

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 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: **001-36823**



SHAKE SHACK INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

47-1941186

(IRS Employer
Identification No.)

225 Varick Street

Suite 301

New York, New York

(Address of principal executive offices)

10014

(Zip Code)

(646) 747-7200

(Registrant's telephone number, including area code)

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

Title of each class

Class A Common Stock, par value \$0.001

Trading symbol(s)

SHAK

Name of each exchange on which registered

New York Stock Exchange

Indicate by check mark if 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 and posted pursuant to Rule-405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). ☒ Yes ☐ No

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

Large Accelerated Filer

☒

Non-accelerated filer

☐

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 is a shell company (as defined in Rule 12b-2 of the Act). ☐ Yes ☒ No

As of April 28, 2021, there were 39,103,614 shares of Class A common stock outstanding and 2,921,588 shares of Class B common stock outstanding.

SHAKE SHACK INC.

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Cautionary Note Regarding Forward-Looking Information

This Quarterly Report on Form 10-Q ("Form 10-Q") contains forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which are subject to known and unknown risks, uncertainties and other important factors that may cause actual results to be materially different from the statements made herein. All statements other than statements of historical fact are forward-looking statements. Forward-looking statements discuss our current expectations and projections relating to our financial position, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as "aim," "anticipate," "believe," "estimate," "expect," "forecast," "future," "intend," "outlook," "potential," "project," "projection," "plan," "seek," "may," "could," "would," "will," "should," "can," "can have," "likely," the negatives thereof and other similar expressions.

All forward-looking statements are expressly qualified in their entirety by these cautionary statements. You should evaluate all forward-looking statements made in this Form 10-Q in the context of the risks and uncertainties disclosed in our Annual Report on Form 10-K for the fiscal year ended December 30, 2020 filed with the Securities and Exchange Commission (the "SEC").

The forward-looking statements included in this Form 10-Q are made only as of the date hereof. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements (Unaudited).

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SHAKE SHACK INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(UNAUDITED)

(in thousands, except share and per share amounts)

	March 31 2021	December 30 2020
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 374,999	\$ 146,873
Marketable securities	40,914	36,887
Accounts receivable, net	8,838	9,464
Inventories	2,734	2,888
Prepaid expenses and other current assets	7,805	7,074
Total current assets	435,290	203,186
Property and equipment, net of accumulated depreciation of \$179,226 and \$166,156, respectively	348,580	336,541
Operating lease assets	312,087	306,317
Deferred income taxes, net	299,838	287,007
Other assets	11,794	12,297
TOTAL ASSETS	\$ 1,407,589	\$ 1,145,348
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 24,307	\$ 23,487
Accrued expenses	28,774	25,920
Accrued wages and related liabilities	13,306	10,441
Operating lease liabilities, current	37,275	35,657
Other current liabilities	15,087	14,200
Total current liabilities	118,749	109,705
Long-term debt	242,875	—
Long-term operating lease liabilities	349,670	343,736
Liabilities under tax receivable agreement, net of current portion	234,048	232,954
Other long-term liabilities	22,297	24,460
Total liabilities	967,639	710,855
Commitments and contingencies (Note 13)		
Stockholders' equity:		
Preferred stock, no par value—10,000,000 shares authorized; none issued and outstanding as of March 31, 2021 and December 30, 2020.	—	—
Class A common stock, \$0.001 par value—200,000,000 shares authorized; 39,103,239 and 38,717,790 shares issued and outstanding as of March 31, 2021 and December 30, 2020, respectively.	39	39
Class B common stock, \$0.001 par value—35,000,000 shares authorized; 2,921,588 and 2,951,188 shares issued and outstanding as of March 31, 2021 and December 30, 2020, respectively.	3	3
Additional paid-in capital	400,371	395,067
Retained earnings	13,518	12,209
Accumulated other comprehensive income	2	3
Total stockholders' equity attributable to Shake Shack Inc.	413,933	407,321
Non-controlling interests	26,017	27,172
Total equity	439,950	434,493
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 1,407,589	\$ 1,145,348

See accompanying Notes to Condensed Consolidated Financial Statements.

SHAKE SHACK INC.

CONDENSED CONSOLIDATED STATEMENTS OF INCOME (LOSS)

(UNAUDITED)

(in thousands, except per share amounts)

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Shack sales	\$ 150,668	\$ 138,048
Licensing revenue	4,614	5,122
TOTAL REVENUE	155,282	143,170
Shack-level operating expenses:		
Food and paper costs	44,630	39,564
Labor and related expenses	46,382	41,766
Other operating expenses	23,144	17,779
Occupancy and related expenses	13,911	12,558
General and administrative expenses	19,565	16,191
Depreciation and amortization expense	13,726	11,768
Pre-opening costs	3,576	2,243
Impairment and loss on disposal of assets	369	2,088
TOTAL EXPENSES	165,303	143,957
OPERATING LOSS	(10,021)	(787)
Other income (expense), net	31	(93)
Interest expense	(515)	(112)
LOSS BEFORE INCOME TAXES	(10,505)	(992)
Income tax expense (benefit)	(11,080)	87
NET INCOME (LOSS)	575	(1,079)
Less: net loss attributable to non-controlling interests	(734)	(119)
NET INCOME (LOSS) ATTRIBUTABLE TO SHAKE SHACK INC.	\$ 1,309	\$ (960)
Earnings (loss) per share of Class A common stock:		
Basic	\$ 0.03	\$ (0.03)
Diluted	\$ 0.01	\$ (0.03)
Weighted-average shares of Class A common stock outstanding:		
Basic	38,948	34,444
Diluted	42,789	34,444

See accompanying Notes to Condensed Consolidated Financial Statements.

SHAKE SHACK INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(UNAUDITED)
(in thousands)

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Net income (loss)	\$ 575	\$ (1,079)
Other comprehensive income (loss), net of tax ⁽¹⁾ :		
Change in foreign currency translation adjustment	(1)	1
Net change	(1)	1
OTHER COMPREHENSIVE INCOME (LOSS)	(1)	1
COMPREHENSIVE INCOME (LOSS)	574	(1,078)
Less: comprehensive loss attributable to non-controlling interest	(734)	(119)
COMPREHENSIVE INCOME (LOSS) ATTRIBUTABLE TO SHAKE SHACK INC.	\$ 1,308	\$ (959)

(1) Net of tax expense of \$0 for the thirteen weeks ended March 31, 2021 and March 25, 2020.

See accompanying Notes to Condensed Consolidated Financial Statements.

SHAKE SHACK INC.

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(UNAUDITED)

(in thousands, except share amounts)

For the Thirteen Weeks Ended March 31, 2021 and March 25, 2020										
	Class A Common Stock		Class B Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Non- Controlling Interest	Total Equity	
	Shares	Amount	Shares	Amount						
BALANCE, DECEMBER 30, 2020	38,717,790	\$ 39	2,951,188	\$ 3	\$ 395,067	\$ 12,209	\$ 3	\$ 27,172	\$434,493	
Net income (loss)						1,309		(734)	575	
Other comprehensive income (loss):										
Net change in foreign currency translation adjustment							(1)		(1)	
Equity-based compensation					1,696				1,696	
Activity under stock compensation plans	355,849				3,359			82	3,441	
Redemption of LLC Interests	29,600		(29,600)		36			(36)	—	
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis					213				213	
Distributions paid to non-controlling interest holders								(467)	(467)	
BALANCE, MARCH 31, 2021	39,103,239	\$ 39	2,921,588	\$ 3	\$ 400,371	\$ 13,518	\$ 2	\$ 26,017	\$439,950	
BALANCE, DECEMBER 25, 2019	34,417,302	\$ 35	3,145,197	\$ 3	\$ 244,410	\$ 54,367	\$ 2	\$ 23,168	\$321,985	
Net loss						(960)		(119)	(1,079)	
Other comprehensive income (loss):										
Net change in foreign currency translation adjustment							1		1	
Equity-based compensation					1,313				1,313	
Activity under stock compensation plans	77,903	—			424			(361)	63	
Redemption of LLC Interests	28,195	—	(28,195)	—	195			(195)	—	
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis					628				628	
Distributions paid to non-controlling interest holders								(305)	(305)	
BALANCE, MARCH 25, 2020	34,523,400	\$ 35	3,117,002	\$ 3	\$ 246,970	\$ 53,407	\$ 3	\$ 22,188	\$322,606	

SHAKE SHACK INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(in thousands)

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
OPERATING ACTIVITIES		
Net income (loss) (including amounts attributable to non-controlling interests)	\$ 575	\$ (1,079)
Adjustments to reconcile net income (loss) to net cash provided by operating activities		
Depreciation and amortization expense	13,726	11,768
Amortization of debt issuance costs	86	—
Amortization of cloud computing asset	313	260
Non-cash operating lease cost	12,330	10,742
Equity-based compensation	1,681	1,300
Deferred income taxes	(1,523)	3,775
Non-cash interest expense	337	69
Gain on sale of marketable securities	—	(79)
Impairment and loss on disposal of assets	369	2,088
Unrealized loss on available-for-sale securities	46	356
Other non-cash (income) expense	(1)	183
Changes in operating assets and liabilities:		
Accounts receivable	626	3,150
Inventories	154	306
Prepaid expenses and other current assets	(731)	(439)
Other assets	(216)	(1,039)
Accounts payable	1,474	(4,449)
Accrued expenses	(9,420)	(6,330)
Accrued wages and related liabilities	2,865	(5,113)
Other current liabilities	(158)	273
Long-term operating lease liabilities	(10,754)	(8,755)
Other long-term liabilities	(1,828)	497
NET CASH PROVIDED BY OPERATING ACTIVITIES	9,951	7,484
INVESTING ACTIVITIES		
Purchases of property and equipment	(23,155)	(19,159)
Purchases of marketable securities	(4,073)	(192)
Sales of marketable securities	—	20,000
NET CASH PROVIDED BY (USED IN) INVESTING ACTIVITIES	(27,228)	649
FINANCING ACTIVITIES		
Proceeds from issuance of convertible notes, net of discount	243,750	—
Proceeds from revolving credit facility	—	50,000
Deferred financing costs	(70)	—
Payments on principal of finance leases	(602)	(615)
Distributions paid to non-controlling interest holders	(467)	(305)
Payments under tax receivable agreement	—	(6,569)
Debt issuance costs	(649)	—
Proceeds from stock option exercises	6,451	1,032
Employee withholding taxes related to net settled equity awards	(3,010)	(969)
NET CASH PROVIDED BY FINANCING ACTIVITIES	245,403	42,574
NET INCREASE IN CASH AND CASH EQUIVALENTS	228,126	50,707
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	146,873	37,099
CASH AND CASH EQUIVALENTS AT END OF PERIOD	\$ 374,999	\$ 87,806

See accompanying Notes to Condensed Consolidated Financial Statements.

SHAKE SHACK INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share amounts)

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NOTE 1: NATURE OF OPERATIONS

Shake Shack Inc. was formed on September 23, 2014 as a Delaware corporation for the purpose of facilitating an initial public offering and other related transactions in order to carry on the business of SSE Holdings, LLC and its subsidiaries ("SSE Holdings"). We are the sole managing member of SSE Holdings and, as sole managing member, we operate and control all of the business and affairs of SSE Holdings. As a result, we consolidate the financial results of SSE Holdings and report a non-controlling interest representing the economic interest in SSE Holdings held by the other members of SSE Holdings. As of March 31, 2021 we owned 93.0% of SSE Holdings. Unless the context otherwise requires, "we," "us," "our," "Shake Shack," the "Company" and other similar references, refer to Shake Shack Inc. and, unless otherwise stated, all of its subsidiaries, including SSE Holdings.

We operate and license Shake Shack restaurants ("Shacks"), which serve hamburgers, hot dogs, chicken, crinkle-cut fries, shakes, frozen custard, beer, wine and more. As of March 31, 2021, there were 321 Shacks in operation, system-wide, of which 192 were domestic Company-operated Shacks, 22 were domestic licensed Shacks and 107 were international licensed Shacks. As of March 31, 2021, four domestic Company-operated Shacks and 16 licensed Shacks were temporarily closed, primarily due to the COVID-19 pandemic.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements include the accounts of Shake Shack Inc. and its subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. These interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and on a basis consistent in all material respects with the accounting policies described in our Annual Report on Form 10-K for the fiscal year ended December 30, 2020 ("2020 Form 10-K"). Certain information and footnote disclosures normally presented in annual financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. These interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and related notes thereto included in our 2020 Form 10-K. In our opinion, all adjustments, which are normal and recurring in nature, necessary for a fair presentation of our financial position and results of operation have been included. Operating results for interim periods are not necessarily indicative of the results that may be expected for a full fiscal year.

SSE Holdings is considered a variable interest entity. Shake Shack Inc. is the primary beneficiary as we have the majority economic interest in SSE Holdings and, as the sole managing member, have decision making authority that significantly affects the economic performance of the entity, while the limited partners have no substantive kick-out or participating rights. As a result, we consolidate SSE Holdings. The assets and liabilities of SSE Holdings represent substantially all of our consolidated assets and liabilities with the exception of certain deferred taxes and liabilities under the Tax Receivable Agreement. As of March 31, 2021 and December 30, 2020, the net assets of SSE Holdings were \$380,713 and \$383,669, respectively. The assets of SSE Holdings are subject to certain restrictions in SSE Holdings' revolving credit agreement. See Note 6, Debt, for more information.

Fiscal Year

We operate on a 52/53 week fiscal year ending on the last Wednesday in December. Fiscal 2021 contains 52 weeks and ends on December 29, 2021. Fiscal 2020 contained 53 weeks and ended on December 30, 2020. Unless otherwise stated, references to years in this report relate to fiscal years.

Use of Estimates

The preparation of these condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and

liabilities at the date of the financial statements, and the reported amounts of sales and expenses during the reporting period. Actual results could differ from those estimates.

Recently Adopted Accounting Pronouncements

We adopted the Accounting Standards Updates ("ASUs") summarized below in fiscal 2021.

Accounting Standards Update	Description	Date Adopted
Simplifying the Accounting for Income Taxes (ASU 2019-12)	This standard simplifies various aspects related to accounting for income taxes by removing certain exceptions to the general principles in ASC 740, "Income Taxes" ("ASC 740"), and clarifying certain aspects of the current guidance to promote consistency among reporting entities. The adoption of this standard did not have a material impact to our condensed consolidated financial statements.	December 31, 2020
Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)—Accounting For Convertible Instruments and Contracts in an Entity's Own Equity. (ASU 2020-06)	This ASU amends the guidance on convertible instruments and the derivatives scope exception for contracts in an entity's own equity and improves and amends the related earnings per share guidance for both Subtopics. We elected to early adopt this standard, beginning December 31, 2020. The guidance of this ASU is applicable to our convertible notes issued in March 2021. As a result, the convertible notes are accounted for as a single liability measured at amortized cost. The if-converted earnings per share ("EPS") method is used, with the effect of potential share settlement included in diluted EPS. Refer to Note 6, Debt, for further details of the convertible notes issued.	December 31, 2020

NOTE 3: REVENUE

Revenue Recognition

Revenue consists of Shack sales and Licensing revenue. Generally, revenue is recognized as promised goods or services transfer to the guest or customer in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. Shack revenues are recognized when payment is tendered at the point of sale as the performance obligation has been satisfied.

Revenue from Shack sales is presented net of discounts and recognized when food, beverage and retail products are sold. Sales tax collected from customers is excluded from Shack sales and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Revenue from our gift cards is deferred and recognized upon redemption.

Licensing revenues include initial territory fees, Shack opening fees, and ongoing sales-based royalty fees from licensed Shacks. Generally, the licenses granted to develop, open and operate each Shack in a specified territory are the predominant goods or services transferred to the licensee in our contracts, and represent distinct performance obligations. Ancillary promised services, such as training and assistance during the initial opening of a Shack, are typically combined with the licenses and considered as one performance obligation per Shack. We determine the transaction price for each contract, which is comprised of the initial territory fee, and an estimate of the total Shack opening fees we expect to be entitled to. The calculation of total Shack opening fees included in the transaction price requires judgment, as it is based on an estimate of the number of Shacks we expect the licensee to open. The transaction price is then allocated equally to each Shack expected to open. The performance obligations are satisfied over time, starting when a Shack opens, through the end of the term of the license granted to the Shack. Because we are transferring licenses to access our intellectual property during a contractual term, revenue is recognized on a straight-line basis over the license term. Generally, payment for the initial territory fee is received upon execution of the licensing agreement, and payment for the Shack opening fees are received either in advance of or upon opening the related Shack. These payments are initially deferred and recognized as revenue as the performance obligations are satisfied, which occurs over a long-term period.

Revenue from sales-based royalties is recognized as the related sales occur.

Revenue recognized during the thirteen weeks ended March 31, 2021 and March 25, 2020, disaggregated by type is as follows:

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Shack sales	\$ 150,668	\$ 138,048
Licensing revenue:		
Sales-based royalties	4,425	4,944
Initial territory and opening fees	189	178
Total revenue	\$ 155,282	\$ 143,170

The aggregate amount of the transaction price allocated to performance obligations that are unsatisfied (or partially unsatisfied) as of March 31, 2021 was \$16,748. We expect to recognize this amount as revenue over a long-term period, as the license term for each Shack ranges from 5 to 20 years. This amount excludes any variable consideration related to sales-based royalties.

Contract Balances

Opening and closing balances of contract liabilities and receivables from contracts with customers is as follows:

	March 31 2021	December 31 2020
Shack sales receivables	\$ 5,641	\$ 5,373
Licensing receivables, net of allowance for doubtful accounts	2,420	2,647
Gift card liability	2,600	2,637
Deferred revenue, current	612	608
Deferred revenue, long-term	11,965	12,151

Revenue recognized during the thirteen weeks ended March 31, 2021 and March 25, 2020 that was included in their respective liability balances at the beginning of the period is as follows:

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Gift card liability	\$ 219	\$ 300
Deferred revenue	181	175

NOTE 4: FAIR VALUE MEASUREMENTS

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The carrying value of our Cash and cash equivalents, Accounts receivable, net, Accounts payable and Accrued expenses approximate their fair value due to the short-term nature of these financial instruments.

As of March 31, 2021 and December 30, 2020, we held certain assets that are required to be measured at fair value on a recurring basis including our Marketable securities, which consist of investments in equity securities. Fair value of these investments is measured using Level 1 inputs (unadjusted quoted prices in active markets for identical assets). The carrying value of these investments in equity securities approximates fair value.

Our assets measured at fair value on a recurring basis as of March 31, 2021 and December 30, 2020 were as follows:

	Fair Value Measurements	
	March 31 2021	December 30 2020
	Level 1	Level 1
Equity securities:		
Mutual funds	\$ 40,914	\$ 36,887
Total Marketable securities	\$ 40,914	\$ 36,887

Refer to Note 6, Debt, for the fair value of the Company's outstanding debt instruments.

A summary of Other income (expense) from equity securities recognized during the thirteen weeks ended March 31, 2021 and March 25, 2020 is as follows:

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Equity securities:		
Dividend income	\$ 74	\$ 184
Realized gain (loss) on sale of investments	—	79
Unrealized gain (loss) on equity securities	(46)	(356)
Total	\$ 28	\$ (93)

Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

Assets and liabilities that are measured at fair value on a non-recurring basis include our long-lived assets, operating lease right-of-use assets and indefinite-lived intangible assets. During the thirteen weeks ended March 25, 2020, we recognized an impairment charge of \$1,132 at one location. Of the total impairment charge, \$736 was attributed to property and equipment held and used, \$383 was attributed to operating lease right-of-use assets, and \$13 was attributed to finance lease right-of-use assets. The asset impairment charge was included in Impairment and loss on disposal of assets on the Condensed Consolidated Statement of Income (Loss). The fair values of assets were determined using an income-based approach and are classified as Level 3 within the fair value hierarchy. Significant inputs include projections of future cash flows, discount rates, Shack sales and profitability. There were no impairment charges recognized during the thirteen weeks ended March 31, 2021.

NOTE 5: SUPPLEMENTAL BALANCE SHEET INFORMATION

The components of Other current liabilities as of March 31, 2021 and December 30, 2020 are as follows:

	March 31 2021	December 30 2020
Sales tax payable	\$ 4,045	\$ 4,285
Gift card liability	2,600	2,637
Current portion of financing equipment lease liabilities	2,445	1,998
Other	5,997	5,280
Other current liabilities	\$ 15,087	\$ 14,200

The components of Other long-term liabilities as of March 31, 2021 and December 30, 2020 are as follows:

	March 31 2021	December 30 2020
Deferred licensing revenue	\$ 11,965	\$ 12,151
Long-term portion of financing equipment lease liabilities	4,056	3,586
Other ⁽¹⁾	6,276	8,723
Other long-term liabilities	\$ 22,297	\$ 24,460

(1) As of March 31, 2021, Other included \$3,359 of deferred lease incentive liabilities related to leases with variable lease cost as well as \$2,607 of deferred Social Security taxes associated with the Coronavirus Aid, Relief, and Economic Security Act.

NOTE 6: DEBT

Revolving Credit Facility

In August 2019, we entered into a revolving credit facility agreement ("Revolving Credit Facility"), which permits borrowings up to \$50,000, of which the entire amount is available immediately, with the ability to increase available borrowings up to an additional \$100,000, to be made available subject to satisfaction of certain conditions. The Revolving Credit Facility also permits the issuance of letters of credit upon our request of up to \$15,000.

In March 2020, we drew down the full \$50,000 available under the Revolving Credit Facility to enhance liquidity and financial flexibility given the uncertain market conditions created by the COVID-19 pandemic. We repaid this amount in full, plus interest, in June 2020.

In May 2020, we entered into a first amendment to the Revolving Credit Facility ("First Amendment"), which, among other things, provided for modified financial covenant compliance requirements for a period of time. The First Amendment required us to maintain minimum liquidity of \$25,000 through July 1, 2021 and outstanding borrowings during the applicable period covered by the First Amendment bore interest at either: (i) the London Interbank Offered Rate ("LIBOR") plus a percentage ranging from 1.0% to 2.5% or (ii) the base rate plus a percentage ranging from 0.0% to 1.5%, in each case depending on our net lease adjusted leverage ratio.

In March 2021, we entered into a second amendment to the Revolving Credit Facility ("Second Amendment"). The Second Amendment modified the applicable covenants and restrictions in the Credit Agreement to permit the incurrence of the Convertible Notes (as defined below), including obligations and transactions in connection therewith. In addition, the Second Amendment, among other things, (i) extended the period applicable to the increased interest rate margin as set forth in the First Amendment; (ii) shortened the maturity date of the Revolving Credit Facility from August 2024 to September 2022 and (iii) added mechanics relating to the transition from the use of LIBOR to the Secured Overnight Financing Rate ("SOFR") upon the discontinuance or unavailability of LIBOR.

Subsequently, and also in March 2021, we entered into a third amendment to the Revolving Credit Facility ("Third Amendment") with JPMorgan Chase Bank, N.A. (as successor agent to Wells Fargo Bank, National Association), as administrative agent, and

the lenders party thereto. In addition, in March 2021, Wells Fargo Bank resigned as administrative agent under the Revolving Credit Facility and assigned its commitments thereunder to JPMorgan Bank, N.A. The Third Amendment appoints JPMorgan Bank, N.A. as administrative agent under the Revolving Credit Facility. In addition, the Third Amendment, among other things, extends the maturity date of the Revolving Credit Facility from September 2022 to March 2026. As of March 31, 2021 and December 30, 2020, no amounts were outstanding under the Revolving Credit Facility.

The obligations under the Revolving Credit Facility are secured by a first-priority security interest in substantially all of the assets of SSE Holdings and the guarantors. The obligations under the Revolving Credit Facility are guaranteed by each of SSE Holdings' direct and indirect subsidiaries (with certain exceptions).

The Revolving Credit Facility requires us to comply with maximum net lease adjusted leverage and minimum fixed charge coverage ratios. We are not subject to these coverage ratios for a period of time due to the Second Amendment to the Revolving Credit Facility described above. In addition, the Revolving Credit Facility contains other customary affirmative and negative covenants, including those which (subject to certain exceptions and dollar thresholds) limit our ability to incur debt; incur liens; make investments; engage in mergers, consolidations, liquidations or acquisitions; dispose of assets; make distributions on or repurchase equity securities; engage in transactions with affiliates; and prohibits us, with certain exceptions, from engaging in any line of business not related to our current line of business. As of March 31, 2021, we were in compliance with all covenants.

As of March 31, 2021, the Revolving Credit Facility had unamortized deferred financing costs of \$110, and was included in Other assets on the Condensed Consolidated Balance Sheet. Total interest expense related to the Revolving Credit Facility were \$368 and \$52 for the thirteen weeks ended March 31, 2021 and March 25, 2020, respectively. Total interest expense for the thirteen weeks ended March 31, 2021 primarily included write-off of previously capitalized costs on the Revolving Credit Facility.

Convertible Notes

In March 2021, we issued \$225,000 aggregate principal amount of 0% Convertible Senior Notes due 2028 (the "Convertible Notes") in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933. We granted an option to the initial purchasers to purchase up to an additional \$25,000 aggregate principal amount of Convertible Notes to cover over-allotments, which was subsequently fully exercised during March 2021, resulting in a total issuance of \$250,000 aggregate principal amount of Convertible Notes. The Convertible Notes will mature on March 1, 2028, unless earlier converted, redeemed or repurchased in certain circumstances. Upon conversion, we pay or deliver, as the case may be, cash, shares of Shake Shack's Class A common stock or a combination of cash and shares of Shake Shack's Class A common stock, at our election.

The Convertible Notes are convertible at the option of the holders at any time prior to the close of business on the business day immediately preceding December 1, 2027, only under the following circumstances: (1) during any fiscal quarter commencing after the fiscal quarter ending on June 30, 2021 (and only during such fiscal quarter), if the last reported sale price of our Class A common stock, par value \$0.001 per share, for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price for the Convertible Notes on each applicable trading day; (2) during the five business day period after any ten consecutive trading day period (the "measurement period") in which the trading price (as defined in the Indenture) per \$1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of Class A common stock and the conversion rate for the Convertible Notes on each such trading day; (3) if we call such Convertible Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date, but only with respect to the Convertible Notes called (or deemed called) for redemption; and (4) upon the occurrence of specified corporate events as set forth in the Indenture. On or after December 1, 2027, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders of the Convertible Notes may convert all or any portion of their Convertible Notes at any time, regardless of the foregoing circumstances.

The Convertible Notes had an initial conversion rate of 5.8679 shares of Shake Shack's Class A common stock per \$1,000 principal amount of Convertible Notes, which is equivalent to an initial conversion price of approximately \$170.42 per share of Shake Shack's Class A common stock.

We may not redeem the Convertible Notes prior to March 6, 2025. We may redeem for cash all or any portion of the Convertible Notes, at our option, on or after March 6, 2025 if the last reported sale price of Shake Shack's Class A common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30

consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which we provide notice of redemption at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid special interest, if any, to, but excluding, the redemption date.

In addition, if we undergo a fundamental change (as defined in the indenture governing the Convertible Notes), subject to certain conditions, holders may require us to repurchase for cash all or any portion of their Convertible Notes at a repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid special interest, if any, to, but excluding, the fundamental change repurchase date. In addition, following certain corporate events that occur prior to the maturity date of the Convertible Notes or if we deliver a notice of redemption in respect of some or all of the Convertible Notes, we will, in certain circumstances, increase the conversion rate of the Convertible Notes for a holder who elects to convert our Convertible Notes in connection with such a corporate event or convert our Convertible Notes called (or deemed called) for redemption during the related redemption period, as the case may be.

Contemporaneously with the issuance of the Convertible Notes, Shake Shack Inc. entered into an intercompany note with SSE Holdings, LLC ("Intercompany Note"). SSE Holdings promises to pay Shake Shack, Inc., for value received, the principal amount with interest of the Intercompany Note in March 2028. Shake Shack Inc. will exercise its right to convert the Intercompany Note to maintain at all times a one-to-one ratio between the number of common units, directly or indirectly, by Shake Shack Inc and the aggregate number of outstanding shares of common stock.

As of March 31, 2021, the Convertible Notes had a gross principal balance of \$250,000 and a balance of \$242,875, net of unamortized discount and debt issuance costs of \$7,125. As of March 31, 2021, the unamortized balance of discount and debt issuance costs was recorded as a contra-liability and netted with Long-term debt on the Condensed Consolidated Balance Sheets and was being amortized as interest expense using the effective interest method. Total amortization expense was \$86 for the thirteen weeks ended March 31, 2021 and was included in Interest expense in the Condensed Consolidated Statements of Income (Loss). In connection with the Convertible Notes, we also incurred costs of \$236, including consulting and advisory fees, in the thirteen weeks ended March 31, 2021 and was included in General and administrative expense in the Condensed Consolidated Statements of Income (Loss).

At March 31, 2021, the fair value of the Convertible Notes was approximately \$248,125, based on external pricing data, including available quoted market prices of these instruments, and consideration of comparable debt instruments with similar interest rates and trading frequency, among other factors, and is classified as a Level 2 measurement within the fair value hierarchy.

NOTE 7: LEASES

Nature of Leases

We currently lease all of our domestic Company-operated Shacks, our home office and certain equipment under various non-cancelable lease agreements that expire on various dates through 2037. We evaluate contracts entered into to determine whether the contract involves the use of property or equipment, which is either explicitly or implicitly identified in the contract. We evaluate whether we control the use of the asset, which is determined by assessing whether we obtain substantially all economic benefits from the use of the asset, and whether we have the right to direct the use of the asset. If these criteria are met and we have identified a lease, we account for the contract under the requirements of Accounting Standards Codification Topic 842 ("ASC 842").

Upon the possession of a leased asset, we determine its classification as an operating or finance lease. Our real estate leases are classified as operating leases and most of our equipment leases are classified as finance leases. Generally, our real estate leases have initial terms ranging from 10 to 15 years and typically include two five-year renewal options. Renewal options are generally not recognized as part of the right-of-use assets and lease liabilities as it is not reasonably certain at commencement date that we would exercise the options to extend the lease. Our real estate leases typically provide for fixed minimum rent payments and/or contingent rent payments based upon sales in excess of specified thresholds. When the achievement of such sales thresholds are deemed to be probable, contingent rent is accrued in proportion to the sales recognized during the period. Fixed minimum rent payments are recognized on a straight-line basis over the lease term from the date we take possession of the leased property. Lease expense incurred before a Shack opens is recorded in Pre-opening costs on the Condensed Consolidated Statements of Income (Loss). Once a domestic Company-operated Shack opens, we record the straight-line lease

expense and any contingent rent, if applicable, in Occupancy and related expenses on the Condensed Consolidated Statements of Income (Loss). Many of our leases also require us to pay real estate taxes, common area maintenance costs and other occupancy costs which are included in Occupancy and related expenses on the Condensed Consolidated Statements of Income (Loss).

As there are no explicit rates provided in our leases, we use our incremental borrowing rate in determining the present value of future lease payments. The discount rate used to measure the lease liability is derived from the average of the yield curves obtained from using the notching method and the recovery rate method. The most significant assumption in calculating the incremental borrowing rate is our credit rating and is subject to judgment. We determined our credit rating based on a comparison of the financial information of SSE Holdings to other public companies and then used their respective credit ratings to develop our own.

We expend cash for leasehold improvements to build out and equip our leased premises. Generally, a portion of the leasehold improvements and building costs are reimbursed by our landlords as landlord incentives pursuant to agreed-upon terms in our lease agreements. If obtained, landlord incentives usually take the form of cash, full or partial credits against our future minimum or contingent rents otherwise payable by us, or a combination thereof. In most cases, landlord incentives are received after we take possession of the property, as we meet required milestones during the construction of the property. We include these amounts in the measurement of the initial operating lease liability, which are also reflected as a reduction to the initial measurement of the right-of-use asset.

A summary of finance and operating lease right-of-use assets and liabilities as of March 31, 2021 and December 30, 2020 is as follows:

	Classification	March 31 2021	December 30 2020
Finance leases	Property and equipment, net	\$ 6,315	\$ 5,409
Operating leases	Operating lease assets	312,087	306,317
Total right-of-use assets		\$ 318,402	\$ 311,726
Finance leases:			
	Other current liabilities	\$ 2,445	\$ 1,998
	Other long-term liabilities	4,056	3,586
Operating leases:			
	Operating lease liabilities, current	37,275	35,657
	Long-term operating lease liabilities	349,670	343,736
Total lease liabilities		\$ 393,446	\$ 384,977

The components of lease expense for the thirteen weeks ended March 31, 2021 and March 25, 2020 was as follows:

	Classification	Thirteen Weeks Ended	
		March 31 2021	March 25 2020
Finance lease cost:			
Amortization of right-of-use assets	Depreciation expense	\$ 613	\$ 577
Interest on lease liabilities	Interest expense	54	55
Operating lease cost	Occupancy and related expenses		
	Pre-opening costs	12,330	10,742
	General and administrative expenses		
Short-term lease cost	Occupancy and related expenses	82	124
Variable lease cost	Occupancy and related expenses		
	Pre-opening costs		
	General and administrative expenses	2,851	3,730
Total lease cost		\$ 15,930	\$ 15,228

As of March 31, 2021, future minimum lease payments for finance and operating leases consisted of the following:

	Finance Leases	Operating Leases
2021	\$ 2,023	\$ 35,013
2022	2,183	53,111
2023	1,326	56,121
2024	689	55,896
2025	438	54,853
Thereafter	289	246,023
Total minimum payments	6,948	501,017
Less: imputed interest	447	114,072
Total lease liabilities	\$ 6,501	\$ 386,945

As of March 31, 2021 we had additional operating lease commitments of \$55,964 for non-cancelable leases without a possession date, which will begin to commence in 2021. These lease commitments are consistent with the leases that we have executed thus far.

A summary of lease terms and discount rates for finance and operating leases as of March 31, 2021 and December 30, 2020 is as follows:

	March 31 2021	December 30 2020
Weighted-average remaining lease term (years):		
Finance leases	5.5	5.2
Operating leases	9.6	9.7
Weighted-average discount rate:		
Finance leases	3.5 %	3.6 %
Operating leases	3.9 %	4.2 %

Supplemental cash flow information related to leases for the thirteen weeks ended March 31, 2021 and March 25, 2020 is as follows:

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from finance leases	54	\$ 55
Operating cash flows from operating leases	11,825	11,329
Financing cash flows from finance leases	602	559
Right-of-use assets obtained in exchange for lease obligations:		
Finance leases	1,518	716
Operating leases	11,095	28,035

NOTE 8: NON-CONTROLLING INTERESTS

We are the sole managing member of SSE Holdings and, as a result, consolidate the financial results of SSE Holdings. We report a non-controlling interest representing the economic interest in SSE Holdings held by the other members of SSE Holdings. The Third Amended and Restated Limited Liability Company Agreement, as further amended, (the "LLC Agreement") of SSE Holdings provides that holders of LLC Interests may, from time to time, require SSE Holdings to redeem all or a portion of their LLC Interests for newly-issued shares of Class A common stock on a one-for-one basis. In connection with any redemption or

exchange, we will receive a corresponding number of LLC Interests, increasing our total ownership interest in SSE Holdings. Changes in our ownership interest in SSE Holdings while we retain our controlling interest in SSE Holdings will be accounted for as equity transactions. As such, future redemptions or direct exchanges of LLC Interests in SSE Holdings by the other members of SSE Holdings will result in a change in ownership and reduce the amount recorded as non-controlling interest and increase additional paid-in capital.

The following table summarizes the ownership interest in SSE Holdings as of March 31, 2021 and December 30, 2020.

	March 31, 2021		December 30, 2020	
	LLC Interests	Ownership%	LLC Interests	Ownership %
Number of LLC Interests held by Shake Shack Inc.	39,103,239	93.0 %	38,717,790	92.9 %
Number of LLC Interests held by non-controlling interest holders	2,921,588	7.0 %	2,951,188	7.1 %
Total LLC Interests outstanding	42,024,827	100.0 %	41,668,978	100.0 %

The weighted average ownership percentages for the applicable reporting periods are used to attribute Net income (loss) and Other comprehensive income (loss) to Shake Shack Inc. and the non-controlling interest holders. The non-controlling interest holders' weighted average ownership percentage for the thirteen weeks ended March 31, 2021 and March 25, 2020 was 7.0% and 8.4%, respectively.

The following table summarizes the effects of changes in ownership of SSE Holdings on our equity during the thirteen weeks ended March 31, 2021 and March 25, 2020.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Net income (loss) attributable to Shake Shack Inc.	\$ 1,309	\$ (960)
Transfers (to) from non-controlling interests:		
Increase in additional paid-in capital as a result of the redemption of LLC Interests	36	195
Increase (decrease) in additional paid-in capital as a result of activity under stock compensation plans and the related income tax effect	3,359	424
Total effect of changes in ownership interest on equity attributable to Shake Shack Inc.	\$ 4,704	\$ (341)

The following table summarizes redemptions of LLC Interests activity during the thirteen weeks ended March 31, 2021 and March 25, 2020.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Redemption and acquisition of LLC Interests		
Number of LLC Interests redeemed by non-controlling interest holders	29,600	28,195
Number of LLC Interests received by Shake Shack Inc.	29,600	28,195
Issuance of Class A common stock		
Shares of Class A common stock issued in connection with redemptions of LLC Interests	29,600	28,195
Cancellation of Class B common stock		
Shares of Class B common stock surrendered and canceled	29,600	28,195

During the thirteen weeks ended March 31, 2021 and March 25, 2020, we received an aggregate of 355,849 and 77,903 LLC Interests, respectively, in connection with the activity under our stock compensation plan.

NOTE 9: EQUITY-BASED COMPENSATION

A summary of equity-based compensation expense recognized during the thirteen weeks ended March 31, 2021 and March 25, 2020 is as follows:

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Stock options	\$ 20	\$ 261
Performance stock units	414	413
Restricted stock units	1,247	626
Equity-based compensation expense	\$ 1,681	\$ 1,300
Total income tax benefit recognized related to equity-based compensation	\$ 67	\$ 36

Equity-based compensation expense is included in General and administrative expenses and Labor and related expenses on the Condensed Consolidated Statements of Income (Loss) during the thirteen weeks ended March 31, 2021 and March 25, 2020 as follows:

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
General and administrative expenses	\$ 1,541	\$ 1,214
Labor and related expenses	140	86
Equity-based compensation expense	\$ 1,681	\$ 1,300

NOTE 10: INCOME TAXES

We are the sole managing member of SSE Holdings and, as a result, consolidate the financial results of SSE Holdings. SSE Holdings is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, SSE Holdings is not subject to U.S. federal and certain state and local income taxes. Any taxable income or loss generated by SSE Holdings is passed through to and included in the taxable income or loss of its members, including us, on a pro rata basis. We are subject to U.S. federal income taxes, in addition to state and local income taxes with respect to our allocable share of any taxable income or loss of SSE Holdings, as well as any stand-alone income or loss generated by Shake Shack Inc. We are also subject to withholding taxes in foreign jurisdictions.

Our effective income tax rates for the thirteen weeks ended March 31, 2021 and March 25, 2020 were 105.5% and (8.8)%, respectively. The increase was primarily driven by lower pre-tax book income resulting in a loss, causing tax credits and windfall tax benefits related to equity-based compensation to have an increasing effect on the tax rate, as well as a reduction of a valuation allowance. Additionally, an increase in our ownership interest in SSE Holdings increases our share of the taxable income (loss) of SSE Holdings. Our weighted-average ownership interest in SSE Holdings was 93.0% and 91.6% for the thirteen weeks ended March 31, 2021 and March 25, 2020, respectively.

Deferred Tax Assets and Liabilities

During the thirteen weeks ended March 31, 2021, we acquired an aggregate of 385,449 LLC Interests in connection with the redemption of LLC Interests, and activity relating to our stock compensation plan. We recognized a deferred tax asset in the amount of \$10,204 associated with the basis difference in our investment in SSE Holdings upon acquisition of these LLC Interests. As of March 31, 2021, the total deferred tax asset related to the basis difference in our investment in SSE Holdings was \$142,867. However, a portion of the total basis difference will only reverse upon the eventual sale of our interest in SSE Holdings, which we expect would result in a capital loss. As of March 31, 2021, the total valuation allowance established against the deferred tax asset to which this portion relates was \$1,260.

During the thirteen weeks ended March 31, 2021, we also recognized \$300 of deferred tax assets related to additional tax basis increases generated from expected future payments under the Tax Receivable Agreement and related deductions for imputed interest on such payments. See "Tax Receivable Agreement," herein for more information.

We evaluate the realizability of our deferred tax assets on a quarterly basis and establish valuation allowances when it is more likely than not that all or a portion of a deferred tax asset may not be realized. As of March 31, 2021, we concluded, based on the weight of all available positive and negative evidence, that all of our deferred tax assets (except for those deferred tax assets described above relating to basis differences that are expected to result in a capital loss upon eventual sale of our interest in SSE Holdings, New York City UBT credits and certain foreign tax credits) are more likely than not to be realized. As such, no additional valuation allowance was recognized.

Tax Receivable Agreement

Pursuant to our election under Section 754 of the Internal Revenue Code (the "Code"), we expect to obtain an increase in our share of the tax basis in the net assets of SSE Holdings when LLC Interests are redeemed or exchanged by the other members of SSE Holdings. We plan to make an election under Section 754 of the Code for each taxable year in which a redemption or exchange of LLC Interest occurs. We intend to treat any redemptions and exchanges of LLC Interests as direct purchases of LLC Interests for U.S. federal income tax purposes. These increases in tax basis may reduce the amounts that we would otherwise pay in the future to various tax authorities. They may also decrease gains (or increase losses) on future dispositions of certain capital assets to the extent tax basis is allocated to those capital assets.

On February 4, 2015, we entered into a tax receivable agreement with certain of the then-existing members of SSE Holdings (the "Tax Receivable Agreement") that provides for the payment by us of 85% of the amount of any tax benefits that we actually realize, or in some cases are deemed to realize, as a result of (i) increases in our share of the tax basis in the net assets of SSE Holdings resulting from any redemptions or exchanges of LLC Interests, (ii) tax basis increases attributable to payments made under the Tax Receivable Agreement, and (iii) deductions attributable to imputed interest pursuant to the Tax Receivable Agreement (the "TRA Payments"). We expect to benefit from the remaining 15% of any tax benefits that we may actually realize. The TRA Payments are not conditioned upon any continued ownership interest in SSE Holdings or us. The rights of each member of SSE Holdings that is a party to the Tax Receivable Agreement, are assignable to transferees of their respective LLC Interests.

During the thirteen weeks ended March 31, 2021, we acquired an aggregate of 29,600 LLC Interests in connection with the redemption of LLC Interests, which resulted in an increase in the tax basis of our investment in SSE Holdings subject to the provisions of the Tax Receivable Agreement. We recognized an additional liability in the amount of \$1,094 for the TRA Payments due to the redeeming members, representing 85% of the aggregate tax benefits we expect to realize from the tax basis increases related to the redemption of LLC Interests, after concluding it was probable that such TRA Payments would be paid based on our estimates of future taxable income. During the thirteen weeks ended March 31, 2021 and March 25, 2020, payments of \$0 and \$6,569, inclusive of interest, were made to the parties to the Tax Receivable Agreement, respectively. As of March 31, 2021, the total amount of TRA Payments due under the Tax Receivable Agreement, was \$234,048. See Note 13, Commitments and Contingencies, for more information relating to our liabilities under the Tax Receivable Agreement.

NOTE 11: EARNINGS (LOSS) PER SHARE

The following table sets forth reconciliations of the numerators and denominators used to compute basic and diluted earnings (loss) per share of Class A common stock (in thousands, except per share amounts) for the thirteen weeks ended March 31, 2021 and March 25, 2020.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Numerator:		
Net income (loss) attributable to Shake Shack Inc.—basic	\$ 1,309	\$ (960)
Reallocation of net loss attributable to non-controlling interests from the assumed conversion of Class B shares	(734)	—
Net income (loss) attributable to Shake Shack Inc.—diluted	\$ 575	\$ (960)
Denominator:		
Weighted-average shares of Class A common stock outstanding—basic	38,948	34,444
Effect of dilutive securities:		
Stock options	232	—
Performance stock units	53	—
Restricted stock units	164	—
Convertible Notes	451	—
Shares of Class B common stock	2,941	—
Weighted-average shares of Class A common stock outstanding—diluted	42,789	34,444
Earnings (loss) per share of Class A common stock—basic	\$ 0.03	\$ (0.03)
Earnings (loss) per share of Class A common stock—diluted	\$ 0.01	\$ (0.03)

Shares of our Class B common stock do not share in the earnings or losses of Shake Shack and are therefore not participating securities. As such, separate presentation of basic and diluted earnings (loss) per share of Class B common stock under the two-class method has not been presented. However, shares of our Class B common stock outstanding for the period are considered potentially dilutive shares of Class A common stock under application of the if-converted method and are included in the computation of diluted earnings (loss) per share, except when the effect would be antidilutive.

The following table presents potentially dilutive securities, as of the end of the period, excluded from the computations of diluted earnings (loss) per share of Class A common stock for the thirteen weeks ended March 31, 2021 and March 25, 2020.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Stock options	1,698 (1)	847,207 (3)
Performance stock units	51,974 (2)	179,253 (3)
Restricted stock units	—	264,431 (3)
Shares of Class B common stock	—	3,117,002 (3)

(1) Number of securities outstanding at the end of the period that were excluded from the computation of diluted earnings (loss) per share of Class A common stock because the exercise price of the stock options exceeded the average market price of our Class A common stock during the period ("out-of-the-money").

(2) Number of securities outstanding at the end of the period that were excluded from the computation of diluted earnings (loss) per share of Class A common stock because the performance conditions associated with these awards were not met assuming the end of the reporting period was the end of the performance period.

(3) Number of securities outstanding at the end of the period that were excluded from the computation of diluted earnings (loss) per share of Class A common stock because the effect would have been anti-dilutive.

NOTE 12: SUPPLEMENTAL CASH FLOW INFORMATION

The following table sets forth supplemental cash flow information for the thirteen weeks ended March 31, 2021 and March 25, 2020:

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Cash paid for:		
Income taxes, net of refunds	\$ 388	\$ 801
Interest, net of amounts capitalized	70	61
Non-cash investing activities:		
Accrued purchases of property and equipment	12,949	13,715
Capitalized equity-based compensation	9	13
Non-cash financing activities:		
Revolving Credit Facility amendment-related accrual	112	—
Convertible Notes issuance-related accrual	312	—
Establishment of liabilities under tax receivable agreement	1,094	310

NOTE 13: COMMITMENTS AND CONTINGENCIES

Lease Commitments

We are obligated under various operating leases for Shacks and our home office space, expiring in various years through 2037. Under certain of these leases, we are liable for contingent rent based on a percentage of sales in excess of specified thresholds and are typically responsible for our proportionate share of real estate taxes, common area maintenance costs and other occupancy costs. See Note 7, Leases.

As security under the terms of one of our leases, we are obligated under a letter of credit totaling \$130 as of March 31, 2021, which expires in February 2026. Additionally, in September 2017, we entered into a letter of credit in conjunction with our new home office lease in the amount of \$603, which expires in August 2021 and renews automatically for one-year periods through January 31, 2034.

Purchase Commitments

Purchase obligations include legally binding contracts, including commitments for the purchase, construction or remodeling of real estate and facilities, firm minimum commitments for inventory purchases, equipment purchases, marketing-related contracts, software acquisition/license commitments and service contracts. These obligations are generally short-term in nature and are recorded as liabilities when the related goods are received or services rendered. We also enter into long-term, exclusive contracts with certain vendors to supply us with food, beverages and paper goods, obligating us to purchase specified quantities.

Legal Contingencies

In March 2020, a claim was filed against Shake Shack alleging certain violations of the Fair Labor Standards Act. At a mediation between the parties, we agreed to settle the matter with the plaintiff and other employees who elect to participate in the settlement for \$595. As of March 31, 2021, an accrual in the amount of \$595 was recorded for this matter and related expenses.

In February 2018, a claim was filed against Shake Shack in California state court alleging certain violations of the California Labor Code. At a mediation between the parties, we agreed to settle the matter with the plaintiff and all other California employees who elect to participate in the settlement for \$1,200. As of March 31, 2021, an accrual in the amount of \$1,180 was recorded for this matter and related expenses.

We are subject to various legal proceedings, claims and liabilities, such as employment-related claims and slip and fall cases, which arise in the ordinary course of business and are generally covered by insurance. As of March 31, 2021, the amount of the ultimate liability with respect to these matters was not material.

Liabilities under Tax Receivable Agreement

As described in Note 10, Income Taxes, we are a party to the Tax Receivable Agreement under which we are contractually committed to pay certain of the members of SSE Holdings 85% of the amount of any tax benefits that we actually realize, or in some cases are deemed to realize, as a result of certain transactions. We are not obligated to make any payments under the Tax Receivable Agreement until the tax benefits associated with the transactions that gave rise to the payments are realized. Amounts payable under the Tax Receivable Agreement are contingent upon, among other things, (i) generation of future taxable income over the term of the Tax Receivable Agreement and (ii) future changes in tax laws. If we do not generate sufficient taxable income in the aggregate over the term of the Tax Receivable Agreement to utilize the tax benefits, then we would not be required to make the related TRA Payments. During the thirteen weeks ended March 31, 2021 and March 25, 2020, we recognized liabilities totaling \$1,094 and \$310, respectively, relating to our obligations under the Tax Receivable Agreement, after concluding that it was probable that we would have sufficient future taxable income over the term of the Tax Receivable Agreement to utilize the related tax benefits. As of March 31, 2021 and December 30, 2020, our total obligations under the Tax Receivable Agreement were \$234,048 and \$232,954, respectively. There were no transactions subject to the Tax Receivable Agreement for which we did not recognize the related liability, as we concluded that we would have sufficient future taxable income to utilize all of the related tax benefits.

NOTE 14: RELATED PARTY TRANSACTIONS

Union Square Hospitality Group

The Chairman of our Board of Directors serves as the Chief Executive Officer of Union Square Hospitality Group, LLC. As a result, Union Square Hospitality Group, LLC and its subsidiaries, set forth below, are considered related parties.

Hudson Yards Sports and Entertainment

In fiscal 2011, we entered into a Master License Agreement (as amended, "MLA") with Hudson Yards Sports and Entertainment LLC ("HYSE") to operate Shake Shack branded limited menu concession stands in sports and entertainment venues within the United States. In February 2019, the agreement was assigned to Hudson Yards Catering ("HYC"), the parent of HYSE. The agreement expires in January 2027 and includes five consecutive five-year renewal options at HYC's option. As consideration for these rights, HYC pays us a license fee based on a percentage of net food sales, as defined in the MLA. HYC also pays us a percentage of profits on sales of branded beverages, as defined in the MLA.

		Thirteen Weeks Ended	
		March 31 2021	March 25 2020
	Classification		
Amounts received from HYC	Licensing revenue	\$ —	\$ 22
		March 31 2021	December 30 2020
	Classification		
Amounts due from HYC	Accounts Receivable	\$ —	\$ 8

Madison Square Park Conservancy

The Chairman of our Board of Directors serves as a director of the Madison Square Park Conservancy ("MSP Conservancy"), with which we have a license agreement and pay license fees to operate our Madison Square Park Shack. No amounts were due to MSP Conservancy as of both March 31, 2021 and December 30, 2020.

		Thirteen Weeks Ended	
		March 31 2021	March 25 2020
Classification			
Amounts paid to MSP Conservancy	Occupancy and related expenses	\$ 215	\$ 219

Olo, Inc.

The Chairman of our Board of Directors serves as a director of Olo, Inc. (formerly known as "Mobo Systems, Inc."), a platform we use in connection with our mobile ordering application. No amounts were due to Olo as of both March 31, 2021 and December 30, 2020.

		Thirteen Weeks Ended	
		March 31 2021	March 25 2020
Classification			
Amounts paid to Olo	Other operating expenses	\$ 147	\$ 52

Square, Inc.

Our Chief Executive Officer is a member of the Board of Directors of Square, Inc. ("Square"). We currently use certain point-of-sale applications, payment processing services, hardware and other enterprise platform services in connection with the processing of a limited amount of sales at certain of our locations, sales for certain off-site events and in connection with our kiosk technology.

		Thirteen Weeks Ended	
		March 31 2021	March 25 2020
Classification			
Amounts paid to Square	Other operating expenses	\$ 462	\$ 571

		Thirteen Weeks Ended	
		March 31 2021	March 25 2020
Classification			
Amounts due to Square	Accounts Payable	\$ 9	\$ —

USHG Acquisition Corp.

Our Chief Executive Officer has been appointed to the board of directors of USHG Acquisition Corp. in which the Chairman of our Board of Directors serves as the chairman of the board of directors of USHG Acquisition Corp. USHG Acquisition Corp. is a newly organized blank check company incorporated for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities. No amounts were due to or due from USHG Acquisition Corp as of both March 31, 2021 and December 30, 2020.

Tax Receivable Agreement

As described in Note 10, Income Taxes, we entered into a Tax Receivable Agreement with certain members of SSE Holdings that provides for the payment by us of 85% of the amount of tax benefits, if any, that Shake Shack actually realizes or in some cases is deemed to realize as a result of certain transactions.

		Thirteen Weeks Ended	
Classification		March 31 2021	March 25 2020
Amounts paid to members (inclusive of interest)	Other current liabilities	\$ —	\$ 6,569
Classification		March 31 2021	December 30 2020
Amounts due under the Tax Receivable Agreement	Other current liabilities Liabilities under tax receivable agreement, net of current portion	\$ 234,048	\$ 232,954

Distributions to Members of SSE Holdings

Under the terms of the SSE Holdings LLC Agreement, SSE Holdings is obligated to make tax distributions to its members. No tax distributions were payable to non-controlling interest holders as of March 31, 2021 and December 30, 2020, respectively.

		Thirteen Weeks Ended	
Classification		March 31 2021	March 25 2020
Amounts paid to non-controlling interest holders	Non-controlling interests	\$ 467	\$ 305

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

This section and other parts of this Quarterly Report on Form 10-Q ("Form 10-Q") contain forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which are subject to known and unknown risks, uncertainties and other important factors that may cause actual results to be materially different from the statements made herein. All statements other than statements of historical fact are forward-looking statements. Forward-looking statements discuss our current expectations and projections relating to our financial position, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to any historical or current facts. These statements may include words such as "aim," "anticipate," "believe," "estimate," "expect," "forecast," "future," "intend," "outlook," "potential," "project," "projection," "plan," "seek," "may," "could," "would," "will," "should," "can," "can have," "likely," the negatives thereof and other similar expressions. All forward-looking statements are expressly qualified in their entirety by these cautionary statements. You should evaluate all forward-looking statements made in this Form 10-Q in the context of the risks and uncertainties disclosed in our Annual Report on Form 10-K for the fiscal year ended December 30, 2020 ("2020 Form 10-K"). The forward-looking statements included in this Form 10-Q are made only as of the date hereof. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

The following discussion should be read in conjunction with our 2020 Form 10-K and the condensed consolidated financial statements and notes thereto included in Part I, Item 1 of this Form 10-Q. All information presented herein is based on our fiscal calendar. Unless otherwise stated, references to particular years, quarters, months or periods refer to our fiscal years and the associated quarters, months and periods of those fiscal years.

OVERVIEW

Shake Shack is a modern day "roadside" burger stand serving a classic American menu of premium burgers, chicken sandwiches, hot dogs, crinkle cut fries, shakes, frozen custard, beer and wine. As of March 31, 2021, there were 321 Shacks in operation system-wide, of which 192 were domestic Company-operated Shacks, 22 were domestic licensed Shacks and 107 were international licensed Shacks.

Recent Developments and Trends

We have experienced continued positive momentum in the business during the first quarter of 2021, and through April 28 ("fiscal April"), all while continuing to support our Shack teams, our guests and the communities in which we operate during the COVID-19 pandemic. With COVID cases stabilizing and more regions steadily loosening restrictions, we are optimistic that improving trends can continue for our industry. With a continued prioritization on health and safety, we have steadily re-opened dining rooms under modified operations to meet public health guidelines and evolving customer behaviors and expectations.

Same-Shack sales continued to improve across all regions, up 5.7% in the first quarter 2021, when compared to down 17.4% in the fourth quarter 2020, with performance driven by increases in in-Shack dining in both urban and suburban Shacks, combined with high levels of digital sales retention. Same-Shack sales in fiscal April were up 86% compared to the same period last year. As of the end of fiscal April 2021, the vast majority of Shacks were operating with open dining rooms, the majority of which continue to remain under varying levels of capacity restrictions, especially in urban Shacks. The Company continues to experience recovery across urban and suburban markets, however many major urban markets, such as Manhattan, remain materially below pre-COVID levels, while office, events and tourism traffic return.

Average weekly sales were \$64,000 in the first quarter of 2021. Fiscal February was heavily impacted by severe winter weather, resulting in average weekly sales of \$60,000, followed by a significant improvement to \$68,000 in fiscal March, and continuing through fiscal April with \$69,000. This continued improvement was driven by a substantial increase in in-Shack sales, as well as a high retention of digital sales.

During the first quarter of 2021, total digital sales, including orders placed on the Shake Shack app, website and third-party delivery platforms, represented 60% of Shack sales. Fiscal January and February digital mix was 64% and 62% of Shack sales, respectively, driven largely by increased delivery due to bad weather across large portions of the United States. Digital sales mix decreased to 54% of Shack sales in fiscal March and 51% of Shack sales in fiscal April, driven by an increase in in-Shack dining as the weather improved and parts of the country continued to re-open. Encouragingly, while in-Shack dining continues to increase, there continues to be a high level of digital sales retention with 90% of fiscal January's digital sales retained in fiscal April. Company-owned app and web channels continued to perform well in the first quarter 2021, with 2.4 million first-time purchasers between mid-March of 2020 and the end of fiscal March 2021, and over 230% year-over-year sales growth, when compared to the first quarter 2020.

Licensing revenue for the first quarter of 2021 was \$4.6 million, reflecting a decrease of 9.9% versus the same period last year. We did, however, see improvement in total weekly sales performance throughout the quarter, with sales recovery led by improvements in both our international and domestic licensed Shacks, particularly in airports which are experiencing increases in Transportation Security Administration ("TSA") flight traffic.

Development Highlights

During the first quarter 2021, we opened ten new domestic Company-operated Shacks and two new international licensed Shacks. These openings were partially offset by the closure of one domestic Company-operated Shack and one international licensed Shack.

Location	Type	Opening Date
Kuwait City, Kuwait — Waterfront	International Licensed	1/28/2021
Plymouth Meeting, PA — Plymouth Meeting	Domestic Company-Operated	2/4/2021
Nanuet, NY — Nanuet	Domestic Company-Operated	2/8/2021
Dubai, UAE — First Avenue Mall, Motor City	International Licensed	2/11/2021
Ardmore, PA — Suburban Square	Domestic Company-Operated	2/19/2021
Towson, MD — Towson	Domestic Company-Operated	2/20/2021
Woburn, MA — Woburn	Domestic Company-Operated	3/1/2021
Huntersville, NC — Huntersville	Domestic Company-Operated	3/2/2021
Nashville, TN — Downtown Nashville	Domestic Company-Operated	3/4/2021
New York, NY — Bryant Park	Domestic Company-Operated	3/22/2021
Boulder, CO — Boulder	Domestic Company-Operated	3/26/2021
Hoboken, NJ — Hoboken	Domestic Company-Operated	3/29/2021

As of May 6, 2021, we have opened another five domestic Company-operated Shacks, and expect a total of 16 to 18 openings by the mid-year point. Though our rate of recovery and development plans continue to be impacted by the ongoing uncertainty due to COVID, we are aiming to open a total of between 35 and 40 new domestic Company-operated Shacks, and 15 to 20 new licensed Shacks, in fiscal 2021.

Liquidity Update

In March 2021, we issued \$225 million aggregate principal amount of 0% Convertible Senior Notes due 2028 (the “Convertible Notes”) in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933. We granted an option to the initial purchasers to purchase up to an additional \$25 million aggregate principal amount of Convertible Notes to cover over-allotments, which was subsequently fully exercised during March 2021, resulting in a total issuance of \$250 million aggregate principal amount of Convertible Notes. The Convertible Notes will mature on March 1, 2028, unless earlier converted, redeemed or repurchased in certain circumstances. Upon conversion, we pay or deliver, as the case may be, cash, shares of Shake Shack’s Class A common stock or a combination of cash and shares of Shake Shack’s Class A common stock, at our election.

Financial Highlights for the First Quarter 2021

- **Total revenue** in the first quarter 2021 increased 8.5% to \$155.3 million versus the same period last year.
- **Shack sales** in the first quarter 2021 increased 9.1% to \$150.7 million versus the same period last year. Total Shack sales improved further in fiscal April with an increase of 171% versus the same period last year.
- **Same-Shack sales¹** improved to up 5.7% in the first quarter 2021 versus the same period last year. In fiscal April, Same-Shack sales continued to recover, with an increase of 86% versus the same period last year.
- **Licensed revenue** in the first quarter 2021 decreased 9.9% to \$4.6 million versus the same period last year.
- **Shack system-wide sales** in the first quarter 2021 increased 3.0% to \$228.3 million, versus the same period last year.
- **Operating loss** in the first quarter 2021 was \$10.0 million compared to an operating loss of \$0.8 million in the same period last year.
- **Shack-level operating profit²** decreased 14.3% to \$22.6 million, or 15.0% of Shack sales in the first quarter 2021, versus the same period last year.
- **Net income** was \$0.6 million and **adjusted EBITDA²** was \$7.1 million in the first quarter 2021, compared to a net loss of \$1.1 million and adjusted EBITDA of \$14.3 million in the same period last year.
- **Net income attributable to Shake Shack Inc.** was \$1.3 million and **adjusted pro forma net income²** was \$1.8 million, or \$0.04 per fully exchanged and diluted share in the first quarter 2021, compared to net loss attributable to Shake Shack Inc. of \$1.0 million and adjusted pro forma net income of \$0.8 million, or \$0.02 per fully exchanged and diluted share, in the same period last year.

- **Net system-wide Shack openings**, comprised of nine net domestic Company-operated Shacks and one net licensed Shack.
- **Cash and marketable securities on hand** was \$415.9 million as of March 31, 2021.

¹In order to compare like-for-like periods for fiscal 2021, same-Shack sales will compare the 52 weeks from December 31, 2020 through December 29, 2021 to the 52 weeks from January 2, 2020 through December 30, 2020. For Q1 2021, same-Shack sales compares the thirteen weeks from December 31, 2020 through March 31, 2021 to the thirteen weeks from January 2, 2021 through April 1, 2021.

²This represents a non-GAAP measure. Reconciliations to the most directly comparable financial measures presented in accordance with GAAP are set forth in the schedules within "Non-GAAP Financial Measures," herein.

RESULTS OF OPERATIONS

The following table summarizes our results of operations for the thirteen weeks ended March 31, 2021 and March 25, 2020:

	Thirteen Weeks Ended					
	March 31 2021		March 25 2020			
<i>(dollar amounts in thousands)</i>						
Shack sales	\$	150,668	97.0 %	\$	138,048	96.4 %
Licensing revenue		4,614	3.0 %		5,122	3.6 %
TOTAL REVENUE		155,282	100.0 %		143,170	100.0 %
Shack-level operating expenses ⁽¹⁾ :						
Food and paper costs		44,630	29.6 %		39,564	28.7 %
Labor and related expenses		46,382	30.8 %		41,766	30.3 %
Other operating expenses		23,144	15.4 %		17,779	12.9 %
Occupancy and related expenses		13,911	9.2 %		12,558	9.1 %
General and administrative expenses		19,565	12.6 %		16,191	11.3 %
Depreciation and amortization expense		13,726	8.8 %		11,768	8.2 %
Pre-opening costs		3,576	2.3 %		2,243	1.6 %
Impairment and loss on disposal of assets		369	0.2 %		2,088	1.5 %
TOTAL EXPENSES		165,303	106.5 %		143,957	100.5 %
OPERATING LOSS		(10,021)	(6.5)%		(787)	(0.5)%
Other income (expense), net		31	— %		(93)	(0.1)%
Interest expense		(515)	(0.3)%		(112)	(0.1)%
LOSS BEFORE INCOME TAXES		(10,505)	(6.8)%		(992)	(0.7)%
Income tax expense (benefit)		(11,080)	(7.1)%		87	0.1 %
NET INCOME (LOSS)		575	0.4 %		(1,079)	(0.8)%
Less: net loss attributable to non-controlling interests		(734)	(0.5)%		(119)	(0.1)%
NET INCOME (LOSS) ATTRIBUTABLE TO SHAKE SHACK INC.	\$	1,309	0.8 %	\$	(960)	(0.7)%

(1) As a percentage of Shack sales.

Shack Sales

Shack sales represent the aggregate sales of food, beverages and Shake Shack branded merchandise at our domestic Company-operated Shacks. Shack sales in any period are directly influenced by the number of operating weeks in such period, the number of open Shacks and same-Shack sales. Same-Shack sales means, for any reporting period, sales performance at our Company-operated domestic Shacks that have been open for at least 24 months.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Shack sales	\$ 150,668	\$ 138,048
Percentage of total revenue	97.0 %	96.4 %
Dollar change compared to prior year	\$ 12,620	
Percentage change compared to prior year	9.1 %	

Shack sales during the thirteen weeks ended March 31, 2021 increased 9.1% from the same prior-year period, primarily driven by the opening of 25 net new domestic Company-operated Shacks between March 25, 2020 and March 31, 2021, and to a lesser extent, an increase in same-Shack sales.

Same-Shack sales continued to improve across all regions, and increased 5.7% for the first quarter of 2021, compared to down 17.4% in the fourth quarter of 2020, with performance driven by increases in in-Shack dining in both urban and suburban Shacks, combined with high levels of digital sales retention. The increase in first quarter 2021 same-Shack sales was due to a price and sales mix increase of 18.0% — a combination of our end-of-year price increase in December, increased pricing on third-party delivery channels which rolled out over the early part of this fiscal year, and a higher number of items per check, particularly in our digital channels — partially offset by a 12.3% decrease in guest traffic. For the purpose of calculating same-Shack sales growth, Shack sales for 123 Shacks were included in the comparable Shack base as of the end of the first quarter of 2021 versus 90 Shacks for the first quarter of 2020.

Licensing Revenue

Licensing revenue is comprised of license fees, opening fees for certain licensed Shacks and territory fees. License fees are calculated as a percentage of sales and territory fees are payments for the exclusive right to develop Shacks in a specific geographic area.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Licensing revenue	\$ 4,614	\$ 5,122
Percentage of total revenue	3.0 %	3.6 %
Dollar change compared to prior year	\$ (508)	
Percentage change compared to prior year	(9.9)%	

Licensed revenue for the thirteen weeks ended March 31, 2021 decreased 9.9% to \$4.6 million versus the same prior-year period, primarily due to reduced sales related to the COVID-19 pandemic, partially offset by a net increase of 9 Shacks opened between March 25, 2020 and March 31, 2021. As of the end of the first quarter 2021, 16 licensed Shacks remained temporarily closed due to COVID. Through the first quarter of 2021, we did, however, see improvement in total weekly sales performance throughout the quarter, with sales recovery led by improvements in both our international and domestic licensed Shacks, particularly in airports which are experiencing increases in TSA flight traffic.

Food and Paper Costs

Food and paper costs include the direct costs associated with food, beverage and packaging of our menu items. The components of Food and paper costs are variable by nature, change with sales volume, are impacted by menu mix and fluctuations in commodity costs, as well as geographic scale and proximity.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Food and paper costs	\$ 44,630	\$ 39,564
Percentage of Shack sales	29.6 %	28.7 %
Dollar change compared to prior year	\$ 5,066	
Percentage change compared to prior year	12.8 %	

The increase in Food and paper costs for the thirteen weeks ended March 31, 2021 was primarily due to the opening of 25 net new domestic Company-operated Shacks between March 25, 2020 and March 31, 2021, as well as increased paper and packaging costs and beef costs.

Labor and Related Expenses

Labor and related expenses include domestic Company-operated Shack-level hourly and management wages, bonuses, payroll taxes, equity-based compensation, workers' compensation expense and medical benefits. As we expect with other variable expense items, we expect labor costs to grow as our Shack sales grow. Factors that influence labor costs include minimum wage and payroll tax legislation, health care costs, size and location of the Shack and the performance of our domestic Company-operated Shacks.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Labor and related expenses	\$ 46,382	\$ 41,766
Percentage of Shack sales	30.8 %	30.3 %
Dollar change compared to prior year	\$ 4,616	
Percentage change compared to prior year	11.1 %	

The increase in Labor and related expenses for the thirteen weeks ended March 31, 2021 was primarily due to our annual wage rate increase, higher payroll taxes at the state level, and a more normalized level of performance related bonuses, including the impact of the opening of 25 net new domestic Company-operated Shacks between March 25, 2020 and March 31, 2021.

As a percentage of Shack sales, the increase in Labor and related expenses for the thirteen weeks ended March 31, 2021 was primarily due to our annual wage increase, a more normalized level of performance related bonuses and new Shack openings at higher levels of labor, partially offset by an increase in labor productivity at existing Shacks.

Other Operating Expenses

Other operating expenses consist of Shack-level repairs and maintenance, utilities and other operating expenses incidental to operating our domestic Company-operated Shacks, such as delivery commissions, credit card fees, non-perishable supplies, and business insurance.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Other operating expenses	\$ 23,144	\$ 17,779
Percentage of Shack sales	15.4 %	12.9 %
Dollar change compared to prior year	\$ 5,365	
Percentage change compared to prior year	30.2 %	

The increase in Other operating expenses for the thirteen weeks ended March 31, 2021 was primarily due to the opening of 25 net new domestic Company-operated Shacks between March 25, 2020 and March 31, 2021 and higher delivery commission as a result of digital growth.

As a percentage of Shack sales, the increase in Other operating expenses for the thirteen weeks ended March 31, 2021 was primarily due to higher delivery commissions as a result of digital growth.

Occupancy and Related Expenses

Occupancy and related expenses consist of Shack-level occupancy expenses (including rent, common area expenses and certain local taxes), and exclude occupancy expenses associated with unopened Shacks, which are recorded separately in Pre-opening costs.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Occupancy and related expenses	\$ 13,911	\$ 12,558
Percentage of Shack sales	9.2 %	9.1 %
Dollar change compared to prior year	\$ 1,353	
Percentage change compared to prior year	10.8 %	

The increase in Occupancy and related expenses for the thirteen weeks ended March 31, 2021 was primarily due to the opening of 25 net new domestic Company-operated Shacks between March 25, 2020 and March 31, 2021.

As a percentage of Shack sales, Occupancy and related expenses for the thirteen weeks ended March 31, 2021 was relatively consistent with the same-prior year period, and continues to be impacted by sales deleverage, particularly in our high-volume urban Shacks.

General and Administrative Expenses

General and administrative expenses consist of costs associated with home office and administrative functions that support Shack development and operations, as well as equity-based compensation expense.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
General and administrative expenses	\$ 19,565	\$ 16,191
Percentage of total revenue	12.6 %	11.3 %
Dollar change compared to prior year	\$ 3,374	
Percentage change compared to prior year	20.8 %	

The increase in General and administrative expenses for the thirteen weeks ended March 31, 2021 was primarily due to continued investment across the business, including an increase in headcount to support the strategic growth plan, and increased investments in marketing and our digital initiatives.

As a percentage of total revenue, the increase in General and administrative expenses for the thirteen weeks ended March 31, 2021 was primarily due primarily to drivers described above.

Depreciation and Amortization Expense

Depreciation and amortization expense primarily consists of the depreciation of fixed assets, including leasehold improvements and equipment, as well as financing equipment lease assets.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Depreciation and amortization expense	\$ 13,726	\$ 11,768
Percentage of total revenue	8.8 %	8.2 %
Dollar change compared to prior year	\$ 1,958	
Percentage change compared to prior year	16.6 %	

The increase in Depreciation and amortization expense for the thirteen weeks ended March 31, 2021 was primarily due to incremental depreciation of capital expenditures related to the opening of 25 net new domestic Company-operated Shacks between March 25, 2020 and March 31, 2021 and increased technology investments to support our digital initiatives.

As a percentage of total revenue, the increase in Depreciation and amortization expense for the thirteen weeks ended March 31, 2021 was primarily due to the aforementioned items.

Pre-Opening Costs

Pre-opening costs consist primarily of legal fees, rent, managers' salaries, training costs, employee payroll and related expenses, costs to relocate and compensate Shack management teams prior to an opening and wages, travel and lodging costs for our opening training team and other supporting team members. All such costs incurred prior to the opening of a domestic Company-operated Shack are expensed in the period in which the expense was incurred. Pre-opening costs can fluctuate significantly from period to period, based on the number and timing of domestic Company-operated Shack openings and the specific pre-opening costs incurred for each domestic Company-operated Shack. Additionally, domestic Company-operated Shack openings in new geographic market areas may initially experience higher pre-opening costs than our established geographic market areas, such as the New York City metropolitan area, where we have greater economies of scale and incur lower travel and lodging costs for our training team.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Pre-opening costs	\$ 3,576	\$ 2,243
Percentage of total revenue	2.3 %	1.6 %
Dollar change compared to prior year	\$ 1,333	
Percentage change compared to prior year	59.4 %	

The increase in Pre-opening costs for the thirteen weeks ended March 31, 2021 was due to the increased fiscal 2021 development pipeline for new domestic Company-operated Shacks, including those expected to open in the first half of the fiscal year.

Impairment and Loss on Disposal of Assets

Impairment and loss on disposal of assets include impairment charges related to our long-lived assets, which includes property and equipment, as well as operating and finance lease assets. Additionally, Impairment and loss on disposal of assets includes the net book value of assets that have been retired and consists primarily of furniture, equipment and fixtures that were replaced in the normal course of business.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Impairment and loss on disposal of assets	\$ 369	\$ 2,088
Percentage of total revenue	0.2 %	1.5 %
Dollar change compared to prior year	\$ (1,719)	
Percentage change compared to prior year	(82.3)%	

The decrease in Impairment and loss on disposal of assets for the thirteen weeks ended March 31, 2021 was primarily due to asset impairment charges of \$1.1 million in the first quarter of 2020 related to the impairment of one Shack. In addition, loss on disposal of assets decreased due to several Shack renovations in fiscal 2020.

Other Income (Expense), Net

Other income (expense), net consists of adjustments to liabilities under our Tax Receivable Agreement, dividend income, interest income and net unrealized and realized gains and losses from the sale of marketable securities.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Other income (expense), net	\$ 31	\$ (93)
Percentage of total revenue	— %	(0.1)%
Dollar change compared to prior year	\$ 124	
Percentage change compared to prior year	(133.3)%	

The increase in Other income (expense), net for the thirteen weeks ended March 31, 2021 was primarily due to a decline in unrealized losses related to our investments in marketable securities, partially offset by a decrease in dividend income.

Interest Expense

Interest expense primarily consists of interest and fees on our Revolving Credit Facility, imputed interest related to our financing equipment leases, amortization of deferred financing costs, and interest on the current portion of our liabilities under the Tax Receivable Agreement.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Interest expense	\$ (515)	\$ (112)
Percentage of total revenue	(0.3)%	(0.1)%
Dollar change compared to prior year	\$ (403)	
Percentage change compared to prior year	359.8 %	

The increase in Interest expense was primarily due to the write-off of previously capitalized costs of \$0.3 million associated with the amendment of our Revolving Credit Facility in March 2021. Refer to Note 6, Debt, for further details.

Income Tax Expense (Benefit)

We are the sole managing member of SSE Holdings, and as a result, consolidate the financial results of SSE Holdings. SSE Holdings is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, SSE Holdings is not subject to U.S. federal and certain state and local income taxes. Any taxable income or loss generated by SSE Holdings is passed through to and included in the taxable income or loss of its members, including us, on a pro rata basis. We are subject to U.S. federal income taxes, in addition to state and local income taxes with respect to our allocable share of any taxable income or loss of SSE Holdings, as well as any stand-alone income or loss generated by Shake Shack Inc. We are also subject to withholding taxes in foreign jurisdictions.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Income tax expense (benefit)	\$ (11,080)	\$ 87
Percentage of total revenue	(7.1)%	0.1 %
Dollar change compared to prior year	\$ (11,167)	
Percentage change compared to prior year	(12,835.6)%	

Our effective income tax rates for the thirteen weeks ended March 31, 2021 and March 25, 2020 were 105.5% and (8.8)%, respectively. The increase was primarily driven by lower pre-tax book income resulting in a loss, causing tax credits and windfall tax benefits related to equity-based compensation to have an increasing effect on the tax rate, as well as a reduction of a valuation allowance. Additionally, an increase in our ownership interest in SSE Holdings increases our share of the taxable income (loss) of SSE Holdings. Our weighted-average ownership interest in SSE Holdings was 93.0% and 91.6% for the thirteen weeks ended March 31, 2021 and March 25, 2020, respectively.

Net Loss Attributable to Non-Controlling Interests

We are the sole managing member of SSE Holdings and have the sole voting power in, and control the management of, SSE Holdings. Accordingly, we consolidate the financial results of SSE Holdings and report a non-controlling interest on our Condensed Consolidated Statements of Income (Loss), representing the portion of Net income (loss) attributable to the other members of SSE Holdings. The Third Amended and Restated Limited Liability Company Agreement of SSE Holdings provides that holders of LLC Interests may, from time to time, require SSE Holdings to redeem all or a portion of their LLC Interests for newly-issued shares of Class A common stock on a one-for-one basis. In connection with any redemption or exchange, we will receive a corresponding number of LLC Interests, increasing our total ownership interest in SSE Holdings. The weighted average ownership percentages for the applicable reporting periods are used to attribute net income (loss) and other comprehensive income to Shake Shack Inc. and the non-controlling interest holders.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Net loss attributable to non-controlling interests	\$ (734)	\$ (119)
Percentage of total revenue	(0.5)%	(0.1)%
Dollar change compared to prior year	\$ (615)	
Percentage change compared to prior year	516.8 %	

The increase in Net loss attributable to non-controlling interests for the thirteen weeks ended March 31, 2021 was primarily due to an increase in net loss for SSE Holdings for the period, partially offset by a decrease in the non-controlling interest holders' weighted average ownership, which was 7.0% and 8.4% for the thirteen weeks ended March 31, 2021 and March 25, 2020, respectively.

NON-GAAP FINANCIAL MEASURES

To supplement the condensed consolidated financial statements, which are prepared and presented in accordance with U.S. GAAP, we use the following non-GAAP financial measures: Shack-level operating profit, Shack-level operating profit margin, EBITDA, adjusted EBITDA, adjusted EBITDA margin, adjusted pro forma net income and adjusted pro forma earnings per fully exchanged and diluted share (collectively the "non-GAAP financial measures").

Shack-Level Operating Profit

Shack-level operating profit is defined as Shack sales less Shack-level operating expenses including Food and paper costs, Labor and related expenses, Other operating expenses and Occupancy and related expenses.

How This Measure Is Useful

When used in conjunction with GAAP financial measures, Shack-level operating profit and Shack-level operating profit margin are supplemental measures of operating performance that the Company believes are useful measures to evaluate the performance and profitability of its Shacks. Additionally, Shack-level operating profit and Shack-level operating profit margin are key metrics used internally by management to develop internal budgets and forecasts, as well as assess the performance of its Shacks relative to budget and against prior periods. It is also used to evaluate employee compensation as it serves as a metric in certain performance-based employee bonus arrangements. The Company believes presentation of Shack-level operating profit and Shack-level operating profit margin provides investors with a supplemental view of its operating performance that can provide meaningful insights to the underlying operating performance of the Shacks, as these measures depict the operating results that are directly impacted by the Shacks and exclude items that may not be indicative of, or are unrelated to, the ongoing operations of the Shacks. It may also assist investors to evaluate the Company's performance relative to peers of various sizes and maturities and provides greater transparency with respect to how management evaluates the business, as well as the financial and operational decision-making.

Limitations of the Usefulness of this Measure

Shack-level operating profit and Shack-level operating profit margin may differ from similarly titled measures used by other companies due to different methods of calculation. Presentation of Shack-level operating profit and Shack-level operating profit margin is not intended to be considered in isolation or as a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP. Shack-level operating profit excludes certain costs, such as General and administrative expenses and Pre-opening costs, which are considered normal, recurring cash operating expenses and are essential to support the operation and development of the Company's Shacks. Therefore, this measure may not provide a complete understanding of the Company's operating results as a whole and Shack-level operating profit and Shack-level operating profit margin should be reviewed in conjunction with the Company's GAAP financial results. A reconciliation of Shack-level operating profit to Operating loss, the most directly comparable GAAP financial measure, is set forth below.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Operating loss	\$ (10,021)	\$ (787)
Less:		
Licensing revenue	4,614	5,122
Add:		
General and administrative expenses	19,565	16,191
Depreciation and amortization expense	13,726	11,768
Pre-opening costs	3,576	2,243
Impairment and loss on disposal of assets ⁽¹⁾	369	2,088
Shack-level operating profit	\$ 22,601	\$ 26,381
Total revenue	\$ 155,282	\$ 143,170
Less: licensing revenue	4,614	5,122
Shack sales	\$ 150,668	\$ 138,048
Shack-level operating profit margin ⁽²⁾	15.0 %	19.1 %

(1) For the thirteen weeks ended March 25, 2020, amount includes a non-cash impairment charge of \$1.1 million related to one Shack.

(2) As a percentage of Shack sales.

EBITDA and Adjusted EBITDA

EBITDA is defined as Net income (loss) before interest expense (net of interest income), Income tax expense (benefit) and Depreciation and amortization expense. Adjusted EBITDA is defined as EBITDA (as defined above) excluding equity-based compensation expense, deferred lease cost, Impairment and loss on the disposal of assets, amortization of cloud-based software implementation costs, as well as certain non-recurring items that the Company does not believe directly reflect its core operations and may not be indicative of the Company's recurring business operations.

How These Measures Are Useful

When used in conjunction with GAAP financial measures, EBITDA and adjusted EBITDA are supplemental measures of operating performance that the Company believes are useful measures to facilitate comparisons to historical performance and competitors' operating results. Adjusted EBITDA is a key metric used internally by management to develop internal budgets and forecasts and also serves as a metric in its performance-based equity incentive programs and certain bonus arrangements. The Company believes presentation of EBITDA and adjusted EBITDA provides investors with a supplemental view of the Company's operating performance that facilitates analysis and comparisons of its ongoing business operations because they exclude items that may not be indicative of the Company's ongoing operating performance.

Limitations of the Usefulness of These Measures

EBITDA and adjusted EBITDA may differ from similarly titled measures used by other companies due to different methods of calculation. Presentation of EBITDA and adjusted EBITDA is not intended to be considered in isolation or as a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP. EBITDA and adjusted EBITDA exclude certain normal recurring expenses. Therefore, these measures may not provide a complete understanding of the Company's performance and should be reviewed in conjunction with the GAAP financial measures. A reconciliation of EBITDA and adjusted EBITDA to Net income (loss), the most directly comparable GAAP measure, is as follows.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(dollar amounts in thousands)</i>		
Net income (loss)	\$ 575	\$ (1,079)
Depreciation and amortization expense	13,726	11,768
Interest expense, net	515	112
Income tax expense (benefit)	(11,080)	87
EBITDA	\$ 3,736	\$ 10,888
Equity-based compensation	1,681	1,300
Amortization of cloud-based software implementation costs ⁽¹⁾	313	260
Deferred lease costs ⁽²⁾	204	(330)
Impairment and loss on disposal of assets ⁽³⁾	369	2,088
Debt offering related costs ⁽⁴⁾	236	—
Legal settlement ⁽⁵⁾	595	—
Executive transition costs ⁽⁶⁾	—	34
Project Concrete ⁽⁷⁾	—	(261)
Other ⁽⁸⁾	—	285
ADJUSTED EBITDA	\$ 7,134	\$ 14,264
Adjusted EBITDA margin⁽⁹⁾	4.6 %	10.0 %

(1) Represents amortization of capitalized implementation costs related to cloud-based software arrangements that are included within General and administrative expenses.

(2) Reflects the extent to which lease expense is greater than or less than contractual fixed base rent.

(3) Includes losses on disposals of property and equipment in the normal course of business. For the thirteen weeks ended March 25, 2020, amount includes a non-cash impairment charge of \$1.1 million related to one Shack.

- (4) Costs incurred in connection with the Company's Convertible Notes, issued in March 2021, including consulting and advisory fees. Refer to Note 6, Debt, for further details.
- (5) Expense incurred to establish an accrual related to the settlement of a legal matter. See Note 13, Commitments and Contingencies, for further details.
- (6) Represents fees paid in connection with the search and hiring of certain executive and key management positions.
- (7) Represents consulting and advisory fees related to the Company's enterprise-wide system upgrade initiative called Project Concrete.
- (8) Represents incremental expenses incurred related to an inventory adjustment and certain employee-related expenses.
- (9) Calculated as a percentage of total revenue which was \$155.3 million and \$143.2 million for the thirteen weeks ended March 31, 2021 and March 25, 2020, respectively.

Adjusted Pro Forma Net Income and Adjusted Pro Forma Earnings Per Fully Exchanged and Diluted Share

Adjusted pro forma net income represents net income (loss) attributable to Shake Shack Inc. assuming the full exchange of all outstanding SSE Holdings, LLC membership interests ("LLC Interests") for shares of Class A common stock, adjusted for certain non-recurring items that we don't believe directly reflect our core operations and may not be indicative of our recurring business operations. Adjusted pro forma earnings per fully exchanged and diluted share is calculated by dividing adjusted pro forma net income (loss) by the weighted-average shares of Class A common stock outstanding, assuming the full exchange of all outstanding LLC Interests, after giving effect to any dilutive securities such as outstanding equity-based awards.

How These Measures Are Useful

When used in conjunction with GAAP financial measures, adjusted pro forma net income and adjusted pro forma earnings per fully exchanged and diluted share are supplemental measures of operating performance that we believe are useful measures to evaluate our performance period over period and relative to our competitors. By assuming the full exchange of all outstanding LLC Interests, we believe these measures facilitate comparisons with other companies that have different organizational and tax structures, as well as comparisons period over period because it eliminates the effect of any changes in net income (loss) attributable to Shake Shack Inc. driven by increases in our ownership of SSE Holdings, which are unrelated to our operating performance, and excludes items that are non-recurring or may not be indicative of our ongoing operating performance.

Limitations of the Usefulness of These Measures

Adjusted pro forma net income and adjusted pro forma earnings per fully exchanged and diluted share are not necessarily comparable to similarly titled measures used by other companies due to different methods of calculation. Presentation of adjusted pro forma net income and adjusted pro forma earnings per fully exchanged and diluted share should not be considered alternatives to net income (loss) and earnings (loss) per share, as determined under GAAP. While these measures are useful in evaluating our performance, it does not account for the earnings attributable to the non-controlling interest holders and therefore does not provide a complete understanding of the net income (loss) attributable to Shake Shack Inc. Adjusted pro forma net income and adjusted pro forma earnings per fully exchanged and diluted share should be evaluated in conjunction with our GAAP financial results. A reconciliation of adjusted pro forma net income to net income (loss) attributable to Shake Shack Inc., the most directly comparable GAAP measure, and the computation of adjusted pro forma earnings per fully exchanged and diluted share are set forth below.

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
<i>(in thousands, except per share amounts)</i>		
Numerator:		
Net income (loss) attributable to Shake Shack Inc.	\$ 1,309	\$ (960)
Adjustments:		
Reallocation of net loss attributable to non-controlling interests from the assumed exchange of LLC Interests ⁽¹⁾	(734)	(119)
Executive transition costs ⁽²⁾	—	34
Project Concrete ⁽³⁾	—	(261)
Legal settlement ⁽⁴⁾	595	—
Debt offering related costs ⁽⁵⁾	236	—
Revolving Credit Facility amendment-related costs ⁽⁶⁾	323	—
Income tax benefit ⁽⁷⁾	24	1,819
Other ⁽⁸⁾	—	285
Adjusted pro forma net income	\$ 1,753	\$ 798
Denominator:		
Weighted-average shares of Class A common stock outstanding—diluted	42,789	34,444
Adjustments:		
Assumed exchange of LLC Interests for shares of Class A common stock ⁽¹⁾	—	3,144
Dilutive effect of stock options	—	704
Adjusted pro forma fully exchanged weighted-average shares of Class A common stock outstanding—diluted	42,789	38,292
Adjusted pro forma earnings per fully exchanged share—diluted	\$ 0.04	\$ 0.02

	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Earnings (loss) per share of Class A common stock - diluted	\$ 0.01	\$ (0.03)
Assumed exchange of LLC Interests for shares of Class A common stock ⁽¹⁾	—	—
Non-GAAP adjustments ⁽⁹⁾	0.03	0.05
Adjusted pro forma earnings per fully exchanged share—diluted	\$ 0.04	\$ 0.02

- (1) Assumes the exchange of all outstanding LLC Interests for shares of Class A common stock, resulting in the elimination of the non-controlling interest and recognition of the net loss attributable to non-controlling interests.
- (2) Represents fees paid in connection with the search and hiring of certain executive and key management positions.
- (3) Represents consulting and advisory fees related to the Company's enterprise-wide system upgrade initiative called Project Concrete.
- (4) Expense incurred to establish an accrual related to the settlement of a legal matter. See Note 13, Commitments and Contingencies, for further details.
- (5) Costs incurred in connection with the Company's Convertible Notes, issued in March 2021, including consulting and advisory fees. Refer to Note 6, Debt, for further details.
- (6) Expense incurred in connection with the Company's amendments on the Revolving Credit Facility, including the write-off of previously capitalized costs on the Revolving Credit Facility. Refer to Note 6, Debt, for further details.
- (7) Represents the tax effect of the aforementioned adjustments and pro forma adjustments to reflect corporate income taxes at assumed effective tax rates of 118.8% and 185.4% for the thirteen weeks ended March 31, 2021 and March 25, 2020, respectively. Amounts include provisions for U.S. federal income taxes, certain LLC entity-level taxes and foreign withholding taxes, assuming the highest statutory rates apportioned to each applicable state, local and foreign jurisdiction.
- (8) Represents incremental expenses incurred related to an inventory adjustment and certain employee-related expenses.
- (9) Represents the per share impact of non-GAAP adjustments for each period. Refer to the reconciliation of Adjusted Pro Forma Net Income above for further details.

LIQUIDITY AND CAPITAL RESOURCES

Sources and Uses of Cash

Our primary sources of liquidity are cash from operations, cash and cash equivalents on hand, short-term investments and availability under our Revolving Credit Facility. In March 2021, we issued 0% Convertible Notes of Convertible Debt, and received \$243.8 million of proceeds, net of discounts. Refer to Note 6, Debt, for further discussion.

As of March 31, 2021, we maintained a cash and cash equivalents balance of \$375.0 million and a short-term investments balance of \$40.9 million within Marketable securities.

On June 8, 2018, we filed a Registration Statement on Form S-3 with the SEC which permits us to issue a combination of securities described in the prospectus in one or more offerings from time to time. To date, we have not experienced difficulty accessing the capital markets; however, future volatility in the capital markets may affect our ability to access those markets or increase the costs associated with issuing debt or equity instruments.

Our primary requirements for liquidity are to fund our working capital needs, operating and finance lease obligations, capital expenditures and general corporate needs. Our requirements for working capital are generally not significant because our guests pay for their food and beverage purchases in cash or on debit or credit cards at the time of the sale and we are able to sell many of our inventory items before payment is due to the supplier of such items. Our ongoing capital expenditures are principally related to opening new Shacks, existing Shack capital investments (both for remodels and maintenance), as well as investments in our corporate and digital infrastructure.

In addition, we are obligated to make payments to certain members of SSE Holdings under the Tax Receivable Agreement. As of March 31, 2021, such obligations totaled \$234.0 million. Amounts payable under the Tax Receivable Agreement are contingent upon, among other things, (i) generation of future taxable income over the term of the Tax Receivable Agreement and (ii) future changes in tax laws. If we do not generate sufficient taxable income in the aggregate over the term of the Tax Receivable Agreement to utilize the tax benefits, then we would not be required to make the related TRA Payments. Although the amount of any payments that must be made under the Tax Receivable Agreement may be significant, the timing of these payments will vary and will generally be limited to one payment per member per year. The amount of such payments are also limited to the extent we utilize the related deferred tax assets. The payments that we are required to make will generally reduce the amount of overall cash flow that might have otherwise been available to us or to SSE Holdings, but we expect the cash tax savings we will realize from the utilization of the related deferred tax assets to fund the required payments.

In response to the uncertain market conditions resulting from the onset of the COVID-19 pandemic, we took the following actions in fiscal 2020.

- On April 17, 2020, we announced an "at-the-market" equity offering program (the "ATM Program"), under which we may offer and sell shares of our Class A common stock having an aggregate price of up to \$75.0 million from time to time. On April 21, 2020, we completed the sale of 233,467 shares of our Class A common stock pursuant to the ATM Program and received \$9.8 million of proceeds, net of commissions. The proceeds were used to purchase newly-issued LLC Interests.
- On April 21, 2020, we completed an underwritten offering of 3,416,070 shares of our Class A common stock, resulting in \$135.9 million of proceeds, net of underwriting discounts and commissions. The proceeds were used to purchase newly-issued LLC Interests.
- In May 2020, we entered into an amendment to our Revolving Credit Facility that provided for a number of enhanced modifications to reflect the current and ongoing impact from COVID-19. Our Revolving Credit Facility was further amended in March 2021, resulting in a modification of the applicable covenants and restrictions in the Credit Agreement to permit the incurrence of the Convertible Notes, including obligations and transactions in connection therewith. Refer to Note 6, Debt, for further information.
- In March 2020, we drew down the full \$50.0 million available under the Revolving Credit Facility to enhance liquidity and financial flexibility given the uncertain market conditions created by the COVID-19 pandemic. We repaid this amount in full, plus interest, in June 2020. As of March 31, 2021, we were in compliance with all covenants.

We believe our existing cash and marketable securities balances will be sufficient to fund our operating and finance lease obligations, capital expenditures, Tax Receivable Agreement obligations and working capital needs for at least the next 12 months and the foreseeable future.

Summary of Cash Flows

The following table presents a summary of our cash flows from operating, investing and financing activities.

<i>(in thousands)</i>	Thirteen Weeks Ended	
	March 31 2021	March 25 2020
Net cash provided by operating activities	\$ 9,951	\$ 7,484
Net cash provided by (used in) investing activities	(27,228)	649
Net cash provided by financing activities	245,403	42,574
Increase in cash and cash equivalents	228,126	50,707
Cash and cash equivalents at beginning of period	146,873	37,099
Cash and cash equivalents at end of period	\$ 374,999	\$ 87,806

Operating Activities

For the thirteen weeks ended March 31, 2021 net cash provided by operating activities was \$10.0 million compared to \$7.5 million for the thirteen weeks ended March 25, 2020, an increase of \$2.5 million. The increase was primarily due to change in operating assets and liabilities of \$3.9 million and an increase in net income of \$1.7 million, partially offset by the impact of non-cash charges of \$3.1 million.

The \$3.9 million change in our operating asset and liability balances was primarily driven by Accrued wages and related liabilities being a source of cash of \$2.9 million in the first quarter of 2021, primarily driven by higher accruals associated with payroll costs, compared to a use of cash of \$5.1 million in the first quarter of 2020; Accounts payable being a source of cash of \$1.5 million in the first quarter of 2021, driven by timing of payments, compared to a use of cash of \$4.4 million in the first quarter of 2020; partially offset by Accrued expenses being a use of cash of \$9.4 million in the first quarter of 2021, due to the timing of accruals associated with tax payments, compared to a use of cash of \$6.3 million in the first quarter of 2020; Other long-term liabilities being a use of cash of \$1.8 million in the first quarter of 2021, due to the timing of tax payments, compared to a source of cash of \$0.5 million in the first quarter of 2020; and Accounts Receivable being a source of cash of \$0.6 million in the first quarter of 2021, primarily driven by timing of cash receipts of open receivables, compared to a source of cash of \$3.2 million in the first quarter of 2020.

Investing Activities

For the thirteen weeks ended March 31, 2021 net cash used in investing activities was \$27.2 million compared to net cash provided by investing activities of \$0.6 million for the thirteen weeks ended March 25, 2020, a decrease of \$27.8 million. This decrease was primarily due to a decrease of \$20.0 million of proceeds from sales of marketable securities, an increase of \$4.0 million in capital expenditures to support our real estate development and digital initiatives and increased purchases of marketable securities of \$3.9 million.

Financing Activities

For the thirteen weeks ended March 31, 2021 net cash provided by financing activities was \$245.4 million compared to \$42.6 million for the thirteen weeks ended March 25, 2020, an increase of \$202.8 million. This increase was primarily due to \$243.8 million in net cash proceeds from the issuance of the Convertible Notes, decreased payments made under the Tax Receivable Agreement, and increased proceeds from stock option exercises, partially offset by \$50.0 million in gross cash proceeds from the drawdown of funds from our Revolving Credit Facility in the first quarter of 2020 — which was repaid in full, plus interest, in the second quarter of 2020.

Revolving Credit Facility

In August 2019, we entered into a Revolving Credit Facility, which permits borrowings up to \$50.0 million, of which the entire amount is available immediately, with the ability to increase available borrowings up to an additional \$100.0 million, to be made available subject to satisfaction of certain conditions. The Revolving Credit Facility also permits the issuance of letters of credit upon our request of up to \$15.0 million.

In March 2020, we drew down the full \$50.0 million available under the Revolving Credit Facility to enhance liquidity and financial flexibility given the uncertain market conditions created by the COVID-19 pandemic. We repaid this amount in full, plus interest, in June 2020.

In May 2020, we entered into a First Amendment, which, among other things, provided for modified financial covenant compliance requirements for a period of time. The First Amendment required us to maintain minimum liquidity of \$25.0 million through July 1, 2021 and outstanding borrowings during the applicable period covered by the First Amendment bore interest at either: (i) LIBOR plus a percentage ranging from 1.0% to 2.5% or (ii) the base rate plus a percentage ranging from 0.0% to 1.5%, in each case depending on our net lease adjusted leverage ratio.

In March 2021, we entered into a Second Amendment. The Second Amendment modified the applicable covenants and restrictions in the Credit Agreement to permit the incurrence of the Convertible Notes (as defined below), including obligations and transactions in connection therewith. In addition, the Second Amendment, among other things, (i) extended the period applicable to the increased interest rate margin as set forth in the First Amendment; (ii) shortened the maturity date of the Revolving Credit Facility from August 2024 to September 2022 and (iii) added mechanics relating to the transition from the use of LIBOR to SOFR upon the discontinuance or unavailability of LIBOR.

Subsequently, and also in March 2021, we entered into a Third Amendment with JPMorgan Chase Bank, N.A. (as successor agent to Wells Fargo Bank, National Association), as administrative agent, and the lenders party thereto. In addition, in March 2021, Wells Fargo Bank resigned as administrative agent under the Revolving Credit Facility and assigned its commitments thereunder to JPMorgan Bank, N.A. The Third Amendment appoints JPMorgan Bank, N.A. as administrative agent under the Revolving Credit Facility. In addition, the Third Amendment, among other things, extends the maturity date of the Revolving Credit Facility from September 2022 to March 2026. As of March 31, 2021 and December 30, 2020, no amounts were outstanding under the Revolving Credit Facility.

The obligations under the Revolving Credit Facility are secured by a first-priority security interest in substantially all of the assets of SSE Holdings and the guarantors. The obligations under the Revolving Credit Facility are guaranteed by each of SSE Holdings' direct and indirect subsidiaries (with certain exceptions).

The Revolving Credit Facility requires us to comply with maximum net lease adjusted leverage and minimum fixed charge coverage ratios. We are not subject to these coverage ratios for a period of time due to the Second Amendment to the Revolving Credit Facility described above. In addition, the Revolving Credit Facility contains other customary affirmative and negative covenants, including those which (subject to certain exceptions and dollar thresholds) limit our ability to incur debt; incur liens; make investments; engage in mergers, consolidations, liquidations or acquisitions; dispose of assets; make distributions on or repurchase equity securities; engage in transactions with affiliates; and prohibits us, with certain exceptions, from engaging in any line of business not related to our current line of business. As of March 31, 2021, we were in compliance with all covenants.

As of March 31, 2021, the Revolving Credit Facility had unamortized deferred financing costs of \$0.1 million, and was included in Other assets on the Condensed Consolidated Balance Sheet. Total interest expense related to the Revolving Credit Facility were \$0.4 million and \$0.1 million for the thirteen weeks ended March 31, 2021 and March 25, 2020, respectively. Total interest expense for the thirteen weeks ended March 31, 2021 primarily included write-off of previously capitalized costs on the Revolving Credit Facility.

Convertible Notes

In March 2021, we issued \$225.0 million aggregate principal amount of 0% Convertible Senior Notes due 2028 in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933. We granted an option to the initial purchasers to purchase up to an additional \$25.0 million aggregate principal amount of Convertible Notes to cover over-allotments, which was subsequently fully exercised during March 2021, resulting in a total issuance of \$250.0 million aggregate principal amount of Convertible Notes. The Convertible Notes will mature on March 1, 2028, unless earlier converted, redeemed or repurchased in certain circumstances. Upon conversion, we pay or deliver, as the case may be, cash, shares of Shake Shack's Class A common stock or a combination of cash and shares of Shake Shack's Class A common stock, at our election.

The Convertible Notes are convertible at the option of the holders at any time prior to the close of business on the business day immediately preceding December 1, 2027, only under the following circumstances: (1) during any fiscal quarter commencing after the fiscal quarter ending on June 30, 2021 (and only during such fiscal quarter), if the last reported sale price of our Class A common stock, par value \$0.001 per share, for at least 20 trading days (whether or not consecutive) during a period of 30

consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price for the Convertible Notes on each applicable trading day; (2) during the five business day period after any ten consecutive trading day period in which the trading price (as defined in the Indenture) per \$1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of Class A common stock and the conversion rate for the Convertible Notes on each such trading day; (3) if we call such Convertible Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date, but only with respect to the Convertible Notes called (or deemed called) for redemption; and (4) upon the occurrence of specified corporate events as set forth in the Indenture. On or after December 1, 2027, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders of the Convertible Notes may convert all or any portion of their Convertible Notes at any time, regardless of the foregoing circumstances.

The Convertible Notes had an initial conversion rate of 5.8679 shares of Shake Shack's Class A common stock per \$1,000 principal amount of Convertible Notes, which is equivalent to an initial conversion price of approximately \$170.42 per share of Shake Shack's Class A common stock.

We may not redeem the Convertible Notes prior to March 6, 2025. We may redeem for cash all or any portion of the Convertible Notes, at our option, on or after March 6, 2025 if the last reported sale price of Shake Shack's Class A common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which we provide notice of redemption at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid special interest, if any, to, but excluding, the redemption date.

In addition, if we undergo a fundamental change (as defined in the indenture governing the Convertible Notes), subject to certain conditions, holders may require us to repurchase for cash all or any portion of their Convertible Notes at a repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid special interest, if any, to, but excluding, the fundamental change repurchase date. In addition, following certain corporate events that occur prior to the maturity date of the Convertible Notes or if we deliver a notice of redemption in respect of some or all of the Convertible Notes, we will, in certain circumstances, increase the conversion rate of the Convertible Notes for a holder who elects to convert our Convertible Notes in connection with such a corporate event or convert our Convertible Notes called (or deemed called) for redemption during the related redemption period, as the case may be.

Contemporaneously with the issuance of the Convertible Notes, Shake Shack Inc. entered into an Intercompany Note with SSE Holdings, LLC. SSE Holdings promises to pay Shake Shack, Inc., for value received, the principal amount with interest of the Intercompany Note in March 2028. Shake Shack Inc. will exercise its right to convert the Intercompany Note to maintain at all times a one-to-one ratio between the number of common units, directly or indirectly, by Shake Shack Inc and the aggregate number of outstanding shares of common stock.

As of March 31, 2021, the Convertible Notes had a gross principal balance of \$250.0 million and a balance of \$242.9 million, net of unamortized discount and debt issuance costs of \$7.1 million. As of March 31, 2021, the unamortized balance of discount and debt issuance costs was recorded as a contra-liability and netted with Long-term debt on the Condensed Consolidated Balance Sheets and was being amortized as interest expense using the effective interest method. Total amortization expense was \$0.1 million for the thirteen weeks ended March 31, 2021 and was included in Interest expense in the Condensed Consolidated Statements of Income (Loss). In connection with the Convertible Notes, we also incurred costs of \$0.2 million, including consulting and advisory fees, in the thirteen weeks ended March 31, 2021 and was included in General and administrative expense in the Condensed Consolidated Statements of Income (Loss).

At March 31, 2021, the fair value of the Convertible Notes was approximately \$248.1 million, based on external pricing data, including available quoted market prices of these instruments, and consideration of comparable debt instruments with similar interest rates and trading frequency, among other factors, and is classified as a Level 2 measurement within the fair value hierarchy.

CONTRACTUAL OBLIGATIONS

There have been no material changes to the contractual obligations as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 30, 2020, other than those made in the ordinary course of business.

OFF-BALANCE SHEET ARRANGEMENTS

There have been no material changes to our off-balance sheet arrangements as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 30, 2020.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our discussion and analysis of our consolidated financial condition and results of operations is based upon the accompanying condensed consolidated financial statements and notes thereto, which have been prepared in accordance with GAAP. The preparation of the condensed consolidated financial statements requires us to make estimates, judgments and assumptions, which we believe to be reasonable, based on the information available. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. Variances in the estimates or assumptions used to actual experience could yield materially different accounting results. On an ongoing basis, we evaluate the continued appropriateness of our accounting policies and resulting estimates to make adjustments we consider appropriate under the facts and circumstances. There have been no significant changes to our critical accounting policies as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 30, 2020.

Recently Issued Accounting Pronouncements

See "Note 2: Summary of Significant Accounting Policies—Recently Issued Accounting Pronouncements" under Part I, Item 1 of this Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

There have been no material changes to our exposure to market risks as described in Part II, Item 7A of our Annual Report on Form 10-K for the fiscal year ended December 30, 2020.

Item 4. Controls and Procedures.

DISCLOSURE CONTROLS AND PROCEDURES

Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of such date. Our disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports we file or submit under 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 the Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

There were no changes to our internal control over financial reporting that occurred during the quarter ended March 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

The information required by this Item is incorporated by reference to Part I, Item 1, Note 13: Commitments and Contingencies—Legal Contingencies.

Item 1A. Risk Factors.

There have been no material changes to the risk factors disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 30, 2020.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Exhibit	Filing Date	
3.1	Amended and Restated Certificate of Incorporation of Shake Shack Inc., effective February 4, 2015	8-K	3.1	2/10/2015	
3.2	Second Amended and Restated Bylaws of Shack Shake Inc., dated October 1, 2019	8-K	3.1	10/4/2019	
4.1	Form of Class A Common Stock Certificate	S-1/A	4.1	1/28/2015	
10.1	Second Amendment to Credit Agreement, dated as of March 1, 2021, by and among SSE Holdings, LLC, the Guarantors party thereto, the Lenders party thereto, and Wells Fargo Bank, National Association, as Administrative Agent				*
10.2	Third Amendment to Credit Agreement, dated as of March 5, 2021, by and among SSE Holdings, LLC, the Guarantors party thereto, the Lenders party thereto, and JPMorgan Chase Bank, National Association, as Administrative Agent				*
31.1	Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				*
31.2	Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				*
32	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				#
101.INS	XBRL Instance Document - the instance document does not appear in the interactive data file because its XBRL tags are embedded within the Inline XBRL document				*
101.SCH	XBRL Taxonomy Extension Schema Document				*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				*
104	Cover Page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document				*

Furnished herewith.

SIGNATURES

Pursuant to the requirements 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.

Shake Shack Inc.
(Registrant)

Date: May 7, 2021

By: /s/ Randy Garutti
Randy Garutti
Chief Executive Officer
(Principal Executive Officer and Duly Authorized Officer)

Date: May 7, 2021

By: /s/ Tara Comonte
Tara Comonte
President and Chief Financial Officer
(Principal Financial Officer and Duly Authorized Officer)

SECOND AMENDMENT TO CREDIT AGREEMENT

THIS SECOND AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of March 1, 2021, is by and among SSE HOLDINGS, LLC, a Delaware limited liability company (the "Borrower"), the Guarantors party hereto, the Lenders party hereto, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as administrative agent on behalf of the Lenders under the Credit Agreement (as hereinafter defined) (in such capacity, the "Administrative Agent").

WITNESSETH

WHEREAS, the Borrower, the Guarantors, the Lenders from time to time party thereto, and the Administrative Agent are parties to that certain Credit Agreement dated as of August 2, 2019 (as amended by that certain First Amendment to Credit Agreement dated as of May 4, 2020 and as further amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement, as amended hereby);

WHEREAS, the Credit Parties have requested that the Lenders make certain amendments to the Credit Agreement as set forth herein; and

WHEREAS, the Lenders have agreed to amend the Credit Agreement subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
AMENDMENTS TO CREDIT AGREEMENT

1.1 Amendment to "Applicable Margin". The definition of "Applicable Margin" in Section 1.1 of the Credit Agreement is hereby amended by replacing the text "March 31, 2021" with the text "March 31, 2022".

1.2 Amendment to "Bail-In Action". The definition of "Bail-In Action" in Section 1.1 of the Credit Agreement is hereby amended by (i) replacing the text "applicable EEA Resolution Authority" with the text "applicable Resolution Authority" and (ii) replacing the text "EEA Financial Institution" with the text "Affected Financial Institution".

1.3 Amendment to "Bail-In Legislation". The definition of "Bail-In Legislation" in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

1.4 Amendment to "Consolidated Total Net Lease Adjusted Leverage Ratio". The definition of "Consolidated Total Net Lease Adjusted Leverage Ratio" in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"Consolidated Total Net Lease Adjusted Leverage Ratio" means, as of any date of determination, the ratio of (a) the sum of (i) Consolidated Total Indebtedness on such date plus (ii) the product of Consolidated Rents paid in cash for the period of four (4) consecutive Fiscal Quarters of the Borrower most recently ended multiplied by eight less (iii) amounts held in a Managed Income Fund and unrestricted cash and Cash Equivalents of the Credit Parties in an amount not to exceed \$35,000,000 to (b) Consolidated EBITDAR for the period of four (4) consecutive Fiscal Quarters of the Borrower most recently ended.

1.5 Amendment to "LIBOR". The definition of "LIBOR" in Section 1.1 of the Credit Agreement is hereby amended by replacing each instance of the text "Replacement Rate" with the text "Benchmark Replacement".

1.6 Amendment to “Permitted Convertible Indebtedness”. Clause (a) in the definition of “Permitted Convertible Indebtedness” in Section 1.1 of the Credit Agreement is hereby amended by replacing the text “the Borrower” with the text “Holdings”.

1.7 Amendment to “Revolving Credit Maturity Date”. The definition of “Revolving Credit Maturity Date” in Section 1.1 of the Credit Agreement is hereby amended by replacing the text “August 2, 2024” with the text “September 30, 2022”.

1.8 Amendment to “Sanctioned Country”. The definition of “Sanctioned Country” in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“Sanctioned Country” means at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions (including, as of the Closing Date, Cuba, Iran, North Korea, Syria and Crimea).

1.9 Amendment to “Sanctioned Person”. The definition of “Sanctioned Person” in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

1.10 Amendment to “Write-Down and Conversion Powers”. The definition of “Write-Down and Conversion Powers” in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.11 Amendment to Section 1.1. Section 1.1 of the Credit Agreement is hereby amended by inserting the following new definitions in the appropriate alphabetical order therein:

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 4.8(c)(iv).

“Benchmark” means, initially, USD LIBOR; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 4.8(c)(i).

“Benchmark Replacement” means, for any Available Tenor,

(a) with respect to any Benchmark Transition Event or Early Opt-in Election, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment;

(2) the sum of: (A) Daily Simple SOFR and (B) the related Benchmark Replacement Adjustment;

(3) the sum of: (A) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment;
or

(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment;

provided that, (i) in the case of clause (a)(1), if the Administrative Agent decides that Term SOFR is not administratively feasible for the Administrative Agent, then Term SOFR will be deemed unable to be determined for purposes of this definition and (ii) in the case of clause (a)(1) or clause (b) of this definition, the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (a)(1), (a)(2) or (a)(3) or clause (b) of this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (a)(1) and (a)(2) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Available Tenor of such Benchmark;

(2) for purposes of clause (a)(3) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities; and

(3) for purposes of clause (b) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of USD LIBOR with a SOFR-based rate;

provided that, (x) in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion and (y) if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement that will replace such Benchmark in accordance with Section 4.8(c)(i) will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of "Benchmark Replacement Adjustment" shall be deemed to be, with respect to each Unadjusted Benchmark Replacement having a payment period for interest calculated with reference thereto, the Available Tenor that has approximately the same length (disregarding business day adjustments) as such payment period.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Administrative Agent has provided the Term SOFR Notice to the Lenders and the Borrower pursuant to Section 4.8(c)(i)(B); or

(4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.8(c) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.8(c).

“Consolidated Senior Secured Net Lease Adjusted Leverage Ratio” means, as of any date of determination, the ratio of (a) the sum of (i) Consolidated Total Indebtedness (other than Subordinated Indebtedness) secured by a Lien on any property or assets of the Borrower or any of its Subsidiaries on such date plus (ii) the product of Consolidated Rents paid in cash for the period of four (4) consecutive Fiscal Quarters of the Borrower most recently ended multiplied by eight less (iii) amounts held in a Managed Income Fund and unrestricted cash and Cash Equivalents of the Credit Parties in an amount not to exceed \$35,000,000 to (b) Consolidated EBITDAR for the period of four (4) consecutive Fiscal Quarters of the Borrower most recently ended. Notwithstanding the foregoing, for purposes of calculating the Consolidated Senior Secured Net Lease Adjusted Leverage Ratio to determine compliance with Section 8.14(a) as of the end of the Fiscal Quarters ending on or about March 31, 2022 and June 30, 2022, Consolidated EBITDA included in clause (b) above shall be calculated as (x) in the case of the Fiscal Quarter ending on or about March 31, 2022, actual Consolidated EBITDA for such Fiscal Quarter multiplied by 4.76, and (y) in the case of the Fiscal Quarter ending on or about June 30, 2022, actual Consolidated EBITDA for the period of two (2) consecutive Fiscal Quarters then ending multiplied by 1.96.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“Early Opt-in Election” means, if the then-current Benchmark is USD LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five (5) currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

“Electronic Record” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Electronic Signature” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Federal Reserve Bank of New York’s Website” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Reference Time” with respect to any setting of the then-current Benchmark means (a) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two (2) London Banking Days preceding the date of such setting, and (b) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

“Relevant Governmental Body” means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Sanctions” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority in any jurisdiction in which (a) the Borrower or any of its Subsidiaries or Affiliates is located or conducts business, (b) in which any of the proceeds of the Extensions of Credit will be used, or (c) from which repayment of the Extensions of Credit will be derived.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Subordinated Indebtedness” means any Indebtedness incurred by the Borrower or any of its Subsidiaries that is expressly subordinated and made junior in right of payment to the full and final payment of the Secured Obligations on terms and conditions satisfactory to the Administrative Agent.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.8(c) with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not Term SOFR.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“USD LIBOR” means the London interbank offered rate for Dollars.

1.12 Amendment to Section 1.11. Section 1.11 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

Section 1.11 Rates; LIBOR Notification. The interest rate on LIBOR Rate Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) is determined by reference to LIBOR, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on LIBOR Rate Loans or Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate). In light of this eventuality, public and private sector industry initiatives have been and continue, as of the date hereof, to be underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate or any other then-current Benchmark is no longer available or in certain other circumstances set forth in Section 4.8(c), such Section 4.8(c) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower in advance, pursuant to Section 4.8(c), of any change to the reference rate upon which the interest rate on LIBOR Rate Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (i) the administration of, submission of, calculation of or any other matter related to the London interbank offered rate or other rates in the definition of “LIBOR” or with respect to any alternative, comparable or successor rate thereto, or replacement rate thereof (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement reference rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 4.8(c), will be similar to, or produce the same value or economic equivalence of, LIBOR or any other Benchmark, or have the same volume or liquidity as did the London interbank offered rate or any other Benchmark prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Benchmark Replacement Conforming Changes.

1.13 Amendment to Article I. Article I of the Credit Agreement is hereby amended by inserting a new Section 1.12 immediately following Section 1.11 to read as follows:

Section 1.12 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.14 Amendment to Section 4.8. Section 4.8 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

Section 4.8 Changed Circumstances.

(a) Circumstances Affecting LIBOR Rate Availability. Subject to clause (c) below, in connection with any request for a LIBOR Rate Loan or a conversion to or continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Loan, (ii) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for the ascertaining the LIBOR Rate for such Interest Period with respect to a proposed LIBOR Rate Loan or (iii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that the LIBOR Rate does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period, then the Administrative Agent shall promptly give notice thereof to the Borrower. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, the obligation of the Lenders to make LIBOR Rate Loans and the right of the Borrower to convert any Loan to or continue any Loan as a LIBOR Rate Loan shall be suspended, and the Borrower shall either (A) repay in full (or cause to be repaid in full) the then outstanding principal amount of each such LIBOR Rate Loan together with accrued interest thereon (subject to Section 4.1(d)), on the last day of the then current Interest Period applicable to such LIBOR Rate Loan; or (B) convert the then outstanding principal amount of each such LIBOR Rate Loan to a Base Rate Loan as of the last day of such Interest Period.

(b) Laws Affecting LIBOR Rate Availability. If, after the date hereof, the introduction of, or any change in, any Applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any LIBOR Rate Loan, such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, (i) the obligations of the Lenders to make LIBOR Rate Loans, and the right of the Borrower to convert any Loan to a LIBOR Rate Loan or continue any Loan as a LIBOR Rate Loan shall be suspended and thereafter the Borrower may select only Base Rate Loans and (ii) if any of the Lenders may not lawfully continue to maintain a LIBOR Rate Loan to the end of the then current Interest Period applicable thereto, the applicable Loan shall immediately be converted to a Base Rate Loan for the remainder of such Interest Period.

(c) Benchmark Replacement Setting.

(i) (A) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document (and any Hedge Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 4.8(c)) if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a)(1) or (a)(2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(B) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that this clause (B) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may elect or not elect to do so in its sole discretion.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 4.8(c)(iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 4.8(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 4.8(c).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a borrowing of, conversion to or continuation of LIBOR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(d) Illegality. If, in any applicable jurisdiction, the Administrative Agent, the Issuing Lender or any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent, the Issuing Lender or any Lender to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) to fund or maintain its participation in any Loan or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Extension of Credit such Person shall promptly notify the Administrative Agent, then, upon the Administrative Agent notifying the Borrower, and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Extension of Credit shall be suspended, and to the extent required by Applicable Law, cancelled. Upon receipt of such notice, the Credit Parties shall, (A) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Borrower or, if earlier, the date specified by such Person in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by Applicable Law) and (B) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

1.15 Amendment to Section 6.1. Section 6.1 of the Credit Agreement is hereby amended by replacing the text "EEA" with the text "Affected".

1.16 Amendment to Section 7.1. Section 7.1 of the Credit Agreement is hereby amended by amending and restating clause (d) therein in its entirety to read as follows:

(d) Sales and Liquidity Reports. Within twenty (20) days after the end of each month ending during the period commencing May 1, 2020 and continuing through and including March 31, 2022 only, (i) a summary of Liquidity as of the end of such month and (ii) a monthly summary of same-store sales for the restaurants of the Borrower and its Subsidiaries for the applicable month, in each case in form and detail reasonably acceptable to the Administrative Agent.

1.17 Amendment to Section 7.2. Section 7.2 of the Credit Agreement is hereby amended by amending and restating clause (a)(iii) therein in its entirety to read as follows:

(iii) except in the case of financial statements delivered pursuant to Section 7.1(b) for the last Fiscal Quarter of a Fiscal Year, setting forth reasonably detailed calculations demonstrating compliance with Section 8.14 and a calculation of the Consolidated Total Net Lease Adjusted Leverage Ratio and

1.18 Amendment to Section 8.1. Section 8.1 of the Credit Agreement is hereby amended by:

(i) amending and restating clause (n) therein to read as follows:

(n) Unsecured Indebtedness of any Credit Party in an aggregate amount not to exceed \$250,000,000 at any time outstanding, provided that, after giving effect to the incurrence of such Indebtedness on a pro forma basis, the Consolidated Total Net Lease Adjusted Leverage Ratio shall be less than or equal to 4.00 to 1.00;

(ii) replacing the final period in clause (o) with the text “; and”

and (iii) inserting a new clause (p) immediately following clause (o) therein to read as follows:

(p) Permitted Convertible Indebtedness in an aggregate principal amount not to exceed \$300,000,000 at any time outstanding, provided that (i) such Permitted Convertible Indebtedness is incurred during the period commencing March 1, 2021 and ending on March 31, 2021 and (ii) at the time such Permitted Convertible Indebtedness is incurred, no Default or Event of Default shall exist or would result therefrom.

1.19 Amendment to Section 8.3. Section 8.3 of the Credit Agreement is hereby amended by (i) replacing the text “September 30, 2021” in clause (g) therein with the text “the date the Borrower delivers to the Administrative Agent the financial statements pursuant to Section 7.1(b) and Officer’s Compliance Certificate pursuant to Section 7.2(a) for the Fiscal Quarter ending March 31, 2022” and (ii) replacing the text “September 30, 2021” in clause (p) therein with the text “the date the Borrower delivers to the Administrative Agent the financial statements pursuant to Section 7.1(b) and Officer’s Compliance Certificate pursuant to Section 7.2(a) for the Fiscal Quarter ending March 31, 2022”.

1.20 Amendment to Section 8.6. Section 8.6 of the Credit Agreement is hereby amended as follows:

(i) clause (d) therein is amended and restated to read as follows:

(d) the Borrower shall be entitled to make any “Tax Distributions” and “Gross-Up Tax Distributions” (each as defined in the LLC Agreement as in effect on the date hereof) in accordance with Section 4.01(b) of the LLC Agreement, and each other Credit Party may pay dividends or otherwise make distributions to permit the Borrower to make such distributions;

(ii) the text “September 30, 2021” in clause (e) therein is replaced with the text “the date the Borrower delivers to the Administrative Agent the financial statements pursuant to Section 7.1(b) and Officer’s Compliance Certificate pursuant to Section 7.2(a) for the Fiscal Quarter ending March 31, 2022”;

(iii) the text “March 31, 2021” in clause (e) therein is replaced with the text “the date the Borrower delivers to the Administrative Agent the financial statements pursuant to Section 7.1(b) and Officer’s Compliance Certificate pursuant to Section 7.2(a) for the Fiscal Quarter ending March 31, 2022”;

(iv) the text “September 30, 2021” in clause (g) therein is replaced with the text “the date the Borrower delivers to the Administrative Agent the financial statements pursuant to Section 7.1(b) and Officer’s Compliance Certificate pursuant to Section 7.2(a) for the Fiscal Quarter ending March 31, 2022”;

(v) the text “September 30, 2021” in clause (h) therein is replaced with the text “the date the Borrower delivers to the Administrative Agent the financial statements pursuant to Section 7.1(b) and Officer’s Compliance Certificate pursuant to Section 7.2(a) for the Fiscal Quarter ending March 31, 2022”;

(vi) the text “September 30, 2021” in clause (i) therein is replaced with the text “the date the Borrower delivers to the Administrative Agent the financial statements pursuant to Section 7.1(b) and Officer’s Compliance Certificate pursuant to Section 7.2(a) for the Fiscal Quarter ending March 31, 2022”; and

(vii) the last sentence thereof is amended and restated to read as follows:

Notwithstanding anything to the contrary in the foregoing, the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under (including any payments of interest), and conversion, exchange, exercise, repurchase, redemption, settlement or termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, common stock of Holdings or, following a merger event or other change of the common stock of Holdings, other securities or property), or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Convertible Indebtedness, any Permitted Bond Hedge Transaction, any Permitted Warrant Transaction, any corresponding or related transaction as between Holdings and the Borrower in respect of the foregoing, and any distributions from Borrower to Holdings or from any other Credit Party to Borrower that are necessary or advisable to address any disparate Tax consequences as between Borrower and Holdings or other Tax inefficiencies arising as a result of any of the foregoing, in each case, shall not constitute a Restricted Payment by the Borrower.

1.21 Amendment to Section 8.9. Section 8.9 of the Credit Agreement is hereby amended as follows:

(i) clause (a)(iii) therein is amended and restated to read as follows:

(iii) payment of regularly scheduled interest (including any special or additional interest in respect of any Permitted Convertible Indebtedness and any intercompany debt relating thereto) and principal payments as and when due in respect of any Indebtedness (other than any such payments prohibited by any subordination provisions applicable thereto);

(ii) the text “September 30, 2021” in clause (a)(vi) therein is replaced with the text “the date the Borrower delivers to the Administrative Agent the financial statements pursuant to Section 7.1(b) and Officer’s Compliance Certificate pursuant to Section 7.2(a) for the Fiscal Quarter ending March 31, 2022”.

1.22 Amendment to Section 8.14. Section 8.14 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

Section 8.14 Financial Covenants.

(a) Consolidated Senior Secured Net Lease Adjusted Leverage Ratio. As of the last day of (i) the Fiscal Quarter ending on or about March 31, 2022, permit the Consolidated Senior Secured Net Lease Adjusted Leverage Ratio to be greater than 4.50 to 1.00, (ii) the Fiscal Quarter ending on or about June 30, 2022, permit the Consolidated Senior Secured Net Lease Adjusted Leverage Ratio to be greater than 4.25 to 1.00 and (iii) each other Fiscal Quarter, permit the Consolidated Senior Secured Net Lease Adjusted Leverage Ratio to be greater than 4.00 to 1.00; provided, that for each of the six (6) Fiscal Quarters immediately following a Qualified Transaction, commencing with the Fiscal Quarter in which such Qualified Transaction was consummated (such period of increase, the “Leverage Increase Period”), the required Consolidated Senior Secured Net Lease Adjusted Leverage Ratio shall be increased by up to 0.50; provided, further, that (i) there shall be no more than three (3) Leverage Increase Periods during the term of this Agreement, (ii) there shall be no more than one (1) Leverage Increase Period in effect at any time, (iii) the maximum Consolidated Senior Secured Net Lease Adjusted Leverage Ratio shall revert to the then-permitted ratio (without giving effect to such increase) for at least one (1) fiscal quarter before a new Leverage Increase Period may be invoked and (iv) the Leverage Increase Period shall only apply (A) with respect to the calculation of the Consolidated Senior Secured Net Lease Adjusted Leverage Ratio for purposes of determining compliance with this Section 8.14(a) as of the end of any Fiscal Quarter of the Borrower during such period, (B) for purposes of determining compliance with this Section 8.14(a) on pro forma basis to determine compliance with clause (e) of the definition of “Permitted Acquisition” or with Section 8.6(e)(iii)(A)(1) and (C) for purposes of determining compliance with this Section 8.14(a) on a pro forma basis to determine if an Incremental Loan is permitted to be incurred. Notwithstanding the foregoing, the covenant in this Section 8.14(a) shall not be tested as of the end of any Fiscal Quarter ending after the First Amendment Closing Date and prior to the Fiscal Quarter ending on or about March 31, 2022 (but otherwise shall be deemed to be in effect with respect to each such Fiscal Quarter end for all provisions under this Agreement and the other Loan Documents that refer to compliance or pro forma compliance with Section 8.14 or Section 8.14(a)).

(b) Consolidated Fixed Charge Coverage Ratio. As of the last day of any Fiscal Quarter, permit the Consolidated Fixed Charge Coverage Ratio for the period of four (4) consecutive Fiscal Quarters of the Borrower then ended to be less than 1.25 to 1.00. Notwithstanding the foregoing, (i) the covenant in this Section 8.14(b) shall not be tested as of the end of any Fiscal Quarter ending after the First Amendment Closing Date and prior to the Fiscal Quarter ending on or about March 31, 2022 (but otherwise shall be deemed to be in effect with respect to each such Fiscal Quarter end for all provisions under this Agreement and the other Loan Documents that refer to compliance or pro forma compliance with Section 8.14 or Section 8.14(b)) and (ii) for the Fiscal Quarters ending on or about March 31, 2022 and June 30, 2022, the Consolidated Fixed Charge Coverage Ratio shall be determined for only the single Fiscal Quarter of the Borrower then ended (rather than the period of four (4) consecutive Fiscal Quarters of the Borrower then ended).

(c) Liquidity. As of the last day of any month ending during the period commencing May 1, 2020 and ending July 1, 2022, permit Liquidity to be less than \$25,000,000.

1.23 Amendment to Section 9.7. Section 9.7 of the Credit Agreement is hereby amended by (i) replacing each instance of the text "Consolidated Total Net Lease Adjusted Leverage Ratio" with the text "Consolidated Senior Secured Net Lease Adjusted Leverage Ratio" and (ii) deleting the text "Equity Cure Contributions" in clause (c) therein.

1.24 Amendment to Section 11.2. Section 11.2 of the Credit Agreement is hereby amended by inserting the text "(including Section 4.8(c))" immediately following the text "provided in any Loan Document".

1.25 Amendment to Section 11.16. Section 11.16 of the Credit Agreement is hereby amended by amending and restating clause (b) therein in its entirety to read as follows:

(b) Electronic Execution. The words "execute," "execution," "signed," "signature," "delivery" and words of like import in or related to this Agreement, any other Loan Document or any document, amendment, approval, consent, waiver, modification, information, notice, certificate, report, statement, disclosure, or authorization to be signed or delivered in connection with this Agreement or any other Loan Document or the transactions contemplated hereby shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and contract formations on electronic platforms approved by the Administrative Agent, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the parties of a manually signed paper which has been converted into electronic form (such as scanned into PDF format), or an electronically signed paper converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (x) to the extent the Administrative Agent has agreed to accept such Electronic Signature from any party hereto, the Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (y) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by an original manually executed counterpart thereof. Without limiting the generality of the foregoing, each party hereto hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and any of the Credit Parties, electronic images of this Agreement or any other Loan Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto.

1.26 Amendment to Section 11.22. Section 11.22 of the Credit Agreement is hereby amended in its entirety to read as follows:

Section 11.22 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

ARTICLE II CONDITIONS

2.1 Closing Conditions. This Amendment shall become effective upon the satisfaction of the following conditions precedent (the "Second Amendment Effective Date"):

(a) Execution of Amendment. The Administrative Agent shall have received a copy of this Amendment duly executed by the Borrower, the other Credit Parties, the Administrative Agent and the Lenders.

(b) Amendment Fee. The Administrative Agent shall have received, for the account of each Lender, upfront fees in an aggregate amount equal to 0.10% of the aggregate amount of the Commitments on the Second Amendment Effective Date.

(c) Other Fees and Out of Pocket Costs. The Borrower shall have paid or made arrangements to pay contemporaneously with closing any and all reasonable, documented out-of-pocket costs incurred by the Administrative Agent (including the fees, charges and disbursements of Moore & Van Allen PLLC as legal counsel to the Administrative Agent) and all other fees and amounts required to be paid to the Administrative Agent pursuant to Section 11.3(a) of the Credit Agreement in connection with this Amendment to the extent invoiced prior to the date hereof.

ARTICLE III MISCELLANEOUS

3.1 Amended Terms. On and after the date hereof, all references to the Credit Agreement in each of the Credit Documents shall hereafter mean the Credit Agreement as amended by this Amendment. Except as specifically amended hereby or otherwise agreed, the Credit Agreement is hereby ratified and confirmed and shall remain in full force and effect according to its terms.

3.2 Representations and Warranties of Credit Parties. Each of the Credit Parties represents and warrants as follows:

(a) Such Credit Party has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Amendment.

(b) This Amendment has been duly executed and delivered on behalf of each of the Credit Parties. This Amendment constitutes a legal, valid and binding obligation of each of the Credit Parties, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies.

(c) No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the execution, delivery or performance of this Amendment by the Credit Parties (other than those which have been obtained) or with the validity or enforceability of this Amendment against the Credit Parties.

(d) The representations and warranties made by the Credit Parties in the Credit Agreement and the other Loan Documents are true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty is true and correct in all respects, on and as of the date hereof as if made on and as of such date, (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty is true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty is true and correct in all respects as of such earlier date).

(e) No Default or Event of Default has occurred and is continuing on the date hereof.

(f) The Security Documents continue to create a valid security interest in, and Lien upon, the Collateral purported to be covered thereby, in favor of the Administrative Agent, for the benefit of the holders of the Secured Obligations, which security interests and Liens are perfected in accordance with the terms of the Security Documents and prior to all Liens other than Permitted Liens.

(g) The Obligations of the Credit Parties are not reduced or modified by this Amendment (except as set forth herein) and, as of the date hereof, are not subject to any offsets, defenses or counterclaims.

3.3 Reaffirmation of Obligations. Each Credit Party hereby ratifies the Credit Agreement, as amended hereby, and each other Credit Document to which it is a party and acknowledges and reaffirms (a) that it is bound by all terms of the Credit Agreement, as amended hereby, and each other Credit Document to which it is a party applicable to it and (b) that it is responsible for the observance and full performance of its respective obligations under the Credit Documents.

3.4 Release. The Borrower and each of the other Credit Parties hereby releases and forever discharges the Administrative Agent, each Lender, the Issuing Lender, the Swingline Lender and their respective predecessors, successors, assigns, attorneys and Related Parties (each and every of the foregoing, a "Lender Party") from any and all claims, counterclaims, demands, damages, debts, suits, liabilities, actions and causes of action of any nature whatsoever, in each case to the extent arising in connection with any of the Credit Documents through the date hereof, whether arising at law or in equity, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, which any Credit Party may have or claim to have against any Lender Party.

3.5 Credit Document. This Amendment shall constitute a Credit Document under the terms of the Credit Agreement.

3.6 Entirety. This Amendment and the other Credit Documents embody the entire agreement among the parties hereto and supersede all prior agreements and understandings, oral or written, if any, relating to the subject matter hereof.

3.7 Expenses. Pursuant to and subject to Section 11.3(a) of the Credit Agreement, the Borrower agrees to pay all reasonable costs and expenses of the Administrative Agent in connection with the preparation, execution and delivery of this Amendment, including without limitation the reasonable fees and expenses of the Administrative Agent's legal counsel.

3.8 Counterparts; Electronic Execution. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed signature page of this Amendment by facsimile transmission or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart hereof.

3.9 GOVERNING LAW. THIS AMENDMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AMENDMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

3.10 Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

3.11 Consent to Jurisdiction; Service of Process; Waiver of Jury Trial. The jurisdiction, services of process and waiver of jury trial provisions set forth in Section 11.5 and Section 11.6 of the Credit Agreement are hereby incorporated by reference, mutatis mutandis.

[Signature pages to follow]

IN WITNESS WHEREOF the parties hereto have caused this Amendment to be duly executed on the date first above written.

BORROWER: SSE HOLDINGS, LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr.
Name: Ron Palmese, Jr.
Title: General Counsel

GUARANTORS: CUSTARD'S FIRST STAND, LLC,
a New York limited liability company

SHAKE SHACK 366 COLUMBUS LLC,
a New York limited liability company
SHAKE SHACK 1111 LINCOLN ROAD LLC,
a New York limited liability company
SHAKE SHACK 300 WEST 44TH STREET LLC,
a New York limited liability company
SHAKE SHACK 152 E 86 LLC,
a New York limited liability company
SHAKE SHACK 18TH STREET NW WASHINGTON D.C. LLC, a Delaware limited liability
company
SHAKE SHACK 102 NORTH END AVE LLC,
a New York limited liability company
SHAKE SHACK WESTPORT LLC,
a Delaware limited liability company
SHAKE SHACK FULTON STREET BROOKLYN LLC, a Delaware limited liability company
SHAKE SHACK SANSOM STREET PHILADELPHIA LLC, a Delaware limited liability company
SHAKE SHACK CORAL GABLES, LLC,
a Delaware limited liability company
SHAKE SHACK WESTBURY LLC,
a Delaware limited liability company
SHAKE SHACK NEW HAVEN LLC,
a Delaware limited liability company
SHAKE SHACK BOSTON CHESTNUT HILL LLC,
a Delaware limited liability company
SHAKE SHACK BOCA RATON LLC,
a Delaware limited liability company
SHAKE SHACK 800 F STREET LLC,
a Delaware limited liability company
SHAKE SHACK GRAND CENTRAL LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr.
Name: Ron Palmese, Jr.
Title: General Counsel of each of the foregoing

SHAKE SHACK UNIVERSITY CITY PHILADELPHIA LLC,
a Delaware limited liability company
SHAKE SHACK KING OF PRUSSIA LLC,
a Delaware limited liability company
SHAKE SHACK PARAMUS LLC,
a Delaware limited liability company
SHAKE SHACK HARVARD SQUARE BOSTON LLC, a Delaware limited liability company
SHAKE SHACK FLATBUSH BROOKLYN LLC,
a Delaware limited liability company
SHAKE SHACK UNION STATION WASHINGTON D.C. LLC, a Delaware limited liability company
SHAKE SHACK DUMBO BROOKLYN LLC,
a Delaware limited liability company
SHAKE SHACK BUCKHEAD ATLANTA LLC,
a Delaware limited liability company
SHAKE SHACK TYSONS CORNER FAIRFAX COUNTY LLC, a Delaware limited liability
company
SHAKE SHACK WINTER PARK ORLANDO LLC,
a Delaware limited liability company
SHAKE SHACK CHICAGO OHIO STREET LLC,
a Delaware limited liability company
SHAKE SHACK SOUTH LAMAR AUSTIN LLC,
a Delaware limited liability company
SHAKE SHACK LAS VEGAS PARK LLC,
a Delaware limited liability company
SHAKE SHACK GARDEN STATE PLAZA WESTFIELD LLC,
a Delaware limited liability company
SHAKE SHACK NEWBURY STREET BOSTON LLC,
a Delaware limited liability company
SHAKE SHACK THE DOMAIN AUSTIN LLC,
a Delaware limited liability company
SHAKE SHACK 600 THIRD AVE NEW YORK CITY LLC, a Delaware limited liability company
SHAKE SHACK CAA CHICAGO LLC,
a Delaware limited liability company
SHAKE SHACK PRATT STREET BALTIMORE LLC,
a Delaware limited liability company
SHAKE SHACK INTERNATIONAL DRIVE ORLANDO LLC, a Delaware limited liability company
SHAKE SHACK LAKE SUCCESS LONG ISLAND LLC, a Delaware limited liability company
SHAKE SHACK LEGACY PLACE DEDHAM LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr. _____

Name: Ron Palmese, Jr.

Title: General Counsel of each of the foregoing

SHAKE SHACK 1333 BROADWAY NYC LLC,
a Delaware limited liability company
SHAKE SHACK SEAPORT BOSTON LLC,
a Delaware limited liability company
SHAKE SHACK ROUTE 110 MELVILLE LLC,
a Delaware limited liability company
SHAKE SHACK OLD ORCHARD SKOKIE LLC,
a Delaware limited liability company
SHAKE SHACK BRIDGEWATER COMMONS LLC,
a Delaware limited liability company
SHAKE SHACK WOODBURY COMMONS LLC,
a Delaware limited liability company
SHAKE SHACK PENTAGON CENTER ARLINGTON LLC, a Delaware limited liability company
SHAKE SHACK FASHION SQUARE SCOTTSDALE LLC, a Delaware limited liability company
SHAKE SHACK FULTON CENTER NYC LLC,
a Delaware limited liability company
SHAKE SHACK DOWNTOWN SUMMERLIN LLC,
a Delaware limited liability company
SHAKE SHACK QUEENS CENTER MALL LLC,
a Delaware limited liability company
SHAKE SHACK WEST HOLLYWOOD LA LLC,
a Delaware limited liability company
SHAKE SHACK THE GALLERIA HOUSTON LLC,
a Delaware limited liability company
SHAKE SHACK WOODFIELD MALL SCHAUMBURG LLC,
a Delaware limited liability company
SHAKE SHACK LEGACY WEST PLANO LLC,
a Delaware limited liability company
SHAKE SHACK KING OF PRUSSIA LLC,
a Delaware limited liability company
SHAKE SHACK DELAWARE LLC,
a Delaware limited liability company
SHAKE SHACK ASTOR PLACE LLC,
a Delaware limited liability company
SHAKE SHACK ARIZONA LLC,
a Delaware limited liability company
SHAKE SHACK GEORGIA LLC,
a Delaware limited liability company
SHAKE SHACK NEW YORK LLC,
a Delaware limited liability company
SHAKE SHACK NEW JERSEY LLC,
a Delaware limited liability company
SHAKE SHACK NORTH CAROLINA LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr.

Name: Ron Palmese, Jr.

Title: General Counsel of each of the foregoing

SHAKE SHACK TEXAS LLC,
a Delaware limited liability company
SHAKE SHACK KENTUCKY LLC,
a Delaware limited liability company
SHAKE SHACK CALIFORNIA LLC,
a Delaware limited liability company
SHAKE SHACK FLORIDA LLC,
a Delaware limited liability company
SHAKE SHACK CONNECTICUT LLC,
a Delaware limited liability company
SHAKE SHACK MINNESOTA LLC,
a Delaware limited liability company
SHAKE SHACK MISSOURI LLC,
a Delaware limited liability company
SHAKE SHACK MARYLAND LLC,
a Delaware limited liability company
SHAKE SHACK MARYLAND MANAGEMENT COMPANY LLC, a Delaware limited liability
company
SHAKE SHACK POTOMAC MARYLAND MANAGEMENT COMPANY LLC,
a Delaware limited liability company
SHAKE SHACK MICHIGAN LLC,
a Delaware limited liability company
SHAKE SHACK ALABAMA LLC,
a Delaware limited liability company
SHAKE SHACK TENNESSEE LLC,
a Delaware limited liability company
SHAKE SHACK ILLINOIS LLC,
a Delaware limited liability company
SHAKE SHACK WASHINGTON D.C. LLC,
a Delaware limited liability company
SHAKE SHACK NEVADA LLC,
a Delaware limited liability company
SHAKE SHACK RHODE ISLAND LLC,
a Delaware limited liability company
SHAKE SHACK COLORADO LLC,
a Delaware limited liability company
SHAKE SHACK OHIO LLC,
a Delaware limited liability company
SHAKE SHACK PENNSYLVANIA LLC,
a Delaware limited liability company
SHAKE SHACK WASHINGTON LLC,
a Delaware limited liability company
SHAKE SHACK WISCONSIN LLC,
a Delaware limited liability company
SHAKE SHACK ENTERPRISES, LLC,
a New York limited liability company

By: /s/ Ron Palmese, Jr. _____

Name: Ron Palmese, Jr.

Title: General Counsel of each of the foregoing

SHAKE SHACK ENTERPRISES INTERNATIONAL, LLC, a New York limited liability company
SSE HOLDINGS, LLC,
a Delaware limited liability company
SSE IP, LLC,
a Delaware limited liability company
SHAKE SHACK DOMESTIC LICENSING LLC,
a Delaware limited liability company
SHAKE SHACK MIDDLE EAST LLC,
a Delaware limited liability company
SHAKE SHACK RUSSIA LLC,
a Delaware limited liability company
SHAKE SHACK TURKEY LLC,
a Delaware limited liability company
SHAKE SHACK UNITED KINGDOM LLC,
a Delaware limited liability company
SHAKE SHACK TEXAS BEVERAGE COMPANY LLC, a Texas limited liability company
SHAKE SHACK TEXAS HOLDING COMPANY LLC,
a Texas limited liability company
SHAKE SHACK TEXAS MANAGEMENT COMPANY LLC, a Texas limited liability company
SHAKE SHACK MOBILE LLC,
a Delaware limited liability company
SHAKE SHACK LOUISIANA LLC,
a Delaware limited liability company
SHAKE SHACK MASSACHUSETTS LLC,
a Delaware limited liability company
SHAKE SHACK UTAH LLC,
a Delaware limited liability company
SHAKE SHACK TRUCKS LLC,
a Delaware limited liability company
SHAKE SHACK VIRGINIA LLC,
a Delaware limited liability company
SHAKE SHACK INDIANA LLC,
a Delaware limited liability company
SHAKE SHACK KANSAS DOMESTIC LLC,
a Kansas limited liability company

By: /s/ Ron Palmese, Jr.

Name: Ron Palmese, Jr.

Title: General Counsel of each of the foregoing

ADMINISTRATIVE AGENT
AND LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent, Swingline Lender, Issuing Lender
and Lender

By: /s/ Maureen Malphus

Name: Maureen Malphus

Title: Vice President

THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of March 5, 2021, is by and among SSE HOLDINGS, LLC, a Delaware limited liability company (the "Borrower"), the Guarantors party hereto, the Lenders party hereto, and JPMORGAN CHASE BANK, N.A., a national banking association ("Chase"), as the successor administrative agent on behalf of the Lenders under the Credit Agreement (as hereinafter defined) (in such capacity, the "Administrative Agent").

WITNESSETH

WHEREAS, the Borrower, the Guarantors, the Lenders from time to time party thereto, and Wells Fargo Bank, National Association ("Wells Fargo"), as administrative agent, are parties to that certain Credit Agreement dated as of August 2, 2019 (as amended by that certain First Amendment to Credit Agreement dated as of May 4, 2020 and that certain Second Amendment to Credit Agreement dated as of March 1, 2021 and as further amended, extended, restated, replaced, supplemented or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement, as amended hereby);

WHEREAS, Wells Fargo has given notice of its resignation as the Administrative Agent, effective as of the date hereof, to the Lenders, the Issuing Lender and the Borrower pursuant to Section 10.06(a) of the Credit Agreement;

WHEREAS, the Lenders and the Borrower have elected to appoint Chase as the successor Administrative Agent pursuant to Section 10.06(a) of the Credit Agreement, and Chase has agreed to accept such appointment as the successor Administrative Agent;

WHEREAS, the Credit Parties have requested that the Lenders make certain amendments to the Credit Agreement as set forth herein; and

WHEREAS, the Lenders have agreed to amend the Credit Agreement subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
AMENDMENTS TO CREDIT AGREEMENT

1.1 Amendment to "Applicable Margin". The table set forth in the definition of "Applicable Margin" in Section 1.1 of the Credit Agreement is hereby amended by (a) replacing the text "LIBOR +" in the heading thereof with the text "Adjusted LIBO Rate +" and (b) replacing the text "Base Rate +" in the heading thereof with the text "CB Floating Rate +".

1.2 Amendment to "Issuing Lender". The definition of "Issuing Lender" in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"Issuing Lender" means Chase, in its capacity as issuer of Letters of Credit hereunder.

1.3 Amendment to "Managed Income Fund". The definition of "Managed Income Fund" in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"Managed Income Fund" means (a) that certain Managed Income Fund – Class L held by the Borrower at JP Morgan Asset Management and which invests mainly in investment-grade, US dollar-denominated fixed and floating-rate debt and (b) any similar managed income fund account held by a Credit Party with Chase or any of its Affiliates that invests mainly in investment-grade, US dollar-denominated fixed and floating-rate debt.

1.4 Amendment to "Prime Rate". The definition of "Prime Rate" in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"Prime Rate" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

1.5 Amendment to "Revolving Credit Maturity Date". The definition of "Revolving Credit Maturity Date" in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"Revolving Credit Maturity Date" means the earliest to occur of (a) March 5, 2026, (b) the date of termination of the entire Revolving Credit Commitment by the Borrower pursuant to Section 2.5, and (c) the date of termination of the Revolving Credit Commitment pursuant to Section 9.2(a).

1.6 Amendment to "Swingline Lender". The definition of "Swingline Lender" in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"Swingline Lender" means Chase in its capacity as swingline lender hereunder or any successor thereto.

1.7 Amendment to Section 1.1. Section 1.1 of the Credit Agreement is hereby amended by inserting the following new definitions in the appropriate alphabetical order therein:

"Adjusted LIBO Rate" means, with respect to any Eurodollar Loan for any Interest Period or for any CBFR Loan, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Adjusted One Month LIBOR Rate" means, for any day, an interest rate per annum equal to the sum of (i) 2.50% plus (ii) the Adjusted LIBO Rate for a one-month interest period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate at approximately 11:00 a.m. London time on such day; provided, further, that, if the LIBO Screen Rate, as determined without giving effect to the first proviso set forth in the definition of "LIBO Screen Rate," at such time shall be less than zero, such rate shall be deemed to be zero for purposes of determining the "Adjusted One Month LIBOR Rate" and the "CB Floating Rate".

"CB Floating Rate" means the Prime Rate; provided that the CB Floating Rate shall never be less than the Adjusted One Month LIBOR Rate on such day (or if such day is not a Business Day, the immediately preceding Business Day). Any change in the CB Floating Rate due to a change in the Prime Rate or the Adjusted One Month LIBOR Rate shall be effective from and including the effective date of such change in the Prime Rate or the Adjusted One Month LIBOR Rate, respectively.

"CBFR Loan" means any Loan bearing interest at a rate based upon the CB Floating Rate as provided in Section 4.1(a).

"Chase" means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

"Eurodollar Loan" means any Loan bearing interest at a rate based upon the Adjusted LIBO Rate as provided in Section 4.1(a).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Interpolated Rate" means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time; provided that, if any Interpolated Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“LIBO Rate” means, with respect to any Eurodollar Loan for any applicable Interest Period or for any CBFR Loan, the LIBO Screen Rate at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that, if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”), then the LIBO Rate shall be the Interpolated Rate, subject to Section 4.8 in the event that the Administrative Agent shall conclude that it shall not be possible to determine such Interpolated Rate (which conclusion shall be conclusive and binding absent manifest error). Notwithstanding the above, to the extent that “LIBO Rate” or “Adjusted LIBO Rate” is used in connection with a CBFR Loan, such rate shall be determined as modified by the definition of “Adjusted One Month LIBOR Rate”. Each calculation by the Administrative Agent of the LIBO Rate shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 4.8(c), in the event that a Benchmark Replacement with respect to the LIBO Rate is implemented then all references herein to the LIBO Rate shall be deemed to be references to such Benchmark Replacement.

“LIBO Screen Rate” means, for any day and time, with respect to any Eurodollar Loan for any Interest Period or for any CBFR Loan, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars) for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); provided that, if the LIBO Screen Rate as so determined would be less than 1.00%, such rate shall be deemed to be 1.00% for the purposes of this Agreement; provided, further, that the foregoing proviso shall not be applicable to determine the “Adjusted One Month LIBOR Rate” and the “CB Floating Rate”.

“Reuters” means, as applicable, Thomson Reuters Corp, Refinitiv, or any successor thereto.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D). Such reserve percentages shall include those imposed pursuant to Regulation D of the Federal Reserve Board. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D of the Federal Reserve Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

1.8 Amendment to Section 1.1. Section 1.1 of the Credit Agreement is hereby amended by deleting the following definitions set forth therein: “Base Rate”, “Base Rate Loan”, “Eurodollar Reserve Percentage”, “LIBOR”, “LIBOR Rate” and “LIBOR Rate Loan”.

1.9 Amendment to Section 1.11. Section 1.11 of the Credit Agreement is hereby amended by replacing each instance of the text “Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate)” with the text “CBFR Loans (when determined by reference to the Adjusted One Month LIBOR Rate)”.

1.10 Amendment to Section 4.8. Section 4.8 of the Credit Agreement is hereby amended by amending and restating the last sentence of clause (c)(v) therein in its entirety to read as follows:

During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the Adjusted One Month LIBOR Rate, to the extent based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the CB Floating Rate.

1.11 Amendments to Credit Agreement. The Credit Agreement is hereby amended by (a) replacing each instance of the text “Base Rate” with the text “CB Floating Rate”, (b) replacing each instance of the text “Base Rate Loan” with the text “CBFR Loan”, (c) replacing each instance of the text “LIBOR” with the text “LIBO Rate”, (d) replacing each instance of the text “LIBOR Rate” with the text “Adjusted LIBO Rate” and (e) replacing each instance of the text “LIBOR Rate Loan” with the text “Eurodollar Loan”, in each case with appropriate grammatical changes related thereto.

ARTICLE II CONDITIONS

2.1 Closing Conditions. This Amendment shall become effective upon the satisfaction of the following conditions precedent (the “Third Amendment Effective Date”):

(a) Execution of Amendment. The Administrative Agent shall have received a copy of this Amendment duly executed by the Borrower, the other Credit Parties, the Administrative Agent and the Lenders.

(b) Costs and Expenses. The Borrower shall have paid or made arrangements to pay contemporaneously with closing any and all reasonable, documented out-of-pocket costs incurred by Chase (including the fees, charges and disbursements of Mayer Brown LLP as legal counsel to Chase) and all other amounts required to be paid to Chase pursuant to Section 11.3(a) of the Credit Agreement in connection with this Amendment to the extent invoiced prior to the date hereof.

ARTICLE III APPOINTMENT OF SUCCESSORS

3.1 Successor Administrative Agent. In accordance with Section 10.6(a) of the Credit Agreement, (a) the Required Lenders hereby appoint Chase as the successor Administrative Agent under the Loan Documents, (b) the Borrower hereby consents to such appointment of Chase as the successor Administrative Agent, and (c) Chase hereby accepts such appointment as the Administrative Agent.

3.2 Successor Issuing Lender and Swingline Lender. In accordance with Section 10.6(d) of the Credit Agreement, Chase hereby (i) elects to succeed to and become vested with all of the rights, powers, privileges and duties of the Issuing Lender and (ii) acknowledges that it shall succeed to and become vested with all of the rights, powers, privileges and duties of the Swingline Lender.

3.3 Reaffirmation of Liens. Each of the Credit Parties hereby acknowledges and reaffirms the execution and delivery of the Collateral Agreement and acknowledges, reaffirms and agrees that the Collateral Agreement and the granting of the security interest in the Collateral, and all filings and recordings in connection therewith, in favor of the Administrative Agent shall continue in full force and effect in favor of Chase, as the successor Administrative Agent for the benefit of the Secured Parties, and secure any and all existing and future Secured Obligations.

3.4 Address for Notices. All notices and other communications to be provided under the Loan Documents to Chase as the Administrative Agent shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile to the following address:

JPMorgan Chase Bank, N.A.
Middle Market Servicing
10 South Dearborn, Floor L2
Suite IL1-1145
Chicago, IL 60603-2300
Attention of: John Puente
Email: john.m.puente@jpmorgan.com

With a copy to:

JPMorgan Chase Bank, N.A.
237 Park Avenue, 6th Floor
New York, NY 10017
Attention of: Megan Westhuis
Email: megan.a.westhuis@chase.com

ARTICLE IV MISCELLANEOUS

4.1 Amended Terms. On and after the date hereof, all references to the Credit Agreement in each of the Credit Documents shall hereafter mean the Credit Agreement as amended by this Amendment. Except as specifically amended hereby or otherwise agreed, the Credit Agreement is hereby ratified and confirmed and shall remain in full force and effect according to its terms.

4.2 Representations and Warranties of Credit Parties. Each of the Credit Parties represents and warrants as follows:

(a) Such Credit Party has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Amendment and the performance of the Credit Agreement, as amended hereby.

(b) This Amendment has been duly executed and delivered on behalf of each of the Credit Parties. This Amendment constitutes a legal, valid and binding obligation of each of the Credit Parties, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies.

(c) No consent or authorization of, filing with, notice to or other act by or in respect of any Governmental Authority or any other Person is required in connection with the execution, delivery or performance of this Amendment by the Credit Parties (other than those which have been obtained) or with the validity or enforceability of this Amendment against the Credit Parties.

(d) The representations and warranties made by the Credit Parties in the Credit Agreement and the other Loan Documents are true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty is true and correct in all respects, on and as of the date hereof as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty is true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty is true and correct in all respects as of such earlier date).

(e) No Default or Event of Default has occurred and is continuing on the date hereof.

(f) The Security Documents continue to create a valid security interest in, and Lien upon, the Collateral purported to be covered thereby, in favor of the Administrative Agent, for the benefit of the holders of the Secured Obligations, which security interests and Liens are perfected in accordance with the terms of the Security Documents and prior to all Liens other than Permitted Liens.

(g) The Obligations of the Credit Parties are not reduced or modified by this Amendment (except as expressly set forth herein) and, as of the date hereof, are not subject to any offsets, defenses or counterclaims.

4.3 Reaffirmation of Obligations. Each Credit Party hereby ratifies the Credit Agreement, as amended hereby, and each other Credit Document to which it is a party and acknowledges and reaffirms (a) that it is bound by all terms of the Credit Agreement, as amended hereby, and each other Credit Document to which it is a party applicable to it and (b) that it is responsible for the observance and full performance of its respective obligations under the Credit Documents.

4.4 Release. The Borrower and each of the other Credit Parties hereby releases and forever discharges the Administrative Agent, each Lender, the Issuing Lender, the Swingline Lender and their respective predecessors, successors, assigns, attorneys and Related Parties (each and every of the foregoing, a "Lender Party") from any and all claims, counterclaims, demands, damages, debts, suits, liabilities, actions and causes of action of any nature whatsoever, in each case to the extent arising in connection with any of the Credit Documents through the date hereof, whether arising at law or in equity, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, which any Credit Party may have or claim to have against any Lender Party.

4.5 Credit Document. This Amendment shall constitute a Credit Document under the terms of the Credit Agreement.

4.6 Entirety. This Amendment and the other Credit Documents embody the entire agreement among the parties hereto and supersede all prior agreements and understandings, oral or written, if any, relating to the subject matter hereof.

4.7 Expenses. Pursuant to and subject to Section 11.3(a) of the Credit Agreement, the Borrower agrees to pay all reasonable costs and expenses of the Administrative Agent in connection with the preparation, execution and delivery of this Amendment, including, without limitation, the reasonable fees and expenses of the Administrative Agent's legal counsel.

4.8 Counterparts; Electronic Execution. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed signature page of this Amendment by facsimile transmission or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart hereof.

4.9 GOVERNING LAW. THIS AMENDMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AMENDMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

4.10 Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

4.11 Consent to Jurisdiction; Service of Process; Waiver of Jury Trial. The jurisdiction, services of process and waiver of jury trial provisions set forth in Section 11.5 and Section 11.6 of the Credit Agreement are hereby incorporated by reference, mutatis mutandis.

[Signature pages to follow]

IN WITNESS WHEREOF the parties hereto have caused this Amendment to be duly executed on the date first above written.

BORROWER: SSE HOLDINGS, LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr.
Name: Ronald Palmese, Jr.
Title: General Counsel

GUARANTORS: CUSTARD'S FIRST STAND, LLC,
a New York limited liability company

SHAKE SHACK 366 COLUMBUS LLC,
a New York limited liability company
SHAKE SHACK 1111 LINCOLN ROAD LLC,
a New York limited liability company
SHAKE SHACK 300 WEST 44TH STREET LLC,
a New York limited liability company
SHAKE SHACK 152 E 86 LLC,
a New York limited liability company
SHAKE SHACK 18TH STREET NW WASHINGTON D.C. LLC, a Delaware limited liability
company
SHAKE SHACK 102 NORTH END AVE LLC,
a New York limited liability company
SHAKE SHACK WESTPORT LLC,
a Delaware limited liability company
SHAKE SHACK FULTON STREET BROOKLYN LLC, a Delaware limited liability company
SHAKE SHACK SANSOM STREET PHILADELPHIA LLC, a Delaware limited liability company
SHAKE SHACK CORAL GABLES, LLC,
a Delaware limited liability company
SHAKE SHACK WESTBURY LLC,
a Delaware limited liability company
SHAKE SHACK NEW HAVEN LLC,
a Delaware limited liability company
SHAKE SHACK BOSTON CHESTNUT HILL LLC,
a Delaware limited liability company
SHAKE SHACK BOCA RATON LLC,
a Delaware limited liability company
SHAKE SHACK 800 F STREET LLC,
a Delaware limited liability company
SHAKE SHACK GRAND CENTRAL LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr.
Name: Ronald Palmese, Jr.
Title: General Counsel

SHAKE SHACK UNIVERSITY CITY PHILADELPHIA LLC,
a Delaware limited liability company
SHAKE SHACK KING OF PRUSSIA LLC,
a Delaware limited liability company
SHAKE SHACK PARAMUS LLC,
a Delaware limited liability company
SHAKE SHACK HARVARD SQUARE BOSTON LLC, a Delaware limited liability company
SHAKE SHACK FLATBUSH BROOKLYN LLC,
a Delaware limited liability company
SHAKE SHACK UNION STATION WASHINGTON D.C. LLC, a Delaware limited liability company
SHAKE SHACK DUMBO BROOKLYN LLC,
a Delaware limited liability company
SHAKE SHACK BUCKHEAD ATLANTA LLC,
a Delaware limited liability company
SHAKE SHACK TYSONS CORNER FAIRFAX COUNTY LLC, a Delaware limited liability
company
SHAKE SHACK WINTER PARK ORLANDO LLC,
a Delaware limited liability company
SHAKE SHACK CHICAGO OHIO STREET LLC,
a Delaware limited liability company
SHAKE SHACK SOUTH LAMAR AUSTIN LLC,
a Delaware limited liability company
SHAKE SHACK LAS VEGAS PARK LLC,
a Delaware limited liability company
SHAKE SHACK GARDEN STATE PLAZA WESTFIELD LLC,
a Delaware limited liability company
SHAKE SHACK NEWBURY STREET BOSTON LLC,
a Delaware limited liability company
SHAKE SHACK THE DOMAIN AUSTIN LLC,
a Delaware limited liability company
SHAKE SHACK 600 THIRD AVE NEW YORK CITY LLC, a Delaware limited liability company
SHAKE SHACK CAA CHICAGO LLC,
a Delaware limited liability company
SHAKE SHACK PRATT STREET BALTIMORE LLC,
a Delaware limited liability company
SHAKE SHACK INTERNATIONAL DRIVE ORLANDO LLC, a Delaware limited liability company
SHAKE SHACK LAKE SUCCESS LONG ISLAND LLC, a Delaware limited liability company
SHAKE SHACK LEGACY PLACE DEDHAM LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr.
Name: Ronald Palmese, Jr.
Title: General Counsel

SHAKE SHACK 1333 BROADWAY NYC LLC,
a Delaware limited liability company
SHAKE SHACK SEAPORT BOSTON LLC,
a Delaware limited liability company
SHAKE SHACK ROUTE 110 MELVILLE LLC,
a Delaware limited liability company
SHAKE SHACK OLD ORCHARD SKOKIE LLC,
a Delaware limited liability company
SHAKE SHACK BRIDGEWATER COMMONS LLC,
a Delaware limited liability company
SHAKE SHACK WOODBURY COMMONS LLC,
a Delaware limited liability company
SHAKE SHACK PENTAGON CENTER ARLINGTON LLC, a Delaware limited liability company
SHAKE SHACK FASHION SQUARE SCOTTSDALE LLC, a Delaware limited liability company
SHAKE SHACK FULTON CENTER NYC LLC,
a Delaware limited liability company
SHAKE SHACK DOWNTOWN SUMMERLIN LLC,
a Delaware limited liability company
SHAKE SHACK QUEENS CENTER MALL LLC,
a Delaware limited liability company
SHAKE SHACK WEST HOLLYWOOD LA LLC,
a Delaware limited liability company
SHAKE SHACK THE GALLERIA HOUSTON LLC,
a Delaware limited liability company
SHAKE SHACK WOODFIELD MALL SCHAUMBURG LLC,
a Delaware limited liability company
SHAKE SHACK LEGACY WEST PLANO LLC,
a Delaware limited liability company
SHAKE SHACK DELAWARE LLC,
a Delaware limited liability company
SHAKE SHACK ASTOR PLACE LLC,
a Delaware limited liability company
SHAKE SHACK ARIZONA LLC,
a Delaware limited liability company
SHAKE SHACK GEORGIA LLC,
a Delaware limited liability company
SHAKE SHACK NEW YORK LLC,
a Delaware limited liability company
SHAKE SHACK NEW JERSEY LLC,
a Delaware limited liability company
SHAKE SHACK NORTH CAROLINA LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr.

Name: Ronald Palmese, Jr.

Title: General Counsel

SHAKE SHACK TEXAS LLC,
a Delaware limited liability company
SHAKE SHACK KENTUCKY LLC,
a Delaware limited liability company
SHAKE SHACK CALIFORNIA LLC,
a Delaware limited liability company
SHAKE SHACK FLORIDA LLC,
a Delaware limited liability company
SHAKE SHACK CONNECTICUT LLC,
a Delaware limited liability company
SHAKE SHACK MINNESOTA LLC,
a Delaware limited liability company
SHAKE SHACK MISSOURI LLC,
a Delaware limited liability company
SHAKE SHACK MARYLAND LLC,
a Delaware limited liability company
SHAKE SHACK MARYLAND MANAGEMENT COMPANY LLC, a Delaware limited liability
company
SHAKE SHACK POTOMAC MARYLAND MANAGEMENT COMPANY LLC,
a Delaware limited liability company
SHAKE SHACK MICHIGAN LLC,
a Delaware limited liability company
SHAKE SHACK ALABAMA LLC,
a Delaware limited liability company
SHAKE SHACK TENNESSEE LLC,
a Delaware limited liability company
SHAKE SHACK ILLINOIS LLC,
a Delaware limited liability company
SHAKE SHACK WASHINGTON D.C. LLC,
a Delaware limited liability company
SHAKE SHACK NEVADA LLC,
a Delaware limited liability company
SHAKE SHACK RHODE ISLAND LLC,
a Delaware limited liability company
SHAKE SHACK COLORADO LLC,
a Delaware limited liability company
SHAKE SHACK OHIO LLC,
a Delaware limited liability company
SHAKE SHACK PENNSYLVANIA LLC,
a Delaware limited liability company
SHAKE SHACK WASHINGTON LLC,
a Delaware limited liability company
SHAKE SHACK WISCONSIN LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr.

Name: Ronald Palmese, Jr.

Title: General Counsel

SHAKE SHACK ENTERPRISES, LLC,
a New York limited liability company
SHAKE SHACK ENTERPRISES INTERNATIONAL, LLC, a New York limited liability company
SSE HOLDINGS, LLC,
a Delaware limited liability company
SSE IP, LLC,
a Delaware limited liability company
SHAKE SHACK DOMESTIC LICENSING LLC,
a Delaware limited liability company
SHAKE SHACK MIDDLE EAST LLC,
a Delaware limited liability company
SHAKE SHACK RUSSIA LLC,
a Delaware limited liability company
SHAKE SHACK TURKEY LLC,
a Delaware limited liability company
SHAKE SHACK UNITED KINGDOM LLC,
a Delaware limited liability company
SHAKE SHACK TEXAS BEVERAGE COMPANY LLC, a Texas limited liability company
SHAKE SHACK TEXAS HOLDING COMPANY LLC,
a Texas limited liability company
SHAKE SHACK TEXAS MANAGEMENT COMPANY LLC, a Texas limited liability company
SHAKE SHACK MOBILE LLC,
a Delaware limited liability company
SHAKE SHACK LOUISIANA LLC,
a Delaware limited liability company
SHAKE SHACK MASSACHUSETTS LLC,
a Delaware limited liability company
SHAKE SHACK UTAH LLC,
a Delaware limited liability company
SHAKE SHACK TRUCKS LLC,
a Delaware limited liability company
SHAKE SHACK VIRGINIA LLC,
a Delaware limited liability company
SHAKE SHACK INDIANA LLC,
a Delaware limited liability company
SHAKE SHACK KANSAS DOMESTIC LLC,
a Kansas limited liability company
SHAKE SHACK OREGON LLC,
a Delaware limited liability company

By: /s/ Ron Palmese, Jr.
Name: Ronald Palmese, Jr.
Title: General Counsel

ADMINISTRATIVE AGENT
AND LENDERS:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, Swingline Lender,
Issuing Lender and Lender

By: /s/ Megan Westhuis
Name: Megan Westhuis
Title: Vice President

Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Randy Garutti, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2021 of Shake Shack Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 7, 2021

/s/ Randy Garutti
Randy Garutti
Chief Executive Officer

Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Tara Comonte, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2021 of Shake Shack Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 7, 2021

/s/ Tara Comonte

Tara Comonte

President and Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Shake Shack Inc. (the "Company"), for the quarterly period ended March 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 7, 2021

/s/ Randy Garutti
Randy Garutti
Chief Executive Officer

Date: May 7, 2021

/s/ Tara Comonte
Tara Comonte
President and Chief Financial Officer