation and amortization. We define Adjusted EBITDA as EBITDA before non-cash rent expense, pre-opening expenses, lease termination expenses, stock-based compensation, COVID-19 related expenses and non-recurring gains and losses. Not all of the items defining Adjusted EBITDA occur in each reporting period but have been included in our definitions of these terms based on our historical activity. We define Restaurant Operating Profit as owned restaurant net revenue minus owned restaurant cost of sales and owned restaurant operating expenses.

We believe that EBITDA, Adjusted EBITDA and Restaurant Operating Profit are appropriate measures of our operating performance because they eliminate non-cash or non-recurring expenses that do not reflect our underlying business performance. We believe Restaurant Operating Profit is an important component of financial results because: (i) it is a widely used metric within the restaurant industry to evaluate restaurant-level productivity, efficiency, and performance, and (ii) we use Restaurant Operating Profit as a key metric to evaluate our restaurant financial performance compared to our competitors. We use these metrics to facilitate a comparison of our operating performance on a consistent basis from period to period, to analyze the factors and trends affecting our business and to evaluate the performance of our restaurants. Adjusted EBITDA has limitations as an analytical tool and our calculation of Adjusted EBITDA may not be comparable to that reported by other companies; accordingly, you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Adjusted EBITDA is a key measure used by management. Additionally, Adjusted EBITDA and Restaurant Operating Profit are frequently used by analysts, investors and other interested parties to evaluate companies in our industry. We use Adjusted EBITDA and Restaurant Operating Profit, alongside other GAAP measures such as net income, to measure profitability, as a key profitability target in our budgets, and to compare our performance against that of peer companies despite possible differences in calculation.

Please refer to the table on page 30 for our reconciliation of net income to EBITDA and Adjusted EBITDA and for a reconciliation of operating income (loss) to Restaurant Operating Profit.

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Results of Operations

The following table sets forth certain statements of operations data for the periods indicated (in thousands):

	For the year ended December 31,	
	2021	2020
Revenues:		
Owned restaurant net revenue	\$ 264,404	\$ 136,618
Management, license and incentive fee revenue	12,774	5,325
Total revenues	277,178	141,943
Cost and expenses:		
Owned operating expenses:		
Owned restaurant cost of sales	67,468	34,024
Owned restaurant operating expenses	144,529	87,042
Total owned operating expenses	211,997	121,066
General and administrative (including stock-based compensation of \$3,618 and \$1,773 for the years ended December 31, 2021 and 2020, respectively)	25,573	13,922
Depreciation and amortization	10,790	10,114
COVID-19 related expenses	5,821	5,492
Transaction costs	160	1,109
Lease termination expenses	1,912	3,315
Agreement restructuring expenses	503	452
Pre-opening expenses	1,037	178
Other income, net	—	(11)
Total costs and expenses	257,793	155,637
Operating income (loss)	19,385	(13,694)
Other (income) expenses, net:		
Interest expense, net of interest income	3,780	5,329
Loss on early debt extinguishment	600	—
Gain on CARES Act Loan Forgiveness	(18,529)	—
Total other (income) expenses, net	(14,149)	5,329
Income (loss) before provision (benefit) for income taxes	33,534	(19,023)
Provision (benefit) for income taxes	1,586	(5,400)
Net income (loss)	31,948	(13,623)
Less: net income (loss) attributable to noncontrolling interest	600	(798)
Net income (loss) attributable to The ONE Group Hospitality, Inc.	\$ 31,348	\$ (12,825)

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The following table sets forth certain statements of operations data as a percentage of total revenues for the periods indicated. Certain percentage amounts may not sum to total due to rounding.

	For the year ended December 31,	
	2021	2020
Revenues:		
Owned restaurant net revenue	95.4 %	96.2 %
Management, license and incentive fee revenue	4.6 %	3.8 %
Total revenues	100.0 %	100.0 %
Cost and expenses:		
Owned operating expenses:		
Owned restaurant cost of sales ⁽¹⁾	25.5 %	24.9 %
Owned restaurant operating expenses ⁽¹⁾	54.7 %	63.7 %
Total owned operating expenses ⁽¹⁾	80.2 %	88.6 %
General and administrative (including stock-based compensation of 1.3% and 1.2% for the years ended December 31, 2021 and 2020, respectively)	9.2 %	9.8 %
Depreciation and amortization	3.9 %	7.1 %
COVID-19 related expenses	2.1 %	3.9 %
Transaction costs	0.1 %	0.8 %
Lease termination expenses	0.7 %	2.3 %
Agreement restructuring expenses	0.2 %	0.3 %
Pre-opening expenses	0.4 %	0.1 %
Other income, net	—%	—%
Total costs and expenses	93.0 %	109.6 %
Operating income (loss)	7.0 %	(9.6)%
Other (income) expenses, net:		
Interest expense, net of interest income	1.4 %	3.8 %
Loss on early debt extinguishment	0.2 %	—%
Gain on CARES Act Loan Forgiveness	(6.7)%	—%
Total other (income) expenses, net	(5.1)%	3.8 %
Income (loss) before provision (benefit) for income taxes	12.1 %	(13.4)%
Provision (benefit) for income taxes	0.6 %	(3.8)%
Net income (loss)	11.5 %	(9.6)%
Less: net income (loss) attributable to noncontrolling interest	0.2 %	(0.6)%
Net income (loss) attributable to The ONE Group Hospitality, Inc.	11.3 %	(9.0)%

(1) These expenses are being shown as a percentage of owned restaurant net revenue.

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The following table presents a reconciliation of net income (loss) to EBITDA and Adjusted EBITDA for the periods indicated (in thousands):

	For the year ended December 31,	
	2021	2020
Net income (loss) attributable to The ONE Group Hospitality, Inc.	\$ 31,348	\$ (12,825)
Net income (loss) attributable to noncontrolling interest	600	(798)
Net income (loss)	31,948	(13,623)
Interest expense, net of interest income	3,780	5,329
Provision (benefit) for income taxes	1,586	(5,400)
Depreciation and amortization	10,790	10,114
EBITDA	48,104	(3,580)
COVID-19 related expenses	5,821	5,492
Transaction costs ⁽¹⁾	160	1,109
Stock-based compensation	3,618	1,773
Lease termination expense ⁽²⁾	1,912	3,315
Agreement restructuring expense	503	452
Pre-opening expenses	1,037	178
Non-cash rent ⁽³⁾	(32)	300
Gain on CARES Act Loan forgiveness	(18,529)	—
Loss on early debt extinguishment	600	—
Adjusted EBITDA	43,194	9,039
Adjusted EBITDA attributable to noncontrolling interest	507	(517)
Adjusted EBITDA attributable to The ONE Group Hospitality, Inc.	\$ 42,687	\$ 9,556

- (1) Primarily transaction costs incurred with the Kona Grill acquisition and subsequent integration activities and costs associated with capital raising activities.
- (2) Lease termination expense are costs associated with closed, abandoned and disputed locations or leases.
- (3) Non-cash rent expense is included in owned restaurant operating expenses and general and administrative expense on the consolidated statements of operations and comprehensive income.

The following table presents a reconciliation of Operating income (loss) to Restaurant Operating Profit for the periods indicated (in thousands):

	For the year ended December 31,	
	2021	2020
Operating income (loss) as reported	\$ 19,385	\$ (13,694)
Management, license and incentive fee revenue	(12,774)	(5,325)
General and administrative	25,573	13,922
Depreciation and amortization	10,790	10,114
COVID-19 related expenses	5,821	5,492
Agreement restructuring expenses	503	452
Pre-opening expenses	1,037	178
Lease termination expense	1,912	3,315
Transaction costs	160	1,109
Other income, net	—	(11)
Restaurant Operating Profit	\$ 52,407	\$ 15,552
Restaurant Operating Profit as a percentage of owned restaurant net revenue	19.8%	11.4%

Restaurant Operating Profit by brand is as follows (in thousands):

	For the year ended December 31,	
	2021	2020
STK restaurant operating profit (Company owned)	\$ 34,598	\$ 7,347
STK restaurant operating profit (Company owned) as a percentage of STK revenue (Company owned)	24.7%	13.1%
Kona Grill restaurant operating profit	\$ 17,785	\$ 8,175
Kona Grill restaurant operating profit as a percentage of Kona Grill revenue	14.4%	10.4%

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The following tables show our operating results by segment for the periods indicated (in thousands). Prior year amounts have been revised to conform to the current year segment presentation.

	STK	Kona Grill	ONE Hospitality	Corporate	Total
For the year ended December 31, 2021					
Total revenues	\$ 151,436	\$ 123,181	\$ 1,725	\$ 836	\$ 277,178
Operating income (loss) ⁽¹⁾	39,863	12,982	466	(33,926)	19,385
Capital asset additions	\$ 7,581	\$ 2,307	\$ 170	\$ 1,409	\$ 11,467
As of December 31, 2021					
Total assets	\$ 95,510	\$ 91,323	\$ 6,117	\$ 36,885	\$ 229,835
For the year ended December 31, 2020					
Total revenues	\$ 60,932	\$ 78,591	\$ 1,197	\$ 1,223	\$ 141,943
Operating income (loss) ⁽¹⁾	5,973	3,356	33	(23,056)	(13,694)
Capital asset additions	\$ 2,734	\$ 1,952	\$ 206	\$ 895	\$ 5,787
As of December 31, 2020					
Total assets	\$ 81,431	\$ 96,262	\$ 5,484	\$ 32,392	\$ 215,569

(1) Operating loss for the Corporate segment for the years ended December 31, 2021 and 2020 includes \$5.8 million and \$5.5 million, respectively, in COVID-19 related expenses.

Results of Operations for the Years Ended December 31, 2021 and December 31, 2020

Revenues

Owned restaurant net revenue. Owned restaurant net revenue increased \$127.8 million, or 93.5%, to \$264.4 million for 2021 from \$136.6 million for 2020. The increase was primarily attributable to strong sales as state and local governments eased COVID-19 seating capacity restrictions in markets where we operate combined with strong execution of our sales initiatives. Same store sales increased 92.8% in 2021.

Management, license and incentive fee revenue. Management and license fee revenues increased \$7.5 million, or 139.9%, to \$12.8 million for 2021 from \$5.3 million for 2020. The increase was primarily attributable to local governments lifting stay at home orders and easing seating capacity restrictions in the markets in which we operate as well as revenue generated from two managed STKs, one licensed STK and three managed F&B venues we opened during 2021.

Cost and Expenses

Owned restaurant cost of sales. Food and beverage costs for owned restaurants increased approximately \$33.5 million, or 98.3%, to \$67.5 million for 2021 from \$34.0 million for 2020. The increase was due to the incremental sales increases noted above. As a percentage of revenues, cost of sales increased 60 basis points to 25.5% for 2021 from 24.9% for 2020 primarily due to increased commodity prices partly offset by operational cost reduction initiatives.

Owned restaurant operating expenses. Owned restaurant operating expenses increased \$57.5 million, or 66.0%, to \$144.5 million for 2021 from \$87.0 million for 2020. Owned restaurant operating costs as a percentage of owned restaurant net revenue decreased 900 basis points from 63.7% in 2020 to 54.7% for 2021 due to leverage on higher average weekly sales and actively managing operating costs.

General and administrative. General and administrative costs increased \$11.7 million, or 83.7% to \$25.6 million for 2021 from \$13.9 million for 2020. The increase was attributable to increased activity as restaurants resumed in-person dining compared to the prior year when significant cost savings measures were implemented as a result of COVID-19. Stock-based compensation increased \$1.8 million to \$3.6 million for 2021 compared to \$1.8 million for 2020. The increase was driven by certain grants that vested based on stock price thresholds and employer payroll taxes on stock option exercises and restricted stock vesting. Also, accruals for performance-based compensation increased by \$1.6 million compared to 2020.

As a percentage of revenues, general and administrative costs were 9.2% in 2021 compared to 9.8% in 2020.

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Depreciation and amortization. Depreciation and amortization expense increased \$0.7 million to \$10.8 million for 2021 from \$10.1 million for 2020. The increase was primarily related to the opening of an owned STK restaurant in July 2021 and capital expenditures to expand seating capacity and other initiatives to enhance the guest experience.

Transaction costs. We incurred \$0.2 million in 2021 associated with capital raising and financing activities compared to transaction and integration costs of \$1.1 million related to the Kona Grill acquisition in 2020.

Lease termination expenses. Lease termination expense was \$1.9 million and \$3.3 million in 2021 and 2020, respectively. Lease termination expenses are costs associated with closed, abandoned and disputed locations or disputed leases. In 2020, we accrued approximately \$2.7 million for lease exit costs for restaurants never built and still under dispute with landlords.

Agreement restructuring. Agreement restructuring expense for both 2021 and 2020 was \$0.5 million, related to the restructuring of agreements with our management and license partners. We do not expect to incur additional agreement restructuring expenses going forward.

COVID-19 related expenses. COVID-19 related expenses were \$5.8 million and \$5.5 million for 2021 and 2020, respectively, composed primarily of sanitation, supplies and safety precautions taken to prevent the spread of COVID-19.

Pre-opening expenses. Pre-opening expenses for 2021 were \$1.0 million, related to the STK Bellevue restaurant which opened in July 2021 and non-cash pre-open rent for STK Dallas and STK San Francisco which are currently under construction. Pre-opening expenses for 2020 were \$0.2 million.

Interest expense, net of interest income. Interest expense, net of interest income was approximately \$3.8 million and \$5.3 million for 2021 and 2020, respectively.

Loss on early debt extinguishment. During August 2021, we entered into the Third Amendment to the credit and guaranty agreement with Goldman Sachs Bank USA (“Credit Agreement”) and made a \$22.2 million pre-payment on the term loan. We recognized a loss on early debt extinguishment of \$0.6 million for the year ended December 31, 2021.

Provision (benefit) for income taxes. The provision for income taxes for 2021 was \$1.6 million compared to a benefit for income taxes of \$5.4 million for 2020. Our effective tax rate was 4.7% and 28.4% for the years ended December 31, 2021 and 2020, respectively. For 2021, the provision for income taxes included discrete period tax benefits resulting from the vesting of restricted stock units and the exercise of stock options. Our effective tax rate differs from the statutory U.S. tax rate of 21% primarily due to the following: (i) tax credits for FICA taxes on certain employees’ tips; (ii) taxes owed in foreign jurisdictions such as the United Kingdom, Canada and Italy; (iii) taxes owed in state and local jurisdictions; (iv) the benefit of excluding the Paycheck Protection Program loans forgiven under the CARES Act; and (v) windfall tax benefits from equity compensation offset by compensation limited for certain individuals with compensation in excess of \$1 million.

Net income (loss) attributable to noncontrolling interest. Net income attributable to noncontrolling interest increased by \$1.4 million to \$0.6 million for 2021 compared to net loss of \$0.8 million for 2020.

Liquidity and Capital Resources

Executive Summary

Our principal liquidity requirements are to meet our lease obligations, our working capital and capital expenditure needs and to pay principal and interest on our outstanding debt. Subject to our operating

performance, which, if significantly adversely affected, would adversely affect the availability of funds, we expect to finance our operations for at least the next 12 months, including the costs of opening currently planned new restaurants, through cash provided by operations and construction allowances provided by landlords of certain locations. We also may borrow on our revolving credit facility or issue equity to support ongoing business and fund additional expansion. We believe the combination of the aforementioned items are adequate to support our immediate business operations and plans. As of December 31,

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2021, we had cash and cash equivalents of \$23.6 million. We had \$24.8 million in long-term debt, which consisted of borrowings under our Credit Agreement as of December 31, 2021. As of December 31, 2021, the availability on our revolving credit facility was \$10.6 million, subject to the restrictions described in Note 5 to our consolidated financial statements.

Capital expenditures in 2021 were \$11.5 million primarily for the construction of STK Bellevue which opened in July 2021, the development and construction of STK restaurants in Dallas and San Francisco and a Kona Grill in Riverton as well as capital expenditures for our existing restaurants and technology initiatives. Our future cash requirements will depend on many factors, including the pace of expansion, conditions in the retail property development market, construction costs, the nature of the specific sites selected for new restaurants, and the nature of the specific leases and associated tenant improvement allowances available, if any, as negotiated with landlords.

Our operations have not required significant working capital, and, like many restaurant companies, we may have negative working capital during the year. Revenues are received primarily in credit card or cash receipts, and restaurant operations do not require significant receivables or inventories, other than our wine inventory. In addition, we receive trade credit for the purchase of food, beverages and supplies, thereby reducing the need for incremental working capital to support growth.

In the event the Company needs to temporarily suspend all operations due to COVID-19 restrictions, the ongoing operating costs per month are expected to be as follows (in thousands):

Minimum rents	\$ 1,600
Insurance	200
Interest	100
Minimum general & administrative costs	500
Total	<u>\$ 2,400</u>

Credit Agreement

On October 4, 2019, in conjunction with the acquisition of Kona Grill, we entered into our Credit Agreement with Goldman Sachs Bank USA. On August 6, 2021, we entered into the Third Amendment to the Credit Agreement to extend the maturity date for both the term loan and revolving credit facility to August 2026, to eliminate all financial covenants except a maximum net leverage ratio of 2.00 to 1.00, and to eliminate restrictions on the maximum amount of capital expenditures, the maximum number of Company-owned new locations, and credit extensions under the revolving credit facility. As amended, the Credit Agreement provides for a secured revolving credit facility of \$12.0 million and a \$25.0 million term loan (reduced from \$48.0 million). The term loan is payable in quarterly installments of \$0.1 million, with the final payment due in August 2026.

The amended Credit Agreement has several borrowing and interest rate options, including the following: (a) a LIBOR rate (or a comparable successor rate) subject to a 1.00% floor from a 1.75% floor or (b) a base rate equal to the greatest of (i) the prime rate, (ii) the federal funds rate plus 0.50%, (iii) the LIBOR rate for a one-month period plus 1.00% or (iv) 4.00%. Loans under the amended Credit Agreement bear interest at a rate per annum using the applicable indices plus an interest rate margin of 5.00% from a variable interest rate margin of 5.75 to 6.75% (for LIBOR rate loans) and 4.00% from 4.75% to 5.75% (for base rate loans). Upon the cessation of LIBOR, the amended Credit Agreement provides for the use of a benchmark replacement as defined in the amended Credit Agreement.

As of December 31, 2021, we were compliant with the covenants under the amended Credit Agreement. Based on current projections, we believe that we will continue to comply with the covenants in the Credit Agreement, as amended, throughout the twelve months following the issuance of the financial statements.

See Note 5 and Note 15 to our consolidated financial statements for further information on our long-term debt and commitments and contingencies.

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CARES Act Loans

On May 4, 2020, two of our subsidiaries obtained CARES Act Loans from BBVA USA under the Paycheck Protection Program (“PPP”) created by the CARES Act. Repayment of the CARES Act Loans was guaranteed by the Small Business Administration (“SBA”). The ONE Group, LLC received a loan of \$9.8 million related to the operations of STK restaurants, and Kona Grill Acquisition, LLC received a loan of \$8.5 million related to the operation of Kona Grill restaurants.

The CARES Act Loans were eligible for forgiveness if the proceeds were used for qualified purposes within a specified period and if at least 60% was spent on payroll costs. We used all of the proceeds from the CARES Act Loans for qualified purposes in accordance with the CARES Act and SBA regulations, and these funds supported the re-opening of in person dining and the return of approximately 3,000 furloughed employees to work.

We applied for forgiveness of the CARES Act Loans in February 2021, and loans were forgiven in June 2021 and July 2021. As a result, we recognized an \$18.5 million gain on CARES Act Loan forgiveness for the year ended December 31, 2021.

Capital Expenditures and Lease Arrangements

When we open new Company-owned restaurants, our capital expenditures for construction increase. For owned restaurants, where we build from a shell state, we have typically targeted an average cash investment of approximately \$3.8 million for a 10,000 square-foot STK restaurant and approximately \$2.5 million for an 8,000 square-foot Kona Grill restaurant, in each case, net of landlord contributions and excluding pre-opening costs. For STK locations where we may be the successor restaurant tenant, which anticipate total cash investment of \$2.0 million to \$3.0 million. Typical cash pre-opening costs are \$0.3 million to \$0.5 million. In addition, some of our existing restaurants will require capital improvements to either maintain or improve the facilities. We may add seating or provide enclosures for outdoor space in the next twelve months for some of our locations, when we believe that will increase revenues for those locations.

Our hospitality F&B services projects typically require limited capital investment from us. Capital expenditures for these projects are primarily be funded by cash flows from operations and equipment financing, depending upon the timing of these expenditures and cash availability.

We typically seek to lease our restaurant locations for periods of 10 to 20 years under operating lease arrangements, with a limited number of renewal options. Our rent structure varies, but our leases generally provide for the payment of both minimum and contingent rent based on sales, as well as other expenses related to the leases such as our pro-rata share of common area maintenance, property tax and insurance expenses. Many of our lease arrangements include the opportunity to secure tenant improvement allowances to partially offset the cost of developing and opening the related restaurants. Generally, landlords recover the cost of such allowances from increased minimum rents. However, there can be no assurance that such allowances will be available to us on each project that we select for development.

Cash Flows

The following table summarizes the statement of cash flows for the fiscal years ended December 31, 2021 and December 31, 2020 (in thousands):

	For the year ended December 31,	
	2021	2020
Net cash provided by (used in):		
Operating activities	\$ 30,966	\$ 431
Investing activities	(11,467)	(5,787)
Financing activities	(20,275)	17,424
Effect of exchange rate changes on cash	5	(27)

Net (decrease) increase in cash and cash equivalents	\$ (771)	\$ 12,041

Operating Activities. Net cash provided by operating activities was \$31.0 million for 2021 compared to \$0.4 million for 2020. The increase was primarily attributable to net income generated during the year due to strong sales compared

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to a net loss for 2020 as a result of COVID-19 restrictions. The increase is also attributed to an increase in accounts payable and accrued expenses as a result of higher sales volumes.

Investing Activities. Net cash used in investing activities for 2021 was \$11.5 million primarily for the construction of STK restaurants in Bellevue, Washington; Dallas, Texas; San Francisco, California; and a Kona Grill restaurant in Riverton, Utah, as well as capital expenditures for existing restaurants and technology initiatives compared to \$5.8 million for 2020.

Financing Activities. Net cash used in financing activities was \$20.3 million for 2021 compared to net cash provided by financing activities of \$17.4 million for 2020. During 2021, we made a \$22.2 million principal payment on the amended Credit Agreement. In May of 2020, we received \$18.3 million in proceeds from the CARES Act Loans, which were subsequently forgiven in 2021.

Recent Accounting Pronouncements

Refer to Note 2 of our consolidated financial statements for a detailed description of recent accounting pronouncements.

Critical Accounting Estimates

Critical accounting estimates are those that management believes are the most important to the portrayal of our financial condition and results and require the most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain, especially in light of the current economic environment due to the COVID-19 pandemic. Judgments and uncertainties may result in materially different amounts being reported under different conditions or using different assumptions.

Our significant accounting estimates are discussed in additional detail in Note 2 to our consolidated financial statements. We base our estimates on historical experience and various assumptions that we believe to be reasonable under the circumstances and we evaluate those estimates on an ongoing basis. Actual results may differ from these estimates under different assumptions or conditions. We believe that our significant accounting estimates involve a higher degree of judgment and/or complexity for the reasons discussed below:

Income Taxes

We recognize deferred tax assets and liabilities based on the differences between the financial statement carrying amounts and the respective tax bases of our assets and liabilities. Deferred tax assets and liabilities are measured using current enacted rates expected to apply to taxable income in the years in which we expect the temporary differences to reverse. We routinely evaluate the likelihood of realizing the benefit of our deferred tax assets and may record a valuation allowance if, based on all available evidence, we determine that some portion of the tax benefit will not be realized.

In addition, our income tax returns are periodically audited by federal, state and foreign tax authorities. These audits include questions regarding our tax filing positions, including the timing and amount of deductions taken and the allocation of income amongst various tax jurisdictions. We evaluate our exposures associated with our various tax filing positions and record a related liability. We adjust our liability for unrecognized tax benefits and income tax provision in the period in which an uncertain tax provision is effectively settled, the statute of limitations expires for the relevant taxing authority to examine the tax position or when more information becomes available.

As of December 31, 2021, we had a valuation allowance of \$0.3 million that relates to foreign tax credits we do not expect to utilize as a result of generating income in a jurisdiction with a higher income tax rate than the U.S. The recording of deferred taxes requires significant management judgment regarding the interpretation of applicable statutes, the status of various income tax audits, and our particular facts and circumstances.

Our income taxes are impacted by the enactment of the Tax Cuts and Job Act in December 2017 (the “TCJA”), which, amongst other things, enacted global intangible low-taxed income provisions that do not allow us to defer the earnings of our U.K. and Italy subsidiaries.

[Table of Contents](#)*Impairment of Long-Lived Assets and Disposal of Property and Equipment*

Long-lived assets, which include property and equipment and right-of-use assets for operating leases, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be fully recoverable. The impairment evaluation is generally performed at the individual restaurant level, as we believe this is the lowest level of identifiable cash flows. We believe that historical cash flows, in addition to other relevant facts and circumstances, are the primary basis for estimating future cash flows. Relevant facts and circumstances include, among others, significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, and significant negative industry or economic trends. Recoverability of restaurant assets is measured by a comparison of the carrying amount of an individual restaurant's assets to the estimated identifiable undiscounted future cash flows expected to be generated by those restaurant assets. This process requires the use of estimates and assumptions, which are subject to a high degree of judgment. If the carrying amount of an individual restaurant's assets exceeds its estimated undiscounted future cash flows an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds its fair value. The estimated fair value is determined for these assets in accordance with ASC 820. Property and equipment, net of accumulated depreciation, and the operating lease right-of-use assets as of December 31, 2021 were \$69.6 million and \$85.4 million, respectively. For the year ended December 31, 2021, no impairment loss related to long-lived assets has been recognized.

From time to time, we have decided to close or dispose of restaurants. Typically, such decisions are based on operating performance or strategic considerations and must be made before the actual costs or proceeds of disposition are known, and management must make estimates of these outcomes. Such outcomes could include the sale of a leasehold, mitigating costs through a tenant or subtenant, or negotiating a buyout of a remaining lease term. In these instances, management evaluates possible outcomes, frequently using outside real estate and legal advice, and records provisions for the effect of such outcomes. The accuracy of such provisions can vary materially from original estimates, and management regularly monitors the adequacy of the provisions until final disposition occurs.

For the years ended December 31, 2021 and 2020, we did not identify any event or changes in circumstances that indicated that the carrying values of our restaurant long-lived assets were impaired.

Leases

Contracts are evaluated to determine whether they contain a lease at inception, and leases are classified as either operating or financing. For operating leases, we recognize a lease liability equal to the present value of the remaining lease payments, and a right of use asset equal to the lease liability, subject to certain adjustments, such as prepaid rents, initial direct costs and lease incentives received from the lessor. For leases that do not have a rate implicit in the lease, we use our incremental borrowing rate to determine the present value of the lease payments. Our incremental borrowing rate is the rate of interest that we would have to borrow on a collateralized basis over a similar term on an amount equal to the lease payments in a similar economic environment.

The lease term at the lease commencement date is determined based on the non-cancellable period for which we have the right to use the underlying asset, together with any periods covered by an option to extend the lease if we are reasonably certain to exercise that option, periods covered by an option to terminate the lease if we are reasonably certain not to exercise that option, and periods covered by an option to extend (or not to terminate) the lease in which the exercise of the option is controlled by the lessor.

Certain of our leases also provide for percentage rent, which are variable lease costs determined as a percentage of gross sales in excess of specified, minimum sales targets. These percentage rents are recognized as rent expense prior to the achievement of the specified sales target provided achievement of the sales target is considered probable.

We currently lease all of our restaurant locations under leases classified as operating leases. Management makes judgments regarding the probable term for each lease and considers a number of factors to evaluate whether renewal options in the lease contracts are reasonably certain of exercise, such as length of time before option exercise, expected value of the leased asset at the end of the initial lease term, importance of the lease to overall operations, costs to negotiate a new lease, and any contractual or economic penalties. The lease term can impact the lease classification and accounting for a lease as either an operating or financing lease, the incremental borrowing rate, the rent holidays and/or escalations in payments that are taken into consideration when calculating the rent expense and the related lease liability

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and right-of-use asset, and the term over which leasehold improvements for each restaurant are depreciated. These judgments may produce materially different amounts of depreciation, amortization and rent expense and materially different lease liabilities and right-of-use assets than would be reported if different assumed lease terms were used.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk*Commodity Price Risk*

We are exposed to market price fluctuations in beef, seafood, produce and other food product prices. Given the historical volatility of beef, seafood, produce and other food product prices, these fluctuations can materially impact our food and beverage costs. In addition, the COVID-19 pandemic has adversely impacted commodity prices due to supply and labor shortages. While we have taken steps to qualify multiple suppliers who meet our standards as suppliers for our restaurants and enter into agreements with suppliers for some of the commodities used in our restaurant operations, we do not enter into long-term agreements for the purchase of such supplies. There can be no assurance that future supplies and costs for such commodities will not fluctuate due to weather and other market conditions outside of our control and we may be subject to unforeseen supply and cost fluctuations. Dairy costs can also fluctuate due to government regulation. Because we typically set our menu prices in advance of our food product prices, our menu prices cannot immediately take into account the changing costs of food items. To the extent that we are unable to pass the increased costs on to our customers through price increases, our results of operations would be adversely affected. We do not use financial instruments to hedge our risk to market price fluctuations in beef, seafood, produce and other food product prices at this time.

Inflation

Over the past several years, inflation has not significantly affected our operations. However, the impact of inflation on labor, food and occupancy costs could, in the future, significantly affect our operations. In addition, the COVID-19 pandemic has resulted in inflation due to supply and labor shortages. We pay many of our employees hourly rates related to the applicable federal or state minimum wage. Food costs as a percentage of revenues have been somewhat stable due to procurement efficiencies and menu price adjustments, although no assurance can be made that our procurement will continue to be efficient or that we will be able to raise menu prices in the future. Costs for construction, taxes, repairs, maintenance and insurance all impact our occupancy costs. We believe that our current strategy, which is to seek to maintain operating margins through a combination of menu price increases, cost controls, careful evaluation of property and equipment needs, and efficient purchasing practices, has been an effective tool for dealing with inflation. There can be no assurance, however, that future inflationary or other cost pressure will be effectively offset by this strategy.

Foreign Currency Exchange Rate Risk

We are subject to foreign currency exchange risk for our restaurants operating in the United Kingdom, Italy, Canada, Mexico and the Middle East. If foreign currency exchange rates depreciate in these countries or regions, or any other country or region in which we may operate in the future, we may experience declines in our international operating results but such exposure would not be material to the consolidated financial statements. We currently do not use financial instruments to hedge foreign currency exchange rate changes.

Item 8. Financial Statements and Supplementary Data

Our Consolidated Financial Statements required by this Item are set forth in Item 15 of this Annual Report on Form 10-K.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

[Table of Contents](#)**Item 9A. Controls and Procedures****Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, as our controls are designed to do, and management necessarily applies its judgment in evaluating the risk and cost benefit relationship related to controls and procedures.

Our Chief Executive Officer and Chief Financial Officer, have reviewed the effectiveness of our disclosure controls and procedures as of December 31, 2021 and, based on this evaluation, have concluded that due to two material weaknesses in our internal control over financial reporting described below, our disclosure controls and procedures were not effective as of December 31, 2021. These material weaknesses did not result in a material misstatement of the annual or interim consolidated financial statements.

Report of Management on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act and based upon the criteria established in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (“the COSO framework”). Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of our financial reporting for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes maintaining records that in reasonable detail accurately and fairly reflect our transactions; providing reasonable assurance that transactions are recorded as necessary for preparation of our financial statements; providing reasonable assurance that receipts and expenditures are made in accordance with management authorization; and providing reasonable assurance that unauthorized acquisition, use or disposition of company assets that could have a material effect on our financial statements would be prevented or detected on a timely basis. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that a misstatement of our financial statements would be prevented or detected.

Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework and criteria established in the COSO framework.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. Based on our assessment, management has concluded that as of December 31, 2021, our internal control over financial reporting was ineffective due to the material weaknesses in the control activities component of the COSO framework described below:

- Management identified there is a lack of segregation of duties as it relates to the review of journal entries.
- In addition, management identified the following deficiencies which, in the aggregate, constitute a material weakness:
 - The Company’s redesign of certain controls throughout 2021 did not contemplate all the relevant design elements of control activities necessary to address the risks of material

misstatement, as well as the completeness and accuracy over the information used in those controls. Additionally, certain controls were not executed as designed or were performed without sufficiently documented supporting evidence. The business processes impacted primarily consisted of payroll, accounts payable and property and equipment. Additionally, in certain cases controls were redesigned and implemented without a sufficient period of time remaining to evidence operating effectiveness.

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- The Company did not design and maintain formal and effective controls over user access to certain information systems to ensure adequate restriction of users and privileged access to venue level transaction processing applications and IT systems maintained by third parties. As a result, it is possible that the Company's business process controls that depend on the accuracy and completeness of data or financial reports generated by these information technology systems could be adversely affected due to the lack of operating effectiveness of information technology controls.
- In certain instances, the Company determined there was inappropriate application of technical accounting pronouncements for certain transactions and disclosures.

These material weaknesses did not result in a material misstatement of the annual or interim consolidated financial statements. However, these deficiencies in control activities result in the potential for there to have been material accounting errors.

Deloitte & Touche LLP, the independent registered public accounting firm that audited the financial statements included in this Annual Report, has issued an attestation report on our internal control over financial reporting as of December 31, 2021.

Remediation Efforts to Address the Material Weaknesses

To remediate the material weakness regarding the lack of segregation of duties as it relates to the review of journal entries, in late 2021 we modified our journal entry review process to require that senior members of the management team who are outside of the journal entry recording process review journal entries in order to enforce proper segregation of duties.

To remediate the material weakness resulting from other identified deficiencies, we plan to accelerate the timeline for testing and documenting the design and operating effectiveness of control activities to aid in the repetition of control activities and implementation of corrective actions as necessary. In addition, the following remediation efforts are planned or ongoing:

- We plan to increase the precision and specificity in the design of our control activities, including the controls over the completeness and accuracy of the information used in performing control activities.
- We will continue to educate control owners and enhance policies to ensure that all design elements of control activities are addressed in the performance of control activities, including a focus on information technology user access security.
- We will provide access to accounting literature and research to enable the controls owners in evaluating technical accounting pronouncements for certain transactions.

We are committed to maintaining a strong internal control environment and have fully implemented measures designed to help ensure that the control deficiencies contributing to the material weaknesses are remediated. However, there cannot be any assurance that these remediation efforts will be successful or that our internal control over financial reporting will be effective as a result of these efforts. These material weaknesses cannot be considered remediated until the applicable remediated controls have operated for a period of time sufficient for management to conclude that they have operated effectively.

Changes in Internal Control Over Financial Reporting

Except for the changes in connection with our implementation of the remediation plan discussed above, there have been no other changes in our internal control over financial reporting that occurred

during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

[Table of Contents](#)**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the stockholders and the Board of Directors of The ONE Group Hospitality, Inc.

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of The ONE Group Hospitality, Inc. and subsidiaries (the “Company”) as of December 31, 2021, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, because of the effect of the material weaknesses identified below on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2021, of the Company and our report dated March 16, 2022, expressed an unqualified opinion on those financial statements.

Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Report of Management on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

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 includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) 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 (3) 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.

[Table of Contents](#)**Material Weaknesses**

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weaknesses in the control activities component of the COSO framework have been identified and included in management's assessment:

- Lack of segregation of duties as it relates to the review of journal entries
- The following deficiencies in the aggregate constitute a material weakness:
 - The Company's redesign of certain controls throughout 2021 did not contemplate all the relevant design elements of control activities necessary to address the risks of material misstatement, as well as the completeness and accuracy over the information used in those controls. Additionally, certain controls were not executed as designed or were performed without sufficiently documented supporting evidence. The business processes impacted primarily consisted of payroll, accounts payable and property and equipment. Additionally, in certain cases controls were redesigned and implemented without a sufficient period of time remaining to evidence operating effectiveness
 - The Company did not design and maintain formal and effective controls over user access to certain information systems to ensure adequate restriction of users and privileged access to venue level transaction processing applications and IT systems maintained by third parties. As a result, it is possible that the Company's business process controls that depend on the accuracy and completeness of data or financial reports generated by these information technology systems could be adversely affected due to the lack of operating effectiveness of information technology controls
 - In certain instances, the Company determined there was inappropriate application of technical accounting pronouncements for certain transactions and disclosures

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the consolidated financial statements as of and for the year ended December 31, 2021, of the Company, and this report does not affect our report on such financial statements.

/s/ Deloitte & Touche LLP

Denver, Colorado
March 16, 2022

[Table of Contents](#)**Item 9B. Other Information**

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

None.

PART III**Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2022 Annual Meeting of Stockholders.

Item 11. EXECUTIVE COMPENSATION

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2022 Annual Meeting of Stockholders.

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

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2022 Annual Meeting of Stockholders.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2022 Annual Meeting of Stockholders.

Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2022 Annual Meeting of Stockholders.

[Table of Contents](#)**PART IV****Item 15. Exhibits, Financial Statement Schedules**

- (a)(1) *Financial Statements*. For the financial statements included in this annual report, see “Index to the Financial Statements” on page F-1.
- (a)(3) *Exhibits*. The list of exhibits filed as part of this Annual Report on Form 10-K is set forth on the Exhibit Index immediately preceding such exhibits and is incorporated by reference in this Item 15(a)(3).
- (b) *Exhibits*. See Exhibit Index.
- (c) *Separate Financial Statements*. None.

Item 16. 10-K Summary

None.

[Table of Contents](#)**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.

Dated: March 16, 2022

THE ONE GROUP HOSPITALITY, INC.

By: /s/ TYLER LOY

Tyler Loy
Chief Financial Officer

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>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ EMANUEL HILARIO</u> Emanuel Hilario	Chief Executive Officer and Director (Principal Executive Officer)	March 16, 2022
<u>/s/ TYLER LOY</u> Tyler Loy	Chief Financial Officer (Principal Financial Officer)	March 16, 2022
<u>/s/ CHRISTI HING</u> Christi Hing	Chief Accounting Officer (Principal Accounting Officer)	March 16, 2022
<u>/s/ JONATHAN SEGAL</u> Jonathan Segal	Executive Chairman, Director	March 16, 2022
<u>/s/ DIMITRIOS ANGELIS</u> Dimitrios Angelis	Director	March 16, 2022
<u>/s/ EUGENE BULLIS</u> Eugene Bullis	Director	March 16, 2022
<u>/s/ SUSAN LINTONSMITH</u> Susan Lintonsmith	Director	March 16, 2022
<u>/s/ HAYDEE OLINGER</u> Haydee Olinger	Director	March 16, 2022
<u>/s/ MICHAEL SERRUYA</u> Michael Serruya	Director	March 16, 2022

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Exhibit Number	Exhibit Description
3.1	Amended and Restated Certificate of Incorporation (Incorporated by reference to Form 8-K filed on June 5, 2014).
3.2	Amended and Restated Bylaws (Incorporated by reference to Form 8-K filed on October 25, 2011).
4.1	Description of securities registered under Section 12 of the Securities Exchange Act of 1934 (Incorporated by reference to Exhibit 4.1 to Form 10-K filed on March 26, 2020).
4.2	Form of Common Stock Purchase Warrant dated as of November 15, 2017 (Incorporated by reference to Form 8-K filed on November 16, 2017).
10.1	Form of Indemnity Agreement (Incorporated by reference to Amendment No. 1 to Form S-1 filed on June 30, 2011).
10.2†	Amended and Restated Employment Agreement, dated October 30, 2017, by and between The ONE Group Hospitality, Inc. and Jonathan Segal (Incorporated by reference to Form 8-K filed on November 3, 2017).
10.3†	The ONE Group Hospitality, Inc. 2019 Equity Incentive Plan (Incorporated by reference to Form 8-K filed on June 4, 2019).
10.4†	Amended and Restated Employment Agreement between Emanuel N. Hilario and The ONE Group Hospitality, Inc. dated September 24, 2021 (Incorporated by reference to Form 8-K filed on September 28, 2021).
10.5†	Notice of Grant of Restricted Stock Units dated September 24, 2021 between Emanuel N. Hilario and The ONE Group Hospitality, Inc. (Incorporated by reference to Form 8-K filed on September 28, 2021).
10.6†	Employment Letter Agreement with Tyler Loy Effective April 1, 2019 (Incorporated by reference to Exhibit 10.7 to Form 10-K filed on March 26, 2020).
10.7	Credit and Guaranty Agreement dated October 4, 2019 with Goldman Sachs Bank USA (Incorporated by reference to Form 8-K/A filed on October 8, 2019).
10.8	Third Amendment to Credit and Guaranty Agreement dated August 6, 2021 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 10-Q filed on August 10, 2021).
10.9	Second Amendment to Credit and Guaranty Agreement dated August 10, 2020 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 8-K filed on August 12, 2020).
10.10	First Amendment to Credit and Guaranty Agreement dated May 8, 2020 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 8-K filed May 8, 2020).
10.11†	Form of Restricted Stock Unit Grant Notice and Agreement (Incorporated by reference to Exhibit 10.10 to Form 10-K filed on March 26, 2020).
21.1*	List of Subsidiaries.
23.1*	Consent of Deloitte & Touche LLP
23.2*	Consent of Plante & Moran, PLLC
31.1*	Certification of Emanuel Hilario, Chief Executive Officer, pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
31.2*	Certification of Tyler Loy, Chief Financial Officer, pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
32.1**	Certification of Emanuel Hilario, Chief Executive Officer, pursuant to Section 906 of the Sarbanes – Oxley Act of 2002, 18 U.S.C. Section 1350.
32.2**	Certification of Tyler Loy, Chief Financial Officer, pursuant to Section 906 of the Sarbanes – Oxley Act of 2002, 18 U.S.C. Section 1350.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document

* Filed herewith.

** Furnished herewith.

† Management contract or compensatory plan or arrangement.

[Table of Contents](#)**THE ONE GROUP HOSPITALITY, INC.****INDEX TO FINANCIAL STATEMENTS**

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[Table of Contents](#)**Report of Independent Registered Accounting Firm**

To the stockholders and the Board of Directors of The ONE Group Hospitality, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of The ONE Group Hospitality, Inc. and subsidiaries (the "Company") as of December 31, 2021, the related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity, and cash flows, for the period ended December 31, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021, and the results of its operations and its cash flows for the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 16, 2022, expressed an adverse opinion on the Company's internal control over financial reporting because of material weaknesses.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the 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 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 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates 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 matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates. The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates 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 matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

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[Table of Contents](#)**Long-Lived Asset Impairment — Refer to Note 2 to the financial statements***Critical Audit Matter Description*

Long-lived assets, which includes property and equipment and right-of-use assets for operating leases, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying values of these assets may not be fully recoverable. The impairment evaluation is performed at the individual restaurant level. Recoverability of restaurant assets is measured by a comparison of the carrying amount of an individual restaurant's assets to the estimated undiscounted future cash flows expected to be generated by those restaurant assets. If the carrying amount of an individual restaurant's assets exceeds its estimated undiscounted future cash flows an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds its fair value. The estimated fair value is determined for these assets in accordance with ASC 820. Property and equipment, net, and the Operating lease right-of-use assets as of December 31, 2021 were \$69.6 million and \$85.4 million, respectively. For the year ended December 31, 2021, no impairment loss related to long-lived assets was recognized.

We identified the determination of possible triggering events for long-lived assets as a critical audit matter because of the significant assumptions management makes when determining whether events or changes in circumstances have occurred indicating that the carrying amounts of long-lived assets may not be recoverable. This required a high degree of auditor judgement.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to evaluation of long-lived asset impairment indicators included the following, among others:

- We tested effectiveness of internal controls over the Company's long lived asset impairment indicator evaluation.
- We evaluated the reasonableness of the Company's evaluation of impairment indicators by:
 - Testing long-lived restaurant assets for possible indications of impairment, including searching for locations with current period losses or projected losses
 - Performing inquiries of management regarding the process and assumptions used to identify potential indicators of impairment and evaluating the consistency of the assumptions with evidence obtained in other areas of the audit
 - Inspecting minutes of the board of directors, the Company's public statements, operating plans, and industry data to identify any evidence that may contradict management's assumptions
- We tested the completeness and accuracy of the underlying source information used by management to identify quantitative indicators of impairment.

/s/ Deloitte & Touche LLP

Denver, Colorado
March 16, 2022

We have served as the Company's auditor since 2021.

[Table of Contents](#)**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders
The ONE Group Hospitality, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of The ONE Group Hospitality, Inc. (the “Company”) as of December 31, 2020, the related consolidated statements of operations and comprehensive (loss) income, changes in stockholders' equity, and cash flows for the year ended December 31, 2020, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2020, 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

The Company's management is responsible for these financial statements. Our responsibility is to express an opinion on the Company's 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 audit 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 financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the 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 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 financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ Plante & Moran PLLC

We served as the Company's auditor from 2018 to 2021.

Boulder, Colorado

March 19, 2021

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share information)

	December 31, 2021	December 31, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 23,614	\$ 24,385
Accounts receivable	11,356	5,777
Inventory	3,915	2,490
Other current assets	3,666	1,348
Due from related parties	376	376
Total current assets	42,927	34,376
Property and equipment, net	69,638	67,344
Operating lease right-of-use assets	85,395	80,960
Deferred tax assets, net	12,313	13,226
Intangibles, net	15,505	16,313
Other assets	3,199	2,446
Security deposits	858	904
Total assets	<u>\$ 229,835</u>	<u>\$ 215,569</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 11,094	\$ 7,404
Accrued expenses	23,155	15,684
Deferred license revenue	90	207
Deferred gift card revenue and other	2,029	1,990
Current portion of operating lease liabilities	5,396	4,817
Current portion of CARES Act Loans	—	10,057
Current portion of long-term debt	500	588
Total current liabilities	42,264	40,747
Deferred license revenue, long-term	298	953
Operating lease liabilities, net of current portion	103,616	98,569
CARES Act Loans, net of current portion	—	8,257
Long-term debt, net of current portion	23,132	45,064
Total liabilities	169,310	193,590
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Common stock, \$0.0001 par value, 75,000,000 shares authorized; 32,138,396 issued and 32,125,762 outstanding at December 31, 2021 and 29,083,183 shares issued and outstanding at December 31, 2020	3	3
Preferred stock, \$0.0001 par value, 10,000,000 shares authorized; no shares issued and outstanding at December 31, 2021 and December 31, 2020, respectively	—	—
Treasury stock, 12,634 shares and 0 shares at December 31, 2021 and December 31, 2020, respectively	(37)	—
Additional paid-in capital	53,481	46,538
Retained earnings (accumulated deficit)	10,632	(20,716)
Accumulated other comprehensive loss	(2,645)	(2,646)
Total stockholders' equity	61,434	23,179
Noncontrolling interests	(909)	(1,200)
Total equity	60,525	21,979
Total liabilities and equity	<u>\$ 229,835</u>	<u>\$ 215,569</u>

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(in thousands, except earnings per share and related share information)

	For the year ended December 31,	
	2021	2020
Revenues:		
Owned restaurant net revenue	\$ 264,404	\$ 136,618
Management, license and incentive fee revenue	12,774	5,325
Total revenues	277,178	141,943
Cost and expenses:		
Owned operating expenses:		
Owned restaurant cost of sales	67,468	34,024
Owned restaurant operating expenses	144,529	87,042
Total owned operating expenses	211,997	121,066
General and administrative (including stock-based compensation of \$3,618 and \$1,773 for the years ended December 31, 2021 and 2020, respectively)	25,573	13,922
Depreciation and amortization	10,790	10,114
COVID-19 related expenses	5,821	5,492
Transaction costs	160	1,109
Lease termination expenses	1,912	3,315
Agreement restructuring expenses	503	452
Pre-opening expenses	1,037	178
Other income, net	—	(11)
Total costs and expenses	257,793	155,637
Operating income (loss)	19,385	(13,694)
Other (income) expenses, net:		
Interest expense, net of interest income	3,780	5,329
Loss on early debt extinguishment	600	—
Gain on CARES Act Loan Forgiveness	(18,529)	—
Total other (income) expenses, net	(14,149)	5,329
Income (loss) before provision (benefit) for income taxes	33,534	(19,023)
Provision (benefit) for income taxes	1,586	(5,400)
Net income (loss)	31,948	(13,623)
Less: net income (loss) attributable to noncontrolling interest	600	(798)
Net income (loss) attributable to The ONE Group Hospitality, Inc.	\$ 31,348	\$ (12,825)
Currency translation (loss) gain	1	5
Comprehensive income (loss) attributable to The One Group Hospitality, Inc.	\$ 31,349	\$ (12,820)
Net income (loss) attributable to The ONE Group Hospitality, Inc. per share:		
Basic net income (loss) per share	\$ 1.01	\$ (0.44)
Diluted net income (loss) per share	\$ 0.93	\$ (0.44)
Shares used in computing basic earnings per share	31,155,224	28,909,963
Shares used in computing diluted earnings per share	33,794,344	28,909,963

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(in thousands, except share information)

	Common stock		Additional	Treasury	Retained	Accumulated	Stockholders'	Noncontrolling	Total
	Shares	Par value	paid-in capital	stock	earnings	other comprehensive loss	equity	interests	
Balance at January 1, 2020	28,603,829	\$ 3	\$ 44,853	\$ —	\$ (7,891)	\$ (2,651)	\$ 34,314	\$ (402)	\$ 33,912
Stock-based compensation	226,983	—	1,773	—	—	—	1,773	—	1,773
Exercise of stock options	18,000	—	38	—	—	—	38	—	38
Issuance of vested restricted shares, net of tax withholding	234,371	—	(126)	—	—	—	(126)	—	(126)
Gain on foreign currency translation, net	—	—	—	—	—	5	5	—	5
Net loss	—	—	—	—	(12,825)	—	(12,825)	(798)	(13,623)
Balance at December 31, 2020	29,083,183	\$ 3	\$ 46,538	\$ —	\$ (20,716)	\$ (2,646)	\$ 23,179	\$ (1,200)	\$ 21,979
Stock-based compensation	61,399	—	3,248	—	—	—	3,248	—	3,248
Exercise of stock options and warrants	1,590,029	—	3,615	—	—	—	3,615	—	3,615
Issuance of vested restricted shares, net of tax withholding	1,403,785	—	(154)	—	—	—	(154)	—	(154)
Purchase of treasury stock	(12,634)	—	—	(37)	—	—	(37)	—	(37)
Purchase of noncontrolling interest	—	—	234	—	—	—	234	(309)	(75)
Gain on foreign currency translation, net	—	—	—	—	—	1	1	—	1
Net income	—	—	—	—	31,348	—	31,348	600	31,948
Balance at December 31, 2021	<u>32,125,762</u>	<u>\$ 3</u>	<u>\$ 53,481</u>	<u>\$ (37)</u>	<u>\$ 10,632</u>	<u>\$ (2,645)</u>	<u>\$ 61,434</u>	<u>\$ (909)</u>	<u>\$ 60,525</u>

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the year ended December 31,	
	2021	2020
Operating activities:		
Net income (loss)	\$ 31,948	\$ (13,623)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	10,790	10,114
Stock-based compensation	3,248	1,773
Loss on early debt extinguishment	600	—
Amortization of debt issuance costs	415	479
Deferred taxes	913	(5,475)
Gain on CARES Act Loan Forgiveness	(18,529)	—
Changes in operating assets and liabilities:		
Accounts receivable	(5,615)	4,378
Inventory	(1,425)	568
Other current assets	(2,189)	(301)
Due from related parties	—	(35)
Security deposits	46	405
Other assets	(417)	(826)
Accounts payable	3,462	(939)
Accrued expenses	7,261	4,468
Operating lease liabilities and right-of-use assets	1,191	848
Deferred revenue	(733)	(1,403)
Net cash provided by operating activities	30,966	431
Investing activities:		
Purchase of property and equipment	(11,467)	(5,787)
Net cash used in investing activities	(11,467)	(5,787)
Financing activities:		
Repayments of long-term debt	(22,758)	(752)
Proceeds from CARES Act Loans	—	18,314
Debt issuance costs	(866)	(50)
Exercise of stock options and warrants	3,615	38
Tax-withholding obligation on stock-based compensation	(154)	(126)
Purchase of treasury stock	(37)	—
Purchase of non-controlling interests	(75)	—
Net cash (used in) provided by financing activities	(20,275)	17,424
Effect of exchange rate changes on cash	5	(27)
Net (decrease) increase in cash and cash equivalents	(771)	12,041
Cash and cash equivalents, beginning of year	24,385	12,344
Cash and cash equivalents, end of year	\$ 23,614	\$ 24,385
Supplemental disclosure of cash flow data:		
Interest paid	\$ 3,402	\$ 3,925
Income taxes paid	\$ 437	\$ 286
Non-cash CARES Act Loan Forgiveness	\$ 18,529	\$ —
Non-cash capital expenditures	\$ 854	\$ 303

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
Notes to Consolidated Financial Statements

Note 1 – Description of Business

The ONE Group Hospitality, Inc. and its subsidiaries (collectively, the “Company”) is a global hospitality company that develops, owns and operates, manages and licenses upscale and polished casual, high-energy restaurants and lounges and provides turn-key food and beverage (“F&B”) services for hospitality venues including hotels, casinos and other high-end locations. Turn-key F&B services are food and beverage services that can be scaled, customized and implemented by the Company at a particular hospitality venue and customized for the client. The Company’s primary restaurant brands are STK, a multi-unit steakhouse concept that combines a high-energy, social atmosphere with the quality and service of a traditional upscale steakhouse, and Kona Grill, a polished casual bar-centric grill concept featuring American favorites, award-winning sushi, and specialty cocktails in a polished casual atmosphere.

As of December 31, 2021, the Company owned, operated, managed or licensed 60 venues including 23 STKs and 24 Kona Grills in major metropolitan cities in North America, Europe and the Middle East and 13 F&B venues in seven hotels and casinos in the United States and Europe. For those restaurants and venues that are managed or licensed, we generate management fees based on top-line revenues and incentive fee revenue based on a percentage of the location’s revenues and net profits.

Overview of the Impact of COVID-19

The COVID-19 pandemic has significantly impacted, and will continue to adversely affect our operations and financial results for the foreseeable future. In response to COVID-19, the Company has taken significant steps to adapt its business to increase sales while providing a safe environment for guests and employees. COVID-19 related expenses were \$5.8 million and \$5.5 million for 2021 and 2020, respectively, composed primarily of sanitation, supplies and safety precautions taken to prevent the spread of COVID-19. Currently, all restaurants are open for in-person dining. The continuation of normal dining operations is subject to events beyond the Company’s control, including the effectiveness of governmental efforts to halt the spread of COVID-19.

The Company is in regular contact with its major suppliers and has not experienced any significant disruption in its supply chain. The Company has implemented programs to attract and retain both restaurant managers and hourly employees. The Company has also increased cleaning protocols, including the creation of a role which is focused on sanitation in high-touch and high-traffic areas, implemented daily health and safety checklists, provided additional personal protective equipment and cleaning supplies and engaged third party vendors to perform electrostatic cleaning of its restaurants.

Note 2 – Summary of Significant Accounting Policies*Basis of Presentation and Principles of Consolidation*

The accompanying consolidated financial statements include the accounts of the Company and have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”). All intercompany accounts and transactions have been eliminated in consolidation.

Prior Period Reclassifications

Certain reclassifications of the 2020 amounts in the accrued expenses and segment reporting footnotes have been made to conform to the current year presentation.

Use of Estimates

The preparation of the consolidated financial statements in conformity with GAAP requires the Company to make estimates and assumptions for the reporting period and as of the reporting date. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingencies. Actual results could differ from those estimates.

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Fair Value Measurements

Fair value represents the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Assets and liabilities are valued based upon observable and non-observable inputs. Valuations using Level 1 inputs are based on unadjusted quoted prices that are available in active markets for the identical assets or liabilities at the measurement date. Level 2 inputs utilize significant other observable inputs available at the measurement date, other than quoted prices included in Level 1, either directly or indirectly. Valuations using Level 3 inputs are based on significant unobservable inputs that cannot be corroborated by observable market data and reflect the use of significant management judgment. There were no significant transfers between levels during any period presented.

Cash and Cash Equivalents

Cash and cash equivalents are defined as cash on hand and highly liquid instruments with original maturities of three months or less when purchased. The Company's cash and cash equivalents consist of cash in banks and at the restaurants as of December 31, 2021 and 2020.

Accounts Receivable

The majority of the Company's receivables arise primarily from credit cards, management agreements, trade customers and other reimbursable amounts due from hotel operators where the Company operates a food and beverage service. The increase in accounts receivables at December 31, 2021 is attributable to strong sales reflecting the execution of the Company's sales initiatives. Accounts receivable from credit card processors and third party delivery services at December 31, 2021 and 2020 was \$3.9 million and \$2.0 million, respectively. Receivables from the Company's management, license and hotel partners were \$6.4 million and \$3.1 million at December 31, 2021 and 2020, respectively. The Company determines an allowance for doubtful accounts by considering a number of factors, including the length of time trade accounts receivable are past due, previous loss and payment history, the customer's current ability to pay its obligation to the Company and the condition of the general economy and industry as a whole. The Company has not reserved any trade receivables as of December 31, 2021 and 2020.

Inventory

Inventories, which consist of food, liquor and other beverages, are stated at the lower of cost or net realizable value. Cost is determined by the first in, first out method. Net realizable value is defined as the estimated selling price in the ordinary course of business, less reasonably predictable costs to sell.

Property and Equipment

Additions to property and equipment, including leasehold improvements, are recorded at cost while costs incurred to repair and maintain the Company's operations and equipment are expensed as incurred. Depreciation is calculated using the straight-line method over the estimated useful life of the asset. When assets are retired or otherwise disposed of, the cost of the assets and the related accumulated depreciation are removed from the accounts, and any gain or loss on retirements is reflected in operating income in the year of disposition.

Computers and equipment as well as furniture and fixtures are depreciated over their useful lives from three to ten years. Leasehold improvements are depreciated over the shorter of their estimated useful lives or the remaining term of the associated lease. Lease terms begin on the date the Company takes possession under the lease and include option periods where failure to exercise such options would result in an economic penalty.

Other Assets

Other assets include liquor license acquisition costs and costs to fulfill obligations under the Company's management and license agreements.

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Intangible Assets

Intangible assets consist of the “Kona Grill” trade name and other finite-lived intangible assets that are amortized using the straight-line method over their estimated useful life of 10 to 20 years. As of December 31, 2021 and 2020, the gross carrying amount of the tradename intangible was \$17.4 million. As of December 31, 2021 and 2020 the gross carrying amount of the other finite-lived intangible assets were \$0.1 million and \$0 million, respectively. The accumulated amortization of the tradename was \$2.0 million and \$1.1 million as of December 31, 2021 and 2020, respectively, and the amortization expense was \$0.9 million for each of the years ending December 31, 2021 and 2020. The Company’s estimated aggregate amortization expense for each of the five succeeding fiscal years is approximately \$0.9 million annually.

Impairment of Long-Lived Assets

Long-lived assets, which include property and equipment and right-of-use assets for operating leases, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be fully recoverable. The impairment evaluation is generally performed at the individual restaurant level, as we believe this is the lowest level of identifiable cash flows. We believe that historical cash flows, in addition to other relevant facts and circumstances, are the primary basis for estimating future cash flows. Relevant facts and circumstances include, among others, significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, and significant negative industry or economic trends. Recoverability of restaurant assets is measured by a comparison of the carrying amount of an individual restaurant’s assets to the estimated identifiable undiscounted future cash flows exclusive of operating lease payments, expected to be generated by those restaurant assets. This process requires the use of estimates and assumptions, which are subject to a high degree of judgment. If the carrying amount of an individual restaurant’s assets exceeds its estimated undiscounted future cash flows, exclusive of operating lease payments, an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds its fair value. The estimated fair value is determined for these assets in accordance with ASC 820. Property and equipment, net of accumulated depreciation, and the operating lease right-of-use assets as of December 31, 2021 were \$69.6 million and \$85.4 million, respectively. For the year ended December 31, 2021, no impairment loss related to long-lived assets has been recognized.

For the years ended December 31, 2021 and 2020, the Company did not identify any event or changes in circumstances that indicated that the carrying values of its restaurant assets were impaired.

Debt Issuance Costs

Debt issuance costs incurred in connection with the issuance of long-term debt are capitalized and amortized to interest expense based on the term of the related debt agreement using the straight-line method, which approximates the effective interest method. The Company has recorded debt issuance costs related to the revolving credit facility in other assets on the consolidated balance sheets. The portion of debt issuance costs related to the term loan is recorded in long-term debt, net of current portion on the consolidated balance sheets.

Income Taxes

The Company computes income taxes using the asset and liability method. Under this method, deferred income taxes are recognized for differences between the basis of assets and liabilities for financial statement and income tax purposes, using the enacted statutory rate in effect for the year these differences are expected to be taxable or refunded. Deferred income tax expenses or credits are based on the changes in the asset or liability, respectively, from period to period. A deferred tax asset or liability is recognized whenever there are future tax effects from existing temporary differences and operating loss and tax credit carry-forwards. If the Company determines that a deferred tax asset or liability could be realized in a greater or lesser amount than recorded, the deferred tax asset or liability is adjusted and a corresponding

adjustment is made to the provision for income taxes in the consolidated statements of operations and comprehensive income in the period during which the determination is made.

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The Company reduces its deferred tax assets by a valuation allowance if it determines that it is more likely than not that some portion or all of these tax assets will not be realized. In making this determination, the Company considers various qualitative and quantitative factors, such as:

- the level of historical taxable income;
- the projection of future taxable income over periods in which the deferred tax assets would be deductible;
- events within the restaurant industry;
- the health of the economy; and,
- historical trending.

As of December 31, 2021, the Company had a valuation allowance of \$0.3 million that relates to foreign tax credits that the Company does not expect to utilize as a result of generating income in a jurisdiction with a higher income tax rate than the U.S. The recording of deferred taxes requires significant management judgment regarding the interpretation of applicable statutes, the status of various income tax audits, and particular facts and circumstances.

The Company recognizes the tax benefit from an uncertain tax position when it determines that it is more-likely-than-not that the position would be sustained upon examination by taxing authorities. The amount recognized is measured as the largest amount of benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. If the Company derecognizes an uncertain tax position, the Company's policy is to record any applicable interest and penalties within the provision (benefit) for income taxes in the consolidated statements of operations and comprehensive income.

Revenue Recognition

Revenue is derived from restaurant sales, management services and license related operations.

The Company recognizes restaurant revenues, net of discounts, when goods and services are provided. Sales tax amounts collected from customers that are remitted to governmental authorities are excluded from net revenue.

Management agreements typically call for a management fee based on a percentage of revenue, a monthly marketing fee based on a percentage of revenues and an incentive fee based on a managed venue's net profits. Similarly, royalties from the licensee in license agreements are generally based on a percentage of the licensed restaurant's revenue. These management, license and incentive fees are recognized as revenue in the period the restaurant's sales occur.

The Company recognizes initial licensing fees and upfront fees related to management and license agreements on a straight-line basis over the term of the agreement as a component of management, license and incentive fee revenue on the consolidated statements of operations and comprehensive income.

The Company has a loyalty program for Kona Grill to encourage customers to frequent its restaurants. The loyalty rewards program awards a customer one point for every dollar spent. When a customer is part of the rewards program, the obligation to provide future discounts related to points earned is considered a separate performance obligation, to which a portion of the transaction price is allocated. The performance obligation related to loyalty points is deemed to have been satisfied, and the amount deferred in the balance sheet is recognized as revenue, when the points are converted to a reward and redeemed, or the likelihood of redemption is remote. A portion of the transaction price is allocated to loyalty points, if necessary, on a pro-rata basis, based on the stand-alone selling price, as determined by menu pricing and loyalty points terms. As of December 31, 2021 and 2020 the deferred revenue allocated to loyalty points that have not been redeemed is \$0.1 million, which is recorded as a component of accrued expenses in the accompanying consolidated balance sheets. The Company expects the loyalty points to be redeemed and recognized over a one-year period.

Gift Cards

Proceeds from the sale of gift cards are recorded as deferred revenue and recognized as revenue when redeemed by the holder. There are no expiration dates on the Company's gift cards and the Company does not charge any service fees that would result in a decrease to a customer's available balance.

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Although the Company will continue to honor all gift cards presented for payment, it may determine the likelihood of redemption to be remote for certain gift cards due to, among other things, long periods of inactivity. In these circumstances, to the extent the Company determines there is no requirement for remitting balances to government agencies under unclaimed property laws, outstanding gift card balances may then be recognized as breakage in the consolidated statements of operations and comprehensive income as a component of owned restaurant net revenue. For the years ended December 31, 2021 and 2020, the Company recognized \$0.5 million and \$1.0 million, respectively, in revenue from gift card breakage.

Pre-opening Costs

Pre-opening costs for Company owned restaurants are expensed as incurred prior to a restaurant opening for business. Pre-opening costs for the years ended December 31, 2021 and 2020 were \$1.0 million and \$0.2 million, respectively.

Advertising Costs

The Company expenses the cost of advertising and promotions as incurred. Advertising expense was \$5.1 million and \$2.5 million for the years ended December 31, 2021 and 2020, respectively.

Leases

Contracts are evaluated to determine whether they contain a lease at inception. The Company's contracts determined to be or contain a lease include explicitly or implicitly identified assets where the Company has the right to substantially all of the economic benefits of the assets and has the ability to direct how and for what purpose the assets are used during the lease term. If it is determined that the contract contains an operating lease, a right-of-use asset and operating lease liability are recorded on the consolidated balance sheets. A right-of-use asset represents the Company's right to use the underlying asset and the lease liability represents the Company's contractually obligated payments. Both the right-of-use asset and the lease liability are recognized as of the commencement date of the lease and are based upon the present value of lease payments due over the course of the lease. The right-of-use asset is reduced by any lease incentives received. For leases that do not have a rate implicit in the lease, the Company's incremental borrowing rate at the date of commencement is used to determine the present value of the lease payments. The Company's incremental borrowing rate is the rate of interest that it would have to borrow on a collateralized basis over a similar term on an amount equal to the lease payments in a similar economic environment.

The Company enters into contracts to lease office and restaurant space with terms that expire at various dates through 2047, which includes exercise of options to extend the lease. The lease term is the minimum of the noncancelable period of the lease or the lease term inclusive of reasonably certain renewal periods. The Company considers a number of factors when evaluating whether the options in its lease contracts were reasonably certain of exercise, such as length of time before option exercise, expected value of the leased asset at the end of the initial lease term, importance of the lease to overall operations, costs to negotiate a new lease, and any contractual or economic penalties.

Certain of the Company's leases also provide for percentage rent, which are variable lease costs determined as a percentage of gross sales in excess of specified, minimum sales targets, as well as other lease costs to reimburse the lessor for real estate tax and insurance expenses, and certain non-lease components that transfer a distinct service to the Company, such as common area maintenance services. These percentage rents and other variable lease costs are not included in the calculation of lease payments when classifying a lease and in the measurement of the lease liability as they do not meet the definition of in-substance, fixed-lease payments under ASC Topic 842.

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[Table of Contents](#)*Stock-Based Compensation*

The Company maintains an equity incentive compensation plan under which it may grant options, warrants, restricted stock or other stock-based awards to directors, officers, key employees and other key individuals performing services to the Company. Restricted stock and restricted stock units (“RSUs”) are valued using the closing stock price on the date of grant.

Under the plan, vesting of awards can either be based on the passage of time or on the achievement of performance goals. For awards that vest on the passage of time, compensation cost is recognized over the vesting period. For performance-based awards, the Company recognizes compensation costs over the requisite service period when conditions for achievement become probable. The Company estimates forfeitures at the time of grant and revises those estimates in subsequent periods if actual forfeitures differ or are expected to differ. These estimates, which are currently at 10%, are based on historical forfeiture behavior exhibited by employees of the Company.

Earnings per Share

Basic earnings per share is computed using the weighted average number of common shares outstanding during the period and income available to common stockholders. Diluted earnings per share is computed using the weighted average number of common shares outstanding during the period plus the dilutive effect of all potential shares of common stock including common stock issuable pursuant to stock options, warrants, and RSUs. Refer to Note 10 for the calculations of basic and diluted earnings per share.

Segment Reporting

The Company has identified the following four reportable operating segments: STK, Kona Grill, ONE Hospitality and Corporate. Refer to Note 13 for additional details and certain financial information regarding the Company’s operating segments relating to the years ended December 31, 2021 and 2020. Prior year amounts have been revised to conform to the current year segment presentation.

Foreign Currency Translation

Assets and liabilities of foreign operations are translated into U.S. dollars at the balance sheet date. Revenues and expenses are translated at average monthly exchange rates. Gains or losses resulting from the translation of foreign subsidiaries represent other comprehensive income (loss) and are accumulated as a separate component of stockholders’ equity. Currency translation gains or losses are recorded in accumulated other comprehensive loss within stockholders’ equity and amounted to a gain of approximately \$1,000 and \$5,000 during 2021 and 2020, respectively.

Comprehensive Income

Comprehensive income consists of two components: net income and other comprehensive income (loss). The Company’s other comprehensive income (loss) is comprised of foreign currency translation adjustments. All of the Company’s foreign currency translation adjustments relate to wholly-owned subsidiaries of the Company.

Recent Accounting Pronouncements

In November 2021, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2021-10 (“ASU 2021-10”) to increase the transparency of government assistance including the disclosure of the types of assistance, the entity’s accounting for the assistance, and the effect of the assistance on an entity’s financial statements. ASU 2021-10 is effective for annual periods beginning after December 15, 2021 with early application permitted. The Company has incorporated the requirements of ASU 2021-10 into its financial statements as of December 31, 2021. The adoption of ASU 2021-10 did not have a material impact on the Company’s financial statements.

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In December 2019, the FASB issued ASU 2019-12, “Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes,” which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Accounting Standard Codification Topic 740, Income Taxes, and it clarifies and amends existing guidance to improve consistent application. ASU 2019-12 is effective for annual and interim periods beginning after December 15, 2020. The adoption of ASU 2019-12 did not have a material impact on the Company’s financial statements.

In June 2016, the FASB issued ASU 2016-13, “Financial Instruments – Credit Losses (Topic 326)” (“ASU 2016-13”). ASU 2016-13 requires companies to measure credit losses utilizing a methodology that reflects expected credit losses and requires a consideration of a broader range of reasonable and supportable information to assess credit loss estimates. ASU 2016-13 is effective for annual and interim periods beginning after December 15, 2022. The Company does not expect the adoption of ASU 2016-13 to have a material impact on its financial statements.

Note 3 – Property and Equipment, net

Property and equipment, net consist of the following (in thousands):

	December 31, 2021	December 31, 2020
Furniture, fixtures and equipment	\$ 24,942	\$ 22,328
Leasehold improvements	76,500	71,654
Less: accumulated depreciation and amortization	(39,425)	(30,948)
Subtotal	62,017	63,034
Construction in progress	5,374	2,294
Restaurant smallwares	2,247	2,016
Total	<u>\$ 69,638</u>	<u>\$ 67,344</u>

Depreciation and amortization related to property and equipment amounted to \$9.9 million and \$9.2 million for the years ended December 31, 2021 and 2020, respectively. The Company does not depreciate construction in progress until such assets are placed into service.

For the years ended December 31, 2021 and 2020, the Company did not identify any event or changes in circumstances that indicated that the carrying values of its restaurant assets were impaired.

Note 4 – Accrued Expenses

Accrued expenses consist of the following (in thousands):

	December 31, 2021	December 31, 2020
Payroll and related ⁽¹⁾	\$ 6,554	\$ 4,860
Accrued lease exit costs ⁽²⁾	4,913	4,144
VAT and sales taxes	3,477	1,119
Variable rent	1,847	1,883
Insurance	642	330
Legal, professional and other services	458	301
Construction on new restaurants	359	—
Interest	132	474
Other	4,773	2,573
Total	<u>\$ 23,155</u>	<u>\$ 15,684</u>

(1) Payroll and related includes \$1.2 million and \$2.6 million in employer payroll taxes for which payment has been deferred under the CARES Act as of December 31, 2021 and 2020, respectively.

(2) Amount relates to lease exit costs for 2016 leases for restaurants never built and still under dispute with landlords.

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Long-term debt consists of the following (in thousands):

	December 31, 2021	December 31, 2020
Term loan agreements	\$ 24,750	\$ 47,400
Revolving credit facility	—	—
Equipment financing agreements	—	108
Total long-term debt	24,750	47,508
Less: current portion of long-term debt	(500)	(588)
Less: debt issuance costs	(1,118)	(1,856)
Total long-term debt, net of current portion	<u>\$ 23,132</u>	<u>\$ 45,064</u>
Future minimum loan payments:		
2022		\$ 500
2023		500
2024		500
2025		500
2026		22,750
Total		<u>\$ 24,750</u>

Interest expense for the Company's debt arrangements, excluding the amortization of debt issuance costs and other discounts and fees, was approximately \$3.3 million and \$4.4 million for the years ended December 31, 2021 and 2020, respectively.

As of December 31, 2021 and 2020, the Company had \$1.4 million and \$1.3 million, respectively, in standby letters of credit outstanding for certain restaurants and \$10.6 million available in its revolving credit facility, subject to certain conditions.

Credit and Guaranty Agreement

On October 4, 2019, in conjunction with the acquisition of Kona Grill, the Company entered into a Credit Agreement with Goldman Sachs Bank USA. On August 6, 2021, the Company entered into the Third Amendment to the Credit Agreement to extend the maturity date for both the term loan and revolving credit facility to August 2026, to eliminate all financial covenants except a maximum net leverage ratio of 2.00 to 1.00, and to eliminate restrictions on the maximum amount of capital expenditures, the maximum number of Company-owned new locations, and credit extensions under the revolving credit facility. As amended, the Credit Agreement provides for a secured revolving credit facility of \$12.0 million and a \$25.0 million term loan (reduced from \$48.0 million). The term loan is payable in quarterly installments of \$0.1 million, with the final payment due in August 2026.

The amended Credit Agreement has several borrowing and interest rate options, including the following: (a) a LIBOR rate (or a comparable successor rate) subject to a 1.00% floor from a 1.75% floor or (b) a base rate equal to the greatest of (i) the prime rate, (ii) the federal funds rate plus 0.50%, (iii) the LIBOR rate for a one-month period plus 1.00% or (iv) 4.00%. Loans under the amended Credit Agreement bear interest at a rate per annum using the applicable indices plus an interest rate margin of 5.00% from a variable interest rate margin of 5.75 to 6.75% (for LIBOR rate loans) and 4.00% from 4.75% to 5.75% (for base rate loans). Upon the cessation of LIBOR, the amended Credit Agreement provides for the use of a benchmark replacement as defined in the amended Credit Agreement.

In conjunction with the amended Credit Agreement, the Company made a pre-payment on the loan of \$22.2 million and incurred \$0.9 million in debt issuance costs. The Company accounted for the amendment as a debt modification with a partial extinguishment and recognized a loss on early debt extinguishment of \$0.6 million for the year ended December 31, 2021 and \$0.1 million in transaction costs.

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The Company's weighted average interest rate on the borrowings under the amended Credit Agreement as of December 31, 2021 and December 31, 2020 was 6.00% and 8.50%, respectively.

The Credit Agreement contains customary representations, warranties and conditions to borrowing including customary affirmative and negative covenants, which include covenants that limit or restrict the Company's ability to incur indebtedness and other obligations, grant liens to secure obligations, make investments, merge or consolidate, alter the organizational structure of the Company and its subsidiaries, and dispose of assets outside the ordinary course of business, in each case subject to customary exceptions for credit facilities of this size and type.

The Company and certain operating subsidiaries of the Company guarantee the obligations under the Credit Agreement, which also are secured by liens on substantially all of the assets of the Company and its subsidiaries.

As of December 31, 2021, the Company had \$1.2 million of debt issuance costs related to the amended Credit Agreement, which were capitalized and are recorded as a direct deduction to the long-term debt and \$0.6 million in debt issuance costs recorded in Other Assets on the consolidated balance sheets. As of December 31, 2021, the Company was in compliance with the financial covenants required by the Credit Agreement.

Equipment Financing Agreements

On June 5, 2015 and August 16, 2016, the Company entered into financing agreements with Sterling National Bank for \$1.0 million and \$0.7 million, respectively, to purchase equipment for the STKs in Orlando, Chicago, San Diego, and Denver. Each of these financing agreements have five-year terms and bear interest at a rate of 5% per annum, payable in equal monthly installments. The financing agreements were fully paid as of December 31, 2021.

CARES Act Loans

On May 4, 2020, two subsidiaries of the Company entered into promissory notes ("CARES Act Loans") with BBVA USA under the Paycheck Protection Program ("PPP") created by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). Repayment of the CARES Act Loans is guaranteed by the U.S. Small Business Administration ("SBA"). The ONE Group, LLC received a loan of \$9.8 million related to the operations of STK restaurants, and Kona Grill Acquisition, LLC received a loan of \$8.5 million related to the operation of Kona Grill restaurants.

The CARES Act Loans were eligible for forgiveness if the proceeds were used for qualified purposes within a specified period and if at least 60% was spent on payroll costs. The Company used all of the proceeds from the CARES Act Loans for qualified purposes in accordance with the CARES Act and SBA regulations, and these funds supported the re-opening of in person dining and the return of approximately 3,000 furloughed employees to work.

The Company applied for forgiveness of the CARES Act Loans in February 2021, and the loans were forgiven in June 2021 and July 2021. As a result, the Company recognized \$18.5 million gain on CARES Act Loan forgiveness for the year ended December 31, 2021.

Note 6 – Related Party Transactions

As of December 31, 2021 and 2020, the Company owned interests in the following companies, which directly or indirectly operate restaurants:

- 31.24% interest in Bagatelle NY LA Investors, LLC ("Bagatelle Investors")
- 51.13% interest in Bagatelle Little West 12th, LLC ("Bagatelle NY")

Bagatelle Investors is a holding company that has an interest in Bagatelle NY. The Company records its retained interests in Bagatelle Investors and Bagatelle NY as cost method investments as the Company has determined that it does not have ability to exercise significant influence over its investees, Bagatelle Investors and Bagatelle NY. As of December 31, 2021 and 2020, the Company has zero carrying value in these investments.

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Net receivables from the Bagatelle entities included in due from related parties were \$0.4 million as of December 31, 2021 and 2020. These receivables represent the Company's maximum exposure to loss. Upon expiration of the lease in November 2020, the Company exited its contract with Bagatelle.

Note 7 – Income Taxes

The components of income before provision (benefit) for income taxes were as follows (in thousands):

	For the years ended December 31,	
	2021	2020
Domestic	\$ 33,331	\$ (19,129)
Foreign	203	106
Total	\$ 33,534	\$ (19,023)

The components of the Company's provision (benefit) for income taxes were as follows (in thousands):

	For the years ended December 31,	
	2021	2020
Current:		
Federal	\$ —	\$ —
State and local	564	39
Foreign	110	36
Total current	674	75
Deferred:		
Federal	(195)	(4,593)
State and local	1,107	(887)
Foreign	—	5
Total deferred	912	(5,475)
Total provision (benefit) for income taxes	\$ 1,586	\$ (5,400)

The Company's effective tax rate differs from the statutory rates as follows:

	For the years ended December 31,	
	2021	2020
Income tax provision (benefit) at federal statutory rate	21.0 %	(21.0)%
State and local taxes	4.5 %	(4.4)%
FICA tip credit	(7.2)%	(5.3)%
Change in valuation allowance	—	(0.9)%
Compensation subject to IRC Section 162(m)	6.2%	—
Equity based compensation	(7.6)%	—
PPP income exclusion	(11.6)%	—
Other items, net	(0.6)%	3.2 %
Effective income tax rate	4.7 %	(28.4)%

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The income tax effects of temporary differences that give rise to significant portions of deferred tax assets and liabilities are as follows (in thousands):

	For the years ended December 31,	
	2021	2020
Deferred tax assets:		
Operating lease liabilities	\$ 17,152	\$ 15,255
Stock compensation	247	439
FICA tip credit carryforward	9,929	6,860
Net operating loss	3,290	6,038
Goodwill	1,055	1,283
Inventory	10	23
Charitable contributions carryforward	—	2
Foreign tax credit carryforward	382	336
Deferred revenue	165	321
State and local tax credit carryforward	310	299
Expenses not deductible until paid	1,667	985
Basis in LLC interest	—	175
IRC 163(j) disallowed interest carryforward	—	835
Debt issuance costs	143	—
Kona related acquisition costs	813	201
Deferred payroll taxes	281	703
Total deferred tax assets	35,444	33,755
Deferred tax liabilities:		
Operating lease right-of-use assets	(13,150)	(10,381)
Depreciation and amortization	(9,605)	(9,812)
Other	(40)	—
Total deferred tax liabilities	(22,795)	(20,193)
Valuation allowance	(336)	(336)
Net deferred tax assets	\$ 12,313	\$ 13,226

Correction of the Prior Period

Subsequent to the issuance of the December 31, 2020 consolidated financial statements, management determined that the deferred tax assets and deferred tax liabilities related to the right-of-use asset and lease liabilities were incorrectly presented on a net basis as deferred rent liabilities and lease incentives for the year ended December 31, 2020. To correct for the classification on a gross basis, the Company presented the operating lease liabilities line item of \$15.3 million as a deferred tax asset and operating lease right-of-use assets line item of \$10.4 million as a deferred tax liability. Management also determined that the deferred tax liability line item for the ASC 740-10 liability of \$0.1 million for the year ended December 31, 2020 should have been netted against the deferred tax asset line item for net operating loss. Net operating loss is the tax attribute for which the ASC 740-10 liability reduces the amount that is more-likely-than-not to be realized. To correct for the misclassification of the uncertain tax position, the Company removed the ASC 740-10 liability line item from Deferred tax liabilities and netted it against the net operating loss line item, resulting in \$6.0 million net operating loss as of December 31, 2020. Management has evaluated the materiality of these corrections and concluded that they are not material to the prior periods.

Tax Carryforwards

As of December 31, 2021, the Company has federal net operating loss ("NOL") carryforwards of \$13.7 million which have no expiration date. The Company has various state NOL carryforwards. The determination of the state NOL carryforwards is dependent upon apportionment percentages and state laws that can change from year to year and impact the amount of such carryforwards. The state NOLs expire at various dates from 2035 to 2040. The state and local tax credit carryforwards expire at various dates from 2022 through 2028.

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In assessing the realizability of deferred tax assets, the Company evaluates whether it is more likely than not that the deferred tax assets will be realized. In the assessment of the valuation allowance, appropriate consideration was given to all positive and negative evidence including current operating results, tax planning strategies and forecasts of future earnings. As of December 31, 2021 and December 31, 2020, the Company has valuation allowance of \$0.3 million and \$0.3 million, respectively, related to foreign tax credits the Company does not expect to utilize as a result of generating income in a jurisdiction with a higher income tax rate than the U.S.

Uncertain tax positions

The following table summarizes the activity related to the Company's uncertain tax positions (in thousands):

	For the years ended December 31,	
	2021	2020
Balance, beginning of year	\$ 814	\$ 814
Increase related to current year positions	—	209
Decrease related to prior period positions	(367)	(209)
Balance, end of year	<u>\$ 447</u>	<u>\$ 814</u>

Included in the balance of unrecognized tax benefits as of December 31, 2021 and December 31, 2020, are \$0.1 million and \$0.1 million, respectively, of tax benefits that, if recognized, would result in adjustments to deferred taxes. Management believes it is reasonably possible that a nominal amount of the uncertain tax position as of December 31, 2021 will decrease within the next twelve months.

The Company is subject to income taxes in the U.S. federal jurisdiction, and the various states and local jurisdictions in which it operates. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. The Company's federal tax filings remain subject to examination for federal tax years 2018 through 2020. The Company's state and local tax filings remain subject to examination for tax years 2018 through 2020. NOL carryforwards are subject to examination regardless of whether the tax year in which they are generated has been closed by statute. The amount subject to disallowance is limited to the NOL utilized. Accordingly, the Company may be subject to examination for prior NOLs generated as such NOLs are utilized.

The Company's foreign income tax returns prior to fiscal year 2018 are closed and management continually evaluates expiring statutes of limitations, audits, proposed settlements, changes in tax law and new authoritative rulings.

Note 8 – Revenue recognition

The following table provides information about contract receivables and liabilities from contracts with customers, which include deferred license revenue, deferred gift card revenue and the Konavore rewards program (in thousands):

	December 31, 2021	December 31, 2020
Receivables ⁽¹⁾	\$ —	\$ 125
Deferred license revenue ⁽²⁾	388	1,160
Deferred gift card revenue ⁽³⁾	1,769	1,945
Konavore rewards program ⁽⁴⁾	136	102

(1) Deferred license receivables are included in accounts receivable on the consolidated balance sheets.

(2) Includes the current and long-term portion of deferred license revenue.

(3) Deferred gift card revenue and advance party deposits on good and services yet to be provided are included in deferred gift card revenue and other on the consolidated balance sheets.

(4) Konavore rewards program is included in accrued expenses on the consolidated balance sheets.

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Significant changes in deferred license revenue and deferred gift card revenue for the years ended December 31, 2021 and 2020 are as follows (in thousands):

	December 31, 2021	December 31, 2020
Revenue recognized from deferred license revenue	\$ 164	\$ 206
Revenue recognized from deferred gift card revenue	1,214	1,904

As of December 31, 2021, the estimated deferred license revenue to be recognized in the future related to performance obligations that are unsatisfied as of December 31, 2021 were as follows for each year ending (in thousands):

2022	\$ 90
2023	79
2024	45
2025	44
2026	37
Thereafter	93
Total future estimated deferred license revenue	<u>\$ 388</u>

Note 9 – Leases

The components of lease expense for the period were as follows (in thousands):

	December 31, 2021	December 31, 2020
Lease cost		
Operating lease cost	\$ 13,602	\$ 11,613
Variable lease cost	7,400	2,001
Short-term lease cost	684	479
Sublease income	—	(493)
Total lease cost	<u>\$ 21,686</u>	<u>\$ 13,600</u>
Weighted average remaining lease term – operating leases	13 years	12 years
Weighted average discount rate – operating leases	8.43 %	8.09 %

Due to the negative effects of COVID-19, the Company implemented measures to reduce its costs, including negotiations with landlords regarding rent concessions. As the rent concessions received and currently being contemplated do not result in a significant increase in cash payments, the Company has elected to account for these concessions as a variable lease payment in accordance with ASC Topic 842. The Company's right-of-use assets and operating lease liabilities have not been remeasured for lease concessions received. Variable lease cost is comprised of percentage rent and common area maintenance, offset by rent concessions received as a result of COVID-19.

The Company has entered into an operating lease for a future Kona Grill restaurant in Riverton, Utah that had not commenced as of December 31, 2021. The present value of the aggregate future commitment related to this lease totals \$0.9 million. The Company expects this lease, which has an initial lease term of 10 years and two five-year options, to commence within the next twelve months.

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Supplemental cash flow information related to leases for the period was as follows (in thousands):

	December 31, 2021	December 31, 2020
Cash paid for amounts included in the measurement of operating lease liabilities	\$ 12,644	\$ 8,491
Right-of-use assets obtained in exchange for operating lease obligations	\$ 8,068	\$ 4,968

As of December 31, 2021, maturities of the Company's operating lease liabilities are as follows (in thousands):

2022	\$ 11,364
2023	14,758
2024	14,250
2025	13,285
2026	13,209
Thereafter	122,827
Total lease payments	189,693
Less: imputed interest	(80,681)
Present value of operating lease liabilities	<u>\$ 109,012</u>

Note 10 – Earnings per share

Basic earnings per share is computed using the weighted average number of common shares outstanding during the period and income available to common stockholders. Diluted earnings per share is computed using the weighted average number of common shares outstanding during the period plus the dilutive effect of all potential shares of common stock including common stock issuable pursuant to stock options, warrants, and restricted stock units.

For the years ended December 31, 2021 and 2020, earnings per share was calculated as follows (in thousands, except earnings per share and related share data):

	Year ended December 31, 2021	2020
Net income (loss) attributable to The ONE Group Hospitality, Inc.	\$ 31,348	\$ (12,825)
Basic weighted average shares outstanding	31,155,224	28,909,963
Dilutive effect of stock options, warrants and restricted share units	2,639,120	—
Diluted weighted average shares outstanding	33,794,344	28,909,963
Net income (loss) available to common stockholders per share - Basic	<u>\$ 1.01</u>	<u>\$ (0.44)</u>
Net income (loss) available to common stockholders per share - Diluted	<u>\$ 0.93</u>	<u>\$ (0.44)</u>

For the years ended December 31, 2021 and 2020, stock options, warrants and restricted share units totaling 0.4 million and 1.4 million, respectively, were determined to be anti-dilutive and were therefore excluded from the calculation of diluted earnings per share.

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Note 11 – Stockholders’ Equity

Common Stock

The Company is authorized by its amended and restated certificate of incorporation to issue up to 75.0 million shares of common stock, par value \$0.0001 per share. As of December 31, 2021 and 2020, there are 32.1 million and 29.1 million shares of common stock outstanding, respectively.

The Company has the following warrants to purchase shares of common stock outstanding as of December 31, 2021 and 2020:

Issuance date	Holder of warrants	Expiration date	Warrants Issued	Exercise Price	Shares available for purchase as of	
					December 31, 2021	December 31, 2020
June 27, 2016	2235570 Ontario Limited	June 27, 2026	100,000	\$ 2.61	—	100,000
	Anson Investments Master					
August 11, 2016	Fund LP	August 11, 2026	300,000	2.61	—	300,000
	Anson Investments Master					
October 24, 2016	Fund LP	October 24, 2026	340,000	2.39	—	340,000
November 15, 2017	2017 Securities Purchase Agreement investors	May 15, 2023	875,000	\$ 1.63	125,000	125,000

The issuance of a dividend is dependent on a variety of factors, including but not limited to, available cash and the overall financial condition of the Company. The issuance of a dividend is also subject to legal restrictions and the terms of the Company’s credit agreement. The Company did not issue dividends related to its common stock in the years ended December 31, 2021 or 2020.

Preferred Stock

The Company is authorized by its amended and restated certificate of incorporation to issue 10.0 million shares of preferred stock, par value \$0.0001 per share. The Company’s Board may designate the rights, powers and preferences of the preferred stock, which may have superior rights to common shareholders in terms of liquidation and dividend preference, voting and other rights. As of December 31, 2021 and 2020, the Board had not designated the rights of the preferred stock and there were no outstanding shares of preferred stock.

Note 12 – Employee Benefit Plans

Defined Contribution Retirement Plan

The Company sponsors a qualified defined contribution retirement plan (the “401(k) Plan”) covering all eligible employees, as defined in the 401(k) Plan. The 401(k) Plan allows participating employees to defer the receipt of a portion of their compensation, on a pre-tax or post-tax basis, and contribute such amount to one or more investment options. Employer contributions to the plan are at the discretion of the Company. The Company did not accrue or make any employer contributions in 2021 and 2020.

Equity Incentive Plan

In October 2013, the Board approved the 2013 Employee, Director and Consultant Equity Incentive Plan (the “2013 Equity Plan”). The 2013 Equity Plan provides for the granting of stock options, warrants, restricted stock or other stock-based awards to directors, officers, key employees and other key individuals performing services for the Company. All awards are required to be approved by the Board or a designated committee of the Board. Options are generally granted with an exercise price equal to fair market value on the date of grant and expire after ten years. Vesting of options and restricted stock can either be based on the passage of time or on the achievement of performance goals.

The 2013 Equity Plan will terminate automatically in October 2023, unless terminated by the Board at an earlier date. The Board has the authority to amend, modify or terminate the 2013 Equity Plan, subject to any required approval by the Company's stockholders under applicable law or upon advice of counsel. No such action would affect any options previously granted under the 2013 Equity Plan without the consent of the holders.

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Effective June 4, 2019, the Company's stockholders approved amendments to the 2013 Equity Plan (the "2019 Equity Plan"). Among other things, the amendments increased the number of shares of common stock authorized for issuance under the 2019 Equity Plan by 2,300,000 shares to a new maximum aggregate limit of 7,073,922 shares. As of December 31, 2021, the Company had 160,624 shares available for issuance under the 2019 Equity Plan.

Stock-based compensation cost for the years ended December 31, 2021 and 2020 was \$3.6 million and \$1.8 million, respectively, and is included in general and administrative expenses in the consolidated statements of operations and comprehensive income. Included in stock-based compensation cost was \$0.5 million and \$0.3 million of unrestricted stock granted to directors for the years ended December 31, 2021 and 2020, respectively. Such grants were awarded consistent with the Board's compensation practices and included grants to two new board members appointed in September 2021. In addition, stock-based compensation expense for the year ended December 31, 2021 included \$0.4 million of employer payroll taxes associated with stock option and restricted stock units ("RSU") activity and \$0.3 million of compensation costs for the vesting of market condition-based stock options and RSUs.

Stock Option Activity

Changes in outstanding stock options during the years ended December 31, 2021 and 2020 were as follows:

	Shares	Weighted average exercise price	Weighted average remaining contractual life	Intrinsic value (thousands)
Outstanding at January 1, 2020	1,806,508	\$ 3.37		
Vested	—	—		
Exercised	(18,000)	2.13		
Cancelled, expired or forfeited	(81,500)	3.75		
Outstanding at December 31, 2020	1,707,008	\$ 3.37	4.98 years	\$ 1,454
Exercisable at December 31, 2020	1,443,675	\$ 3.57	4.68 years	\$ 1,112
Vested	594,402	3.09		
Exercised	(1,039,058)	3.23		
Cancelled, expired or forfeited	(10,000)	2.13		
Outstanding at December 31, 2021	1,252,352	\$ 3.36	3.92 years	\$ 11,581
Exercisable at December 31, 2021	1,126,685	\$ 3.48	3.72 years	\$ 10,283

There were no stock options granted in the years ended December 31, 2021 and 2020

A summary of the status of the Company's non-vested stock options as of December 31, 2021 and 2020 and changes during the years then ended, is presented below:

	Shares	Weighted average grant date fair value
Non-vested stock options at January 1, 2020	536,000	\$ 0.87
Granted	—	—
Vested	(272,667)	0.75
Cancelled, expired or forfeited	—	—
Non-vested stock options at December 31, 2020	263,333	\$ 0.99
Granted	—	—
Vested	(127,667)	1.00
Cancelled, expired or forfeited	(10,000)	0.87
Non-vested stock options at December 31, 2021	125,667	\$ 1.00

The fair value of options that vested in the years ended December 31, 2021 and 2020 were \$0.1 million and \$0.2 million, respectively. As of December 31, 2021, there is less than \$0.1 million of total

unrecognized compensation cost related to non-vested awards, which will be recognized over a weighted-average period of less than 1 year.

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Restricted Stock Unit Activity

The Company issues restricted stock units under the 2019 Equity Plan. The fair value of these RSUs is determined based upon the closing fair market value of the Company's common stock on the grant date.

A summary of the status of RSUs and changes during the years ended December 31, 2021 and 2020 is presented below:

	Shares	Weighted average grant date fair value
Non-vested RSUs at January 1, 2020	955,011	\$ 2.69
Granted	1,316,174	1.21
Vested	(305,027)	2.77
Cancelled, expired or forfeited	(94,566)	2.12
Non-vested RSUs at December 31, 2020	1,871,592	\$ 1.68
Granted	977,599	7.74
Vested	(1,109,250)	1.90
Cancelled, expired or forfeited	(49,931)	5.18
Non-vested RSUs at December 31, 2021	1,690,010	\$ 4.98

As of December 31, 2021, the Company had approximately \$7.0 million of total unrecognized compensation costs related to restricted stock awards, which will be recognized over a weighted average period of 3.0 years.

Note 13 – Segment Reporting

In the fourth quarter of 2019, in conjunction with the Kona Grill acquisition, the Company implemented certain organizational changes, including the reorganization of our internal reporting structure to better facilitate our strategy for growth and operational efficiency. As a result of these organizational changes, the Company has identified its reportable operating segments as follows:

- STK. The STK segment consists of the results of operations from STK restaurant locations, competing in the full-service dining industry, as well as management, license and incentive fee revenue generated from the STK brand and operations of STK restaurant locations.
- Kona Grill. The Kona Grill segment includes the results of operations of Kona Grill restaurant locations.
- ONE Hospitality. The ONE Hospitality segment is comprised of the management, license and incentive fee revenue and results of operations generated from the Company's other brands and venue concepts, which include ANGEL, Heliot, Hideout, Marconi, Radio and Rivershore Bar & Grill. Additionally, this segment includes the results of operations generated from F&B hospitality management agreements with hotels, casinos and other high-end locations.
- Corporate. The Corporate segment consists of the following: general and administrative costs, stock-based compensation, acquisition related gains and losses, lease termination expenses, transaction costs, COVID-19 related expenses and other income and expenses. This segment also includes STK Meat Market, an e-commerce platform that offers signature steak cuts nationwide, the Company's major off-site events group, which supports all brands and venue concepts, and revenue generated from gift card programs.

The Company's Chief Executive Officer, who is the Company's Chief Operating Decision Maker, manages the business and allocates resources via a combination of restaurant sales reports and operating segment profit information, defined as revenues less operating expenses, related to the Company's four operating segments.

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Certain financial information relating to the years ended December 31, 2021 and 2020 for each segment is provided below (in thousands). Prior year amounts for the STK and ONE Hospitality segments have been revised to conform to the current year segment presentation.

	STK	Kona Grill	ONE Hospitality	Corporate	Total
For the year ended December 31, 2021					
Total revenues	\$ 151,436	\$ 123,181	\$ 1,725	\$ 836	\$ 277,178
Operating income (loss) ⁽¹⁾	39,863	12,982	466	(33,926)	19,385
Capital asset additions	\$ 7,581	\$ 2,307	\$ 170	\$ 1,409	\$ 11,467
As of December 31, 2021					
Total assets	\$ 95,510	\$ 91,323	\$ 6,117	\$ 36,885	\$ 229,835
For the year ended December 31, 2020					
Total revenues	\$ 60,932	\$ 78,591	\$ 1,197	\$ 1,223	\$ 141,943
Operating income (loss) ⁽¹⁾	5,973	3,356	33	(23,056)	(13,694)
Capital asset additions	\$ 2,734	\$ 1,952	\$ 206	\$ 895	\$ 5,787
As of December 31, 2020					
Total assets	\$ 81,431	\$ 96,262	\$ 5,484	\$ 32,392	\$ 215,569

(1) Operating loss for the Corporate segment for the years ended December 31, 2021 and 2020 includes \$5.8 million and \$5.5 million, respectively, in COVID-19 related expenses.

Note 14 – Geographic Information

Certain financial information by geographic location relating to the years ended December 31, 2021 and 2020 is provided below (in thousands).

	For the year ended December 31,	
	2021	2020
Domestic revenues	\$ 272,651	\$ 140,537
International revenues	4,527	1,406
Total revenues	\$ 277,178	\$ 141,943
	December 31,	December 31,
	2021	2020
Domestic long-lived assets	\$ 185,718	\$ 180,935
International long-lived assets	1,190	258
Total long-lived assets	\$ 186,908	\$ 181,193

Note 15 – Commitments and Contingencies

The Company is party to claims in lawsuits incidental to its business, including lease disputes and employee-related matters. The Company has recorded accruals in its consolidated financial statements in accordance with ASC 450. While the resolution of a lawsuit, proceeding or claim may have an impact on the Company's financial results for the period in which it is resolved, in the opinion of management, the ultimate outcome of such matters and judgments in which the Company is currently involved, either individually or in the aggregate, will not have a material adverse effect on the Company's consolidated financial position or results of operations.

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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 31, 2022**

or

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

Commission File Number **001-37379****The ONE Group Hospitality, Inc.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

14-1961545

(I.R.S. Employer Identification No.)

1624 Market Street, Suite 311, Denver, Colorado

(Address of principal executive offices)

80202

Zip Code

646-624-2400

(Registrant's telephone number, including area code)

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

Title of each class
Common Stock, par value \$0.0001 per share

Title of each class
STKS

Name of each exchange on which registered
The NASDAQ Stock Market LLC

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 Section 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 (§ 232.405 of this chapter) 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, a 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 ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☒ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided 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. ☒

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant computed by reference to the price at which the common equity was last sold, as of the last business day of the registrant's most recently completed second fiscal quarter, was \$166,595,032.

Number of shares of Common Stock outstanding as of February 28, 2023: 31,643,573

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's proxy statement for its 2023 annual meeting of stockholders are incorporated by reference in Part III of this Form 10-K.

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[Table of Contents](#)**Cautionary Note Regarding Forward-Looking Statements:**

This Annual Report on Form 10-K and certain information incorporated herein by reference contain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Section 27A of the Securities Act of 1933, as amended (the "Securities Act"). Forward-looking statements speak only as of the date thereof and involve risks and uncertainties that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. These risk and uncertainties include, but are not limited to, the risk factors discussed under Item 1A. "Risk Factors" of this Annual Report on Form 10-K. Factors that might cause actual events or results to differ materially from those indicated by these forward-looking statements include matters such as future economic performance, general economic conditions, consumer preferences and spending, costs, competition, new product execution, restaurant openings or closings, operating margins, the availability of acceptable real estate locations, the sufficiency of our cash balances and cash generated from operations and financing activities for our future liquidity and capital resource needs, the impact on our business of Federal and State legislation and local regulation, future litigation, the execution of our growth strategy and other matters. We have attempted to identify forward-looking statements by terminology including "anticipates," "believes," "can," "continue," "ongoing," "could," "estimates," "expects," "intends," "may," "appears," "suggests," "future," "likely," "goal," "plans," "potential," "projects," "predicts," "should," "targets," "would," "will" and similar expressions that convey the uncertainty of future events or outcomes. You should not place undue reliance on any forward-looking statement. We do not undertake any obligation to update or revise any forward-looking statements to reflect events or circumstances after the date of this report or to reflect the occurrence of unanticipated events, except as may be required under applicable law.

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PART I

As used in this report, the terms “Company,” “we,” “our,” or “us,” refer to The ONE Group Hospitality, Inc. and its consolidated subsidiaries, taken as a whole, unless the context otherwise indicates. The term “year ended” refers to the entire calendar year unless the context otherwise indicates.

Item 1. Business

Description of the Business

We are a global restaurant company that develops, owns and operates, manages and licenses upscale and polished casual, high-energy restaurants and lounges and provides turn-key food and beverage (“F&B”) services and consulting service for hospitality venues including hotels, casinos and other high-end locations. Turn-key F&B services are food and beverage services that can be scaled, customized and implemented by us for the client at a particular hospitality venue. Our vision is to be a global market leader in the hospitality industry by melding high-quality service, ambiance, high-energy and cuisine into one great experience that we refer to as “Vibe Dining”. We design all our restaurants, lounges and F&B services to create a social dining and high-energy entertainment experience within a destination location. We believe that this design and operating philosophy separates us from more traditional restaurant and foodservice competitors.



Our primary restaurant brands are STK, a multi-unit steakhouse concept that combines a high-energy, social atmosphere with the quality and service of a traditional upscale steakhouse, and Kona Grill, a polished casual bar-centric grill concept featuring American favorites, award-winning sushi, and specialty cocktails in a polished casual atmosphere. Our F&B hospitality management services are marketed as ONE Hospitality and include developing, managing and operating restaurants, bars, rooftop lounges, pools, banqueting and catering facilities, private dining rooms, room service and mini bars tailored to the specific needs of high-end hotels and casinos. We also provide hospitality advisory and consulting services to certain clients. Our F&B hospitality clients operate global hospitality brands such as the W Hotel, ME Hotel, Hippodrome Casino, and Curio Collection by Hilton.

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We opened our first restaurant in January 2004 in New York, New York. We currently own, operate, manage or license 63 venues including 25 STKs and 25 Kona Grills in major metropolitan cities in North America, Europe and the Middle East and 13 F&B venues in six hotels and casinos in the United States and Europe. We intend to open eight to twelve new venues in 2023, including a Kona Grill restaurant in Columbus, OH which opened in January 2023. There are currently three Company-owned STK restaurants (Charlotte, NC, Boston, MA and Washington D.C.) and two Company-owned Kona Grill restaurants (Riverton, UT and Phoenix, AZ) under construction.

Brands and Locations

The table below reflects our venues by restaurant brand and geographic location:

	Venues			Total
	STK ⁽¹⁾	Kona Grill	ONE Hospitality ⁽²⁾	
Domestic				
Owned	13	25	2	40
Managed	2	—	1	3
Licensed	1	—	3	4
Total domestic	16	25	6	47
International				
Owned	—	—	—	—
Managed	5	—	7	12
Licensed	4	—	—	4
Total international	9	—	7	16
Total venues	25	25	13	63

- (1) Locations with an STK and STK Rooftop are considered one venue location. This includes the STK Rooftop in San Diego, CA, which is a licensed location.
- (2) Includes concepts under the Company's F&B hospitality management agreements and other venue brands such as ANGEL, Bao Yum, Heliot, Hideout, Radio and Rivershore Bar & Grill. Effective January 1, 2022, our agreement with the Hippodrome Casino was amended and extended for five years whereby the Company changed from manager to consultant for the Heliot Steak House and F&B Hospitality services for the casino.

We expect to continue expanding our operations domestically and internationally primarily through a mix of owned, licensed and managed restaurants using a disciplined and targeted site selection process. We refer to our licensing and management strategy as our “capital light strategy” because it requires significantly less capital than expansion through owned restaurants only. Refer to Item 2 – Properties for additional details regarding the domestic and international locations in which we operate.

STK

STK is a global steakhouse restaurant concept with locations in major metropolitan cities. STK artfully blends the modern steakhouse and a chic lounge, offering a high-energy, fine dining experience in a social atmosphere with the quality and service of a traditional upscale steakhouse. Each STK location features a large, open restaurant and bar area with a DJ playing music throughout the restaurant, offering our customers a high-energy, fun “destination” environment that encourages social interaction. We believe this Vibe Dining concept truly differentiates us from other upscale steakhouses. Our menu provides a variety of portion sizes and signature options to appeal to a broad customer demographic.

We operate thirteen owned, seven managed and five licensed STK restaurants in North America, Europe and the Middle East. Our STK restaurants average approximately 10,000 square feet, and we typically target locations that range in size from 8,000 to 10,000 square feet. In 2022, the average domestic restaurant revenues and average domestic check per person for owned and managed STK restaurants that have been open at least 18 months at December 31, 2022 were \$19.1 million and \$131, respectively.

We are focused on expanding our global STK footprint. We believe that the locations of our STK restaurants are critical to our long-term success, and we devote significant time and resources to analyze prospective restaurant sites. We intend to continue our focus on (i) metropolitan areas with demographic and discretionary spending profiles that favor our high-end concept and (ii) finding partners with excellent

track records and brand recognition. We also consider factors such as traffic patterns, proximity to high-end shopping areas and office buildings, hotels and convention centers,

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area restaurant competition, accessibility and visibility. We have identified over 75 additional major metropolitan areas across the globe where we could grow our STK brand to 200 restaurants over the foreseeable future. We expect to open five to six STKs annually.

Kona Grill

Kona Grill is a bar-centric grill concept featuring American favorites, steaks, seafood, award-winning sushi, and specialty cocktails in a polished casual atmosphere. Kona Grill offers freshly prepared food and attentive service in an upscale, contemporary ambiance that creates an exceptional dining experience that we believe exceeds many traditional casual dining restaurants. Menu items are crafted to have memorable flavor profiles that appeal to a wide range of customers. The diverse menu is complemented by a full-service bar offering a broad assortment of wines, craft cocktails, and beers. We believe that the Kona Grill brand is complementary to our STK brand and enables us to capture market share in the Vibe Dining segment.

We own and operate 25 Kona Grill restaurants within 17 states in the United States. Our Kona Grill restaurants average approximately 7,000 to 8,000 square feet. In 2022, the average restaurant revenues were \$5.3 million and average spend per transaction was \$61. We believe we can grow the Kona Grill brand to 200 restaurants over the foreseeable future. We expect to open three to five Kona Grills annually.

ONE Hospitality

Our ONE Hospitality platform is composed of our F&B hospitality management and consulting agreements with hotels, casinos, and other high-end locations as well as our other brands and venue concepts, which are described below:

- *F&B Services*. Our F&B services for hospitality venues provide attractive and comprehensive tailored food and beverage solutions to our hospitality clients. Our fee-based hospitality food and beverage solutions include developing, managing and operating restaurants, bars, rooftops, pools, banquet and catering services, private dining rooms, in-room dining services and mini bars on a contract basis. Currently, we operate five venues pursuant to F&B hospitality management agreements with hotels and casinos in the United States and in Europe. Historically, our clients have provided the majority of the capital required for the development of the facilities we manage on their behalf.
- *ANGEL*. ANGEL Rooftop bar and Dining is a sophisticated Southern-Mediterranean restaurant with two indoor and outdoor bars, a floral garden patio, and a plunge pool located within the Hotel Calimala in Florence, Italy.
- *Bao Yum*. A fast-casual concept that offers a whimsical twist on classic bao. Bao Yum serves breakfast, lunch, dinner and dessert bao along with a variety of salads, soups, sandwiches and snacks. Bao Yum currently operates within the Westminster Curio Hotel in London and in Austin, Texas through a licensing agreement with Reef Kitchens.
- *Heliot*. Heliot Steak House is an award-winning steakhouse and bar within the Hippodrome Casino in London that offers impressive views of the main casino gambling floor.
- *Hideout*. The Hideout by STK is an outdoor, poolside restaurant and bar within the W Hotel in Westwood, California, which complements our owned STK and F&B hospitality services also offered within the W Hotel in Westwood.
- *Radio*. Radio Rooftop is a premier rooftop restaurant and lounge bar concept boasting striking city views with a signature location on top of the ME Milan hotel.
- *Rivershore Bar & Grill*. Rivershore Bar & Grill celebrates the end of the Oregon Trail with a beautiful river view, American favorites and friendly, professional service in Oregon City, Oregon.

Our F&B hospitality contracts generate revenues for us through management fees, which are typically calculated as a percentage of the operation's revenues, and we earn additional milestone and incentive fees based on the operation's profitability. We typically target F&B hospitality service opportunities where we believe we can generate at least \$500,000 of annual pre-tax income.

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We expect our F&B hospitality services business to be an important driver of our growth and profitability, enabling us to generate leads to develop managed STK restaurants and management fee income with minimal capital expenditures. We believe we are well positioned to leverage the strength of our brands and the relationships we have developed with global hospitality providers to drive the continued growth of our F&B hospitality business. We continue to receive inbound inquiries regarding new opportunities globally, and we continue to work with existing hospitality clients to identify and develop additional opportunities in their venues. We expect to enter into one to two new F&B hospitality agreements annually.

We exercised our option to renew the management agreement with ME London to manage STK, Radio, Marconi and in-room dining. Effective January 1, 2023, ME London elected not to renew Radio, Marconi and in-room dining per the agreement. Therefore, we will continue to manage the STK restaurant at ME London.

Sourcing and Supply Chain

We seek to ensure that consistently high-quality food and beverages are served at all of our venues through the coordination and cooperation of our purchasing and culinary teams.

Our culinary and purchasing teams establish product specifications on a global basis, which are then disseminated to all locations through recipe books for all dishes served at our properties. We are committed to culinary innovation which allows us flexibility in our preparations and offerings in order to manage costs and ensure regular availability.

We maintain consistent pricing standards and procedures for all top-volume purchases at our restaurants.

We select high quality suppliers and negotiate pricing on a national level in each country where one or more of our restaurants operate. We test new suppliers on a regional basis for an extended period before using them on a national basis. We periodically review supplier consistency and satisfaction with our location chefs and continually research and evaluate products and supplies to ensure the meat, seafood and other menu ingredients that we purchase comply with our high-quality specifications. We believe we have strong relationships with national and regional foodservice distributors who can continue to supply us with our products on a consistent basis. Products are shipped directly to the restaurants from our suppliers.

Our corporate beverage program establishes guidelines for ordering beverage products at our properties. We provide beverage managers at each location with national guidelines for standardized products. Our concepts emphasize the bar as a driver of activity in the restaurants and in 2022, the sale of beverages accounted for approximately 24% of restaurant revenues.

On a company-wide basis, no supplier of food accounts for more than 35% of our total food and beverage purchases and no brand of alcohol accounts for more than 25% of our alcohol purchases. We believe that our food and beverage supplies are available from a significant number of alternate suppliers and that the loss of a supplier would not have a material adverse effect on our costs of supplies.

Advertising and Marketing

The primary focus of our advertising and marketing is to increase awareness of our brands and our overall reputation for quality, service and delivering a high-energy experience. Our marketing efforts are designed to strengthen our brand recognition in markets where we operate and to create brand awareness in new markets before opening a new location. We use digital/social media channels, targeted local media such as magazines, billboards and other out-of-home advertising, and a strong network of public relations teams to increase the frequency with which our existing customers visit our restaurants and to attract new customers. We conduct frequent promotional programs tailored to the city, brand and clientele of each location. We utilize a network of local and national public relations firms to support these promotional programs. Additional marketing functions include the use of our websites, www.STKsteakhouse.com and

www.KonaGrill.com, to facilitate online reservations, to-go/delivery orders and gift card sales to drive revenue.

Competition

The restaurant and hospitality industries are intensely competitive with respect to price, quality of service, location, ambiance of facilities and type and quality of food. We experience competition from a variety of sources, including upscale steakhouse chains such as Ruth Chris, Del Frisco's, Fleming's, Mastro's and The Capital Grille, local upscale

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steakhouses and polished casual chains, such as The Cheesecake Factory, Bonefish and BJ's. There is also competition from other Vibe Dining restaurants such as Nobu, Lavo and Tao and other high-end hospitality services companies such as the Gerber Group, Lettuce Entertain You and ESquared Hospitality. To the extent that we operate lounges and similar venues in hotels and resorts, we are subject to our host venues being able to compete effectively in attracting customers who would frequent our establishments.

Seasonality

Our business is subject to fluctuations due to seasonality and adverse weather. Because of the seasonality of the business and the industry, results for any quarter are not necessarily indicative of the results that may be achieved for any other quarter or the full calendar year. Typically, our fourth quarter has higher sales volumes than other quarters in the year.

Intellectual Property

Our rights in our registered and unregistered intellectual property, including trademarks and service marks, are significant to our business. We own the U.S. federal registration rights to "STK," "Kona Grill," and several related word marks and design marks related to our brands. We depend on registered and unregistered trademarks and service marks to maintain the identity of our locations. We license the rights to use certain trademarks we own or license to our licensees in connection with their operations. We also own several other trademarks and service marks. It is our policy to defend our marks against encroachment by others.

Human Capital Resources

As of December 31, 2022, we employed 51 employees within our support center, 32 employees in multi-unit leadership and an aggregate of 262 full-time, salaried employees at our venues. We rely on hourly-wage employees for kitchen staff, servers, bussers, runners, polishers, hosts, bartenders, barbacks, reservationists, administrative support, and interns. The average headcount for employees in our domestic restaurants is 90. Combining full-time and part-time employees, we employ and manage directly approximately 3,700 persons and through ONE Hospitality we manage approximately 500 employees worldwide. We have never experienced a work stoppage, and none of our employees are represented by a labor organization.

Our human capital objectives include attracting, developing, rewarding, and retaining our existing and new employees. We offer our employees online training courses and on-the-job training. Restaurant management trainees undergo training in order to understand all aspects of our restaurant operations. We provide our employees with cash-based performance bonuses. We also have an equity incentive compensation plan to provide certain management-level or other key employees with stock-based awards. We have implemented programs to attract and retain both restaurant managers and hourly employees. We monitor our progress with metrics such as employee performance measures, turnover rates and restaurant customer surveys.

Government Regulation

Our operations are subject to extensive federal, state and local governmental regulation, including health, safety, labor, sanitation, building and fire agencies in the state, county, municipality or jurisdiction in which the restaurant is located. In certain states, our restaurants are subject to "dram shop" statutes, which generally provides a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. We maintain the necessary restaurant, alcoholic beverage and retail licenses, permits and approvals. Federal and state labor laws govern our relationship with our employees and affect operating costs. The development and construction of new restaurants are also subject to compliance with applicable zoning, land use and environmental regulations. A failure to comply with one or more regulations could result in the imposition of sanctions, including the closing of restaurants for an indeterminate period of time, fines or third-party litigation.

Available Information

We are required to file reports with the SEC, including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K. The SEC maintains a website that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at www.sec.gov.

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We maintain a website at www.togrp.com, including an investor relations section at ir.togrp.com, on which we routinely post information, such as webcasts of quarterly earnings calls and other investor events in which we participate and any related material. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports, as well as other reports relating to us that are filed with or furnished to the SEC can be accessed in the investor relations section of our website free of charge as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC.

We also make available on our website and in print to any stockholder who requests it, our Audit, Compensation, and Nominating and Corporate Governance Committee charters, as well as the Code of Conduct that applies to all directors, officers and associates of the Company. We do not incorporate any information found or accessible through our websites into this Annual Report on Form 10-K.

Item 1A. Risk Factors**RISK FACTORS**

Ownership of our common stock involves certain risks. Holders of our common stock and prospective investors should carefully consider the following risks and other information contained in this document, including our historical financial statements and related notes included herein. The following risk factors could materially adversely affect our business, financial condition and results of operations. This could cause the trading price of our common stock to decline, perhaps significantly, and you may lose part or all of your investment. The risks and uncertainties below are all those that we have identified as material but may not be the only risks and uncertainties facing us. Our business is subject to general risks and uncertainties that affect many other companies, including overall economic and industry conditions.

Economic Conditions and Competition

Our business is dependent on discretionary spending patterns, business travel and general economic conditions.

We depend on consumer discretionary spending, business travel and the overall economic environment. Disruptions in the economy, including recessions, high unemployment, foreclosures, bankruptcies, inflation and other economic impacts, could affect consumers' ability and willingness to spend discretionary dollars. Reductions in business travel and dining, which we believe accounts for a majority of our weekday revenues at our hotel-based restaurants and food and beverage services operations, would adversely affect our revenues. Reductions in discretionary income and spending also would impact our casino-based restaurants and food and beverage services operations. If uncertain economic conditions were to persist for an extended period of time or worsen, consumers might make long-lasting changes to their discretionary spending behavior, including dining out less frequently. Adverse changes in consumer discretionary spending could be affected by many different factors that are out of our control, including international, national and local economic conditions, any of which could harm our business prospects, financial condition, operating results and cash flows. Continued uncertainty in or a worsening of the economy, generally or in a number of our markets, and our customers' reactions to these trends could adversely affect our business and cause us to, among other things, reduce the number and frequency of new location openings, close locations and delay any re-modeling of existing locations. Our success will depend in part upon our ability to anticipate, identify and respond to changing economic and other conditions.

We have a limited number of venues, and we operate multiple venues in some cities and are therefore sensitive to economic and other trends and developments in these cities.

We have a relatively small number of restaurants and F&B service locations, and we operate multiple venues in some cities. We typically operate one to five venues in the cities where we operate. Accordingly, particularly in cities where we have multiple venues, our business is susceptible to adverse changes in these markets whether as a result of declining economic conditions, declining stock market performance, negative publicity, changes in customer preferences or for other reasons, and any such adverse changes may have a disproportionate effect on our overall results of operations compared to some of our

competitors that may have less restaurant concentration or that do not operate in our markets. Any regional occurrences such as local labor strikes, natural disasters, prolonged inclement weather, acts of terrorism or other national emergencies, accidents, energy shortages, system failures or other unforeseen events in or around these cities could result in temporary or permanent closings of our venues, which could have a material adverse effect on our business, financial condition and results of operations as a whole.

[Table of Contents](#)***Competition in the restaurant industry is intense.***

The restaurant and hospitality industry is intensely competitive with respect to price, quality of service, location, ambiance of facilities and type and quality of food. The industry is also characterized by the continual introduction of new concepts and is subject to rapidly changing consumer preferences, tastes, trends and eating and purchasing habits. Our success depends in part on our ability to anticipate and respond quickly to changing consumer preferences, and other factors affecting the restaurant and hospitality industry, including new market entrants and demographic changes. Shifts in consumer preferences away from upscale steakhouses or beef in general, which are significant components of our concepts' menus and appeal, whether as a result of economic, competitive or other factors, could adversely affect our business and results of operations.

A substantial number of national and regional restaurant chains, as well as independently owned restaurants, compete with us for customers, restaurant locations and qualified management and other restaurant staff. There is also competition from non-steak but upscale and high-energy restaurants, and other high-end hospitality services companies and high-energy nightlife concepts. To the extent that our restaurants and F&B hospitality services operations are in hotels, casinos, resorts and similar client locations, we are subject to competition in the broader lodging and hospitality markets that could draw potential customers away from our locations.

Some of our competitors have greater financial, marketing and operating resources than we do, have been in business longer, have greater name recognition and are better established in the markets where our restaurants and F&B hospitality services operations are located or where we may expand. In addition, improved product offerings in the fast casual segment of the restaurant industry, combined with the effects of negative economic conditions and other factors, may lead consumers to choose less expensive alternatives. Our inability to compete successfully with other restaurants, other F&B hospitality services operations and other segments of the industry may harm our ability to maintain acceptable levels of revenue growth, limit our development of new restaurants or concepts, or force us to close one or more of our restaurants or F&B hospitality services operations.

We may also need to evolve our concepts to compete with popular new restaurant or F&B hospitality services operation formats, concepts or trends that emerge from time to time, and we cannot provide any assurance that any changes we make to any of our concepts in response will be successful or not adversely affect our profitability.

Health and Safety***The COVID-19 pandemic has had a significant effect on our restaurant traffic and our business, financial condition and results of operations.***

The COVID-19 pandemic significantly affected our business and results. We incurred COVID-19 related costs of \$2.5 million and \$5.8 million in 2022 and 2021, respectively. We have made operational changes to adhere to government requirements on safety and sanitation in our restaurants. However, we cannot guarantee that changes to our operational policies and training will be effective to keep our employees and customers safe from COVID-19. COVID-19 may impact the willingness of customers to dine outside of the home. While it is not possible at this time to estimate the full impact that COVID-19 could have on our business going forward, the spread of the virus and the measures taken by governments or by us in response could adversely impact our business, financial condition and results of operations.

Health concerns arising from outbreaks of flu viruses or other diseases, or regional or global health pandemic could severely affect our business.

The United States and other countries have experienced, or may experience in the future, outbreaks of viruses, such as coronavirus, norovirus, Avian Flu or "SARS," and H1N1 or "swine flu," or other diseases such as bovine spongiform encephalopathy, commonly known as "mad cow disease." If a virus is transmitted by human contact, our employees or customers may become infected, or may choose, or be advised, to avoid gathering in public places, any of which may adversely affect the guest traffic at our

restaurants and the ability to adequately staff our restaurants, receive deliveries on a timely basis or perform functions at the corporate level. We also may be adversely affected if jurisdictions in which we have restaurants impose mandatory closures, seek voluntary closures or impose restrictions on operations. Even if such measures are not implemented and a virus or other disease does not spread significantly, the perceived risk of infection or significant health risk may adversely affect our business.

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To the extent that a virus or disease is food-borne, or perceived to be food-borne, future outbreaks may adversely affect the price and availability of certain food products and cause our customers to eat less of a product. For example, health concerns relating to the consumption of beef or to specific events such as the outbreak of “mad cow disease” may adversely impact sales of our beef-related menu items. In addition, public concern over “avian flu” may cause fear about the consumption of chicken, eggs and other products derived from poultry. The inability to serve beef or poultry-based products would restrict our ability to provide a variety of menu items to our customers. If we change our menu in response to such concerns, we may lose customers who do not prefer the new menu, and we may not be able to sufficiently attract new customers to produce the revenue needed to restore the profitability of our restaurant operations. We also may generate different or additional competitors for our intended customers as a result of such a menu change and may not be able to successfully compete against such competitors.

Failure to protect food supplies and adhere to food safety standards could result in food borne illnesses and adversely affect our business.

Failure to protect our food supply or enforce food safety policies, such as proper food temperature and adherence to shelf-life dates, could result in food-borne illnesses to our guests. Also, our reputation of providing high-quality food is an important factor in our guests choosing our restaurants. Whether or not traced to our restaurants or those of our competitors, instances of food borne illness or other food safety issues could reduce the demand for certain or all of our menu offerings. If any of our guest become ill from consuming our products, the affected restaurants may be forced to close, and we may be subject to legal liability. An instance of food contamination from one of our restaurants or suppliers could have far-reaching effects, as the contamination, or the perception of contamination could affect any or all of our restaurants. Publicity related to either product contamination, recalls, or food-borne illness, including Bovine-Spongiform Encephalopathy, which is also known as BSE or mad cow disease, aphthous fever, which is also known as hoof and mouth disease, and hepatitis A, listeria, salmonella and e-coli may also injure our brand and may affect the selection of our restaurants by our guests or licensees based on fear of such illnesses. In addition, the occurrence of food-borne 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 margins for us and our licensees.

Labor and Supplies

Changes to wage, immigration and labor laws could increase our costs substantially.

Under the minimum wage laws in most domestic jurisdictions, we are permitted to pay certain hourly employees a wage that is less than the base minimum wage because these employees receive tips as a substantial part of their income. As of December 31, 2022, approximately 34% of our employees earn this lower minimum wage in their respective locations since tips constitute a substantial part of their income. If cities, states or the federal government change their laws to require all employees to be paid the general employee minimum base wage regardless of supplemental tip income, our labor costs would increase substantially. Certain states in which we operate restaurants also have adopted or are considering adopting minimum wage statutes that exceed the federal minimum wage. We may be unable or unwilling to increase our prices to pass these increased labor costs on to our customers, in which case, our business and results of operations could be adversely affected.

A restaurant company employer may claim a credit against the company’s federal income taxes for FICA taxes paid on certain tip wages (the “FICA tip credit”). We utilize the federal FICA tip credit to reduce our federal income tax expense. Changes in the tax law could reduce or eliminate the FICA tip credit, which could negatively impact our results of operations and cash flows in future periods.

Further, the U.S. Congress and Department of Homeland Security may implement changes to federal immigration laws, regulations or enforcement programs. Some of these changes may increase our obligations for compliance and oversight, which could subject us to additional costs and make our hiring process more cumbersome or reduce the availability of potential employees. Even if we operate our restaurants in strict compliance with U.S. Immigration and Customs Enforcement and state requirements, some of our employees may not meet federal work eligibility or residency requirements, which could lead

to a disruption in our work force. Although we require all of our new employees to provide us with the government-specified documentation evidencing their employment eligibility, some of our employees may, without our knowledge, be unauthorized workers. Unauthorized workers are subject to seizure and deportation and may subject us to fines, penalties or loss of our business license in certain jurisdictions. Additionally, a government audit could result in a disruption to our workforce or adverse publicity that could negatively impact our brand and our use of E-Verify and/or potential for receipt of letters from the Social Security Administration requesting

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information (commonly referred to as no-match letters) could make it more difficult to recruit and/or retain qualified employees.

Potential changes in labor laws or increased union recruiting activities could result in portions of our workforce being subjected to greater organized labor influence. Although we do not currently have any unionized employees, labor legislation could have an adverse effect on our business and financial results by imposing requirements that could potentially increase our costs, reduce our flexibility and impact our ability to service our customers. In addition, a labor dispute involving some or all of our employees could harm our reputation, disrupt our operations and reduce our revenues and resolution of disputes may increase our costs.

The loss of key personnel or difficulties recruiting and retaining qualified personnel could adversely affect our business and financial results.

Our success depends substantially on the contributions and abilities of key executives and other employees, and on our ability to recruit and retain high-quality employees to work in and manage our restaurants. We must continue to recruit, retain and motivate management and other employees sufficient to maintain our current business and support our projected growth. A loss of key employees or a significant shortage of high-quality restaurant employees to maintain our current business and support our projected growth could adversely affect our business and financial results.

The restaurant industry has faced labor challenges coming out of the COVID-19 pandemic. Although, we have been able to fully staff our restaurants in this challenging labor environment, there is no assurance that we will be able to continue to effectively manage our employee base and avoid a labor shortage.

We occupy most of our restaurants and some of our food and beverage hospitality services locations under long-term non-cancelable leases under which we may remain obligated to perform even if we close those operations, and we may be unable to renew leases at the end of their terms.

Most of our restaurants and some of our food and beverage hospitality operations are located in premises that we lease. Many of our current leases are non-cancelable and typically have terms ranging from 10 to 15 years with renewal options for terms ranging from 1 to 5 years. We believe that future leases that we enter into will be on substantially similar terms. Fixed payments and/or minimum percentage rent payments under our operating leases and management agreements account for a significant portion of our operating expenses. This may increase our vulnerability to general adverse economic and industry conditions, limit our ability to obtain additional financing, and limit our flexibility in planning for or reacting to changes in our business.

We primarily depend on cash flow from operations to pay our obligations and to fulfill our other cash needs. If our business does not generate sufficient cash flow from operating activities and sufficient funds are not otherwise available to us from borrowings under our credit facility or other sources, we may not be able to meet our operating lease and management agreement obligations, grow our business, respond to competitive challenges or fund our other liquidity and capital needs, which could adversely affect our business and results of operations.

If we were to close or fail to open a restaurant or other venue at a location we lease, we would generally remain committed to perform our obligations under the applicable lease, which could include, among other things, payment of the base rent for the balance of the lease term. Our obligation to continue making rental payments and fulfilling other lease obligations in respect of leases for closed or unopened restaurants could have a material adverse effect on our business and results of operations. Alternatively, at the end of the lease term and any renewal period for a restaurant, we may be unable to renew the lease without substantial additional cost, if at all. If we cannot renew such a lease we may be forced to close or relocate a restaurant, which could subject us to construction and other costs and risks.

Additionally, negative effects on our existing and potential landlords due to the inaccessibility of credit and other unfavorable economic factors may adversely affect our business and results of operations. If our landlords are unable to obtain financing or remain in good standing under their existing financing

arrangements, they may be unable to provide construction contributions or satisfy other lease covenants to us. If any landlord files for bankruptcy protection, the landlord may be able to reject our lease in the bankruptcy proceedings. While we would under some circumstances have the option to retain our rights under the lease, we could not compel the landlord to perform any of its obligations and would be left with damages (which are subject to collectability risk) as our sole recourse. Our development of new locations may also be adversely affected by the negative financial situations of potential developers, landlords and host sites. Such parties may delay or cancel development projects or renovations of existing projects due to the instability in

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the credit markets and economic uncertainty. This could reduce the number of high-quality locations available that we would consider for our new operations or cause the quality of the sites in which the restaurants and food and beverage hospitality services operations are located to deteriorate. Any of these developments could have an adverse effect on our existing businesses or cause us to curtail new projects.

We depend upon frequent deliveries of food, alcohol and other supplies, which subjects us to the possible risks of shortages, interruptions and price fluctuations.

Our ability to maintain consistent quality throughout our locations depends in part upon our ability to acquire fresh, quality products, including beef, seafood, produce and related items, from reliable sources in accordance with our specifications. We currently purchase our food products from various suppliers. We have elected to purchase our beef from a limited number of suppliers. If there were any shortages, interruptions or significant price fluctuations in beef or seafood or if our suppliers were unable to perform adequately or fail to distribute products or supplies to our restaurants, or terminate or refuse to renew any contract with us, this could cause a short-term increase of our costs or cause us to remove certain items from our menu, increase the price of certain offerings or temporarily close a location, which could adversely affect our business and results of operations.

In addition, we purchase beer, wine and spirits from distributors who own the exclusive rights to sell such alcoholic beverage products in the geographic areas in which our locations reside. Our continued ability to purchase certain brands of alcoholic beverages depends upon maintaining our relationships with those distributors, of which there can be no assurance. If any of our alcohol beverage distributors cease to supply us, we may be forced to offer brands of alcoholic beverage which have less consumer appeal or that do not match our brand image, which could adversely affect our business and results of operations.

Increases in commodity prices would adversely affect our results of operations.

Our profitability depends in part on our ability to anticipate and react to changes in commodity costs, which have a substantial effect on our total costs. The purchase of beef represents approximately 23% of our food and beverage costs. The market for beef is subject to extreme price fluctuations due to seasonal shifts, climate conditions, the price of feed, industry demand, energy demand and other factors. Our ability to forecast and manage our commodities could significantly affect our gross margins. Energy prices can also affect our operating results because increased energy prices may cause increased transportation costs for beef and other commodities and supplies, and increased costs for the utilities required to run each location. Historically we have passed increased commodity and other costs on to our customers by increasing the prices of our menu items. While we believe these price increases have historically not affected customer traffic, there can be no assurance that additional price increases would not affect future customer traffic. If prices increase in the future and we are unable to anticipate or mitigate these increases, or if there are shortages for beef, our business and results of operations would be adversely affected.

Strategy and Operations

Unsuccessful implementation of any or all of the initiatives of our business strategy, including opening new restaurants and attracting new F&B hospitality service opportunities, could negatively impact our operations.

One key element of our growth strategy is opening new restaurants and F&B hospitality services locations. We believe there are opportunities to open approximately seven to twelve new locations (restaurants and/or hospitality services operations) annually, with a focus on operating under licensing or management agreements (referred to as our “capital light strategy”). However, there can be no assurance that we will be able to open new restaurants or F&B hospitality services locations at the rate that we currently expect.

Our success in growing our business through the opening of new restaurants and F&B hospitality locations is dependent upon a number of factors, including our ability to: cost-effectively operate in markets that we are not familiar with, find suitable license and food and beverage partners, find suitable locations, reach acceptable lease terms, have adequate capital, find acceptable contractors, obtain licenses

and permits, manage construction and development costs, recruit and train appropriate staff and properly manage the new venue. Unanticipated costs or delays in the development or construction of future restaurants could impede our ability to open new restaurants timely and cost-effectively, which could have a negative impact on our business, financial condition and results of operations. Specifically, some of the factors that adversely affect the cost and time associated with the development and construction of our restaurants include: labor disputes, shortages of materials or skilled labor, adverse weather conditions, unforeseen engineering

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problems, environmental problems, construction or zoning problems, local government regulations, modifications in design, and other unanticipated increases in cost.

Additionally, our venues are expensive to build, and we, our managed unit partners and our licensees incur significant capital and pre-opening expense. Our business and profitability may be adversely affected if the “ramp-up” period for a new location lasts longer than we expect or if the profitability of a new location dips after our initial “ramp-up” marketing program ends. New locations may not be profitable, and their sales performance may not follow historical or projected patterns. If we are forced to close any new operations, we will incur losses for certain buildout costs and pre-opening expenses incurred in connection with opening such operations.

We face a variety of risks associated with doing business with licensees.

We rely in part on our licensees and the manner in which they operate the STK restaurants to develop and promote our business. As of December 31, 2022, we had five licensed STK restaurants.

Our licensees are required to operate our restaurants according to the specific guidelines we set forth, which are essential to maintaining brand integrity and reputation, as well as in accordance with all laws and regulations applicable to us, and all laws and regulations applicable in the countries in which we operate. We provide training to these licensees to integrate them into our operating strategy and culture. However, since we do not have day-to-day control over all of these restaurants, we cannot give assurance that there will not be differences in product and service quality, operations, labor law enforcement, marketing or profitability or that there will be adherence to all of our guidelines and applicable laws. In addition, if our licensees fail to make investments necessary to maintain or improve the restaurants, guest preference for our brand could suffer. Our licensees are subject to business risks similar to those we face such as competition; customer acceptance; fluctuations in the cost, quality and availability of raw ingredients; increased labor costs; difficulty obtaining acceptable site leases; and difficulty obtaining proper financing. Failure of licensed restaurants to operate effectively could adversely affect our cash flows from those operations or have a negative impact on our reputation and our business.

The success of our licensed operations depends on our ability to establish and maintain good relationships with our licensees. The value of our brand and the rapport that we maintain with our licensees are important factors for potential licensees considering doing business with us. If we are unable to maintain good relationships with licensees, we may be unable to renew license agreements and opportunities for developing new relationships with additional licensees may be adversely affected. This, in turn, could have an adverse effect on our results of operations. Although we have developed criteria to evaluate and screen prospective developers and licensees, we cannot be certain that the developers and licensees we select will have the business acumen necessary to open and operate successful licensed restaurants in their licensing areas, or that the licensees, once selected, will be able to negotiate acceptable lease or purchase terms for prospective sites or to obtain the necessary approvals for such sites, or that financing will be available to construct and open new venues.

To the extent that our operations are located in hotels, casinos or similar destinations, our results of operations and growth are subject to the risks facing such venues.

Our ability to grow and realize profits from our operations in hotels, casinos and other branded or destination venues are dependent on the success of such venues’ business. We are subject to the actions and business decisions of our clients and third parties, in which we may have little or no influence in the overall operation of the applicable venue and such actions and decisions could have an adverse effect on our business and operations.

Litigation and Brand Risk

We face the risk of adverse publicity in connection with our operations, including as a result of increased social media usage.

The quality of our food and our facilities are two of our competitive strengths. Therefore, adverse publicity, whether accurate or not, relating to food quality, public health concerns, illness, safety, injury or government or industry findings concerning our venues or those operated by others could negatively impact us. Any shifts in consumer preferences away from the kinds of food we offer, particularly beef, whether because of dietary or health concerns or otherwise, would make our locations less appealing and could reduce customer traffic and/or impose practical limits on pricing.

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The use of social media platforms allows individuals to access a broad audience of consumers and other interested persons. Consumers value readily available information concerning goods and services that they have or plan to purchase and may act on such information without further investigation or authentication. Many social media platforms immediately publish content from their subscribers and participants, often without filters or checks on the accuracy of the content posted. Information concerning our company may be posted on such platforms at any time. If customers perceive or experience a reduction in our food quality, service or ambiance or in any way believe we have failed to deliver a consistently positive experience, this information can be immediately and broadly disseminated. This information may be adverse to our interests or may be inaccurate, each of which may harm our performance, prospects or business.

We face the risk of litigation in connection with our operations.

We are, from time to time, the subject of complaints or litigation from our consumers alleging, among other things, illness, injury or other food quality, health or operational concerns. The inappropriate use of social media by our employees or customers could lead to litigation and result in negative publicity that could damage our reputation. In addition, third party and employee claims against us based on, among other things, alleged discrimination, harassment or wrongful termination, or labor code violations may divert financial and management resources that would otherwise be used to benefit our future performance. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations. In addition, they may generate negative publicity, which could reduce customer traffic and sales. Although we maintain what we believe to be adequate levels of insurance commensurate with the nature and extent of our operations, insurance may not be available at all or in sufficient amounts to cover any liabilities with respect to these matters. A significant increase in the number of these claims or in the number of such claims that are successful could materially adversely affect our brand, financial condition or operating results. Like most employee practices liability insurance policies, our policy does not provide protection against hour and wage claims, and therefore litigation in the area could adversely impact our financial condition.

We may not be able to protect our brands, trademarks, service marks or other proprietary rights.

We have registered, or have applications pending to register, the trademarks STK, Kona Grill and Konavore with the United States Patent and Trademark Office and in certain foreign countries in connection with restaurant services. Our brands, which include our trademarks, service marks and other intellectual property and proprietary rights, are important to our success and our competitive position. In that regard, we believe that our trade names, trademarks and service marks are valuable assets that are critical to our success. Accordingly, we devote substantial resources to the establishment and protection of our brands. However, the actions we take may be inadequate to prevent imitation of our products and concepts by others, to prevent various challenges to our registrations or applications or denials of applications for the registration of trademarks, service marks and proprietary rights in the U.S. or other countries, or to prevent others from claiming violations of their trademarks and proprietary marks. In addition, others may assert rights in our trademarks, service marks and other proprietary rights or may assert that we are infringing rights they have in their trademarks, service marks, patents or other proprietary rights. Any such disputes could force us to incur costs related to enforcing our rights. In addition, the use of trade names, trademarks or service marks similar to ours in some markets may keep us from entering those markets.

Each of our intellectual property marks is pledged as collateral securing our credit and guaranty agreement with Goldman Sachs Bank USA ("Goldman Sachs"). Default under these agreements could enable Goldman Sachs to sell (at auction or otherwise) our trademarks, which would have a material adverse effect on our ability to continue our business.

Other Risks

Our operations may be negatively impacted by seasonality, adverse weather conditions, natural disasters or acts of terror.

Our business is subject to seasonal fluctuations, adverse weather conditions and natural disasters that may at times affect the regions in which our restaurants and F&B hospitality services operations are located, regions that supply or produce food products for our restaurants, or locations of our distribution network. As a result of the seasonality of our business due to weather, holiday events and other factors, our quarterly results for any one quarter or fiscal year may not be indicative of results to be expected for any other quarter or for any year.

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In addition, if adverse weather conditions or natural disasters such as fires and hurricanes affect our restaurants, we could experience closures, repair and restoration costs, food spoilage, and other significant reopening costs, any of which would adversely affect our business. We could also experience shortages or delayed shipments at our restaurants if adverse weather or natural disasters affect our distribution network, which could adversely affect our restaurants and our business as a whole. Additionally, during periods of extreme temperatures (either hot or cold) or precipitation, we may experience a reduction in customer traffic, which could adversely affect our restaurants and our business as a whole. Weather conditions are impossible to predict as is the negative impact on our business that such conditions might cause. Catastrophic weather conditions are likely to affect the supply of and costs for food products. If we do not anticipate or react to changing food costs by adjusting our purchasing practices or menu prices, our operating margins would likely deteriorate.

Terrorism, including cyber-terrorism or efforts to tamper with food supplies, could have an adverse impact on our brand and results of operations.

Security breaches, loss of data and other disruptions could compromise sensitive information related to our business, prevent us from accessing critical information or expose us to liability, which could adversely affect our business and our reputation

We utilize information technology systems and networks to process, transmit and store electronic information in connection with our business activities. As the use of digital technologies has increased, cyber incidents, including deliberate attacks and attempts to gain unauthorized access to computer systems and networks, have increased in frequency and sophistication. These threats pose a risk to the security of our systems and networks and the confidentiality, availability and integrity of our data, all of which are vital to our operations and business strategy. There can be no assurance that we will be successful in preventing cyber-attacks or successfully mitigating their effects.

We estimate that approximately 80% of our sales are by credit or debit cards. Other restaurants and retailers have experienced security breaches in which credit and debit card information has been stolen. We may in the future become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and we may also be subject to lawsuits or other proceedings relating to these types of incidents. Further, in 2015, the major credit card networks shifted the liability associated with EMV (Europay/Mastercard/Visa) chip card technology to the merchants. With this liability shift, any restaurant or merchant that is not using an approved chip-and-pin point-of-sale device would be liable for counterfeit or fraudulent charges.

Despite the implementation of security measures (such as the employment of internal resources and external consultants to conduct auditing and testing for weaknesses in our informational technology environment), our internal computer systems and those of our third-party contractors and consultants are vulnerable to damage or disruption from hacking, computer viruses, software bugs, unauthorized access or disclosure, natural disasters, terrorism, war, and telecommunication, equipment and electrical failures. There can be no assurance that we will promptly detect any such disruption or security breach, if at all. Unauthorized access, loss or dissemination could disrupt our operations, our ability to process and prepare company financial information, and manage various general and administrative aspects of our business. To the extent that any such disruption or security breach results in a loss of or damage to our data or applications, or inappropriate disclosure or theft of confidential, proprietary or personal information, we could incur liability, suffer reputational damage or poor financial performance or become the subject of regulatory actions by state, federal or non-US authorities, any of which could adversely affect our business.

We are subject to numerous and changing U.S. federal and foreign government regulations. Failure to comply with or substantial changes in government regulations could negatively affect our sales, increase our costs or result in fines or other penalties against us.

Each of our venues is subject to licensing and regulation by the health, sanitation, safety, labor, building environmental (including disposal, pollution, and the presence of hazardous substances) and fire agencies of the respective states, counties, cities, and municipalities in which it is located, as well as under federal law. These regulations govern the preparation and sale of food, the sale of alcoholic beverages, the

sale and use of tobacco, zoning and building codes, land use and employee, health, sanitation and safety matters. Alcoholic beverage control regulations govern various aspects of our locations' daily operations, including the minimum age of patrons and employees, hours of operation, advertising, wholesale purchasing and inventory control, handling and storage. Typically, our locations' licenses to sell alcoholic beverages must be renewed annually and may be suspended or revoked at any time for cause. A failure to comply with one or more regulations could result in the imposition of sanctions, including the closing of

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venues for an indeterminate period of time, or third-party litigation, any of which could have a material adverse effect on us and our results of operations.

Government regulation can also affect customer traffic at our locations. A number of states, counties and cities have enacted menu labeling laws requiring multi-unit restaurant operators to disclose certain nutritional information. For example, the Affordable Care Act establishes a uniform, federal requirement for restaurant chains with 20 or more locations operating under the same trade name and offering substantially the same menus to post nutritional information on their menus, including the total number of calories. The law also requires such restaurants to provide to consumers, upon request, a written summary of detailed nutritional information, including total calories and calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein in each serving size or other unit of measure, for each standard menu item. The Food and Drug Administration is also permitted to require additional nutrient disclosures, such as trans-fat content. Our compliance with the Affordable Care Act or other similar laws to which we may become subject could reduce demand for our menu offerings, reduce customer traffic and/or reduce average revenue per customer, which would have an adverse effect on our revenue. Any reduction in customer traffic related to these or other government regulations could affect revenues and adversely affect our business and results of operations.

Our foreign operations are subject to all of the same risks as our domestic restaurants and food and beverage hospitality services operations, and additional risks that include, among others, international economic and political conditions and the possibility of instability and unrest, differing cultures and consumer preferences, diverse government regulations and tax systems, the ability to source fresh ingredients and other commodities in a cost-effective manner and the availability of experienced management.

We are subject to governmental regulation in the domestic and international jurisdictions where we operate, including antitrust and tax requirements, anti-boycott regulations, import/export/customs regulations and other international trade regulations, the USA PATRIOT Act and the Foreign Corrupt Practices Act. Any new regulatory or trade initiatives could impact our operations in certain countries. Failure to comply with any such legal requirements could subject us to monetary liabilities and other sanctions, which could harm our business, results of operations and financial condition.

We may not be able to comply with certain debt covenants on our debt.

Our credit agreement requires us to achieve specified financial and operating results and maintain compliance with specified financial ratios. Our ability to comply with these provisions may be affected by events beyond our control, including the effects on our business of COVID-19 and related government actions and consumer behavior. If we were to default under our covenants and such default were not cured or waived, our indebtedness could become immediately due and payable. If we breach these covenants and fail to comply with the credit agreement, and the lenders accelerate the amounts outstanding, our business and results of operations would be adversely affected.

In addition, our ability to borrow under our revolving credit facility depends on several factors, including compliance with specified leverage incurrence ratios. If we are not able to borrow under our revolving credit facility to bridge losses we incur while our operations are affected by the COVID-19 pandemic, and if alternative financing is not available to us on acceptable terms or at all, our business and results of operations would be adversely affected.

Failure of our internal controls over financial reporting could harm our business and financial results.

Our management is responsible for establishing and maintaining effective internal control over financial reporting. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with accounting principles generally accepted in the United States. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that we would prevent or detect a misstatement of our financial statements or fraud. Any failure to maintain an effective system of internal

control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. A significant financial reporting failure or material weakness in internal control over financial reporting could cause a loss of investor confidence and decline in the market price of our stock.

We cannot be certain that we will be able to maintain adequate controls over our financial processes and reporting. Refer to Part II —Item 9A, “Controls and Procedures” of this Annual Report on Form 10-K for management’s assessment as of December 31, 2022. Any failure to maintain an effective system of internal control over financial

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reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. A significant financial reporting failure or material weakness in internal control over financial reporting could cause a loss of investor confidence and decline in the market price of our stock, and we could be subject to sanctions or investigation by regulatory authorities, such as the SEC or Nasdaq.

Insiders have substantial control over us, and they could delay or prevent a change in our corporate control even if our other stockholders wanted it to occur.

Our executive officers, directors, and principal stockholders hold a significant percentage of our outstanding common stock. Accordingly, these stockholders are able to control or have a significant impact on all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This could delay or prevent an outside party from acquiring or merging with us even if our other stockholders affirmed such action. In addition, such concentrated control may adversely affect the price of our common stock and sales by our insiders or affiliates, along with any other market transactions, could affect the market price of our common stock.

Provisions in our amended and restated certificate of incorporation, our bylaws and Delaware law may inhibit a takeover of us, which could limit the price investors might be willing to pay in the future for our common stock and could entrench management.

Our amended and restated certificate of incorporation and our bylaws contain provisions that may discourage unsolicited takeover proposals that stockholders may consider to be in their best interests. Our Board of Directors (the “Board”) is divided into three classes, each of which generally serve for a term of three years with only one class of directors being elected each year. As a result, at a given annual meeting, only a minority of the Board may be considered for election. Since our staggered Board may prevent our stockholders from replacing a majority of our Board at any given annual meeting, it may entrench management and discourage unsolicited stockholder proposals that may be in the best interests of stockholders.

Moreover, our Board has the ability to designate the terms of and issue new series of preferred stock without stockholder approval. Under the terms of our amended and restated certificate of incorporation, our Board may authorize and issue up to 10,000,000 shares of one or more series or class of preferred stock with rights superior to those of holders of common stock in terms of liquidation and dividend preference, voting and other rights. The issuance of preferred stock would reduce the relative rights of holders of common stock vis-à-vis the holders of preferred stock without the approval of the holders of common stock. In addition, to the extent that such preferred stock is convertible into shares of common stock, its issuance would result in a dilution of the percentage ownership of holders of common stock on a fully diluted basis. In addition, the issuance of a series of preferred stock could be used as a method of discouraging, delaying or preventing a change in control of our company.

We are also subject to the anti-takeover provisions under Delaware law, which could delay or prevent a change of control. Together, these provisions may make the removal of management more difficult and may discourage transactions that otherwise could involve a payment of a premium over prevailing market prices for our securities.

The price of our common stock could be subject to volatility related or unrelated to our operations.

The trading price of our common stock could fluctuate significantly due to a number of factors, including market perception of our ability to meet our growth projections and expectations, quarterly operating results of other companies in the same industry, trading value in our common stock, changes in general conditions in the economy and the financial markets or other developments affecting our business and the business of others in the industry. In addition, the stock market itself is subject to extreme price and volume fluctuations. This volatility has had a significant effect on the market price of securities issued by many companies for reasons related and unrelated to their operating performance and could have the same effect on our common stock.

Item 1B. Unresolved Staff Comments

None

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Item 2. Properties

We do not own any real property. Each of our “owned” restaurants operates in premises leased by its operating subsidiary. We do not have a direct ownership interest in restaurants we operate under a management agreement (“managed”) or license agreement (“licensed”).

Our STK locations are as follows:

Venue	Hotel/Casino/Special Venue	Location	Type of Interest
STK Atlanta	—	Atlanta, Georgia	Owned
STK Bellevue	—	Bellevue, Washington	Owned
STK Chicago	—	Chicago, Illinois	Owned
STK Dallas	—	Dallas, Texas	Owned
STK Denver	—	Denver, Colorado	Owned
STK Doha	The Ritz-Carlton	Doha, Qatar	Licensed
STK Downtown ⁽¹⁾	—	New York, New York	Owned ⁽²⁾
STK Dubai	Jumeirah Beach Residence	Dubai, United Arab Emirates	Licensed
STK Ibiza	Ibiza Corso Hotel & Spa	Illes Balears, Spain	Licensed
STK Las Vegas	The Cosmopolitan	Las Vegas, Nevada	Managed
STK London	ME London	London, England	Managed
STK Los Cabos	Los Cabos Airport	Cabo San Lucas, Mexico	Licensed
STK Miami Beach	—	Miami Beach, Florida	Owned
STK Midtown	—	New York, New York	Owned
STK Milan	ME Milan	Milan, Italy	Managed
STK Nashville	—	Nashville, Tennessee	Owned
STK Orlando ⁽¹⁾	Disney Springs	Orlando, Florida	Owned
STK San Diego ⁽¹⁾	Andaz Hotel	San Diego, California	Owned
STK San Juan	Condado Vanderbilt Hotel	San Juan, Puerto Rico	Licensed
STK San Francisco	—	San Francisco, California	Owned
STK Scottsdale	—	Scottsdale, Arizona	Managed
STK Stratford	The Gantry London	London, England	Managed
STK Toronto	—	Toronto, Canada	Managed
STK Westminster	The Westminster London	London, England	Managed
STK Westwood	W Hotel	Los Angeles, California	Owned

(1) Location includes an owned rooftop lounge, except for the STK Rooftop San Diego which is a licensed location.

(2) Ownership in location is 64.81%.

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Our Kona Grill locations are as follows:

Venue	Location	Type of Interest
Kona Grill Alpharetta	Alpharetta, Georgia	Owned
Kona Grill Baltimore	Baltimore, Maryland	Owned
Kona Grill Boca Park	Las Vegas, Nevada	Owned
Kona Grill Boise	Meridian, Idaho	Owned
Kona Grill Carmel	Carmel, Indiana	Owned
Kona Grill Cincinnati	Cincinnati, Ohio	Owned
Kona Grill Columbus	Columbus, Ohio	Owned
Kona Grill Dallas	Dallas, Texas	Owned
Kona Grill Denver	Denver, Colorado	Owned
Kona Grill Eden Prairie	Eden Prairie, Minnesota	Owned
Kona Grill El Paso	El Paso, Texas	Owned
Kona Grill Gilbert	Gilbert, Arizona	Owned
Kona Grill Huntsville	Huntsville, Alabama	Owned
Kona Grill Kansas City	Kansas City, Missouri	Owned
Kona Grill Minnetonka	Minnetonka, Minnesota	Owned
Kona Grill North Star	San Antonio, Texas	Owned
Kona Grill Oak Brook	Oak Brook, Illinois	Owned
Kona Grill Omaha	Omaha, Nebraska	Owned
Kona Grill Plano	Plano, Texas	Owned
Kona Grill San Antonio	San Antonio, Texas	Owned
Kona Grill Sarasota	Sarasota, Florida	Owned
Kona Grill Scottsdale	Scottsdale, Arizona	Owned
Kona Grill Tampa	Tampa, Florida	Owned
Kona Grill Troy	Troy, Michigan	Owned
Kona Grill Woodbridge	Iselin, New Jersey	Owned

Our ONE Hospitality brands and F&B services locations are as follows:

Venue	Hotel/Casino/Special Venue	Location	Type of Interest
ANGEL	Hotel Calimala	Florence, Italy	Managed
Bao Yum	The Westminster London	London, England	Managed
F&B Services - Westminster London	The Westminster London	London, England	Managed
F&B Services - Hippodrome	Hippodrome Casino	London, England	Managed
F&B Services - ME Milan	ME Milan	Milan, Italy	Managed
F&B Services - W Hotel	W Hotel	Los Angeles, California	Owned
Heliot	Hippodrome Casino	London, England	Managed
Hideout	W Hotel	Los Angeles, California	Owned
Radio Rooftop Bar	ME Milan	Milan, Italy	Managed
Reef Kitchens (3 venues)	—	Austin, Texas	Licensed
Rivershore Bar & Grill	Rivershore BW Plus	Oregon City, Oregon	Managed

In addition to the locations above, we lease office space for support offices in Denver, Colorado; New York, New York; Scottsdale, Arizona; and London, England.

[Table of Contents](#)**Item 3. Legal Proceedings**

We are subject to claims common to our industry and in the ordinary course of our business. Companies in our industry, including us, have been and are subject to class action lawsuits, primarily regarding compliance with labor laws and regulations. Defending lawsuits requires significant management attention and financial resources and the outcome of any litigation is inherently uncertain. We believe that accruals for these matters are adequately provided for in our consolidated financial statements. We may have to make payments from time to time to settle or resolve legal matters. We do not believe the ultimate resolutions of these matters will have a material adverse effect on our consolidated financial position and results of operations. However, the resolution of lawsuits is difficult to predict. A significant increase in the number of these claims, or one or more successful claims under which we incur greater liabilities than is currently anticipated, could materially and adversely affect our consolidated financial statements.

For information regarding litigation refer to Note 15. “Commitments and Contingencies” in our consolidated financial statements included in Item 8. “Financial Statements and Supplementary Data.” For more information about the impact of legal proceedings in our business, see Item 1A. “Risk Factors”.

Item 4. Mine Safety Disclosures

Not applicable

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PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Our common stock is traded on the NASDAQ Capital Market under the symbol "STKS". As of February 28, 2023, there were 76 holders of record of our common stock.

Dividends

We have not declared or paid any cash dividends on our common stock and do not intend to declare or pay any cash dividend in the foreseeable future. The payment of dividends, if any, is within the discretion of our Board of Directors and will depend on our earnings, our capital requirements, compliance with debt covenants, overall financial condition and such other factors as the Board of Directors may consider. As a Delaware corporation, we are also limited by Delaware law as to the payment of dividends. We currently intend to retain our earnings to finance our growth.

Issuer Purchases of Equity Securities

On September 7, 2022, the Company announced a repurchase program of up to \$10.0 million of outstanding common stock, which program terminates in September 2024. The table below sets forth information with respect to share repurchases under the program in the fourth quarter of 2022. We purchased an additional 118,085 shares totaling \$0.7 million during the first two months of 2023.

Period	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plan	Maximum dollar value of shares that may yet be purchased under the plan
October 1-31, 2022	16,224	\$ 6.50	16,224	\$ 6,391,022
November 1-30, 2022	245,688	\$ 6.09	245,688	\$ 4,887,917
December 1-31, 2022	320,026	\$ 6.28	320,026	\$ 2,867,788

Recent Sales of Unregistered Securities

None

Item 6. [Reserved]

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Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following management's discussion and analysis of our consolidated financial condition and results of operations should be read in conjunction with the consolidated financial statements and related notes to those statements included elsewhere in this Annual Report on Form 10-K.

Overview

We currently own, operate, manage or license 63 venues including 25 STKs and 25 Kona Grills in major metropolitan cities in North America, Europe and the Middle East and 13 F&B venues in six hotels and casinos in the United States and Europe. We intend to open eight to twelve new venues in 2023, including a Kona Grill restaurant in Columbus, Ohio which opened in January 2023. The four venues that were opened in 2022 are below:

- Owned STK restaurant in San Francisco, California;
- Owned STK restaurant in Dallas, Texas;
- Licensed virtual Bao Yum in Austin, Texas
- Managed STK restaurant at The Gantry London hotel in London, United Kingdom

There are currently three Company-owned STK restaurants (Charlotte, NC, Boston, MA and Washington D.C.) and two Company-owned Kona Grill restaurants (Riverton, UT and Phoenix, AZ) under construction. We are in ongoing discussions for additional owned, managed and licensed venues both in the U.S. and international.

The table below reflects our venues by restaurant brand and geographic location:

	Venues			Total
	STK ⁽¹⁾	Kona Grill	ONE Hospitality ⁽²⁾	
Domestic				
Owned	13	25	2	40
Managed	2	—	1	3
Licensed	1	—	3	4
Total domestic	16	25	6	47
International				
Owned	—	—	—	—
Managed	5	—	7	12
Licensed	4	—	—	4
Total international	9	—	7	16
Total venues	25	25	13	63

- (1) Locations with an STK and STK Rooftop are considered one venue location. This includes the STK Rooftop in San Diego, CA, which is a licensed location.
- (2) Includes concepts under the Company's F&B hospitality management agreements and other venue brands such as ANGEL, Bao Yum, Heliot, Hideout, Marconi, Radio and Rivershore Bar & Grill. Effective January 1, 2022, our agreement with the Hippodrome Casino was amended and extended for five years whereby the Company changed from manager to consultant for the Heliot Steak House and F&B Hospitality services for the casino.

Overview of the Impact of COVID-19

In response to COVID-19, the Company took significant steps to adapt its business to increase sales while providing a safe environment for guests and employees. COVID-19 related expenses were \$2.5 million and \$5.8 million for 2022 and 2021, respectively, composed primarily of sanitation, supplies and safety precautions taken to prevent the spread of COVID-19.

2022 Financial Highlights

Total revenue increased \$39.5 million, or 14.2% to \$316.6 million for 2022 compared to \$277.2 million for 2021. The increase was primarily attributable to strong execution of our sales initiatives combined with the opening of STK San Francisco and STK Dallas in August 2022 and November 2022,

respectively. Same store sales increased 10.8% in 2022 compared to 2021. STK same store sales increased 17.1% while Kona Grill same store sales increased 2.5%. On a

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three-year basis, same-store sales increased 47.7% for 2022 compared to 2019; STK same store sales increased 69.1% on a three-year basis while Kona Grill same store sales increased 26.3%.

Restaurant operating profit decreased \$1.6 million, or 3.1% to \$50.8 million for 2022 compared to \$52.4 million in 2021. Consistent with the restaurant industry, costs faced significant inflationary pressures during 2022. Restaurant operating profit as a percentage of owned restaurant net revenue was 16.9% in 2022 compared to 19.8% in 2021.

Operating income decreased \$3.1 million to \$16.3 million for 2022 from \$19.4 million for 2021. The decreased is attributed to higher general and administrative and pre-opening expenses and offset by higher managed, licensed and incentive fee revenue and lower COVID-19 related expenses.

Net income attributable to The ONE Group Hospitality, Inc was \$13.5 million in 2022 compared to \$31.3 million in 2021. We recognized an \$18.5 million gain on CARES Act Loan Forgiveness in 2021.

Our Growth Strategies and Outlook

Our growth model is primarily driven by the following:

Expansion of STK. We expect to continue to expand our operations domestically and internationally through a mix of owned, licensed and managed STK restaurants using a disciplined and targeted site selection process. We have identified over 75 additional major metropolitan areas across the globe where we expect we could grow our STK brand to 200 restaurants over the foreseeable future. We expect to open five to six STKs annually, primarily through company-owned locations and management or licensing agreements, provided that we have sufficient interest from prospective licensees, acceptable locations and quality restaurant managers available to support that pace of growth.

In 2022, we opened two owned STK restaurants in San Francisco, California and Dallas, Texas and one managed STK restaurant in London, United Kingdom. Additionally, we have Company-owned STK restaurants in Charlotte, North Carolina, Boston, Massachusetts and Washington, D.C under construction and several restaurants under lease or in lease negotiation.

Expansion of Kona Grill. We expect to expand our operations domestically using a disciplined and targeted site selection process. We believe we could grow the Kona Grill brand to 200 restaurants over the foreseeable future. We expect to open three to five Kona Grills annually, primarily through company-owned locations, provided that we have acceptable locations and quality restaurant managers available to support that pace of growth. We opened the first Kona Grill since the Company acquired the Kona Grill brand in Columbus, Ohio in January 2023 and have two restaurants under construction in Riverton, Utah and Phoenix, Arizona.

Expansion through New F&B Hospitality Projects. We expect our F&B hospitality services business to be an important contributor of our growth and profitability, enabling us to generate leads to develop managed STK restaurants and management fee income with minimal capital expenditures. We believe we are well positioned to leverage the strength of our brands and the relationships we have developed with global hospitality providers to drive the continued growth of our F&B hospitality business. We continue to receive inbound inquiries regarding new opportunities globally, and we continue to work with existing hospitality clients to identify and develop additional opportunities in their venues. We expect to enter into at least one to two new F&B hospitality agreements annually. In 2022, we opened a licensed virtual location in conjunction with REEF Kitchens in Austin, Texas that features offerings from Bao Yum.

Increase Same Store Sales and Increase Our Operating Efficiency. In addition to expanding into new cities and hospitality venues, we intend to continue to increase revenue and profits in our existing operations through continued focus on high-quality, high-margin food and beverage menu items. We believe that our operating margins will improve through growth in same store sales, as defined below in Key Performance Indicators, and a reduction of store-level operating expenses.

Acquisitions. We will continue to evaluate potential acquisition opportunities.

As our footprint increases, we expect to benefit by leveraging system-wide operating efficiencies and best practices through the management of our general and administrative expenses as a percentage of overall revenue.

[Table of Contents](#)**Key Performance Indicators**

We use the following key performance indicators in evaluating our restaurants and assessing our business:

Same Store Sales (“SSS”). SSS represents total food and beverage sales at domestic owned and managed restaurants opened for at least a full 18-month period at the beginning of each quarter, which removes the impact of new restaurant openings in comparing the operations of existing restaurants. For STK SSS, this measure includes total revenue from our owned and managed STK locations, excluding revenues from our owned STK restaurant located in the W Hotel in Los Angeles, California due to the impact of the F&B hospitality management agreement with the hotel. Revenues from locations where we do not directly control the event sales force are excluded from this measure. We have presented three-year comparable sales to illustrate how sales at our restaurant base before the COVID-19 pandemic compare to sales post COVID-19 restrictions.

Our comparable restaurant base for STK SSS consisted of ten domestic restaurants for the year ended December 31, 2022. For Kona Grill SSS 24 domestic restaurants are included in the comparable restaurant base. STK and Kona Grill SSS increased 17.1% and 2.5%, respectively, for 2022 compared to the prior year. On a three-year basis, STK SSS increased 69.1% while Kona Grill SSS increased 26.3%.

Number of Restaurant Openings. Number of restaurant openings reflects the number of restaurants opened during a particular fiscal period. For each restaurant opening, we incur pre-opening costs, which are defined below. Typically, new restaurants open with an initial start-up period of higher than normalized sales volumes (also referred to in the restaurant industry as the “honeymoon” period), which decrease to a steady level approximately 18 to 24 months after opening. However, operating costs during this initial period are also higher than normal, resulting in restaurant operating margins that are generally lower during the start-up period of operation and increase to a steady level approximately 18 to 24 months after opening. Some new restaurants may experience a “honeymoon” period that is either shorter or longer than this time frame.

In 2022, we opened three STK restaurants including two owned restaurants in San Francisco, California and Dallas, Texas, a managed STK restaurant in London, United Kingdom and opened one venue under a licensing agreement.

Average Check Per Person and Average Spend. Average check is calculated by dividing total restaurant sales by total number of guests for a specified period. Average spend per transaction is calculated by dividing total restaurant sales by total number of transactions for a specified period. Our management team uses these indicators to analyze trends in customers’ preferences, customer expenditures and the overall effectiveness of menu changes and price increases. For our comparable STK restaurants, our average check was \$131 for 2022 compared to \$114 for 2021. The average spend per transaction was \$61 for Kona Grill restaurants for 2022 compared to \$56 for 2021.

Average Comparable Restaurant Revenue. Average comparable restaurant revenue consists of the average sales of our comparable restaurants over a certain period of time. This measure is calculated by dividing total comparable restaurant sales in a given period by the total number of comparable restaurants in that period. For purposes of this calculation, STK Downtown restaurant and rooftop are considered a single venue. This indicator assists management in measuring changes in customer traffic, pricing and development of our brand. Our average comparable STK restaurant revenues were \$19.1 million and \$16.3 million for 2022 and 2021, respectively. Our average comparable Kona Grill restaurant revenues were \$5.3 million and \$5.1 million for 2022 and 2021, respectively.

[Table of Contents](#)**Key Financial Terms and Metrics**

We evaluate our business using a variety of key financial measures:

Segment reporting

Our reportable operating segments are as follows:

- STK. The STK segment consists of the results of operations from STK restaurant locations, competing in the full-service dining industry, as well as management, license and incentive fee revenue generated from the STK brand and pre-opening expenses associated with new restaurants under development.
- Kona Grill. The Kona Grill segment includes the results of operations of Kona Grill restaurant locations and pre-opening expenses associated with new restaurants under development.
- ONE Hospitality. The ONE Hospitality segment is composed of the management, license and incentive fee revenue and results of operations generated from the Company's other brands and venue concepts, which include ANGEL, Bao Yum, Heliot, Hideout, Marconi, Radio and Rivershore Bar & Grill. Additionally, this segment includes the results of operations generated from F&B hospitality management agreements with hotels, casinos and other high-end locations.
- Corporate. The Corporate segment consists of the following: general and administrative costs, stock-based compensation, lease termination expenses, transaction costs, COVID-19 related expenses and other income and expenses. This segment also includes STK Meat Market, an e-commerce platform that offers signature steak cuts nationwide, the Company's major off-site events group, which supports all brands and venue concepts, and revenue generated from gift card programs. The Corporate segment's total assets primarily include cash and cash equivalents, the Kona Grill tradename, and deferred tax assets.

See Note 13 to our consolidated financial statements for further information on our segment reporting.

Revenues

Owned restaurant net revenues. Owned restaurant net revenues consist of food and beverage sales by owned restaurants net of any discounts associated with each sale and of any ancillary F&B hospitality services at owned locations. Additionally, revenues from offsite banquets, our major off-site events group, and our gift card programs are included in owned restaurant net revenues. For the year ended December 31, 2022, beverage sales comprised 24% of food and beverage sales, and food sales comprised the remaining 76%. This indicator assists management in understanding the trends in gross margins of the restaurants.

Our primary owned restaurant brands are STK and Kona Grill. We specifically look at comparable sales from both owned and managed restaurants to understand customer count trends and changes in average check as it relates to our primary restaurant brands.

Management, license and incentive fee revenue. Management, license and incentive fee revenues include fees received pursuant to management and license agreements. Management agreements typically call for a management fee based on a percentage of revenue, a monthly marketing fee based on a percentage of revenues and an incentive fee based on a managed venue's net profits. Similarly, royalties from the licensee in license agreements are generally based on a percentage of the licensed restaurant's revenue. These management, license and incentive fees are recognized as revenue in the period the restaurant's sales occur. Initial licensing fees and upfront fees related to management and license agreements are recognized as revenue on a straight-line basis over the term of the agreement.

We evaluate the performance of our managed and licensed properties based on sales growth, a key driver for management and license fees, and on improvements in operating profitability margins, which, combined with sales, drives incentive fee growth.

Cost and expenses

Owned restaurant cost of sales. Owned restaurant cost of sales includes all owned restaurant food and beverage expenditures. We measure cost of goods as a percentage of owned restaurant net revenues. Owned restaurant cost of sales are generally influenced by the cost of food and beverage items, menu mix, discounting activity and restaurant

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level controls. See “Item 1A. Risk Factors — Increases in commodity prices would adversely affect our results of operations.”

Owned restaurant operating expenses. We measure owned restaurant operating expenses as a percentage of owned restaurant net revenues. Owned restaurant operating expenses include the following:

- *Payroll and related expenses.* Payroll and related expenses consist of manager salaries, hourly staff payroll and other payroll-related items, including taxes, insurance and fringe benefits. We measure our labor cost efficiency by tracking total labor costs as a percentage of owned restaurant net revenues.
- *Occupancy.* Occupancy comprises all occupancy costs, consisting of both fixed and variable rent, deferred rent expense, which is a non-cash adjustment included in our Adjusted EBITDA calculation as defined below, common area maintenance charges, real estate property taxes, utilities and other related occupancy costs and is measured by considering both the fixed and variable components of certain occupancy expenses.
- *Direct operating expenses.* Direct operating expenses consist of supplies, such as paper, smallwares, china, silverware and glassware, cleaning supplies, credit card fees and linen costs. Direct operating expenses are typically measured as a variable expense based on owned restaurant net revenues.
- *Outside services.* Outside services include music and entertainment costs, such as the use of live DJ’s, promoter costs, security services, outside cleaning services and commissions paid to event staff for banquet sales and delivery service fees.
- *Repairs and maintenance.* Repairs and maintenance consist of general repair work to maintain our facilities, and computer maintenance contracts. We expect these costs to increase at each facility as they get older.
- *Marketing.* Marketing includes the cost of promoting our brands and, at times, can include the cost of goods used specifically for complementary purposes. Marketing costs will typically be higher during the first 18 months of a restaurant’s operations.

General and administrative. General and administrative expenses are comprised of all corporate overhead expenses, including payroll and related benefits, stock-based compensation expense, professional fees, such as legal and accounting fees, insurance and travel expenses. Certain centrally managed general and administrative expenses are allocated specifically to restaurant locations and are reflected in owned restaurant operating expenses and include shared services such as reservations, events and marketing. We expect general and administrative expenses to be leveraged as we grow, become more efficient, and continue to focus on best practices and cost savings measures.

Depreciation and amortization. Depreciation and amortization expense consists principally of charges related to the depreciation of fixed assets including leasehold improvements, equipment and furniture and fixtures and loss on disposal of fixed assets.

Pre-opening expenses. Pre-opening expenses consist of costs incurred prior to opening an owned or managed STK restaurant at either a leased or F&B location. Pre-opening expenses are comprised principally of manager salaries and relocation costs, employee payroll, training costs for new employees and lease costs incurred prior to opening. Pre-opening expenses have varied from location to location depending on a number of factors, including the proximity of our existing restaurants; the amount of rent expensed during the construction and in-restaurant training periods; the size and physical layout of each location; the number of management and hourly employees required to operate each restaurant; the relative difficulty of the restaurant staffing process; the cost of travel and lodging for different metropolitan areas; the timing of the restaurant opening; and the extent of unexpected delays, if any, in obtaining necessary licenses and permits to open the restaurant.

Other Items

EBITDA, Adjusted EBITDA and Restaurant Operating Profit. We present EBITDA, Adjusted EBITDA and Restaurant Operating Profit to supplement other measures of financial performance. EBITDA,

Adjusted EBITDA and Restaurant Operating Profit are not required by, or presented in accordance with, accounting principles generally accepted in the United States of America ("GAAP"). We define EBITDA as net income before interest expense, provision for income taxes and depreciation and amortization. We define Adjusted EBITDA as EBITDA before non-cash rent expense, pre-opening expenses, lease termination expenses, stock-based compensation, COVID-19 related expenses and non-recurring gains and losses. Not all of the items defining Adjusted EBITDA occur in each reporting period but have been included in our definitions of these terms based on our historical activity. We define Restaurant

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Operating Profit as owned restaurant net revenue minus owned restaurant cost of sales and owned restaurant operating expenses.

We believe that EBITDA, Adjusted EBITDA and Restaurant Operating Profit are appropriate measures of our operating performance because they eliminate non-cash or non-recurring expenses that do not reflect our underlying business performance. We believe Restaurant Operating Profit is an important component of financial results because: (i) it is a widely used metric within the restaurant industry to evaluate restaurant-level productivity, efficiency, and performance, and (ii) we use Restaurant Operating Profit as a key metric to evaluate our restaurant financial performance compared to our competitors. We use these metrics to facilitate a comparison of our operating performance on a consistent basis from period to period, to analyze the factors and trends affecting our business and to evaluate the performance of our restaurants. Adjusted EBITDA has limitations as an analytical tool and our calculation of Adjusted EBITDA may not be comparable to that reported by other companies; accordingly, you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Adjusted EBITDA is a key measure used by management and is a metric used in our debt compliance calculation. Additionally, Adjusted EBITDA and Restaurant Operating Profit are frequently used by analysts, investors and other interested parties to evaluate companies in our industry. We use Adjusted EBITDA and Restaurant Operating Profit, alongside other GAAP measures such as net income, to measure profitability, as a key profitability target in our budgets, and to compare our performance against that of peer companies despite possible differences in calculation.

Please refer to the table on page 28 for our reconciliation of net income to EBITDA and Adjusted EBITDA and for a reconciliation of operating income to Restaurant Operating Profit.

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Results of Operations

The following table sets forth certain statements of operations data for the periods indicated (in thousands):

	For the year ended December 31,	
	2022	2021
Revenues:		
Owned restaurant net revenue	\$ 300,859	\$ 264,404
Management, license and incentive fee revenue	15,779	12,774
Total revenues	316,638	277,178
Cost and expenses:		
Owned operating expenses:		
Owned restaurant cost of sales	75,365	67,468
Owned restaurant operating expenses	174,689	144,529
Total owned operating expenses	250,054	211,997
General and administrative (including stock-based compensation of \$3,985 and \$3,618 for the years ended December 31, 2022 and 2021, respectively)	29,081	25,573
Depreciation and amortization	12,134	10,790
COVID-19 related expenses	2,534	5,821
Transaction costs	123	160
Lease termination expenses	257	1,912
Agreement restructuring expenses	—	503
Pre-opening expenses	5,519	1,037
Write-off of trademark costs and other	630	—
Total costs and expenses	300,332	257,793
Operating income	16,306	19,385
Other expenses (income), net:		
Interest expense, net of interest income	2,113	3,780
Loss on early debt extinguishment	—	600
Gain on CARES Act Loan Forgiveness	—	(18,529)
Total other expenses (income), net	2,113	(14,149)
Income before provision for income taxes	14,193	33,534
Provision for income taxes	874	1,586
Net income	13,319	31,948
Less: net (loss) income attributable to noncontrolling interest	(215)	600
Net income attributable to The ONE Group Hospitality, Inc.	\$ 13,534	\$ 31,348

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The following table sets forth certain statements of operations data as a percentage of total revenues for the periods indicated. Certain percentage amounts may not sum to total due to rounding.

	For the year ended December 31,	
	2022	2021
Revenues:		
Owned restaurant net revenue	95.0%	95.4%
Management, license and incentive fee revenue	5.0%	4.6%
Total revenues	100.0%	100.0%
Cost and expenses:		
Owned operating expenses:		
Owned restaurant cost of sales ⁽¹⁾	25.0%	25.5%
Owned restaurant operating expenses ⁽¹⁾	58.1%	54.7%
Total owned operating expenses ⁽¹⁾	83.1%	80.2%
General and administrative (including stock-based compensation of 1.3% and 1.3% for the years ended December 31, 2022 and 2021, respectively)	9.2%	9.2%
Depreciation and amortization	3.8%	3.9%
COVID-19 related expenses	0.8%	2.1%
Transaction costs	0.0%	0.1%
Lease termination expenses	0.1%	0.7%
Agreement restructuring expenses	—%	0.2%
Pre-opening expenses	1.7%	0.4%
Write-off of trademark costs and other	0.2%	—%
Total costs and expenses	94.9%	93.0%
Operating income	5.1%	7.0%
Other expenses (income), net:		
Interest expense, net of interest income	0.7%	1.4%
Loss on early debt extinguishment	—%	0.2%
Gain on CARES Act Loan Forgiveness	—%	(6.7)%
Total other expenses (income), net	0.7%	(5.1)%
Income before provision for income taxes	4.5%	12.1%
Provision for income taxes	0.3%	0.6%
Net income	4.2%	11.5%
Less: net (loss) income attributable to noncontrolling interest	(0.1)%	0.2%
Net income attributable to The ONE Group Hospitality, Inc.	4.3%	11.3%

(1) These expenses are being shown as a percentage of owned restaurant net revenue.

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The following table presents a reconciliation of net income to EBITDA and Adjusted EBITDA for the periods indicated (in thousands):

	For the year ended December 31,	
	2022	2021
Net income attributable to The ONE Group Hospitality, Inc.	\$ 13,534	\$ 31,348
Net income (loss) attributable to noncontrolling interest	(215)	600
Net income	13,319	31,948
Interest expense, net of interest income	2,113	3,780
Provision for income taxes	874	1,586
Depreciation and amortization	12,134	10,790
EBITDA	28,440	48,104
COVID-19 related expenses	2,534	5,821
Transaction costs	123	160
Stock-based compensation	3,985	3,618
Lease termination expense ⁽¹⁾	257	1,912
Agreement restructuring expense	—	503
Pre-opening expenses	5,519	1,037
Non-cash rent ⁽²⁾	(164)	(32)
Gain on CARES Act Loan forgiveness	—	(18,529)
Loss on early debt extinguishment	—	600
Write-off of trademark costs and other	630	—
Adjusted EBITDA	41,324	43,194
Adjusted EBITDA attributable to noncontrolling interest	72	507
Adjusted EBITDA attributable to The ONE Group Hospitality, Inc.	\$ 41,252	\$ 42,687

(1) Lease termination expense are costs associated with closed, abandoned and disputed locations or leases.

(2) Non-cash rent expense is included in owned restaurant operating expenses and general and administrative expense on the consolidated statements of operations and comprehensive income.

The following table presents a reconciliation of Operating income to Restaurant Operating Profit for the periods indicated (in thousands):

	For the year ended December 31,	
	2022	2021
Operating income as reported	\$ 16,306	\$ 19,385
Management, license and incentive fee revenue	(15,779)	(12,774)
General and administrative	29,081	25,573
Depreciation and amortization	12,134	10,790
COVID-19 related expenses	2,534	5,821
Agreement restructuring expenses	—	503
Pre-opening expenses	5,519	1,037
Lease termination expense	257	1,912
Transaction costs	123	160
Write-off of trademark costs and other	630	—
Restaurant Operating Profit	\$ 50,805	\$ 52,407
Restaurant Operating Profit as a percentage of owned restaurant net revenue	16.9%	19.8%

Restaurant Operating Profit by brand is as follows (in thousands):

	For the year ended December 31,	
	2022	2021
STK restaurant operating profit (Company owned)	\$ 37,259	\$ 34,598
STK restaurant operating profit (Company owned) as a percentage of STK revenue (Company owned)	21.5%	24.7%
Kona Grill restaurant operating profit	\$ 13,695	\$ 17,785
Kona Grill restaurant operating profit as a percentage of Kona Grill revenue	10.8%	14.4%

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The following tables show our operating results by segment for the periods indicated (in thousands). Prior year amounts have been revised to conform to the current year segment presentation.

	STK	Kona Grill	ONE Hospitality	Corporate	Total
For the year ended December 31, 2022					
Total revenues	\$ 187,402	\$ 126,341	\$ 2,344	\$ 551	\$ 316,638
Operating income (loss)	40,343	7,217	1,282	(32,536)	16,306
Capital asset additions	\$ 19,116	\$ 10,496	\$ 139	\$ 2,878	\$ 32,629
As of December 31, 2022					
Total assets	\$ 113,911	\$ 78,691	\$ 5,746	\$ 92,676	\$ 291,024
	STK	Kona Grill	ONE Hospitality	Corporate	Total
For the year ended December 31, 2021					
Total revenues	\$ 151,436	\$ 123,181	\$ 1,725	\$ 836	\$ 277,178
Operating income (loss)	39,863	12,982	466	(33,926)	19,385
Capital asset additions	\$ 7,581	\$ 2,307	\$ 170	\$ 1,409	\$ 11,467
As of December 31, 2021					
Total assets	\$ 95,579	\$ 69,006	\$ 5,735	\$ 59,515	\$ 229,835

Results of Operations for the Years Ended December 31, 2022 and December 31, 2021

Revenues

Owned restaurant net revenue. Owned restaurant net revenue increased \$36.5 million, or 13.8%, to \$300.9 million for 2022 from \$264.4 million for 2021. The increase was primarily attributable to strong execution of our sales initiatives combined with the opening of STK San Francisco and STK Dallas in August 2022 and November 2022, respectively. Same store sales increased 10.8% in 2022.

Management, license and incentive fee revenue. Management and license fee revenues increased \$3.0 million, or 23.5%, to \$15.8 million for 2022 from \$12.8 million for 2021. The increase was primarily attributable to strong revenues at our managed restaurants in North America.

Cost and Expenses

Owned restaurant cost of sales. Food and beverage costs for owned restaurants increased \$7.9 million, or 11.7%, to \$75.4 million for 2022 from \$67.5 million for 2021. The increase was primarily due to the incremental sales increases noted above. As a percentage of revenues, cost of sales decreased 50 basis points to 25.0% for 2022 from 25.5% for 2021 primarily due to product mix management, pricing and operational cost reduction initiatives partially offset by significant commodity price increases.

Owned restaurant operating expenses. Owned restaurant operating expenses increased \$30.2 million, or 20.9%, to \$174.7 million for 2022 from \$144.5 million for 2021. Owned restaurant operating costs as a percentage of owned restaurant net revenue increased 340 basis points from 54.7% in 2021 to 58.1% for 2022 primarily due to higher average wage and operating costs.

General and administrative. General and administrative costs increased \$3.5 million, or 13.7% to \$29.1 million for 2022 from \$25.6 million for 2021. The increase was attributable to additional investments required ahead of growth, increased accounting and legal fees partially offset by a decrease in performance based variable compensation. As a percentage of revenues, general and administrative costs were 9.2% in both 2022 and 2021.

Depreciation and amortization. Depreciation and amortization expense increased \$1.3 million to \$12.1 million for 2022 from \$10.8 million for 2021. The increase was primarily related to the opening of two owned STK restaurant in the second half of 2022 and capital expenditures to enhance the guest experience.

Lease termination expenses. Lease termination expense was \$0.3 million and \$1.9 million in 2022 and 2021, respectively. Lease termination expenses are costs associated with closed, abandoned and disputed locations or disputed leases.

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Agreement restructuring. Agreement restructuring expense for 2021 was \$0.5 million, related to the restructuring of agreements with our management and license partners. We do not expect to incur additional agreement restructuring expenses going forward.

COVID-19 related expenses. COVID-19 related expenses were \$2.5 million and \$5.8 million for 2022 and 2021, respectively, composed primarily of sanitation, supplies and safety precautions taken to prevent the spread of COVID-19.

Pre-opening expenses. We incurred \$5.5 million of pre-opening expenses primarily related to payroll, training, and non-cash rent for STK San Francisco which opened August 2022, STK Dallas which opened November 2022, Kona Grill Columbus which opened January 2023 and two new restaurants which are currently under construction. Total pre-opening expenses related to non-cash rent were \$1.1 million. Pre-opening expenses for 2021 were \$1.0 million, primarily related to STK Bellevue, which opened in July 2021. Detail of pre-opening expenses by category is provided in the table below for 2022 (in thousands).

	Preopen Expenses	Preopen Rent	Total
Training Team	\$ 1,186	\$ —	\$ 1,186
Restaurants ⁽¹⁾	3,200	1,133	4,333
Total	<u>\$ 4,386</u>	<u>\$ 1,133</u>	<u>\$ 5,519</u>

(1) Includes STK San Francisco, STK Dallas, Kona Grill Columbus, Kona Grill Phoenix and Kona Grill Riverton.

Write-off of trademark costs and other. Other expenses were \$0.6 million for 2022 composed primarily of trademark defense and litigation expenses.

Interest expense, net of interest income. Interest expense, net of interest income, was approximately \$2.1 million and \$3.8 million for 2022 and 2021, respectively. In conjunction with the Third Amendment to the Credit Agreement in August 2021, we made a \$22.2 million pre-payment on the loan.

Loss on early debt extinguishment. During August 2021, we entered into the Third Amendment to the Credit Agreement with Goldman Sachs Bank USA and made a \$22.2 million pre-payment on the term loan. We recognized a loss on early debt extinguishment of \$0.6 million in 2021.

Provision for income taxes. The provision for income taxes for 2022 was \$0.9 million compared to \$1.6 million for 2021. Our effective tax rate was 6.2% and 4.7% for the years ended December 31, 2022 and 2021, respectively. Our effective tax rate differs from the statutory U.S. tax rate of 21% primarily due to the following: (i) tax credits for FICA taxes on certain employees' tips; (ii) taxes owed in foreign jurisdictions such as the United Kingdom, Canada and Italy; (iii) taxes owed in state and local jurisdictions; and (iv) windfall tax benefits from equity compensation offset by compensation limited for certain individuals with compensation in excess of \$1 million.

Net (loss) income attributable to noncontrolling interest. Net income attributable to noncontrolling interest decreased \$0.8 million to a net loss of \$0.2 million for 2022 compared to net income of \$0.6 million for 2021.

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Liquidity and Capital Resources

Executive Summary

Our principal liquidity requirements are to meet our lease obligations, working capital and capital expenditure needs and to pay principal and interest on our outstanding debt. Subject to our operating performance, which, if significantly adversely affected, would adversely affect the availability of funds, we expect to finance our operations for at least the next 12 months, including the costs of opening currently planned new restaurants, through cash provided by operations, construction allowances provided by landlords of certain locations and borrowings under our credit agreement. We also may borrow on our revolving credit facility or issue equity to support ongoing business and fund additional expansion. We believe these sources of financing are adequate to support our immediate business operations and plans. As of December 31, 2022, we had cash and cash equivalents of \$55.1 million. We had \$74.3 million in long-term debt, which consisted of borrowings under our Credit Agreement as of December 31, 2022. As of December 31, 2022, the availability on our revolving credit facility was \$10.6 million, subject to the restrictions described in Note 5 to our consolidated financial statements.

Capital expenditures in 2022 were \$32.7 million of which \$17.8 million primarily related to the construction of two new STK restaurants in San Francisco, California and Dallas, Texas which opened in 2022, Kona Grill Columbus which opened in January 2023 and several restaurants that were under construction as of December 31, 2022. We spent \$10.0 million on maintenance capital expenditures for existing restaurants which included additional furniture, fixtures and equipment commensurate with the higher sales volumes at our restaurants. In addition, we spent approximately \$2.3 million for furniture, fixtures and equipment for restaurants that we plan to open in the future. Net capital expenditures, inclusive of \$2.2 million in landlord contributions, was \$30.5 million for 2022. Capital expenditures by type for 2022 is provided below (in thousands).

	STK	Kona Grill	Other	Total
New Venues	\$ 12,555	\$ 5,226	\$ 2,258	\$ 20,039
Maintenance	5,279	4,748	—	10,027
Other	409	413	1,741	2,563
Total	<u>\$ 18,243</u>	<u>\$ 10,387</u>	<u>\$ 3,999</u>	<u>\$ 32,629</u>

Our future cash requirements will depend on many factors, including the pace of expansion, conditions in the retail property development market, construction costs, the nature of the specific sites selected for new restaurants, and the nature of the specific leases and associated tenant improvement allowances available, if any, as negotiated with landlords.

Our operations have not required significant working capital, and, like many restaurant companies, we may have negative working capital during the year. Revenues are received primarily in credit card or cash receipts, and restaurant operations do not require significant receivables or inventories, other than our wine inventory. In addition, we receive trade credit for the purchase of food, beverages and supplies, thereby reducing the need for incremental working capital to support growth.

Credit Agreement

On October 4, 2019, in conjunction with the acquisition of Kona Grill, we entered into our Credit Agreement with Goldman Sachs Bank USA. On August 6, 2021, we entered into the Third Amendment to the Credit Agreement to extend the maturity date for both the term loan and revolving credit facility to August 2026. The Credit Agreement provides for a secured revolving credit facility of \$12.0 million and a \$25.0 million term loan (reduced from \$48.0 million). The term loan is payable in quarterly installments of \$0.1 million, with the final payment due in August 2026.

On December 13, 2022, we entered into the Fourth Amendment to the Credit Agreement that:

- Allows for a new \$50.0 million delayed draw term facility, available to draw for twelve months and subject to a 1.75x Net Leverage Ratio incurrence test (as defined in the Credit Agreement) for permitted acquisitions, stock repurchases and new restaurant capital expenditures;

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- Allows the Company to redeem, repurchase or otherwise acquire its own capital stock in an aggregate amount of up to \$50.0 million subject to a 1.75x Net Leverage Ratio incurrence test and no default or event of default;
- Changes the interest rate from London Interbank Offered Rate (“LIBOR”) plus a margin to Secured Overnight Financing Rate (“SOFR”) plus an applicable margin; and
- Requires the Company to pay interest on an undrawn portion of the delayed draw term loan up to \$35.0 million, beginning 90 days following the effective date until December 13, 2023.

We borrowed \$50.0 million on the delayed draw term facility on December 28, 2022.

Loans under the amended Credit Agreement bear interest at a rate per annum using the SOFR rate subject to a 1.00% floor plus an interest rate margin of 6.50%. Prior to the Fourth Amendment to the Credit Agreement, the amended Credit Agreement had several borrowing and interest rate options, including the following: (a) a LIBOR rate (or a comparable successor rate) subject to a 1.00% floor (b) a base rate equal to the greatest of (i) the prime rate, (ii) the federal funds rate plus 0.50%, (iii) the LIBOR rate for a one-month period plus 1.00% or (iv) 4.00%. Loans under the Third Amendment to the Credit Agreement bore interest at a rate per annum using the applicable indices plus an interest rate margin of 5.00% (for LIBOR rate loans) and 4.00% (for base rate loans).

As of December 31, 2022, we were in compliance with the covenants under the amended Credit Agreement. Based on current projections, we believe that we will continue to comply with the covenants in the Credit Agreement, as amended, throughout the twelve months following the issuance of the financial statements.

See Note 5 and Note 15 to our consolidated financial statements for further information on our long-term debt and commitments and contingencies.

CARES Act Loans

On May 4, 2020, two of our subsidiaries obtained CARES Act Loans from BBVA USA under the Paycheck Protection Program (“PPP”) created by the CARES Act. Repayment of the CARES Act Loans was guaranteed by the Small Business Administration (“SBA”). The ONE Group, LLC received a loan of \$9.8 million related to the operations of STK restaurants, and Kona Grill Acquisition, LLC received a loan of \$8.5 million related to the operation of Kona Grill restaurants.

The CARES Act Loans were eligible for forgiveness if the proceeds were used for qualified purposes within a specified period and if at least 60% was spent on payroll costs. We used all of the proceeds from the CARES Act Loans for qualified purposes in accordance with the CARES Act and SBA regulations, and these funds supported the re-opening of in person dining and the return of approximately 3,000 furloughed employees to work.

We applied for forgiveness of the CARES Act Loans in February 2021, and loans were forgiven in June 2021 and July 2021. As a result, we recognized an \$18.5 million gain on CARES Act Loan forgiveness for the year ended December 31, 2021.

Capital Expenditures and Lease Arrangements

When we open new Company-owned restaurants, our capital expenditures for construction increase. For owned restaurants, where we build from a shell state, we have typically targeted an average cash investment of approximately \$3.8 million for a 10,000 square-foot STK restaurant and approximately \$2.5 million for an 8,000 square-foot Kona Grill restaurant, in each case, net of landlord contributions and excluding pre-opening costs. For STK locations where we may be the successor restaurant tenant, which anticipate total cash investment of \$2.0 million to \$3.0 million. Typical cash pre-opening costs are \$0.6 million to \$0.8 million, excluding the impact of cash and non-cash pre-opening rent. In addition, some of our existing restaurants will require capital improvements to either maintain or improve the facilities. We

may add seating or provide enclosures for outdoor space in the next twelve months for some of our locations, when we believe that will increase revenues for those locations.

Our hospitality F&B services projects typically require limited capital investment from us. Capital expenditures for these projects are primarily be funded by cash flows from operations and equipment financing, depending upon the timing of these expenditures and cash availability.

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We typically seek to lease our restaurant locations for periods of 10 to 20 years under operating lease arrangements, with a limited number of renewal options. Our rent structure varies, but our leases generally provide for the payment of both minimum and contingent rent based on sales, as well as other expenses related to the leases such as our pro-rata share of common area maintenance, property tax and insurance expenses. Many of our lease arrangements include the opportunity to secure tenant improvement allowances to partially offset the cost of developing and opening the related restaurants. Generally, landlords recover the cost of such allowances from increased minimum rents. However, there can be no assurance that such allowances will be available to us on each project that we select for development.

Cash Flows

The following table summarizes the statement of cash flows for the years ended December 31, 2022 and December 31, 2021 (in thousands):

	For the year ended December 31,	
	2022	2021
Net cash provided by (used in):		
Operating activities	\$ 25,251	\$ 30,966
Investing activities	(32,629)	(11,467)
Financing activities	39,102	(20,275)
Effect of exchange rate changes on cash	(217)	5
Net increase (decrease) in cash and cash equivalents	<u>\$ 31,507</u>	<u>\$ (771)</u>

Operating Activities. Net cash provided by operating activities was \$25.3 million for 2022 compared to \$31.0 million for 2021. The decrease in net cash provided by operating activities during 2022 compared to 2021 was primarily attributable to payments on accrued expenses partially offset by collection on accounts receivable.

Investing Activities. Net cash used in investing activities for 2022 was \$32.7 million primarily for the construction of STK restaurants in Dallas, Texas and San Francisco, California; and Kona Grill restaurants in Riverton, Utah and Columbus, Ohio, as well as capital expenditures for existing restaurants compared to \$11.5 million for 2021.

Financing Activities. Net cash provided by financing activities was \$39.1 million for 2022 compared to net cash used by financing activities of \$20.3 million for 2021. During 2022, we borrowed \$50.0 million under the amended Credit Agreement, partially offset by \$7.1 million in purchases of common stock and \$2.0 million to pay employee taxes for shares withheld upon vesting of restricted stock units. During 2021, we made a \$22.2 million payment for the partial paydown of the term loan in conjunction with the Third Amendment to the Credit Agreement.

Recent Accounting Pronouncements

Refer to Note 2 of our consolidated financial statements for a detailed description of recent accounting pronouncements.

Critical Accounting Estimates

Critical accounting estimates are those that management believes are the most important to the portrayal of our financial condition and results and require the most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain, especially in light of the current economic environment due to the COVID-19 pandemic. Judgments and uncertainties may result in materially different amounts being reported under different conditions or using different assumptions.

Our significant accounting estimates are discussed in additional detail in Note 2 to our consolidated financial statements. We base our estimates on historical experience and various assumptions that we believe to be reasonable under the circumstances and we evaluate those estimates on an ongoing basis.

Actual results may differ from these estimates under different assumptions or conditions. We believe that our significant accounting estimates involve a higher degree of judgment and/or complexity for the reasons discussed below:

[Table of Contents](#)*Income Taxes*

We recognize deferred tax assets and liabilities based on the differences between the financial statement carrying amounts and the respective tax bases of our assets and liabilities. Deferred tax assets and liabilities are measured using current enacted rates expected to apply to taxable income in the years in which we expect the temporary differences to reverse. We routinely evaluate the likelihood of realizing the benefit of our deferred tax assets and may record a valuation allowance if, based on all available evidence, we determine that some portion of the tax benefit will not be realized.

In addition, our income tax returns are periodically audited by federal, state and foreign tax authorities. These audits include questions regarding our tax filing positions, including the timing and amount of deductions taken and the allocation of income amongst various tax jurisdictions. We evaluate our exposures associated with our various tax filing positions and record a related liability. We adjust our liability for unrecognized tax benefits and income tax provision in the period in which an uncertain tax provision is effectively settled, the statute of limitations expires for the relevant taxing authority to examine the tax position or when more information becomes available.

As of December 31, 2022, we had a valuation allowance of \$0.6 million that relates to foreign tax credits we do not expect to utilize as a result of generating income in a jurisdiction with a higher income tax rate than the U.S. The recording of deferred taxes requires significant management judgment regarding the interpretation of applicable statutes, the status of various income tax audits, and our particular facts and circumstances.

Our income taxes are impacted by the enactment of the Tax Cuts and Job Act in December 2017 (the “TCJA”), which, amongst other things, enacted global intangible low-taxed income provisions that do not allow us to defer the earnings of our U.K. and Italy subsidiaries.

Impairment of Long-Lived Assets and Disposal of Property and Equipment

Long-lived assets, which include property and equipment and right-of-use assets for operating leases, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be fully recoverable. The impairment evaluation is generally performed at the individual restaurant level, as we believe this is the lowest level of identifiable cash flows. We believe that historical cash flows, in addition to other relevant facts and circumstances, are the primary basis for estimating future cash flows. Relevant facts and circumstances include, among others, significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, and significant negative industry or economic trends. Recoverability of restaurant assets is measured by a comparison of the carrying amount of an individual restaurant’s assets to the estimated identifiable undiscounted future cash flows expected to be generated by those restaurant assets. This process requires the use of estimates and assumptions, which are subject to a high degree of judgment. If the carrying amount of an individual restaurant’s assets exceeds its estimated undiscounted future cash flows an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds its fair value. The estimated fair value is determined for these assets in accordance with ASC 820, Fair Value Measurement. Property and equipment, net of accumulated depreciation and the operating lease right-of-use assets as of December 31, 2022 were \$94.1 million and \$85.2 million, respectively.

From time to time, we have decided to close or dispose of restaurants. Typically, such decisions are based on operating performance or strategic considerations and must be made before the actual costs or proceeds of disposition are known, and management must make estimates of these outcomes. Such outcomes could include the sale of a leasehold, mitigating costs through a tenant or subtenant, or negotiating a buyout of a remaining lease term. In these instances, management evaluates possible outcomes, frequently using outside real estate and legal advice, and records provisions for the effect of

such outcomes. The accuracy of such provisions can vary materially from original estimates, and management regularly monitors the adequacy of the provisions until final disposition occurs.

For the years ended December 31, 2022 and 2021, we did not identify any event or changes in circumstances that indicated that the carrying values of our restaurant long-lived assets were impaired and therefore, no impairment loss related to long-lived assets has been recognized.

[Table of Contents](#)*Impairment of Indefinite-Lived Intangible Assets*

Indefinite-lived intangible assets are tested for impairment annually or on an interim basis if events or changes in circumstances between annual tests indicate a potential impairment. First, we determine if, based on qualitative factors, it is more likely than not that an impairment exists. Factors considered include, but are not limited to, historical financial performance, expected future cash flows, changes in management or key personnel, macroeconomic and industry conditions and the legal and regulatory environment. If the qualitative assessment indicates that it is more likely than not that an impairment exists, then a quantitative assessment is performed.

The quantitative assessments require the use of estimates and assumptions regarding future cash flows. Key assumptions include projected revenue growth and operating expenses, discount rates, royalty rates and other factors that could affect fair value or otherwise indicate potential impairment. These estimates are subjective, and our ability to realize future cash is affected by factors such as changes in economic conditions and operating performance. Changes in circumstances existing at the measurement date or at other times in the future, or in the estimates associated with management's judgments and assumptions made in assessing the fair value of our trademarks, could result in an impairment loss of a portion or all of our trademarks.

Leases

Contracts are evaluated to determine whether they contain a lease at inception, and leases are classified as either operating or financing. For operating leases, we recognize a lease liability equal to the present value of the remaining lease payments, and a right of use asset equal to the lease liability, subject to certain adjustments, such as prepaid rents, initial direct costs and lease incentives received from the lessor. For leases that do not have a rate implicit in the lease, we use our incremental borrowing rate to determine the present value of the lease payments. Our incremental borrowing rate is the rate of interest that we would have to borrow on a collateralized basis over a similar term on an amount equal to the lease payments in a similar economic environment.

The lease term at the lease commencement date is determined based on the non-cancellable period for which we have the right to use the underlying asset, together with any periods covered by an option to extend the lease if we are reasonably certain to exercise that option, periods covered by an option to terminate the lease if we are reasonably certain not to exercise that option, and periods covered by an option to extend (or not to terminate) the lease in which the exercise of the option is controlled by the lessor.

Certain of our leases also provide for percentage rent, which are variable lease costs determined as a percentage of gross sales in excess of specified, minimum sales targets. These percentage rents are recognized as rent expense prior to the achievement of the specified sales target provided achievement of the sales target is considered probable.

We currently lease all of our restaurant locations under leases classified as operating leases. Management makes judgments regarding the probable term for each lease and considers a number of factors to evaluate whether renewal options in the lease contracts are reasonably certain of exercise, such as length of time before option exercise, expected value of the leased asset at the end of the initial lease term, importance of the lease to overall operations, costs to negotiate a new lease, and any contractual or economic penalties. The lease term can impact the lease classification and accounting for a lease as either an operating or financing lease, the incremental borrowing rate, the rent holidays and/or escalations in payments that are taken into consideration when calculating the rent expense and the related lease liability and right-of-use asset, and the term over which leasehold improvements for each restaurant are depreciated. These judgments may produce materially different amounts of depreciation, amortization and rent expense and materially different lease liabilities and right-of-use assets than would be reported if different assumed lease terms were used.

[Table of Contents](#)**Item 7A. Quantitative and Qualitative Disclosures about Market Risk***Commodity Price Risk*

We are exposed to market price fluctuations in beef, seafood, produce and other food product prices. Given the historical volatility of beef, seafood, produce and other food product prices, these fluctuations can materially impact our food and beverage costs. In addition, the COVID-19 pandemic has adversely impacted commodity prices due to supply and labor shortages. While we have taken steps to qualify multiple suppliers who meet our standards as suppliers for our restaurants and enter into agreements with suppliers for some of the commodities used in our restaurant operations, we do not enter into long-term agreements for the purchase of such supplies. There can be no assurance that future supplies and costs for such commodities will not fluctuate due to weather and other market conditions outside of our control and we may be subject to unforeseen supply and cost fluctuations. Dairy costs can also fluctuate due to government regulation. Because we typically set our menu prices in advance of our food product prices, our menu prices cannot immediately take into account the changing costs of food items. To the extent that we are unable to pass the increased costs on to our customers through price increases, our results of operations would be adversely affected. We do not use financial instruments to hedge our risk to market price fluctuations in beef, seafood, produce and other food product prices at this time.

Inflation

Inflation significantly affected our operations in 2022. The impact of inflation on labor, food and occupancy costs could, in the future, significantly affect our operations. In addition, the COVID-19 pandemic has resulted in inflation due to supply and labor shortages. We pay many of our employees hourly rates related to the applicable federal or state minimum wage. Food costs as a percentage of revenues have been somewhat stable due to procurement efficiencies and menu price increases, although no assurance can be made that our procurement will continue to be efficient or that we will be able to raise menu prices in the future. Costs for construction, taxes, repairs, maintenance and insurance all impact our occupancy costs. We believe that our current strategy, which is to seek to maintain operating margins through a combination of menu price increases, cost controls, careful evaluation of property and equipment needs, and efficient purchasing practices, has been an effective tool for dealing with inflation. There can be no assurance, however, that future inflationary or other cost pressure will be effectively offset by this strategy.

Interest Rate Risk

Under our Credit Agreement, we are exposed to market risk from changes in interest rates on our borrowings. Borrowings under the Credit Agreement are subject to rates based on SOFR plus an interest rate margin of 6.5%. As of December 31, 2022, we had \$74.3 million of borrowings subject to variable interest rates.

Foreign Currency Exchange Rate Risk

We are subject to foreign currency exchange risk for our restaurants operating in the United Kingdom, Italy, Canada, Mexico and the Middle East. If foreign currency exchange rates depreciate in these countries or regions, or any other country or region in which we may operate in the future, we may experience declines in our international operating results but such exposure would not be material to the consolidated financial statements. We currently do not use financial instruments to hedge foreign currency exchange rate changes.

Item 8. Financial Statements and Supplementary Data

Our Consolidated Financial Statements required by this Item are set forth in Item 15 of this Annual Report on Form 10-K.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

[Table of Contents](#)**Item 9A. Controls and Procedures****Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, as our controls are designed to do, and management necessarily applies its judgment in evaluating the risk and cost benefit relationship related to controls and procedures.

Our Chief Executive Officer and Chief Financial Officer, have reviewed the effectiveness of our disclosure controls and procedures as of December 31, 2022 and, based on this evaluation, have concluded that our disclosure controls and procedures were effective as of December 31, 2022.

Report of Management on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of our financial reporting for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes maintaining records that in reasonable detail accurately and fairly reflect our transactions; providing reasonable assurance that transactions are recorded as necessary for preparation of our financial statements; providing reasonable assurance that receipts and expenditures are made in accordance with management authorization; and providing reasonable assurance that unauthorized acquisition, use or disposition of company assets that could have a material effect on our financial statements would be prevented or detected on a timely basis. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that a misstatement of our financial statements would be prevented or detected.

Our management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making its assessment of internal control over financial reporting, management used the criteria set forth by the Committee of Sponsoring Organizations (the “COSO”) of the Treadway Commission in Internal Control – Integrated Framework (2013). Based on this assessment, our CEO and CFO concluded that our internal control over financial reporting was effective as of December 31, 2022.

Deloitte & Touche LLP, the independent registered public accounting firm that audited the financial statements included in this Annual Report, has issued an attestation report on our internal control over financial reporting as of December 31, 2022.

Remediation Efforts to Address the Previously Disclosed Material Weaknesses

As previously disclosed in our 2021 Annual Report on Form 10-K filed on March 16, 2022, we identified two material weaknesses in our internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Our remediation efforts previously identified in Item 9A. “Controls and Procedures” of our 2021 Annual Report on Form 10-K to address the identified material weaknesses have been completed. As of December 31, 2022, we completed the execution of the following remediation measures, including testing of the design and concluding on the operating effectiveness of the related controls:

- We redesigned the control over the review of journal entries to ensure the appropriate segregation of duties. Specifically, we limited the accounting personnel within the Company that have the authority to approve journal entries and modified our journal entry review process to require senior members of the management

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team, who are outside of the journal entry recording process, review journal entries in order to enforce proper segregation of duties.

- We increased the precision and specificity in the design of our control activities within the business processes related to payroll, accounts payable and property and equipment, including the controls over the completeness and accuracy of the information used in performing these control activities.
- We educated control owners and enhanced policies to ensure that all design elements are addressed in the performance of control activities, including the retention of documentation supporting the effective operation of such control activities.
- We have improved the control activities related to information technology user access security. Specifically we have reviewed and restricted both user and privileged access, enhanced the user provisioning and termination processes and instituted detailed quarterly security reviews for both in house applications and IT systems maintained by third parties.
- We hired additional experienced accounting personnel and provided access to accounting literature and research to enable the control owners in evaluating technical accounting pronouncements for certain transactions.

Based upon the above, we believe the steps taken have improved the effectiveness of our internal control over financial reporting and determined that these new or redesigned controls are operating effectively.

Changes in Internal Control Over Financial Reporting

Except for the improvements to our internal control over financial reporting to remediate the material weaknesses discussed above, there have been no other changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2022 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

[Table of Contents](#)**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the shareholders and the Board of Directors of The ONE Group Hospitality, Inc.

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of The ONE Group Hospitality, Inc. and subsidiaries (the “Company”) as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2022, of the Company and our report dated March 9, 2023, expressed an unqualified opinion on those financial statements.

Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Report of Management on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

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 includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) 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 (3) 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.

/s/ Deloitte & Touche LLP

Denver, Colorado
March 9, 2023

[Table of Contents](#)**Item 9B. Other Information**

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

None.

PART III**Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2023 Annual Meeting of Stockholders.

Item 11. EXECUTIVE COMPENSATION

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2023 Annual Meeting of Stockholders.

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

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2023 Annual Meeting of Stockholders.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2023 Annual Meeting of Stockholders.

Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2023 Annual Meeting of Stockholders.

[Table of Contents](#)**PART IV****Item 15. Exhibits, Financial Statement Schedules**

- (a)(1) *Financial Statements*. For the financial statements included in this annual report, see “Index to the Financial Statements” on page F-1.
- (a)(3) *Exhibits*. The list of exhibits filed as part of this Annual Report on Form 10-K is set forth on the Exhibit Index immediately preceding such exhibits and is incorporated by reference in this Item 15(a)(3).
- (b) *Exhibits*. See Exhibit Index.
- (c) *Separate Financial Statements*. None.

Item 16. 10-K Summary

None.

[Table of Contents](#)**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.

Dated: March 9, 2023

THE ONE GROUP HOSPITALITY, INC.

By: /s/ TYLER LOY

Tyler Loy

Chief Financial Officer

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.

Signature	Title	Date
<u>/s/ EMANUEL HILARIO</u> Emanuel Hilario	Chief Executive Officer and Director (Principal Executive Officer)	March 9, 2023
<u>/s/ TYLER LOY</u> Tyler Loy	Chief Financial Officer (Principal Financial Officer)	March 9, 2023
<u>/s/ CHRISTI HING</u> Christi Hing	Chief Accounting Officer (Principal Accounting Officer)	March 9, 2023
<u>/s/ JONATHAN SEGAL</u> Jonathan Segal	Executive Chairman, Director	March 9, 2023
<u>/s/ DIMITRIOS ANGELIS</u> Dimitrios Angelis	Director	March 9, 2023
<u>/s/ EUGENE BULLIS</u> Eugene Bullis	Director	March 9, 2023
<u>/s/ SUSAN LINTONSMITH</u> Susan Lintonsmith	Director	March 9, 2023
<u>/s/ HAYDEE OLINGER</u> Haydee Olinger	Director	March 9, 2023
<u>/s/ MICHAEL SERRUYA</u> Michael Serruya	Director	March 9, 2023

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Exhibit Number	Exhibit Description
3.1	Amended and Restated Certificate of Incorporation (Incorporated by reference to Form 8-K filed on June 5, 2014).
3.2	Amended and Restated Bylaws (Incorporated by reference to Form 8-K filed on October 25, 2011).
4.1	Description of securities registered under Section 12 of the Securities Exchange Act of 1934 (Incorporated by reference to Exhibit 4.1 to Form 10-K filed on March 26, 2020).
4.2	Form of Common Stock Purchase Warrant dated as of November 15, 2017 (Incorporated by reference to Form 8-K filed on November 16, 2017).
10.1	Form of Indemnity Agreement (Incorporated by reference to Amendment No. 1 to Form S-1 filed on June 30, 2011).
10.2†	Amended and Restated Employment Agreement, dated October 30, 2017, by and between The ONE Group Hospitality, Inc. and Jonathan Segal (Incorporated by reference to Form 8-K filed on November 3, 2017).
10.3†	The ONE Group Hospitality, Inc. 2019 Equity Incentive Plan (Incorporated by reference to Appendix A to the Proxy Statement filed on April 8, 2022).
10.4†	Amended and Restated Employment Agreement between Emanuel N. Hilario and The ONE Group Hospitality, Inc. dated September 2, 2022 (Incorporated by reference to Form 8-K filed on September 7, 2022).
10.5†	Notice of Grant of Restricted Stock Units dated September 24, 2021 between Emanuel N. Hilario and The ONE Group Hospitality, Inc. (Incorporated by reference to Form 8-K filed on September 28, 2021).
10.6†	Notice of Grant of Restricted Stock Units (Time-vesting) dated September 2, 2022 between Emanuel N. Hilario and The ONE Group Hospitality, Inc. (Incorporated by reference to Form 8-K filed on September 7, 2022).
10.7†	Notice of Grant of Restricted Stock Units (Performance-vesting) dated September 2, 2022 between Emanuel N. Hilario and The ONE Group Hospitality, Inc. (Incorporated by reference to Form 8-K filed on September 7, 2022).
10.8†	Employment Letter Agreement with Tyler Loy Effective April 1, 2019 (Incorporated by reference to Exhibit 10.7 to Form 10-K filed on March 26, 2020).
10.9	Credit and Guaranty Agreement dated October 4, 2019 with Goldman Sachs Bank USA (Incorporated by reference to Form 8-K/A filed on October 8, 2019).
10.10	Fourth Amendment to Credit and Guaranty Agreement dated December 13, 2022 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 8-K filed on December 14, 2022).
10.11	Third Amendment to Credit and Guaranty Agreement dated August 6, 2021 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 10-Q filed on August 10, 2021).
10.12	Second Amendment to Credit and Guaranty Agreement dated August 10, 2020 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 8-K filed on August 12, 2020).
10.13	First Amendment to Credit and Guaranty Agreement dated May 8, 2020 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 8-K filed May 8, 2020).
10.14†	Form of Restricted Stock Unit Grant Notice and Agreement (Incorporated by reference to Exhibit 10.10 to Form 10-K filed on March 26, 2020).
21.1*	List of Subsidiaries.
23.1*	Consent of Deloitte & Touche LLP
31.1*	Certification of Emanuel Hilario, Chief Executive Officer, pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
31.2*	Certification of Tyler Loy, Chief Financial Officer, pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
32.1**	Certification of Emanuel Hilario, Chief Executive Officer, pursuant to Section 906 of the Sarbanes – Oxley Act of 2002, 18 U.S.C. Section 1350.
32.2**	Certification of Tyler Loy, Chief Financial Officer, pursuant to Section 906 of the Sarbanes – Oxley Act of 2002, 18 U.S.C. Section 1350.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
104	Cover Page Interactive Data File (formatted in iXBRL and contained in Exhibit 101)

* Filed herewith.

** Furnished herewith.

† Management contract or compensatory plan or arrangement.

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[Table of Contents](#)**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the shareholders and the Board of Directors of The ONE Group Hospitality, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of The ONE Group Hospitality, Inc. and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations *and* comprehensive income (loss), changes in shareholders' equity, and cash flows, for each of the two years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 9, 2023, expressed an unqualified opinion on the Company's internal control over financial reporting.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the 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 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 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates 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 matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Long-Lived Asset Impairment — Refer to Note 2 to the financial statements*Critical Audit Matter Description*

Long-lived assets, which includes property and equipment and right-of-use assets for operating leases, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying values of these assets may not be fully recoverable. The impairment evaluation is performed at the individual

restaurant level. Recoverability of restaurant assets is measured by a comparison of the carrying amount of an individual restaurant's assets to the estimated undiscounted future cash flows expected to be generated by those restaurant assets. If the carrying amount of an

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individual restaurant's assets exceeds its estimated undiscounted future cash flows an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds its fair value. The estimated fair value is determined for these assets in accordance with ASC 820, *Fair Value Measurement*. Property and equipment, net, and the Operating lease right-of-use assets as of December 31, 2022, were \$94.1 million and \$85.2 million, respectively. For the year ended December 31, 2022, no impairment loss related to long-lived assets was recognized.

We identified the determination of possible impairment indicators for long-lived assets as a critical audit matter because of the significant assumptions management makes when determining whether events or changes in circumstances have occurred indicating that the carrying amounts of long-lived assets may not be recoverable. This required a high degree of auditor judgement and an increased extent of effort when performing audit procedures to evaluate whether management appropriately identified impairment indicators.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the evaluation of long-lived asset impairment indicators included the following, among others:

- We tested the effectiveness of internal controls over the Company's long lived asset impairment indicator evaluation.
- We evaluated the reasonableness of the Company's evaluation of impairment indicators by:
 - Testing long-lived restaurant assets for possible indications of impairment, including searching for locations with current period losses or projected losses
 - Performing inquiries of management regarding the process and assumptions used to identify potential indicators of impairment and evaluating the consistency of the assumptions with evidence obtained in other areas of the audit
 - Inspecting minutes of the board of directors, the Company's public statements, operating plans, and industry data to identify any evidence that may contradict management's assumptions
- We tested the completeness and accuracy of the underlying source information used by management to identify quantitative indicators of impairment.

/s/ Deloitte & Touche LLP

Denver, Colorado
March 9, 2023

We have served as the Company's auditor since 2021.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share information)

	December 31, 2022	December 31, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 55,121	\$ 23,614
Accounts receivable	15,220	11,356
Inventory	5,728	3,915
Other current assets	2,091	3,666
Due from related parties	376	376
Total current assets	78,536	42,927
Property and equipment, net	94,087	69,638
Operating lease right-of-use assets	85,161	85,395
Deferred tax assets, net	12,323	12,313
Intangibles, net	15,290	15,505
Other assets	4,774	3,199
Security deposits	853	858
Total assets	<u>\$ 291,024</u>	<u>\$ 229,835</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 13,055	\$ 11,094
Accrued expenses	22,409	23,155
Deferred gift card revenue and other	2,115	2,029
Current portion of operating lease liabilities	6,336	5,396
Current portion of long-term debt	1,500	500
Other current liabilities	256	90
Total current liabilities	45,671	42,264
Operating lease liabilities, net of current portion	105,247	103,616
Long-term debt, net of current portion	70,544	23,132
Other long-term liabilities	972	298
Total liabilities	222,434	169,310
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Common stock, \$0.0001 par value, 75,000,000 shares authorized; 32,829,995 issued and 31,735,423 outstanding at December 31, 2022 and 32,138,396 shares issued and 32,125,762 outstanding at December 31, 2021	3	3
Preferred stock, \$0.0001 par value, 10,000,000 shares authorized; no shares issued and outstanding at December 31, 2022 and December 31, 2021, respectively	—	—
Treasury stock, 1,094,572 and 12,634 shares at cost at December 31, 2022 and December 31, 2021, respectively	(7,169)	(37)
Additional paid-in capital	55,583	53,481
Retained earnings	24,166	10,632
Accumulated other comprehensive loss	(2,869)	(2,645)
Total stockholders' equity	69,714	61,434
Noncontrolling interests	(1,124)	(909)
Total equity	68,590	60,525
Total liabilities and equity	<u>\$ 291,024</u>	<u>\$ 229,835</u>

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(in thousands, except earnings per share and related share information)

	For the year ended December 31,	
	2022	2021
Revenues:		
Owned restaurant net revenue	\$ 300,859	\$ 264,404
Management, license and incentive fee revenue	15,779	12,774
Total revenues	316,638	277,178
Cost and expenses:		
Owned operating expenses:		
Owned restaurant cost of sales	75,365	67,468
Owned restaurant operating expenses	174,689	144,529
Total owned operating expenses	250,054	211,997
General and administrative (including stock-based compensation of \$3,985 and \$3,618 for the years ended December 31, 2022 and 2021, respectively)	29,081	25,573
Depreciation and amortization	12,134	10,790
COVID-19 related expenses	2,534	5,821
Transaction costs	123	160
Lease termination expenses	257	1,912
Agreement restructuring expenses	—	503
Pre-opening expenses	5,519	1,037
Write-off of trademark costs and other	630	—
Total costs and expenses	300,332	257,793
Operating income	16,306	19,385
Other expenses (income), net:		
Interest expense, net of interest income	2,113	3,780
Loss on early debt extinguishment	—	600
Gain on CARES Act Loan Forgiveness	—	(18,529)
Total other expenses (income), net	2,113	(14,149)
Income before provision for income taxes	14,193	33,534
Provision for income taxes	874	1,586
Net income	13,319	31,948
Less: net (loss) income attributable to noncontrolling interest	(215)	600
Net income attributable to The ONE Group Hospitality, Inc.	\$ 13,534	\$ 31,348
Currency translation (loss) gain	(224)	1
Comprehensive income attributable to The One Group Hospitality, Inc.	\$ 13,310	\$ 31,349
Net income attributable to The ONE Group Hospitality, Inc. per share:		
Basic net income per share	\$ 0.42	\$ 1.01
Diluted net income per share	\$ 0.40	\$ 0.93
Shares used in computing basic income per share	32,400,515	31,155,224
Shares used in computing diluted income per share	33,871,797	33,794,344

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(in thousands, except share information)

	Common stock		Treasury stock	Additional paid-in capital	Retained earnings	Accumulated other comprehensive loss	Stockholders' equity	Noncontrolling interests	Total
	Shares	Par value							
Balance at January 1, 2021	29,083,183	\$ 3	\$ —	\$ 46,538	\$(20,716)	\$ (2,646)	\$ 23,179	\$ (1,200)	\$21,979
Stock-based compensation	61,399	—	—	3,248	—	—	3,248	—	3,248
Exercise of stock options and warrants	1,590,029	—	—	3,615	—	—	3,615	—	3,615
Issuance of vested restricted shares, net of tax withholding	1,403,785	—	—	(154)	—	—	(154)	—	(154)
Purchase of treasury stock	(12,634)	—	(37)	—	—	—	(37)	—	(37)
Purchase of noncontrolling interests	—	—	—	234	—	—	234	(309)	(75)
Gain on foreign currency translation, net	—	—	—	—	—	1	1	—	1
Net income	—	—	—	—	31,348	—	31,348	600	31,948
Balance at December 31, 2021	32,125,762	\$ 3	\$ (37)	\$ 53,481	\$ 10,632	\$ (2,645)	\$ 61,434	\$ (909)	\$60,525
Stock-based compensation	40,573	—	—	3,985	—	—	3,985	—	3,985
Exercise of stock options and warrants	65,000	—	—	138	—	—	138	—	138
Issuance of vested restricted shares, net of tax withholding	586,026	—	—	(2,021)	—	—	(2,021)	—	(2,021)
Purchase of treasury stock	(1,081,938)	—	(7,132)	—	—	—	(7,132)	—	(7,132)
Loss on foreign currency translation, net	—	—	—	—	—	(224)	(224)	—	(224)
Net income (loss)	—	—	—	—	13,534	—	13,534	(215)	13,319
Balance at December 31, 2022	<u>31,735,423</u>	<u>\$ 3</u>	<u>\$(7,169)</u>	<u>\$ 55,583</u>	<u>\$ 24,166</u>	<u>\$ (2,869)</u>	<u>\$ 69,714</u>	<u>\$ (1,124)</u>	<u>\$68,590</u>

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the year ended December 31,	
	2022	2021
Operating activities:		
Net income	\$ 13,319	\$ 31,948
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	12,134	10,790
Stock-based compensation	3,985	3,248
Loss on early debt extinguishment	—	600
Amortization of debt issuance costs	373	415
Deferred taxes	(10)	913
Gain on CARES Act Loan Forgiveness	—	(18,529)
Changes in operating assets and liabilities:		
Accounts receivable	(3,858)	(5,615)
Inventory	(1,813)	(1,425)
Other current assets	1,574	(2,189)
Security deposits	5	46
Other assets	(1,169)	(417)
Accounts payable	886	3,462
Accrued expenses	(4,001)	7,261
Operating lease liabilities and right-of-use assets	2,805	1,191
Deferred revenue	1,021	(733)
Net cash provided by operating activities	25,251	30,966
Investing activities:		
Purchase of property and equipment	(32,629)	(11,467)
Net cash used in investing activities	(32,629)	(11,467)
Financing activities:		
Borrowings of long-term debt	55,000	—
Repayments of long-term debt and financing lease liabilities	(5,551)	(22,758)
Debt issuance costs	(1,332)	(866)
Exercise of stock options and warrants	138	3,615
Tax-withholding obligation on stock-based compensation	(2,021)	(154)
Purchase of treasury stock	(7,132)	(37)
Purchase of non-controlling interests	—	(75)
Net cash provided by (used in) financing activities	39,102	(20,275)
Effect of exchange rate changes on cash	(217)	5
Net increase (decrease) in cash and cash equivalents	31,507	(771)
Cash and cash equivalents, beginning of year	23,614	24,385
Cash and cash equivalents, end of year	\$ 55,121	\$ 23,614
Supplemental disclosure of cash flow data:		
Interest paid, net of capitalized interest	\$ 1,556	\$ 3,402
Income taxes paid	\$ 789	\$ 437
Non-cash CARES Act Loan Forgiveness	\$ —	\$ 18,529
Non-cash capital expenditures	\$ 5,125	\$ 854

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
Notes to Consolidated Financial Statements

Note 1 – Description of Business

The ONE Group Hospitality, Inc. and its subsidiaries (collectively, the “Company”) is a global restaurant company that develops, owns and operates, manages and licenses upscale and polished casual, high-energy restaurants and lounges and provides turn-key food and beverage (“F&B”) services for hospitality venues including hotels, casinos and other high-end locations. Turn-key F&B services are food and beverage services that can be scaled, customized and implemented by the Company at a particular hospitality venue and customized for the client. The Company’s primary restaurant brands are STK, a multi-unit steakhouse concept that combines a high-energy, social atmosphere with the quality and service of a traditional upscale steakhouse, and Kona Grill, a polished casual bar-centric grill concept featuring American favorites, award-winning sushi, and specialty cocktails in a polished casual atmosphere.

As of December 31, 2022, the Company owned, operated, managed or licensed 63 venues including 25 STKs and 24 Kona Grills in major metropolitan cities in North America, Europe and the Middle East and 14 F&B venues in seven hotels and casinos in the United States and Europe. For those restaurants and venues that are managed or licensed, the Company generates management fees based on top-line revenues and incentive fee revenue based on a percentage of the location’s revenues and net profits.

Overview of the Impact of COVID-19

In response to COVID-19, the Company has taken significant steps to adapt its business to increase sales while providing a safe environment for guests and employees. COVID-19 related expenses were \$2.5 million and \$5.8 million for 2022 and 2021, respectively, composed primarily of sanitation, supplies and safety precautions taken to prevent the spread of COVID-19.

Note 2 – Summary of Significant Accounting Policies*Basis of Presentation and Principles of Consolidation*

The accompanying consolidated financial statements include the accounts of the Company and have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”). All intercompany accounts and transactions have been eliminated in consolidation.

Change in Accounting Estimate

Effective April 1, 2022, the Company changed its estimated useful life of the Kona Grill trade name. Based upon the strong performance of the Kona Grill restaurants over the twelve months ended March 31, 2022, significant capital investments in both existing and new restaurants and the Company’s commitment to expand the Kona Grill brand with the opening of new restaurants, the Company has determined that the Kona Grill trade name has an indefinite life rather than the twenty-year life previously determined. As of December 31, 2022, the Company had two Kona Grill venues under construction in Riverton, Utah and Columbus, Ohio and plans to open three to five Kona Grills each year for the foreseeable future. The effect of this change in estimate will reduce depreciation and amortization expense by \$0.9 million annually, increase net income by \$0.9 million annually, and increase basic and diluted earnings per share by approximately \$0.03 annually based upon the current number of shares outstanding.

Prior Period Reclassifications

Certain reclassifications of the 2021 amounts in the segment reporting footnote have been made to conform to the current year presentation.

Use of Estimates

The preparation of the consolidated financial statements in conformity with GAAP requires the Company to make estimates and assumptions for the reporting period and as of the reporting date. These

estimates and assumptions affect

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the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingencies. Actual results could differ from those estimates.

Fair Value Measurements

Fair value represents the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Assets and liabilities are valued based upon observable and non-observable inputs. Valuations using Level 1 inputs are based on unadjusted quoted prices that are available in active markets for the identical assets or liabilities at the measurement date. Level 2 inputs utilize significant other observable inputs available at the measurement date, other than quoted prices included in Level 1, either directly or indirectly. Valuations using Level 3 inputs are based on significant unobservable inputs that cannot be corroborated by observable market data and reflect the use of significant management judgment. There were no significant transfers between levels during any period presented.

Cash and Cash Equivalents

Cash and cash equivalents are defined as cash on hand and highly liquid instruments with original maturities of three months or less when purchased. The Company's cash and cash equivalents consist of cash in banks and at the restaurants as of December 31, 2022 and 2021.

Accounts Receivable

The Company's receivables arise from credit cards, management agreements, trade customers and other reimbursable amounts due from hotel operators where the Company operates a food and beverage service. Accounts receivable from credit card processors and third-party delivery services at December 31, 2022 and 2021 was \$6.4 million and \$3.9 million, respectively. Receivables from the Company's management, license and hotel partners were \$7.0 million and \$6.4 million at December 31, 2022 and 2021, respectively. The Company determines an allowance for doubtful accounts by considering a number of factors, including the length of time trade accounts receivable are past due, previous loss and payment history, the customer's current ability to pay its obligation to the Company and the condition of the general economy and industry as a whole. The Company has not reserved any trade receivables as of December 31, 2022 and 2021.

Inventory

Inventories, which consist of food, liquor and other beverages, are stated at the lower of cost or net realizable value. Cost is determined by the first in, first out method. Net realizable value is defined as the estimated selling price in the ordinary course of business, less reasonably predictable costs to sell. As of December 31, 2022 and 2021, food inventories were \$3.7 million and \$2.0 million, respectively, and beverage inventories were \$2.0 million and \$1.9 million, respectively.

Property and Equipment

Additions to property and equipment, including leasehold improvements, are recorded at cost while costs incurred to repair and maintain the Company's operations and equipment are expensed as incurred. Depreciation is calculated using the straight-line method over the estimated useful life of the asset. When assets are retired or otherwise disposed of, the cost of the assets and the related accumulated depreciation are removed from the accounts, and any gain or loss on retirements is reflected in operating income in the year of disposition.

Computers and equipment as well as furniture and fixtures are depreciated over their useful lives from three to fifteen years. Leasehold improvements are depreciated over the shorter of their estimated useful lives or the remaining term of the associated lease. Lease terms begin on the date the Company takes possession under the lease and include option periods where failure to exercise such options would result in an economic penalty.

Other Assets

Other assets include liquor license acquisition costs and costs to fulfill obligations under the Company's management and license agreements.

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Intangible Assets

Intangible assets consist of the indefinite-lived “Kona Grill” trade name and other finite-lived intangible assets that are amortized using the straight-line method over their estimated useful life of 10 years. As of December 31, 2022 and 2021, the gross carrying amount of the Kona Grill trade name intangible was \$17.4 million. As of December 31, 2022 and 2021 the gross carrying amount of the other finite-lived intangible assets were \$0.1 million. The accumulated amortization of the trade name was \$2.2 million and \$2.0 million as of December 31, 2022 and 2021, respectively, and the amortization expense was \$0.2 million and \$0.9 million for the years ending December 31, 2022 and 2021, respectively. The Company’s estimated aggregate amortization expense for each of the five succeeding fiscal years is less than \$0.1 million annually. Refer to Note 1 regarding the change in accounting estimate for the Kona Grill trade name.

Impairment of Long-Lived Assets

Long-lived assets, which include property and equipment and right-of-use assets for operating leases, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be fully recoverable. The impairment evaluation is generally performed at the individual restaurant level, as we believe this is the lowest level of identifiable cash flows. We believe that historical cash flows, in addition to other relevant facts and circumstances, are the primary basis for estimating future cash flows. Relevant facts and circumstances include, among others, significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, and significant negative industry or economic trends. Recoverability of restaurant assets is measured by a comparison of the carrying amount of an individual restaurant’s assets to the estimated identifiable undiscounted future cash flows exclusive of operating lease payments, expected to be generated by those restaurant assets. This process requires the use of estimates and assumptions, which are subject to a high degree of judgment. If the carrying amount of an individual restaurant’s assets exceeds its estimated undiscounted future cash flows, exclusive of operating lease payments, an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds its fair value. The estimated fair value is determined for these assets in accordance with ASC 820, Fair Value Measurement. Property and equipment, net of accumulated depreciation and the operating lease right-of-use assets as of December 31, 2022 were \$94.1 million and \$85.2 million, respectively. For the year ended December 31, 2022, no impairment loss related to long-lived assets has been recognized.

For the years ended December 31, 2022 and 2021, the Company did not identify any event or changes in circumstances that indicated that the carrying values of its restaurant assets were impaired.

Debt Issuance Costs

Debt issuance costs incurred in connection with the issuance of long-term debt are capitalized and amortized to interest expense based on the term of the related debt agreement using the straight-line method, which approximates the effective interest method. The Company has recorded debt issuance costs related to the revolving credit facility in other assets on the consolidated balance sheets. The portion of debt issuance costs related to the term loan and delayed draw term loan is recorded in long-term debt, net of current portion on the consolidated balance sheets.

Income Taxes

The Company computes income taxes using the asset and liability method. Under this method, deferred income taxes are recognized for differences between the basis of assets and liabilities for financial statement and income tax purposes, using the enacted statutory rate in effect for the year these differences are expected to be taxable or refunded. Deferred income tax expenses or credits are based on the changes in the asset or liability, respectively, from period to period. A deferred tax asset or liability is recognized whenever there are future tax effects from existing temporary differences and operating loss and tax credit carry-forwards. If the Company determines that a deferred tax asset or liability could be realized in a greater or lesser amount than recorded, the deferred tax asset or liability is adjusted and a corresponding

adjustment is made to the provision for income taxes in the consolidated statements of operations and comprehensive income in the period during which the determination is made.

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The Company reduces its deferred tax assets by a valuation allowance if it determines that it is more likely than not that some portion or all of these tax assets will not be realized. In making this determination, the Company considers various qualitative and quantitative factors, such as:

- the level of historical taxable income;
- the projection of future taxable income over periods in which the deferred tax assets would be deductible;
- events within the restaurant industry;
- the health of the economy; and,
- historical trending.

As of December 31, 2022, the Company had a valuation allowance of \$0.6 million that relates to foreign tax credits that the Company does not expect to utilize as a result of generating income in a jurisdiction with a higher income tax rate than the U.S. The recording of deferred taxes requires significant management judgment regarding the interpretation of applicable statutes, the status of various income tax audits, and particular facts and circumstances.

The Company recognizes the tax benefit from an uncertain tax position when it determines that it is more-likely-than-not that the position would be sustained upon examination by taxing authorities. The amount recognized is measured as the largest amount of benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. If the Company derecognizes an uncertain tax position, the Company's policy is to record any applicable interest and penalties within the provision (benefit) for income taxes in the consolidated statements of operations and comprehensive income.

Revenue Recognition

Revenue is derived from restaurant sales, management services and license related operations.

The Company recognizes restaurant revenues, net of discounts, when goods and services are provided. Sales tax amounts collected from customers that are remitted to governmental authorities are excluded from net revenue.

Management agreements typically call for a management fee based on a percentage of revenue, a monthly marketing fee based on a percentage of revenues and an incentive fee based on a managed venue's net profits. Similarly, royalties from the licensee in license agreements are generally based on a percentage of the licensed restaurant's revenue. These management, license and incentive fees are recognized as revenue in the period the restaurant's sales occur.

The Company recognizes initial licensing fees and upfront fees related to management and license agreements on a straight-line basis over the term of the agreement as a component of management, license and incentive fee revenue on the consolidated statements of operations and comprehensive income.

The Company has a loyalty program for Kona Grill to encourage customers to frequent its restaurants. The loyalty rewards program awards a customer one point for every dollar spent. When a customer is part of the rewards program, the obligation to provide future discounts related to points earned is considered a separate performance obligation, to which a portion of the transaction price is allocated. The performance obligation related to loyalty points is deemed to have been satisfied, and the amount deferred in the balance sheet is recognized as revenue, when the points are converted to a reward and redeemed, or the likelihood of redemption is remote. A portion of the transaction price is allocated to loyalty points, if necessary, on a pro-rata basis, based on the stand-alone selling price, as determined by menu pricing and loyalty points terms. As of December 31, 2022 and 2021 the deferred revenue allocated to loyalty points that have not been redeemed was \$0.2 million and \$0.1 million, respectively, which is recorded as a component of accrued expenses in the accompanying consolidated balance sheets. The Company expects the loyalty points to be redeemed and recognized over a one-year period.

Gift Cards

Proceeds from the sale of gift cards are recorded as deferred revenue and recognized as revenue when redeemed by the holder. There are no expiration dates on the Company's gift cards and the Company does not charge any service fees that would result in a decrease to a customer's available balance.

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Although the Company will continue to honor all gift cards presented for payment, it may determine the likelihood of redemption to be remote for certain gift cards due to, among other things, long periods of inactivity. In these circumstances, to the extent the Company determines there is no requirement for remitting balances to government agencies under unclaimed property laws, outstanding gift card balances may then be recognized as breakage in the consolidated statements of operations and comprehensive income as a component of owned restaurant net revenue. For the years ended December 31, 2022 and 2021, the Company recognized \$0.3 million and \$0.5 million, respectively, in revenue from gift card breakage.

Pre-opening Costs

Pre-opening costs for Company owned restaurants are expensed as incurred prior to a restaurant opening for business. Pre-opening costs for the years ended December 31, 2022 and 2021 were \$5.5 million and \$1.0 million, respectively.

Advertising Costs

The Company expenses the cost of advertising and promotions as incurred. Advertising expense was \$7.5 million and \$5.1 million for the years ended December 31, 2022 and 2021, respectively.

Leases

Contracts are evaluated to determine whether they contain a lease at inception. The Company's contracts determined to be or contain a lease include explicitly or implicitly identified assets where the Company has the right to substantially all of the economic benefits of the assets and has the ability to direct how and for what purpose the assets are used during the lease term. If it is determined that the contract contains an operating lease, a right-of-use asset and operating lease liability are recorded on the consolidated balance sheets. A right-of-use asset represents the Company's right to use the underlying asset and the lease liability represents the Company's contractually obligated payments. Both the right-of-use asset and the lease liability are recognized as of the commencement date of the lease and are based upon the present value of lease payments due over the course of the lease. The right-of-use asset is reduced by any lease incentives received. For leases that do not have a rate implicit in the lease, the Company's incremental borrowing rate at the date of commencement is used to determine the present value of the lease payments. The Company's incremental borrowing rate is the rate of interest that it would have to borrow on a collateralized basis over a similar term on an amount equal to the lease payments in a similar economic environment.

The Company enters into contracts to lease office and restaurant space with terms that expire at various dates through 2047. The lease term is the minimum of the noncancelable period of the lease or the lease term inclusive of reasonably certain renewal periods. The Company considers a number of factors when evaluating whether the options in its lease contracts were reasonably certain of exercise, such as length of time before option exercise, expected value of the leased asset at the end of the initial lease term, importance of the lease to overall operations, costs to negotiate a new lease, and any contractual or economic penalties.

Certain of the Company's leases also provide for percentage rent, which are variable lease costs determined as a percentage of gross sales in excess of specified, minimum sales targets, as well as other lease costs to reimburse the lessor for real estate tax and insurance expenses, and certain non-lease components that transfer a distinct service to the Company, such as common area maintenance services. These percentage rents and other variable lease costs are not included in the calculation of lease payments when classifying a lease and in the measurement of the lease liability as they do not meet the definition of in-substance, fixed-lease payments under ASC Topic 842, Leases.

Stock-Based Compensation

The Company maintains an equity incentive compensation plan under which it may grant options, warrants, restricted stock or other stock-based awards to directors, officers, key employees and other key

individuals performing services to the Company. Restricted stock and restricted stock units (“RSUs”) are valued using the closing stock price on the date of grant.

Under the plan, vesting of awards can either be based on the passage of time or on the achievement of performance goals. For awards that vest on the passage of time, compensation cost is recognized over the vesting period. For

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performance-based awards, the Company recognizes compensation costs over the requisite service period when conditions for achievement become probable. The Company estimates forfeitures at the time of grant and revises those estimates in subsequent periods if actual forfeitures differ or are expected to differ. These estimates, which are currently at 10%, are based on historical forfeiture behavior exhibited by employees of the Company.

Earnings per Share

Basic earnings per share is computed using the weighted average number of common shares outstanding during the period and income available to common stockholders. Diluted earnings per share is computed using the weighted average number of common shares outstanding during the period plus the dilutive effect of all potential shares of common stock including common stock issuable pursuant to stock options, warrants, and RSUs. Refer to Note 10 for the calculations of basic and diluted earnings per share.

Segment Reporting

The Company has identified the following four reportable operating segments: STK, Kona Grill, ONE Hospitality and Corporate. Refer to Note 13 for additional details and certain financial information regarding the Company's operating segments relating to the years ended December 31, 2022 and 2021.

Foreign Currency Translation

Assets and liabilities of foreign operations are translated into U.S. dollars at the balance sheet date. Revenues and expenses are translated at average monthly exchange rates. Gains or losses resulting from the translation of foreign subsidiaries represent other comprehensive income (loss) and are accumulated as a separate component of stockholders' equity. Currency translation gains or losses are recorded in accumulated other comprehensive loss within stockholders' equity and amounted to a loss of approximately \$0.2 million and a gain of approximately \$1,000 during 2022 and 2021, respectively.

Comprehensive Income

Comprehensive income consists of two components: net income and other comprehensive income (loss). The Company's other comprehensive income (loss) is comprised of foreign currency translation adjustments. All of the Company's foreign currency translation adjustments relate to wholly owned subsidiaries of the Company.

Recent Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13, "Financial Instruments – Credit Losses (Topic 326)" ("ASU 2016-13"). ASU 2016-13 requires companies to measure credit losses utilizing a methodology that reflects expected credit losses and requires a consideration of a broader range of reasonable and supportable information to assess credit loss estimates. ASU 2016-13 is effective for annual and interim periods beginning after December 15, 2022. The Company will adopt the standard effective January 1, 2023. The Company does not expect the adoption of ASU 2016-13 to result in a material change to its consolidated financial statements.

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Note 3 – Property and Equipment, net

Property and equipment, net consist of the following (in thousands):

	December 31, 2022	December 31, 2021
Furniture, fixtures and equipment	\$ 33,372	\$ 24,942
Leasehold improvements	89,121	76,500
Less: accumulated depreciation and amortization	(47,528)	(39,425)
Subtotal	74,965	62,017
Construction in progress	16,276	5,374
Restaurant smallwares	2,846	2,247
Total	<u>\$ 94,087</u>	<u>\$ 69,638</u>

Depreciation and amortization related to property and equipment amounted to \$11.7 million and \$9.9 million for the years ended December 31, 2022 and 2021, respectively. The Company does not depreciate construction in progress until such assets are placed into service.

Note 4 – Accrued Expenses

Accrued expenses consist of the following (in thousands):

	December 31, 2022	December 31, 2021
Payroll and related ⁽¹⁾	\$ 5,249	\$ 6,554
VAT and sales taxes	4,118	3,477
Amounts due to landlords	2,949	1,847
Income taxes and related	156	—
Construction on new restaurants	1,903	359
Insurance	742	642
Legal, professional and other services	626	458
Interest	268	132
Accrued lease exit costs ⁽²⁾	—	4,913
Other ⁽³⁾	6,398	4,773
Total	<u>\$ 22,409</u>	<u>\$ 23,155</u>

(1) Payroll and related included \$1.2 million in employer payroll taxes for which payment was deferred under the CARES Act as of December 31, 2021.

(2) Amount relates to lease exit costs for 2016 leases for restaurants never built and still under dispute with landlords.

(3) Amount primarily relates to recurring restaurant operating expenses.

Note 5 – Long Term Debt

Long-term debt consists of the following (in thousands):

	December 31, 2022	December 31, 2021
Term loan agreements	\$ 24,250	\$ 24,750
Revolving credit facility	—	—
Delayed draw term facility	50,000	—
Total long-term debt	74,250	24,750
Less: current portion of long-term debt	(1,500)	(500)
Less: debt issuance costs	(2,206)	(1,118)
Total long-term debt, net of current portion	<u>\$ 70,544</u>	<u>\$ 23,132</u>

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Future minimum loan payments:	
2023	\$ 1,500
2024	1,500
2025	1,500
2026	69,750
Total	<u>\$ 74,250</u>

Interest expense for the Company's debt arrangements, excluding the amortization of debt issuance costs and other discounts and fees, was approximately \$1.7 million and \$3.3 million for the years ended December 31, 2022 and 2021, respectively.

As of both December 31, 2022 and 2021, the Company had \$1.4 million in standby letters of credit outstanding for certain restaurants and \$10.6 million available in its revolving credit facility, subject to certain conditions.

Credit and Guaranty Agreement

On October 4, 2019, in conjunction with the acquisition of Kona Grill, the Company entered into a Credit Agreement with Goldman Sachs Bank USA. On August 6, 2021, the Company entered into the Third Amendment to the Credit Agreement to extend the maturity date for both the term loan and revolving credit facility to August 2026, to eliminate all financial covenants except a maximum net leverage ratio of 2.00 to 1.00, and to eliminate restrictions on the maximum amount of capital expenditures, the maximum number of Company-owned new locations, and credit extensions under the revolving credit facility. The Third Amendment to the Credit Agreement provided for a secured revolving credit facility of \$12.0 million and a \$25.0 million term loan (reduced from \$48.0 million). The term loan is payable in quarterly installments of \$0.1 million, with the final payment due in August 2026.

On December 13, 2022, the Company entered into the Fourth Amendment to the Credit Agreement that:

- Allows for a new \$50.0 million delayed draw term facility, available to draw for twelve months and subject to a 1.75x Net Leverage Ratio incurrence test (as defined in the Credit Agreement) for permitted acquisitions, stock repurchases and new restaurant capital expenditures;
- Allows the Company to redeem, repurchase or otherwise acquire its own capital stock in an aggregate amount of up to \$50 million subject to a 1.75x Net Leverage Ratio incurrence test and no default or event of default;
- Changes the interest rate from London Interbank Offered Rate ("LIBOR") plus a margin to Secured Overnight Financing Rate ("SOFR") plus an applicable margin; and
- Requires the Company to pay interest on an undrawn portion of the delayed draw term loan up to \$35.0 million, beginning 90 days following the effective date until December 13, 2023.

The Company borrowed \$50.0 million on the delayed draw term facility on December 28, 2022.

Loans under the amended Credit Agreement bear interest at a rate per annum using the SOFR rate subject to a 1.00% floor plus an interest rate margin of 6.50%. Prior to the Fourth Amendment to the Credit Agreement, the amended Credit Agreement had several borrowing and interest rate options, including the following: (a) a LIBOR rate (or a comparable successor rate) subject to a 1.00% floor (b) a base rate equal to the greatest of (i) the prime rate, (ii) the federal funds rate plus 0.50%, (iii) the LIBOR rate for a one-month period plus 1.00% or (iv) 4.00%. Loans under the Third Amendment to the Credit Agreement bore interest at a rate per annum using the applicable indices plus an interest rate margin of 5.00% (for LIBOR rate loans) and 4.00% (for base rate loans).

In conjunction with the Third Amendment to the Credit Agreement, the Company made a pre-payment on the loan of \$22.2 million and incurred \$0.9 million in debt issuance costs. The Company accounted for

the amendment as a debt modification with a partial extinguishment and recognized a loss on early debt extinguishment of \$0.6 million for the year ended December 31, 2021 and \$0.1 million in transaction costs.

The Company's weighted average interest rate on the borrowings under the amended Credit Agreement as of December 31, 2022 and December 31, 2021 was 10.31% and 6.00%, respectively.

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The Credit Agreement contains customary representations, warranties and conditions to borrowing including customary affirmative and negative covenants, which include covenants that limit or restrict the Company's ability to incur indebtedness and other obligations, grant liens to secure obligations, make investments, merge or consolidate, alter the organizational structure of the Company and its subsidiaries, and dispose of assets outside the ordinary course of business, in each case subject to customary exceptions for credit facilities of this size and type.

The Company and certain operating subsidiaries of the Company guarantee the obligations under the Credit Agreement, which also are secured by liens on substantially all of the assets of the Company and its subsidiaries.

As of December 31, 2022, the Company had \$2.2 million of debt issuance costs related to the amended Credit Agreement, which were capitalized and are recorded as a direct deduction to long-term debt and \$0.5 million in debt issuance costs recorded in other assets on the consolidated balance sheets. As of December 31, 2022, the Company was in compliance with the financial covenants required by the Credit Agreement.

CARES Act Loans

On May 4, 2020, two subsidiaries of the Company entered into promissory notes ("CARES Act Loans") with BBVA USA under the Paycheck Protection Program ("PPP") created by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). Repayment of the CARES Act Loans is guaranteed by the U.S. Small Business Administration ("SBA"). The ONE Group, LLC received a loan of \$9.8 million related to the operations of STK restaurants, and Kona Grill Acquisition, LLC received a loan of \$8.5 million related to the operation of Kona Grill restaurants.

The CARES Act Loans were eligible for forgiveness if the proceeds were used for qualified purposes within a specified period and if at least 60% was spent on payroll costs. The Company used all of the proceeds from the CARES Act Loans for qualified purposes in accordance with the CARES Act and SBA regulations, and these funds supported the re-opening of in person dining and the return of approximately 3,000 furloughed employees to work.

The Company applied for forgiveness of the CARES Act Loans in February 2021, and the loans were forgiven in June 2021 and July 2021. As a result, the Company recognized \$18.5 million gain on CARES Act Loan forgiveness for the year ended December 31, 2021.

Note 6 – Related Party Transactions

As of December 31, 2022 and 2021, the Company owned interests in the following companies, which directly or indirectly operate restaurants:

- 31.24% interest in Bagatelle NY LA Investors, LLC ("Bagatelle Investors")
- 51.13% interest in Bagatelle Little West 12th, LLC ("Bagatelle NY")

Bagatelle Investors is a holding company that has an interest in Bagatelle NY. The Company records its retained interests in Bagatelle Investors and Bagatelle NY as cost method investments as the Company has determined that it does not have ability to exercise significant influence over its investees, Bagatelle Investors and Bagatelle NY. As of December 31, 2022 and 2021, the Company has zero carrying value in these investments.

Net receivables from the Bagatelle entities included in due from related parties were \$0.4 million as of December 31, 2022 and 2021. These receivables represent the Company's maximum exposure to loss. Upon expiration of the lease in November 2020, the Company exited its contract with Bagatelle.

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[Table of Contents](#)**Note 7 – Income Taxes**

The components of income before provision for income taxes were as follows (in thousands):

	For the years ended December 31,	
	2022	2021
Domestic	\$ 14,051	\$ 33,331
Foreign	142	203
Total	<u>\$ 14,193</u>	<u>\$ 33,534</u>

The components of the Company's provision for income taxes were as follows (in thousands):

	For the years ended December 31,	
	2022	2021
Current:		
Federal	\$ —	\$ —
State and local	808	564
Foreign	75	110
Total current	<u>883</u>	<u>674</u>
Deferred:		
Federal	(429)	(195)
State and local	420	1,107
Foreign	—	—
Total deferred	<u>(9)</u>	<u>912</u>
Total provision for income taxes	<u>\$ 874</u>	<u>\$ 1,586</u>

The Company's effective tax rate differs from the statutory rates as follows:

	For the years ended December 31,	
	2022	2021
Income tax provision at federal statutory rate	21.0%	21.0%
State and local taxes	7.6%	4.5%
FICA tip credit	(22.5)%	(7.2)%
Compensation subject to IRC Section 162(m)	8.6%	6.2%
Equity based compensation	(9.3)%	(7.6)%
PPP income exclusion	—%	(11.6)%
Other items, net	0.8%	(0.6)%
Effective income tax rate	<u>6.2%</u>	<u>4.7%</u>

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The income tax effects of temporary differences that give rise to significant portions of deferred tax assets and liabilities are as follows (in thousands):

	For the years ended December 31,	
	2022	2021
Deferred tax assets:		
Operating lease liabilities	\$ 18,871	\$ 17,152
Stock compensation	415	247
FICA tip credit carryforward	13,976	9,929
Net operating loss	3,203	3,290
Goodwill	906	1,055
Inventory	20	10
Charitable contributions carryforward	3	—
Foreign tax credit carryforward	622	382
Deferred revenue	190	165
State and local tax credit carryforward	135	310
Expenses not deductible until paid	298	1,667
IRC 163(j) disallowed interest carryforward	483	—
Debt issuance costs	113	143
Kona related acquisition costs	755	813
Deferred payroll taxes	—	281
Total deferred tax assets	39,990	35,444
Deferred tax liabilities:		
Operating lease right-of-use assets	(13,974)	(13,150)
Depreciation and amortization	(13,064)	(9,605)
Other	(7)	(40)
Total deferred tax liabilities	(27,045)	(22,795)
Valuation allowance	(622)	(336)
Net deferred tax assets	\$ 12,323	\$ 12,313

Tax Carryforwards

As of December 31, 2022, the Company has federal net operating loss (“NOL”) carryforwards of \$13.9 million which have no expiration date. The Company has various state NOL carryforwards. The determination of the state NOL carryforwards is dependent upon apportionment percentages and state laws that can change from year to year and impact the amount of such carryforwards. The state NOLs expire at various dates from 2036 to 2041. The state and local tax credit carryforwards expire at various dates from 2023 through 2029.

In assessing the realizability of deferred tax assets, the Company evaluates whether it is more likely than not that the deferred tax assets will be realized. In the assessment of the valuation allowance, appropriate consideration was given to all positive and negative evidence including current operating results, tax planning strategies and forecasts of future earnings. As of December 31, 2022 and December 31, 2021, the Company had a valuation allowance of \$0.6 million and \$0.3 million, respectively, related to foreign tax credits the Company does not expect to utilize as a result of generating income in a jurisdiction with a higher income tax rate than the U.S.

Uncertain tax positions

The following table summarizes the activity related to the Company’s uncertain tax positions (in thousands):

	For the years ended December 31,	
	2022	2021
Balance, beginning of year	\$ 447	\$ 814
Increase related to current year positions	—	—
Decrease related to prior period positions	(401)	(367)

Balance, end of year	<u>\$</u> <u>46</u>	<u>\$</u> <u>447</u>

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Included in the balance of unrecognized tax benefits as of December 31, 2022 and December 31, 2021, are less than \$0.1 million and \$0.1 million, respectively, of tax benefits that, if recognized, would result in adjustments to deferred taxes. Management believes it is reasonably possible that a nominal amount of the uncertain tax position as of December 31, 2022 will decrease within the next twelve months.

The Company is subject to income taxes in the U.S. federal jurisdiction, and the various states and local jurisdictions in which it operates. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. The Company's federal tax filings remain subject to examination for federal tax years 2019 through 2021. The Company's state and local tax filings remain subject to examination for tax years 2019 through 2021. NOL carryforwards are subject to examination regardless of whether the tax year in which they are generated has been closed by statute. The amount subject to disallowance is limited to the NOL utilized. Accordingly, the Company may be subject to examination for prior NOLs generated as such NOLs are utilized.

The Company's foreign income tax returns prior to fiscal year 2019 are closed and management continually evaluates expiring statutes of limitations, audits, proposed settlements, changes in tax law and new authoritative rulings.

Note 8 – Revenue recognition

The following table provides information about contract receivables and liabilities from contracts with customers, which include deferred license revenue, deferred gift card revenue and the Konavore rewards program and deposits from customers for future events (in thousands):

	December 31, 2022	December 31, 2021
Deferred license revenue ⁽¹⁾	297	388
Deferred gift card revenue ⁽²⁾	1,680	1,769
Advanced party deposits ⁽²⁾	435	260
Konavore rewards program ⁽³⁾	163	136

- (1) Includes the current and long-term portion of deferred license revenue which are included in other current liabilities and other long-term liabilities on the consolidated balance sheets.
- (2) Deferred gift card revenue and advance party deposits on goods and services yet to be provided are included in deferred gift card revenue and other on the consolidated balance sheets.
- (3) Konavore rewards program is included in accrued expenses on the consolidated balance sheets.

Significant changes in deferred license revenue and deferred gift card revenue for the years ended December 31, 2022 and 2021 are as follows (in thousands):

	December 31, 2022	December 31, 2021
Revenue recognized from deferred license revenue	\$ 79	\$ 164
Revenue recognized from deferred gift card revenue	1,295	1,214
Revenue recognized from advanced party deposits	248	60

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As of December 31, 2022, the estimated deferred license revenue to be recognized in the future related to performance obligations that are unsatisfied as of December 31, 2022 were as follows for each year ending (in thousands):

2023	\$	78
2024		45
2025		44
2026		37
2027		34
Thereafter		59
Total future estimated deferred license revenue	\$	<u>297</u>

Note 9 – Leases

The components of lease expense for the period were as follows (in thousands):

	December 31, 2022	December 31, 2021
Lease cost		
Operating lease cost	\$ 14,587	\$ 13,602
Finance lease cost		
Amortization of ROU assets	59	—
Interest on lease liabilities	25	—
Total finance lease cost	84	—
Variable lease cost ⁽¹⁾	11,373	7,400
Short-term lease cost	945	684
Total lease cost	\$ 26,989	\$ 21,686
Weighted average remaining lease term		
Operating leases	13 years	13 years
Finance leases	5 years	—
Weighted average discount rate		
Operating leases	8.40 %	8.43 %
Finance leases	8.96 %	— %

(1) Variable lease cost is comprised of percentage rent and common area maintenance.

The components of finance lease assets and liabilities on the consolidated balance sheet were as follows (in thousands):

	December 31, 2022	December 31, 2021
Finance lease right-of-use assets ⁽¹⁾	\$ 942	\$ —
Current portion of finance lease liabilities ⁽¹⁾	177	—
Long-term portion of finance lease liabilities ⁽¹⁾	754	—

(1) Finance lease assets and liabilities are included in other assets, other current liabilities, and other long-term liabilities on the consolidated balance sheets.

The Company has entered into two operating leases for future restaurants in Denver, Colorado, and Phoenix, Arizona that have not commenced as of December 31, 2022. The present value of the aggregate future commitment related to these leases totals \$2.9 million. The Company expects these leases, which have an initial lease terms of 10 to 15 years, to commence within the next twelve months.

Supplemental cash flow information related to leases for the period was as follows (in thousands):

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	December 31, 2022	December 31, 2021
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 13,297	\$ 12,644
Operating cash flows from finance leases	\$ 59	\$ —
Financing cash flows from finance leases	\$ 51	\$ —
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	\$ 5,487	\$ 8,068
Finance leases	\$ 1,000	\$ —

As of December 31, 2022, maturities of the Company's operating lease liabilities are as follows (in thousands):

2023	\$ 11,789
2024	14,881
2025	14,105
2026	14,047
2027	14,356
Thereafter	124,223
Total lease payments	193,401
Less: imputed interest	(81,818)
Present value of operating lease liabilities	<u>\$ 111,583</u>

As of December 31, 2022, maturities of the Company's finance lease liabilities are as follows (in thousands):

2023	\$ 253
2024	233
2025	233
2026	233
2027	194
Total lease payments	1,146
Less: imputed interest	(215)
Present value of finance lease liabilities	<u>\$ 931</u>

Note 10 – Earnings per share

Basic earnings per share is computed using the weighted average number of common shares outstanding during the period and income available to common stockholders. Diluted earnings per share is computed using the weighted average number of common shares outstanding during the period plus the dilutive effect of all potential shares of common stock including common stock issuable pursuant to stock options, warrants, and restricted stock units.

For the years ended December 31, 2022 and 2021, earnings per share was calculated as follows (in thousands, except earnings per share and related share data):

	Year ended December 31, 2022	2021
Net income attributable to The ONE Group Hospitality, Inc.	\$ 13,534	\$ 31,348
Basic weighted average shares outstanding	32,400,515	31,155,224
Dilutive effect of stock options, warrants and restricted share units	1,471,282	2,639,120

Diluted weighted average shares outstanding	33,871,797	33,794,344
Net income available to common stockholders per share - Basic	\$ 0.42	\$ 1.01
Net income available to common stockholders per share - Diluted	\$ 0.40	\$ 0.93

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For the years ended December 31, 2022 and 2021, stock options, warrants and restricted share units totaling less than 0.1 million and 0.4 million, respectively, were determined to be anti-dilutive and were therefore excluded from the calculation of diluted earnings per share.

Note 11 – Stockholders’ Equity

Common Stock

The Company is authorized by its amended and restated certificate of incorporation to issue up to 75.0 million shares of common stock, par value \$0.0001 per share. As of December 31, 2022 and 2021, there are 31.7 million and 32.1 million shares of common stock outstanding, respectively.

Stock Purchase Program

In September 2022, the Company’s Board of Directors authorized a stock purchase program of up to \$10.0 million of outstanding common stock. As of December 31, 2022, the Company had repurchased 1,081,938 shares for \$7.1 million under the program.

Warrants

The Company has the following warrants to purchase shares of common stock outstanding as of December 31, 2022 and 2021:

Issuance date	Holder of warrants	Expiration date	Shares available for purchase as of			
			Warrants Issued	Exercise Price	December 31, 2022	December 31, 2021
November 15, 2017	2017 Securities Purchase Agreement investors	May 15, 2023	875,000	\$ 1.63	125,000	125,000

The issuance of a dividend is dependent on a variety of factors, including but not limited to, available cash and the overall financial condition of the Company. The issuance of a dividend is also subject to legal restrictions and the terms of the Company’s credit agreement. The Company did not issue dividends related to its common stock in 2022 or 2021.

Preferred Stock

The Company is authorized by its amended and restated certificate of incorporation to issue 10.0 million shares of preferred stock, par value \$0.0001 per share. The Company’s Board may designate the rights, powers and preferences of the preferred stock, which may have superior rights to common shareholders in terms of liquidation and dividend preference, voting and other rights. As of December 31, 2022 and 2021, the Board had not designated the rights of the preferred stock and there were no outstanding shares of preferred stock.

Note 12 – Employee Benefit Plans

Defined Contribution Retirement Plan

The Company sponsors a qualified defined contribution retirement plan (the “401(k) Plan”) covering all eligible employees, as defined in the 401(k) Plan. The 401(k) Plan allows participating employees to defer the receipt of a portion of their compensation, on a pre-tax or post-tax basis, and contribute such amount to one or more investment options. Employer contributions to the plan are at the discretion of the Company. The Company did not accrue or make any employer contributions in 2022 and 2021.

Equity Incentive Plan

The Company provides equity-based compensation to directors, officers, key employees and other key individuals performing services for the Company under its 2019 Equity Incentive Plan (the “Equity Incentive Plan”). The Equity

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Incentive Plan provides for the granting of stock options, warrants, restricted stock or other stock-based awards. All awards are required to be approved by the Board or a designated committee of the Board. Options are generally granted with an exercise price equal to fair market value of the Company's common stock on the date of grant and expire after ten years. Vesting of options and restricted stock can either be based on the passage of time or on the achievement of performance goals. The Board has the authority to amend, modify or terminate the Equity Incentive Plan, subject to any required approval by the Company's stockholders under applicable law or upon advice of counsel. No such action would affect any options previously granted under the Equity Incentive Plan without the consent of the holders.

Effective May 18, 2022, the Board and the Company's stockholders approved a 4,500,000 increase to the number of shares of common stock authorized for issuance under the Equity Incentive Plan, bringing the maximum aggregate limit to 11,573,922 shares. As of December 31, 2022, the Company had 3,727,848 shares available for issuance under the Equity Incentive Plan.

Stock-based compensation cost for 2022 and 2021 was \$4.0 million and \$3.6 million, respectively, and is included in general and administrative expenses in the consolidated statements of operations and comprehensive income. Included in stock-based compensation cost was \$0.3 million and \$0.5 million of unrestricted stock granted to directors for the years ended December 31, 2022 and 2021, respectively. Such grants were awarded consistent with the Board's compensation practices and included grants to two new board members appointed in September 2021. Stock-based compensation for the year ended December 31, 2022 included \$0.2 million of compensation costs for market condition-based restricted stock units ("RSU"). Refer to discussion of CEO RSUs below. In addition, stock-based compensation expense for the year ended December 31, 2021 included \$0.4 million of employer payroll taxes associated with stock option and restricted RSU activity and \$0.3 million of compensation costs for the vesting of market condition-based stock options and RSUs.

Stock Option Activity

Changes in outstanding stock options during the years ended December 31, 2022 and 2021 were as follows:

	Shares	Weighted average exercise price	Weighted average remaining contractual life	Intrinsic value (thousands)
Outstanding at January 1, 2021	1,707,008	\$ 3.37		
Vested	594,402	3.09		
Exercised	(1,039,058)	3.23		
Cancelled, expired or forfeited	(10,000)	2.13		
Outstanding at December 31, 2021	1,252,352	3.36	3.92 years	\$ 11,581
Exercisable at December 31, 2021	1,126,685	3.48	3.72 years	\$ 10,283
Vested	-	-		
Exercised	(65,000)	2.13		
Cancelled, expired or forfeited	-	-		
Outstanding at December 31, 2022	1,187,352	3.43	2.84 years	\$ 3,811
Exercisable at December 31, 2022	1,187,352	\$ 3.43	2.84 years	\$ 3,811

There were no stock options granted in 2022 or 2021.

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A summary of the status of the Company's non-vested stock options as of December 31, 2022 and 2021 and changes during the years then ended, is presented below:

	Shares	Weighted average grant date fair value
Non-vested stock options at January 1, 2021	263,333	\$ 0.99
Granted	—	—
Vested	(127,667)	1.00
Cancelled, expired or forfeited	(10,000)	0.87
Non-vested stock options at December 31, 2021	125,667	\$ 1.00
Granted	—	—
Vested	(125,667)	1.00
Cancelled, expired or forfeited	—	—
Non-vested stock options at December 31, 2022	—	\$ —

The fair value of options that vested in each of the years ended December 31, 2022 and 2021 was \$0.1 million.

Restricted Stock Unit Activity

The Company issues restricted stock units under the 2019 Equity Plan. The fair value of RSUs is determined based upon the closing fair market value of the Company's common stock on the grant date, except for the RSUs discussed below.

Awards granted during September 2022 included 500,000 RSUs awarded to our Chief Executive Officer with both a market condition and time element ("CEO RSUs"). The CEO RSUs may be earned based on achieving common stock price targets within a 48-month period and, if earned, will vest and be settled based on a time element as outlined in the RSU agreement governing the CEO RSUs. To value the CEO RSUs, the Company, with the assistance of a third-party specialist, calculated the fair value of CEO RSUs using the Monte Carlo Simulation, a risk-free rate of 3.31%, a starting common stock value of \$6.95, volatility of 73%, and a standard normal distribution. The Company valued the CEO RSUs at \$2.9 million and will amortize this amount evenly over 48 months. For 2022, the Company recorded \$0.2 million of stock-based compensation expense associated with these awards.

A summary of the status of RSUs and changes during the years ended December 31, 2022 and 2021 is presented below:

	Shares	Weighted average grant date fair value
Non-vested RSUs at January 1, 2021	1,871,592	\$ 1.68
Granted	977,599	7.74
Vested	(1,109,250)	1.90
Cancelled, expired or forfeited	(49,931)	5.18
Non-vested RSUs at December 31, 2021	1,690,010	\$ 4.98
Granted	983,147	7.31
Vested	(742,781)	3.82
Cancelled, expired or forfeited	(90,944)	6.38
Non-vested RSUs at December 31, 2022	1,839,432	\$ 6.62

As of December 31, 2022, the Company had approximately \$9.8 million of total unrecognized compensation costs related to restricted stock awards, which will be recognized over a weighted average period of 2.8 years.

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Note 13 – Segment Reporting

The Company has identified its reportable operating segments as follows:

- STK. The STK segment consists of the results of operations from STK restaurant locations, competing in the full-service dining industry, as well as management, license and incentive fee revenue generated from the STK brand and pre-opening expenses associated with new restaurants under development.
- Kona Grill. The Kona Grill segment includes the results of operations of Kona Grill restaurant locations and pre-opening expenses associated with new restaurants under development.
- ONE Hospitality. The ONE Hospitality segment is composed of the management, license and incentive fee revenue and results of operations generated from the Company's other brands and venue concepts, which include ANGEL, Bao Yum, Heliot, Hideout, Marconi, Radio and Rivershore Bar & Grill. Additionally, this segment includes the results of operations generated from F&B hospitality management agreements with hotels, casinos and other high-end locations.
- Corporate. The Corporate segment consists of the following: general and administrative costs, stock-based compensation, lease termination expenses, transaction costs, COVID-19 related expenses and other income and expenses. This segment also includes STK Meat Market, an e-commerce platform that offers signature steak cuts nationwide, the Company's major off-site events group, which supports all brands and venue concepts, and revenue generated from gift card programs. The Corporate segment's total assets primarily include cash and cash equivalents, the Kona Grill tradename, and deferred tax assets.

The Company's Chief Executive Officer, who is the Company's Chief Operating Decision Maker, manages the business and allocates resources via a combination of restaurant sales reports and operating segment profit information, defined as revenues less operating expenses, related to the Company's four operating segments. In the second quarter of 2022, the Company changed its financial information regularly reviewed by the CODM to include all cash and cash equivalents, the Kona Grill tradename and deferred tax assets in the Corporate segment. Previously, certain cash amounts were included in the STK and Kona Grill segments and the Kona Grill tradename and certain deferred tax assets were included in the Kona Grill segment. Fiscal 2021 figures have been reclassified for comparability. Total assets for each of the segments include operating lease liabilities for both existing and new venues under construction.

Certain financial information relating to the years ended December 31, 2022 and 2021 for each segment is provided below (in thousands).

	<u>STK</u>	<u>Kona Grill</u>	<u>ONE Hospitality</u>	<u>Corporate</u>	<u>Total</u>
For the year ended December 31, 2022					
Total revenues	\$ 187,402	\$ 126,341	\$ 2,344	\$ 551	\$ 316,638
Operating income (loss)	40,343	7,217	1,282	(32,536)	16,306
Capital asset additions	\$ 19,116	\$ 10,496	\$ 139	\$ 2,878	\$ 32,629
As of December 31, 2022					
Total assets	\$ 113,911	\$ 78,691	\$ 5,746	\$ 92,676	\$ 291,024
	<u>STK</u>	<u>Kona Grill</u>	<u>ONE Hospitality</u>	<u>Corporate</u>	<u>Total</u>
For the year ended December 31, 2021					
Total revenues	\$ 151,436	\$ 123,181	\$ 1,725	\$ 836	\$ 277,178
Operating income (loss)	39,863	12,982	466	(33,926)	19,385
Capital asset additions	\$ 7,581	\$ 2,307	\$ 170	\$ 1,409	\$ 11,467
As of December 31, 2021					
Total assets	\$ 95,579	\$ 69,006	\$ 5,735	\$ 59,515	\$ 229,835

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Note 14 – Geographic Information

Certain financial information by geographic location relating to the years ended December 31, 2022 and 2021 is provided below (in thousands).

	For the year ended December 31,	
	2022	2021
Domestic revenues	\$ 311,119	\$ 272,651
International revenues	5,519	4,527
Total revenues	<u>\$ 316,638</u>	<u>\$ 277,178</u>

	December 31,	December 31,
	2022	2021
Domestic long-lived assets	\$ 211,143	\$ 185,718
International long-lived assets	1,345	1,190
Total long-lived assets	<u>\$ 212,488</u>	<u>\$ 186,908</u>

Note 15 – Commitments and Contingencies

The Company is party to claims in lawsuits incidental to its business, including lease disputes and employee-related matters. The Company has recorded accruals in its consolidated financial statements in accordance with ASC 450, Contingencies. While the resolution of a lawsuit, proceeding or claim may have an impact on the Company's financial results for the period in which it is resolved, in the opinion of management, the ultimate outcome of such matters and judgements in which the Company is currently involved, either individually or in the aggregate, will not have a material adverse effect on the Company's consolidated financial position or results of operations.

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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 31, 2023

or

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

Commission File Number 001-37379

The ONE Group Hospitality, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

14-1961545

(I.R.S. Employer Identification No.)

1624 Market Street, Suite 311, Denver, Colorado

(Address of principal executive offices)

80202

Zip Code

646-624-2400

(Registrant's telephone number, including area code)

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

Title of each class	Title of each class	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	STKS	The NASDAQ Stock Market LLC

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 Section 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 (§ 232.405 of this chapter) 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, a 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 ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☒ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided 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. ☒

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant computed by reference to the price at which the common equity was last sold, as of the last business day of the registrant's most recently completed second fiscal quarter, was \$151,615,073.

Number of shares of Common Stock outstanding as of February 29, 2024: 31,307,407

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's proxy statement for its 2024 annual meeting of stockholders are incorporated by reference in Part III of this Form 10-K.

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[Table of Contents](#)**Cautionary Note Regarding Forward-Looking Statements:**

This Annual Report on Form 10-K and certain information incorporated herein by reference contain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and Section 27A of the Securities Act of 1933, as amended (the “Securities Act”). Forward-looking statements speak only as of the date thereof and involve risks and uncertainties that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. These risk and uncertainties include, but are not limited to, the risk factors discussed under Item 1A. “Risk Factors” of this Annual Report on Form 10-K. Factors that might cause actual events or results to differ materially from those indicated by these forward-looking statements include matters such as future economic performance, general economic conditions, consumer preferences and spending, costs, competition, new product execution, restaurant openings or closings, operating margins, the availability of acceptable real estate locations, the sufficiency of our cash balances and cash generated from operations and financing activities for our future liquidity and capital resource needs, the impact on our business of Federal and State legislation and local regulation, future litigation, the execution of our growth strategy and other matters. We have attempted to identify forward-looking statements by terminology including “anticipates,” “believes,” “can,” “continue,” “ongoing,” “could,” “estimates,” “expects,” “intends,” “may,” “appears,” “suggests,” “future,” “likely,” “goal,” “plans,” “potential,” “projects,” “predicts,” “should,” “targets,” “would,” “will” and similar expressions that convey the uncertainty of future events or outcomes. You should not place undue reliance on any forward-looking statement. We do not undertake any obligation to update or revise any forward-looking statements to reflect events or circumstances after the date of this report or to reflect the occurrence of unanticipated events, except as may be required under applicable law.

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PART I

As used in this report, the terms “Company,” “we,” “our,” or “us,” refer to The ONE Group Hospitality, Inc. and its consolidated subsidiaries, taken as a whole, unless the context otherwise indicates. The term “year ended” refers to the entire calendar year unless the context otherwise indicates.

Item 1. Business

Description of the Business

We are an international restaurant company that develops, owns and operates, manages and licenses upscale and polished casual, high-energy restaurants and lounges and provides turn-key food and beverage (“F&B”) services and consulting service for hospitality venues including hotels, casinos and other high-end locations. Turn-key F&B services are food and beverage services that can be scaled, customized and implemented by us for the client at a particular hospitality venue. Our vision is to be a global market leader in the hospitality industry by melding high-quality service, ambiance, high-energy and cuisine into one great experience that we refer to as “Vibe Dining”. We design all our restaurants, lounges and F&B services to create a social dining and high-energy entertainment experience within a destination location. We believe that this design and operating philosophy separates us from more traditional restaurant and foodservice competitors.



Our primary restaurant brands are STK, a multi-unit steakhouse concept that combines a high-energy, social atmosphere with the quality and service of a traditional upscale steakhouse, and Kona Grill, a polished casual bar-centric grill concept featuring American favorites, award-winning sushi, and specialty cocktails in a polished casual atmosphere. Our F&B hospitality management services are marketed as ONE Hospitality and include developing, managing and operating restaurants, bars, rooftop lounges, pools, banqueting and catering facilities, private dining rooms, room service and mini bars tailored to the specific needs of high-end hotels and casinos. We also provide hospitality advisory and consulting services to certain clients. Our F&B hospitality clients operate global hospitality brands such as the W Hotel, ME Hotel, Hippodrome Casino, and Curio Collection by Hilton. For those restaurants and venues that are

managed or licensed, we generate management fee revenue based on top-line revenues and incentive fee revenue based on a percentage of the location's revenues and net profits.

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We opened our first restaurant in January 2004 in New York, New York. We currently own, operate, manage or license 63 venues including 28 STKs and 27 Kona Grills in major metropolitan cities in North America, Europe and the Middle East and 8 F&B venues in four hotels and casinos in the United States and Europe.

We opened the following eight new venues in 2023:

- Owned STK restaurant in Charlotte, North Carolina
- Owned STK restaurant in Boston, Massachusetts
- Owned STK restaurant in Salt Lake City, Utah
- Owned Kona Grill restaurant in Columbus, Ohio
- Owned Kona Grill restaurant in Riverton, Utah
- Owned Kona Grill restaurant in Phoenix, Arizona
- Two Bao Yum venues through a licensing agreement with Reef Kitchens

Recently the Company exited its licensing agreement with REEF Kitchens and has no venues operating pursuant to that agreement.

We intend to add six to eight new venues in 2024. In March 2024, we opened the following:

- Owned STK restaurant in Washington DC

There is currently one Company-owned STK restaurant, one Company-owned Kona Grill restaurant, and one Company-owned Salt Water Social restaurant under construction in the following cities:

- Owned STK restaurant in Aventura, Florida
- Owned Kona Grill restaurant Tigard, Oregon
- Owned Salt Water Social restaurant in Denver, Colorado

As our footprint increases, we expect to benefit by leveraging system-wide operating efficiencies and best practices through the management of our general and administrative expenses as a percentage of overall revenue.

Brands and Locations

The table below reflects our venues by restaurant brand and geographic location:

	Venues			Total
	STK ⁽¹⁾	Kona Grill	ONE Hospitality ⁽²⁾	
Domestic				
Owned	17	27	2	46
Managed	2	—	1	3
Licensed	1	—	—	1
Total domestic	20	27	3	50
International				
Owned	—	—	1	1
Managed	4	—	4	8
Licensed	4	—	—	4
Total international	8	—	5	13
Total venues	28	27	8	63

(1) Locations with an STK and STK Rooftop are considered one venue location. This includes the STK Rooftop in San Diego, CA, which is a licensed location.

(2) Includes concepts under the Company's F&B hospitality management agreements and other venue brands such as Bao Yum, Heliot, Hideout, Radio and Rivershore Bar & Grill.

We expect to continue expanding our operations domestically and internationally primarily through a mix of owned, licensed and managed restaurants using a disciplined and targeted site selection process. We refer to our licensing and management strategy as our “capital light strategy” because it requires significantly less capital than expansion through

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owned restaurants only. Refer to Item 2 – Properties for additional details regarding the domestic and international locations in which we operate.

STK

STK is a global steakhouse restaurant concept with locations in major metropolitan cities. STK artfully blends the modern steakhouse and a chic lounge, offering a high-energy, fine dining experience in a social atmosphere with the quality and service of a traditional upscale steakhouse. Each STK location features a large, open restaurant and bar area with a DJ playing music throughout the restaurant, offering our customers a high-energy, fun “destination” environment that encourages social interaction. We believe this Vibe Dining concept truly differentiates us from other upscale steakhouses. Our menu provides a variety of portion sizes and signature options to appeal to a broad customer demographic.

We operate seventeen owned, six managed and five licensed STK restaurants in North America, Europe and the Middle East. Our STK restaurants average 10,000 square feet, and we typically target locations that range in size from 8,000 to 10,000 square feet. In 2023, the average domestic restaurant revenues and average domestic check per person for owned and managed STK restaurants that have been open at least 18 months at December 31, 2023 were \$17.3 million and \$130, respectively.

We are focused on expanding our global STK footprint. We believe that the locations of our STK restaurants are critical to our long-term success, and we devote significant time and resources to analyze prospective restaurant sites. We intend to continue our focus on (i) metropolitan areas with demographic and discretionary spending profiles that favor our high-end concept and (ii) finding partners with excellent track records and brand recognition. We also consider factors such as traffic patterns, proximity to high-end shopping areas and office buildings, hotels and convention centers, area restaurant competition, accessibility and visibility. We have identified over 75 additional major metropolitan areas across the globe where we could grow our STK brand to 200 restaurants over the foreseeable future. We expect to open five to six STKs annually.

Kona Grill

Kona Grill is a bar-centric grill concept featuring American favorites, steaks, seafood, award-winning sushi, and specialty cocktails in a polished casual atmosphere. Kona Grill offers freshly prepared food and attentive service in an upscale, contemporary ambiance that creates an exceptional dining experience that we believe exceeds many traditional casual dining restaurants. Menu items are crafted to have memorable flavor profiles that appeal to a wide range of customers. The diverse menu is complemented by a full-service bar offering a broad assortment of wines, craft cocktails, and beers. We believe that the Kona Grill brand is complementary to our STK brand and enables us to capture market share in the Vibe Dining segment.

We own and operate 27 Kona Grill restaurants within 18 states in the United States. Our Kona Grill restaurants average approximately 7,000 to 8,000 square feet. In 2023, the average restaurant revenues were \$5.2 million and average spend per transaction was \$63. We believe we can grow the Kona Grill brand to 200 restaurants over the foreseeable future. We expect to open three to five Kona Grills annually.

ONE Hospitality

Our ONE Hospitality platform is composed of our F&B hospitality management and consulting agreements with hotels, casinos, and other high-end locations as well as our other brands and venue concepts, which are described below:

- *F&B Services.* Our F&B services for hospitality venues provide attractive and comprehensive tailored food and beverage solutions to our hospitality clients. Our fee-based hospitality food and beverage solutions include developing, managing and operating restaurants, bars, rooftops, pools, banquet and catering services, private dining rooms, in-room dining services and mini bars on a contract basis. Currently, we operate three venues pursuant to F&B hospitality management agreements with hotels and casinos in the United States and in Europe. Historically, our clients

have provided the majority of the capital required for the development of the facilities we manage on their behalf.

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- *Bao Yum*. A fast-casual concept that offers a whimsical twist on classic bao. Bao Yum serves breakfast, lunch, dinner and dessert bao along with a variety of salads, soups, sandwiches and snacks. Bao Yum currently operates in London.
- *Heliot*. Heliot Steak House is an award-winning steakhouse and bar within the Hippodrome Casino in London that offers impressive views of the main casino gambling floor.
- *Hideout*. The Hideout by STK is an outdoor, poolside restaurant and bar within the W Hotel in Westwood, California, which complements our owned STK and F&B hospitality services also offered within the W Hotel in Westwood.
- *Radio*. Radio Rooftop is a premier rooftop restaurant and lounge bar concept boasting striking city views with a signature location on top of the ME Milan hotel.
- *Rivershore Bar & Grill*. Rivershore Bar & Grill celebrates the end of the Oregon Trail with a beautiful river view, American favorites and friendly, professional service in Oregon City, Oregon.
- *Salt Water Social*. Salt Water Social is a seafood concept which artfully blends the classic seafood restaurant and a chic lounge into a high-energy, fine dining experience.

Our F&B hospitality contracts generate revenues for us through management fees, which are typically calculated as a percentage of the operation's revenues, and we earn additional milestone and incentive fees based on the operation's profitability. We typically target F&B hospitality service opportunities where we believe we can generate at least \$500,000 of annual pre-tax income.

We expect our F&B hospitality services business to be an important driver of our growth and profitability, enabling us to generate leads to develop managed STK restaurants and management fee income with minimal capital expenditures. We believe we are well positioned to leverage the strength of our brands and the relationships we have developed with global hospitality providers to drive the continued growth of our F&B hospitality business. We continue to receive inbound inquiries regarding new opportunities globally, and we continue to work with existing hospitality clients to identify and develop additional opportunities in their venues. We expect to enter into one to two new F&B hospitality agreements annually.

We exercised our option to renew the management agreement with ME London to manage STK. Effective January 1, 2023, ME London elected not to renew Radio, Marconi and in-room dining per the agreement. Therefore, we only continue to manage the STK restaurant at ME London. In October 2023, we consolidated STK operations in London, United Kingdom to STK Strand and STK Stratford which resulted in the closure of our operations within the Westminster London Hotel. In December 2023, our agreement with ANGEL at the Hotel Calimala in Florence, Italy terminated. In February 2024, we terminated our agreement with REEF Kitchens.

Sourcing and Supply Chain

We seek to ensure that consistently high-quality food and beverages are served at all of our venues through the coordination and cooperation of our purchasing and culinary teams.

Our culinary and purchasing teams establish product specifications on a global basis, which are then disseminated to all locations through recipe books for all dishes served at our properties. We are committed to culinary innovation which allows us flexibility in our preparations and offerings in order to manage costs and ensure regular availability.

We maintain consistent pricing standards and procedures for all top-volume purchases at our restaurants.

We select high quality suppliers and negotiate pricing on a national level in each country where one or more of our restaurants operate. We test new suppliers on a regional basis for an extended period before using them on a national basis. We periodically review supplier consistency and satisfaction with our restaurant chefs and continually research and evaluate products and supplies to ensure the meat, seafood and other menu ingredients that we purchase comply with our high-quality specifications. We believe we have strong relationships with national and regional foodservice

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distributors who can continue to supply us with our products on a consistent basis. Products are shipped directly to the restaurants from our suppliers.

Our corporate beverage program establishes guidelines for ordering beverage products at our properties. We provide beverage managers at each restaurant with national guidelines for standardized products. Our concepts emphasize the bar as a key driver of activity in our restaurants. In 2023, the sale of beverages accounted for approximately 23% of restaurant revenues.

On a company-wide basis, no supplier of food accounts for more than 30% of our total food and beverage purchases and no brand of alcohol accounts for more than 25% of our alcohol purchases. We believe that our food and beverage supplies are available from a significant number of alternate suppliers and that the loss of a supplier would not have a material adverse effect on our costs of supplies.

Advertising and Marketing

The primary focus of our advertising and marketing is to increase awareness of our brands and our overall reputation for quality, service and delivering a high-energy experience. Our marketing efforts are designed to strengthen our brand recognition in markets where we operate and to create brand awareness in new markets before opening a new location. We use digital/social media channels, targeted local media such as magazines, billboards and other out-of-home advertising, and a strong network of public relations teams to increase the frequency with which our existing customers visit our restaurants and to attract new customers. We conduct frequent promotional programs tailored to the city, brand and clientele of each location. We utilize a network of local and national public relations firms to support these promotional programs. Additional marketing functions include the use of our websites, www.STKsteakhouse.com and www.KonaGrill.com, to facilitate online reservations, to-go/delivery orders and gift card sales to drive revenue.

Competition

The restaurant and hospitality industries are intensely competitive with respect to price, quality of service, location, ambiance of facilities and type and quality of food. We experience competition from a variety of sources, including upscale steakhouse chains such as Ruth Chris, Del Frisco's, Fleming's, Mastro's and The Capital Grille, local upscale steakhouses and polished casual chains, such as The Cheesecake Factory, Bonefish and BJ's. There is also competition from other Vibe Dining restaurants such as Nobu, Catch, Lavo, Zuma and Tao and other high-end hospitality services companies such as the Gerber Group and Lettuce Entertain You. To the extent that we operate lounges and similar venues in hotels and resorts, we are subject to our host venues being able to compete effectively in attracting customers to frequent our establishments.

Seasonality

Our business is subject to fluctuations due to seasonality and adverse weather. Because of the seasonality of the business and the industry, results for any quarter are not necessarily indicative of the results that may be achieved for any other quarter or the full calendar year. Typically, our fourth quarter has higher sales volumes than other quarters in the year.

Intellectual Property

Our rights in our registered and unregistered intellectual property, including trademarks and service marks, are significant to our business. We own the U.S. federal registration rights to "STK," "Kona Grill," and several related word marks and design marks related to our brands. We depend on registered and unregistered trademarks and service marks to maintain the identity of our locations. We license the rights to use certain trademarks we own or license to our licensees in connection with their operations. We also own several other trademarks and service marks. It is our policy to defend our marks against encroachment by others.

Human Capital Resources

As of December 31, 2023, we employed 60 employees within our support center, 27 employees in multi-unit leadership and an aggregate of 257 full-time, salaried employees at our venues. We rely on hourly-wage employees for kitchen staff, servers, bussers, runners, polishers, hosts, bartenders, barbacks, reservationists, administrative support, and interns. The average headcount for employees in our domestic restaurants is 90. Combining full-time and part-time

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employees, we employ and manage directly approximately 4,500 persons and through ONE Hospitality we manage approximately 500 employees for a total of approximately 5,000 employees worldwide. We have never experienced a work stoppage, and none of our employees are represented by a labor organization.

Our human capital objectives include attracting, developing, rewarding, and retaining our existing and new employees. We offer our employees online training courses and on-the-job training. Restaurant management trainees undergo training in order to understand all aspects of our restaurant operations. We provide our employees with cash-based performance bonuses. We also have an equity incentive compensation plan to provide certain management-level or other key employees with stock-based awards. We have implemented programs to attract and retain both restaurant managers and hourly employees. We monitor our progress with metrics such as employee performance measures, turnover rates and restaurant customer surveys.

Government Regulation

Our operations are subject to extensive federal, state and local governmental regulation, including health, safety, labor, sanitation, building and fire agencies in the state, county, municipality or jurisdiction in which the restaurant is located. In certain states, our restaurants are subject to “dram shop” statutes, which generally provides a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. We maintain the necessary restaurant, alcoholic beverage and retail licenses, permits and approvals. Federal and state labor laws govern our relationship with our employees and affect operating costs. The development and construction of new restaurants are also subject to compliance with applicable zoning, land use and environmental regulations. A failure to comply with one or more regulations could result in the imposition of sanctions, including the closing of restaurants for an indeterminate period of time, fines or third-party litigation.

Available Information

We are required to file reports with the SEC, including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K. The SEC maintains a website that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at www.sec.gov.

We maintain a website at www.togrp.com, including an investor relations section at ir.togrp.com, on which we routinely post information, such as webcasts of quarterly earnings calls and other investor events in which we participate and any related material. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports, as well as other reports relating to us that are filed with or furnished to the SEC can be accessed in the investor relations section of our website free of charge as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC.

We also make available on our website and in print to any stockholder who requests it, our Audit, Compensation, and Nominating and Corporate Governance Committee charters, as well as the Code of Conduct that applies to all directors, officers and employees of the Company. We do not incorporate any information found or accessible through our websites into this Annual Report on Form 10-K.

Item 1A. Risk Factors

RISK FACTORS

Ownership of our common stock involves certain risks. Holders of our common stock and prospective investors should carefully consider the following risks and other information contained in this document, including our historical financial statements and related notes included herein. The following risk factors could materially adversely affect our business, financial condition and results of operations. This could cause the trading price of our common stock to decline, perhaps significantly, and you may lose part or all of your investment. The risks and uncertainties below are all those that we have identified as material but

may not be the only risks and uncertainties facing us. Our business is subject to general risks and uncertainties that affect many other companies, including overall economic and industry conditions.

Economic Conditions and Competition

[Table of Contents](#)***Our business is dependent on discretionary spending patterns, business travel and general economic conditions.***

We depend on consumer discretionary spending, business travel and the overall economic environment. Disruptions in the economy, including recessions, high unemployment, foreclosures, bankruptcies, inflation and other economic impacts, could affect consumers' ability and willingness to spend discretionary dollars. Reductions in business travel and dining, which we believe accounts for a majority of our weekday revenues at our hotel-based restaurants and food and beverage services operations, would adversely affect our revenues. Reductions in discretionary income and spending also would impact our casino-based restaurants and food and beverage services operations. If uncertain economic conditions were to persist for an extended period of time or worsen, consumers might make long-lasting changes to their discretionary spending behavior, including dining out less frequently. Adverse changes in consumer discretionary spending could be affected by many different factors that are out of our control, including international, national and local economic conditions, any of which could harm our business prospects, financial condition, operating results and cash flows. Continued uncertainty in or a worsening of the economy, generally or in a number of our markets, and our customers' reactions to these trends could adversely affect our business and cause us to, among other things, reduce the number and frequency of new restaurant openings, close locations and delay any remodeling of existing restaurants. Our success will depend in part upon our ability to anticipate, identify and respond to changing economic and other conditions.

We have a limited number of venues, and we operate multiple venues in some cities and are therefore sensitive to economic and other trends and developments in these cities.

We have a relatively small number of restaurants and F&B service locations, and we operate multiple venues in some cities. We typically operate one to five venues in the cities where we operate. Accordingly, particularly in cities where we have multiple venues, our business is susceptible to adverse changes in these markets whether as a result of declining economic conditions, declining stock market performance, negative publicity, changes in customer preferences or for other reasons, and any such adverse changes may have a disproportionate effect on our overall results of operations compared to some of our competitors that may have less restaurant concentration or that do not operate in our markets. Any regional occurrences such as local labor strikes, natural disasters, prolonged inclement weather, acts of terrorism or other national emergencies, accidents, energy shortages, system failures or other unforeseen events in or around these cities could result in temporary or permanent closings of our venues, which could have a material adverse effect on our business, financial condition and results of operations as a whole.

Competition in the restaurant industry is intense.

The restaurant and hospitality industry is intensely competitive with respect to price, quality of service, location, ambiance of facilities and type and quality of food. The industry is also characterized by the continual introduction of new concepts and is subject to rapidly changing consumer preferences, tastes, trends and eating and purchasing habits. Our success depends in part on our ability to anticipate and respond quickly to changing consumer preferences, and other factors affecting the restaurant and hospitality industry, including new market entrants and demographic changes. Shifts in consumer preferences away from upscale steakhouses or beef in general, which are significant components of our concepts' menus and appeal, whether as a result of economic, competitive or other factors, could adversely affect our business and results of operations.

A substantial number of national and regional restaurant chains, as well as independently owned restaurants, compete with us for customers, restaurant locations and qualified management and other restaurant staff. There is also competition from non-steak but upscale and high-energy restaurants, and other high-end hospitality services companies and high-energy nightlife concepts. To the extent that our restaurants and F&B hospitality services operations are in hotels, casinos, resorts and similar locations, we are subject to competition in the broader lodging and hospitality markets that could draw potential customers away from our locations.

Some of our competitors have greater financial, marketing and operating resources than we do, have been in business longer, have greater name recognition and are better established in the markets where our restaurants and F&B hospitality services operations are located or where we may expand. In addition, improved product offerings in the fast casual segment of the restaurant industry, combined with the effects of negative economic conditions and other factors, may lead consumers to choose less expensive alternatives. Our inability to compete successfully with other restaurants, other F&B hospitality services operations and other segments of the industry may harm our ability to maintain acceptable levels of revenue growth, limit our development of new restaurants or concepts, or force us to close one or more of our restaurants or F&B hospitality services operations.

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We may also need to evolve our concepts to compete with popular new restaurant or F&B hospitality services operation formats, concepts or trends that emerge from time to time, and we cannot provide any assurance that any changes we make to any of our concepts in response will be successful or not adversely affect our profitability.

Health and Safety

Health concerns arising from outbreaks of flu viruses or other diseases, or regional or global health pandemics could severely affect our business.

The United States and other countries have experienced, or may experience in the future, outbreaks of viruses, such as coronavirus, norovirus, Avian Flu or “SARS,” H1N1 or “swine flu,” or other diseases such as bovine spongiform encephalopathy, commonly known as “mad cow disease.” If a virus is transmitted by human contact, our employees or customers may become infected, or may choose, or be advised, to avoid gathering in public places, any of which may adversely affect the guest traffic at our restaurants and the ability to adequately staff our restaurants, receive deliveries on a timely basis or perform functions at the corporate level. We also may be adversely affected if jurisdictions in which we have restaurants impose mandatory closures, seek voluntary closures or impose restrictions on operations. Even if such measures are not implemented and a virus or other disease does not spread significantly, the perceived risk of infection or significant health risk may adversely affect our business.

To the extent that a virus or disease is food-borne, or perceived to be food-borne, future outbreaks may adversely affect the price and availability of certain food products and cause our customers to eat less of such products. For example, health concerns relating to the consumption of beef or to specific events such as the outbreak of “mad cow disease” may adversely impact sales of our beef-related menu items. In addition, public concern over “avian flu” may cause fear about the consumption of chicken, eggs and other products derived from poultry. The inability to serve beef or poultry-based products would restrict our ability to provide a variety of menu items to our customers. If we change our menu in response to such concerns, we may lose customers who do not prefer the new menu, and we may not be able to sufficiently attract new customers to produce the revenue needed to restore the profitability of our restaurant operations. We also may generate different or additional competitors for our intended customers as a result of such a menu change and may not be able to successfully compete against such competitors.

Failure to protect food supplies and adhere to food safety standards could result in food borne illnesses and adversely affect our business.

Failure to protect our food supply or enforce food safety policies, such as proper food temperature and adherence to shelf-life dates, could result in food-borne illnesses to our guests. Also, our reputation of providing high-quality food is an important factor in our guests choosing our restaurants. Whether or not traced to our restaurants or those of our competitors, instances of food borne illness or other food safety issues could reduce the demand for certain or all of our menu offerings. If any of our guest become ill from consuming our products, the affected restaurants may be forced to close, and we may be subject to legal liability. An instance of food contamination from one of our restaurants or suppliers could have far-reaching effects, as the contamination, or the perception of contamination could affect any or all of our restaurants. Publicity related to either product contamination, recalls, or food-borne illness, including Bovine-Spongiform Encephalopathy, which is also known as BSE or mad cow disease, aphthous fever, which is also known as hoof and mouth disease, and hepatitis A, listeria, salmonella and e-coli may also injure our brand and may affect the selection of our restaurants by our guests or licensees based on fear of such illnesses. In addition, the occurrence of food-borne 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 margins for us and our licensees.

Labor and Supplies

Changes to wage, immigration and labor laws could increase our costs substantially.

Under the minimum wage laws in most domestic jurisdictions, we are permitted to pay certain hourly employees a wage that is less than the base minimum wage because these employees receive tips as a substantial part of their income. As of December 31, 2023, approximately 33% of our employees earn this lower minimum wage in their respective locations since tips constitute a substantial part of their income. If cities, states or the federal government change their laws to require all employees to be paid the general employee minimum base wage regardless of supplemental tip income, our labor costs would increase substantially. Certain states in which we operate restaurants also have adopted or are considering adopting minimum wage statutes that exceed the federal minimum wage. We may be unable or

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unwilling to increase our prices to pass these increased labor costs on to our customers, in which case, our business and results of operations could be adversely affected.

A restaurant company employer may claim a credit against the company's federal income taxes for FICA taxes paid on certain tip wages (the "FICA tip credit"). We utilize the federal FICA tip credit to reduce our federal income tax expense. Changes in the tax law could reduce or eliminate the FICA tip credit, which could negatively impact our results of operations and cash flows in future periods.

Further, the U.S. Congress and Department of Homeland Security may implement changes to federal immigration laws, regulations or enforcement programs. Some of these changes may increase our obligations for compliance and oversight, which could subject us to additional costs and make our hiring process more cumbersome or reduce the availability of potential employees. Even if we operate our restaurants in strict compliance with U.S. Immigration and Customs Enforcement and state requirements, some of our employees may not meet federal work eligibility or residency requirements, which could lead to a disruption in our work force. Although we require all of our new employees to provide us with the government-specified documentation evidencing their employment eligibility, some of our employees may, without our knowledge, be unauthorized workers. Unauthorized workers are subject to seizure and deportation and may subject us to fines, penalties or loss of our business license in certain jurisdictions. Additionally, a government audit could result in a disruption to our workforce or adverse publicity that could negatively impact our brand and our use of E-Verify and/or potential for receipt of letters from the Social Security Administration requesting information (commonly referred to as no-match letters) could make it more difficult to recruit and/or retain qualified employees.

Potential changes in labor laws or increased union recruiting activities could result in portions of our workforce being subjected to greater organized labor influence. Although we do not currently have any unionized employees, labor legislation could have an adverse effect on our business and financial results by imposing requirements that could potentially increase our costs, reduce our flexibility and impact our ability to service our customers. In addition, a labor dispute involving some or all of our employees could harm our reputation, disrupt our operations and reduce our revenues and resolution of such disputes may increase our costs.

The loss of key personnel or difficulties recruiting and retaining qualified personnel could adversely affect our business and financial results.

Our success depends substantially on the contributions and abilities of key executives and other employees, and on our ability to recruit and retain high-quality employees to work in and manage our restaurants. We must continue to recruit, retain and motivate management and other employees sufficient to maintain our current business and support our projected growth. A loss of key employees or a significant shortage of high-quality restaurant employees to maintain our current business and support our projected growth could adversely affect our business and financial results.

The restaurant industry has faced labor challenges coming out of the COVID-19 pandemic. Although, we have been able to fully staff our restaurants in this challenging labor environment, there is no assurance that we will be able to continue to effectively manage our employee base and avoid a labor shortage.

We occupy most of our restaurants and some of our food and beverage hospitality services locations under long-term non-cancelable leases under which we may remain obligated to perform even if we close those operations, and we may be unable to renew leases at the end of their terms.

Most of our restaurants and some of our food and beverage hospitality operations are located in premises that we lease. Many of our current leases are non-cancelable and typically have terms ranging from 10 to 15 years with renewal options for terms ranging from 5 to 10 years. We believe that future leases that we enter into will be on substantially similar terms. Fixed payments and/or minimum percentage rent payments under our operating leases and management agreements account for a significant portion of our operating expenses. This may increase our vulnerability to general adverse economic and industry conditions, limit our ability to obtain additional financing, and limit our flexibility in planning for or reacting to changes in our business.

We primarily depend on cash flow from operations to pay our obligations and to fulfill our other cash needs. If our business does not generate sufficient cash flow from operating activities and sufficient funds are not otherwise available to us from borrowings under our credit facility or other sources, we may not be able to meet our operating lease and

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management agreement obligations, grow our business, respond to competitive challenges or fund our other liquidity and capital needs, which could adversely affect our business and results of operations.

If we were to close or fail to open a restaurant, we would generally remain committed to perform our obligations under the applicable lease, which could include, among other things, payment of the base rent for the balance of the lease term. Our obligation to continue making rent payments and fulfilling other lease obligations in respect of leases for closed or unopened restaurants could have a material adverse effect on our business and results of operations. Alternatively, at the end of the lease term and any renewal period for a restaurant, we may be unable to renew the lease without substantial additional cost, if at all. If we cannot renew such a lease we may be forced to close or relocate a restaurant, which could subject us to construction and other costs and risks.

Additionally, negative effects on our existing and potential landlords due to the inaccessibility of credit and other unfavorable economic factors may adversely affect our business and results of operations. If our landlords are unable to obtain financing or remain in good standing under their existing financing arrangements, they may be unable to provide construction contributions or satisfy other lease covenants to us. If any landlord files for bankruptcy protection, the landlord may be able to reject our lease in the bankruptcy proceedings. While we would under some circumstances have the option to retain our rights under the lease, we could not compel the landlord to perform any of its obligations and would be left with damages (which are subject to collectability risk) as our sole recourse. Our development of new restaurants may also be adversely affected by the negative financial situations of potential developers, landlords and host sites. Such parties may delay or cancel development projects or renovations of existing projects due to the instability in the credit markets and economic uncertainty. This could reduce the number of high-quality locations available that we would consider for new restaurants or cause the quality of the sites in which the restaurants and food and beverage hospitality services operations are located to deteriorate. Any of these developments could have an adverse effect on our existing businesses or cause us to curtail new projects.

We depend upon frequent deliveries of food, alcohol and other supplies, which subjects us to the possible risks of shortages, interruptions and price fluctuations.

Our ability to maintain consistent quality throughout our locations depends in part upon our ability to acquire fresh, quality products, including beef, seafood, produce and related items, from reliable sources in accordance with our specifications. We currently purchase our food products from various suppliers. We have elected to purchase our beef from a limited number of suppliers. If there were any shortages, interruptions or significant price fluctuations in beef or seafood or if our suppliers were unable to perform adequately or fail to distribute products or supplies to our restaurants, or terminate or refuse to renew any contract with us, this could cause a short-term increase in our costs or cause us to remove certain items from our menu, increase the price of certain offerings or temporarily close a location, which could adversely affect our business and results of operations.

In addition, we purchase beer, wine and spirits from distributors who own the exclusive rights to sell such alcoholic beverage products in the geographic areas in which our restaurants operate. Our continued ability to purchase certain brands of alcoholic beverages depends upon maintaining our relationships with those distributors, of which there can be no assurance. If any of our alcohol beverage distributors cease to supply us, we may be forced to offer brands of alcoholic beverage which have less consumer appeal or that do not match our brand image, which could adversely affect our business and results of operations.

Increases in commodity prices would adversely affect our results of operations.

Our profitability depends in part on our ability to anticipate and react to changes in commodity costs, which have a substantial effect on our total costs. The purchase of beef represents approximately 25% of our food and beverage costs. The market for beef is subject to extreme price fluctuations due to seasonal shifts, climate conditions, the price of feed, industry demand, energy demand and other factors. Our ability to forecast and manage our commodities could significantly affect our gross margins. Energy prices can also affect our operating results because increased energy prices may cause increased transportation costs for beef and other commodities and supplies, and increased costs for the utilities required to run each restaurant. Historically we have passed increased commodity and other costs on to our customers by

increasing the prices of our menu items. While we believe these price increases have historically not affected customer traffic, there can be no assurance that additional price increases would not affect future customer traffic. If prices increase in the future and we are unable to anticipate or mitigate these increases, or if there are shortages for beef, our business and results of operations would be adversely affected.

[Table of Contents](#)**Strategy and Operations**

Unsuccessful implementation of any or all of the initiatives of our business strategy, including opening new restaurants and attracting new F&B hospitality service opportunities, could negatively impact our operations.

One key element of our growth strategy is opening new restaurants and F&B hospitality services locations. We believe there are opportunities to add approximately seven to twelve new locations (restaurants and/or hospitality services operations) annually, with a focus on operating under licensing or management agreements (referred to as our “capital light strategy”). However, there can be no assurance that we will be able to open new restaurants or F&B hospitality services locations at the rate that we currently expect.

Our success in growing our business through the opening of new restaurants and F&B hospitality locations is dependent upon a number of factors, including our ability to: cost-effectively operate in markets that we are not familiar with, find suitable license and food and beverage partners, find suitable locations, reach acceptable lease terms, maintain adequate capital, find qualified contractors, obtain licenses and permits, manage construction and development costs, recruit and train appropriate staff and properly manage the new venue. Unanticipated costs or delays in the development or construction of future restaurants could impede our ability to open new restaurants timely and cost-effectively, which could have a negative impact on our business, financial condition and results of operations. Specifically, some of the factors that adversely affect the cost and time associated with the development and construction of our restaurants include: labor disputes, shortages of materials or skilled labor, adverse weather conditions, unforeseen engineering problems, environmental problems, construction or zoning problems, local government regulations, modifications in design, and other unanticipated increases in cost.

Additionally, our restaurants are expensive to build, and we, our managed unit partners and our licensees incur significant capital and pre-opening expenses. Our business and profitability may be adversely affected if the “ramp-up” period for a new location lasts longer than we expect or if the profitability of a new location dips after our initial “ramp-up” marketing program ends. New locations may not be profitable, and their sales performance may not follow historical or projected patterns. If we are forced to close any new restaurants, we will incur losses for certain buildout costs and pre-opening expenses incurred in connection with opening such operations.

We face a variety of risks associated with doing business with licensees.

We rely in part on our licensees and the manner in which they operate the STK restaurants to develop and promote our business. As of December 31, 2023, we had five licensed STK restaurants.

Our licensees are required to operate our restaurants according to the specific guidelines we set forth, which are essential to maintaining brand integrity and reputation, as well as in accordance with all laws and regulations applicable to us, and all laws and regulations applicable in the countries in which we operate. We provide training to these licensees to integrate them into our operating strategy and culture. However, since we do not have day-to-day control over these restaurants, we cannot give assurance that there will not be differences in product and service quality, operations, labor law enforcement, marketing or profitability or that there will be adherence to all of our guidelines and applicable laws. In addition, if our licensees fail to make investments necessary to maintain or improve the restaurants, guest preference for our brand could suffer. Our licensees are subject to business risks similar to those we face such as competition; customer acceptance; fluctuations in the cost, quality and availability of raw ingredients; increased labor costs; difficulty obtaining acceptable site leases; and difficulty obtaining proper financing. Failure of licensed restaurants to operate effectively could adversely affect our cash flows from those operations or have a negative impact on our reputation and our business.

The success of our licensed restaurants depends on our ability to establish and maintain good relationships with our licensees. The value of our brand and the rapport that we maintain with our licensees are important factors for potential licensees considering doing business with us. If we are unable to maintain good relationships with licensees, we may be unable to renew license agreements and

opportunities for developing new relationships with additional licensees may be adversely affected. This, in turn, could have an adverse effect on our results of operations. Although we have developed criteria to evaluate and screen prospective developers and licensees, we cannot be certain that the developers and licensees we select will have the business acumen necessary to open and operate successful licensed restaurants in their licensed areas, or that the licensees, once selected, will be able to negotiate acceptable lease or purchase terms for prospective sites or to obtain the necessary approvals for such sites, or that financing will be available to construct and open new venues.

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To the extent that our operations are located in hotels, casinos or similar destinations, our results of operations and growth are subject to the risks facing such venues.

Our ability to grow and realize profits from our operations in hotels, casinos and other branded or destination venues are dependent on the success of such venues' business. We are subject to the actions and business decisions of our partners and third parties, in which we may have little or no influence in the overall operation of the applicable venue and such actions and decisions could have an adverse effect on our business and operations.

Litigation and Brand Risk

We face the risk of adverse publicity in connection with our operations, including as a result of increased social media usage.

The quality of our food and ambiance of our restaurants are two of our competitive strengths. Therefore, adverse publicity, whether accurate or not, relating to food quality, public health concerns, illness, safety, injury or government or industry findings concerning our venues or those operated by others could negatively impact us. Any shifts in consumer preferences away from the kinds of food we offer, particularly beef, whether because of dietary or health reasons, sustainability concerns or otherwise, would make our restaurants less appealing and could reduce customer traffic and/or impose practical limits on pricing.

The use of social media platforms allows individuals to access a broad audience of consumers and other interested persons. Consumers value readily available information concerning goods and services that they have or plan to purchase and may act on such information without further investigation or authentication. Many social media platforms immediately publish content from their subscribers and participants, often without filters or checks on the accuracy of the content posted. Information concerning our company may be posted on such platforms at any time. If customers perceive or experience a reduction in our food quality, service or ambiance or in any way believe we have failed to deliver a consistently positive experience, this information can be immediately and broadly disseminated. This information may be adverse to our interests or may be inaccurate, each of which may harm our performance, prospects or business.

We face the risk of litigation in connection with our operations.

We are, from time to time, the subject of complaints or litigation from our consumers alleging, among other things, illness, injury or other food quality, health or operational concerns. The inappropriate use of social media by our employees or customers could lead to litigation and result in negative publicity that could damage our reputation. In addition, third party and employee claims against us based on, among other things, alleged discrimination, harassment or wrongful termination, or labor code violations may divert financial and management resources that would otherwise be used to benefit our future performance. Regardless of whether any claims against us are valid or whether we are liable, such claims may be expensive to defend and may divert time and money away from our operations. In addition, they may generate negative publicity, which could reduce customer traffic and sales. Although we maintain what we believe to be adequate levels of insurance commensurate with the nature and extent of our operations, insurance may not be available at all or in sufficient amounts to cover any liabilities with respect to these matters. A significant increase in the number of these claims or in the number of such claims that are successful could materially adversely affect our brand, financial condition or operating results. Like most employee practices liability insurance policies, our policy does not provide protection against wage and hour claims, and therefore litigation in this area could adversely impact our financial condition.

We may not be able to protect our brands, trademarks, service marks or other proprietary rights.

We have registered, or have applications pending to register, the trademarks STK, Kona Grill and Konavore with the United States Patent and Trademark Office and in certain foreign countries in connection with restaurant services. Our brands, which include our trademarks, service marks and other intellectual property and proprietary rights, are important to our success and our competitive position. In

that regard, we believe that our trade names, trademarks and service marks are valuable assets that are critical to our success. Accordingly, we devote substantial resources to the establishment and protection of our brands. However, the actions we take may be inadequate to prevent imitation of our products and concepts by others, to prevent various challenges to our registrations or applications or denials of applications for the registration of trademarks, service marks and proprietary rights in the U.S. or other countries, or to prevent others from claiming violations of their trademarks and proprietary marks. In addition, others may assert rights

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in our trademarks, service marks and other proprietary rights or may assert that we are infringing rights they have in their trademarks, service marks, patents or other proprietary rights. Any such disputes could force us to incur costs related to enforcing our rights. In addition, the use of trade names, trademarks or service marks similar to ours in some markets may keep us from entering those markets.

Each of our intellectual property marks is pledged as collateral securing our credit and guaranty agreement with Goldman Sachs Bank USA (“Goldman Sachs”). Default under these agreements could enable Goldman Sachs to sell (at auction or otherwise) our trademarks, which would have a material adverse effect on our ability to continue our business.

Cybersecurity and IT Systems

Security breaches, loss of data and other disruptions could compromise sensitive information related to our business, prevent us from accessing critical information or expose us to liability, which could adversely affect our business and our reputation.

We utilize information technology systems and networks to process, transmit and store electronic information in connection with our business activities. As the use of digital technologies has increased, cyber incidents, including deliberate attacks and attempts to gain unauthorized access to computer systems and networks, have increased in frequency and sophistication. These threats pose a risk to the security of our systems and networks and the confidentiality, availability and integrity of our data, all of which are vital to our operations and business strategy. There can be no assurance that we will be successful in preventing cyber-attacks or successfully mitigating their effects.

We estimate that approximately 80% of our sales are by credit or debit cards. Other restaurants and retailers have experienced security breaches in which credit and debit card information has been stolen. We may in the future become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and we may also be subject to lawsuits or other proceedings relating to these types of incidents.

The scope and severity of risks posed to our systems from cyber threats has increased. Many of our information technology systems, including those used for our point-of-sale, delivery services and administrative functions, contain personal, financial or other information that is entrusted to us by our guests, vendors and employees. Many of our information technology systems also contain confidential information about our business, such as business strategies, development initiatives and designs. To date, these attacks have not had a material impact on our operations, but we cannot provide assurance that they will not have an impact in the future.

Our third-party providers’ information technology systems and databases are likewise subject to such risks. We provide some guest and employee data, as well as confidential information important to our business, to third parties to conduct our business. Individuals performing work for us and these third parties also may access some of this data, including on personally owned digital devices. To the extent we, a third party or such an individual were to experience a breach of our or their information technology systems that results in the unauthorized access, theft, use, destruction or other compromises of customers’ or employees’ data or confidential information stored in or transmitted through such systems, it could result in a material loss of revenues from the potential adverse impact to our reputation and brand, a decrease in our ability to retain customers or attract new ones, the imposition of potentially significant costs (including loss of data or payment for recovery of data), loss of business, disruption to our supply chain, business and plans. Unauthorized access, theft, use, destruction or other compromises are becoming increasingly sophisticated and may occur through a variety of methods, including attacks using malicious code, vulnerabilities in software, hardware or other infrastructure (including systems used by our supply chain), system misconfigurations, phishing or social engineering. The rapid evolution and increased adoption of artificial intelligence technologies may intensify our cybersecurity risks. Our logging capabilities, or the logging capabilities of third parties, are not always complete or sufficiently granular, affecting our ability to fully understand the scope of security breaches.

We rely heavily on information technology systems and failures or interruptions in our IT systems could harm our ability to effectively operate our business and/or result in the loss of guests or employees.

We rely heavily on information technology systems, including the point-of-sale and payment processing system in our restaurants, technologies supporting our digital and delivery services business, technologies that manage our supply chain, our rewards program, technologies that facilitate marketing initiatives, employee engagement and payroll processing, and various other processes and transactions. Our ability to effectively manage our business and coordinate

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the procurement, production, distribution, safety and sale of our products depends significantly on the availability, reliability and security of these systems. Many of these critical systems are provided and managed by third parties, and we are reliant on these third-party providers to implement protective measures that ensure the security and availability of their systems. Although we have operational safeguards in place, these safeguards may not be effective in preventing the failure of these third-party systems or platforms to operate effectively and be available. Failures may be caused by various factors, including power outages, catastrophic events, physical theft, computer and network failures, inadequate or ineffective redundancy, problems with transitioning to upgraded or replacement systems or platforms, flaws in third-party software or services, errors or improper use by our employees or the third-party service providers. If any of our critical IT systems were to become unreliable, unavailable, compromised or otherwise fail, and we were unable to recover in a timely manner, we could experience an interruption in our operations that could have a material adverse impact on our profitability.

Other Risks

Our operations may be negatively impacted by seasonality, adverse weather conditions, natural disasters or acts of terror.

Our business is subject to seasonal fluctuations, adverse weather conditions and natural disasters that may at times affect the regions in which our restaurants and F&B hospitality services operations are located, regions that supply or produce food products for our restaurants, or locations of our distribution network. As a result of the seasonality of our business due to weather, holiday events and other factors, our quarterly results for any one quarter or fiscal year may not be indicative of results to be expected for any other quarter or for any year.

In addition, if adverse weather conditions or natural disasters such as fires and hurricanes affect our restaurants, we could experience closures, repair and restoration costs, food spoilage, and other significant reopening costs, any of which would adversely affect our business. We could also experience shortages or delayed shipments at our restaurants if adverse weather or natural disasters affect our distribution network, which could adversely affect our restaurants and our business as a whole. Additionally, during periods of extreme temperatures (either hot or cold) or precipitation, we may experience a reduction in customer traffic, which could adversely affect our restaurants and our business as a whole. Weather conditions are impossible to predict as is the negative impact on our business that such conditions might cause. Catastrophic weather conditions are likely to affect the supply of and costs for food products. If we do not anticipate or react to changing food costs by adjusting our purchasing practices or menu prices, our operating margins would likely deteriorate.

Terrorism, including cyber-terrorism or efforts to tamper with food supplies, could have an adverse impact on our brand and results of operations.

We are subject to numerous and changing U.S. federal and foreign government regulations. Failure to comply with or substantial changes in government regulations could negatively affect our sales, increase our costs or result in fines or other penalties against us.

Each of our venues is subject to licensing and regulation by the health, sanitation, safety, labor, building environmental (including disposal, pollution, and the presence of hazardous substances) and fire agencies of the respective states, counties, cities, and municipalities in which it is located, as well as under federal law. These regulations govern the preparation and sale of food, the sale of alcoholic beverages, the sale and use of tobacco, zoning and building codes, land use and employee, health, sanitation and safety matters. Alcoholic beverage control regulations govern various aspects of our restaurants' daily operations, including the minimum age of patrons and employees, hours of operation, advertising, wholesale purchasing and inventory control, handling and storage. Typically, our restaurants' licenses to sell alcoholic beverages must be renewed annually and may be suspended or revoked at any time for cause. A failure to comply with one or more regulations could result in the imposition of sanctions, including the closing of venues for an indeterminate period of time, or third-party litigation, any of which could have a material adverse effect on us and our results of operations.

Our foreign operations are subject to all of the same risks as our domestic restaurants and food and beverage hospitality services operations, and additional risks that include, among others, international economic and political conditions and the possibility of instability and unrest, differing cultures and consumer preferences, diverse government regulations and tax systems, the ability to source fresh ingredients and other commodities in a cost-effective manner and the availability of experienced management.

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We are subject to governmental regulation in the domestic and international jurisdictions where we operate, including antitrust and tax requirements, anti-boycott regulations, import/export/customs regulations and other international trade regulations, the USA PATRIOT Act and the Foreign Corrupt Practices Act. Any new regulatory or trade initiatives could impact our operations in certain countries. Failure to comply with any such legal requirements could subject us to monetary liabilities and other sanctions, which could harm our business, results of operations and financial condition.

We may not be able to comply with certain debt covenants on our debt.

Our credit agreement requires us to achieve specified financial and operating results and maintain compliance with specified financial ratios. Our ability to comply with these provisions may be affected by events beyond our control. If we were to default under our covenants and such default were not cured or waived, our indebtedness could become immediately due and payable. If we breach these covenants and fail to comply with the credit agreement, and the lenders accelerate the amounts outstanding, our business and results of operations would be adversely affected.

In addition, our ability to borrow under our revolving credit facility depends on several factors, including compliance with specified leverage incurrence ratios. If we are not able to borrow under our revolving credit facility and if alternative financing is not available to us on acceptable terms or at all, our business and results of operations would be adversely affected.

Failure of our internal controls over financial reporting could harm our business and financial results.

Our management is responsible for establishing and maintaining effective internal control over financial reporting. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with accounting principles generally accepted in the United States. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that we would prevent or detect a misstatement of our financial statements or fraud. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. A significant financial reporting failure or material weakness in internal control over financial reporting could cause a loss of investor confidence and decline in the market price of our stock.

We cannot be certain that we will be able to maintain adequate controls over our financial processes and reporting. Refer to Part II —Item 9A, “Controls and Procedures” of this Annual Report on Form 10-K for management’s assessment as of December 31, 2023. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. A significant financial reporting failure or material weakness in internal control over financial reporting could cause a loss of investor confidence and decline in the market price of our stock, and we could be subject to sanctions or investigation by regulatory authorities, such as the SEC or Nasdaq.

Insiders have substantial control over us, and they could delay or prevent a change in our corporate control even if our other stockholders wanted it to occur.

Our executive officers, directors, and principal stockholders hold a significant percentage of our outstanding common stock. Accordingly, these stockholders are able to control or have a significant impact on all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This could delay or prevent an outside party from acquiring or merging with us even if our other stockholders affirmed such action. In addition, such concentrated control may adversely affect the price of our common stock and sales by our insiders or affiliates, along with any other market transactions, could affect the market price of our common stock.

Provisions in our amended and restated certificate of incorporation, our bylaws and Delaware law may inhibit a takeover of us, which could limit the price investors might be willing to pay in the future for our common stock and could entrench management.

Our amended and restated certificate of incorporation and our bylaws contain provisions that may discourage unsolicited takeover proposals that stockholders may consider to be in their best interests. Our Board of Directors (the “Board”) is divided into three classes, each of which generally serve for a term of three years with only one class of directors being elected each year. As a result, at a given annual meeting, only a minority of the Board may be considered for election. Since our staggered Board may prevent our stockholders from replacing a majority of our Board at any

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given annual meeting, it may entrench management and discourage unsolicited stockholder proposals that may be in the best interests of stockholders.

Moreover, our Board has the ability to designate the terms of and issue new series of preferred stock without stockholder approval. Under the terms of our amended and restated certificate of incorporation, our Board may authorize and issue up to 10,000,000 shares of one or more series or class of preferred stock with rights superior to those of holders of common stock in terms of liquidation and dividend preference, voting and other rights. The issuance of preferred stock would reduce the relative rights of holders of common stock vis-à-vis the holders of preferred stock without the approval of the holders of common stock. In addition, to the extent that such preferred stock is convertible into shares of common stock, its issuance would result in a dilution of the percentage ownership of holders of common stock on a fully diluted basis. In addition, the issuance of a series of preferred stock could be used as a method of discouraging, delaying or preventing a change in control of our company.

We are also subject to the anti-takeover provisions under Delaware law, which could delay or prevent a change of control. Together, these provisions may make the removal of management more difficult and may discourage transactions that otherwise could involve a payment of a premium over prevailing market prices for our securities.

The price of our common stock could be subject to volatility related or unrelated to our operations.

The trading price of our common stock could fluctuate significantly due to a number of factors, including market perception of our ability to meet our growth projections and expectations, quarterly operating results of other companies in the same industry, trading value in our common stock, changes in general conditions in the economy and the financial markets or other developments affecting our business and the business of others in the industry. In addition, the stock market itself is subject to extreme price and volume fluctuations. This volatility has had a significant effect on the market price of securities issued by many companies for reasons related and unrelated to their operating performance and could have the same effect on our common stock.

Item 1B. Unresolved Staff Comments

None.

Item 1C. Cybersecurity

Our enterprise risk management framework considers cybersecurity risk alongside other company risks as part of our overall risk assessment process. In the ordinary course of our business, we receive, process and use large amounts of data. Digital data is stored and backed up with third party partners. Maintaining the integrity and availability of our information technology systems and this information, as well as appropriate limitations on access and confidentiality of such information, is important to our operations and business strategy. We implemented a program designed to assess, identify and manage risks from potential unauthorized occurrences on or through our information technology systems that may result in adverse effects on the confidentiality and integrity of these systems and the data residing in them. With the exception of local point-of-sale solutions, we do not host any solutions on premise as all applications are software as a service.

The program is managed and monitored by a team led by our Chief Information Officer and includes mechanisms, controls, technologies, systems, policies and other processes designed to prevent or mitigate data loss, theft, misuse, or other security incidents or vulnerabilities affecting the systems and data residing in them. For example, we conduct risk-based penetration and vulnerability testing and ongoing risk assessments. We also conduct employee training on cyber and information security, among other topics. In addition, we consult with outside advisors and experts to assist with assessing, identifying, and managing cybersecurity risks and their impact on our risk environment. Lastly, we outsource to a cybersecurity firm all intrusion detection, intrusion prevention and system incident and event monitoring.

Our Chief Information Officer, who reports directly to the Chief Executive Officer and has over 25 years of experience managing information technology and cybersecurity matters, together with our third-party service providers, are responsible for assessing and managing cybersecurity risks. We consider cybersecurity, along with other significant risks that we face, within our overall enterprise risk management framework. In the last fiscal year, we have not identified any prior cybersecurity incidents that materially affected us, but we face certain ongoing risks from

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cybersecurity threats that, if realized, could materially affect us. Additional information on cybersecurity risks we face is discussed in Part I, Item 1A, “Risk Factors,” under the heading “Cybersecurity, Data Privacy and IT Systems.”

The Board of Directors, as a whole and at the committee level, has oversight for the most significant risks facing us and for our processes to identify, prioritize, assess, manage, and mitigate those risks. The Audit Committee, which is comprised solely of independent directors, has been designated by our Board to oversee cybersecurity risks. The Committee receives regular updates and reviews with management the implementation and effectiveness of the Company’s controls to monitor and mitigate cybersecurity risks.

Item 2. Properties

We do not own any real property. Each of our “owned” restaurants operates in premises leased by its operating subsidiary. We do not have a direct ownership interest in restaurants we operate under a management agreement (“managed”) or license agreement (“licensed”).

Our STK locations are as follows:

Venue	Hotel/Casino/Special Venue	Location	Type of Interest
STK Atlanta	—	Atlanta, Georgia	Owned
STK Bellevue	—	Bellevue, Washington	Owned
STK Boston	—	Boston, Massachusetts	Owned
STK Charlotte	—	Charlotte, North Carolina	Owned
STK Chicago	—	Chicago, Illinois	Owned
STK Dallas	—	Dallas, Texas	Owned
STK Denver	—	Denver, Colorado	Owned
STK Doha	The Ritz-Carlton	Doha, Qatar	Licensed
STK Downtown ⁽¹⁾	—	New York, New York	Owned ⁽²⁾
STK Dubai	Jumeirah Beach Residence	Dubai, United Arab Emirates	Licensed
STK Ibiza	Ibiza Corso Hotel & Spa	Illes Balears, Spain	Licensed
STK Las Vegas	The Cosmopolitan	Las Vegas, Nevada	Managed
STK London	ME London	London, England	Managed
STK Los Cabos	Los Cabos Airport	Cabo San Lucas, Mexico	Licensed
STK Miami Beach	—	Miami Beach, Florida	Owned
STK Midtown	—	New York, New York	Owned
STK Milan	ME Milan	Milan, Italy	Managed
STK Nashville	—	Nashville, Tennessee	Owned
STK Orlando ⁽¹⁾	Disney Springs	Orlando, Florida	Owned
STK Salt Lake City	—	Salt Lake City, Utah	Owned
STK San Diego ⁽¹⁾	Andaz Hotel	San Diego, California	Owned
STK San Juan	Condado Vanderbilt Hotel	San Juan, Puerto Rico	Licensed
STK San Francisco	—	San Francisco, California	Owned
STK Scottsdale ⁽¹⁾	—	Scottsdale, Arizona	Managed
STK Stratford	The Gantry London	London, England	Managed
STK Toronto	—	Toronto, Canada	Managed
STK Westwood	W Hotel	Los Angeles, California	Owned
STK Washington DC	Marriot Marquis	Washington, D.C.	Owned

(1) Location includes an owned rooftop lounge, except for the STK Rooftop San Diego which is a licensed location and STK Rooftop Scottsdale which is a managed location.

(2) Ownership in location is 64.81%.

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Our Kona Grill locations are as follows:

Venue	Location	Type of Interest
Kona Grill Alpharetta	Alpharetta, Georgia	Owned
Kona Grill Baltimore	Baltimore, Maryland	Owned
Kona Grill Boca Park	Las Vegas, Nevada	Owned
Kona Grill Boise	Meridian, Idaho	Owned
Kona Grill Carmel	Carmel, Indiana	Owned
Kona Grill Cincinnati	Cincinnati, Ohio	Owned
Kona Grill Columbus	Columbus, Ohio	Owned
Kona Grill Dallas	Dallas, Texas	Owned
Kona Grill Denver	Denver, Colorado	Owned
Kona Grill Eden Prairie	Eden Prairie, Minnesota	Owned
Kona Grill El Paso	El Paso, Texas	Owned
Kona Grill Gilbert	Gilbert, Arizona	Owned
Kona Grill Huntsville	Huntsville, Alabama	Owned
Kona Grill Kansas City	Kansas City, Missouri	Owned
Kona Grill Minnetonka	Minnetonka, Minnesota	Owned
Kona Grill North Star	San Antonio, Texas	Owned
Kona Grill Oak Brook	Oak Brook, Illinois	Owned
Kona Grill Omaha	Omaha, Nebraska	Owned
Kona Grill Phoenix	Phoenix, Arizona	Owned
Kona Grill Plano	Plano, Texas	Owned
Kona Grill Riverton	Riverton, Utah	Owned
Kona Grill San Antonio	San Antonio, Texas	Owned
Kona Grill Sarasota	Sarasota, Florida	Owned
Kona Grill Scottsdale	Scottsdale, Arizona	Owned
Kona Grill Tampa	Tampa, Florida	Owned
Kona Grill Troy	Troy, Michigan	Owned
Kona Grill Woodbridge	Iselin, New Jersey	Owned

Our ONE Hospitality brands and F&B services locations are as follows:

Venue	Hotel/Casino/Special Venue	Location	Type of Interest
F&B Services - Hippodrome	Hippodrome Casino	London, England	Managed
F&B Services - ME Milan	ME Milan	Milan, Italy	Managed
F&B Services - W Hotel	W Hotel	Los Angeles, California	Owned
Heliot	Hippodrome Casino	London, England	Managed
Hideout	W Hotel	Los Angeles, California	Owned
Radio Rooftop Bar	ME Milan	Milan, Italy	Managed
Rivershore Bar & Grill	Rivershore BW Plus	Oregon City, Oregon	Managed
Bao Yum ⁽¹⁾	—	London, England	Owned

(1) Temporary location

In addition to the locations above, we lease office space for support offices in Denver, Colorado; New York, New York; Scottsdale, Arizona; and London, England.

[Table of Contents](#)**Item 3. Legal Proceedings**

We are subject to claims common to our industry and in the ordinary course of our business. Companies in our industry, including us, have been and are subject to class action lawsuits, primarily regarding compliance with labor laws and regulations. Defending lawsuits requires significant management attention and financial resources and the outcome of any litigation is inherently uncertain. We believe that accruals for these matters are adequately provided for in our consolidated financial statements. We may have to make payments from time to time to settle or resolve legal matters. We do not believe the ultimate resolutions of these matters will have a material adverse effect on our consolidated financial position and results of operations. However, the resolution of lawsuits is difficult to predict. A significant increase in the number of these claims, or one or more successful claims under which we incur greater liabilities than is currently anticipated, could materially and adversely affect our consolidated financial statements.

For information regarding litigation refer to Note 14. "Commitments and Contingencies" in our consolidated financial statements included in Item 8. "Financial Statements and Supplementary Data." For more information about the impact of legal proceedings in our business, see Item 1A. "Risk Factors".

Item 4. Mine Safety Disclosures

Not applicable.

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PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Our common stock is traded on the NASDAQ Capital Market under the symbol "STKS". As of February 29, 2024, there were 70 holders of record of our common stock.

Dividends

We have not declared or paid any cash dividends on our common stock and do not intend to declare or pay any cash dividend in the foreseeable future. The payment of dividends, if any, is within the discretion of our Board of Directors and will depend on our earnings, our capital requirements, compliance with debt covenants, overall financial condition and such other factors as the Board of Directors may consider. As a Delaware corporation, we are also limited by Delaware law as to the payment of dividends. We currently intend to retain our earnings to finance our growth.

Issuer Purchases of Equity Securities

In September 2022, the Company's Board of Directors authorized a repurchase program of up to \$10.0 million of outstanding common stock. In May 2023, the Company's Board of Directors authorized an additional \$5.0 million to this program. During the years ended December 31, 2023 and 2022, the Company purchased 1.2 million and 1.1 million shares for aggregate consideration of \$7.9 million and \$7.1 million, respectively. As of December 31, 2023, the Company had repurchased 2.3 million shares for \$15.0 million under the program. The repurchase program was completed in October 2023 with the repurchase of \$0.2 million in shares. The table below sets forth information with respect to share repurchases under the program for each day during the fourth quarter of 2023.

Period	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plan	Maximum dollar value of shares that may yet be purchased under the plan
October 1-31, 2023	35,739	\$ 5.39	35,739	—
November 1-30, 2023	—	—	—	—
December 1-31, 2023	—	—	—	—

Recent Sales of Unregistered Securities

None.

Item 6. [Reserved]

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Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following management's discussion and analysis of our consolidated financial condition and results of operations should be read in conjunction with the consolidated financial statements and related notes to those statements included elsewhere in this Annual Report on Form 10-K.

Overview

We currently own, operate, manage or license 63 venues including 28 STKs and 27 Kona Grills in major metropolitan cities in North America, Europe and the Middle East and 8 F&B venues in four hotels and casinos in the United States and Europe.

We opened the following eight new venues in 2023:

- Owned STK restaurant in Charlotte, North Carolina
- Owned STK restaurant in Boston, Massachusetts
- Owned STK restaurant in Salt Lake City, Utah
- Owned Kona Grill restaurant in Columbus, Ohio
- Owned Kona Grill restaurant in Riverton, Utah
- Owned Kona Grill restaurant in Phoenix, Arizona
- Two Bao Yum venues through a licensing agreement with Reef Kitchens

Recently the Company exited its licensing agreement with REEF Kitchens and has no venues operating pursuant to that agreement.

We intend to open six to eight new venues in 2024. In March 2024, we opened the following:

- Owned STK restaurant in Washington DC

There is currently one Company-owned STK restaurant, one Company-owned Kona Grill restaurant, and one Company-owned Salt Water Social restaurant under construction in the following cities:

- Owned STK restaurant in Aventura, Florida
- Owned Kona Grill restaurant Tigard, Oregon
- Owned Salt Water Social restaurant in Denver, Colorado

The table below reflects our venues by restaurant brand and geographic location:

	Venues			Total
	STK ⁽¹⁾	Kona Grill	ONE Hospitality ⁽²⁾	
Domestic				
Owned	17	27	2	46
Managed	2	—	1	3
Licensed	1	—	—	1
Total domestic	20	27	3	50
International				
Owned	—	—	1	1
Managed	4	—	4	8
Licensed	4	—	—	4
Total international	8	—	5	13
Total venues	28	27	8	63

(1) Locations with an STK and STK Rooftop are considered one venue location. This includes the STK Rooftop in San Diego, CA, which is a licensed location.

(2) Includes concepts under the Company's F&B hospitality management agreements and other venue brands such as Bao Yum, Heliot, Hideout, Marconi, Radio and Rivershore Bar & Grill.

[Table of Contents](#)**2023 Financial Highlights**

Total revenue increased \$16.1 million, or 5.1% to \$332.8 million for 2023 compared to \$316.6 million for 2022. The increase was primarily attributable to the opening of three STK restaurants and three Kona Grill restaurants during 2023. Same store sales decreased 2.7% in 2023 compared to 2022. STK same store sales decreased 3.0% while Kona Grill same store sales decreased 2.2%. Compared to pre COVID-19 pandemic sales volumes, same-store sales increased 43.8% for 2023 compared to 2019; STK same store sales increased 64.1% which includes a 39.1% increase in traffic, while Kona Grill same store sales increased 23.6%.

Restaurant operating profit decreased \$0.4 million, or 0.8% to \$50.4 million for 2023 compared to \$50.8 million in 2022. Restaurant operating profit as a percentage of owned restaurant net revenue was 15.9% in 2023 compared to 16.9% in 2022. Inflation outpaced our price increases during the year putting pressure on our restaurant operating profit, therefore we have implemented several initiatives to improve restaurant operating profit and overall profitability of our company. These initiatives are focused on purchasing efficiencies for both food and operating supplies, maximizing productivity through smart scheduling, evaluating third-party vendor relationships and reducing travel costs. We believe these initiatives will improve profitability without impacting the guest experience.

Operating income decreased \$7.0 million to \$9.3 million for 2023 from \$16.3 million for 2022 primarily due to higher pre-opening expenses associated with the increased number of venue openings in 2023, increased depreciation expense associated with eight venues opened since August 2022 and higher labor costs driven by wage inflation and investments in human capital in anticipation of growth.

Net income attributable to The ONE Group Hospitality, Inc was \$4.7 million in 2023 compared to \$13.5 million in 2022.

Our Growth Strategies and Outlook

Our growth model is primarily driven by the following:

Expansion of STK. We expect to continue to expand our operations domestically and internationally through a mix of owned, licensed and managed STK restaurants using a disciplined and targeted site selection process. We have identified over 75 additional major metropolitan areas across the globe where we expect we could grow our STK brand to 200 restaurants over the foreseeable future. We expect to open five to six STKs annually, primarily through company-owned locations and management or licensing agreements, provided that we have sufficient interest from prospective licensees, acceptable locations and quality restaurant managers available to support that pace of growth.

In 2023, we opened Company-owned STK restaurants in Charlotte, North Carolina, Boston, Massachusetts and Salt Lake City, Utah. In March 2024, we opened a Company-owned STK restaurant at the Marriott Marquis hotel in Washington, D.C. Additionally, we have one STK restaurant in Aventura, Florida under construction and several restaurants in the development phase or under lease that we plan to open in 2024 or 2025.

In 2022, we opened two owned STK restaurants in San Francisco, California and Dallas, Texas and one managed STK restaurant in London, United Kingdom.

Expansion of Kona Grill. We expect to expand our operations domestically using a disciplined and targeted site selection process. We believe we could grow the Kona Grill brand to 200 restaurants over the foreseeable future. We expect to open three to five Kona Grills annually, primarily through company-owned locations, provided that we have acceptable locations and quality restaurant managers available to support that pace of growth. We opened the first Kona Grill since the Company acquired the Kona Grill brand in Columbus, Ohio in January 2023 and also opened two additional Kona Grill restaurants in Riverton, Utah and Phoenix, Arizona in 2023.

Expansion through New F&B Hospitality Projects. We expect our F&B hospitality services business to be an important contributor of our growth and profitability, enabling us to generate leads to develop managed STK restaurants and management fee income with minimal capital expenditures. We believe we are well positioned to leverage the strength of our brands and the relationships we have developed with global hospitality providers to drive the continued growth of our F&B hospitality business. We continue to receive inbound inquiries regarding new opportunities globally,

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and we continue to work with existing hospitality clients to identify and develop additional opportunities in their venues. We expect to enter into one to two new F&B hospitality agreements annually. In 2023, we opened two licensed virtual Bao Yum locations in Denver, Colorado in conjunction with REEF Kitchens. Recently the Company exited its licensing agreement with REEF Kitchens and has no venues operating pursuant to that agreement.

Increase Same Store Sales and Increase Our Operating Efficiency. In addition to expanding into new cities and hospitality venues, we intend to continue to increase revenue and profits in our existing operations through continued focus on high-quality, high-margin food and beverage menu items. We believe that our operating margins will improve through growth in same store sales, as defined below in Key Performance Indicators, and a reduction of store-level operating expenses.

Acquisitions. We continue to evaluate potential acquisition opportunities.

As our footprint increases, we expect to benefit by leveraging system-wide operating efficiencies and best practices through the management of our general and administrative expenses as a percentage of overall revenue.

Key Performance Indicators

We use the following key performance indicators in evaluating our restaurants and assessing our business:

Same Store Sales (“SSS”). SSS represents total food and beverage sales at domestic owned and managed restaurants opened for at least a full 18-month period at the beginning of each quarter, which removes the impact of new restaurant openings in comparing the operations of existing restaurants. For STK SSS, this measure includes total revenue from our owned and managed domestic STK locations, excluding revenues from our owned STK restaurant located in the W Hotel in Los Angeles, California due to the impact of the F&B hospitality management agreement with the hotel. Revenues from locations where we do not directly control the event sales force are excluded from this measure. We have presented four-year comparable sales to illustrate how sales at our restaurant base before the COVID-19 pandemic compare to sales post COVID-19 restrictions.

Our comparable restaurant base for STK SSS consisted of twelve domestic restaurants for the year ended December 31, 2023. For Kona Grill SSS, 24 domestic restaurants are included in the comparable restaurant base. STK and Kona Grill SSS decreased 3.0% and 2.2%, respectively for 2023 compared to the prior year. On a four-year basis, STK SSS increased 64.1% while Kona Grill SSS increased 23.6%.

Number of Restaurant Openings. Number of restaurant openings reflects the number of restaurants opened during a particular fiscal period. For each restaurant opening, we incur pre-opening costs, which are defined below. Typically, new restaurants open with an initial start-up period of higher than normalized sales volumes (also referred to in the restaurant industry as the “honeymoon” period), which decrease to a steady level approximately 18 to 24 months after opening. However, operating costs during this initial period are also higher than normal, resulting in restaurant operating margins that are generally lower during the start-up period of operation and increase to a steady level approximately 18 to 24 months after opening. Some new restaurants may experience a “honeymoon” period that is either shorter or longer than this time frame.

In 2023, we opened three STK restaurants, three Kona Grill restaurants and two Bao Yum venues under a licensing agreement. Recently the Company exited its licensing agreement with REEF Kitchens and has no venues operating pursuant to that agreement. In 2022, we opened three STK restaurants including two owned restaurants in San Francisco, California and Dallas, Texas, a managed STK restaurant in London, United Kingdom and opened one Bao Yum venue under a licensing agreement.

Average Check Per Person and Average Spend. Average check is calculated by dividing total restaurant sales by total number of guests for a specified period. Average spend per transaction is calculated by dividing total restaurant sales by total number of transactions for a specified period. Our management

team uses these indicators to analyze trends in customers' preferences, customer expenditures and the overall effectiveness of menu changes and price increases. For our comparable STK restaurants, the average check was \$130 for 2023 compared to \$131 for 2022. The average spend per transaction was \$63 for our comparable Kona Grill restaurants in 2023 compared to \$61 for 2022.

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Average Comparable Restaurant Revenue. Average comparable restaurant revenue consists of the average sales of our comparable restaurants over a certain period of time. This measure is calculated by dividing total comparable restaurant sales in a given period by the total number of comparable restaurants in that period. For purposes of this calculation, STK Downtown restaurant and rooftop are considered a single venue. This indicator assists management in measuring changes in customer traffic, pricing and development of our brand. Our average comparable STK restaurant revenues were \$17.3 million and \$19.1 million for 2023 and 2022, respectively. Our average comparable Kona Grill restaurant revenues were \$5.2 million and \$5.3 million for 2023 and 2022, respectively.

Key Financial Terms and Metrics

We evaluate our business using a variety of key financial measures:

Segment reporting

Our reportable operating segments are as follows:

- *STK.* The STK segment consists of the results of operations from company-owned STK restaurant locations, competing in the full-service dining category, as well as management, license and incentive fee revenue generated from the STK brand and pre-opening expenses associated with new restaurants.
- *Kona Grill.* The Kona Grill segment includes the results of operations of Kona Grill restaurant locations and pre-opening expenses associated with new restaurants.
- *ONE Hospitality.* The ONE Hospitality segment is composed of the management, license and incentive fee revenue and results of operations generated from the Company's other brands and venue concepts, not including STK or Kona Grill, which include Bao Yum, Heliot, Hideout, Radio and Rivershore Bar & Grill. Additionally, this segment includes the results of operations generated from F&B hospitality management agreements with hotels, casinos and other high-end locations.
- *Corporate.* The Corporate segment consists of the following: general and administrative costs, stock-based compensation, lease termination expenses, transaction costs, COVID-19 related expenses and other income and expenses. This segment also includes STK Meat Market, an e-commerce platform that offers signature steak cuts nationwide, and revenue generated from gift card programs. The Corporate segment's total assets primarily include cash and cash equivalents, the Kona Grill tradename, and deferred tax assets.

See Note 12 to our consolidated financial statements for further information on our segment reporting.

Revenues

Owned restaurant net revenues. Owned restaurant net revenues consist of food and beverage sales by owned restaurants net of any discounts associated with each sale and of any ancillary F&B hospitality services at owned locations. Additionally, revenues from offsite banquets and our gift card programs are included in owned restaurant net revenues. For the year ended December 31, 2023, beverage sales comprised 23% of food and beverage sales, and food sales comprised the remaining 77%. This indicator assists management in understanding the trends in gross margins of the restaurants.

Our primary owned restaurant brands are STK and Kona Grill. We specifically look at comparable sales from both owned and managed restaurants to understand customer count trends and changes in average check as it relates to our primary restaurant brands.

Management, license and incentive fee revenue. Management, license and incentive fee revenues include fees received pursuant to management and license agreements. Management agreements typically call for a management fee based on a percentage of revenue, a monthly marketing fee based on a

percentage of revenues and an incentive fee based on a managed venue's net profits. Similarly, royalties from the licensee in license agreements are generally based on a percentage of the licensed restaurant's revenue. These management, license and incentive fees are recognized as revenue in the period the restaurant's sales occur. Initial licensing fees and upfront fees related to management and license agreements are recognized as revenue on a straight-line basis over the term of the agreement.

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We evaluate the performance of our managed and licensed properties based on sales growth, a key driver for management and license fees, and on improvements in operating profitability margins, which, combined with sales, drives incentive fee growth.

Cost and expenses

Owned restaurant cost of sales. Owned restaurant cost of sales includes all owned restaurant food and beverage expenditures. We measure cost of goods as a percentage of owned restaurant net revenues. Owned restaurant cost of sales are generally influenced by the cost of food and beverage items, menu mix, discounting activity and restaurant level controls. See “Item 1A. Risk Factors — Increases in commodity prices would adversely affect our results of operations.”

Owned restaurant operating expenses. We measure owned restaurant operating expenses as a percentage of owned restaurant net revenues. Owned restaurant operating expenses include the following:

- *Payroll and related expenses.* Payroll and related expenses consist of manager salaries, hourly staff payroll and other payroll-related items, including taxes, insurance and fringe benefits. We measure our labor cost efficiency by tracking total labor costs as a percentage of owned restaurant net revenues.
- *Occupancy.* Occupancy comprises all occupancy costs, consisting of both fixed and variable rent, deferred rent expense, which is a non-cash adjustment included in our Adjusted EBITDA calculation as defined below, common area maintenance charges, real estate property taxes, utilities and other related occupancy costs and is measured by considering both the fixed and variable components of certain occupancy expenses.
- *Direct operating expenses.* Direct operating expenses consist of supplies, such as paper, smallwares, china, silverware and glassware, cleaning supplies, credit card fees and linen costs. Direct operating expenses are typically measured as a variable expense based on owned restaurant net revenues.
- *Outside services.* Outside services include music and entertainment costs, such as the use of live DJ’s, security services, outside cleaning services and delivery service fees.
- *Repairs and maintenance.* Repairs and maintenance consist of general repair work to maintain our facilities, and computer maintenance contracts. We expect these costs to increase at each facility as they get older.
- *Marketing.* Marketing includes the cost of promoting our brands and, at times, can include the cost of goods used specifically for complementary purposes. Marketing costs will typically be higher during the first 18 months of a restaurant’s operations.

General and administrative. General and administrative expenses are comprised of all corporate overhead expenses, including payroll and related benefits, stock-based compensation expense, professional fees, such as legal and accounting fees, insurance and travel expenses. Certain centrally managed general and administrative expenses are allocated specifically to restaurant locations and are reflected in owned restaurant operating expenses and include shared services such as reservations, events and marketing. We expect general and administrative expenses to be leveraged as we grow, become more efficient, and continue to focus on best practices and cost savings measures.

Depreciation and amortization. Depreciation and amortization expense consists principally of charges related to the depreciation of fixed assets including leasehold improvements, equipment and furniture and fixtures and loss on disposal of fixed assets.

Pre-opening expenses. Pre-opening expenses consist of costs incurred prior to opening an owned or managed STK or Kona Grill restaurant at either a leased or F&B location. Pre-opening expenses are

comprised principally of manager salaries and relocation costs, employee payroll, training costs for new employees and lease costs incurred prior to opening. Pre-opening expenses also include payroll and travel costs associated with our new restaurant opening training team. Pre-opening expenses have varied from location to location depending on a number of factors, including the proximity to our existing restaurants; the amount of rent expensed during the construction and in-restaurant training periods; the size and physical layout of each location; the number of management and hourly employees required to operate each restaurant; the relative difficulty of the restaurant staffing process; the cost of travel and lodging for

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different metropolitan areas; the timing of the restaurant opening; and the extent of unexpected delays, if any, in obtaining necessary licenses and permits to open the restaurant.

Other Items

EBITDA, Adjusted EBITDA and Restaurant Operating Profit. We present EBITDA, Adjusted EBITDA and Restaurant Operating Profit to supplement other measures of financial performance. EBITDA, Adjusted EBITDA and Restaurant Operating Profit are not required by, or presented in accordance with, accounting principles generally accepted in the United States of America (“GAAP”). We define EBITDA as net income before interest expense, provision for income taxes and depreciation and amortization. We define Adjusted EBITDA as EBITDA before non-cash rent expense, pre-opening expenses, lease termination expenses, stock-based compensation, COVID-19 related expenses and non-recurring gains and losses. Not all of the items defining Adjusted EBITDA occur in each reporting period but have been included in our definitions of these terms based on our historical activity. We define Restaurant Operating Profit as owned restaurant net revenue minus owned restaurant cost of sales and owned restaurant operating expenses.

We believe that EBITDA, Adjusted EBITDA and Restaurant Operating Profit are appropriate measures of our operating performance because they eliminate non-cash or non-recurring expenses that do not reflect our underlying business performance. We believe Restaurant Operating Profit is an important component of financial results because: (i) it is a widely used metric within the restaurant industry to evaluate restaurant-level productivity, efficiency, and performance, and (ii) we use Restaurant Operating Profit as a key metric to evaluate our restaurant financial performance compared to our competitors. We use these metrics to facilitate a comparison of our operating performance on a consistent basis from period to period, to analyze the factors and trends affecting our business and to evaluate the performance of our restaurants. Adjusted EBITDA has limitations as an analytical tool and our calculation of Adjusted EBITDA may not be comparable to that reported by other companies; accordingly, you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Adjusted EBITDA is a key measure used by management and is a metric used in our debt compliance calculation. Additionally, Adjusted EBITDA and Restaurant Operating Profit are frequently used by analysts, investors and other interested parties to evaluate companies in our industry. We use Adjusted EBITDA and Restaurant Operating Profit, alongside other GAAP measures such as net income, to measure profitability, as a key profitability target in our budgets, and to compare our performance against that of peer companies despite possible differences in calculation.

Please refer to the table on page 30 for our reconciliation of net income to EBITDA and Adjusted EBITDA and for a reconciliation of operating income to Restaurant Operating Profit.

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Results of Operations

The following table sets forth certain statements of operations data for the periods indicated (in thousands):

	For the year ended December 31,	
	2023	2022
Revenues:		
Owned restaurant net revenue	\$ 317,366	\$ 300,859
Management, license and incentive fee revenue	15,403	15,779
Total revenues	332,769	316,638
Cost and expenses:		
Owned operating expenses:		
Owned restaurant cost of sales	75,727	75,365
Owned restaurant operating expenses	191,250	174,689
Total owned operating expenses	266,977	250,054
General and administrative (including stock-based compensation of \$5,032 and \$3,985 for the years ended December 31, 2023 and 2022, respectively)	30,751	29,081
Depreciation and amortization	15,664	12,134
Pre-opening expenses	8,855	5,519
Transaction costs	207	123
Lease termination expenses	—	257
COVID-19 related expenses	—	2,534
Other expenses	1,021	630
Total costs and expenses	323,475	300,332
Operating income	9,294	16,306
Other expenses, net:		
Interest expense, net of interest income	7,028	2,113
Total other expenses, net	7,028	2,113
Income before provision for income taxes	2,266	14,193
(Benefit) provision for income taxes	(1,760)	874
Net income	4,026	13,319
Less: net loss attributable to noncontrolling interest	(692)	(215)
Net income attributable to The ONE Group Hospitality, Inc.	\$ 4,718	\$ 13,534

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The following table sets forth certain statements of operations data as a percentage of total revenues for the periods indicated. Certain percentage amounts may not sum to total due to rounding.

	For the year ended December 31,	
	2023	2022
Revenues:		
Owned restaurant net revenue	95.4%	95.0%
Management, license and incentive fee revenue	4.6%	5.0%
Total revenues	100.0%	100.0%
Cost and expenses:		
Owned operating expenses:		
Owned restaurant cost of sales ⁽¹⁾	23.9%	25.0%
Owned restaurant operating expenses ⁽¹⁾	60.3%	58.1%
Total owned operating expenses ⁽¹⁾	84.1%	83.1%
General and administrative (including stock-based compensation of 1.5% and 1.3% for the years ended December 31, 2023 and 2022, respectively)	9.2%	9.2%
Depreciation and amortization	4.7%	3.8%
Pre-opening expenses	2.7%	1.7%
Transaction costs	0.1%	0.0%
Lease termination expenses	—%	0.1%
COVID-19 related expenses	—%	0.8%
Other expenses	0.3%	0.2%
Total costs and expenses	97.2%	94.9%
Operating income	2.8%	5.1%
Other expenses, net:		
Interest expense, net of interest income	2.1%	0.7%
Total other expenses, net	2.1%	0.7%
Income before provision for income taxes	0.7%	4.5%
(Benefit) provision for income taxes	(0.5)%	0.3%
Net income	1.2%	4.2%
Less: net loss attributable to noncontrolling interest	(0.2)%	(0.1)%
Net income attributable to The ONE Group Hospitality, Inc.	1.4%	4.3%

(1) These expenses are being shown as a percentage of owned restaurant net revenue.

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The following table presents a reconciliation of net income to EBITDA and Adjusted EBITDA for the periods indicated (in thousands):

	For the year ended December 31,	
	2023	2022
Net income attributable to The ONE Group Hospitality, Inc.	\$ 4,718	\$ 13,534
Net loss attributable to noncontrolling interest	(692)	(215)
Net income	4,026	13,319
Interest expense, net of interest income	7,028	2,113
(Benefit) provision for income taxes	(1,760)	874
Depreciation and amortization	15,664	12,134
EBITDA	24,958	28,440
Pre-opening expenses	8,855	5,519
Stock-based compensation	5,032	3,985
Transaction costs	207	123
COVID-19 related expenses	—	2,534
Lease termination expense ⁽¹⁾	—	257
Non-cash rent ⁽²⁾	(340)	(164)
Other expenses	1,021	630
Adjusted EBITDA	39,733	41,324
Adjusted EBITDA attributable to noncontrolling interest	(339)	72
Adjusted EBITDA attributable to The ONE Group Hospitality, Inc.	\$ 40,072	\$ 41,252

(1) Lease termination expense are costs associated with closed, abandoned and disputed locations or leases.

(2) Non-cash rent expense is included in owned restaurant operating expenses and general and administrative expense on the consolidated statements of operations and comprehensive income.

The following table presents a reconciliation of Operating income to Restaurant Operating Profit for the periods indicated (in thousands):

	For the year ended December 31,	
	2023	2022
Operating income as reported	\$ 9,294	\$ 16,306
Management, license and incentive fee revenue	(15,403)	(15,779)
General and administrative	30,751	29,081
Depreciation and amortization	15,664	12,134
COVID-19 related expenses	—	2,534
Pre-opening expenses	8,855	5,519
Lease termination expense	—	257
Transaction costs	207	123
Other expenses	1,021	630
Restaurant Operating Profit	\$ 50,389	\$ 50,805
Restaurant Operating Profit as a percentage of owned restaurant net revenue	15.9%	16.9%

Restaurant Operating Profit by brand is as follows (in thousands):

	For the year ended December 31,	
	2023	2022
STK restaurant operating profit (Company owned)	\$ 38,531	\$ 37,259
STK restaurant operating profit (Company owned) as a percentage of STK revenue (Company owned)	20.9%	21.5%
Kona Grill restaurant operating profit	\$ 12,305	\$ 13,695
Kona Grill restaurant operating profit as a percentage of Kona Grill revenue	9.3%	10.8%

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The following tables show our operating results by segment for the periods indicated (in thousands).

	STK	Kona Grill	ONE Hospitality	Corporate	Total
For the year ended December 31, 2023					
Total revenues	\$ 198,679	\$ 131,716	\$ 1,999	\$ 375	\$ 332,769
Operating income (loss)	38,890	2,189	187	(31,972)	9,294
Capital asset additions	\$ 28,426	\$ 21,450	\$ 123	\$ 3,551	\$ 53,550
As of December 31, 2023					
Total assets	\$ 153,769	\$ 97,840	\$ 5,868	\$ 59,768	\$ 317,245
	STK	Kona Grill	ONE Hospitality	Corporate	Total
For the year ended December 31, 2022					
Total revenues	\$ 187,402	\$ 126,341	\$ 2,344	\$ 551	\$ 316,638
Operating income (loss)	40,343	7,217	1,282	(32,536)	16,306
Capital asset additions	\$ 19,116	\$ 10,496	\$ 139	\$ 2,878	\$ 32,629
As of December 31, 2022					
Total assets	\$ 113,911	\$ 78,691	\$ 5,746	\$ 92,676	\$ 291,024

Results of Operations for the Years Ended December 31, 2023 and December 31, 2022

Revenues

Owned restaurant net revenue. Owned restaurant net revenue increased \$16.5 million, or 5.5%, to \$317.4 million for 2023 from \$300.9 million for 2022. The increase was primarily attributable to a full year of sales for two STK restaurants that opened in the second half of 2022, the opening of three STK restaurants in the fourth quarter of 2023 and the opening of three Kona Grill restaurants during 2023. Comparable restaurant sales decreased 2.7% in 2023 compared to 2022.

Management, license and incentive fee revenue. Management and license fee revenues decreased \$0.4 million, or 2.4%, to \$15.4 million for 2023 from \$15.8 million for 2022. The decrease was primarily attributable to the non-renewal of the management agreement for Radio at the ME London hotel.

Cost and Expenses

Owned restaurant cost of sales. Food and beverage costs for owned restaurants increased \$0.3 million, or 0.5%, to \$75.7 million for 2023 from \$75.4 million for 2022. The increase was due to the incremental sales increases noted above from the opening of eight new venues since August 2022. As a percentage of revenues, cost of sales decreased 110 basis points to 23.9% for 2023 from 25.0% for 2022 primarily due to product mix management, pricing and operational cost reduction initiatives partially offset by increased commodity prices.

Owned restaurant operating expenses. Owned restaurant operating expenses increased \$16.6 million, or 9.5%, to \$191.3 million for 2023 from \$174.7 million for 2022. Owned restaurant operating costs as a percentage of owned restaurant net revenue increased 220 basis points from 58.1% in 2022 to 60.3% for 2023 primarily due to higher labor costs driven by wage inflation and investments in anticipation of growth, increased marketing expenses and general operating cost inflation.

General and administrative. General and administrative costs increased \$1.7 million, or 5.7%, to \$30.8 million for 2023 from \$29.1 million for 2022. The increase was attributable to increased stock-based compensation expense and additional investments required ahead of new restaurant openings partially offset by lower incentive-based performance compensation. As a percentage of revenues, general and administrative costs were 9.2% in both 2023 and 2022.

Depreciation and amortization. Depreciation and amortization expense increased \$3.6 million to \$15.7 million for 2023 from \$12.1 million for 2022. The increase was primarily attributable to the opening of eight new owned venues since August 2022 and capital expenditures to maintain and enhance the guest experience in our restaurants.

Pre-opening expenses. We incurred \$8.9 million of pre-opening expenses primarily related to payroll, training, and non-cash rent for six STK and Kona Grill restaurants which opened in 2023 as well as STK and Kona Grill restaurants currently under development. Total pre-opening expenses related to non-cash pre-open rent was \$1.8 million.

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Pre-opening expenses for 2022 were \$5.5 million primarily related costs associated with STK San Francisco which opened August 2022, STK Dallas which opened November 2022, and restaurants opened in 2023. Total pre-opening expenses related to non-cash rent were \$1.1 million.

Detail of pre-opening expenses by category is provided in the tables below for 2023 and 2022 (in thousands).

Year ended December 31, 2023	Preopen Expenses	Preopen Rent	Total
Training Team	\$ 3,845	\$ —	\$ 3,845
Restaurants	3,213	1,797	5,010
Total	<u>\$ 7,058</u>	<u>\$ 1,797</u>	<u>\$ 8,855</u>

Year ended December 31, 2022	Preopen Expenses	Preopen Rent	Total
Training Team	\$ 1,186	\$ —	\$ 1,186
Restaurants	3,200	1,133	4,333
Total	<u>\$ 4,386</u>	<u>\$ 1,133</u>	<u>\$ 5,519</u>

(1) Cash rent paid was \$0.2 million and \$0.2 million for the years ended December 31, 2023 and 2022, respectively.

Other expenses. Other expenses were \$1.0 million for 2023 primarily related to litigation expenses compared to other expenses of \$0.6 million for 2022 composed primarily of trademark defense and litigation expenses.

Interest expense, net of interest income. Interest expense, net of interest income, was approximately \$7.0 million and \$2.1 million for 2023 and 2022, respectively. We borrowed \$50.0 million on the delayed draw term loan facility in December 2022. The weighted average interest rate for 2023 was 11.9% compared to 6.9% for 2022.

(Benefit) provision for income taxes. The benefit for income taxes for 2023 was (\$1.8) million compared to provision for income taxes of \$0.9 million for 2022. Our effective tax rate was (77.7)% and 6.2% for the years ended December 31, 2023 and 2022, respectively. Our effective tax rate differs from the statutory U.S. tax rate of 21% primarily due to the following: (i) tax credits for FICA taxes on certain employees' tips; (ii) taxes owed in foreign jurisdictions such as the United Kingdom, Canada and Italy; (iii) taxes owed in state and local jurisdictions; and (iv) windfall tax benefits from equity compensation offset by compensation limited for certain individuals with compensation in excess of \$1 million.

Net loss attributable to noncontrolling interest. Net loss attributable to noncontrolling interest increased to a net loss of \$0.7 million for 2023 compared to net loss of \$0.2 million for 2022.

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Liquidity and Capital Resources

Executive Summary

Our principal liquidity requirements are to meet our lease obligations, working capital and capital expenditure needs and to pay principal and interest on our outstanding debt. Subject to our operating performance, which, if significantly adversely affected, would adversely affect the availability of funds, we expect to finance our operations for at least the next 12 months, including the costs of opening currently planned new restaurants, through cash provided by operations, construction allowances provided by landlords of certain locations and borrowings under our credit agreement. We also may borrow on our revolving credit facility or issue equity to support ongoing business and fund additional expansion. We believe these sources of financing are adequate to support our immediate business operations and plans. As of December 31, 2023, we had cash and cash equivalents of \$21.0 million. We had \$73.5 million in long-term debt, which consisted of borrowings under our Credit Agreement as of December 31, 2023. As of December 31, 2023, the availability on our revolving credit facility was \$10.6 million, subject to the restrictions described in Note 5 to our consolidated financial statements.

Capital expenditures in 2023 were \$53.5 million of which \$41.8 million primarily related to the construction of six new STK and Kona Grill restaurants and several restaurants that were under development as of December 31, 2023. We spent \$8.4 million on maintenance capital expenditures for existing restaurants which included additional furniture, fixtures and equipment commensurate with the higher sales volumes at our restaurants. In addition, we spent approximately \$2.9 million for furniture, fixtures and equipment for restaurants that we plan to open in the future. Net capital expenditures, inclusive of \$4.7 million in landlord contributions, was \$48.8 million for 2023. We expect to receive between \$1.5 million to \$2.1 million in landlord contributions in the next three months.

Capital expenditures by type for 2023 and 2022 is provided below (in thousands).

Year Ended December 31, 2023	STK	Kona Grill	Other	Total
New Venues	\$ 24,574	\$ 17,234	\$ 2,865	\$ 44,673
Maintenance	4,294	4,134	—	8,428
Other	—	—	449	449
Total ⁽¹⁾	<u>\$ 28,868</u>	<u>\$ 21,368</u>	<u>\$ 3,314</u>	<u>\$ 53,550</u>

Year Ended December 31, 2022	STK	Kona Grill	Other	Total
New Venues	\$ 12,555	\$ 5,226	\$ 2,258	\$ 20,039
Maintenance	5,279	4,748	—	10,027
Other	409	413	1,741	2,563
Total ⁽¹⁾	<u>\$ 18,243</u>	<u>\$ 10,387</u>	<u>\$ 3,999</u>	<u>\$ 32,629</u>

(1) Exclusive of landlord contributions of \$4.7 million and \$2.2 million for the years ended December 31, 2023 and 2022, respectively.

Our operations have not required significant working capital, and, like many restaurant companies, we may have negative working capital during the year. Revenues are received primarily in credit card or cash receipts, and restaurant operations do not require significant receivables or inventories, other than our wine inventory. In addition, we receive trade credit for the purchase of food, beverages and supplies, thereby reducing the need for incremental working capital to support growth. Due to the seasonality of our business, we typically generate a greater proportion of our cash flow from operations during the fourth quarter.

Our future cash requirements will depend on many factors, including the pace of expansion, conditions in the retail property development market, construction costs, the nature of the specific sites selected for

new restaurants, and the nature of the specific leases and associated tenant improvement allowances available, if any, as negotiated with landlords. We have made significant investments in our training and development teams to support new restaurants openings. We believe these investments are necessary to support the successful opening of our new restaurants. If we modify our growth plans, the personnel that comprise our training team could be deployed to operate existing restaurants.

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To help manage future cash requirements, we limit the number of owned company venues under construction at any given time to four restaurants. We also set a maximum number of signed leases for new restaurant development to twelve in order to minimize our cash rent commitment to approximately \$3.0 million to \$4.0 million annually for restaurants under development.

Credit Agreement

On October 4, 2019, in conjunction with the acquisition of Kona Grill, the Company entered into a Credit Agreement with Goldman Sachs Bank USA. On August 6, 2021, the Company entered into the Third Amendment to the Credit Agreement to extend the maturity date for both the term loan and revolving credit facility to August 2026, to eliminate all financial covenants except a maximum net leverage ratio of 2.00 to 1.00, and to eliminate restrictions on the maximum amount of capital expenditures, the maximum number of Company-owned new locations, and credit extensions under the revolving credit facility. As amended, the Credit Agreement provided for a secured revolving credit facility of \$12.0 million and a \$25.0 million term loan (reduced from \$48.0 million). The term loan is payable in quarterly installments of \$0.1 million, with the final payment due in August 2026.

On December 13, 2022, the Company entered into the Fourth Amendment to the Credit Agreement that:

- Allows for a new \$50.0 million delayed draw term facility, available to draw for twelve months and subject to a 1.75x Net Leverage Ratio incurrence test (as defined in the Credit Agreement) for permitted acquisitions, stock repurchases and new restaurant capital expenditures;
- Allows the Company to redeem, repurchase or otherwise acquire its own capital stock in an aggregate amount of up to \$50 million subject to a 1.75x Net Leverage Ratio incurrence test and no default or event of default;
- Changes the interest rate from London Interbank Offered Rate ("LIBOR") plus a margin to Secured Overnight Financing Rate ("SOFR") plus an applicable margin.

The Company borrowed \$50.0 million on the delayed draw term facility on December 28, 2022. The delayed draw term loan is payable in quarterly installments of \$0.25 million beginning December 31, 2023, with the final payment due in August 2026.

Loans under the amended Credit Agreement bear interest at a rate per annum using the SOFR rate subject to a 1.00% floor plus an interest rate margin of 6.50%.

As of December 31, 2023, we were in compliance with the covenants under the amended Credit Agreement. Based on current projections, we believe that we will continue to comply with the covenants in the Credit Agreement, as amended, throughout the twelve months following the issuance of the financial statements.

See Note 5 and Note 14 to our consolidated financial statements for further information on our long-term debt and commitments and contingencies.

Capital Expenditures and Lease Arrangements

When we open new Company-owned restaurants, our capital expenditures for construction increase. For owned STK restaurants, where we build from a shell state, we have typically targeted a restaurant size of 8,000 square feet with a gross cash investment of approximately \$515 to \$675 per square foot, exclusive of \$200 per square foot in landlord contributions. STK restaurants opened in 2023 had a gross cost per square foot of \$690 and \$125 per square foot in landlord contributions with an average size of 10,386 square feet. For owned Kona Grill restaurants, where we build from a shell state, we have typically targeted a restaurant size of 7,000 square feet with a gross cash investment of approximately \$510 per square foot, exclusive of \$150 per square foot in landlord contributions. Kona Grill restaurants opened in 2023 had a

gross cost per square foot of \$600 and \$90 per square foot in landlord contributions with an average size of 8,631 square feet. In situations where we add functional space and build an STK or Kona Grill restaurant with a mezzanine, covered patio, or rooftop, costs per square feet will increase. Typical cash pre-opening costs are \$0.6 million to \$0.8 million, excluding the impact of cash and non-cash pre-opening rent. In addition, some of our existing restaurants will require capital improvements to either maintain or improve the facilities. We may add seating or provide

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enclosures for outdoor space in the next twelve months for some of our locations, when we believe that will increase revenues for those locations.

Our hospitality F&B services projects typically require limited capital investment from us. Capital expenditures for these projects are primarily funded by cash flows from operations and equipment financing, depending upon the timing of these expenditures and cash availability.

We typically seek to lease our restaurant locations for periods of 10 to 20 years under operating lease arrangements, with a limited number of renewal options. Our rent structure varies, but our leases generally provide for the payment of both minimum and contingent rent based on sales, as well as other expenses related to the leases such as our pro-rata share of common area maintenance, property tax and insurance expenses. Many of our lease arrangements include the opportunity to secure tenant improvement allowances to partially offset the cost of developing and opening the related restaurants. Generally, landlords recover the cost of such allowances from increased minimum rents. However, there can be no assurance that such allowances will be available to us on each project that we select for development.

Cash Flows

The following table summarizes the statement of cash flows for the years ended December 31, 2023 and December 31, 2022 (in thousands):

	For the year ended December 31,	
	2023	2022
Net cash provided by (used in):		
Operating activities	\$ 30,781	\$ 25,251
Investing activities	(53,550)	(32,629)
Financing activities	(11,248)	39,102
Effect of exchange rate changes on cash	(57)	(217)
Net (decrease) increase in cash and cash equivalents	<u>\$ (34,074)</u>	<u>\$ 31,507</u>

Operating Activities. Net cash provided by operating activities was \$30.8 million for 2023 compared to \$25.3 million for 2022. The increase in net cash provided by operating activities during 2023 compared to 2022 was primarily attributable to higher accounts payable and accrued expenses attributable to the timing of payments.

Investing Activities. Net cash used in investing activities for 2023 was \$53.5 million primarily for the construction of six restaurants opened in 2023 and new restaurants under development, as well as capital expenditures for existing restaurants compared to \$32.6 million for 2022.

Financing Activities. Net cash used by financing activities was \$11.2 million for 2023 primarily attributable to \$7.9 million of shares purchased under our stock buyback plan compared to net cash provided by financing activities of \$39.1 million for 2022. During 2022, we borrowed \$50.0 million under the amended Credit Agreement, partially offset by \$7.1 million in purchases of common stock and \$2.0 million to pay employee taxes for shares withheld upon vesting of restricted stock units.

Recent Accounting Pronouncements

Refer to Note 2 of our consolidated financial statements for a detailed description of recent accounting pronouncements.

Critical Accounting Estimates

Critical accounting estimates are those that management believes are the most important to the portrayal of our financial condition and results and require the most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. Judgments and uncertainties may result in materially different amounts being reported under different conditions or using different assumptions.

Our significant accounting estimates are discussed in additional detail in Note 2 to our consolidated financial statements. We base our estimates on historical experience and various assumptions that we believe to be reasonable under the circumstances and we evaluate those estimates on an ongoing basis. Actual results may differ from these

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estimates under different assumptions or conditions. We believe that our significant accounting estimates involve a higher degree of judgment and/or complexity for the reasons discussed below:

Income Taxes

We recognize deferred tax assets and liabilities based on the differences between the financial statement carrying amounts and the respective tax bases of our assets and liabilities. Deferred tax assets and liabilities are measured using current enacted rates expected to apply to taxable income in the years in which we expect the temporary differences to reverse. We routinely evaluate the likelihood of realizing the benefit of our deferred tax assets and may record a valuation allowance if, based on all available evidence, we determine that some portion of the tax benefit will not be realized.

In addition, our income tax returns are periodically audited by federal, state and foreign tax authorities. These audits include questions regarding our tax filing positions, including the timing and amount of deductions taken and the allocation of income amongst various tax jurisdictions. We evaluate our exposures associated with our various tax filing positions and record a related liability. We adjust our liability for unrecognized tax benefits and income tax provision in the period in which an uncertain tax provision is effectively settled, the statute of limitations expires for the relevant taxing authority to examine the tax position or when more information becomes available.

As of December 31, 2023, we had a valuation allowance of \$0.6 million that relates to foreign tax credits we do not expect to utilize as a result of generating income in a jurisdiction with a higher income tax rate than the U.S. The recording of deferred taxes requires significant management judgment regarding the interpretation of applicable statutes, the status of various income tax audits, and our particular facts and circumstances.

Our income taxes are impacted by the enactment of the Tax Cuts and Job Act in December 2017 (the "TCJA"), which, amongst other things, enacted global intangible low-taxed income provisions that do not allow us to defer the earnings of our subsidiaries in the U.K. and Italy.

Impairment of Long-Lived Assets and Disposal of Property and Equipment

Long-lived assets, which include property and equipment and right-of-use assets for operating leases, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be fully recoverable. The impairment evaluation is generally performed at the individual restaurant level, as we believe this is the lowest level of identifiable cash flows. We believe that historical cash flows, in addition to other relevant facts and circumstances, are the primary basis for estimating future cash flows. Relevant facts and circumstances include, among others, significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, and significant negative industry or economic trends. Recoverability of restaurant assets is measured by a comparison of the carrying amount of an individual restaurant's assets to the estimated identifiable undiscounted future cash flows expected to be generated by those restaurant assets. This process requires the use of estimates and assumptions, which are subject to a high degree of judgment. If the carrying amount of an individual restaurant's assets exceeds its estimated undiscounted future cash flows, an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds its fair value. The estimated fair value is determined for these assets in accordance with ASC 820, Fair Value Measurement. Property and equipment, net of accumulated depreciation and the operating lease right-of-use assets as of December 31, 2023 were \$139.9 million and \$95.1 million, respectively.

From time to time, we have decided to close or dispose of restaurants. Typically, such decisions are based on operating performance or strategic considerations and must be made before the actual costs or proceeds of disposition are known, and management must make estimates of these outcomes. Such outcomes could include the sale of a leasehold, mitigating costs through a tenant or subtenant, or negotiating a buyout of a remaining lease term. In these instances, management evaluates possible outcomes, frequently using outside real estate and legal advice, and records provisions for the effect of

such outcomes. The accuracy of such provisions can vary materially from original estimates, and management regularly monitors the adequacy of the provisions until final disposition occurs.

For the years ended December 31, 2023 and 2022, we did not identify any event or changes in circumstances that indicated that the carrying values of our restaurant long-lived assets were impaired and therefore, no impairment loss related to long-lived assets has been recognized.

[Table of Contents](#)*Impairment of Indefinite-Lived Intangible Assets*

Indefinite-lived intangible assets are tested for impairment annually or on an interim basis if events or changes in circumstances between annual tests indicate a potential impairment. First, we determine if, based on qualitative factors, it is more likely than not that an impairment exists. Factors considered include, but are not limited to, historical financial performance, expected future cash flows, changes in management or key personnel, macroeconomic and industry conditions and the legal and regulatory environment. If the qualitative assessment indicates that it is more likely than not that an impairment exists, then a quantitative assessment is performed.

The quantitative assessments require the use of estimates and assumptions regarding future cash flows. Key assumptions include projected revenue growth and operating expenses, discount rates, royalty rates and other factors that could affect fair value or otherwise indicate potential impairment. These estimates are subjective, and our ability to realize future cash is affected by factors such as changes in economic conditions and operating performance. Changes in circumstances existing at the measurement date or at other times in the future, or in the estimates associated with management's judgments and assumptions made in assessing the fair value of our trademarks, could result in an impairment loss of a portion or all of our trademarks.

Leases

Contracts are evaluated to determine whether they contain a lease at inception, and leases are classified as either operating or financing. For operating leases, we recognize a lease liability equal to the present value of the remaining lease payments, and a right of use asset equal to the lease liability, subject to certain adjustments, such as prepaid rents, initial direct costs and lease incentives received from the lessor. For leases that do not have a rate implicit in the lease, we use our incremental borrowing rate to determine the present value of the lease payments. Our incremental borrowing rate is the rate of interest that we would have to borrow on a collateralized basis over a similar term on an amount equal to the lease payments in a similar economic environment.

The lease term at the lease commencement date is determined based on the non-cancellable period for which we have the right to use the underlying asset, together with any periods covered by an option to extend the lease if we are reasonably certain to exercise that option, periods covered by an option to terminate the lease if we are reasonably certain not to exercise that option, and periods covered by an option to extend (or not to terminate) the lease in which the exercise of the option is controlled by the lessor.

Certain of our leases also provide for percentage rent, which are variable lease costs determined as a percentage of gross sales in excess of specified, minimum sales targets. These percentage rents are recognized as rent expense prior to the achievement of the specified sales target provided achievement of the sales target is considered probable.

We currently lease all of our restaurant locations under leases classified as operating leases. Management makes judgments regarding the probable term for each lease and considers a number of factors to evaluate whether renewal options in the lease contracts are reasonably certain of exercise, such as length of time before option exercise, expected value of the leased asset at the end of the initial lease term, importance of the lease to overall operations, costs to negotiate a new lease, and any contractual or economic penalties. The lease term can impact the lease classification and accounting for a lease as either an operating or financing lease, the incremental borrowing rate, the rent holidays and/or escalations in payments that are taken into consideration when calculating the rent expense and the related lease liability and right-of-use asset, and the term over which leasehold improvements for each restaurant are depreciated. These judgments may produce materially different amounts of depreciation, amortization and rent expense and materially different lease liabilities and right-of-use assets than would be reported if different assumed lease terms were used.

[Table of Contents](#)**Item 7A. Quantitative and Qualitative Disclosures about Market Risk***Commodity Price Risk*

We are exposed to market price fluctuations in beef, seafood, produce and other food product prices. Given the historical volatility of beef, seafood, produce and other food product prices, these fluctuations can materially impact our food and beverage costs. While we have taken steps to qualify multiple suppliers who meet our standards as suppliers for our restaurants and enter into agreements with suppliers for some of the commodities used in our restaurant operations, we do not enter into long-term agreements for the purchase of such supplies. There can be no assurance that future supplies and costs for such commodities will not fluctuate due to weather and other market conditions outside of our control and we may be subject to unforeseen supply and cost fluctuations. Dairy costs can also fluctuate due to government regulation. Because we typically set our menu prices in advance of our food product prices, our menu prices cannot immediately take into account the changing costs of food items. To the extent that we are unable to pass the increased costs on to our customers through price increases, our results of operations would be adversely affected. We do not use financial instruments to hedge our risk to market price fluctuations in beef, seafood, produce and other food product prices at this time.

Inflation

Inflation significantly affected our operations in 2022 and 2023, to a lesser extent. The impact of inflation on labor, food and occupancy costs could, in the future, significantly affect our operations. We pay many of our employees hourly rates related to the applicable federal or state minimum wage. Food costs as a percentage of revenues have been somewhat stable due to procurement efficiencies and menu price increases, although no assurance can be made that our procurement will continue to be efficient or that we will be able to raise menu prices in the future. Costs for construction, taxes, repairs, maintenance and insurance all impact our occupancy costs. We believe that our current strategy, which is to seek to maintain operating margins through a combination of menu price increases, cost controls, careful evaluation of property and equipment needs, and efficient purchasing practices, has been an effective tool for dealing with inflation. There can be no assurance, however, that future inflationary or other cost pressure will be effectively offset by this strategy.

Interest Rate Risk

Under our Credit Agreement, we are exposed to market risk from changes in interest rates on our borrowings. Borrowings under the Credit Agreement are subject to rates based on SOFR plus an interest rate margin of 6.5%. As of December 31, 2023, we had \$73.5 million of borrowings subject to variable interest rates.

Foreign Currency Exchange Rate Risk

We are subject to foreign currency exchange risk for our restaurants operating in the United Kingdom, Europe, Canada, Mexico and the Middle East. If foreign currency exchange rates depreciate in these countries or regions, or any other country or region in which we may operate in the future, we may experience declines in our international operating results but such exposure would not be material to the consolidated financial statements. We currently do not use financial instruments to hedge foreign currency exchange rate changes.

Item 8. Financial Statements and Supplementary Data

Our Consolidated Financial Statements required by this Item are set forth in Item 15 of this Annual Report on Form 10-K.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

[Table of Contents](#)**Item 9A. Controls and Procedures****Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, as our controls are designed to do, and management necessarily applies its judgment in evaluating the risk and cost benefit relationship related to controls and procedures.

Our Chief Executive Officer and Chief Financial Officer, have reviewed the effectiveness of our disclosure controls and procedures as of December 31, 2023 and, based on this evaluation, have concluded that our disclosure controls and procedures were effective as of December 31, 2023.

Report of Management on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of our financial reporting for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes maintaining records that in reasonable detail accurately and fairly reflect our transactions; providing reasonable assurance that transactions are recorded as necessary for preparation of our financial statements; providing reasonable assurance that receipts and expenditures are made in accordance with management authorization; and providing reasonable assurance that unauthorized acquisition, use or disposition of company assets that could have a material effect on our financial statements would be prevented or detected on a timely basis. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that a misstatement of our financial statements would be prevented or detected.

Our management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2023. In making its assessment of internal control over financial reporting, management used the criteria set forth by the Committee of Sponsoring Organizations (the “COSO”) of the Treadway Commission in Internal Control – Integrated Framework (2013). Based on this assessment, our CEO and CFO concluded that our internal control over financial reporting was effective as of December 31, 2023.

Deloitte & Touche LLP, the independent registered public accounting firm that audited the financial statements included in this Annual Report, has issued an attestation report on our internal control over financial reporting as of December 31, 2023.

Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2023 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

[Table of Contents](#)**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the shareholders and the Board of Directors of The ONE Group Hospitality, Inc.

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of The ONE Group Hospitality, Inc. and subsidiaries (the “Company”) as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2023, of the Company and our report dated March 12, 2024, expressed an unqualified opinion on those financial statements.

Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Report of Management on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

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 includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) 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 (3) 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.

/s/ Deloitte & Touche LLP

Denver, Colorado
March 14, 2024

[Table of Contents](#)**Item 9B. Other Information***(c) Trading Plans*

During the quarter ended December 31, 2023, no director or officer adopted or terminated any Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

None.

PART III**Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2024 Annual Meeting of Stockholders.

Item 11. EXECUTIVE COMPENSATION

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2024 Annual Meeting of Stockholders.

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

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2024 Annual Meeting of Stockholders.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2024 Annual Meeting of Stockholders.

Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Information required by this item is incorporated by reference from the Company's Proxy Statement for the 2024 Annual Meeting of Stockholders.

[Table of Contents](#)**PART IV****Item 15. Exhibits, Financial Statement Schedules**

- (a)(1) *Financial Statements*. For the financial statements included in this annual report, see “Index to the Financial Statements” on page F-1.
- (a)(2) *Financial Statement Schedules*. None.
- (a)(3) *Exhibits*. The list of exhibits filed as part of this Annual Report on Form 10-K is set forth on the Exhibit Index immediately preceding such exhibits and is incorporated by reference in this Item 15(a)(3).

Item 16. 10-K Summary

None.

[Table of Contents](#)**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.

Dated: March 14, 2024

THE ONE GROUP HOSPITALITY, INC.

By: /s/ TYLER LOY

Tyler Loy
Chief Financial Officer

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.

Signature	Title	Date
<u>/s/ EMANUEL HILARIO</u> Emanuel Hilario	Chief Executive Officer and Director (Principal Executive Officer)	March 14, 2024
<u>/s/ TYLER LOY</u> Tyler Loy	Chief Financial Officer (Principal Financial Officer)	March 14, 2024
<u>/s/ CHRISTI HING</u> Christi Hing	Chief Accounting Officer (Principal Accounting Officer)	March 14, 2024
<u>/s/ JONATHAN SEGAL</u> Jonathan Segal	Executive Chairman, Director	March 14, 2024
<u>/s/ DIMITRIOS ANGELIS</u> Dimitrios Angelis	Director	March 14, 2024
<u>/s/ EUGENE BULLIS</u> Eugene Bullis	Director	March 14, 2024
<u>/s/ SUSAN LINTONSMITH</u> Susan Lintonsmith	Director	March 14, 2024
<u>/s/ HAYDEE OLINGER</u> Haydee Olinger	Director	March 14, 2024
<u>/s/ MICHAEL SERRUYA</u> Michael Serruya	Director	March 14, 2024

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Exhibit Number	Exhibit Description
3.1	Amended and Restated Certificate of Incorporation (Incorporated by reference to Form 8-K filed on June 5, 2014).
3.2	Amended and Restated Bylaws (Incorporated by reference to Form 8-K filed on October 25, 2011).
4.1	Description of securities registered under Section 12 of the Securities Exchange Act of 1934 (Incorporated by reference to Exhibit 4.1 to Form 10-K filed on March 26, 2020).
4.2	Form of Common Stock Purchase Warrant dated as of November 15, 2017 (Incorporated by reference to Form 8-K filed on November 16, 2017).
10.1	Form of Indemnity Agreement (Incorporated by reference to Amendment No. 1 to Form S-1 filed on June 30, 2011).
10.2†	Amended and Restated Employment Agreement, dated October 30, 2017, by and between The ONE Group Hospitality, Inc. and Jonathan Segal (Incorporated by reference to Form 8-K filed on November 3, 2017).
10.3†	The ONE Group Hospitality, Inc. 2019 Equity Incentive Plan (Incorporated by reference to Appendix A to the Proxy Statement filed on April 8, 2022).
10.4†	Amended and Restated Employment Agreement between Emanuel N. Hilario and The ONE Group Hospitality, Inc. dated September 2, 2022 (Incorporated by reference to Form 8-K filed on September 7, 2022).
10.5†	Notice of Grant of Restricted Stock Units dated September 24, 2021 between Emanuel N. Hilario and The ONE Group Hospitality, Inc. (Incorporated by reference to Form 8-K filed on September 28, 2021).
10.6†	Notice of Grant of Restricted Stock Units (Time-vesting) dated September 2, 2022 between Emanuel N. Hilario and The ONE Group Hospitality, Inc. (Incorporated by reference to Form 8-K filed on September 7, 2022).
10.7†	Notice of Grant of Restricted Stock Units (Performance-vesting) dated September 2, 2022 between Emanuel N. Hilario and The ONE Group Hospitality, Inc. (Incorporated by reference to Form 8-K filed on September 7, 2022).
10.8†	Employment Letter Agreement with Tyler Loy Effective April 1, 2019 (Incorporated by reference to Exhibit 10.7 to Form 10-K filed on March 26, 2020).
10.9	Credit and Guaranty Agreement dated October 4, 2019 with Goldman Sachs Bank USA (Incorporated by reference to Form 8-K/A filed on October 8, 2019).
10.10	Fourth Amendment to Credit and Guaranty Agreement dated December 13, 2022 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 8-K filed on December 14, 2022).
10.11	Third Amendment to Credit and Guaranty Agreement dated August 6, 2021 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 10-Q filed on August 10, 2021).
10.12	Second Amendment to Credit and Guaranty Agreement dated August 10, 2020 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 8-K filed on August 12, 2020).
10.13	First Amendment to Credit and Guaranty Agreement dated May 8, 2020 between The ONE Group, LLC, certain other credit parties, and Goldman Sachs Bank USA, as administrative agent for the lenders (Incorporated by reference to Form 8-K filed May 8, 2020).
10.14†	Form of Restricted Stock Unit Grant Notice and Agreement (Incorporated by reference to Exhibit 10.10 to Form 10-K filed on March 26, 2020).
21.1*	List of Subsidiaries.
23.1*	Consent of Deloitte & Touche LLP
31.1*	Certification of Emanuel Hilario, Chief Executive Officer, pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
31.2*	Certification of Tyler Loy, Chief Financial Officer, pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
32.1**	Certification of Emanuel Hilario, Chief Executive Officer, pursuant to Section 906 of the Sarbanes – Oxley Act of 2002, 18 U.S.C. Section 1350.
32.2**	Certification of Tyler Loy, Chief Financial Officer, pursuant to Section 906 of the Sarbanes – Oxley Act of 2002, 18 U.S.C. Section 1350.
97.1	The ONE Group Hospitality, Inc. Clawback Policy.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
104	Cover Page Interactive Data File (formatted in iXBRL and contained in Exhibit 101)

* Filed herewith.

** Furnished herewith.

† Management contract or compensatory plan or arrangement.

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[Table of Contents](#)**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the shareholders and the Board of Directors of The ONE Group Hospitality, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of The ONE Group Hospitality, Inc. and subsidiaries (the "Company") as of December 31, 2023 and 2022, the related consolidated statements of operations and comprehensive income (loss), changes in shareholders' equity, and cash flows, for each of the two years in the period ended December 31, 2023 and 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2023 and 2022, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 12, 2024, expressed an unqualified opinion on the Company's internal control over financial reporting.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the 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 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 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates 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 matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Long-Lived Asset Impairment — Refer to Note 2 to the financial statements***Critical Audit Matter Description***

Long-lived assets, which includes property and equipment and right-of-use assets for operating leases, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying values of these assets may not be fully recoverable. The impairment evaluation is performed at the individual

restaurant level. Recoverability of restaurant assets is measured by a comparison of the carrying amount of an individual restaurant's assets to the estimated

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undiscounted future cash flows expected to be generated by those restaurant assets. If the carrying amount of an individual restaurant's assets exceeds its estimated undiscounted future cash flows an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds its fair value. The estimated fair value is determined for these assets in accordance with ASC 820, *Fair Value Measurement*. Property and equipment, net, and the Operating lease right-of-use assets as of December 31, 2023 were \$139.9 million and \$95.1 million, respectively. For the year ended December 31, 2023, no impairment loss related to long-lived assets was recognized.

We identified the impairment of long-lived assets as a critical audit matter because of the significant estimates and assumptions management makes to evaluate the recoverability of long-lived assets. This required a high degree of auditor judgement and an increased extent of effort when performing audit procedures to evaluate whether management appropriately identified impairment indicators and the reasonableness of management's undiscounted future cash flows analysis.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to impairment of long-lived assets included the following, among others:

- We tested the effectiveness of internal controls over the Company's long lived asset impairment indicator evaluation and undiscounted future cash flow analysis.
- We evaluated the Company's evaluation of impairment indicators by:
 - Testing long-lived restaurant assets for indications of impairment, including evaluating locations with current period losses or projected losses
 - Performing inquiries of management regarding the process and assumptions used to identify potential indicators of impairment and evaluating the consistency of the assumptions with evidence obtained in other areas of the audit.
 - Inspecting minutes of the board of directors, the Company's public statements, operating plans, and industry data to identify any evidence that may contradict management's assumptions.
- We evaluated the reasonableness of management's undiscounted future cash flows analysis by comparing management's projections to (1) the Company's historical results, (2) internal communications to management and the Board of Directors, (3) external communications made publicly by management, and (4) industry data.
- We tested the completeness and accuracy of the underlying source information used by management to identify quantitative indicators of impairment.

/s/ Deloitte & Touche LLP

Denver, Colorado
March 14, 2024

We have served as the Company's auditor since 2021.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share information)

	December 31, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 21,047	\$ 55,121
Accounts receivable	17,264	15,220
Inventory	6,184	5,728
Other current assets	1,809	2,091
Due from related parties	376	376
Total current assets	46,680	78,536
Property and equipment, net	139,908	94,087
Operating lease right-of-use assets	95,075	85,161
Deferred tax assets, net	14,757	12,323
Intangibles, net	15,306	15,290
Other assets	4,636	4,774
Security deposits	883	853
Total assets	<u>\$ 317,245</u>	<u>\$ 291,024</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 19,089	\$ 13,055
Accrued expenses	28,333	22,409
Deferred gift card revenue and other	2,077	2,115
Current portion of operating lease liabilities	6,897	6,336
Current portion of long-term debt	1,500	1,500
Other current liabilities	266	256
Total current liabilities	58,162	45,671
Operating lease liabilities, net of current portion	120,481	105,247
Long-term debt, net of current portion	70,410	70,544
Other long-term liabilities	832	972
Total liabilities	249,885	222,434
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Common stock, \$0.0001 par value, 75,000,000 shares authorized; 33,560,428 issued and 31,283,975 outstanding at December 31, 2023 and 32,829,995 shares issued and 31,735,423 outstanding at December 31, 2022	3	3
Preferred stock, \$0.0001 par value, 10,000,000 shares authorized; no shares issued and outstanding at December 31, 2023 and December 31, 2022, respectively	—	—
Treasury stock, 2,276,453 and 1,094,572 shares at cost at December 31, 2023 and December 31, 2022, respectively	(15,051)	(7,169)
Additional paid-in capital	58,270	55,583
Retained earnings	28,884	24,166
Accumulated other comprehensive loss	(2,930)	(2,869)
Total stockholders' equity	69,176	69,714
Noncontrolling interests	(1,816)	(1,124)
Total equity	67,360	68,590
Total liabilities and equity	<u>\$ 317,245</u>	<u>\$ 291,024</u>

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(in thousands, except earnings per share and related share information)

	For the year ended December 31,	
	2023	2022
Revenues:		
Owned restaurant net revenue	\$ 317,366	\$ 300,859
Management, license and incentive fee revenue	15,403	15,779
Total revenues	332,769	316,638
Cost and expenses:		
Owned operating expenses:		
Owned restaurant cost of sales	75,727	75,365
Owned restaurant operating expenses	191,250	174,689
Total owned operating expenses	266,977	250,054
General and administrative (including stock-based compensation of \$5,032 and \$3,985 for the years ended December 31, 2023 and 2022, respectively)	30,751	29,081
Depreciation and amortization	15,664	12,134
Pre-opening expenses	8,855	5,519
Transaction costs	207	123
Lease termination expenses	—	257
COVID-19 related expenses	—	2,534
Other expenses	1,021	630
Total costs and expenses	323,475	300,332
Operating income	9,294	16,306
Other expenses, net:		
Interest expense, net of interest income	7,028	2,113
Total other expenses, net	7,028	2,113
Income before provision for income taxes	2,266	14,193
(Benefit) provision for income taxes	(1,760)	874
Net income	4,026	13,319
Less: net loss attributable to noncontrolling interest	(692)	(215)
Net income attributable to The ONE Group Hospitality, Inc.	\$ 4,718	\$ 13,534
Currency translation loss	(61)	(224)
Comprehensive income attributable to The One Group Hospitality, Inc.	\$ 4,657	\$ 13,310
Net income attributable to The ONE Group Hospitality, Inc. per share:		
Basic net income per share	\$ 0.15	\$ 0.42
Diluted net income per share	\$ 0.15	\$ 0.40
Shares used in computing basic income per share	31,556,437	32,400,515
Shares used in computing diluted income per share	32,287,864	33,871,797

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(in thousands, except share information)

	Common stock		Treasury stock	Additional paid-in capital	Retained earnings	Accumulated other comprehensive loss	Stockholders' equity	Noncontrolling interests	Total
	Shares	Par value							
Balance at January 1, 2022	32,125,762	\$ 3	\$ (37)	\$ 53,481	\$10,632	\$ (2,645)	\$ 61,434	\$ (909)	\$60,525
Stock-based compensation	40,573	—	—	3,985	—	—	3,985	—	3,985
Exercise of stock options and warrants	65,000	—	—	138	—	—	138	—	138
Issuance of vested restricted shares, net of tax withholding	586,026	—	—	(2,021)	—	—	(2,021)	—	(2,021)
Purchase of treasury stock	(1,081,938)	—	(7,132)	—	—	—	(7,132)	—	(7,132)
Loss on foreign currency translation, net	—	—	—	—	—	(224)	(224)	—	(224)
Net income (loss)	—	—	—	—	13,534	—	13,534	(215)	13,319
Balance at December 31, 2022	31,735,423	\$ 3	\$ (7,169)	\$ 55,583	\$24,166	\$ (2,869)	\$ 69,714	\$ (1,124)	\$68,590
Stock-based compensation	79,445	—	—	5,032	—	—	5,032	—	5,032
Exercise of stock options and warrants	162,000	—	—	310	—	—	310	—	310
Issuance of vested restricted shares, net of tax withholding	488,988	—	—	(2,655)	—	—	(2,655)	—	(2,655)
Purchase of treasury stock	(1,181,881)	—	(7,882)	—	—	—	(7,882)	—	(7,882)
Loss on foreign currency translation, net	—	—	—	—	—	(61)	(61)	—	(61)
Net income (loss)	—	—	—	—	4,718	—	4,718	(692)	4,026
Balance at December 31, 2023	<u>31,283,975</u>	<u>\$ 3</u>	<u>\$(15,051)</u>	<u>\$ 58,270</u>	<u>\$28,884</u>	<u>\$ (2,930)</u>	<u>\$ 69,176</u>	<u>\$ (1,816)</u>	<u>\$67,360</u>

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the year ended December 31,	
	2023	2022
Operating activities:		
Net income	\$ 4,026	\$ 13,319
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	15,664	12,134
Stock-based compensation	5,032	3,985
Amortization of debt issuance costs	745	373
Deferred taxes	(2,434)	(10)
Changes in operating assets and liabilities:		
Accounts receivable	(2,056)	(3,858)
Inventory	(456)	(1,813)
Other current assets	340	1,574
Security deposits	(30)	5
Other assets	(552)	(1,169)
Accounts payable	2,911	886
Accrued expenses	1,608	(4,001)
Operating lease liabilities and right-of-use assets	5,880	2,805
Other liabilities	103	1,021
Net cash provided by operating activities	30,781	25,251
Investing activities:		
Purchase of property and equipment	(53,550)	(32,629)
Net cash used in investing activities	(53,550)	(32,629)
Financing activities:		
Borrowings of long-term debt	—	55,000
Repayments of long-term debt and financing lease liabilities	(1,021)	(5,551)
Debt issuance costs	—	(1,332)
Exercise of stock options and warrants	310	138
Tax-withholding obligation on stock-based compensation	(2,655)	(2,021)
Purchase of treasury stock	(7,882)	(7,132)
Net cash (used in) provided by financing activities	(11,248)	39,102
Effect of exchange rate changes on cash	(57)	(217)
Net (decrease) increase in cash and cash equivalents	(34,074)	31,507
Cash and cash equivalents, beginning of year	55,121	23,614
Cash and cash equivalents, end of year	\$ 21,047	\$ 55,121
Supplemental disclosure of cash flow data:		
Interest paid, net of capitalized interest	\$ 5,313	\$ 1,556
Income taxes paid, net of refunds	\$ 720	\$ 789
Accrued purchases of property and equipment	\$ 12,575	\$ 5,125

See notes to the consolidated financial statements.

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THE ONE GROUP HOSPITALITY, INC.
Notes to Consolidated Financial Statements

Note 1 – Description of Business

The ONE Group Hospitality, Inc. and its subsidiaries (collectively, the “Company”) is a global restaurant company that develops, owns and operates, manages and licenses upscale and polished casual, high-energy restaurants and lounges and provides turn-key food and beverage (“F&B”) services for hospitality venues including hotels, casinos and other high-end locations. Turn-key F&B services are food and beverage services that can be scaled, customized and implemented by the Company at a particular hospitality venue and customized for the client. The Company’s primary restaurant brands are STK, a multi-unit steakhouse concept that combines a high-energy, social atmosphere with the quality and service of a traditional upscale steakhouse, and Kona Grill, a polished casual bar-centric grill concept featuring American favorites, award-winning sushi, and specialty cocktails in a polished casual atmosphere.

As of December 31, 2023, the Company owned, operated, managed or licensed 65 venues including 27 STKs and 27 Kona Grills in major metropolitan cities in North America, Europe and the Middle East and 11 F&B venues in four hotels and casinos in the United States and Europe. For those restaurants and venues that are managed or licensed, the Company generates management fees based on top-line revenues and incentive fee revenue based on a percentage of the location’s revenues and net profits.

Note 2 – Summary of Significant Accounting Policies*Basis of Presentation and Principles of Consolidation*

The accompanying consolidated financial statements include the accounts of the Company and have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”). All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of the consolidated financial statements in conformity with GAAP requires the Company to make estimates and assumptions for the reporting period and as of the reporting date. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingencies. Actual results could differ from those estimates.

Fair Value Measurements

Fair value represents the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Assets and liabilities are valued based upon observable and non-observable inputs. Valuations using Level 1 inputs are based on unadjusted quoted prices that are available in active markets for the identical assets or liabilities at the measurement date. Level 2 inputs utilize significant other observable inputs available at the measurement date, other than quoted prices included in Level 1, either directly or indirectly. Valuations using Level 3 inputs are based on significant unobservable inputs that cannot be corroborated by observable market data and reflect the use of significant management judgment. There were no significant transfers between levels during any period presented.

Cash and Cash Equivalents

Cash and cash equivalents are defined as cash on hand and highly liquid instruments with original maturities of three months or less when purchased. The Company’s cash and cash equivalents consist of cash in banks and at the restaurants as of December 31, 2023 and 2022.

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Accounts Receivable

The Company's receivables arise from credit cards, management agreements, trade customers and other reimbursable amounts due from hotel operators where the Company operates a food and beverage service. Accounts receivable from credit card processors and third-party delivery services at December 31, 2023 and 2022 was \$7.6 million and \$6.4 million, respectively. Receivables from the Company's management, license and hotel partners were \$8.2 million and \$7.0 million at December 31, 2023 and 2022, respectively.

Inventory

Inventories, which consist of food, liquor and other beverages, are stated at the lower of cost or net realizable value. Cost is determined by the first in, first out method. Net realizable value is defined as the estimated selling price in the ordinary course of business, less reasonably predictable costs to sell. As of December 31, 2023 and 2022, food inventories were \$4.0 million and \$3.7 million, respectively, and beverage inventories were \$2.2 million and \$2.0 million, respectively.

Property and Equipment

Additions to property and equipment, including leasehold improvements, are recorded at cost while costs incurred to repair and maintain the Company's operations and equipment are expensed as incurred. Depreciation is calculated using the straight-line method over the estimated useful life of the asset. When assets are retired or otherwise disposed of, the cost of the assets and the related accumulated depreciation are removed from the accounts, and any gain or loss on retirements is reflected in operating income in the year of disposition.

Computers and equipment as well as furniture and fixtures are depreciated over their useful lives from three to fifteen years. Leasehold improvements are depreciated over the shorter of their estimated useful lives or the remaining term of the associated lease. Lease terms begin on the date the Company takes possession under the lease and include option periods where failure to exercise such options would result in an economic penalty.

Other Assets

Other assets include liquor license acquisition costs and costs to fulfill obligations under the Company's management and license agreements.

Intangible Assets

Intangible assets consist of the indefinite-lived "Kona Grill" trade name and other finite-lived intangible assets that are amortized using the straight-line method over their estimated useful life of 10 years. As of December 31, 2023 and 2022, the gross carrying amount of the Kona Grill trade name intangible was \$17.4 million. As of December 31, 2023 and 2022 the gross carrying amount of the other finite-lived intangible assets were \$0.1 million. The amortization expense was nominal and \$0.2 million for the years ending December 31, 2023 and 2022, respectively. The Company's estimated aggregate amortization expense for each of the five succeeding fiscal years is a nominal amount annually.

Impairment of Long-Lived Assets

Long-lived assets, which include property and equipment and right-of-use assets for operating leases, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be fully recoverable. The impairment evaluation is generally performed at the individual restaurant level, as we believe this is the lowest level of identifiable cash flows. We believe that historical cash flows, in addition to other relevant facts and circumstances, are the primary basis for estimating future cash flows. Relevant facts and circumstances include, among others, significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, and significant negative industry or economic trends. Recoverability of restaurant assets is measured by a comparison of the

carrying amount of an individual restaurant's assets to the estimated identifiable undiscounted future cash flows exclusive of operating lease payments, expected to be generated by those restaurant assets. This process requires the use of estimates and assumptions, which are subject to a high degree of judgment. If the carrying amount of an individual restaurant's assets exceeds its estimated undiscounted future cash flows, exclusive of operating lease payments, an impairment charge is

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recognized as the amount by which the carrying amount of the asset exceeds its fair value. The estimated fair value is determined for these assets in accordance with ASC 820, Fair Value Measurement. Property and equipment, net of accumulated depreciation and the operating lease right-of-use assets as of December 31, 2023 were \$139.9 million and \$95.1 million, respectively. For the year ended December 31, 2023, no impairment loss related to long-lived assets has been recognized.

For the years ended December 31, 2023 and 2022, the Company did not identify any event or changes in circumstances that indicated that the carrying values of its restaurant assets were impaired.

Debt Issuance Costs

Debt issuance costs incurred in connection with the issuance of long-term debt are capitalized and amortized to interest expense based on the term of the related debt agreement using the straight-line method, which approximates the effective interest method. The Company has recorded debt issuance costs related to the revolving credit facility in other assets on the consolidated balance sheets. The portion of debt issuance costs related to the term loan and delayed draw term loan is recorded in long-term debt, net of current portion on the consolidated balance sheets.

Income Taxes

The Company computes income taxes using the asset and liability method. Under this method, deferred income taxes are recognized for differences between the basis of assets and liabilities for financial statement and income tax purposes, using the enacted statutory rate in effect for the year these differences are expected to be taxable or refunded. Deferred income tax expenses or credits are based on the changes in the asset or liability, respectively, from period to period. A deferred tax asset or liability is recognized whenever there are future tax effects from existing temporary differences and operating loss and tax credit carry-forwards. If the Company determines that a deferred tax asset or liability could be realized in a greater or lesser amount than recorded, the deferred tax asset or liability is adjusted and a corresponding adjustment is made to the provision for income taxes in the consolidated statements of operations and comprehensive income in the period during which the determination is made.

The Company reduces its deferred tax assets by a valuation allowance if it determines that it is more likely than not that some portion or all of these tax assets will not be realized. In making this determination, the Company considers various qualitative and quantitative factors, such as:

- the level of historical taxable income;
- the projection of future taxable income over periods in which the deferred tax assets would be deductible;
- events within the restaurant industry;
- the health of the economy; and,
- historical trending.

The recording of deferred taxes requires significant management judgment regarding the interpretation of applicable statutes, the status of various income tax audits, and particular facts and circumstances.

The Company recognizes the tax benefit from an uncertain tax position when it determines that it is more-likely-than-not that the position would be sustained upon examination by taxing authorities. The amount recognized is measured as the largest amount of benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. If the Company derecognizes an uncertain tax position, the Company's policy is to record any applicable interest and penalties within the provision (benefit) for income taxes in the consolidated statements of operations and comprehensive income.

Revenue Recognition

Revenue is derived from restaurant sales, management services and license related operations.

The Company recognizes restaurant revenues, net of discounts, when goods and services are provided. Sales tax amounts collected from customers that are remitted to governmental authorities are excluded

from net revenue.

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Management agreements typically call for a management fee based on a percentage of revenue, a monthly marketing fee based on a percentage of revenues and an incentive fee based on a managed venue's net profits. Similarly, royalties from the licensee in license agreements are generally based on a percentage of the licensed restaurant's revenue. These management, license and incentive fees are recognized as revenue in the period the restaurant's sales occur.

The Company recognizes initial licensing fees and upfront fees related to management and license agreements on a straight-line basis over the term of the agreement as a component of management, license and incentive fee revenue on the consolidated statements of operations and comprehensive income.

The Company has a loyalty program for Kona Grill to encourage customers to frequent its restaurants. The loyalty rewards program awards a customer one point for every dollar spent. When a customer is part of the rewards program, the obligation to provide future discounts related to points earned is considered a separate performance obligation, to which a portion of the transaction price is allocated. The performance obligation related to loyalty points is deemed to have been satisfied, and the amount deferred in the balance sheet is recognized as revenue, when the points are converted to a reward and redeemed, or the likelihood of redemption is remote. A portion of the transaction price is allocated to loyalty points, if necessary, on a pro-rata basis, based on the stand-alone selling price, as determined by menu pricing and loyalty points terms. As of December 31, 2023 and 2022 the deferred revenue allocated to loyalty points that have not been redeemed was \$0.2 million, which is recorded as a component of accrued expenses in the accompanying consolidated balance sheets. The Company expects the loyalty points to be redeemed and recognized over a one-year period.

Gift Cards

Proceeds from the sale of gift cards are recorded as deferred revenue and recognized as revenue when redeemed by the holder. There are no expiration dates on the Company's gift cards and the Company does not charge any service fees that would result in a decrease to a customer's available balance.

Although the Company will continue to honor all gift cards presented for payment, it may determine the likelihood of redemption to be remote for certain gift cards due to, among other things, long periods of inactivity. In these circumstances, to the extent the Company determines there is no requirement for remitting balances to government agencies under unclaimed property laws, outstanding gift card balances may then be recognized as breakage in the consolidated statements of operations and comprehensive income as a component of owned restaurant net revenue. For the years ended December 31, 2023 and 2022, the Company recognized \$0.1 million and \$0.3 million, respectively, in revenue from gift card breakage.

Pre-opening Costs

Pre-opening costs for Company owned restaurants are expensed as incurred prior to a restaurant opening for business. Pre-opening costs for the years ended December 31, 2023 and 2022 were \$8.9 million and \$5.5 million, respectively.

Advertising Costs

The Company expenses the cost of advertising and promotions as incurred. Advertising expense was \$10.4 million and \$7.5 million for the years ended December 31, 2023 and 2022, respectively.

Leases

Contracts are evaluated to determine whether they contain a lease at inception. The Company's contracts determined to be or contain a lease include explicitly or implicitly identified assets where the Company has the right to substantially all of the economic benefits of the assets and has the ability to direct how and for what purpose the assets are used during the lease term. If it is determined that the contract contains an operating lease, a right-of-use asset and operating lease liability are recorded on the consolidated balance sheets. A right-of-use asset represents the Company's right to use the underlying asset and the lease liability represents the Company's contractually obligated payments. Both the right-of-use

asset and the lease liability are recognized as of the commencement date of the lease and are based upon the present value of lease payments due over the course of the lease. The right-of-use asset is reduced by any lease incentives

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received. For leases that do not have a rate implicit in the lease, the Company's incremental borrowing rate at the date of commencement is used to determine the present value of the lease payments. The Company's incremental borrowing rate is the rate of interest that it would have to borrow on a collateralized basis over a similar term on an amount equal to the lease payments in a similar economic environment.

The Company enters into contracts to lease office and restaurant space with terms that expire at various dates through 2047. The lease term is the minimum of the noncancelable period of the lease or the lease term inclusive of reasonably certain renewal periods. The Company considers a number of factors when evaluating whether the options in its lease contracts were reasonably certain of exercise, such as length of time before option exercise, expected value of the leased asset at the end of the initial lease term, importance of the lease to overall operations, costs to negotiate a new lease, and any contractual or economic penalties.

Certain of the Company's leases also provide for percentage rent, which are variable lease costs determined as a percentage of gross sales in excess of specified, minimum sales targets, as well as other lease costs to reimburse the lessor for real estate tax and insurance expenses, and certain non-lease components that transfer a distinct service to the Company, such as common area maintenance services. These percentage rents and other variable lease costs are not included in the calculation of lease payments when classifying a lease and in the measurement of the lease liability as they do not meet the definition of in-substance, fixed-lease payments under ASC Topic 842, Leases.

Stock-Based Compensation

The Company maintains an equity incentive compensation plan under which it may grant options, warrants, restricted stock or other stock-based awards to directors, officers, key employees and other key individuals performing services to the Company. Restricted stock and restricted stock units ("RSUs") that vest on the passage of time are valued using the closing stock price on the date of grant. For RSUs with both a market condition and time element, the fair value was calculated using the Monte Carlo Simulation.

Under the plan, vesting of awards can either be based on the passage of time or on the achievement of performance goals. For awards that vest on the passage of time, compensation cost is recognized over the vesting period. For performance-based awards, the Company recognizes compensation costs over the requisite service period when conditions for achievement become probable. The Company estimates forfeitures at the time of grant and revises those estimates in subsequent periods if actual forfeitures differ or are expected to differ. These estimates, which are currently at 10%, are based on historical forfeiture behavior exhibited by employees of the Company.

Earnings per Share

Basic earnings per share is computed using the weighted average number of common shares outstanding during the period and income available to common stockholders. Diluted earnings per share is computed using the weighted average number of common shares outstanding during the period plus the dilutive effect of all potential shares of common stock including common stock issuable pursuant to stock options, warrants, and RSUs. Refer to Note 9 for the calculations of basic and diluted earnings per share.

Segment Reporting

The Company has identified the following four reportable operating segments: STK, Kona Grill, ONE Hospitality and Corporate. Refer to Note 12 for additional details and certain financial information regarding the Company's operating segments relating to the years ended December 31, 2023 and 2022.

Foreign Currency Translation

Assets and liabilities of foreign operations are translated into U.S. dollars at the balance sheet date. Revenues and expenses are translated at average monthly exchange rates. Gains or losses resulting from the translation of foreign subsidiaries represent other comprehensive income (loss) and are accumulated as a separate component of stockholders' equity. Currency translation gains or losses are recorded in

accumulated other comprehensive loss within stockholders' equity and amounted to a loss of approximately \$0.1 million and \$0.2 million during 2023 and 2022, respectively.

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[Table of Contents](#)*Comprehensive Income*

Comprehensive income consists of two components: net income and other comprehensive income (loss). The Company's other comprehensive income (loss) is comprised of foreign currency translation adjustments. All of the Company's foreign currency translation adjustments relate to wholly owned subsidiaries of the Company.

Recent Accounting Pronouncements

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. This update requires companies to measure credit losses utilizing a methodology that reflects expected credit losses and requires a consideration of a broader range of reasonable and supportable information to estimate credit losses. Effective, January 1, 2023, the Company implemented ASU 2016-13. The implementation did not have a material impact on the Company's financial statements.

In November 2023, the FASB issued ASU No. 2023-07, "Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosure." The ASU updates reportable segment disclosure requirements, primarily through requiring enhanced disclosures about significant segment expenses and information used to assess segment performance. The ASU is effective for fiscal years beginning after December 15, 2023, with early adoption permitted. The Company is evaluating the impact of adopting this ASU on its disclosures.

In December 2023, the FASB issued ASU No. 2023-09, "Income Taxes (Topic 740): Improvements to Income Tax Disclosures." The ASU includes amendments requiring enhanced income tax disclosures, primarily related to standardization and disaggregation of rate reconciliation categories and income taxes paid by jurisdiction. The guidance is effective for fiscal years beginning after December 15, 2024, with early adoption permitted. The Company is evaluating the impact of adopting this ASU on its disclosures.

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Note 3 – Property and Equipment, net

Property and equipment, net consist of the following (in thousands):

	December 31, 2023	December 31, 2022
Furniture, fixtures and equipment	\$ 49,753	\$ 33,372
Leasehold improvements	130,136	89,121
Less: accumulated depreciation and amortization	(60,128)	(47,528)
Subtotal	119,761	74,965
Construction in progress	17,044	16,276
Restaurant smallwares	3,103	2,846
Total	<u>\$ 139,908</u>	<u>\$ 94,087</u>

Depreciation and amortization related to property and equipment amounted to \$15.1 million and \$11.7 million for the years ended December 31, 2023 and 2022, respectively. The Company depreciates construction in progress upon such assets being placed into service.

Note 4 – Accrued Expenses

Accrued expenses consist of the following (in thousands):

	December 31, 2023	December 31, 2022
New restaurant construction	\$ 6,318	\$ 1,903
Payroll and related	5,655	5,249
VAT and sales taxes	4,238	4,118
Amounts due to landlords	2,753	2,949
Interest	2,396	268
Legal, professional and other services	1,364	626
Insurance	545	742
Income taxes and related	30	156
Other ⁽¹⁾	5,034	6,398
Total	<u>\$ 28,333</u>	<u>\$ 22,409</u>

(1) Amount primarily relates to recurring restaurant operating expenses.

Note 5 – Long Term Debt

Long-term debt consists of the following (in thousands):

	December 31, 2023	December 31, 2022
Term loan agreements	\$ 23,750	\$ 24,250
Revolving credit facility	—	—
Delayed draw term facility	49,750	50,000
Total long-term debt	73,500	74,250
Less: current portion of long-term debt	(1,500)	(1,500)
Less: debt issuance costs	(1,590)	(2,206)
Total long-term debt, net of current portion	<u>\$ 70,410</u>	<u>\$ 70,544</u>

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Future minimum loan payments:	
2024	\$ 1,500
2025	1,500
2026	70,500
Total	<u>\$ 73,500</u>

Interest expense for the Company's debt arrangements, excluding the amortization of debt issuance costs and fees, was \$7.4 million and \$1.7 million for the years ended December 31, 2023 and 2022, respectively. Capitalized interest was \$1.6 million and \$0.3 million for the years ended December 31, 2023 and 2022, respectively.

As of both December 31, 2023 and 2022, the Company had \$1.4 million in standby letters of credit outstanding for certain restaurants and \$10.6 million available in its revolving credit facility, subject to certain conditions.

Credit and Guaranty Agreement

On October 4, 2019, in conjunction with the acquisition of Kona Grill, the Company entered into a Credit Agreement with Goldman Sachs Bank USA. On August 6, 2021, the Company entered into the Third Amendment to the Credit Agreement to extend the maturity date for both the term loan and revolving credit facility to August 2026, to eliminate all financial covenants except a maximum net leverage ratio of 2.00 to 1.00, and to eliminate restrictions on the maximum amount of capital expenditures, the maximum number of Company-owned new locations, and credit extensions under the revolving credit facility. As amended, the Credit Agreement provided for a secured revolving credit facility of \$12.0 million and a \$25.0 million term loan (reduced from \$48.0 million). The term loan is payable in quarterly installments of \$0.1 million, with the final payment due in August 2026.

On December 13, 2022, the Company entered into the Fourth Amendment to the Credit Agreement that:

- Allows for a new \$50.0 million delayed draw term facility, available to draw for twelve months and subject to a 1.75x Net Leverage Ratio incurrence test (as defined in the Credit Agreement) for permitted acquisitions, stock repurchases and new restaurant capital expenditures;
- Allows the Company to redeem, repurchase or otherwise acquire its own capital stock in an aggregate amount of up to \$50 million subject to a 1.75x Net Leverage Ratio incurrence test and no default or event of default;
- Changes the interest rate from London Interbank Offered Rate ("LIBOR") plus a margin to Secured Overnight Financing Rate ("SOFR") plus an applicable margin.

The Company borrowed \$50.0 million on the delayed draw term facility on December 28, 2022. The delayed draw term loan is payable in quarterly installments of \$0.25 million beginning December 31, 2023, with the final payment due in August 2026.

Loans under the amended Credit Agreement bear interest at a rate per annum using the SOFR rate subject to a 1.00% floor plus an interest rate margin of 6.50%.

The Company's weighted average interest rate on the borrowings under the amended Credit Agreement as of December 31, 2023 and December 31, 2022 was 12.40% and 10.31%, respectively.

The Credit Agreement contains customary representations, warranties and conditions to borrowing including customary affirmative and negative covenants that limit or restrict the Company's ability to incur indebtedness and other obligations, grant liens to secure obligations, make investments, merge or consolidate, alter the organizational structure of the Company and its subsidiaries, and dispose of assets outside the ordinary course of business, in each case subject to customary exceptions for credit facilities of this size and type.

The Company and certain operating subsidiaries of the Company guarantee the obligations under the Credit Agreement, which also are secured by liens on substantially all of the assets of the Company and its subsidiaries.

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As of December 31, 2023, the Company had \$1.6 million of debt issuance costs related to the amended Credit Agreement, which were capitalized and are recorded as a direct deduction to long-term debt and \$0.3 million in debt issuance costs recorded in other assets on the consolidated balance sheets. As of December 31, 2023, the Company was in compliance with the financial covenants required by the Credit Agreement.

Note 6 - Income Taxes

The components of income before provision for income taxes were as follows (in thousands):

	For the years ended December 31,	
	2023	2022
Domestic	\$ 2,077	\$ 14,051
Foreign	189	142
Total	\$ 2,266	\$ 14,193

The components of the Company's provision for income taxes were as follows (in thousands):

	For the years ended December 31,	
	2023	2022
Current:		
Federal	\$ —	\$ —
State and local	638	808
Foreign	35	75
Total current	673	883
Deferred:		
Federal	(2,550)	(429)
State and local	117	420
Foreign	—	—
Total deferred	(2,433)	(9)
Total provision for income taxes	\$ (1,760)	\$ 874

The Company's effective tax rate differs from the statutory rates as follows:

	For the years ended December 31,	
	2023	2022
Income tax provision at federal statutory rate	21.0%	21.0%
State and local taxes	26.5%	7.6%
FICA tip credit	(151.2)%	(22.5)%
Compensation subject to IRC Section 162(m)	52.3%	8.6%
Equity based compensation	(33.1)%	(9.3)%
Non-controlling interest	6.4%	—%
Other items, net	0.4%	0.8%
Effective income tax rate	(77.7)%	6.2%

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The income tax effects of temporary differences that give rise to significant portions of deferred tax assets and liabilities are as follows (in thousands):

	For the years ended December 31,	
	2023	2022
Deferred tax assets:		
Operating lease liabilities	\$ 23,798	\$ 18,871
Stock compensation	371	415
FICA tip credit carryforward	18,312	13,976
Net operating loss	5,543	3,203
Goodwill	753	906
Inventory	52	20
Charitable contributions carryforward	26	3
Foreign tax credit carryforward	622	622
Deferred revenue	126	190
State and local tax credit carryforward	78	135
Expenses not deductible until paid	83	298
IRC 163(j) disallowed interest carryforward	2,152	483
Debt issuance costs	82	113
Kona Grill related acquisition costs	693	755
Total deferred tax assets	52,691	39,990
Deferred tax liabilities:		
Operating lease right-of-use assets	(17,360)	(13,974)
Depreciation and amortization	(19,888)	(13,064)
Other	(64)	(7)
Total deferred tax liabilities	(37,312)	(27,045)
Valuation allowance	(622)	(622)
Net deferred tax assets	<u>\$ 14,757</u>	<u>\$ 12,323</u>

Tax Carryforwards

As of December 31, 2023, the Company has federal net operating loss (“NOL”) carryforwards of \$25.2 million which have no expiration date. The Company has various state NOL carryforwards. The determination of the state NOL carryforwards is dependent upon apportionment percentages and state laws that can change from year to year and impact the amount of such carryforwards. The state NOLs expire at various dates from 2036 to 2043. The state and local tax credit carryforwards expire at various dates from 2024 through 2029.

In assessing the realizability of deferred tax assets, the Company evaluates whether it is more likely than not that the deferred tax assets will be realized. In the assessment of the valuation allowance, appropriate consideration was given to all positive and negative evidence including current operating results, tax planning strategies and forecasts of future earnings. As of both December 31, 2023 and December 31, 2022, the Company had a valuation allowance of \$0.6 million related to foreign tax credits the Company does not expect to utilize as a result of generating income in a jurisdiction with a higher income tax rate than the U.S.

Uncertain tax positions

The following table summarizes the activity related to the Company’s uncertain tax positions (in thousands):

	For the years ended December 31,	
	2023	2022
Balance, beginning of year	\$ 46	\$ 447
Increase related to current year positions	—	—
Decrease related to prior period positions	(46)	(401)
Balance, end of year	<u>\$ —</u>	<u>\$ 46</u>

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Included in the balance of unrecognized tax benefits as of December 31, 2023 and December 31, 2022, are zero and less than \$0.1 million, respectively, of tax benefits that, if recognized, would result in adjustments to deferred taxes.

The Company is subject to income taxes in the U.S. federal jurisdiction, and the various states and local jurisdictions in which it operates. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. The Company's federal tax filings remain subject to examination for federal tax years 2020 through 2022. The Company's state and local tax filings remain subject to examination for tax years 2019 through 2022. NOL carryforwards are subject to examination regardless of whether the tax year in which they are generated has been closed by statute. The amount subject to disallowance is limited to the NOL utilized. Accordingly, the Company may be subject to examination for prior NOLs generated as such NOLs are utilized.

The Company's foreign income tax returns prior to fiscal year 2020 are closed and management continually evaluates expiring statutes of limitations, audits, proposed settlements, changes in tax law and new authoritative rulings.

Note 7 – Revenue recognition

The following table provides information about contract receivables and liabilities from contracts with customers, which include deferred license revenue, deferred gift card revenue and the Konavore rewards program and deposits from customers for future events (in thousands):

	December 31, 2023	December 31, 2022
Deferred license revenue ⁽¹⁾	218	297
Deferred gift card revenue ⁽²⁾	1,716	1,680
Advanced party deposits ⁽²⁾	361	435
Konavore rewards program ⁽³⁾	177	163

- (1) Includes the current and long-term portion of deferred license revenue which are included in other current liabilities and other long-term liabilities on the consolidated balance sheets.
(2) Deferred gift card revenue and advance party deposits on goods and services yet to be provided are included in deferred gift card revenue and other on the consolidated balance sheets.
(3) Konavore rewards program is included in accrued expenses on the consolidated balance sheets.

Revenue recognized during the period from contract liabilities as of the preceding fiscal year end date is as follows (in thousands):

	December 31, 2023	December 31, 2022
Revenue recognized from deferred license revenue	\$ 79	\$ 79
Revenue recognized from deferred gift card revenue	1,325	1,295
Revenue recognized from advanced party deposits	279	248

The estimated deferred license revenue to be recognized in the future related to performance obligations that are unsatisfied as of December 31, 2023 were as follows for each year ending (in thousands):

2024	\$ 44
2025	44
2026	37
2027	34
2028	34
Thereafter	25

Total future estimated deferred license revenue	\$ 218

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Note 8 – Leases

The components of lease expense for the period were as follows (in thousands):

	December 31, 2023	December 31, 2022
Lease cost		
Operating lease cost	\$ 16,466	\$ 14,587
Finance lease cost		
Amortization of ROU assets	210	59
Interest on lease liabilities	82	25
Total finance lease cost	292	84
Variable lease cost ⁽¹⁾	12,158	11,373
Short-term lease cost	1,114	945
Total lease cost	\$ 30,030	\$ 26,989
Weighted average remaining lease term		
Operating leases	13 years	13 years
Finance leases	4 years	5 years
Weighted average discount rate		
Operating leases	8.74 %	8.40 %
Finance leases	9.17 %	8.96 %

(1) Variable lease cost is comprised of percentage rent and common area maintenance.

The components of finance lease assets and liabilities on the consolidated balance sheet were as follows (in thousands):

	December 31, 2023	December 31, 2022
Finance lease right-of-use assets ⁽¹⁾	\$ 850	\$ 942
Current portion of finance lease liabilities ⁽¹⁾	222	177
Long-term portion of finance lease liabilities ⁽¹⁾	658	754

(1) Finance lease assets and liabilities are included in other assets, other current liabilities, and other long-term liabilities on the consolidated balance sheets.

Supplemental cash flow information related to leases for the period was as follows (in thousands):

	December 31, 2023	December 31, 2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 14,968	\$ 13,297
Operating cash flows from finance leases	\$ 210	\$ 59
Financing cash flows from finance leases	\$ 271	\$ 51
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	\$ 12,699	\$ 5,487
Finance leases	\$ 118	\$ 1,000

The Company has entered into six operating leases for future restaurants that have not commenced as of December 31, 2023. The present value of the aggregate future commitment related to these leases totals \$6.9 million. The Company expects these leases, which have initial lease terms of 10 years, to commence within the next twelve months.

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As of December 31, 2023, maturities of the Company's operating lease liabilities are as follows (in thousands):

2024	\$	10,324
2025		17,373
2026		17,177
2027		17,565
2028		10,192
Thereafter		160,373
Total lease payments		233,004
Less: imputed interest		(105,626)
Present value of operating lease liabilities	\$	<u>127,378</u>

As of December 31, 2023, maturities of the Company's finance lease liabilities are as follows (in thousands):

2024	\$	289
2025		266
2026		266
2027		221
Total lease payments		1,042
Less: imputed interest		(162)
Present value of finance lease liabilities	\$	<u>880</u>

Note 9 – Earnings per share

Basic earnings per share is computed using the weighted average number of common shares outstanding during the period and income available to common stockholders. Diluted earnings per share is computed using the weighted average number of common shares outstanding during the period plus the dilutive effect of all potential shares of common stock including common stock issuable pursuant to stock options, warrants, and restricted stock units.

For the years ended December 31, 2023 and 2022, earnings per share was calculated as follows (in thousands, except earnings per share and related share data):

	Year ended December 31,	
	2023	2022
Net income attributable to The ONE Group Hospitality, Inc.	\$ 4,718	\$ 13,534
Basic weighted average shares outstanding	31,556,437	32,400,515
Dilutive effect of stock options, warrants and restricted share units	731,427	1,471,282
Diluted weighted average shares outstanding	32,287,864	33,871,797
Net income available to common stockholders per share - Basic	\$ 0.15	\$ 0.42
Net income available to common stockholders per share - Diluted	\$ 0.15	\$ 0.40

For the years ended December 31, 2023 and 2022, stock options, warrants and restricted share units totaling 0.5 million and less than 0.1 million, respectively, were determined to be anti-dilutive and were therefore excluded from the calculation of diluted earnings per share.

[Table of Contents](#)**Note 10 – Stockholders’ Equity***Common Stock*

The Company is authorized by its amended and restated certificate of incorporation to issue up to 75.0 million shares of common stock, par value \$0.0001 per share. As of December 31, 2023 and 2022, there are 31.3 million and 31.7 million shares of common stock outstanding, respectively.

Stock Purchase Program

In September 2022, the Company’s Board of Directors authorized a repurchase program of up to \$10.0 million of outstanding common stock. In May 2023, the Company’s Board of Directors authorized an additional \$5.0 million to this program. During the years ended December 31, 2023, and 2022, the Company purchased 1.2 million and 1.1 million shares for aggregate consideration of \$7.9 million and \$7.1 million, respectively. As of December 31, 2023, the Company had completed the repurchase program.

Warrants

During 2023, warrants to purchase 125,000 shares of common stock at an exercise price of \$1.63 per share were exercised. There were no warrants outstanding as of December 31, 2023.

Dividends

The issuance of a dividend is dependent on a variety of factors, including but not limited to, available cash and the overall financial condition of the Company. The issuance of a dividend is also subject to legal restrictions and the terms of the Company’s credit agreement. The Company did not issue dividends related to its common stock in 2023 or 2022.

Preferred Stock

The Company is authorized by its amended and restated certificate of incorporation to issue 10.0 million shares of preferred stock, par value \$0.0001 per share. The Company’s Board may designate the rights, powers and preferences of the preferred stock, which may have superior rights to common shareholders in terms of liquidation and dividend preference, voting and other rights. As of December 31, 2023 and 2022, the Board had not designated the rights of the preferred stock and there were no outstanding shares of preferred stock.

Note 11 – Employee Benefit Plans*Defined Contribution Retirement Plan*

The Company sponsors a qualified defined contribution retirement plan (the “401(k) Plan”) covering all eligible employees, as defined in the 401(k) Plan. The 401(k) Plan allows participating employees to defer the receipt of a portion of their compensation, on a pre-tax or post-tax basis, and contribute such amount to one or more investment options. Employer contributions to the plan are at the discretion of the Company. The Company did not accrue or make any employer contributions in 2023 and 2022.

Equity Incentive Plan

The Company provides equity-based compensation to directors, officers, key employees and other key individuals performing services for the Company under its 2019 Equity Incentive Plan (the “Equity Incentive Plan”). The Equity Incentive Plan provides for the granting of stock options, warrants, restricted stock or other stock-based awards. All awards are required to be approved by the Board or a designated committee of the Board. Options are generally granted with an exercise price equal to fair market value of the Company’s common stock on the date of grant and expire after ten years. Vesting of options and restricted stock can either be based on the passage of time or on the achievement of performance goals. The

Board has the authority to amend, modify or terminate the Equity Incentive Plan, subject to any required approval by the Company's stockholders under applicable law or upon advice of counsel. No such action would affect any options previously granted under the Equity Incentive Plan without the consent of the holders.

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Effective May 18, 2022, the Board and the Company's stockholders approved a 4,500,000 increase to the number of shares of common stock authorized for issuance under the Equity Incentive Plan, bringing the maximum aggregate limit to 11,573,922 shares. As of December 31, 2023, the Company had 3,717,186 shares available for issuance under the Equity Incentive Plan.

Stock-based compensation cost for 2023 and 2022 was \$5.0 million and \$4.0 million, respectively, and is included in general and administrative expenses in the consolidated statements of operations and comprehensive income. Included in stock-based compensation cost was \$0.5 million and \$0.3 million of unrestricted stock granted to directors for 2023 and 2022, respectively. Such grants were awarded consistent with the Board's compensation practices. Stock-based compensation for 2023 and 2022 included \$0.7 million and \$0.2 million of compensation costs for market condition-based restricted stock units ("RSU"). Refer to discussion of CEO RSUs below.

Stock Option Activity

Changes in outstanding stock options during the years ended December 31, 2023 and 2022 were as follows:

	Shares	Weighted average exercise price	Weighted average remaining contractual life	Intrinsic value (thousands)
Outstanding at January 1, 2022	1,252,352	\$ 3.36		
Vested	—	—		
Exercised	(65,000)	2.13		
Cancelled, expired or forfeited	—	—		
Outstanding at December 31, 2022	1,187,352	3.43	2.84 years	\$ 3,811
Vested	-	-		
Exercised	(37,000)	2.87		
Cancelled, expired or forfeited	(476,410)	4.62		
Outstanding at December 31, 2023	673,942	2.35	3.24 years	\$ 2,540

There were no stock options granted in 2023 or 2022.

A summary of the status of the Company's non-vested stock options as of December 31, 2023 and 2022 and changes during the years then ended, is presented below:

	Shares	Weighted average grant date fair value
Non-vested stock options at January 1, 2022	125,667	\$ 1.00
Granted	—	—
Vested	(125,667)	1.00
Cancelled, expired or forfeited	—	—
Non-vested stock options at December 31, 2022	—	\$ —
Granted	—	—
Vested	—	—
Cancelled, expired or forfeited	—	—
Non-vested stock options at December 31, 2023	—	\$ —

The fair value of options that vested in the year ended December 31, 2022 was \$0.1 million.

Restricted Stock Unit Activity

The Company issues restricted stock units under the 2019 Equity Plan. The fair value of RSUs is determined based upon the closing fair market value of the Company's common stock on the grant date, except for the RSUs discussed below.

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Awards granted during September 2022 included 500,000 RSUs awarded to our Chief Executive Officer with both a market condition and time element (“CEO RSUs”). The CEO RSUs may be earned based on achieving common stock price targets within a 48-month period and, if earned, will vest and be settled based on a time element as outlined in the RSU agreement governing the CEO RSUs. To value the CEO RSUs, the Company, with the assistance of a third-party specialist, calculated the fair value of CEO RSUs using the Monte Carlo Simulation, a risk-free rate of 3.31%, a starting common stock value of \$6.95, volatility of 73%, and a standard normal distribution. The Company valued the CEO RSUs at \$2.9 million and will amortize this amount evenly over 48 months. For 2023 and 2022, the Company recorded \$0.7 and \$0.2 million, respectively, of stock-based compensation expense associated with these awards.

A summary of the status of RSUs and changes during the years ended December 31, 2023 and 2022 is presented below:

	Shares	Weighted average grant date fair value
Non-vested RSUs at January 1, 2022	1,690,010	\$ 4.98
Granted	983,147	7.31
Vested	(742,781)	3.82
Cancelled, expired or forfeited	(90,944)	6.38
Non-vested RSUs at December 31, 2022	1,839,432	\$ 6.62
Granted	509,968	7.21
Vested	(851,503)	5.69
Cancelled, expired or forfeited	(102,341)	6.74
Non-vested RSUs at December 31, 2023	1,395,556	\$ 7.49

As of December 31, 2023, the Company had approximately \$8.2 million of total unrecognized compensation costs related to restricted stock awards, which will be recognized over a weighted average period of 2.2 years.

Note 12 – Segment Reporting

The Company has identified its reportable operating segments as follows:

- STK. The STK segment consists of the results of operations from STK restaurant locations, competing in the full-service dining industry, as well as management, license and incentive fee revenue generated from the STK brand and pre-opening expenses associated with new restaurants.
- Kona Grill. The Kona Grill segment includes the results of operations of Kona Grill restaurant locations and pre-opening expenses associated with new restaurants.
- ONE Hospitality. The ONE Hospitality segment is composed of the management, license and incentive fee revenue and results of operations generated from the Company’s other brands and venue concepts, not including STK or Kona Grill, which include Bao Yum, Heliot, Hideout, Radio and Rivershore Bar & Grill. Additionally, this segment includes the results of operations generated from F&B hospitality management agreements with hotels, casinos and other high-end locations.
- Corporate. The Corporate segment consists of the following: general and administrative costs, stock-based compensation, lease termination expenses, transaction costs, COVID-19 related expenses and other income and expenses. This segment also includes STK Meat Market, an e-commerce platform that offers signature steak cuts nationwide, and revenue generated from gift card programs. The Corporate segment’s total assets primarily include cash and cash equivalents, the Kona Grill tradename, and deferred tax assets.

The Company's Chief Executive Officer, who is the Company's Chief Operating Decision Maker, manages the business and allocates resources via a combination of restaurant sales reports and operating segment profit information, defined as revenues less operating expenses, related to the Company's four operating segments.

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Certain financial information relating to the years ended December 31, 2023 and 2022 for each segment is provided below (in thousands).

	STK	Kona Grill	ONE Hospitality	Corporate	Total
For the year ended December 31, 2023					
Total revenues	\$ 198,679	\$ 131,716	\$ 1,999	\$ 375	\$ 332,769
Operating income (loss)	38,890	2,189	187	(31,972)	9,294
Capital asset additions	\$ 28,426	\$ 21,450	\$ 123	\$ 3,551	\$ 53,550
As of December 31, 2023					
Total assets	\$ 153,769	\$ 97,840	\$ 5,868	\$ 59,768	\$ 317,245
For the year ended December 31, 2022					
Total revenues	\$ 187,402	\$ 126,341	\$ 2,344	\$ 551	\$ 316,638
Operating income (loss)	40,343	7,217	1,282	(32,536)	16,306
Capital asset additions	\$ 19,116	\$ 10,496	\$ 139	\$ 2,878	\$ 32,629
As of December 31, 2022					
Total assets	\$ 113,911	\$ 78,691	\$ 5,746	\$ 92,676	\$ 291,024

Note 13 – Geographic Information

Certain financial information by geographic location relating to the years ended December 31, 2023 and 2022 is provided below (in thousands).

	For the year ended December 31,	
	2023	2022
Domestic revenues	\$ 327,627	\$ 311,119
International revenues	5,142	5,519
Total revenues	\$ 332,769	\$ 316,638
	December 31, 2023	December 31, 2022
Domestic long-lived assets	\$ 269,052	\$ 211,143
International long-lived assets	1,513	1,345
Total long-lived assets	\$ 270,565	\$ 212,488

Note 14 – Commitments and Contingencies

The Company is party to claims in lawsuits incidental to its business, including lease disputes and employee-related matters. The Company has recorded accruals in its consolidated financial statements in accordance with ASC 450, Contingencies. While the resolution of a lawsuit, proceeding or claim may have an impact on the Company's financial results for the period in which it is resolved, in the opinion of management, the ultimate outcome of such matters and judgements in which the Company is currently involved, either individually or in the aggregate, will not have a material adverse effect on the Company's consolidated financial position or results of operations.

EXHIBIT F
TO BENIHANA NATIONAL CORP. FRANCHISE DISCLOSURE DOCUMENT

STATEMENT OF PROSPECTIVE FRANCHISEE

**[TO BE COMPLETED BY ALL FRANCHISEES & GUARANTORS BEFORE SIGNING
FRANCHISE AGREEMENT OR ANY EXHIBITS TO THE FRANCHISE AGREEMENT]**

As you know, you and Benihana National Corp. (“BNC”) are preparing to enter into a Franchise Agreement for the establishment and operation of a BENIHANA® Restaurant. The purpose of this Questionnaire is to determine whether any statements or promises were made to you by any BNC employee or representative that BNC has not authorized and that may be untrue, inaccurate, or misleading. Please review each of the following questions carefully and provide honest and complete responses to each question. **The answers you provide in this Questionnaire are material to BNC, and BNC is relying on all such answers in agreeing to enter into a franchise relationship with you.**

1. Have you received and personally reviewed the BNC Franchise Disclosure Document (“FDD”), including all Exhibits attached to the FDD?

Yes _____ No _____
2. Did you sign a receipt for the FDD indicating the date you received it?

Yes _____ No _____
3. Have you received and personally reviewed the BNC Franchise Agreement?

Yes _____ No _____
4. Do you understand all of the information contained in the FDD and the BNC Franchise Agreement?

Yes _____ No _____
5. Has any employee or other person speaking on behalf of BNC made any statement or promise concerning the revenue, profits, or operating costs of BENIHANA Restaurant operated by BNC or its franchisees?

Yes _____ No _____

[Continued on following page]

6. Has any employee or other person purporting to speak on behalf of BNC made any oral, written, visual or other promises, agreements, commitments, representations, understandings, "side deals," options, rights-of-first-refusal or other of type of commitment (collectively, the "representations"), including, but not limited to, any statements that expanded upon or were inconsistent with the FDD, the Franchise Agreement, or any other written documents, with respect to any matter including advertising, marketing, site location and development, operational, marketing, or administrative assistance, exclusive rights, exclusive or protected territory, or otherwise?

Yes____ No____

7. Has any employee or other person speaking on behalf of BNC made any statement or promise regarding the amount of money you may earn in operating a BENIHANA® Restaurant?

Yes____ No____

8. Has any employee or other person speaking on behalf of BNC made any statement or promise concerning the amount of revenue a BENIHANA® Restaurant will generate?

Yes____ No____

9. Has any employee or other person speaking on behalf of BNC made any statement or promise regarding the costs you may incur in operating a BENIHANA® Restaurant that is contrary to, or different from, the information contained in the FDD?

Yes____ No____

10. Has any employee or other person speaking on behalf of BNC made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a BENIHANA® Restaurant?

Yes____ No____

11. Has any employee or other person speaking on behalf of BNC made any statement, promise, or agreement concerning the advertising, marketing, training, support service, or assistance that BNC will furnish to you that is contrary to or different from the information contained in the FDD?

Yes____ No____

[Continued on following page]

12. Has any employee or other person speaking on behalf of BNC made any statement, promise, or agreement, or given you any assurances concerning your ability to obtain the inventory that you may wish to purchase in connection with the operation of a BENIHANA® Restaurant?

Yes____ No____

13. Do you understand that the approval of BNC of a location for a BENIHANA® Restaurant does not constitute an assurance, representation, or warranty of any kind as to the successful operation or profitability of a BENIHANA® Restaurant at the location?

Yes____ No____

14. Do you understand that BNC's approval of a financing plan for operation of a BENIHANA® Restaurant does not constitute any assurance that such financing plan is favorable, or not unduly burdensome, or that a BENIHANA® Restaurant will be successful if the financing plan is implemented?

Yes____ No____

15. Do you understand that, in all dealings with you, the officers, directors, employees, and agents of BNC act only in a representative capacity and not in an individual capacity and such dealings are solely between you and BNC ?

Yes____ No____

16. Do you understand that the purchase of a franchise is a speculative investment, that investment beyond that outlined in the FDD may be required to succeed, that there exists no guaranty against possible loss or failure in this or any other business, and the most important factors in the success of any franchise are your personal business, marketing, sales, and management judgment and skills?

Yes____ No ____

17. Do you understand that the success or failure of your BENIHANA® Restaurant will depend in large part upon your individual skill and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, location, lease terms, your management capabilities, and other economic and business factors beyond the control of BNC?

Yes____ No____

[Continued on following page]

18. I confirm that, as advised, I have had the opportunity to speak with past and/or existing franchisees of BNC, and that I have made the decision as whether to speak with those franchisees and to which I chose to speak.

Initial: _____

If you have answered "Yes" to any of questions 5 through 12, please provide a full explanation by attaching an additional page. You understand that your answers are important to us and that we will rely on them.

If there are any matters inconsistent with the answers I provided in this document, or if anyone has suggested that I sign this document without all of its statements being true, correct and complete, I/we will (a) immediately inform the Franchisor's General Counsel and an officer of the Franchisor and (b) make a written statement regarding such next to my signature below so that the Franchisor may address and resolve any such issue(s) at this time and before either party goes forward.

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions.

PROSPECTIVE FRANCHISEE: (Individual)

By: _____
Print Name: _____

By: _____
Print Name: _____

PROSPECTIVE FRANCHISEE: (Corp., LLC, or Partnership)

Name of Legal Entity:

By: _____
Print Name: _____
Title: _____

EXHIBIT G
TO BENIHANA NATIONAL CORP. FRANCHISE DISCLOSURE DOCUMENT

FORM OF GENERAL RELEASE

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__ by and between Benihana National Corp., a Delaware corporation having its principal place of business located at 1624 Market Street, Suite 311, Denver, Colorado 80202 (the "Franchisor"), and _____, an individual residing at _____ (hereinafter referred to as "Releasor"), wherein the parties hereto, in exchange for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, and in reliance upon the representations, warranties, and comments herein are set forth, do agree as follows:

1. Release by Releasor: Releasor does for itself, its successors and assigns, hereby release and forever discharge generally the Franchisor and any affiliate, wholly owned or controlled corporation, subsidiary, successor or assign thereof and any shareholder, officer, director, employee, or agent of any of them, from any and all claims, demands, damages, injuries, agreements and contracts, indebtedness, accounts of every kind or nature, whether presently known or unknown, suspected or unsuspected, disclosed or undisclosed, actual or potential, which Releasor may now have, or may hereafter claim to have or to have acquired against them of whatever source or origin, arising out of or related to any and all transactions of any kind or character at any time prior to and including the date hereof, including generally any and all claims at law or in equity, those arising under the common law or state or federal statutes, rules or regulations such as, by way of example only, franchising, securities and anti-trust statutes, rules or regulations, in any way arising out of or connected with the Agreement, and further promises never from this day forward, directly or indirectly, to institute, prosecute, commence, join in, or generally attempt to assert or maintain any action thereon against the Franchisor, any affiliate, successor, assign, parent corporation, subsidiary, director, officer, shareholder, employee, agent, executor, administrator, estate, trustee or heir, in any court or tribunal of the United States of America, any state thereof, or any other jurisdiction for any matter or claim arising before execution of this Agreement. If Releasor breaches any of the promises, covenants, or undertakings made herein by any act or omission, Releasor must pay, by way of indemnification, all costs and expenses of the Franchisor caused by the act or omission, including reasonable attorneys' fees.

2. Releasor hereto represents and warrants that no portion of any claim, right, demand, obligation, debt, guarantee, or cause of action released hereby has been assigned or transferred by Releasor party to any other party, firm or entity in any manner including, but not limited to, assignment or transfer by subrogation or by operation of law. If any claim, demand, or suit is made or brought against any released party because of any such purported assignment, transfer or subrogation, the assigning or transferring party agrees to indemnify and hold such released party free and harmless from and against any such claim, demand, or suit, including reasonable costs and attorneys' fees incurred in connection therewith. It is further agreed that this indemnification and hold harmless agreement will not require payment to such claimant as a condition precedent to recovery under this paragraph.

3. Each party acknowledges and warrants that his, her, or its execution of this Agreement is free and voluntary.

4. Florida law will govern the validity and interpretation of this Agreement, as well as the performance due thereunder. This Agreement is binding upon and inures to the benefit of the respective assigns, successors, heirs, and legal representatives of the parties hereto.

5. If any action is filed to interpret any provision of this Agreement, or to enforce any of the terms thereof, the prevailing party shall be entitled to its reasonable attorneys' fees and costs incurred therein, and said action must be filed in a court of competent jurisdiction in Miami-Dade County, Florida.

6. This Agreement may be signed in counterparts, each of which will be binding against the party executing it and considered as the original.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this agreement effective as of the date first above.

Witness:

RELEASOR:

By: _____
Print Name: _____

FRANCHISOR:

BENIHANA NATIONAL CORP.

By: _____
Print Name: _____
Title: _____

EXHIBIT H
TO BENIHANA NATIONAL CORP. FRANCHISE DISCLOSURE DOCUMENT

GUARANTEE OF PERFORMANCE

For value received, **The ONE Group Hospitality, Inc.**, a Delaware corporation (“Guarantor”), located at 1624 Market Street, Suite 311, Denver, Colorado 80202, absolutely and unconditionally guarantees to assume the duties and obligations of **BENIHANA NATIONAL CORP.**, a wholly-owned subsidiary of Guarantor, located at 1624 Market Street, Suite 311, Denver, Colorado 80202 (“Franchisor”), under Franchisor’s franchise registration in each state where the franchise is registered, and under the Franchise Agreement identified in Franchisor’s 2024 Franchise Disclosure Document, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended from time to time. This Guarantee of Performance continues until all such obligations of the Franchisor under its franchise registrations and the Franchise Agreement are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreement has been completely discharged, whichever first occurs. Guarantor is not discharged from liability if a claim by a franchisee against Franchisor remains outstanding. Notice of acceptance is waived. Guarantor does not waive receipt of notice of default on the part of Franchisor. This Guarantee of Performance is binding on Guarantor and its successor and assigns.

Guarantor signs this Guarantee of Performance at Denver, Colorado effective as of October 1, 2024.

Guarantor: **The ONE Group Hospitality, Inc.**

By: _____

Name: _____

Title: _____

TYLER LOY
TREASURER

Receipt

This Disclosure Document summarizes provisions of the Franchise Agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If Benihana National Corp. offers you a franchise, it must provide this Disclosure Document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

[Maryland, New York and Rhode Island require that we give you this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]

[Michigan, Oregon and Washington require that we give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever comes first.]

If Benihana National Corp does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal and state law may have occurred and should be reported to The Federal Trade Commission, Washington D.C. 20580 and the state agency listed on Exhibit A.

The franchisor is Benihana National Corp. located at 1624 Market Street, Suite 311, Denver, Colorado 80202.

Issuance date: October 1, 2024.

The name, principal business address, and telephone number of the Franchise Seller offering this franchise is:

Name: Benihana National Corp.

Business Address: 1624 Market Street, Suite 311, Denver, Colorado 80202

Telephone Number: (305) 702-2805

We authorize the respective state agencies identified on Exhibit A to receive service of process for us in the particular state.

I received a Disclosure Document **dated** _____, **2024**, that included the following Exhibits:

A.	Agents for Service of Process and Regulatory Authorities	E.	Financial Statements
B.	Form of Franchise Agreement	F.	Statement of Prospective Franchisee
C.	List of Current Franchisees	G.	General Release Form
D.	List of Former Franchisees	H.	Guarantee of Performance

Date: _____

(Do not leave blank)

Print Name: _____

individually and as an officer or partner of

a (_____ corporation, limited liability company, or partnership)

Please sign and print your name, date and return one copy of this receipt to Benihana National Corp., and keep the other for your records.

Receipt

This Disclosure Document summarizes provisions of the Franchise Agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If Benihana National Corp. offers you a franchise, it must provide this Disclosure Document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

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individually and as an officer or partner of

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