



# SHAKE SHACK



# FULL YEAR 2020 RESULTS

**\$523M**

FY 2020 Total Revenue

**\$779M**

Shack System-wide Sales<sup>1</sup>

**\$71.4M**

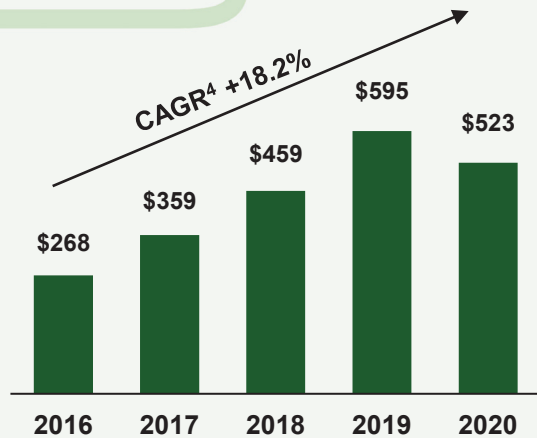
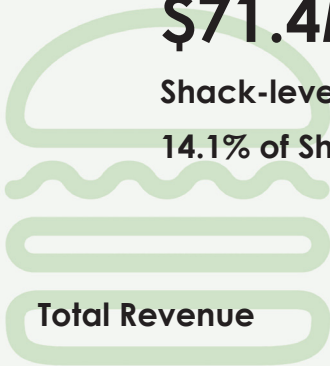
Shack-level Operating Profit<sup>2</sup>

14.1% of Shack Sales

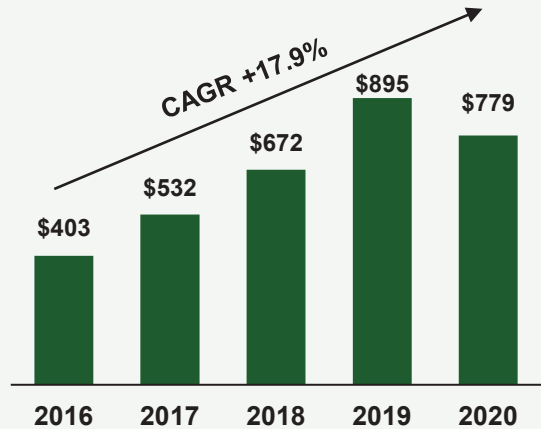
**\$22.7M**

Adjusted EBITDA<sup>3</sup>

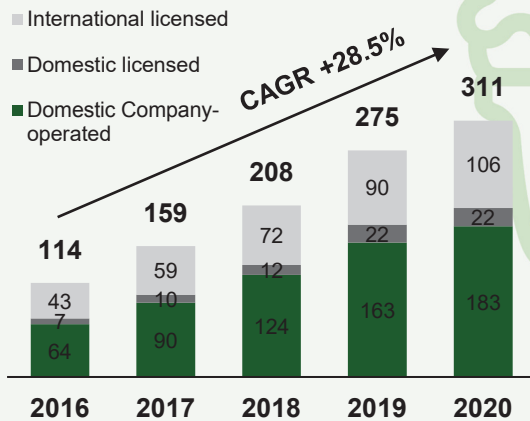
4.3% of Total Revenue



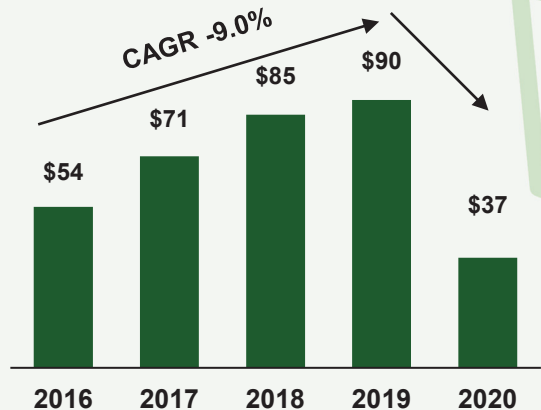
## System-wide Sales



## System-wide Shack Count



## Cash Flow from Operations

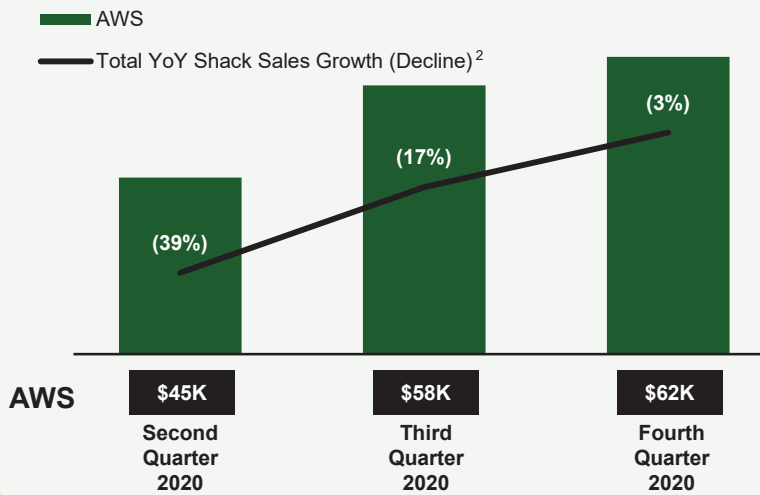


- "Shack system-wide sales" is an operating measure and consists of sales from the Company's domestic Company-operated Shacks, domestic licensed Shacks and international licensed Shacks. The Company does not recognize the sales from licensed Shacks as revenue. Of these amounts, revenue is limited to Shack sales from domestic Company-operated Shacks and licensing revenue based on a percentage of sales from domestic and international licensed Shacks
- "Shack-level operating profit," a non-GAAP measure, 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. See Non-GAAP Financial Measures within our Form 10-K for definition and reconciliation to the most comparable GAAP measure
- "Adjusted EBITDA," a non-GAAP measure, is defined as EBITDA excluding equity-based compensation expense, deferred lease costs, impairment and loss on 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. See Non-GAAP Financial Measures within our Form 10-K for definition and reconciliation to the most comparable GAAP measure



# 2020 SALES RECOVERY

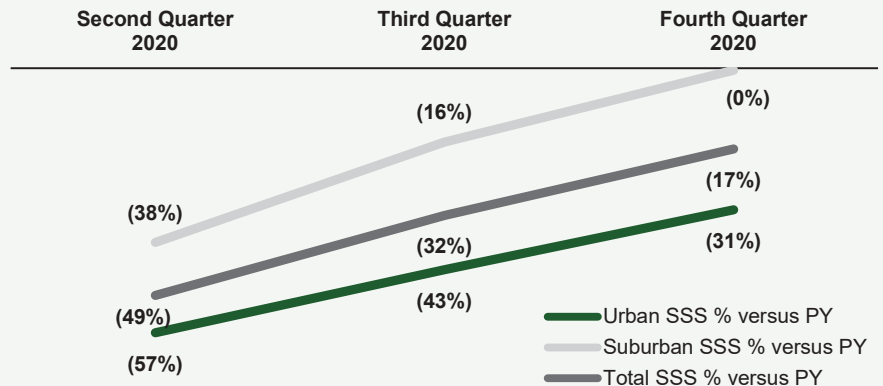
## Average Weekly Sales ("AWS")<sup>1</sup>



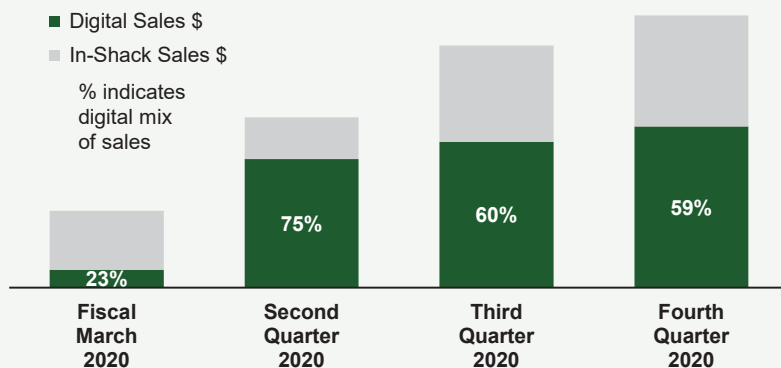
Despite the significant challenges facing our business, and with much of the country under varying degrees of lockdowns, we saw steady sales recovery in every region following Fiscal April

Suburban Same Shack Sales recovery outpaced our urban footprint throughout the year, approaching flat by the end of the fourth quarter. Urban markets, particularly our hometown of New York City, were more acutely impacted but still showed continuous improvement through the year

## Urban versus Suburban Same-Shack Sales %



## Digital Sales Mix



With extensive COVID restrictions in place, we quickly pivoted to leverage our digital infrastructure, capturing the majority of Shack sales through our own app/web channels, and 3rd party delivery services. These sales exited the year at approximately 60% of total sales, while we added close to 2 million first-time app/web purchasers between March and the end of 2020

1. Average Weekly Sales ("AWS") is calculated by dividing total Shack sales by the number of operating weeks for all Shacks in operation during the period. For Shacks that are not open for the entire period, fractional adjustments are made to the number of operating weeks open such that it corresponds to the period of associated sales  
 2. Fourth Quarter 2020 total YoY Shack sales decline excludes impact of the 53<sup>rd</sup> fiscal accounting. The favorable impact of the 53<sup>rd</sup> week in fiscal 2020 was an incremental Shack sales of \$10.7 million



OUR PURPOSE

# We Stand For Something Good



OUR MISSION

We Are On an Endless Pursuit to Create Uplifting Experiences

OUR ENGINE

We Encourage Hope, Optimism, Affirmation + Ongoing Learning

OUR PRODUCTS

Elevated, Modern and Fun Versions of the Classics

OUR COMMITMENTS



- We elevate everything we do
- We deliver *Enlightened Hospitality* at every touchpoint
- We gather communities and enrich our neighborhoods
- We do the right thing and hold ourselves accountable
- We empower our team to act like entrepreneurs





# We elevate everything we do

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Shake Shack is on an endless journey to create uplifting experiences within our neighborhoods. It is our goal to be thoughtful with the premium ingredients we source, the Shacks we build, and the way we support our teams and guests. We constantly ask the question, "Whoever wrote the rule it has to be this way?"

- Our culinary innovation focuses on elevated, modern, fun versions of the classics
  - o LTOs and seasonal menus drive customer engagement
  - o Thoughtful expansion and improvement of existing menu categories, including chicken, beverage and frozen custard
  - o Testing and iteration of new category expansion such as Veggie Burgers
- Broadening multi-format Shack strategy, including new designs to support drive-thru, Shack Track walk-up and drive-up layouts, and more that allow us to build Shacks to best meet the needs of each community



# We deliver enlightened hospitality at every touchpoint

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Shake Shack was founded on the concept of Enlightened Hospitality and today, we deliver on that promise by incorporating hospitality throughout our guest touchpoints. Hospitality to us is taking care of our team, our guests, our communities, our suppliers and our shareholders

- Our digital products expand ease and access to the brand and remove friction in the ordering and pickup experience
- Digitally enabled Shack Track and curbside pickup elevate guest experience through convenience and ease of use
- Delivery through the Shack app launched nationwide early in 2021 which, in addition to third-party marketplace delivery options, brings Shack to your door





# We gather communities and enrich our neighborhoods

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Across the globe, Shacks are an integral part of their communities, and we believe we have a role to play in supporting and revitalizing the neighborhoods where we work and serve. More than ever, we believe the world needs to - and will - gather again, and we are positioning Shake Shack to be every bit of the community-gathering experience we have built this company on, while adding the convenience our guests deserve

- Opened 20 domestic Company-operated Shacks in 2020 in existing and new markets such as Oakland and Madison
- Expanded into new formats, including our first ever Shack Track walk-up and drive-up window formats, with a goal of increased convenience. We are focused on building our first drive-thru Shacks in 2021
- Opened 23 licensed Shacks in 2020, including the first Beijing Shack, a new international market
- Accelerating a robust pipeline ahead, targeting 35-40 Company-operated and 15-20 licensed new Shack openings in 2021; while targeting 45-50 Company-operated and 20-25 licensed new Shacks in 2022





# We do the right thing and hold ourselves accountable

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At Shake Shack we have always believed in leading by example and making better possibilities come to life with our team and community, beyond just making great food. We are on an endless journey of learning and working to improve. You will see some of these commitments in our Stand For Something Good Summary, available on the investor section of our website

- Increased our investment in regenerative and sustainable ingredients
- In 2021, we are piloting various sustainable packaging alternatives for straws, cutlery and water bottles as we continue to work to mitigate our environmental impact
- Supported both national and local organizations, making donations to the Equal Justice Initiative, the Fresh Air Fund, Relief Opportunities for All Restaurants (ROAR), and other non-profit organizations
- Provided thousands of meals to healthcare & frontline workers and non-profits
- Board of Directors consists of majority independent seats, with a diverse composition in terms of gender, race, and ethnicity, and separate CEO & Chairman positions



# We empower our team to act like entrepreneurs

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At the heart of a Shake Shack experience is our teams' personal commitment to hospitality. As we grow, we are developing our leaders and building tools to empower our Shacks to extend hospitality through uplifting experiences

- Awarded 100% score for the third year in a row on the Human Rights Campaign's Corporate Equality Index, for support of the LGBTQ+ community in the workplace
- Built extensive diversity, equity and inclusion initiatives including mentoring programs, unconscious bias training, and employee resource groups
- Paid out close to \$6M in additional pay to our Shack teams in 2020, including guaranteed bonuses. We award equity grants to GMs, and increased entry-level wages at the majority of Shacks in early 2021
- Launched the Shift Up Education Program to progress the careers of our future leaders, with training in professional, financial and leadership skills
- More than 56% of internal promotions in 2020 were women, and 76% were underrepresented minorities





## Dear Valued Shareholders,

As we reflect on all that transpired in 2020, we begin and end with the commitment to our team members and communities around the world. None of us could have been prepared for the simultaneous collision of a global pandemic, an economic tornado, a reckoning of social and racial injustice, and the loss of so many so close to us. Yet our team pulled together and persevered. One day, one burger, one neighborhood, one business evolution at a time, our company's resilience was tested over and over, and by overcoming adversity together, our team grew closer than ever and we are now solidly on the road to recovery. If anything, the tests posed by this past year encouraged - and even forced - us to accelerate our thinking, planning and building for our future. Our message to the team has been to lead with hope, while acting on reality. We know that the adversity of this year will ultimately have caused Shake Shack to become an even more connected team, a stronger brand, and a better business. More than ever, We Stand For Something Good.

### A few of the key financial metrics for Fiscal 2020:

- System-wide Shacks grew by 13%, to 311 units at the end of 2020
  - Company-operated Shacks grew 12% to 183
  - Licensed Shacks grew 14% to 128
- System-wide sales of \$778.9 million
- Total revenue of \$522.9 million
- Same-Shack sales decreased 27.8%
- Approximately 2 million first-time app/web purchasers between March and the end of 2020
- Shack-level operating profit of \$71.4 million
- Adjusted EBITDA of \$22.7 million
- Cash, cash equivalents and marketable securities of \$183.8 million and no outstanding debt, at year-end

Looking forward, while a full recovery will take time, especially in our hometown of New York City and other densely populated urban areas, we have seen continued and steady upward momentum every month since April 2020. After a successful equity raise in April 2020 and a subsequent convertible bond issuance in March 2021, Shake Shack today has the strongest balance sheet in its history, and we are in a position for significant ongoing global growth. Execution of our focused strategic initiatives will lead the way towards a growing total addressable market opportunity.

Here is a bit of what we have learned and where we are focused in 2021:

- **Accelerated Development:** Our team acted quickly in 2020 to recapture growth as soon as it was safe to do so, opening 20 domestic Company-operated and 23 licensed Shacks. Through the pandemic and on the other side, we believe there is a robust real estate opportunity globally and we intend to capture it, as a preferred tenant in some of the world's best locations. We are excited to accelerate unit growth and will be targeting between 35 and 40 new domestic Company-operated Shacks in 2021, ramping up to 45 to 50 in fiscal 2022. This represents an approximately 45% increase to our year-end 2020 domestic Company-operated Shack count over the next two years. We have identified great real estate in new and existing markets with formats focused on convenience, while still elevating the great community gathering places for which we are known. Our new formats allow us to look at markets and locations with a wider breadth, as we bring together the physical and digital investments enhancing the guest experience, leading with Shack Track formats, curbside and drive-thru experiences. Our first drive-thrus are targeted for Q4 2021, with at least five to eight additional drive-thrus planned through fiscal 2022.



Additionally, we expect to open 15 to 20 new licensed Shacks in fiscal 2021 and 20 to 25 new licensed Shacks in fiscal 2022 with significant focus in the near term on China and the broader Asia market, with market launches this year in Shenzhen, Macau and more. The strength of the brand continues to reinforce the opportunities ahead for global expansion.

- **Digital Transformation:** Overnight in the beginning of the pandemic, our digital sales flipped from close to 20% of total sales to 80%, ending the year around 60%. We have accelerated our digital ecosystem strategy quickly and are doubling down on investments that allow our guests to get their Shack however, whenever, and wherever they desire. Hospitality to us has always meant being on your side. Now more than ever, the power of the Shack experience lies in the able hands of our Shack fans. Shack Track creates an ever-improving platform for digital innovation, with enhancements to our App, Web, Kiosks, Curbside, Third-Party Delivery and Delivery within our own App channels, all launched and with a roadmap for continuous improvement. As of the end of 2020, we added nearly two million new guests to our own digital channels since March and we have begun to build the infrastructure to deepen the relationship and connections we have with both new and active guests. There has never been a more important shift in our business, and we are excited for what we can build from here.
- **Culinary Innovation:** As always, we are focused on our products. We are working to strengthen our core menu every day, while innovating LTOs like Hot Chicken, Korean-Style Fried Chicken, Black Truffle Burgers, Seasonal Shakes and Lemonades and more. We are testing new and improved Veggie Burger options to meet evolving guest preferences, and we are always working in our New York Innovation Kitchen to find those flavors and ideas that celebrate our history as a fine dining company, while giving our guests more reasons to return. This year we are working with a diverse group of talented Chefs around the country to expand our “Now Serving” Chef Collaboration series, while we deepen our connection to Shack communities around the globe.
- **Our Stand For Something Good Summary:** This year, we have provided an even closer look into our ESG efforts through our updated 2020 SFSG Summary, available on the investor page of our website. We recognize the impact we can and should have on the world, and we begin every initiative with the belief that we can do more. Throughout the toughest times of the last year, we supported our team more than ever, with increased pay, guaranteed bonuses, and a relentless focus on improving equitable opportunities across the board. We have expanded and named our DEI goals and created Employee Resource Groups, connection forums, training, and educational opportunities to lift our team higher than ever. We are working one product at a time to improve our impact, with projects such as eliminating plastic water bottles for a re-usable aluminum option and testing new utensils made from sustainable materials. We have expanded our hormone- and antibiotic-free protein commitments and are working with more regenerative farming suppliers. We have grown our Board, further diversifying and improving our governance. With each day we are studying, we are learning, and we are committing. We know we have so much more to do, and we are excited to share more of this as it comes.

### **Our Mission: Stand for Something Good**

Now, more than ever, we are on a pursuit to create uplifting experiences for everyone in our Shack community. We are committed to elevating everything we do. Since that first hot dog was served twenty years ago in Madison Square Park, we have asked the simple question, “Who ever wrote the rule it has to work that way?” With every day, we keep asking that question as we work to deliver Enlightened Hospitality at every touchpoint. Through new formats, we will

continue to create community gathering places and enrich those neighborhoods in which we operate. And through it all, we will work hard to do the right thing, hold ourselves accountable for the choices we make and empower our team to act like entrepreneurs.

Adversity is a terrible thing to waste. This year, our Shack team chose to embrace it, and we are more grateful than ever for them. They led us through this year and will lead us into a full recovery. It is with deep admiration that we thank our thousands of Shack leaders, team members, guests, communities, suppliers, global partners and shareholders who stand with us every day as we create a company where all are welcome.

We look ahead now with optimism, with confidence, and with hope for what is ahead.

To you and your families, stay healthy and stay safe. We are thankful you are on this journey with us.

Sincerely,

Randy Garutti  
CEO

Danny Meyer  
Chairman & Founder



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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 30, 2020

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

(I.R.S. Employer Identification No.)

225 Varick Street, Suite 301, New York, New York 10014

(Address of principal executive offices and 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                     | Trading symbol(s) | Name of exchange on which registered |
|---|-------------------|--------------------------------------|
| Class A Common Stock, par value \$0.001 | SHAK              | New York Stock Exchange              |

Securities registered pursuant to Section 12(g) of the Act: **None**

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

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

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule-405 of Regulation S-T

(§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).  Yes  No

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

Large accelerated filer

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 standard provided pursuant to Section 13(a) of the Exchange Act.

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

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

The aggregate market value of the voting and non-voting stock held by non-affiliates of the Registrant, as of June 24, 2020, the last business day of the Registrant's most recently completed second fiscal quarter, was approximately \$1,845,175,639, computed using the closing price on that day of \$52.07. Solely for purposes of this disclosure, shares of common stock held by members part of the Voting Group pursuant to the Stockholders Agreement, as amended, of the Registrant as of such date have been excluded because such persons may be deemed to be affiliates. This determination of affiliates is not necessarily a conclusive determination for any other purposes.

As of February 17, 2021, there were 39,022,298 shares of Class A common stock outstanding and 2,948,788 shares of Class B common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for its 2021 Annual Meeting of Shareholders are incorporated by reference into Part III of this Form 10-K.



# SHAKE SHACK INC.

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## Cautionary Note Regarding Forward-Looking Information

This Annual Report on Form 10-K ("Form 10-K") 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-K in the context of the risks and uncertainties disclosed in Part I, Item 1A of this Form 10-K under the heading "Risk Factors" and Part II, Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations".

The forward-looking statements included in this Form 10-K are made only as of the date hereof. We undertake no obligation to publicly update any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law. If we do update one or more forward-looking statements, no inference should be made that we will make additional updates with respect to those or other forward-looking statements.

# Part I

## Item 1. Business.

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. Shake Shack Inc. Class A common stock trades on the New York Stock Exchange under the symbol "SHAK." 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.

### *Equity Offering*

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.

### **COVID-19**

COVID-19 was officially declared a global pandemic by the World Health Organization in March 2020. The virus has impacted all global economies, and particularly in the United States, it has resulted in varying levels of restrictions and shutdowns implemented by national, state, and local authorities. Although the pandemic has presented challenges to our global business, it has also caused us to accelerate a variety of existing strategic growth initiatives — including new digital capabilities. By proactively taking steps to expand access, safety and convenience for our guests, we've positioned ourselves to return to growth, as described herein.

## **OVERVIEW**

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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. Originally founded in 2001 by Danny Meyer's Union Square Hospitality Group ("USHG"), which owns and operates some of New York City's most acclaimed and popular restaurants — such as Union Square Cafe, Gramercy Tavern and Maialino, to name a few — Shake Shack began as a hot dog cart to support the rejuvenation of New York City's Madison Square Park through its Conservancy's first art installation, "I ♥ Taxi." The cart was an instant success, with lines forming daily throughout the summer months over the next three years. In response, the city's Department of Parks and Recreation awarded Shake Shack a contract to create a kiosk to help fund the park's future. In 2004, Shake Shack officially opened. It soon became a gathering place for locals and visitors alike, and a beloved New York City institution, garnering significant media attention, critical acclaim and a passionately-devoted following. Since its inception, Shake Shack has grown rapidly — with 311 system-wide Shacks as of December 30, 2020, in 15 countries and 30 states, as well as the District of Columbia — and we continue to expand globally bringing the Shake Shack experience to new guests around the world.



## WE STAND FOR SOMETHING GOOD

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At Shake Shack, we Stand For Something Good® in everything we do. We are on an endless pursuit to create uplifting experiences through elevated, modern and fun versions of classic food. Specifically, we are committed to seeing this vision executed across all aspects of the business, through the following actions:

- **We elevate everything we do.** Shake Shack is about creating uplifting experiences and moments of pure satisfaction. We aim to be thoughtful in every ingredient we buy, recipe we develop, Shack we design, team we build and community we support.
- **We deliver Enlightened Hospitality at every touchpoint.** Shake Shack was founded on the idea of Enlightened Hospitality. Today, we deliver on that vision by building hospitality through all our guest touchpoints. To us, hospitality is all about taking care of our team, our guests, our communities — and bringing those groups together.
- **We gather communities and enrich our neighborhoods.** Across the globe, Shacks have been an integral part of their communities, and, we believe we have a role to play in supporting and revitalizing the neighborhoods where we work and serve.
- **We do the right thing and hold ourselves accountable.** At Shake Shack, we've always believed in leading by example and making better possibilities come to life with our teams and community, beyond just making great food. Our commitment to doing things differently includes a focus on exceptional career support for our teams, while creating meaningful impact in both our neighborhoods and the global industry.
- **We empower our teams to act like entrepreneurs.** At the heart of a Shake Shack experience is our teams' personal commitment to craft and hospitality. As we grow, we are developing our leaders and building tools that empower our Shacks to better promote uplifting experiences.

## GUEST EXPERIENCE

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Danny Meyer's original vision of Enlightened Hospitality™ guided the creation of Shake Shack's unique culture. We believe that culture is the single most important factor in our success. To maintain this, we take care of our teams first and foremost, and this allows us to take care of our guests, our community, our suppliers and our investors.

With Enlightened Hospitality, we strive to create a personalized experience for our guests at each of our Shacks around the world. We achieve this through innovations in service, trendsetting culinary innovation, and the design of warm community gathering places.

### Digital Evolution

Our digital strategy makes it possible for us to offer Enlightened Hospitality to our guests at scale. Through modern platforms, we continuously strive to build better and faster ways to deliver the unique Shake Shack experience with convenience and accessibility. Our digital initiatives are defined by each of the following three themes:

- **Enlightened Hospitality** – Using our digital channels to bring guests an uplifted sense of hospitality. This ranges from developing innovative digital pre-ordering and pick-up experiences, to meaningfully engaging with guests through our Company-owned app and web channels.
- **Personal Guest Experience** – Knowing, understanding, and creating a personal guest experience that drives loyalty, frequency, and brand engagement across multiple digital platforms and in the Shacks themselves.
- **Smarter Every Day** – Building and refining our data platform and overall approach so we can drive return on investment on marketing campaigns and technology spending, and improve our ability to make smart decisions that fuel growth.

As we have evolved our physical Shack design to efficiently serve our guests, the continued development of our digital ordering tools has also been essential. The pandemic has accelerated those plans, as we use these tools to connect with our guests directly, more frequently, and safely — while focusing on a return to growth in the process.

Our Company-owned web and app channels, when combined, continue to be the fastest growing channel on a year-on-year basis since the second quarter of 2020. At the end of fiscal 2020, we had added 1.8 million first-time purchasers to those channels since early March 2020, and this has now grown to over 2 million by the end of fiscal January 2021. This influx of new and returning guests has reinforced our commitment to optimizing these channels and has given us opportunities to capitalize on new marketing and targeting strategies, which could help drive both frequency and average check size.

During fiscal 2020, we innovated the order pickup experience and expanded the modes that customers could use to enjoy it. This now includes in-Shack pickup, Shack Track, curbside pick-up, kiosk and delivery on certain platforms such as Uber Eats, Postmates, DoorDash, Caviar, and Grubhub.

#### *Shack Track*

To give our guests the flexibility they needed in 2020, we introduced Shack Track, as an enhanced digital pre-order and fulfillment solution that allows guests to order through our Company-owned app or web channels — and pick up however they like, whether through curbside, walk-up window, drive-up window or at an improved in-Shack pick-up area. It allows for intentional, directional and friction-reduced order and pick-up, across all formats. Shack Track is integrated in the design of the Shack, while remaining separate and distinct from the in-Shack guest experience — allowing any guest's journey to be intuitive and efficient. Within Shack Track, our overarching goal is to bring together our physical and digital infrastructure to reduce friction at every step of Shake Shack experience.

As of December 30, 2020, we have added eight Shack Track pick-up windows to existing Shacks, as well as our first drive-up Shack Track. For fiscal 2021, we expect most of our new Shacks to have some version of a Shack Track, whether a drive-up or walk-up window, or a combination of enhanced interior pick-up, curbside pick-up, and/or dedicated delivery courier pick-up areas.

#### *Curbside Pick-up*

In 2020, we also introduced curbside pick-up on our app at participating Shacks. Guests can pre-order on the app, identify their car, and our team members will bring the order to them with contactless pay and hand-off. This model was created to solve the need for safe, contactless pick-up, and we will continue to evolve and improve this model as we learn more — and we intend to add this option to future Shacks wherever the layout allows for it.

#### *Shake Shack Drive-Thru*

To further expand our guests' range of choices for pick-up, we plan to launch our first-ever drive-thru location in Orlando, Florida in 2021. The Shake Shack drive-thru will be a modern version of the traditional drive lane experience, supported by technology-enhanced hospitality and innovative design – all while maintaining our core tradition of building community gathering places. We view this as an opportunity to increase our addressable market. We are targeting to launch between five and eight drive-thru locations by the end of 2022.

#### *Delivery Service*

Over the past several years, we executed various third-party delivery options in an effort to bring Shake Shack to our guests wherever they are and whenever they want. Delivery is an essential part of how consumers order today, presenting an opportunity to reach more people and have them engage with Shake Shack on their terms. With that in mind, we entered into an integrated delivery partnership with Uber Eats, expanded our existing integrated delivery partnerships with Postmates, DoorDash and Caviar and moved to a non-exclusive arrangement with Grubhub. Additionally, we partnered with Goldbelly to offer cook-at-home Shackburger meal kits available through nationwide shipping. We are also looking forward to an expanded rollout of delivery through our own channels, and as of December 30, 2020 had begun testing this functionality across three Shacks in Miami, Florida. Through fiscal February 2021, this testing will have expanded to more than one hundred Shacks across multiple markets, and we expect a nationwide rollout to be largely completed by the end of the second quarter fiscal 2021. Offering delivery through our own channels will help us create consistent and personal experiences, garner additional data and insights to allow for better service, and connect with guests more directly as part of our broader digital strategy. We are also enhancing our

web and app functionality, with new and improved options, allowing for additional personalization and feedback, and offering new features like giving guests real-time order status.

### *Guest Insights*

In an effort to better understand the preferences of our guests, in October 2020, we completed the first phase of an initiative to bring together disparate data and derive actionable insights through improved analytics and business intelligence. The first phase was focused on supporting our digital strategies, with the aim of increasing sales across all channels, improving our transactional and marketing communications, and, most importantly, delivering an enhanced guest experience.

Going forward, our data initiative will focus on improvements to digital marketing and collecting guest feedback, allowing us to further refine our ability to serve our guests and create lasting experiences that attract new guests, keep existing guests coming back and ensure all guests return with increased frequency.

### *Contactless Mobile Payment Method*

With the safety and convenience of our guests in mind, we started implementing a mobile contactless payment method in 2021, helping to make the in-Shack ordering experience safe and secure. This new contactless payment method allows guests to pay through a secure payment device and utilize digital wallets on their own device. This technology will give our guests an easier, faster and more convenient way to pay for their meals and is expected to be rolled out nationwide by the end of the second quarter 2021.

Our omnichannel approach has unlocked new opportunities for us to better understand and personalize both our menu offerings and preferred channels for guests. We're continuing to explore the optimal balance of event-based marketing and targeted offerings to bring Shake Shack to anyone who wants it — whether our guests dine with us once a year or once a week. We are in the process of ensuring all of our channels offer a uniform user experience so that a pickup order placed in the app looks and feels the same as a curbside order placed from a mobile browser. No matter what channel or platform guests use, our goal is to bring them a customized and enhanced payment experience that suits their particular needs.

Our ongoing digital strategy in fiscal 2021 and beyond will continue to focus on these themes — safety, personalization and consistency — allowing us to expand on the omnichannel foundational work performed during fiscal 2020, and offer innovative digital interactions and dynamic personal relationships with our guests throughout every Shake Shack experience.

## **Development**

### *Site Selection*

In choosing a new site, we focus first and foremost on the guest experience — so that each new location can be the ideal spot for people to gather together. Our experienced development team actively leads the site selection process, and their recommendations are reviewed and approved by our Real Estate Committee, which follows a stringent approval process to ensure quality, fiduciary responsibility and overall adherence to our strategic growth goals. Our analytical tools allow for extensive demographic analysis and data collection for both existing and new potential sites. In addition to our in-house team of experienced real estate professionals, we also use a national real estate broker to manage a network of regional brokers in order to leverage external resources in pursuit of pipeline development. Looking beyond, we are pursuing and developing sites where we can continue to implement our Shack Track concepts.

### *Construction*

In a normal operating environment, a Shack will generally take between 14 and 22 weeks to build. In fiscal 2020, the total investment cost of a new Shack — which includes costs related to items such as furniture, fixtures and equipment — ranged from approximately \$1.4 million to \$3.2 million, with an average investment cost of approximately \$2.4 million, or approximately \$2.0 million net of tenant improvement allowances received from our landlords. We use a number of general contractors on a regional basis and employ a mixed approach of bidding and strategic negotiation in order to ensure the best value and highest quality construction.

## Engaging the Community

### ***A Warm Community Gathering Place***

Shacks are so much more than a place to get burgers, fries and shakes; they're places for the community to safely gather. We place a high premium on connecting with our communities — whether through the physical design of our Shacks or by the local causes we support.

No matter the format or region, each Shack is specifically designed to be of its place and connect with its community. The original Shake Shack in Madison Square Park, for instance, was designed to set the tone for a dynamic dialogue inside the park and the surrounding neighborhood. Today, across our domestic and international locations, we secure vibrant sites and give them a hand-crafted, community-appropriate look by blending unique local features with our core Shake Shack design elements. We have also developed a number of iconic brand identifiers, like wrap-around steel beams, open kitchens, large distinctive menu boards and comfortable, distinctive furniture that advances our sustainability initiatives. We believe these identifiers are key components to the expression of the brand and the Shake Shack experience.

The overall atmosphere of our new Shacks evokes our original upbeat and relaxed park ambiance, combined with the fine dining experience that has become part of our brand's DNA. We use high-quality tactile materials, warm lighting that highlights every table and textured wall, as well as seating layouts that encourage guests to relax and stay for a while. Additionally, whenever possible, our Shacks feature either outdoor seating or easy access to a park or green space.

From time to time during the construction of certain new Shacks, we re-imagine the often-uninspiring plywood barriers that surround a construction site and use them as a canvas to introduce Shake Shack to the community prior to opening. We also collaborate with local artists and designers to bring beautiful artwork and installations to our Shacks.

Each Shack is designed to convey a consistent brand message while also tailoring marketing efforts to its specific region. We offer menu items that feature ingredients and beers specific to each Shack's community, and we often team up with local chefs and restaurants to offer our guests unique, collaborative menu items. We participate in local celebrations and develop relationships within the community, helping position Shake Shack as a premium brand that is connected to its neighborhood.

### ***Community and Charitable Partners***

In addition to special events, we regularly serve our communities by hosting 25% Donation Days. Supporters who participate in these fundraisers have 25% of their order totals donated to a local charitable non-profit.

In light of the impact the pandemic has had on our communities, in February and March of 2020, Shake Shacks across the country rallied to bring food donations to local hospitals and frontline workers. Over the course of that two-month period, we provided over 11,000 meals to healthcare and frontline workers and nonprofits. Additionally, as we have begun opening new domestic Company-operated Shacks, we have partnered with local charities in those areas to donate meals for every order placed on opening day.

In keeping with our commitment to give back to the communities we serve, we donated \$100,000 to the Equal Justice Initiative in 2020, and we will continue to partner with them in 2021 as part of our evolving diversity, equity and inclusion initiatives as well as our employee engagement initiatives.

## Engaging With our Guests

Shake Shack grew up alongside social media and we believe we have benefited from our close relationship with passionate fans who want to engage with us and share their real-time experiences. We're proud to be recognized by media and influencers alike, garnering attention around the world.

Our positioning and brand voice, derived from the spirit, integrity and light-hearted nature of Shake Shack, are reinforced by our contemporary, responsible designs and hospitable team members who Stand For Something Good. This identity also anchors our marketing efforts, with the heart of our marketing strategy to cultivate community and connect with guests both in our Shacks and through digital channels.



## **Social Media**

Just as we design our Shacks as community gathering places, our social media strategy creates an online, on-brand community gathering place. With our social media, we mirror the in-person hospitality a guest experiences when they visit a Shack. We interact with fans primarily on Facebook, Instagram, Twitter and TikTok through comments, replies and the use of user-generated content; a quick search of "#shakeshack" on Instagram reveals over 1 million organic posts from our fans. In addition to social media, we also connect with our guests by sending out menu item alerts, local event invites, new Shack opening information and other relevant Shake Shack news through our email marketing program.

## **Promotions and Events**

Throughout fiscal 2020 we continued to extend our brand by collaborating with celebrated chefs, developing new creative concepts, unveiling exciting promotions and participating in special events to drive brand awareness and engage with our guests. These initiatives were key to harnessing the growing strength of the Shake Shack brand and helping it stand out through unique moments and activations. Some notable collaborative promotions and events include:

- **Brandon Maxwell Fashion Show** — For the third time, we catered front and back of house for the Brandon Maxwell Spring Fashion Show at the American Museum of Natural History. Shake Shack has become a staple at this event and saw engagement from top tier influencers such as Bella Hadid.
- **Postmates x Coachella Delivery Promotion** — After a postponement due to COVID-19, Coachella Valley Music and Arts Festival partnered with YouTube to stream a documentary called *Coachella: 20 Years In The Desert*. During this festival weekend, we partnered with Postmates to offer a free ShackBurger with orders over \$20 for guests to enjoy, while hosting their own watch party. In addition, we offered our Shake Shack fans a free month of Postmates Unlimited.
- **Goldbelly DIY Kits** — We partnered with Goldbelly to bring cooking kits of Shake Shack's ShackBurger and SmokeShack nationwide. These offerings, which came in an 8 and 16 pack, marked the first time that fans could cook and enjoy Shack favorites from the comfort of their own home.
- **Shack Camp** — For the first time in 2020, we launched Shack Camp, providing families with our Shack Camp Box that included six weeks' worth of activities to keep families entertained from home — with a portion of proceeds going to the Fresh Air Fund's virtual summer program. The program also included six IGTV videos for families to follow each week.
- **Shake Shake: UberEats x Shake Shack** — A campaign in partnership with UberEats, we created a new Tik Tok dance called "The Shake Shake" — a fun new way to shake hands during this "low contact" time. To drive sales, we offered BOGO Shakes via UberEats, plus a free Shake for EatsPass members.
- **Election Campaign** — For this year's election, we had a number of initiatives to help educate voters and support the electoral process. We partnered with Vote.org on a content series to help inform and educate our social community on resources and voting options. We also partnered with Uber Eats to distribute 5,000 ShackBurgers via Uber Eats Food Trucks to particularly crowded polling stations and gave guests free fries to celebrate early voting. Additionally, for the first time ever, we offered our workers Voting PTO and Poll Worker PTO policies.

## **Capitalizing on Our Brand Awareness**

Since 2004, we have become a globally recognized brand with significant consumer awareness relative to our current footprint of 311 Shacks. Shake Shack has become a New York City institution, a vibrant and authentic community gathering place delivering an exceptional experience to our loyal guests. One great advantage for Shake Shack has been our birthplace and headquarters in New York City, and our origination from a fine dining company. This gives us tremendous media and brand power, often outweighing our relative size. Shake Shack was awarded the Restaurant Business 2020 Pacesetter Award — an honor given to a growth chain with a sustained track record of success — and made Restaurant Business's Top 500 Chains. Additionally, Shake Shack was named in Fast Casual's Top 100 Movers and Shakers, was among the finalists in the 2019 Shorty Awards' Best in Food & Beverage Sites and Apps, was on Nation's Restaurant News's 2018 Top 10 Fastest Growing Chains and was named on Foodable's "brand of the year" list as part of their 2018 Top Emerging Brands. We believe this brand awareness will continue to fuel our growth in both new and existing markets.

### *Media, Product Placement and Influencers*

Shake Shack's unique positioning has helped us garner robust media coverage across food, lifestyle, business and trade publications. We have also been fortunate to receive considerable product placement in movies, TV shows and other media. In addition, we have been featured across various media outlets, allowing us to increase brand awareness. Shake Shack's popularity and cultural relevance is reflected in our countless celebrity and influencer fans across Hollywood, music, fashion, sports and more.

## **Culinary Innovation**

Shake Shack's unique value proposition is partially defined by our roots in fine dining. We embrace that heritage and are committed to sourcing premium ingredients — such as all-natural, hormone and antibiotic-free beef, chicken and pork — while offering excellent value to our guests. Our core menu is inspired by the finest versions of the classic American roadside burger stand. Occasionally, we supplement our menu with limited time offers, and we experiment with potential new categories we may consider adding to the menu over time.

We are committed to culinary creativity and excellence, collaborating with award-winning chefs, talented bakers, farmers and artisanal purveyors, each of whom bring their unique skills and expertise to the Shake Shack experience. As we grow across the country, we are excited to expand these collaborations with industry-leading chefs and suppliers.

While we're extraordinarily proud of our legacy and current position, we will continue to look for the best ingredients and culinary partners, in an effort to exceed our guests' expectations in every aspect of their experience.

### ***Our Menu***

Our menu focuses on premium food and beverages, carefully crafted from a range of classic American foods at more accessible price points than full-service restaurants.

#### *Burgers*



Our burgers are made with a proprietary whole-muscle blend of 100% all-natural, hormone and antibiotic-free Angus beef, ground fresh, cooked to order and served on a non-GMO potato bun. We take great care in the preparation of our burgers — from sourcing, to handling, to cooking — to ensure their taste and quality is second to none. Our signature burger is the ShackBurger®, a four-ounce cheeseburger topped with lettuce, tomato and ShackSauce™. Our burger offerings also include the SmokeShack®, 'Shroom Burger™ (a vegetarian burger), Shack Stack® and Hamburger.



#### *Chicken*

Our Chick'n Shack™ is a 100% all-natural, hormone-free, antibiotic-free and cage-free chicken breast, slow cooked in buttermilk herbs, hand-battered, hand-breaded and crisp-fried to order. Our Chick'n Bites are made with all-natural, antibiotic-free whole muscle that is sous-vide cooked for optimum flavor, moisture and texture.



#### *Crinkle Cut Fries*

Our classic, passionately beloved crinkle cut fries are made from premium Yukon potatoes and are prepared 100% free of artificial trans fats. So many of our guests love the crispiness and ridges of our crinkle cut fries — a nostalgic ode to the roadside burger stand of yesteryear. Guests can also enjoy our Cheese Fries; our crinkle cut fries topped with a proprietary blend of cheddar and American cheese sauce.



#### *Hot Dogs*

Shake Shack was born as a hot dog cart in 2001 and we're proud to honor that legacy by continuing to offer a premium hot dog category. Both our beef hot dogs and our chicken dogs are made from 100% all-natural, hormone and antibiotic-free beef and chicken.



### *Shakes and Frozen Custard*

Our premium, dense, rich and creamy ice cream, hand-spun daily on-site, is crafted from our proprietary vanilla and chocolate recipes. We use only real sugar (no corn syrup) and milk from dairy farmers who pledge not to use artificial growth hormones. Shakes remain our guests' favorite in this category, and they're scooped and spun to order. Our concretes are made by blending frozen custard at high speed with premium mix-ins.

### *Beer, Wine and Beverages*



Our proprietary ShackMeister® Ale, brewed by Brooklyn Brewery, was specifically crafted to complement the ShackBurger's flavor profile. At select locations, we also offer local craft beers. Our Shack Red® and Shack White® wines are sourced and produced exclusively by Gotham Project, providing our guests with premium beverage options not commonly found in our industry — a nod to our fine dining heritage. We also serve canned red, white and rosé wines at our Shacks that serve alcohol. In addition, we serve Abita Root Beer, Shack-made Lemonade, organic fresh brewed iced tea, Fifty/Fifty™ (half lemonade, half organic iced tea), Stumptown cold brew coffee, Honest Kids organic apple juice and Shack|20® bottled water, from which 1% of sales help support the clean-up of water sources around the world.

### ***The Innovation Kitchen***

To explore exciting new menu options for our guests, our Innovation Kitchen is located on the lower level of the West Village Shack and connected to our home office — the hub of Shake Shack's menu development. This dedicated space allows our culinary team to get even more creative, dig deeper into our fine dining roots, collaborate with other chefs and explore new opportunities as we continue to grow. The West Village Shack's menu has all of our classic items and also features a rotating list of items from the Innovation Kitchen, with guest-favorite test items potentially becoming permanent menu items. This space also allows us to house our quality assurance and culinary teams together, ensuring that every item on our menu meets our strict standards.

### ***Shack-Wide Limited Time Offerings ("LTO")***

In response to COVID-19, we briefly simplified our menu during the first half of fiscal 2020. However, in the third quarter, we recommenced our rotating LTO calendar — with highlights including new chicken flavors, shakes and lemonades. Our LTO program generally features a new, premium burger or chicken menu item for varying time periods throughout the year. Some of our notable LTOs throughout 2020 were:

- **Hot Chick'n, Bites, and Fries** — In September 2020, we brought back Hot Chick'n, a perennial fan favorite, and added new Hot Spicy Fries and Hot Chick'n Bites to the menu with our new Ranch sauce. These items were offered in three spice levels: hot, extra hot and fire, with the latter exclusively available through our digital channels.
- **Featured Shakes** — Throughout 2020 we offered our guests a new shake corresponding to various time periods throughout the year, including flavors like Cookie Butter, Malted Milk Chocolate, Frozen Hot Chocolate, S'Mores, Cherry Blossom and Pumpkin and Winter Citrusade, to name a few. Additionally, we featured our trio of holiday shakes during November and December, which included Christmas Cookie, Candy Cane and Chocolate Spice.
- **Lemonade** — In addition to a variety of shakes offered throughout 2020, we also featured new lemonades, including Cherry Blossom, Pink and Winter Citrusade Lemonade.

In the first quarter of fiscal 2021, we brought a regional favorite from our South Korean Shacks to the United States for the first time: a Spicy Korean-Style Fried Chick'n sandwich featuring a Gochujang-glazed chicken breast topped with roasted sesame seeds, over white kimchi slaw. A version of this menu item was on the LTO menu in our South Korean Shacks in 2020, and it demonstrates how our international presence can enhance and elevate our brand as we share exciting, innovative menu items across the world. Although the pandemic resulted in a short-term focus on simplification during early 2020, we hope to return to more consistent limited time offerings in 2021, with a culinary calendar that introduces bold new chicken flavors, innovation around our beverage and custard program, and expanded testing of our new Veggie Shack.

### **Exclusive Offerings**

In addition to supplementing our menu with Shack-wide LTOs, we also seek to create new, exciting offerings that are inspired by local favorites or special events. Some examples of our exclusive offerings from 2020 include:

- **New Veggie Shack** — The Veggie Shack is made with greens, grains, and herbs, served on a wheat bun topped with avocado, roasted tomato, shredded lettuce and tangy lemon mayo. The Veggie Shack was available for a limited time at select Shacks.
- **Black Truffle Menu** — In December, we paired up with specialty food purveyor Regalis Foods to bring a Black Truffle Menu to select Los Angeles and New York City Shacks for a limited time. Our Black Truffle Menu featured new items made with Regalis' USDA Organic Black Truffle Arbequina Oil — a natural truffle product, made from Spanish black truffles and California extra virgin olive oil.
- **Bar Sardine Collab** — We teamed up with NYC Restaurateur Gabriel Stulman to bring the return of the Bar Sardine Burger. The one-day-only collab at the Madison Square Park Shack gave fans an early taste of the burger before it landed on the menu at Fairfax. And as a way to give back to our hometown New York City ("NYC"), net proceeds benefited the NYC-based ROAR, Relief Opportunities for All Restaurants.

## **GROWTH STRATEGIES**

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Even amidst the challenges of fiscal 2020, we added 36 net new system-wide Shacks and reached 311 Shacks worldwide — and going forward, we believe we are well-positioned to continue significant, sustainable financial growth. We plan to execute our growth strategies while remembering to Stand For Something Good in everything we do.

### **Opening New Domestic Company-Operated Shacks**

We believe our greatest opportunity for growth lies in opening new, Company-operated Shacks. We waited nearly five years to open our second Shack, and a little over a decade since then, we are still in the early chapters of our story. We see a tremendous whitespace opportunity to expand in both new and existing U.S. markets, and we will continue to invest in infrastructure with an eye toward growing rapidly, but with discipline. In the long-term, we believe we have the potential to grow our current domestic Company-operated Shack footprint to at least 450 Shacks; for comparison, we have only opened 41% of that number through the end of fiscal year 2020. Of course, the rate of future Shack growth in any particular period is inherently uncertain and is subject to numerous factors beyond our control. As a result, we do not currently have an anticipated timeframe for such expansion.

In response to COVID-19, new design and construction of future Shacks was temporarily suspended and openings were put on pause in early 2020. With the gradual and sequential recovery of sales throughout the year, we restarted our new Shack development during the second quarter of 2020. Domestically, we expanded our Company-operated footprint by opening 20 new Shacks in 2020 — a 12% increase in our domestic Company-operated Shack count from the prior fiscal year. As of December 30, 2020, we had 183 domestic Company-operated Shacks.

We believe we have a versatile real estate model built for growth; our disciplined expansion strategy is designed to leverage our business model's strength and our brand awareness. We continue to be encouraged by the success of our multi-format strategy which includes but is not limited to free-standing pads, urban centers, food courts, shopping centers and more. As we look to 2021, we intend to return to the full development schedule that was in place before COVID, and we are targeting between 35 and 40 new Company-operated Shacks. We hope to launch in new cities like Portland, Tampa, Indianapolis and Boulder, while also developing a deeper presence in California, the Midwest and some of our other strong markets on the east coast. We aim to build a balanced set of formats across our portfolio, and to keep diversifying across markets as we look to ramp up Shack unit development in 2022 and beyond. To that end, we are planning to open a total of 45 to 50 new domestic Company-operated Shacks in fiscal 2022.



## Growing Our Licensed Shack Business

Beyond our Company-owned Shacks, we also hope to keep growing our licensed portfolio by expanding further domestically and internationally. Historically, this strategy has been a low-cost, high-return method to grow our brand awareness and increase cash flow. As of December 30, 2020 we had 128 licensed Shacks, of which 106 were international and 22 were domestic in the U.S.

### ***International Licensed Operations***

In fiscal 2020, we opened 22 international Shacks and closed six international Shacks. The 22 new international Shacks included four Shacks in mainland China, two in Hong Kong, four in the United Arab Emirates, four in South Korea, four in Singapore, two in Mexico, one in Turkey, and one in the Philippines. We believe our brand's strength continues to reinforce opportunities for global expansion. In the near-term, a meaningful part of our international business strategy remains focused on the Chinese and broader Asian markets. In fiscal 2020, we increased the Asian market Shack count by approximately 35%. In fiscal 2020, we also expanded our partnership with licensee Maxim's Caterers Limited which targets a development agreement of 15 Shacks in South China by 2030, including locations in Shenzhen, Guangzhou and more. Through this expanded partnership, this agreement increases development targets for mainland China to 55 Shacks by 2030 — building upon the seven Shacks that were open as of December 30, 2020, including locations in Beijing and Shanghai.

These partnerships with our international licensed counterparts are great opportunities for our team to grow, learn and bring back insights to the broader Company. Given our position in New York and the success of our existing licensed Shacks at home and abroad, we continue to attract interest from potential licensees around the world. We see significant opportunities to expand our licensing footprint in existing and new international markets as our team and supply chain matures.

### ***Domestic Licensed Operations***

In fiscal 2020, we opened one domestic licensed Shack in the Salt Lake City Airport (in September) and closed one domestic licensed Shack. Our licensed airport and stadium business continued to be deeply impacted by the pandemic through the end of fiscal 2020, with only 14 of the 22 domestic licensed Shacks open as of December 30, 2020. In the meantime, we continue to work with domestic licensed operating partners to support new openings as they arise.

## Growing Same-Shack Sales

In addition to opening new Shacks, we continue to focus on improving our same-Shack sales performance by providing a dynamic, personalized guest experience that includes new seasonal and Shack-specific offerings, technological upgrades like the Company-owned app and web ordering/delivery, thoughtful integration with local communities and excellent standards of hospitality. We also continue to innovate our core menu to deliver fresh offerings, while maintaining the standard of our signature items.

## OPERATIONS

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At Shake Shack, we believe our success depends upon maintaining efficient and nimble operations. Just as we invest in our menu options and in-Shack experience, we take special care to ensure our supply chain, distribution, quality assurance, and management information systems are constantly being evaluated and streamlined to deliver smooth results.

## Sourcing and Supply Chain

Our Stand For Something Good vision isn't just a slogan — it indicates how we source and develop our ingredients. We work with best-in-class suppliers across our supply chain, and we're always looking for the best ways to provide top quality food at an excellent value. We pride ourselves on working with like-minded ranchers, farmers and food purveyors to source premium ingredients like 100% all-natural proteins with no hormones or antibiotics, that are humanely raised and source-verified. In fact, we are committed to sourcing 100% cage-free eggs for our global supply chain by 2025, and we're already sourcing 100% cage-free eggs for both the US and UK supply chains. We have also committed not to serve foie gras in our Shacks.

Another Shake Shack principle is that we aim to deliver menu items that are not only delicious, but nourishing. In 2020, for example, we worked with our pickle suppliers to remove artificial preservatives from our pickle recipe.

Our domestic regional strategy for ground beef production ensures we consistently serve freshly ground beef at our domestic Shacks. As we've grown domestically, we have eight butchers around the country who produce our burgers on a daily basis. As we grow, we will continue to partner with regional suppliers in new markets.

To ensure dependable quality, we have a limited number of domestic suppliers for our major ingredients, including beef patties, chicken, potato buns, custard, portobello mushrooms and cheese sauce. In fiscal 2020, we purchased all of our (i) ground beef patties from seven suppliers, with approximately 44% of our ground beef patties from one supplier; (ii) chicken breasts from one supplier; (iii) potato buns from one supplier; (iv) custard base from two suppliers; (v) 'Shroom Burgers from one supplier; (vi) crinkle cut fries from two suppliers; and (vii) ShackSauce from two suppliers, with approximately 78% of ShackSauce supplied by one supplier. We believe we have developed a reliable supply chain, but we have also taken strides to identify alternative sources to avoid any possible interruptions of service and product.

## Distribution

We have pursued a centralized distribution process by contracting with one distributor, which we refer to as our "broadline" distributor, to provide virtually all of our food distribution services in the United States. As of December 30, 2020, approximately 84% of certain food and beverage ingredients including chicken, fries and custard — collectively representing approximately 45% of our purchases — were processed through our broadline distributor for distribution and delivery to each Shack. As of December 30, 2020, we were utilizing 20 affiliated distribution centers to supply our domestic Company-operated Shacks. We recognize that the safety and consistency of our products begins with our suppliers — so suppliers must meet certain criteria and strict quality control standards in the production and delivery of our food and other products. Finally, we regularly evaluate our broadline distributor to ensure the products we purchase conform to our standards and that the prices they offer are competitive.

## Food Safety and Quality Assurance

As should go without saying, food safety is our top priority. We have rigorous quality assurance and food safety protocols in place throughout our supply chain and in our Shacks. We take a two-pronged approach: we allow for quarterly third-party audits of our Shacks, as well as a review of our suppliers. We have a comprehensive supplier and ingredient selection process, and we maintain a limited list of approved suppliers that meet our standards. We thoroughly review the results of suppliers' internal and external quality audits, insurance coverage and track record on an on-going basis. We perform food safety and brands audits, and we also audit and visit our suppliers. To stress test for exceptional scenarios, we conduct mock food recalls across a selection of our suppliers on a quarterly basis. We have developed and implemented training and operating standards related to the food preparation, cleanliness and safety in each Shack, as we ensure our team members go through crisis management training. And of course, we have a dedicated Quality Assurance team.

## Management Information Systems

Our domestic Company-operated Shacks use computerized point-of-sale and back-office systems designed for the restaurant industry; we use many customized features to increase operational effectiveness, improve internal communication and enhance data analysis. This system uses a touch screen interface, graphical order confirmation display, touch screen kitchen display and integrated, high-speed credit card and gift card processing. The point-of-sale system collects daily transaction data, which generates information about sales, product mix and average transaction size. From there, our back-office systems assist in the

management of our domestic Company-operated Shacks and provide real-time labor and food cost management tools. These tools provide the home office and operations management quick, easy access to detailed business data, and allow Shack-level managers to spend less time addressing administrative needs. We expect to continue improving our information technology infrastructure to better serve our business needs and accommodate growth.

### ***Enterprise-wide System Upgrade – Project Concrete***

In an effort to ensure our infrastructure and support systems are sufficiently robust and scalable enough to deliver upon our growth opportunities — in June 2020, we completed an enterprise-wide system upgrade, "Project Concrete." Project Concrete is an enterprise resource planning (ERP) project to implement new systems and processes that support our finance, procure-to-pay, inventory and human capital management areas. Project Concrete focused on (i) streamlining and automating business processes to make robust future growth possible; (ii) standardizing and centralizing business processes; and (iii) implementing new software applications to centralize our business in a controlled and efficient way. Project Concrete replaced our current back-of-house systems, reduced administrative tasks in Shacks, and it reflects our broader mission of investing in tools across the Company.

## **HUMAN CAPITAL MANAGEMENT**

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We are committed to investing in our people so we can build, develop and retain the best teams. We aim to recruit people who have integrity, who are warm, friendly, motivated, caring, self-aware and intellectually curious — what we call "51%'ers." We use the term "51%" to describe the interpersonal and emotional skills needed to thrive in the role, with the other "49%" representing the technical skills. Our team is trained to understand and practice the values of Enlightened Hospitality: caring for each other, caring for our guests, caring for our community, caring for our suppliers and caring for our investors. We believe this culture is fundamental to the way we operate our business, and a key driver of our ability to deliver great guest experiences — and therefore, successfully grow our footprint.

### **Our Employee Value Proposition**

Working at Shake Shack is about more than making a great burger — it's about creating elevated experiences for our team members and guests, and getting opportunities to build a rewarding career. We want every team member at Shake Shack to be empowered to impact our Shacks and the communities around them.

We're a family of passionate, fun-loving and hardworking people who encourage and uplift each other. We are committed to doing the right thing for our teams, guests and communities. We challenge ourselves, hold each other accountable and take care of one another. In short: We Stand For Something Good.

### **Leaders Training Future Leaders**

We invest in leadership development programs so that Shake Shack remains a compelling career choice for team members at every level, through their entire career. As our team continues to grow, we believe that our culture of Enlightened Hospitality helps us deliver a consistent Shack experience, and to develop future leaders from within.

#### *The Shacksperience and Steppin' Up Model*

We call our team member life cycle and overall employment experience, The Shacksperience™. A key element of The Shacksperience is the Steppin' Up Model, which defines the steps in the employment life cycle, from team member to general manager. It clarifies the eligibility requirements and training necessary for each position, outlines the growth opportunities at all levels of the organization and furthers our philosophy of "leaders training future leaders."

First and foremost, we train new team members on our culture and guiding principles. From there, we move to menu knowledge, followed by operational training. We know everyone learns differently, so our training programs use various formats: online interactive, video, hands-on and paper-based. For our online sessions, every team member has access to ShackSource™, our proprietary online training portal, which is used both as a learning platform and communication tool. ShackSource gives team

members a platform to send recognition messages, comments, praise and thanks to their fellow team members across the Company. And for hands-on training sessions, we gather our teams around the country whenever possible, as well as in our Leadership Center, located below our home office on the lower level of our West Village Shack. The Leadership Center is dedicated to the training and development of our Shack and home office teams; we use it to host New Leader Orientation sessions for new managers.

We care about our team and we're committed to setting them up for success, at Shake Shack and in their future careers. In 2020, we promoted over 1,500 people throughout our Company, 56% of whom were women and 76% were under-represented minorities. We are proud of our leaders who graduate from hourly roles to managers, managers to General Managers and General Managers to regional leadership. This year, 73% of our new General Managers and 75% of new Area Directors were promoted from within.

We are committed to retaining our leaders by continuing to evolve our training, development programs, compensation and benefits. We want to incentivize our Shack leaders, give them the opportunity to feel like owners and reward them for their performance. One way we try to achieve this is by extending our equity-based compensation program to all General Managers.

### **Shift-Up Program**

As part of our long-term investment in our people, we began to pilot the Shift-Up program in December 2020, which is designed to provide skills that help accelerate shift managers' career paths within the Company. This six-month program focuses on modules, like professional communication, public speaking and presentation skills, personal finance, management skills, and the ability to lead and participate in inclusion conversations. Shift managers generally attend these sessions through live virtual classrooms, as well as in small group or peer learning settings.



## We Are All-In

To make sure every Shake Shack team member at every level has a positive experience, we strive to build an inclusive workplace, made up of diverse talent throughout the Company. Our diversity, equity and inclusion program, All-In, is part of that mission. With the support of executive leaders, All-In works to ensure Shake Shack provides equal opportunities for, and removes obstacles to, success, while also fostering a culture of diversity, inclusion and empowerment. Our All-In program's initiatives include:

- Employee Resource Groups — We launched four Employee Resource Groups in fiscal 2020, with a focus on women, Black, Hispanic and LGBTQ+ identifying team members, to help Shake Shack continue to foster a diverse, inclusive workplace. These are voluntary employee-led groups of people who gather together based on common interests, backgrounds or demographics such as gender, race or ethnicity. These groups support both personal and career development.
- Unconscious Bias Training — We launched unconscious bias training for all home office and field-based team members. The training was designed to create awareness for the impact of bias in the workplace, and to provide tools for our teams to address and counteract that bias.
- Stand Together Series — We launched a Stand Together Series forum to discuss on-going social issues. The Company-wide sessions served as an open forum and safe space for sharing personal stories to help deepen the collective understanding of diversity issues in the United States while strengthening our community and team. In 2020, we hosted live sessions on topics such as racial discrimination and injustice, gender equity, LGBTQ inclusion, voting, and more.
- Mentorship Program — As part of our commitment to leadership and team member development, our mentorship program facilitates learning and growth, while providing tools and opportunities to connect with other members of the program, and the Company as a whole.
- #ShacktheVote — Leading up to the general election in November 2020, we launched an internal campaign to help educate our employees on the importance of civic engagement, including how and where to vote. We also provided our team members with paid time off to exercise their right to vote.
- We were proud to be named one of the "Best places to work for LGBTQ+ Equality" and earn a 100% score on the Human Rights Campaign's Corporate Equality Index for our support of the LGBTQ+ community in the workplace. This designation highlights the core of our Enlightened Hospitality ethos and our commitment to a great workplace for all.

## The HUG Fund

One of the ways we embrace Enlightened Hospitality internally is through the administration of our own HUG (Help Us Give) Fund, a 501(c)(3) organization available for all of our employees. The HUG Fund provides an opportunity for all Shake Shack employees to take care of each other through tax-deductible payroll and other one-time contributions. The HUG Fund provides timely financial assistance to employees impacted by financially devastating circumstances far beyond their control and their means. In fiscal 2020, employee participation in the HUG Fund increased, with donations increasing by 24% compared to 2019.

## Actions Taken to Protect our Teams and Guests During COVID-19

Our priority throughout the COVID-19 pandemic has been to keep our teams and guests safe first and foremost, while keeping our Shacks open wherever we can.

Our team created a new guest experience around curbside pickup with digital pre-ordering, and created distinct and separate areas for delivery courier pickups — all to ensure safety of our team and our guests. We have taken significant actions to ensure maximum safety for our team members and guests in these times, including increased cleaning, sanitizing and hand washing protocols, social distancing, and wearing gloves and masks at all times. We also incurred additional costs in procuring and distributing the supplies necessary to keep our teams and guests safe, such as face coverings, gloves, additional secure packaging for all orders, directional signage and cleaning supplies, which are all expected to be ongoing for the immediate

future. Furthermore, in fiscal 2021, we have begun installing state-of-the-art air purification systems to ensure a safe and clean working and dining environment for our teams and guests.

Beyond the safety of our team, we also took steps to ensure their security during an uncertain time. We paid 100% of our furloughed team members' medical insurance through August 2020, and we guaranteed full pay for our Shack General Managers even if their Shacks were closed. In fiscal 2020, we incurred close to \$6 million incremental payroll costs to support our Shack employees. These incremental payroll costs were related to a temporary 10% premium pay raise to hourly employees through the end of August, guaranteed bonuses for Shack teams, and payments related to scheduling changes for hourly team members as our teams navigated the challenging operating conditions caused by COVID-19. Furthermore, understanding the burden that the pandemic has placed on people's mental health, our employees have free access to a 24-hour emotional support helpline.

As of December 30, 2020, we had 7,429 employees, of whom 7,187 were hourly team members and Shack-level managers and 242 were home office personnel.

## COMPETITION

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The restaurant industry is highly competitive and fragmented, with restaurants competing on a variety of fronts, including taste, price, food quality, service, location and the ambiance and condition of the restaurant. Our primary competitors include other fast casual restaurants, quick service restaurants and casual dining restaurants. Our competition includes multi-unit national and regional chains, as well as a wide variety of locally-owned restaurants. Our competitors may operate company-owned restaurants, franchised restaurants or some combination. Many of our competitors offer breakfast, lunch and dinner, as well as dine-in, carry-out and delivery services. In certain ways, we also compete with companies outside of the traditional restaurant industry, such as grocery store chains, meal subscription services and delicatessens — especially those that target customers who seek high-quality food — as well as convenience food stores, cafeterias and other dining outlets.

As new competitors enter the burger and fast casual segments, and offer new digital experiences, our competition continues to intensify. We also face increasing pressures from certain competitors who have announced initiatives to offer better quality ingredients relative to their previous offerings, such as antibiotic-free meat or plant-based meat alternatives. For more information regarding the risks we face from our competitors — who may have, among other things, a more diverse menu, greater financial resources, lower operating costs, a more well-established brand, additional locations and more extensive marketing than we do — see "Risks Related to Operating in the Restaurant Industry — We face significant competition for guests, and if we are unable to compete effectively, our business could be adversely affected" in [Item 1A, Risk Factors](#).

We see ourselves as well-positioned to continue our market growth, as we believe consumers will keep seeking higher quality offerings — especially given an increasing consumer focus on responsible sourcing, ingredients and preparation. We believe that many consumers want to associate with brands whose ethos matches their own, and that Shake Shack, with our mission to Stand For Something Good and our culture of Enlightened Hospitality, reflects the values of conscientious consumers.

## INTELLECTUAL PROPERTY

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Since our inception, we have strategically and proactively developed our intellectual property portfolio by registering our trademarks and service marks worldwide. As of December 30, 2020, we had 22 registered marks domestically, including registrations in our core marks ("Shake Shack," "Shack Burger," "SHAKE  SHACK" and "") and certain other marks, such as Stand for Something Good. Internationally, we have registered our core marks in 82 countries spanning six continents. These marks are registered in multiple international trademark classes, including for restaurant services, food services, non-alcoholic beverages and apparel. We also own the domain [www.shakeshack.com](http://www.shakeshack.com) as well as over 400 other domain names for use in other markets.

In addition, we have agreements with the suppliers of our proprietary products stating that the recipes and production processes associated with those products are our property, confidential to us, and may not be provided to any other customer. Our proprietary products include the burger recipe for our whole-muscle blend, our patty grinding procedure and the product formulations for our ShackSauce, 'Shroom Burger, chicken breast, chicken breading and buttermilk herb mayo, cheese sauce, unflavored custard base, chocolate custard base, as well as certain toppings and custard mix-ins. We also have exclusive arrangements with our suppliers of ShackMeister Ale, Shack Red wine, Shack White wine, hot dog and chicken sausage, relish and cherry peppers.

## GOVERNMENT REGULATION AND ENVIRONMENTAL MATTERS

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We are subject to extensive federal, state, local and foreign laws and regulations, as well as other statutory and regulatory requirements, including those related to, among others, nutritional content labeling and disclosure requirements, food safety regulations, local licensure, building and zoning regulations, employment regulations and laws and regulations related to our licensed operations. New laws and regulations or new interpretations of existing laws and regulations may also impact our business. The costs of compliance with these laws and regulations are high, are likely to increase in the future, and any failure on our part to comply with these laws may subject us to significant liabilities and other penalties. See "Regulatory and Legal Risks" in Item 1A, Risk Factors for more information.

We are not aware of any federal, state or local provisions that have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, that have materially affected, or are reasonably expected to materially affect, our results of operations, competitive position, or capital expenditures.

## SEASONALITY

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Our business is subject to slight seasonal fluctuations which can impact sales from quarter-to-quarter. Year-over-year and quarter-to-quarter results can be also be impacted by the number and timing of new Shack openings. Additionally, given our use of a fiscal calendar, there may be some fluctuations between quarters due to holiday shifts in the calendar year. And of course, the COVID-19 outbreak may have an impact on consumer behaviors and customer traffic that may result in temporary changes in the seasonal fluctuations of our business.

## INFORMATION ABOUT OUR EXECUTIVE OFFICERS

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The name, age and position held by each of our executive officers as of December 30, 2020 is set forth below.

| Name          | Age | Position                              |
|---------------|-----|---------------------------------------|
| Randy Garutti | 45  | Chief Executive Officer and Director  |
| Tara Comonte  | 46  | President and Chief Financial Officer |
| Zachary Koff  | 41  | Chief Operating Officer               |

**Randy Garutti** has served as Shake Shack's Chief Executive Officer and on the Board of Directors since April 2012. Prior to becoming Chief Executive Officer, Mr. Garutti served as Chief Operating Officer of SSE Holdings since January 2010. Prior to leading Shake Shack, Mr. Garutti was the Director of Operations for USHG, of which Mr. Meyer is the Chief Executive Officer and Chairman, overseeing the operations for all its restaurants. In addition, Mr. Garutti served as General Manager of Union Square Cafe and Tabla, both of which won numerous accolades in the hospitality industry. Mr. Garutti graduated from Cornell University's School of Hotel Administration in 1997.

**Tara Comonte** has served as Shake Shack's President and Chief Financial Officer since October 2019 and as Shake Shack's Chief Financial Officer since June 2017. Prior to becoming Chief Financial Officer at Shake Shack, Ms. Comonte served as Chief Financial & Business Affairs Officer and Executive Vice President at Getty Images, a global digital media company, since October 2016 where she was responsible for the company's global finance, enterprise reporting & analytics and investor relations functions, together with real estate and facilities, as well as oversight of information systems & technology. Prior to that, Ms. Comonte served as the Chief Financial Officer and Senior Vice President of Getty Images since April 2013, where she managed the overall leadership and strategic direction of all aspects of the company's global finance function. Prior to that, Ms. Comonte served as Chief Financial Officer at McCann Worldgroup, the world's largest marketing communications business, since October 2010.

**Zachary Koff** has served as Shake Shack's Chief Operating Officer since January 2017. Prior to becoming Chief Operating Officer, Mr. Koff served as the Senior Vice President, Operations since March 2015, Vice President, Operations since April 2012, and Director of Operations since February 2010. Prior to joining Shake Shack, Mr. Koff spent eight years working in operations for the Bravo Brio Restaurant Group. Mr. Koff graduated from Cornell University's School of hotel administration in 2002 with a Bachelor's Degree in Hospitality Administration.

## AVAILABLE INFORMATION

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Our website is located at [www.shakeshack.com](http://www.shakeshack.com), and our investor relations website is located at <http://investor.shakeshack.com>. We are subject to the informational requirements of the Securities Exchange Act of 1934 (the "Exchange Act") and file or furnish reports, proxy statements and other information with the U.S. Securities and Exchange Commission ("SEC"). Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements, statements of changes in beneficial ownership and amendments to those reports are available for free on our investor relations website as soon as reasonably practicable after we electronically file them with, or furnish them to, the SEC. The SEC maintains a website ([www.sec.gov](http://www.sec.gov)) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

We webcast our earnings calls and certain events we participate in or host with members of the investment community on our investor relations website. Additionally, we provide notifications of news or announcements regarding our financial performance, including SEC filings, investor events, press and earnings releases as part of our investor relations website. Investors and others can receive notifications of new information posted on our investor relations website in real time by subscribing to email alerts. We also make certain corporate governance documents available on our investor relations website, including our corporate governance guidelines, board committee charters, code of business conduct and ethics, as well as certain Company policies.

The contents of our website are not incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our websites are intended to be inactive textual references only.



## Item 1A. Risk Factors.

*Described below are risks that we believe apply to our business and the industry in which we operate. You should carefully consider each of the following risk factors in conjunction with other information provided in this Annual Report on Form 10-K and in our other public disclosures. The risks described below highlight potential events, trends or other circumstances that could adversely affect our business, financial condition, results of operations, cash flows, liquidity or access to sources of financing, and consequently, the market value of our Class A common stock. These risks could cause our future results to differ materially from historical results and from guidance we may provide regarding our expectations of future financial performance.*

### Summary Risk Factors

Our business is subject to a number of risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition and results of operations. These risks are discussed more fully below and include, but are not limited to the following:

#### **Risks Related to Our Growth Strategies and Operations**

- Pandemics or disease outbreaks, such as the recent outbreak of the COVID-19 pandemic, have disrupted, and may continue to disrupt our business, and have materially affected our operations, results of operations and our financial condition.
- Our long-term success is dependent on the selection, design and execution of appropriate business strategies.
- Our primary growth strategy is highly dependent on the availability of suitable locations and our ability to develop and open new Shacks on a timely basis and on terms attractive to us.
- Our plans to open new Shacks, the ongoing need for capital expenditures at our existing Shacks and our ongoing digital enhancements require us to spend capital.
- Our expansion into new domestic markets may present increased risks, which could affect our profitability.
- Our failure to manage our growth effectively could harm our business and operating results.
- New Shacks, once opened, may not be profitable, and may negatively affect Shack sales at our existing Shacks.
- If we are unable to maintain and grow Shack sales at our existing Shacks, our financial performance could be adversely affected.
- Our mission to Stand For Something Good subjects us to risks.
- We have a limited number of suppliers for our major products and rely on one national distribution company for the majority of our domestic distribution needs. If our suppliers or distributor are unable to fulfill their obligations under our arrangements with them, we could encounter supply shortages and incur higher costs.
- Our marketing strategies and channels will evolve and our programs may or may not be successful.
- We rely on a limited number of licensees for the operation of our licensed Shacks, and we have limited control with respect to the operations of our licensed Shacks, which could have a negative impact on our reputation and business.
- If we fail to maintain our corporate culture, our relationships with our employees and guests could be negatively affected.

### ***Risks Related to Operating in the Restaurant Industry***

- Incidents involving food safety and food-borne illnesses could adversely affect guests' perception of our brand, result in lower sales and increase operating costs.
- The digital and delivery business, and expansion thereof, is uncertain and subject to risk.
- Rising labor costs and difficulties recruiting and retaining the right team members could adversely affect our business.
- Increased food commodity and energy costs could decrease our Shack-level operating profit margins or cause us to limit or otherwise modify our menu, which could adversely affect our business.
- Shortages or interruptions in the supply or delivery of food products could adversely affect our operating results.
- We face significant competition for guests, and if we are unable to compete effectively, our business could be adversely affected.
- The increasing focus on environmental sustainability and social initiatives could increase our costs, harm our reputation and adversely impact our financial results.
- Our international licensed Shacks import many of our proprietary and other core ingredients from the United States and the United Kingdom. If this international supply chain is interrupted, our international licensed operations could encounter supply shortages and incur higher costs.
- We are subject to risks associated with leasing property subject to long-term non-cancelable leases.
- Restaurant companies have been the target of class action lawsuits and other proceedings that are costly, divert management attention and, if successful, could result in our payment of substantial damages or settlement costs.
- Our business is subject to risks related to our sale of alcoholic beverages.

### ***General Business and Economic Risks***

- Damage to our reputation could negatively impact our business, financial condition and results of operations.
- Changes in economic conditions, both domestically and internationally, could materially affect our business, financial condition and results of operations.
- Because many of our domestic Company-operated Shacks are concentrated in local or regional areas, we are susceptible to economic and other trends and developments, including adverse weather conditions, in these areas.
- Security breaches of either confidential guest information in connection with, among other things, our electronic processing of credit and debit card transactions, kiosk ordering or mobile ordering app, or confidential employee information may adversely affect our business.
- If we are unable to maintain and update our information technology systems to meet the needs of our business, our business could be adversely impacted.
- If we experience a material failure or interruption in our systems, our business could be adversely impacted.
- Because a component of our strategy is to continue to grow our licensed business internationally, the risks of doing business internationally could lower our revenues, increase our costs, reduce our profits or disrupt our business.
- We may not be able to adequately protect our intellectual property, which, in turn, could harm the value of our brands and adversely affect our business.
- We depend on key members of our executive management team.
- Our insurance coverage and self-insurance reserves may not provide adequate levels of coverage against claims.

### ***Regulatory and Legal Risks***

- We are subject to many federal, state and local laws, as well as other statutory and regulatory requirements, with which compliance is both costly and complex. Failure to comply with, or changes in these laws or requirements, could have an adverse impact on our business.
- Our ability to use our net operating loss carryforwards may be subject to limitation.
- Changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our results of operations and financial condition.
- If we fail to maintain effective internal controls over financial reporting, our ability to produce timely and accurate financial information or comply with Section 404 of the Sarbanes-Oxley Act of 2002 could be impaired, which could have a material adverse effect on our business and stock price.

### **Risks Related to Our Organizational Structure**

- Shake Shack has non-controlling interest holders, whose interests may differ from those of our public stockholders.
- Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the non-controlling interest holders that will not benefit Class A common stockholders to the same extent as it will benefit the non-controlling interest holders.
- The non-controlling interest holders have the right to have their LLC Interests redeemed or exchanged into shares of Class A common stock, which may cause volatility in our stock price.
- We will continue to incur relatively outsized costs as a result of becoming a public company and in the administration of our complex organizational structure.
- Our anti-takeover provisions could prevent or delay a change in control of our Company, even if such change in control would be beneficial to our stockholders.
- The provision of our certificate of incorporation requiring exclusive venue in the Court of Chancery in the State of Delaware for certain types of lawsuits may have the effect of discouraging lawsuits against our directors and officers.
- We do not currently expect to pay any cash dividends.

### **Risks Related to Our Tax Receivable Agreement ("TRA")**

- We are a holding company and our principal asset is our interest in SSE Holdings, and, accordingly, we will depend on distributions from SSE Holdings to pay our taxes and expenses, including payments under the TRA. SSE Holdings' ability to make such distributions may be subject to various limitations and restrictions.
- In certain cases, payments under the TRA to the non-controlling interest holders may be accelerated or significantly exceed the actual benefits we realize in respect of the tax attributes subject to the TRA.
- We will not be reimbursed for any payments made to the non-controlling interest holders under the TRA in the event that any tax benefits are disallowed.

## **RISKS RELATED TO OUR GROWTH STRATEGIES AND OPERATIONS**

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***Pandemics or disease outbreaks, such as the recent outbreak of the COVID-19 pandemic, have disrupted, and may continue to disrupt our business, and have materially affected our operations, results of operations and our financial condition.***

Pandemics or disease outbreaks such as the COVID-19 pandemic have and may continue to impact customer traffic at our Shacks, may make it more difficult to staff our Shacks and, in more severe cases, may cause a temporary inability to obtain supplies and increase commodity costs.

COVID-19 was officially declared a global pandemic by the World Health Organization in March 2020, and the virus has impacted all global economies, and in the United States has resulted in varying levels of restrictions and shutdowns implemented by national, state, and local authorities. In response to the outbreak, in March 2020, we closed all dining rooms and temporarily shifted to a "to-go" only operating model in our domestic Company-operated Shacks. With a prioritization on health and safety, we have re-opened Shacks, where permitted, under modified operations to meet public health guidelines and evolving customer behaviors and expectations. As of December 30, 2020, two domestic Company-operated Shacks and 17 licensed Shacks remain temporarily closed. Approximately half of the Company's domestic Company-operated Shacks had open dining rooms with varying capacity restrictions.

We have also modified hours or reductions in on-site staff, resulting in cancelled shifts for some of our employees. COVID-19 may also materially adversely affect our ability to implement our growth plans, including delays in construction of new Shacks, delays in our digital initiatives, or adverse impacts to our overall ability to successfully execute our plans to enter into new markets. These changes have negatively impacted our results of operations, and these and any additional changes may materially adversely affect our business or results of operations in the future, and may impact our liquidity or financial condition, particularly if these changes are in place for a significant amount of time.

In addition, our operations have been further disrupted when employees or employees of our business partners are suspected of having COVID-19 or other illnesses since this has required us or our business partners to quarantine some or all such employees and close and disinfect our impacted restaurant facilities. If a significant percentage of our workforce or the workforce of our business partners are unable to work, including because of illness or travel or government restrictions in connection with

pandemics or disease outbreaks, our operations may be negatively impacted, potentially materially adversely affecting our business, liquidity, financial condition or results of operations. In addition, we are required by local and state regulations to report employees who have contacted or been exposed to the virus.

Furthermore, such viruses may be transmitted through human contact and airborne delivery, and the risk of contracting viruses could continue to cause employees or guests to avoid gathering in public places, which has had, and could further have, adverse effects on our restaurant guest traffic or the ability to adequately staff restaurants. We have been adversely affected when government authorities have imposed and continue to impose restrictions on public gatherings, human interactions, operations of restaurants or mandatory closures, seek voluntary closures, restrict hours of operations or impose curfews, restrict the import or export of products or if suppliers issue mass recalls of products. Additional regulation or requirements with respect to the compensation of our employees could also have an adverse effect on our business. Even if such measures are not implemented and a virus or other disease does not spread significantly within a specific area, the perceived risk of infection or health risk in such area may adversely affect our business, liquidity, financial condition and results of operations. Additionally, different jurisdictions have seen varying levels of outbreaks or resurgences in outbreaks, and corresponding differences in government responses, which may make it difficult for us to plan or forecast an appropriate response.

The COVID-19 pandemic and mitigation measures have also had an adverse impact on global economic conditions, which have had an adverse effect on our business and financial condition. The Company's sales and operating results may be affected by uncertain or changing economic and market conditions arising in connection with and in response to the COVID-19 pandemic, including prolonged periods of high unemployment, inflation, deflation, prolonged weak consumer demand, a decrease in consumer discretionary spending, political instability or other changes. The significance of the operational and financial impact to the Company will depend on how long and widespread the disruptions caused by COVID-19, and the corresponding response to contain the virus and treat those affected by it, prove to be.

The ability of local and international authorities in containing COVID-19, limiting the spread of infections, and effectively rolling out vaccines, will impact our business operations. Throughout the pandemic, states and local governments in the U.S. and throughout the world have both removed or eased certain restrictions, and also reintroduced restrictions, on businesses, including restaurants, depending on the severity of local outbreaks. While we cannot predict the duration or scope of the COVID-19 pandemic, it has negatively impacted our business and such impact has been and is expected to continue to be material to our financial results, condition and outlook.



***Our long-term success is dependent on the selection, design and execution of appropriate business strategies.***

We operate in a highly competitive and ever-changing environment. Our long-term success is dependent on our ability to identify, develop and execute appropriate business strategies within this environment. Our current strategies include:

- Enhancing our omnichannel guest experience. This will occur through the accelerated innovation of new digital tools (e.g., new digitally-enabled ordering experiences, the introduction of a new digital payments platform and our testing of delivery through our Company-owned app, to support a broader rollout in 2021) and the continued integration of our data platforms enabling segmentation and targeted marketing strategies.
- Global unit expansion and the expansion of Shack formats to incorporate increased convenience and frequency. This will include the pursuit of top-tier real estate in both urban and suburban markets that can incorporate diverse formats, including new Shack Track and drive-thru formats, as well as our focus on increasing our licensed Shack presence, both domestically and abroad, particularly in China.
- Menu innovation, with a focus on LTOs, collaborations and the expansion of existing menu categories.

We may experience challenges in achieving the goals we have set and we may be unsuccessful in executing on our strategies once identified. Conversely, we may also execute on poorly designed strategies that prove to be ineffective or require us to make substantial changes to our strategy in order to produce the desired results. Our strategies may expose us to additional risks, and strategies that have been successful for us in the past may fail to be so in the future. We may incur significant costs and damage our brand if we are unable to identify, develop and execute on appropriate business strategies, which could have a material adverse impact on our business and results of operations.

***Our primary growth strategy is highly dependent on the availability of suitable locations and our ability to develop and open new Shacks on a timely basis and on terms attractive to us.***

One of the key means of achieving our growth strategies will be through opening and operating new Shacks on a profitable basis for the foreseeable future. We must identify target markets where we can enter or expand, taking into account numerous factors such as the location of our current Shacks, the target consumer base, population density, demographics, traffic patterns, competition, geography and information gathered from our various contacts. We may not be able to open our planned new Shacks within budget or on a timely basis, if at all, given the uncertainty of these factors, which could adversely affect our business, financial condition and results of operations. As we operate more Shacks, our rate of expansion relative to the size of our Shack base will eventually decline.

The number and timing of new Shacks opened during any given period may be negatively impacted by a number of factors including:

- the identification and availability of attractive sites for new Shacks;
- difficulty negotiating suitable lease terms;
- shortages of construction labor or materials;
- recruitment and training of qualified personnel in the local market;
- our ability to obtain all required governmental permits, including zonal approvals;
- our ability to control construction and development costs of new Shacks;
- competition in new markets, including competition for appropriate sites;
- failure of the landlords to timely deliver real estate to us and other landlord delays;
- the proximity of potential sites to an existing Shack, and the impact of cannibalization on future growth;
- anticipated commercial, residential and infrastructure development near our new Shacks; and
- the cost and availability of capital to fund construction costs and pre-opening costs.

Accordingly, we cannot assure you that we will be able to successfully expand as we may not correctly analyze the suitability of a location or anticipate all of the challenges imposed by expanding our operations. Our growth strategy, and the substantial investment associated with the development of each new domestic Company-operated Shack, may cause our operating results to fluctuate and be unpredictable or adversely affect our profits. In addition, as has happened when other restaurant concepts have tried to expand, we may find that our concept has limited appeal in new markets or we may experience a decline in the

popularity of our concept in the markets in which we operate. If we are unable to expand in existing markets or penetrate new markets, our ability to increase our revenues and profitability may be materially harmed or we may face losses.

***Our plans to open new Shacks, the ongoing need for capital expenditures at our existing Shacks and our ongoing digital enhancements require us to spend capital.***

Our growth strategy depends on opening new Shacks and innovation of new digital tools, which will require us to use cash flows from operations. We cannot assure that cash flows from operations will be sufficient to allow us to implement our growth strategy. If these funds are not allocated efficiently among our various projects, or if any of these initiatives prove to be unsuccessful, we may experience reduced profitability and we could be required to delay a project or delay, significantly curtail or eliminate planned Shack openings, which could have a material adverse effect on our business, financial condition and results of operations.

In addition, as our Shacks and digital infrastructure mature, our business will require maintenance, investment, renovation and improvement expenditures to remain competitive and maintain the value of our brand standard. This creates an ongoing need for cash, and, to the extent we cannot fund capital expenditures from cash flows from operations, funds will need to be borrowed or otherwise obtained.

If the costs of funding new Shacks or renovations or enhancements to existing Shacks exceed budgeted amounts, and/or the time for building or renovation is longer than anticipated, our profits could be reduced. Additionally, recent inflation of material and labor costs have resulted in higher construction costs. If we cannot access the capital we need, we may not be able to execute our growth strategy, take advantage of future opportunities or respond to competitive pressures.

***Our expansion into new domestic markets may present increased risks, which could affect our profitability.***

We plan to open domestic Company-operated Shacks in markets where we have little or no operating experience. Shacks we open in new markets may take longer to reach expected Shack sales and profit levels on a consistent basis, may be less profitable on average than our current base of Shacks and may have higher construction, occupancy or operating costs than Shacks we open in existing markets. New markets may have competitive conditions, consumer tastes and discretionary spending patterns that are more difficult to predict or satisfy than our existing markets. We may need to make greater investments than we originally planned in advertising and promotional activity in new markets to build brand awareness. We may find it more difficult in new markets to hire, motivate and keep qualified employees who share our values. We may also incur higher costs from entering new markets if, for example, we assign area directors to manage comparatively fewer Shacks than we assign in more developed markets. Also, until we attain a critical mass in a market, the Shacks we do open may incur higher food distribution costs and reduced operating leverage. As a result, these new Shacks may be less successful or may achieve target Shack-level operating profit margins at a slower rate, if ever. If we do not successfully execute our plans to enter new markets, our business, financial condition or results of operations could be adversely affected. In addition, we plan to continue to expand our international presence, which can pose similar and additional challenges in opening new Shacks.

***Our failure to manage our growth effectively could harm our business and operating results.***

Our growth plan includes opening a large number of new Shacks. Our existing personnel, management systems, financial and management controls and information systems may not be adequate to support our planned expansion. Our ability to manage our growth effectively will require us to continue to enhance these systems, procedures and controls and to locate, hire, train and retain management and operating personnel, particularly in new markets. We may not be able to respond on a timely basis to all of the changing demands that our planned expansion will impose on management and on our existing infrastructure, or be able to hire or retain the necessary management and operating personnel, which could harm our business, financial condition or results of operations. These demands could cause us to operate our existing business less effectively, which in turn could cause a deterioration in the financial performance of our existing Shacks. If we experience a decline in financial performance, we may decrease the number of or discontinue Shack openings, or we may decide to close Shacks that we are unable to operate in a profitable manner.

***New Shacks, once opened, may not be profitable, and may negatively affect Shack sales at our existing Shacks.***

Our results have been, and in the future may continue to be, significantly impacted by the timing of new Shack openings (often dictated by factors outside of our control), including landlord delays, associated Shack pre-opening costs and operating inefficiencies, as well as changes in our geographic concentration due to the opening of new Shacks. We typically incur the most significant portion of pre-opening costs associated with a given Shack within the several months preceding the opening of the Shack. Our experience has been that labor and operating costs associated with a newly opened Shack for the first several months of operation are materially greater than what can be expected after that time, both in aggregate dollars and as a percentage of Shack sales. Our new Shacks take a period of time to reach target operating levels due to inefficiencies typically associated with new Shacks, including the training of new personnel, new market learning curves, inability to hire sufficient qualified staff and other factors. We may incur additional costs in new markets, particularly for transportation and distribution, which may impact the profitability of those Shacks. Although we have specific target operating and financial metrics, new Shacks may not meet these targets or may take longer than anticipated to do so. Any new Shacks we open may not be profitable or achieve operating results similar to those of our existing Shacks, which could adversely affect our business, financial condition or results of operations.

The opening of a new Shack in or near markets in which we already have Shacks could adversely affect the Shack sales of those existing Shacks. Existing Shacks could also make it more difficult to build our consumer base for a new Shack in the same market. We will continue to cluster in select markets and open new Shacks in and around areas of existing Shacks that are operating at or near capacity to leverage operational efficiencies and effectively serve our guests. Cannibalization of Shack sales among our Shacks may become significant in the future as we continue to expand our operations and could adversely affect our Shack sales growth, which could, in turn, adversely affect our business, financial condition or results of operations.

Additionally, many of our current domestic Company-operated Shacks are located in high volume urban markets. As we expand, our number of domestic Company-operated Shacks located in high volume urban markets will decline and as a result we do not expect to maintain our current average unit volumes ("AUVs") and Shack-level operating profit margins, and our business, financial condition and results of operations may be adversely affected.

***If we are unable to maintain and grow Shack sales at our existing Shacks, our financial performance could be adversely affected.***

The level of same-Shack sales growth, which represents the change in year-over-year revenues for domestic Company-operated Shacks open for 24 full months or longer, could affect our Shack sales growth. Our ability to increase same-Shack sales depends, in part, on our ability to successfully implement our initiatives to build Shack sales. It is possible such initiatives will not be successful, that we will not achieve our target same-Shack sales growth or that same-Shack sales growth could be negative, which may cause a decrease in Shack sales and profit growth that would adversely affect our business, financial condition or results of operations.

***Our mission to Stand For Something Good subjects us to risks.***

Our mission to Stand For Something Good is a significant part of our business strategy and who we are as a Company. It's our commitment to all that is good in the world and a reflection of how we embrace our values both internally and externally. We pride ourselves on sourcing premium ingredients from like-minded producers — all natural proteins, vegetarian fed, humanely raised and source verified, with no hormones or antibiotics. We are dedicated to using sustainable materials and equipment whenever possible, and distinctive furniture and fixtures that advance our sustainability initiatives, as well as being committed to achieving ethical and humane practices for the animals in our supply chain. We also strive to be the best employer and a good citizen in each community we call home.

We do, however, face many challenges in carrying out our mission to Stand For Something Good. We incur higher costs and other risks associated with paying above-average wages to our employees and purchasing high quality ingredients grown or raised with an emphasis on quality and responsible practices. As a result, our food and labor costs may be significantly higher than other companies who do not source high quality ingredients or pay above minimum wage. Additionally, the supply for high quality ingredients may be limited and it may take us longer to identify and secure relationships with suppliers that are able to meet our quality standards and have sufficient quantities to support our growing business. If we are unable to obtain a sufficient

and consistent supply for our ingredients on a cost-effective basis, our food costs could increase or we may experience supply interruptions which could have an adverse effect on our operating margins. Additionally, some of our competitors have announced initiatives to offer better quality ingredients, such as antibiotic-free meat. If this trend continues, it could further limit our supply for certain ingredients and we may lose our competitive advantage as it will be more difficult to differentiate ourselves.

Because we hold ourselves to such high standards, and because we believe our guests have come to have high expectations of us, we may be more severely affected by negative reports or publicity if we fail, or are believed to have failed, to comply with our own standards. The damage to our reputation may be greater than other companies that do not have similar values as us, and it may take us longer to recover from such an incident and gain back the trust of our guests. Our mission to Stand For Something Good also exposes us to criticism from special interest groups who have different opinions regarding certain food issues or who believe we should pursue different strategies and goals. Any adverse publicity that results from such criticism could damage our brand and adversely affect customer traffic.

We believe that our Stand For Something Good philosophy has been a major contributing factor in our past success because we believe consumers are increasingly focused on where their food comes from and how it is made, and that consumers want to associate themselves with brands whose ethos matches that of their own. However, if these trends change we may no longer be able to successfully compete with other restaurants who share different values than us.

***We have a limited number of suppliers for our major products and rely on one national distribution company for the majority of our domestic distribution needs. If our suppliers or distributor are unable to fulfill their obligations under our arrangements with them, we could encounter supply shortages and incur higher costs.***

We have a limited number of suppliers for our major ingredients, including beef patties, chicken, potato buns, custard, portobello mushrooms and cheese sauce. In fiscal 2020, we purchased all of our (i) ground beef patties from seven suppliers, with approximately 44% of our ground beef patties supplied by one supplier; (ii) chicken breast from one supplier; (iii) potato buns directly from one supplier; (iv) custard base from two suppliers; (v) 'Shroom Burgers from one supplier; and (vi) ShackSauce from two suppliers, with approximately 78% of our ShackSauce supplied by one supplier. Due to this concentration of suppliers, the cancellation of our supply arrangements with any one of these suppliers or the disruption, delay or inability of these suppliers to deliver these major products to our Shacks may materially and adversely affect our results of operations while we establish alternate distribution channels. In addition, if our suppliers fail to comply with food safety or other laws and regulations, or face allegations of non-compliance, their operations may be disrupted. We cannot assure you that we would be able to find replacement suppliers on commercially reasonable terms or a timely basis, if at all.

We contract with one distributor, which we refer to as our "broadline" distributor, to provide virtually all of our food distribution services in the United States. As of December 30, 2020, approximately 84% of certain food and beverage ingredients, including chicken, fries and custard, collectively representing 45% of our purchases, were processed through our broadline distributor for distribution and delivery to each Shack. As of December 30, 2020, we utilized 20 affiliated distribution centers and each distribution center carries two to three weeks of inventory for our core ingredients. In the event of a catastrophe, such as a fire, our broadline distributor can supply the Shacks affected by their respective distribution center from another affiliated distribution center. If a catastrophe, such as a fire, were to occur at the distribution center that services the Shacks located in New York and northern New Jersey, we would be at immediate risk of product shortages because that distribution center supplies 23% of our domestic Company-operated Shacks as of December 30, 2020, which collectively represented 27% of our Shack sales for fiscal 2020. The other 19 distribution centers collectively supply the other approximately 77% of our domestic Company-operated Shacks, which represented the remaining 73% of our Shack sales.

Accordingly, although we believe that alternative supply and distribution sources are available, there can be no assurance that we will continue to be able to identify or negotiate with such sources on terms that are commercially reasonable to us. If our suppliers or distributors are unable to fulfill their obligations under their contracts or we are unable to identify alternative sources, we could encounter supply shortages and incur higher costs, each of which could have a material adverse effect on our results of operations.

***Our marketing strategies and channels will evolve and our programs may or may not be successful.***

Shake Shack is a growing brand, and we incur costs and expend other resources in our marketing efforts to attract and retain guests. Our strategy includes public relations, digital and social media, promotions and in-store messaging, which require less marketing spend as compared to traditional marketing programs. As the number of Shacks increases, and as we expand into new markets, we expect to increase our investment in advertising and promotional activities, including targeted marketing offers to unique guest segments and incentivizing and rewarding loyal guests. Accordingly, in the future, we will incur greater marketing expenditures, resulting in greater financial risk and a greater impact on our financial results.

We rely heavily on social media for many of our marketing efforts. If consumer sentiment towards social media changes or a new medium of communication becomes more mainstream, we may be required to fundamentally change our current marketing strategies which could require us to incur significantly more costs.

Some of our marketing initiatives may not be successful, resulting in expenses incurred without the benefit of higher revenues. Additionally, some of our competitors have greater financial resources, which enable them to spend significantly more on marketing and advertising than we are able to at this time. Should our competitors increase spending on marketing and advertising or our marketing funds decrease for any reason, or should our advertising and promotions be less effective than those of our competitors, there could be a material adverse effect on our business, financial condition and results of operations.

***We rely on a limited number of licensees for the operation of our licensed Shacks, and we have limited control with respect to the operations of our licensed Shacks, which could have a negative impact on our reputation and business.***

We rely, in part, on our licensees and the manner in which they operate their Shacks to develop and promote our business. As of December 30, 2020, six licensees operated all of our domestic licensed Shacks and six licensees operated all of our international licensed Shacks, with one such licensee operating 52% of our international licensed Shacks. Our licensees are required to operate their Shacks according to the specific guidelines we set forth, which are essential to maintaining brand integrity and reputation, all laws and regulations applicable to Shake Shack and its subsidiaries, and all laws and regulations applicable in the countries in which Shake Shack operates. We provide training to these licensees to integrate them into our operating strategy and culture. However, since we do not have day-to-day control over all of these Shacks, we cannot give assurance that there will not be differences in product and service quality, operations, labor law enforcement, marketing or that there will be adherence to all of our guidelines and applicable laws at these Shacks. In addition, if our licensees fail to make investments necessary to maintain or improve their Shacks, guest preference for the Shake Shack brand could suffer. Failure of these Shacks to operate effectively could adversely affect our cash flows from those operations or have a negative impact on our reputation or our business.

The success of our licensed operations depends on our ability to establish and maintain good relationships with our licensees. The value of our brand and the rapport that we maintain with our licensees are important factors for potential licensees considering doing business with us. If we are unable to maintain good relationships with licensees, we may be unable to renew license agreements and opportunities for developing new relationships with additional licensees may be adversely affected. This, in turn, could have an adverse effect on our business, financial condition and results of operations.

Although we have developed criteria to evaluate and screen prospective developers and licensees, we cannot be certain that the developers and licensees we select will have the business acumen necessary to open and operate successful licensed Shacks in their licensing areas. Our licensees compete for guests with other restaurants in their geographic markets, and the ability of our licensees to compete for guests directly impacts our business, financial condition and results of operations, as well as the desirability of our brand to prospective licensees. Licensees may not have access to the financial or management resources that they need to open the Shacks contemplated by their agreements with us or to be able to find suitable sites on which to develop them, or they may elect to cease development for other reasons. Licensees may not be able to negotiate acceptable lease or purchase terms for the sites, obtain the necessary permits and governmental approvals or meet construction schedules. Additionally, financing from banks and other financial institutions may not always be available to licensees to construct and open new Shacks. Any of these problems could slow our growth from licensing operations and reduce our licensing revenues.



***If we fail to maintain our corporate culture, our relationships with our employees and guests could be negatively affected.***

We take great pride in our culture and believe that it is an extremely important factor in our success. We believe that our culture of Enlightened Hospitality and our mission to Stand For Something Good creates a truly differentiated experience for our guests and is one of the reasons guests choose to dine with us and employees choose us as a place of employment. If we are unable to maintain our culture, especially as we continue to rapidly grow and expand in new markets, our reputation may be damaged, we may lose the trust of our guests, employee morale may be diminished and we may experience difficulty recruiting and retaining qualified employees. Any of these factors could have a material adverse effect on our business, financial condition and results of operations.

## **RISKS RELATED TO OPERATING IN THE RESTAURANT INDUSTRY**

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***Incidents involving food safety and food-borne illnesses could adversely affect guests' perception of our brand, result in lower sales and increase operating costs.***

Food safety is a top priority, and we dedicate substantial resources to ensure the safety and quality of the food we serve. Nevertheless, we face food safety risks, including the risk of food-borne illness and food contamination, which are common both in the restaurant industry and the food supply chain and cannot be completely eliminated. We rely on third-party food suppliers and distributors to properly handle, store and transport our ingredients to our Shacks. Any failure by our suppliers, or their suppliers, could cause our ingredients to be contaminated, which may be difficult to detect before the food is served. Additionally, the risk of food-borne illness may also increase whenever our food is served outside of our control, such as by third-party delivery services. We are further exposed to this risk from our sales through unaffiliated third-party delivery services, as well as through any third-party delivery partners we use.

Regardless of the source or cause, any report of food-borne illnesses or food safety issues, whether or not accurate, at one or more of our Shacks, including Shacks operated by our licensees, could adversely affect our brand and reputation, which in turn could result in reduced guest traffic and lower sales. Additionally, we believe that, because our mission to Stand For Something Good promotes the use of higher quality ingredients, our guests have high expectations of us and we could be more severely affected by incidents of food-borne illnesses or food safety issues than some of our competitors who do not promote such standards. We may also have a more difficult time recovering from a food-borne illness incident and may be required to incur significant costs to repair our reputation.

If any of our guests become ill from food-borne illnesses, we could be forced to temporarily close one or more Shacks or choose to close as a preventative measure if we suspect there was a pathogen in our Shacks. Furthermore, any instances of food contamination, whether or not at our Shacks, could subject us or our suppliers to voluntary or involuntary food recalls and the costs to conduct such recalls could be significant and could interrupt our supply to unaffected Shacks or increase the cost of our ingredients.

Additionally, consumer preferences could be affected by health concerns about the consumption of beef, our key ingredient. For example, if a pathogen, such as "mad cow disease," or other virus, bacteria, parasite or toxin infects the food supply (or is believed to have infected the food supply), regardless of whether our supply chain is affected, guests may actively avoid consuming certain ingredients. A negative report or negative publicity surrounding such an incident, whether related to one of our Shacks or to a competitor in the industry, may have an adverse impact on demand for our food and could result in a material decrease in guest traffic and lower sales.

***The digital and delivery business, and expansion thereof, is uncertain and subject to risk.***

Digital innovation and growth remains a key focus for us. We continue to execute upon our digital strategy, including the enhancement of our omnichannel guest experience through the accelerated innovation of new digital tools, and the continued integration of our data platforms enabling segmentation and targeted marketing strategies. Furthermore, we have expanded our reach with third-party delivery partners, and have begun testing delivery through our Company-owned app at several locations in the Miami area to support a broader rollout in 2021. We believe these digital investments to be a critical differentiator for our business, creating the opportunity to drive greater engagement and frequency with both new and existing guests. As the digital space around us continues to evolve, our technology needs to evolve concurrently to stay competitive with the industry. If we do not maintain and innovate our digital systems that are competitive with the industry, our digital business may be adversely affected and could damage our sales. We rely on third-parties for our ordering and payment platforms relating to our mobile app and kiosks. Such services performed by these third-parties could be damaged or interrupted by technological issues, which could then result in a loss of sales for a period of time. Information processed by these third-parties could also be impacted by cyber-attacks, which could not only negatively impact our sales, but also harm our brand image.

Recognizing the rise in delivery services offered throughout the restaurant industry, we understand the importance of providing such services to meet our guests wherever and whenever they want. We have invested in marketing to promote our delivery partnerships, which could negatively impact our profitability if the business does not continue to expand. We rely on third-parties to fulfill delivery orders timely and in a fashion that will satisfy our guests. Errors in providing adequate delivery services may result in guest dissatisfaction, which could also result in loss of guest retention, loss in sales and damage to our brand image. Additionally, as with any third-party handling food, such delivery services increase the risk of food tampering while in transit. We developed sealed packaging to provide some deterrence against such potential food tampering. We are also subject to risk if there is a shortage of delivery drivers, which could result in a failure to meet our guests' expectations.

Third-party delivery services within the restaurant industry is a competitive environment and includes a number of players competing for market share. If our third-party delivery partners fail to effectively compete with other third-party delivery providers in the sector, our delivery business may suffer resulting in a loss of sales. If any third-party delivery provider we partner with experiences damage to their brand image, we may also see ramifications due to our partnership with them. Additionally, some of our competitors have greater financial resources to spend on marketing and advertising around their digital and delivery campaigns than we are able to at this time. Should our competitors increase their spend in these areas, or if our advertising and promotions be less effective than our competitors, there could be an adverse impact on our business in this space. As delivery, as well as the partnerships we have made in connection with delivery, is still a growing business for us, it is difficult for us to anticipate its impact to our sales as well as the challenges we may face in the future.

***Rising labor costs and difficulties recruiting and retaining the right team members could adversely affect our business.***

As our culture remains an important factor to our success, it in part depends on our ability to attract, motivate and retain a sufficient number of qualified managers and team members to meet the needs of our existing Shacks and to staff new Shacks. We aim to hire people who have integrity, who are warm, friendly, motivated, caring, self-aware and intellectually curious — what we call "51%'ers." 51%'ers are excited and committed to high performance, remarkable and enriching hospitality, embodying our culture, and actively growing themselves and the brand. In many markets, competition for qualified individuals is intense and we may be unable to identify and attract a sufficient number of individuals to meet our growing needs, especially in markets where our brand is less established. As a result, because we aim to hire the best people, we may be required to pay higher wages and provide greater benefits. Our commitment to taking care of our team may cause us to incur higher labor costs compared to other restaurant companies. Additionally, several states in which we operate have enacted minimum wage increases and it is possible that other states or the federal government could also enact minimum wage increases, scheduling and benefit changes, increased health care and workers' compensation insurance costs and benefits and costs related to the COVID-19 pandemic. Such increases have and may continue to cause an increase to our labor and related expenses and cause our Shack-level operating profit margins to decline. As more minimum wage increases or other legislation relating to employee benefits are enacted or changed, such as the Affordable Care Act, we may be required to implement additional pay increases or provide additional benefits in the future in order to continue to attract and retain the most qualified people, which may put further pressure on our operating margins by increasing costs. Overall, we expect wages at all levels to continue to increase in the near and short term and we expect these rising wages to add pressure to our operating profit.

We place a heavy emphasis on the qualification and training of our team members and spend a significant amount of time and money training our employees. Any inability to recruit and retain qualified individuals may result in higher turnover and increased labor costs, and could compromise the quality of our service, all of which could adversely affect our business. Any such inability could also delay the planned openings of new Shacks and could adversely impact our existing Shacks. Such increased costs of attracting qualified employees or delays in Shack openings could adversely affect our business and results of operations.

***Increased food commodity and energy costs could decrease our Shack-level operating profit margins or cause us to limit or otherwise modify our menu, which could adversely affect our business.***

Our profitability depends, in part, on our ability to anticipate and react to changes in the price and availability of food commodities, including among other things beef, poultry, grains, dairy and produce. Prices may be affected due to market changes, increased competition, the general risk of inflation, shortages or interruptions in supply due to weather, disease or other conditions beyond our control, or other reasons. For example, in previous years, there were recalls for romaine lettuce, and although we do not serve romaine lettuce, we nonetheless experienced a slight financial impact due to higher demand and price of other types of lettuce we do serve on our burgers and sandwiches. Similarly, beef supply shortages during the second quarter of 2020 - largely due to the COVID-19 pandemic - resulted in significant inflation in beef, with cost nearly double that of the same period in the prior year. Other events could increase commodity prices or cause shortages that could affect the cost and quality of the items we buy or require us to further raise prices or limit our menu options. Furthermore, increasing weather volatility or other long-term changes in global weather patterns, including any changes associated with global climate change, could have a significant impact on the price or availability of some of our ingredients. These events, combined with other more general economic and demographic conditions, could impact our pricing and negatively affect our Shack sales and Shack-level operating profit margins. While we have been able to partially offset inflation and other changes in the costs of core operating resources by gradually increasing menu prices, coupled with more efficient purchasing practices, productivity improvements and greater economies of scale, there can be no assurance that we will be able to continue to do so in the future. From time to time, competitive conditions could limit our menu pricing flexibility. In addition, macroeconomic conditions could make additional menu price increases imprudent. There can be no assurance that future cost increases can be offset by increased menu prices or that increased menu prices will be fully absorbed by our guests without any resulting change to their visit frequencies or purchasing patterns. In addition, there can be no assurance that we will generate same-Shack sales growth in an amount sufficient to offset inflationary or other cost pressures.

We may decide to enter into certain forward pricing arrangements with our suppliers, which could result in fixed or formula-based pricing with respect to certain food products. However, these arrangements generally are relatively short in duration and may

provide only limited protection from price changes. In addition, the use of these arrangements may limit our ability to benefit from favorable price movements.

Our profitability is also adversely affected by increases in the price of utilities, such as natural gas, electric and water, whether as a result of inflation, shortages or interruptions in supply, or otherwise. Our ability to respond to increased costs by increasing prices or by implementing alternative processes or products will depend on our ability to anticipate and react to such increases and other more general economic and demographic conditions, as well as the responses of our competitors and guests. All of these things may be difficult to predict and beyond our control. In this manner, increased costs could adversely affect our results of operations.

***Shortages or interruptions in the supply or delivery of food products could adversely affect our operating results.***

We are dependent on frequent deliveries of food products that meet our exact specifications. Shortages or interruptions in the supply of food products caused by problems in production or distribution, inclement weather, unanticipated demand or other conditions could adversely affect the availability, quality and cost of ingredients, which would adversely affect our operating results.

Our burgers depend on the availability of our proprietary ground beef blend. Availability of our blend depends on two different components: raw material supplied by the slaughterhouses and ground and formed beef patties supplied by regional grinders who further process and convert whole muscle purchased from the slaughterhouses. The primary risk we face is with our regional grinders. If there is an interruption of operation at any one of our regional grinder's facilities, we face an immediate risk because each Shack typically has less than three days of beef patty inventory on hand. However, we have agreements with our regional grinders to provide an alternate back-up supply in the event of a disruption in their operations. In addition, our second largest regional grinder can, in an emergency, supply us in the event of a disruption of operations at one of our beef grinders through our broadline distributor's network, but there would be a delay in availability due to production and shipping.

We currently have seven approved raw beef suppliers and eight approved beef processors in the United States. If there is a supply issue with all U.S. raw beef, we have eight approved raw beef suppliers and seven approved beef processors in other countries. The risks to using international suppliers are shipping lead time, shipping costs, potential import duties and U.S. customs. It is unknown at this time how long it would take and at what cost the raw material would be to import from any such other country, but the delay and cost would likely be adverse to our business.

***We face significant competition for guests, and if we are unable to compete effectively, our business could be adversely affected.***

The restaurant industry is intensely competitive with many well-established companies that compete directly and indirectly with us with respect to taste, price, food quality, service, value, design and location. We compete in the restaurant industry with multi-unit national, regional and locally-owned and/or operated limited-service restaurants and full-service restaurants. We compete with (i) restaurants, (ii) other fast casual restaurants, (iii) quick service restaurants and (iv) casual dining restaurants. Our competitors may operate company-owned restaurants, franchised restaurants or some combination. Many of our competitors offer breakfast, lunch and dinner, as well as dine-in, carry-out and delivery services. We may also compete with companies outside of the traditional restaurant industry, such as grocery store chains, meal subscription services and delicatessens, especially those that target customers who seek high-quality food, as well as convenience food stores, cafeterias and other dining outlets. Many of our competitors have existed longer than we have and may have a more established market presence, better locations and greater name recognition nationally or in some of the local markets in which we operate or plan to open Shacks. Some of our competitors may also have significantly greater financial, marketing, personnel and other resources than we do. They may also operate more restaurants than we do and be able to take advantage of greater economies of scale than we can given our current size.

Our competition continues to intensify as new competitors enter the burger, fast casual, quick service and casual dining segments. Many of our competitors emphasize low cost "value meal" menu options or other programs that provide price discounts on their menu offerings, a strategy we do not pursue. We also face increasing competitive pressures from some of our competitors who have announced initiatives to offer better quality ingredients, such as antibiotic-free meat.

Changes in consumer tastes, nutritional and dietary trends, traffic patterns and the type, number, and location of competing restaurants often affect the restaurant business. Our sales could be impacted by changes in consumer preferences in response to dietary concerns, including preferences regarding items such as calories, sodium, carbohydrates or fat. Our competitors may react more efficiently and effectively to these changes than we can. We cannot make any assurances regarding our ability to effectively respond to changes in consumer health perceptions or our ability to adapt our menu offerings to trends in eating habits.

Additionally, as we continue to innovate upon our digital strategy and offer more ways to reach our guests through digital channels, such as the app, web ordering, kiosk and delivery, and new Shack Track formats, we compete with other competitors who currently, or are beginning to, offer the same options as well as new and improved technologies. With the introduction of these digital channels, there is also an increased opportunity for customer credit card fraud to occur, which could result in increased credit card fees for us.

Our continued success depends, in part, on the continued popularity of our menu and the experience we offer guests at our Shacks. If we are unable to continue to compete effectively on any of the factors mentioned above, our traffic, Shack sales and Shack-level operating profit margins could decline and our business, financial condition and results of operations would be adversely affected.

***The increasing focus on environmental sustainability and social initiatives could increase our costs, harm our reputation and adversely impact our financial results.***

There has been increasing public focus by investors, environmental activists, the media and governmental and nongovernmental organizations on a variety of environmental, social and other sustainability matters. With respect to the restaurant industry, concerns have been expressed regarding energy management, water management, food and packaging waste management, food safety, nutritional content, labor practices and supply chain and management food sourcing. We experience pressure to make commitments relating to sustainability matters that affect companies in our industry, including the design and implementation of specific risk mitigation strategic initiatives relating to sustainability. If we are not effective in addressing environmental, social and other sustainability matters affecting our industry, or setting and meeting relevant sustainability goals, our brand image may suffer. In addition, we may experience increased costs in order to execute upon our sustainability goals and measure achievement of those goals, which could have an adverse impact on our business and financial condition.

***Our international licensed Shacks import many of our proprietary and other core ingredients from the United States and the United Kingdom. If this international supply chain is interrupted, our international licensed operations could encounter supply shortages and incur higher costs.***

Our international licensed Shacks import many of our proprietary ingredients from the United States and the United Kingdom. For example, our mushrooms originate from the United States and United Kingdom. In addition, outside of Turkey, Japan, South Korea and China, our custard supplies are from the United States and United Kingdom. In addition, our proprietary blend of beef patties and/or raw materials for beef patties primarily originate from the United States, Australia and Uruguay. While we have established secondary supply solutions for some of these ingredients, we have not acquired secondary supplies for all of them.

Due to the long lead time and general volatility in the supply chain, the third-party logistic providers for our international licensed Shacks in the Middle East carry at least three months of inventory to allow for delays or interruptions in the supply chain. Specifically, we have had past and ongoing issues ensuring that timely and adequate supplies reach our Middle East Shacks. In the Middle East, our licensee delegates the supply function to its own third-party logistics providers in each country in which it operates, with which we have limited and restricted communication, preventing us from exercising direct control or instruction over such entities.

If our international licensed Shacks are unable to obtain our proprietary ingredients in the necessary amounts in a timely fashion as a result of logistics issues, sanctions or other challenges, it could harm its business and adversely affect the licensing revenue we receive, adversely impacting our business and results of operations.

***We are subject to risks associated with leasing property subject to long-term non-cancelable leases.***

We do not own any real property and all of our domestic Company-operated Shacks are located on leased premises. The leases for our Shacks generally have initial terms ranging from 10 to 15 years and typically include two five-year renewal options. However, the license agreement for our Madison Square Park Shack can be terminated by the New York City Commissioner of Parks for any reason on 25 days' written notice.

Generally, our leases are net leases that require us to pay our share of the costs of real estate taxes, utilities, building operating expenses, insurance and other charges in addition to rent. We generally cannot cancel these leases. Additional sites that we lease are likely to be subject to similar long-term non-cancelable leases. If we close a Shack, we may still be obligated to perform our monetary obligations under the applicable lease, including, among other things, payment of the base rent for the remaining lease term. In addition, as each of our leases expire, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to close Shacks in desirable locations. We depend on cash flows from operations to pay our lease expenses and to fulfill our other cash needs. If our business does not generate sufficient cash flow from operating activities, and sufficient funds are not otherwise available to us from borrowings or other sources, we may not be able to service our lease obligations or fund our other liquidity and capital needs, which would materially affect our business.

***Restaurant companies have been the target of class action lawsuits and other proceedings that are costly, divert management attention and, if successful, could result in our payment of substantial damages or settlement costs.***

Our business is subject to the risk of litigation by employees, guests, suppliers, licensees, stockholders or others through private actions, class actions, administrative proceedings, regulatory actions or other litigation. The outcome of litigation, particularly class action and regulatory actions, is difficult to assess or quantify. In recent years, restaurant companies have been subject to lawsuits, including class action lawsuits, alleging violations of federal and state laws regarding workplace and employment matters, discrimination and similar matters. A number of these lawsuits have resulted in the payment of substantial damages by the defendants. Similar lawsuits have been instituted from time to time alleging violations of various federal and state wage and hour laws regarding, among other things, employee meal deductions, overtime eligibility of assistant managers and failure to pay for all hours worked.

Occasionally, our guests file complaints or lawsuits against us alleging that we are responsible for some illness or injury they suffered at or after a visit to one of our Shacks, including actions seeking damages resulting from food-borne illness or accidents in our Shacks. We are also subject to a variety of other claims from third parties arising in the ordinary course of our business, including contract claims. The restaurant industry has also been subject to a growing number of claims that the menus and actions of restaurant chains have led to the obesity of certain of their customers.

Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations. In addition, they may generate negative publicity, which could reduce guest traffic and Shack sales. Although we maintain what we believe to be adequate levels of insurance to cover any of these liabilities, insurance may not be available at all or in sufficient amounts with respect to these or other matters. A judgment or other liability in excess of our insurance coverage for any claims or any adverse publicity resulting from claims could adversely affect our business and results of operations.

***Our business is subject to risks related to our sale of alcoholic beverages.***

We serve beer and wine at most of our Shacks. Alcoholic beverage control regulations generally require our Shacks to apply to a state authority and, in certain locations, county or municipal authorities for a license that must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of daily operations of our Shacks, including minimum age of patrons and employees, hours of operation, advertising, trade practices, wholesale purchasing, other relationships with alcohol manufacturers, wholesalers and distributors, inventory control and handling, storage and dispensing of alcoholic beverages. Any future failure to comply with these regulations and obtain or retain licenses could adversely affect our business, financial condition and results of operations.

We are also subject in certain states to "dram shop" statutes, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. We



carry liquor liability coverage as part of our existing comprehensive general liability insurance. Recent litigation against restaurant chains has resulted in significant judgments and settlements under dram shop statutes. Because these cases often seek punitive damages, which may not be covered by insurance, such litigation could have an adverse impact on our business, results of operations or financial condition. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and resources away from operations and hurt our financial performance. A judgment significantly in excess of our insurance coverage or not covered by insurance could have a material adverse effect on our business, results of operations or financial condition.

## GENERAL BUSINESS AND ECONOMIC RISKS

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### ***Damage to our reputation could negatively impact our business, financial condition and results of operations.***

Our reputation and the quality of our brand are critical to our business and success in existing markets, and will be critical to our success as we enter new markets. We believe that we have built our reputation on the high quality of our food and service, our commitment to our guests, our strong employee culture, and the atmosphere and design of our Shacks, and we must protect and grow the value of our brand in order for us to continue to be successful. Any incident that erodes consumer loyalty for our brand could significantly reduce its value and damage our business.

We may be adversely affected by any negative publicity, regardless of its accuracy, including with respect to:

- food safety concerns, including food tampering or contamination;
- food-borne illness incidents;
- the safety of the food commodities we use, particularly beef;
- guest injury;
- security breaches of confidential guest or employee information;
- third-party service providers, particularly related to delivery services and information technology, and potential guest dissatisfaction from circumstances out of our control relating to third-party service providers;
- employment-related claims relating to alleged employment discrimination, wage and hour violations, labor standards or health care and benefit issues; or
- government or industry findings concerning our Shacks, restaurants operated by other food service providers or others across the food industry supply chain.

Also, there has been a marked increase in the use of social media platforms and similar devices that provide individuals with access to a broad audience of consumers and other interested persons. The availability of information on social media platforms is virtually immediate as is its impact. Many social media platforms immediately publish the content their subscribers and participants can post, often without filters or checks on accuracy of the content posted. The opportunity for dissemination of information, including inaccurate information, is seemingly limitless and readily available. Information concerning us may be posted on such platforms at any time. Information posted may be adverse to our interests or may be inaccurate, each of which may harm our performance, prospects or business. The harm may be immediate without affording us an opportunity for redress or correction.

Ultimately, the risks associated with any such negative publicity or incorrect information cannot be completely eliminated or mitigated and may materially harm our reputation, business, financial condition and results of operations.

***Changes in economic conditions, both domestically and internationally, could materially affect our business, financial condition and results of operations.***

The restaurant industry depends on consumer discretionary spending, and any economic downturn or disruptions in the overall economy, including political unrest and protests, the impact of a housing crisis, high unemployment and financial market volatility and unpredictability, may cause a related reduction in consumer confidence, which negatively affects the restaurant industry. These factors, as well as national, regional and local regulatory and economic conditions, gasoline prices, energy and other utility costs, inclement weather, conditions in the residential real estate and mortgage markets, health care costs, access to credit, disposable consumer income and consumer confidence, affect discretionary consumer spending. Furthermore, with some of our Shacks located in or near retail malls, general declines in mall traffic experienced by the retail industry over the last few years in general may negatively affect us.

In poor economic conditions, guest traffic could be adversely impacted if our guests choose to dine out less frequently or reduce the amount they spend on meals while dining out. Reduced guest traffic could result in lower Shack sales and licensing revenue, as well as a decline in our profitability as we spread fixed costs across a lower level of Shack sales. Prolonged negative trends in sales could cause us and our licensees to, among other things, reduce the number and frequency of new Shack openings, close Shacks or delay remodeling of our existing Shacks or recognize asset impairment charges.

***Because many of our domestic Company-operated Shacks are concentrated in local or regional areas, we are susceptible to economic and other trends and developments, including adverse weather conditions, in these areas.***

Since our founding, we have built some of the industry's favorite community gathering places. As a result, so much of our real estate footprint has been centered in urban, office, travel and dynamic traffic-driving sales environments. Our urban Shacks, make up approximately half of the units in our same-Shack sales base, and have historically accounted for approximately 60% of our same-Shack sales base sales prior to the COVID-19 pandemic. Additionally, our financial performance is highly dependent on Shacks located in the Northeast and the New York City metropolitan area, which comprise approximately 40% (or 74 out of 183) of our total domestic Company-operated Shacks as of December 30, 2020. As a result, adverse economic conditions in any of these markets or regions could have a material adverse effect on our overall results of operations. In addition, given our geographic concentrations, negative publicity regarding any of our Shacks in these areas could have a material adverse effect on our business and operations, as could other regional occurrences such as local strikes, terrorist attacks, increases in energy prices, inclement weather or natural or man-made disasters.

In particular, adverse weather conditions, such as regional winter storms, floods, severe thunderstorms and hurricanes, could negatively impact our results of operations. Temporary or prolonged Shack closures may occur and guest traffic may decline due to the actual or perceived effects of future weather related events.

***Security breaches of either confidential guest information in connection with, among other things, our electronic processing of credit and debit card transactions, kiosk ordering or mobile ordering app, or confidential employee information may adversely affect our business.***

Our business requires the collection, transmission and retention of large volumes of guest and employee data, including credit and debit card numbers and other personally identifiable information, in various information technology systems that we maintain and in those maintained by third parties with whom we contract to provide services. The integrity and protection of that guest and employee data is critical to us. Further, our guests and employees have a high expectation that we and our service providers will adequately protect their personal information.

Like many other retail companies and because of the prominence of our brand, we have experienced, and will likely continue to experience, attempts to compromise our information technology systems. Additionally, the techniques and sophistication used to conduct cyber-attacks and breaches of information technology systems, as well as the sources and targets of these attacks, change frequently and are often not recognized until such attacks are launched or have been in place for a period of time. While we continue to make significant investment in physical and technological security measures, employee training, and third party services, designed to anticipate cyber-attacks and prevent breaches, our information technology networks and infrastructure or those of our third party vendors and other service providers could be vulnerable to damage, disruptions, shutdowns, or breaches of confidential information due to criminal conduct, employee error or malfeasance, utility failures, natural disasters or other

catastrophic events. Due to these scenarios we cannot provide assurance that we will be successful in preventing such breaches or data loss.

Additionally, the information, security and privacy requirements imposed by governmental regulation are increasingly demanding. Our systems may not be able to satisfy these changing requirements and guest and employee expectations, or may require significant additional investments or time in order to do so. Efforts to hack or breach security measures, failures of systems or software to operate as designed or intended, viruses, operator error or inadvertent releases of data all threaten our and our service providers' information systems and records. A breach in the security of our information technology systems or those of our service providers could lead to an interruption in the operation of our systems, resulting in operational inefficiencies and a loss of profits. Additionally, a significant theft, loss or misappropriation of, or access to, guests' or other proprietary data or other breach of our information technology systems could result in fines, legal claims or proceedings, including regulatory investigations and actions, or liability for failure to comply with privacy and information security laws, which could disrupt our operations, damage our reputation and expose us to claims from guests and employees, any of which could have a material adverse effect on our financial condition and results of operations.

***If we are unable to maintain and update our information technology systems to meet the needs of our business, our business could be adversely impacted.***

We rely heavily on information systems, including point-of-sale processing in our Shacks, for management of our supply chain, accounting, payment of obligations, collection of cash, credit and debit card transactions, digital ordering and other processes and procedures. As a rapidly growing business, our current information technology infrastructure may not be adequately suited to handle the increasing volume of data and additional information needs of our organization. If we are unable to successfully upgrade our information systems to meet the growing needs of our business or are delayed in doing so, whether through our enterprise-wide finance initiative Project Concrete or other future ones, our growth could be adversely affected.

Additionally, as technology systems continue to evolve and as consumers adopt new technologies, we may need to enhance our systems or modify our strategies in order to remain relevant in our industry and to our guests. If we are unable to successfully identify and implement new and emerging technologies, our business could be adversely affected.

***If we experience a material failure or interruption in our systems, our business could be adversely impacted.***

Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of our information technology systems. Our operations depend upon our ability to protect our computer equipment and systems against damage from physical theft, fire, power loss, telecommunications failure or other catastrophic events, as well as from internal and external security breaches, viruses and other disruptive problems. The failure of these systems to operate effectively, maintenance problems, upgrading or transitioning to new platforms, expanding our systems as we grow or a breach in security of these systems could result in interruptions to or delays in our business and guest service and reduce efficiency in our operations. If our information technology systems fail and our redundant systems or disaster recovery plans are not adequate to address such failures, or if our business interruption insurance does not sufficiently compensate us for any losses that we may incur, our revenues and profits could be reduced and the reputation of our brand and our business could be materially adversely affected. In addition, remediation of such problems could result in significant, unplanned capital investments.

Additionally, as we continue to evolve and innovate our digital platforms and enhance our internal systems, we place increasing reliance on third-parties to provide infrastructure and other support services. We may be adversely affected if any of our third-party service providers experience any interruptions in their systems, which then could potentially impact the services we receive from them and cause a material failure or interruption in our own systems.

***Because a component of our strategy is to continue to grow our licensed business internationally, the risks of doing business internationally could lower our revenues, increase our costs, reduce our profits or disrupt our business.***

106 of our 128 licensed Shacks as of December 30, 2020 are located outside the United States and we expect to continue to expand our licensed Shacks internationally. As a result, we are and will be, on an increasing basis, subject to the risks of doing business outside the United States, including:

- changes in foreign currency exchange rates or currency restructurings and hyperinflation or deflation in the countries in which we operate;
- the imposition of restrictions on currency conversion or the transfer of funds or limitations on our ability to repatriate non-U.S. earnings in a tax effective manner;
- the presence and acceptance of business corruption in various international markets;
- the ability to comply with, or impact of complying with, complex and changing laws, regulations and policies of foreign governments that may affect investments or operations, including foreign ownership restrictions, import and export controls, tariffs, embargoes, intellectual property, licensing requirements and regulations, increase in taxes paid and other changes in applicable tax laws;
- the difficulties involved in managing an organization doing business in many different countries;
- the ability to comply with, or impact of complying with, complex and changing laws, regulations and economic political policies of the U.S. government, including U.S. laws and regulations relating to economic sanctions, export controls and anti-boycott requirements;
- increase in an anti-American sentiment and the identification of the licensed brand as an American brand;
- the effect of disruptions caused by severe outbreak of disease, weather, natural disasters or other events that make travel to a particular region, as well as domestic visits, less attractive or more difficult; and
- political and economic instability.

Any or all of these factors may adversely affect the performance of and licensing revenues we receive from our licensed Shacks located in international markets. Our international licensed Shacks operate in several volatile regions that are subject to geopolitical and socio-political factors that pose risk to our business operations. In the past, certain licensees have been negatively impacted by currency devaluation, and we have seen a reduction in licensing revenue from those respective Shacks. In 2019, we closed all of our Shacks operating in Russia. Also, the economy of any region in which our Shacks are located may be adversely affected to a greater degree than that of other areas of the country or the world by certain developments affecting industries concentrated in that region or country. For example, our Shacks that recently opened in Hong Kong have suffered from political unrest due to protesting in the area, and as such, have had to close in certain instances. Such closures result in a loss of sales for the respective time period. Additionally, a health outbreak, such as the COVID-19 pandemic could slow traffic in the impacted regions, as well as abroad and domestically, and could result in a loss of sales. While these factors and the impact of these factors are difficult to predict, any one or more of them could lower our revenues, increase our costs, reduce our profits or disrupt our business, and, as our international licensed operations increase, these risks will become more pronounced.

***We may not be able to adequately protect our intellectual property, which, in turn, could harm the value of our brands and adversely affect our business.***

Our ability to implement our business plan successfully depends in part on our ability to further build brand recognition using our trademarks, service marks, proprietary products and other intellectual property, including our name and logos and the unique character and atmosphere of our Shacks. We rely on U.S. and foreign trademark, copyright, and trade secret laws, as well as license agreements, non-disclosure agreements, and confidentiality and other contractual provisions to protect our intellectual property. Nevertheless, our competitors may develop similar menu items and concepts, and adequate remedies may not be available in the event of an unauthorized use or disclosure of our trade secrets and other intellectual property.

The success of our business depends on our continued ability to use our existing trademarks and service marks to increase brand awareness and further develop our brand in both domestic and international markets. We have registered and applied to register trademarks and service marks in the United States and foreign jurisdictions. We may not be able to adequately protect our trademarks and service marks, and our competitors and others may successfully challenge the validity and/or enforceability of our trademarks and service marks and other intellectual property. Additionally, we may be prohibited from entering into certain new markets due to restrictions surrounding competitors' trademarks. The steps we have taken to protect our intellectual

property in the United States and in foreign countries may not be adequate. In addition, the laws of some foreign countries do not protect intellectual property to the same extent as the laws of the United States.

If our efforts to maintain and protect our intellectual property are inadequate, or if any third party misappropriates, dilutes or infringes on our intellectual property, the value of our brands may be harmed, which could have a material adverse effect on our business and might prevent our brands from achieving or maintaining market acceptance.

We may also from time to time be required to institute litigation to enforce our trademarks, service marks and other intellectual property. Such litigation could result in substantial costs and diversion of resources and could negatively affect our sales, profitability and prospects regardless of whether we are able to successfully enforce our rights.

Third parties may assert that we infringe, misappropriate or otherwise violate their intellectual property and may sue us for intellectual property infringement. Even if we are successful in these proceedings, we may incur substantial costs, and the time and attention of our management and other personnel may be diverted in pursuing these proceedings. If a court finds that we infringe a third party's intellectual property, we may be required to pay damages and/or be subject to an injunction. With respect to any third party intellectual property that we use or wish to use in our business (whether or not asserted against us in litigation), we may not be able to enter into licensing or other arrangements with the owner of such intellectual property at a reasonable cost or on reasonable terms.

***We depend on key members of our executive management team.***

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

***Our insurance coverage and self-insurance reserves may not provide adequate levels of coverage against claims.***

We maintain various insurance policies for employee health, workers' compensation, general liability, and property damage. We believe that we maintain insurance customary for businesses of our size and type. However, there are types of losses we may incur that cannot be insured against or that we believe are not economically reasonable to insure. Such losses could have a material adverse effect on our business and results of operations.

Additionally, we are self-insured for our employee medical plan and we recognize a liability that represents our estimated cost of claims incurred but not reported as of the balance sheet date. Our estimated liability is based on a number of assumptions and factors, including actuarial assumptions and historical trends. Our history of claims experience is short and our significant growth rate could affect the accuracy of our estimates. If a greater amount of claims are reported, or if medical costs increase beyond what we expect, our liabilities may not be sufficient and we could recognize additional expense, which could adversely affect our results of operations.

## **REGULATORY AND LEGAL RISKS**

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***We are subject to many federal, state and local laws, as well as other statutory and regulatory requirements, with which compliance is both costly and complex. Failure to comply with, or changes in these laws or requirements, could have an adverse impact on our business.***

We are subject to extensive federal, state, local and foreign laws and regulations, as well as other statutory and regulatory requirements, including those related to:

- Nutritional content labeling and disclosure requirements - There has been increased legislative, regulatory and consumer focus on the food industry including nutritional and advertising practices. These changes have resulted in, and may continue to result in, the enactment of laws and regulations that impact the ingredients and nutritional content of our menu offerings, or laws and regulations requiring us to disclose the nutritional content of our food offerings. For example, a number of states, counties and cities have enacted menu labeling laws requiring multi-unit restaurant operators to disclose certain nutritional information to customers, or have enacted legislation restricting the use of certain types of ingredients in restaurants. These labeling laws may change consumer buying habits in a way that adversely impacts our sales. Additionally, an unfavorable report on, or reaction to, our menu ingredients, the size of our portions or the nutritional content of our menu items could negatively influence the demand for our offerings.
- Food safety regulations - There is a potential for increased regulation of certain food establishments in the United States, where compliance with a Hazard Analysis and Critical Control Points ("HACCP") approach may be required. HACCP refers to a management system in which food safety is addressed through the analysis and control of potential hazards from production, procurement and handling, to manufacturing, distribution and consumption of the finished product. Additionally, our suppliers may initiate or otherwise be subject to food recalls that may impact the availability of certain products, result in adverse publicity or require us to take actions that could be costly for us or otherwise impact our business.
- Local licensure, building and zoning regulations - The development and operation of Shacks depend, to a significant extent, on the selection of suitable sites, which are subject to zoning, land use, environmental, traffic and other regulations and requirements. We are also subject to licensing and regulation by state and local authorities relating to health, sanitation, safety and fire standards. Typically, licenses, permits and approvals under such laws and regulations must be renewed annually and may be revoked, suspended or denied renewal for cause at any time if governmental authorities determine that our conduct violates applicable regulations. Difficulties or failure to maintain or obtain the required licenses, permits and approvals could adversely affect our existing Shacks and delay or result in our decision to cancel the opening of new Shacks, which would adversely affect our business.
- Employment regulations - We are subject to various federal and state laws governing our employment practices, including laws relating to minimum wage requirements, employee classifications as exempt or non-exempt, payroll and unemployment tax laws, requirements to provide meal and rest periods or other benefits, family leave mandates, requirements regarding working conditions and accommodations to certain employees, citizenship and work authorization requirements, insurance and workers' compensation rules, scheduling notification requirements and anti-discrimination laws. Compliance with these regulations is costly and requires significant resources. For example, the Fair Workweek legislation implemented in New York City requires fast food employers to provide employees with specified notice in scheduling changes and pay premiums for changes made to employees' schedules, among other requirements. Similar legislation may be enacted in other jurisdictions in which we operate as well, and in turn, could result in increased costs. Additionally, we may suffer losses from or incur significant costs to defend claims alleging non-compliance. Although none of our employees are currently covered under collective bargaining agreements, our employees may elect to be represented by labor unions in the future. If a significant number of our employees were to become unionized and collective bargaining agreement terms were significantly different from our current compensation arrangements, it could adversely affect our business, financial condition or results of operations. In addition, a labor dispute involving some or all of our employees may harm our reputation, disrupt our operations and reduce our revenues, and resolution of disputes may increase our costs. Further, if we enter into a new market with unionized construction companies, or the construction companies in our current markets become unionized, construction and build out costs for new Shacks in such markets could materially increase.
- The Affordable Care Act - We are required to provide affordable coverage to substantially all full-time employees, or otherwise be subject to potential excise tax penalties based on the affordability criteria in the Act. Additionally, some states and localities have passed state and local laws mandating the provision of certain levels of health benefits by some employers. Increased health care and insurance costs, as well as the potential increase in participation by our employees who previously had not participated in our medical plan coverage, could have a material adverse effect on our business, financial condition and results of operations.



- *The Americans with Disabilities Act ("ADA") and similar state laws* - We are subject to the ADA and similar state laws, which, among other things, prohibits discrimination in employment and public accommodations on the basis of disability. Under the ADA, our Shacks are required to meet federally mandated requirements for the disabled and we could be required to incur expenses to modify our Shacks to provide service to, or make reasonable accommodations for the employment of, disabled persons. The expenses associated with these modifications, or any damages, legal fees and costs associated with resolving ADA-related complaints could be material.
- *Privacy and cybersecurity* - Our business requires the collection, transmission and retention of large volumes of guest and employee data, including credit and debit card numbers and other personally identifiable information. The collection and use of such information is regulated at the federal and state levels, as well as by the European Union (EU). Regulatory requirements, both domestic and abroad, have been changing with increasing regulation relating to the privacy, security and protection of data. Such regulatory requirements may become more prevalent in other states and jurisdictions as well. It is our responsibility to ensure we are complying with these laws by taking the appropriate measures as well as monitoring our practices as these laws continue to evolve. As our environment continues to evolve in this digital age and reliance upon new technologies become more prevalent, it is imperative we secure the private and sensitive information we collect. Failure to do so, whether through fault of our own information systems or those of outsourced third party providers, could not only cause us to fail to comply with these laws and regulations, but also could cause us to face litigation and penalties that could adversely affect our business, financial condition and results of operations. Our brand's reputation and our image as an employer could also be harmed by these types of security breaches or regulatory violations.
- *Laws and regulations related to our licensed operations* - Our licensing operations are subject to laws enacted by a number of states, rules and regulations promulgated by the U.S. Federal Trade Commission and certain rules and requirements regulating licensing activities in foreign countries. Failure to comply with new or existing licensing laws, rules and regulations in any jurisdiction or to obtain required government approvals could negatively affect our licensing sales and our relationships with our licensees.
- *U.S. Foreign Corrupt Practices Act and other similar anti-bribery and anti-kickback laws* - A significant portion of our licensed operations are located outside the United States. The U.S. Foreign Corrupt Practices Act, and other similar anti-bribery and anti-kickback laws and regulations, generally prohibit companies and their intermediaries from making improper payments to non-U.S. officials for the purpose of obtaining or retaining business. While our license agreements mandate compliance with applicable law, we cannot assure you that we will be successful in preventing our employees or other agents from taking actions in violation of these laws or regulations. Such violations, or allegations of such violations, could disrupt our business and result in a material adverse effect on our financial condition, results of operations and cash flows.

The impact of current laws and regulations, the effect of future changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, uncertainty around future changes in laws made by new regulatory administrations or our inability to respond effectively to significant regulatory or public policy issues, could increase our compliance and other costs of doing business and, therefore, have an adverse effect on our results of operations. Failure to comply with the laws and regulatory requirements of federal, state and local authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, certain laws, including the ADA, could require us to expend significant funds to make modifications to our Shacks if we failed to comply with applicable standards. Compliance with all of these laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings.

***Our ability to use our net operating loss carryforwards may be subject to limitation.***

As of December 30, 2020, our federal and state net operating loss (“NOL”) carryforwards, for income tax purposes were \$313.9 million and \$183.8 million, respectively. If not utilized, \$262.1 million of our federal NOLs can be carried forward indefinitely, and the remainder will begin to expire in 2035. If not utilized, \$40.7 million of our state NOL carryforwards can be carried forward indefinitely, and the remainder will begin to expire in 2023. Federal NOLs incurred in taxable years beginning after December 31, 2017 can be carried forward indefinitely, but the deductibility of federal NOLs in taxable years beginning after December 31, 2020, is subject to certain limitations.

In addition, under Section 382 of the Internal Revenue Code (“IRC”) of 1986, as amended, and corresponding provisions of state law, if a corporation undergoes an “ownership change,” its ability to use its pre-change NOLs to offset its post-change income may be limited. A Section 382 “ownership change” generally occurs if one or more stockholders or groups of stockholders who own at least 5% of our stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. Similar rules may apply under state tax laws. In connection with the equity offering, as described in “Part I. Item I. Business,” herein, we conducted a Section 382 study to determine whether the use of our NOLs is limited. While we did not experience an ownership change related to the equity offering in April 2020, we did experience an ownership change in the second quarter of 2018. An ownership change under Section 382 of the IRC establishes an annual limitation to the amount of NOL carryforwards we could utilize to offset our taxable income in a single year. The change in ownership that occurred in 2018 will not limit our ability to utilize the NOLs before the expiration of the NOL carryforward period. We may experience ownership changes in the future, including as a result of this offering or subsequent changes in our stock ownership, some of which are outside our control. This could limit the amount of NOLs that we can utilize annually to offset future taxable income or tax liabilities. Subsequent statutory or regulatory changes in respect of the utilization of NOLs for federal or state purposes, such as suspensions on the use of NOLs or limitations on the deductibility of NOLs carried forward, or other unforeseen reasons, may result in our existing NOLs expiring or otherwise being unavailable to offset future income tax liabilities.

***Changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our results of operations and financial condition.***

We are subject to taxes by the U.S. federal, state, local and foreign tax authorities, and our tax liabilities will be affected by the allocation of expenses to differing jurisdictions. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- changes in the valuation of our deferred tax assets and liabilities;
- expected timing and amount of the release of any tax valuation allowance;
- tax effects of equity-based compensation;
- changes in tax laws, regulations or interpretations thereof; or
- future earnings being lower than anticipated in jurisdictions where we have lower statutory tax rates and higher than anticipated earnings in jurisdictions where we have higher statutory tax rates.

We may also be subject to audits of our income, sales and other transaction taxes by U.S. federal, state, local and foreign taxing authorities. Outcomes from these audits could have an adverse effect on our operating results and financial condition.

Additionally, SSE Holdings is treated as a partnership for U.S. federal income tax purposes, and the SSE Holdings LLC Agreement restricts transfers of LLC Interests that would cause SSE Holdings to be treated as a “publicly traded partnership” for U.S. federal income tax purposes. If the Internal Revenue Service (“IRS”) were to contend successfully that SSE Holdings should be treated as a “publicly traded partnership” for U.S. federal income tax purposes, SSE Holdings would be treated as a corporation for U.S. federal income tax purposes and thus would be subject to entity-level tax on its taxable income, which could have a material adverse effect on our results of operations, financial position and cash flows.

***If we fail to maintain effective internal controls over financial reporting, our ability to produce timely and accurate financial information or comply with Section 404 of the Sarbanes-Oxley Act of 2002 could be impaired, which could have a material adverse effect on our business and stock price.***

As a public company, we are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"), and the listing standards of the New York Stock Exchange.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. It also requires annual management assessments of the effectiveness of our internal control over financial reporting and disclosure of any material weaknesses in such controls. We are required to have our independent registered public accounting firm provide an attestation report on the effectiveness of our internal control over financial reporting. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting also could adversely affect the results of management evaluations and independent registered public accounting firm audits of our internal control over financial reporting that we are required to include in our periodic reports that will be filed with the SEC. Ineffective disclosure controls and procedures and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which may have a negative effect on the trading price of our Class A common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the New York Stock Exchange.

## **RISKS RELATED TO OUR ORGANIZATIONAL STRUCTURE**

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***Shake Shack has non-controlling interest holders, whose interests may differ from those of our public stockholders.***

As of December 30, 2020, the non-controlling interest holders control approximately 16.8% of the combined voting power of our common stock through their ownership of both our Class A and Class B common stock. The non-controlling interest holders, for the foreseeable future, have influence over corporate management and affairs, as well as matters requiring stockholder approval. The non-controlling interest holders are able to, subject to applicable law and the voting arrangements, participate in the election of a majority of the members of our Board of Directors and actions to be taken by us and our Board of Directors, including amendments to our certificate of incorporation and bylaws and approval of significant corporate transactions, including mergers and sales of substantially all of our assets. The directors so elected will have the authority, subject to the terms of our indebtedness and applicable rules and regulations, to issue additional stock, implement stock repurchase programs, declare dividends and make other decisions. It is possible that the interests of the non-controlling interest holders may in some circumstances conflict with our interests and the interests of our other stockholders. For example, the non-controlling interest holders may have different tax positions from us, especially in light of the tax receivable agreement we entered into with the non-controlling interest holders that provides for the payment by us to the non-controlling interest holders of 85% of the amount of any tax benefits that we actually realize, or in some cases are deemed to realize (the "Tax Receivable Agreement"). This could influence their decisions regarding whether and when to dispose of assets, whether and when to incur new or refinance existing indebtedness, and whether and when Shake Shack should terminate the Tax Receivable Agreement and accelerate its obligations thereunder. In addition, the determination of future tax reporting positions, the structuring of future transactions and the handling of any future challenges by any taxing authorities to our tax reporting positions may take into consideration these non-controlling interest holders' tax or other considerations, which may differ from the considerations of us or our other stockholders.

In addition, certain of the non-controlling interest holders are in the business of making or advising on investments in companies and may hold, and may from time to time in the future acquire interests in or provide advice to businesses that directly or indirectly compete with certain portions of our business or the business of our suppliers. Our amended and restated certificate of incorporation provides that, to the fullest extent permitted by law, none of the non-controlling interest holders or any director who is not employed by us or his or her affiliates has any duty to refrain from engaging in a corporate opportunity in the same or

similar lines of business as us. The non-controlling interest holders may also pursue acquisitions that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us.

***Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the non-controlling interest holders that will not benefit Class A common stockholders to the same extent as it will benefit the non-controlling interest holders.***

We are a party to the Tax Receivable Agreement with the non-controlling interest holders. Under the Tax Receivable Agreement, we are required to make cash payments to the non-controlling interest holders equal to 85% of the tax benefits, if any, that we actually realize, or in certain circumstances are deemed to realize, as a result of (i) the increases in the tax basis of the net assets of SSE Holdings resulting from any redemptions or exchanges of LLC Interests from the non-controlling interest holders and (ii) certain other tax benefits related to our making payments under the Tax Receivable Agreement.

We expect that the amount of the cash payments that we are required to make under the Tax Receivable Agreement will be significant. Any payments made by us to the non-controlling interest holders under the Tax Receivable Agreement will generally reduce the amount of overall cash flow that might have otherwise been available to us. Furthermore, our future obligation to make payments under the Tax Receivable Agreement could make us a less attractive target for an acquisition, particularly in the case of an acquirer that cannot use some or all of the tax benefits that are the subject of the Tax Receivable Agreement. Payments under the Tax Receivable Agreement are not conditioned on any non-controlling interest holders continued ownership of LLC Interests or our Class A common stock after the IPO.

The actual amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors, including the timing of redemptions or exchanges by the holders of LLC Interests, the amount of gain recognized by such holders of LLC Interests, the amount and timing of the taxable income we generate in the future, and the federal tax rates then applicable.

***The non-controlling interest holders have the right to have their LLC Interests redeemed or exchanged into shares of Class A common stock, which may cause volatility in our stock price.***

We have an aggregate of 161,282,210 shares of Class A common stock authorized but unissued, including 2,951,188 shares of Class A common stock issuable upon the redemption or exchange of LLC Interests held by the non-controlling interest holders. Subject to certain restrictions set forth in the SSE Holdings LLC Agreement, the non-controlling interest holders are entitled to have their LLC Interests redeemed or exchanged for shares of our Class A common stock.

We cannot predict the timing or size of any future issuances of our Class A common stock resulting from the redemption or exchange of LLC Interests or the effect, if any, that future issuances and sales of shares of our Class A common stock may have on the market price of our Class A common stock. Sales or distributions of substantial amounts of our Class A common stock, including shares issued in connection with an acquisition, or the perception that such sales or distributions could occur, may cause the market price of our Class A common stock to decline.

***We will continue to incur relatively outsized costs as a result of becoming a public company and in the administration of our complex organizational structure.***

As a public company, we incur significant legal, accounting, insurance and other expenses that we would not incur as a private company, including costs associated with public company reporting requirements. We have also incurred and will continue to incur costs associated with compliance with the Sarbanes-Oxley Act and related rules implemented by the SEC. The expenses incurred by public companies generally for reporting and corporate governance purposes have been increasing. These rules and regulations increase our legal and financial compliance costs and to make some activities more time-consuming. These laws and regulations also make it more difficult or costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. Furthermore, if we are unable to continue to satisfy our obligations as a public company, we would be subject to delisting of our common stock, fines, sanctions and other regulatory action and potentially civil litigation.

Our organizational structure, including our Tax Receivable Agreement, is very complex and we require the expertise of various tax, legal and accounting advisers to ensure compliance with applicable laws and regulations. We have and will continue to incur significant expenses in connection with the administration of our organizational structure. As a result, our expenses for legal, tax and accounting compliance may be significantly greater than other companies of our size that do not have a similar organizational structure or a tax receivable agreement in place.

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

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

- the authority to issue "blank check" preferred stock that could be issued by our Board of Directors to increase the number of outstanding shares and thwart a takeover attempt;
- our classified board of directors providing that not all members of our Board of Directors are elected at one time;
- the removal of directors only for cause;
- prohibiting the use of cumulative voting for the election of directors;
- limiting the ability of stockholders to call special meetings or amend our bylaws;
- requiring all stockholder actions to be taken at a meeting of our stockholders; and
- our advance notice and duration of ownership requirements for nominations for election to the Board of Directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

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

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

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

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

***We do not currently expect to pay any cash dividends.***

The continued operation and expansion of our business will require substantial funding. Accordingly, we do not currently expect to pay any cash dividends on shares of our Class A common stock. Any determination to pay dividends in the future will be at the discretion of our Board of Directors and will depend upon our results of operations, financial condition, contractual restrictions, restrictions imposed by applicable law and other factors our Board of Directors deems relevant. We are a holding company, and substantially all of our operations are carried out by SSE Holdings and its subsidiaries. Under the Revolving Credit Facility, SSE Holdings is currently restricted from paying cash dividends, and we expect these restrictions to continue in the future. Our ability to pay dividends may also be restricted by the terms of any future credit agreement or any future debt or preferred equity securities of ours or of our subsidiaries. Accordingly, if you purchase shares, realization of a gain on your investment will depend on the appreciation of the price of our Class A common stock, which may never occur. Investors seeking cash dividends in the foreseeable future should not purchase our Class A common stock.

## **RISKS RELATED TO OUR TAX RECEIVABLE AGREEMENT**

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***We are a holding company and our principal asset is our interest in SSE Holdings, and, accordingly, we will depend on distributions from SSE Holdings to pay our taxes and expenses, including payments under the Tax Receivable Agreement. SSE Holdings' ability to make such distributions may be subject to various limitations and restrictions.***

We are a holding company and have no material assets other than our ownership interest in SSE Holdings and certain deferred tax assets. As such, we will have no independent means of generating revenue or cash flow, and our ability to pay our taxes and operating expenses or declare and pay dividends in the future, if any, will be dependent upon the distributions we receive from SSE Holdings. There can be no assurance that SSE Holdings will generate sufficient cash flow to distribute funds to us or that applicable state law and contractual restrictions, including negative covenants in our debt instruments, will permit such distributions.

SSE Holdings is treated as a partnership for U.S. federal income tax purposes and, as such, will not be subject to any entity-level U.S. federal income tax. Instead, taxable income will be allocated to its members, including us. Accordingly, we will incur income taxes on our allocable share of any net taxable income of SSE Holdings. Under the terms of the SSE Holdings LLC Agreement, SSE Holdings is obligated to make tax distributions to its members, including us. In addition to tax expenses, we will also incur expenses related to our operations, including payments under the Tax Receivable Agreement, which we expect will be significant. We intend, as its managing member, to cause SSE Holdings to make cash distributions to its members in an amount sufficient to (i) fund all or part of their tax obligations in respect of taxable income allocated to them and (ii) cover our operating expenses, including payments under the Tax Receivable Agreement. However, SSE Holdings' ability to make such distributions may be subject to various limitations and restrictions, such as restrictions on distributions that would either violate any contract or agreement to which SSE Holdings is then a party, including debt agreements, or any applicable law, or that would have the effect of rendering SSE Holdings insolvent. If we do not have sufficient funds to pay our tax and other liabilities or to fund our operations, we may have to borrow funds, which could materially adversely affect our liquidity and financial condition and subject us to various restrictions imposed by any such lenders. To the extent that we are unable to make payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the Tax Receivable Agreement and therefore accelerate payments due under the Tax Receivable Agreement. In addition, if SSE Holdings does not have sufficient funds to make distributions, our ability to declare and pay cash dividends will also be restricted or impaired.



***In certain cases, payments under the Tax Receivable Agreement to the non-controlling interest holders may be accelerated or significantly exceed the actual benefits we realize in respect of the tax attributes subject to the Tax Receivable Agreement.***

The Tax Receivable Agreement provides that, upon certain mergers, asset sales, other forms of business combinations or other changes of control or if, at any time, we elect an early termination of the Tax Receivable Agreement, our obligations, or our successor's obligations, under the Tax Receivable Agreement to make payments thereunder would be based on certain assumptions, including an assumption that we would have sufficient taxable income to fully utilize all potential future tax benefits that are subject to the Tax Receivable Agreement.

As a result of the foregoing, (i) we could be required to make payments under the Tax Receivable Agreement that are greater than the specified percentage of the actual benefits we ultimately realize in respect of the tax benefits that are subject to the Tax Receivable Agreement and (ii) if we elect to terminate the Tax Receivable Agreement early, we would be required to make an immediate cash payment equal to the present value of the anticipated future tax benefits that are the subject of the Tax Receivable Agreement, which payment may be made significantly in advance of the actual realization, if any, of such future tax benefits. In these situations, our obligations under the Tax Receivable Agreement could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. There can be no assurance that we will be able to fund or finance our obligations under the Tax Receivable Agreement. Furthermore, any increases in the federal corporate tax rate may result in an increase in our Tax Receivable Agreement liability, including a gross up of our deferred tax balances.

***We will not be reimbursed for any payments made to the non-controlling interest holders under the Tax Receivable Agreement in the event that any tax benefits are disallowed.***

Payments under the Tax Receivable Agreement will be based on the tax reporting positions that we determine, and the IRS or another tax authority may challenge all or part of the tax basis increases, as well as other related tax positions we take, and a court could sustain such challenge. If the outcome of any such challenge would reasonably be expected to materially affect a recipient's payments under the Tax Receivable Agreement, then we will not be permitted to settle or fail to contest such challenge without the consent (not to be unreasonably withheld or delayed) of each non-controlling interest holder that directly or indirectly owns at least 10% of the outstanding LLC Interests. We will not be reimbursed for any cash payments previously made to the non-controlling interest holders under the Tax Receivable Agreement in the event that any tax benefits initially claimed by us and for which payment has been made to non-controlling interest holders are subsequently challenged by a taxing authority and are ultimately disallowed. Instead, any excess cash payments made by us to non-controlling interest holders will be netted against any future cash payments that we might otherwise be required to make to such non-controlling interest holders under the terms of the Tax Receivable Agreement. However, we might not determine that we have effectively made an excess cash payment to a non-controlling interest holder for a number of years following the initial time of such payment and, if any of our tax reporting positions are challenged by a taxing authority, we will not be permitted to reduce any future cash payments under the Tax Receivable Agreement until any such challenge is finally settled or determined. As a result, payments could be made under the Tax Receivable Agreement in excess of the tax savings that we realize in respect of the tax attributes with respect to non-controlling interest holders that are the subject of the Tax Receivable Agreement.

## **Item 1B. Unresolved Staff Comments.**

None.

## Item 2. Properties.

Our home office is located at 225 Varick Street, Suite 301, New York, NY 10014. We lease our home office, which is approximately 32,000 square feet and all of our domestic Company-operated Shacks. We also have an international office in Hong Kong. We do not own any real property, nor do we own or lease any property related to our licensed operations. The following table sets forth the number of Company-operated and licensed Shacks by geographic location as of December 30, 2020.

|                      | Company-Operated | Licensed  | Total      |
|----------------------|------------------|-----------|------------|
| Alabama              | 1                | —         | 1          |
| Arizona              | 4                | 1         | 5          |
| California           | 24               | —         | 24         |
| Colorado             | 4                | —         | 4          |
| Connecticut          | 4                | —         | 4          |
| Delaware             | 1                | —         | 1          |
| District of Columbia | 6                | 1         | 7          |
| Florida              | 14               | 1         | 15         |
| Georgia              | 3                | 1         | 4          |
| Illinois             | 9                | —         | 9          |
| Kansas               | 1                | —         | 1          |
| Kentucky             | 1                | —         | 1          |
| Louisiana            | 2                | 1         | 3          |
| Maryland             | 4                | 1         | 5          |
| Massachusetts        | 7                | —         | 7          |
| Michigan             | 4                | —         | 4          |
| Minnesota            | 2                | 1         | 3          |
| Missouri             | 3                | —         | 3          |
| North Carolina       | 4                | 1         | 5          |
| Nevada               | 4                | 2         | 6          |
| New Jersey           | 10               | 1         | 11         |
| New York             | 32               | 5         | 37         |
| Ohio                 | 4                | 1         | 5          |
| Pennsylvania         | 5                | 2         | 7          |
| Rhode Island         | 1                | —         | 1          |
| Tennessee            | 1                | —         | 1          |
| Texas                | 17               | 2         | 19         |
| Utah                 | 2                | 1         | 3          |
| Virginia             | 4                | —         | 4          |
| Washington           | 3                | —         | 3          |
| Wisconsin            | 2                | —         | 2          |
| <b>Domestic</b>      | <b>183</b>       | <b>22</b> | <b>205</b> |
| Bahrain              | —                | 2         | 2          |
| China (Mainland)     | —                | 7         | 7          |
| Hong Kong            | —                | 6         | 6          |

|                      |            |            |            |
|----------------------|------------|------------|------------|
| Japan                | —          | 12         | 12         |
| South Korea          | —          | 14         | 14         |
| Kuwait               | —          | 11         | 11         |
| Mexico               | —          | 4          | 4          |
| Oman                 | —          | 2          | 2          |
| Philippines          | —          | 3          | 3          |
| Qatar                | —          | 4          | 4          |
| Saudi Arabia         | —          | 7          | 7          |
| Singapore            | —          | 5          | 5          |
| Turkey               | —          | 4          | 4          |
| United Arab Emirates | —          | 13         | 13         |
| United Kingdom       | —          | 12         | 12         |
| <b>INTERNATIONAL</b> | —          | <b>106</b> | <b>106</b> |
| <b>SYSTEM-WIDE</b>   | <b>183</b> | <b>128</b> | <b>311</b> |

### Item 3. Legal Proceedings

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 December 30, 2020, we do not expect the amount of ultimate liability with respect to these matters to be material to the Company's financial condition, results of operations or cash flows.

### Item 4. Mine Safety Disclosures.

Not applicable.

# Part II

## Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

### MARKET INFORMATION

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Our Class A common stock is traded on the New York Stock Exchange under the symbol "SHAK."

Our Class B common stock is not listed nor traded on any stock exchange.

### HOLDERS OF RECORD

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As of February 17, 2021, there were 86 shareholders of record of our Class A common stock. The number of record holders does not include persons who held shares of our Class A common stock in nominee or "street name" accounts through brokers. As of February 17, 2021, there were 20 shareholders of record of our Class B common stock.

### DIVIDEND POLICY

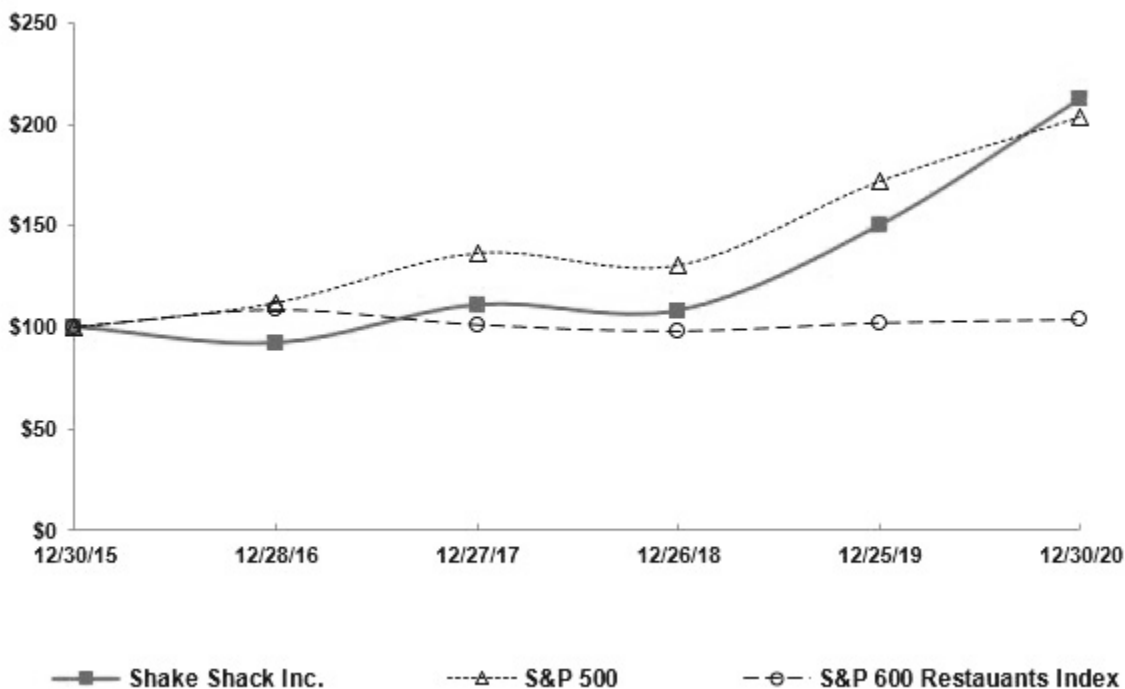
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We currently intend to retain all available funds and any future earnings for use in the operation of our business, and therefore we do not currently expect to pay any cash dividends on our Class A common stock. Holders of our Class B common stock are not entitled to participate in any dividends declared by our Board of Directors. Any future determination to pay dividends to holders of our Class A common stock will be at the discretion of our Board of Directors and will depend upon many factors, including our results of operations, financial condition, capital requirements, restrictions in SSE Holdings' debt agreements and other factors that our Board of Directors deems relevant. We are a holding company, and substantially all of our operations are carried out by SSE Holdings and its subsidiaries. Additionally, under the revolving credit facility, SSE Holdings is currently restricted from paying cash dividends, and we expect these restrictions to continue in the future, which may in turn limit our ability to pay dividends on our Class A common stock.

## STOCK PERFORMANCE GRAPH

The following graph and table illustrate the total return from December 30, 2015 through December 30, 2020 for (i) our Class A common stock, (ii) the Standard and Poor's 500 Index, and (iii) the Standard and Poor's 600 Restaurants Index, assuming an investment of \$100 on December 30, 2015 including the reinvestment of dividends.

### Comparison of 5 Year Cumulative Total Return



|                           | 12/30/2015 | 12/28/2016 | 12/27/2017 | 12/26/2018 | 12/25/2019 | 12/30/2020 |
|---------------------------|------------|------------|------------|------------|------------|------------|
| Shake Shack Inc.          | \$ 100.00  | \$ 92.17   | \$ 110.96  | \$ 108.13  | \$ 150.02  | \$ 212.36  |
| S&P 500 Index             | 100.00     | 111.96     | 136.40     | 130.42     | 171.49     | 203.04     |
| S&P 600 Restaurants Index | 100.00     | 109.06     | 101.28     | 97.60      | 102.23     | 103.92     |

## Item 6. Selected Financial Data.

The selected financial and operating data set forth below was derived from our audited consolidated financial statements and should be read in conjunction with Item 1A, "Risk Factors," Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our audited consolidated financial statements included in Item 8, "Financial Statements and Supplementary Data."

| <i>(dollar amounts in thousands, except per share amounts)</i> | 2020 <sup>1</sup> | 2019       | 2018       | 2017       | 2016       |
|--|-------------------|------------|------------|------------|------------|
| <b>Selected statement of income data:</b>                      |                   |            |            |            |            |
| Shack sales  | \$ 506,339        | \$ 574,625 | \$ 445,589 | \$ 346,388 | \$ 259,350 |
| Licensing revenue <sup>(2)</sup>                               | 16,528            | 19,894     | 13,721     | 12,422     | 9,125      |
| Shack-level operating expenses                                 | 434,961           | 446,607    | 332,683    | 254,079    | 186,058    |
| General and administrative expenses                            | 64,250            | 65,649     | 52,720     | 39,003     | 30,556     |
| Pre-opening costs  | 8,580             | 14,834     | 12,279     | 9,603      | 9,520      |
| Operating income (loss)  | (43,876)          | 25,685     | 31,711     | 33,813     | 27,805     |
| Net income (loss)  | (45,534)          | 24,128     | 21,948     | 8,884      | 22,146     |
| Net income (loss) attributable to Shake Shack Inc.             | (42,158)          | 19,827     | 15,179     | (320)      | 12,446     |
| <b>Per share data:</b>   |                   |            |            |            |            |
| Earnings (loss) per share—basic                                | \$ (1.14)         | \$ 0.63    | \$ 0.54    | \$ (0.01)  | \$ 0.54    |
| Earnings (loss) per share—diluted                              | \$ (1.14)         | \$ 0.61    | \$ 0.52    | \$ (0.01)  | \$ 0.53    |
| <b>Selected balance sheet data (at period end):</b>            |                   |            |            |            |            |
| Cash and cash equivalents                                      | \$ 146,873        | \$ 37,099  | \$ 24,750  | \$ 21,507  | \$ 11,607  |
| Short-term marketable securities                               | 36,887            | 36,508     | 62,113     | 63,036     | 62,040     |
| Total current assets   | 203,186           | 87,675     | 101,119    | 93,199     | 83,944     |
| Total assets   | 1,145,348         | 968,268    | 610,532    | 470,606    | 538,194    |
| Total current liabilities                                      | 109,705           | 99,392     | 59,948     | 34,024     | 31,716     |
| Total debt   | —                 | —          | 20,846     | 14,518     | 2,007      |
| Total liabilities  | 710,855           | 646,283    | 337,077    | 246,127    | 336,841    |
| Total equity   | 434,493           | 321,985    | 273,455    | 224,479    | 201,353    |
| <b>Selected cash flow data:</b>                                |                   |            |            |            |            |
| Net cash provided by operating activities                      | \$ 37,350         | \$ 89,857  | \$ 85,395  | \$ 70,878  | \$ 54,285  |
| Net cash used in investing activities                          | (69,397)          | (80,686)   | (86,604)   | (61,943)   | (114,761)  |
| Net cash provided by financing activities                      | 141,821           | 3,178      | 4,452      | 965        | 1,234      |



| <i>(dollar amounts in thousands)</i>               | 2020 <sup>1</sup> | 2019       | 2018       | 2017       | 2016       |
|--|-------------------|------------|------------|------------|------------|
| <b>Selected operating data:</b>                    |                   |            |            |            |            |
| Shack system-wide sales <sup>(3)</sup>             | \$ 778,861        | \$ 895,288 | \$ 671,926 | \$ 532,137 | \$ 402,791 |
| Same-Shack sales % <sup>(4)</sup>                  | (27.8)%           | 1.3 %      | 1.0 %      | (1.2)%     | 4.2 %      |
| Shacks in the comparable base                      | 114               | 85         | 61         | 43         | 29         |
| Average weekly sales <sup>(5)</sup> :              |                   |            |            |            |            |
| Domestic Company-operated                          | \$ 58             | \$ 79      | \$ 84      | \$ 88      | \$ 96      |
| Average unit volumes <sup>(6)</sup> :              |                   |            |            |            |            |
| Domestic Company-operated                          | \$ 3,020          | \$ 4,090   | \$ 4,390   | \$ 4,598   | \$ 4,981   |
| International licensed                             | \$ 2,766          | \$ 3,367   | \$ 3,047   | \$ 3,176   | \$ 3,334   |
| Shack-level operating profit <sup>(7)</sup>        | \$ 71,378         | \$ 128,018 | \$ 112,906 | \$ 92,309  | \$ 73,292  |
| Shack-level operating profit margin <sup>(7)</sup> | 14.1 %            | 22.3 %     | 25.3 %     | 26.6 %     | 28.3 %     |
| Adjusted EBITDA <sup>(8)</sup>                     | \$ 22,739         | \$ 81,840  | \$ 73,850  | \$ 64,664  | \$ 50,234  |
| Adjusted EBITDA margin <sup>(8)</sup>              | 4.3 %             | 13.8 %     | 16.1 %     | 18.0 %     | 18.7 %     |
| Shack counts (at end of period):                   |                   |            |            |            |            |
| System-wide  | 311               | 275        | 208        | 159        | 114        |
| Domestic Company-operated                          | 183               | 163        | 124        | 90         | 64         |
| Domestic licensed                                  | 22                | 22         | 12         | 10         | 7          |
| International licensed                             | 106               | 90         | 72         | 59         | 43         |

- (1) We operate on a 52/53 week fiscal year that ends on the last Wednesday of the calendar year. Fiscal year 2020 was a 53-week year with the extra operating week (the "53rd week") falling in our fiscal fourth quarter. Fiscal 2019, fiscal 2018, fiscal 2017 and fiscal 2016 each contained 52 weeks.
- (2) On December 28, 2017 we adopted Accounting Standards Update ("ASU") 2014-09, Revenue from Contracts with Customers (Topic 606). Results for reporting periods beginning on or after December 28, 2017 are presented under Accounting Standards Codification Topic 606 ("ASC 606"). Prior period amounts were not revised and continue to be reported in accordance with Accounting Standards Codification Topic 605 ("ASC 605"), the accounting standard then in effect. See Note 3, Revenue, to the consolidated financial statements for more information.
- (3) Shack system-wide sales is an operating measure and consists of sales from our domestic Company-operated Shacks, domestic licensed Shacks and our international licensed Shacks. We do not recognize the sales from our licensed Shacks as revenue. Of these amounts, our revenue is limited to Shack sales from domestic Company-operated Shacks and licensing revenue based on a percentage of sales from domestic and international licensed Shacks, as well as certain up-front fees such as territory and opening fees.
- (4) Same-Shack sales % reflects the change in year-over-year Shack sales for domestic Company-operated Shacks open for 24 full fiscal months or longer. Fiscal 2020 excludes the impact of the 53rd week. For fiscal 2020, same-Shack sales compares the 52 weeks from December 26, 2019 through December 23, 2020 to the 52 weeks from December 27, 2018 through December 25, 2019. In 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.
- (5) Average weekly sales is calculated by dividing total Shack sales by the number of operating weeks for all Shacks in operation during the period. For Shacks that are not open for the entire period, fractional adjustments are made to the number of operating weeks used in the denominator such that it corresponds to the period of associated sales.
- (6) Average unit volumes are calculated by dividing total Shack sales by the number of Shacks open during the period. For Shacks that are not open for the entire period, fractional adjustments are made to the number of Shacks used in the denominator such that it corresponds to the period of associated sales.
- (7) See "Non-GAAP Measures—Shack-Level Operating Profit" on page 65 for additional information and a reconciliation to the most directly comparable GAAP financial measure.
- (8) See "Non-GAAP Measures—EBITDA and Adjusted EBITDA" on page 66 for additional information and a reconciliation to the most directly comparable GAAP financial measure.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

*This section and other parts of this Annual Report on Form 10-K ("Form 10-K") 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 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-K in the context of the risks and uncertainties disclosed in Part I, Item 1A of this Form 10-K under the heading "Risk Factors" and in this Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations".

The forward-looking statements included in this Form 10-K are made only as of the date hereof. We undertake no obligation to publicly update any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law. If we do update one or more forward-looking statements, no inference should be made that we will make additional updates with respect to those or other forward-looking statements.

## OVERVIEW

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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. Our fine dining heritage and commitment to community building, hospitality and the sourcing of premium ingredients is what we call "fine casual." Fine casual couples the ease, value and convenience of fast casual concepts with the high standards of excellence grounded in our fine dining heritage — thoughtful ingredient sourcing and preparation, hospitality and quality.

Our mission is to *Stand For Something Good* in all aspects of our business, including the exceptional team we hire and train, the premium ingredients making up our menu, our community engagement and the design of our Shacks. *Stand For Something Good* is a call to action for all of our stakeholders — our team, guests, communities, suppliers and investors — and we actively invite them all to share in this philosophy with us. This commitment drives our integration into the local communities in which we operate and fosters a deep and lasting connection with our guests.

### Recent Development and Trends

We experienced steady recovery in the business during the fourth quarter of 2020, all while continuing to support our Shack teams, our guests and the communities in which we operate during the COVID-19 global pandemic. COVID-19 was officially declared a global pandemic by the World Health Organization in March 2020. The virus has impacted all global economies, and particularly in the United States, it has resulted in varying levels of restrictions and shutdowns implemented by national, state, and local authorities. In response to the outbreak, in March 2020, we closed all dining rooms and temporarily shifted to a "to-go" only operating model in all of our domestic Company-operated Shacks. With a prioritization on health and safety, we have steadily re-opened Shacks, where permitted, under modified operations to meet public health guidelines and evolving customer behaviors and expectations.

Same-Shack sales improved across all regions on a sequential basis in the fourth quarter 2020 when compared to the third quarter 2020, with performance driven by increases in in-Shack dining in both urban and suburban Shacks, combined with high levels of digital sales. Most notably, same-Shack sales improved sequentially in each of the last nine months of fiscal 2020, and through fiscal January 2021. During the fourth quarter of fiscal 2020, same-Shack sales were down 17.4% compared to the same period last year, with urban Shacks down 31% and suburban Shacks approximately flat compared to the same period last year. Similar to prior years, in mid-December we increased menu prices approximately 2% on average across all Company-operated Shacks.

Our fourth quarter 2020 same-Shack sales reflect sequential improvement from the prior quarter, during which same-Shack sales were down 31.7%, with urban Shacks down 43% and suburban Shacks down 16%. Subsequent to the fourth quarter of 2020, in fiscal January 2021, same-Shack sales were down 5%, with urban Shacks down 17% and suburban Shacks up 8% compared to the same period last year. In the beginning of fiscal February 2021, trends were impacted by cold weather and snowstorms across many parts of the country, causing more than 130 full or partial lost operating days from Shack closures. Through the first three weeks of fiscal February 2021, same-Shack sales were down 16%, with urban Shacks down 27% and suburban Shacks down 4% compared to the same period last year. As expected, urban locations are still acutely impacted by the pandemic and suburban locations are recovering to pre-COVID sales levels quicker. New York City, particularly Manhattan, continues to lag other regions and we expect this to be an ongoing trend until offices return and business and tourism traffic fully recovers.

Two domestic Company-operated Shacks were temporarily closed as of the end of the fourth quarter 2020. Furthermore, as of the end of the fourth quarter 2020, approximately half of our domestic Company-operated Shacks had open dining rooms with varying capacity restrictions, with the majority of Shacks also utilizing outdoor patio space, whenever possible.

During the fourth quarter of 2020, total digital sales, including orders placed on the Shake Shack app, website and third party delivery platforms, represented 59% of total Shack sales, with this trend continuing through the start of fiscal 2021, with digital sales mix at 64% in fiscal January 2021 and 63% during the first three weeks of fiscal February 2021. In fiscal 2021, through the first three weeks of fiscal February 2021, Company-owned app and web sales increased approximately 300% compared to the same period in the prior year. Furthermore, we added over 2 million first-time purchasers to our Company-owned app and web channels between mid-March 2020 and the end of fiscal January 2021.

The following table presents fiscal monthly information about our current trends in Shack sales.

|   | Fiscal 2020   |        |                |        |        |               |        |        |                |                       | Fiscal 2021   |                       |
|---|---------------|--------|----------------|--------|--------|---------------|--------|--------|----------------|-----------------------|---------------|-----------------------|
|   | First Quarter |        | Second Quarter |        |        | Third Quarter |        |        | Fourth Quarter |                       | First Quarter |                       |
|   | Mar 25        | Apr 22 | May 20         | Jun 24 | Jul 22 | Aug 19        | Sep 23 | Oct 21 | Nov 18         | Dec 30 <sup>(1)</sup> | Jan 27        | Feb 17 <sup>(2)</sup> |
| <i>(dollar amounts in thousands)</i>        |               |        |                |        |        |               |        |        |                |                       |               |                       |
| Average weekly sales <sup>(3)</sup>         | \$56          | \$32   | \$50           | \$52   | \$56   | \$59          | \$61   | \$62   | \$62           | \$62                  | \$63          | \$60                  |
| Total year-over-year sales growth (decline) | (11)%         | (56)%  | (32)%          | (32)%  | (23)%  | (20)%         | (10)%  | (5)%   | (3)%           | 18%                   | (6)%          | (2)%                  |
| Same-Shack sales % <sup>(4)</sup>           | (29)%         | (64)%  | (42)%          | (42)%  | (39)%  | (34)%         | (23)%  | (21)%  | (17)%          | (15)%                 | (5)%          | (16)%                 |

- (1) When excluding the impact of the 53rd week, total year-over-year sales were down 1%.
- (2) Represents the first three weeks of fiscal February 2021.
- (3) Average weekly sales is calculated by dividing total Shack sales by the number of operating weeks for all Shacks in operation during the period. For Shacks that are not open for the entire period, fractional adjustments are made to the number of operating weeks open such that it corresponds to the period of associated sales.
- (4) "Same-Shack sales" or "SSS" represents Shack sales for the comparable Shack base, which is defined as the number of domestic Company-operated Shacks open for 24 full fiscal months or longer. For days that Shacks were temporarily closed, the comparative 2019 period was also adjusted. For fiscal December, same-Shack sales excludes the impact of the sixth week and compares the five weeks from November 19, 2020 through December 23, 2020 to the five weeks from November 21, 2019 through December 25, 2019.

Average weekly sales were \$62,000 in the fourth quarter 2020, a 6.9% increase compared to the third quarter 2020. This improvement is in addition to typically lower seasonal average weekly sales during the fourth quarter of any given year, and it continued through fiscal January 2021 with average weekly sales of \$63,000. During the first three weeks of fiscal February 2021 average weekly sales were \$60,000, reflecting the impact of cold weather and snowstorms, which affected nearly all regions.

Our licensed business has shown overall steady recovery, as noted herein, however the business does continue to be impacted by the pandemic. Our domestic licensed business still faces significant headwinds, with airport and stadium Shacks still either closed or at significantly reduced traffic. As of the end of fiscal 2020, 17 licensed Shacks remained temporarily closed. Furthermore, approximately half of our UK Shacks were closed as of the end of fiscal 2020, as the government maintained lockdowns to control the virus spread. The following table presents fiscal monthly information about our licensed sales trends.

|  | Fiscal 2020   |        |                |        |        |               |        |        |                |                       | Fiscal 2021   |                       |
|--|---------------|--------|----------------|--------|--------|---------------|--------|--------|----------------|-----------------------|---------------|-----------------------|
|  | First Quarter |        | Second Quarter |        |        | Third Quarter |        |        | Fourth Quarter |                       | First Quarter |                       |
|  | Mar 25        | Apr 22 | May 20         | Jun 24 | Jul 22 | Aug 19        | Sep 23 | Oct 21 | Nov 18         | Dec 30 <sup>(1)</sup> | Jan 27        | Feb 17 <sup>(2)</sup> |
| <i>(dollar amounts in millions)</i>                  |               |        |                |        |        |               |        |        |                |                       |               |                       |
| Weekly licensed sales <sup>(3)</sup>                 | \$ 4.6        | \$ 2.0 | \$ 2.4         | \$ 3.5 | \$4.6  | \$ 5.4        | \$ 5.7 | \$ 5.9 | \$ 5.9         | \$ 6.4                | \$ 5.6        | \$ 6.0                |
| Total year-over-year licensed sales growth (decline) | 13 %          | (65)%  | (58)%          | (47)%  | (32)%  | (23)%         | (9)%   | (10)%  | (10)%          | 4 %                   | (27)%         | (7)%                  |
| Number of open licensed Shacks                       | 96            | 56     | 59             | 91     | 98     | 104           | 105    | 107    | 106            | 106                   | 107           | 108                   |

- (1) When excluding the impact of the 53rd week, total year-over-year licensed sales were down 15%.
- (2) Represents the first three weeks of fiscal February 2021.
- (3) Weekly licensed sales is an operating measure and consists of sales from domestic licensed Shacks and international licensed Shacks. We do not recognize the sales from licensed Shacks as revenue. Of these amounts, revenue is limited to licensing revenue based on a percentage of sales from domestic and international licensed Shacks, as well as certain up-front fees such as territory fees and opening fees.

## Development Highlights

During fiscal 2020, we opened 20 new domestic Company-operated Shacks and 16 net new licensed Shacks. During fiscal 2021, we expect to open between 35 to 40 new domestic Company-operated Shacks and 15 to 20 new licensed Shacks. Below are Shacks opened during the fourth quarter of 2020.

| <u>Location</u>                                  | <u>Type</u>               | <u>Opening Date</u> |
|--|---------------------------|---------------------|
| Singapore — Suntec City                          | International Licensed    | September 30        |
| Murray, UT — Fashion Place                       | Domestic Company-Operated | October 1           |
| Madison, WI — Hilldale Center                    | Domestic Company-Operated | October 5           |
| Abu Dhabi, UAE — Dalma Mall                      | International Licensed    | October 5           |
| Pasadena, CA — Pasadena                          | Domestic Company-Operated | October 12          |
| White Plains, NY — The Westchester               | Domestic Company-Operated | October 26          |
| Makati, Philippines — Greenbelt, Legazpi Village | International Licensed    | October 29          |
| Mexico City, Mexico — Terraza Coapa              | International Licensed    | November 5          |
| Houston, TX — The Woodlands                      | Domestic Company-Operated | November 19         |
| South Korea — Daejeon Dunsan                     | International Licensed    | November 20         |
| VivoCity, Singapore — VivoCity                   | International Licensed    | December 1          |
| Oakland, CA — Oakland                            | Domestic Company-Operated | December 8          |
| Denver, CO — Cherry Creek                        | Domestic Company-Operated | December 10         |
| Edgewater, CO — Edgewater                        | Domestic Company-Operated | December 19         |
| Beijing China — Xidan                            | International Licensed    | December 21         |

## Liquidity Update

In March 2020, we drew down the full \$50.0 million available under the Revolving Credit Facility, of which the full amount was repaid, plus interest, in fiscal June 2020. In fiscal April 2020, we raised \$135.9 million of proceeds, net of underwriting discounts and commissions, from the sale of 3,416,070 shares of our Class A common stock in an underwritten offering, and \$9.8 million of proceeds, net of commissions, from the sale of 233,467 shares of our Class A common stock pursuant to an "at-the-market" equity offering program. See "Liquidity and Capital Resources" for more information.

## Financial Highlights for Fiscal 2020

- **Total revenue** for the fiscal year ended December 30, 2020 decreased 12.1% to \$522.9 million versus the prior year. This decrease is inclusive of the favorable impact of the 53rd week in the fourth quarter 2020, which resulted in incremental revenue of \$11.1 million. Excluding the 53rd week, total revenue in fiscal year 2020 decreased 13.9%.
- **Shack sales** for the fiscal year ended December 30, 2020 decreased 11.9% to \$506.3 million versus the prior year. This decrease is inclusive of the favorable impact of the 53rd week in the fourth quarter 2020, which resulted in incremental Shack sales of \$10.7 million. Excluding the 53rd week, Shack sales in fiscal year 2020 decreased 13.7%.
- **Same-Shack sales<sup>1</sup>** decreased 27.8%, for the fiscal year ended December 30, 2020 versus the prior year.
- **Licensed revenue** for the fiscal year ended December 30, 2020 decreased 16.9% to \$16.5 million versus the prior-year. This decrease is inclusive of the favorable impact of the 53rd week in the fourth quarter 2020, which resulted in incremental licensed revenue of \$0.4 million. Excluding the 53rd week, licensed revenue in fiscal year 2020 decreased 18.9%.
- **Shack system-wide sales** decreased 13.0% to \$778.9 million, versus the prior year. This decrease is inclusive of the favorable impact of the 53rd week in the fourth quarter 2020, which resulted in incremental Shack system-wide sales of \$17.7 million. Excluding the 53rd week, Shack system-wide sales in the fiscal year 2020 decreased 15.0%.
- **Operating loss** for the fiscal year ended December 30, 2020 was \$43.9 million compared to operating income of \$25.7 million versus the same period last year. This operating loss includes a non-cash impairment charge of \$7.6 million related to two Shacks and the expansion space of the Company's home office.
- **Shack-level operating profit<sup>2</sup>**, a non-GAAP measure, decreased 44.2% to \$71.4 million, or 14.1% of Shack sales in fiscal year 2020, inclusive of a \$0.9 million reduction in Occupancy and related expenses due to the closure of our Shack in Penn Station.
- **Net loss** was \$45.5 million and **adjusted EBITDA<sup>2</sup>**, a non-GAAP measure, was \$22.7 million in fiscal year 2020, compared to net income of \$24.1 million and adjusted EBITDA of \$81.8 million in the same period last year.

- **Net loss attributable to Shake Shack Inc** was \$42.2 million and adjusted pro forma net loss<sup>2</sup>, a non-GAAP measure, was \$22.3 million, or a loss of \$0.56 per fully exchanged and diluted share in fiscal year 2020, compared to net income attributable to Shake Shack Inc. of \$19.8 million, adjusted pro forma net income of \$27.4 million, or \$0.72 per fully exchanged and diluted share, in the same period last year.
- We opened **36 net system-wide Shacks**, comprised of 20 domestic company-operated Shacks and 16 net licensed Shacks. In the fourth quarter 2020, we were notified by our landlord of the early termination of our lease at Penn Station, NY. The termination was due to the landlord's plans to redevelop the Long Island Rail Road Concourse following the successful completion of the East End Gateway and opening of the Moynihan Train Hall. This closure is effective as of fiscal February 2021.

- (1) *Fiscal 2020 excludes the impact of the 53rd week. Same-Shack sales compares the 52 weeks from December 26, 2019 through December 23, 2020 to the 52 weeks from December 27, 2018 through December 25, 2019. In 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.*
- (2) *This 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. See "Non-GAAP Financial Measures."*

## RESULTS OF OPERATIONS

The following table summarizes our results of operations for fiscal 2020 and fiscal 2019:

| <i>(dollar amounts in thousands)</i>                              | <b>2020 <sup>(1)</sup></b> |                | <b>2019</b>      |                |
|---|----------------------------|----------------|------------------|----------------|
| Shack sales   | \$ 506,339                 | 96.8 %         | \$ 574,625       | 96.7 %         |
| Licensing revenue   | 16,528                     | 3.2 %          | 19,894           | 3.3 %          |
| <b>TOTAL REVENUE</b>  | <b>522,867</b>             | <b>100.0 %</b> | <b>594,519</b>   | <b>100.0 %</b> |
| Shack-level operating expenses <sup>(2)</sup> :                   |                            |                |                  |                |
| Food and paper costs  | 153,335                    | 30.3 %         | 168,176          | 29.3 %         |
| Labor and related expenses  | 156,814                    | 31.0 %         | 160,811          | 28.0 %         |
| Other operating expenses  | 73,220                     | 14.5 %         | 69,169           | 12.0 %         |
| Occupancy and related expenses                                    | 51,592                     | 10.2 %         | 48,451           | 8.4 %          |
| General and administrative expenses                               | 64,250                     | 12.3 %         | 65,649           | 11.0 %         |
| Depreciation expense  | 48,801                     | 9.3 %          | 40,392           | 6.8 %          |
| Pre-opening costs   | 8,580                      | 1.6 %          | 14,834           | 2.5 %          |
| Impairment and loss on disposal of assets                         | 10,151                     | 1.9 %          | 1,352            | 0.2 %          |
| <b>TOTAL EXPENSES</b>   | <b>566,743</b>             | <b>108.4 %</b> | <b>568,834</b>   | <b>95.7 %</b>  |
| <b>OPERATING INCOME (LOSS)</b>                                    | <b>(43,876)</b>            | <b>(8.4)%</b>  | <b>25,685</b>    | <b>4.3 %</b>   |
| Other income (expense), net                                       | (786)                      | (0.2)%         | 2,263            | 0.4 %          |
| Interest expense  | (815)                      | (0.2)%         | (434)            | (0.1)%         |
| <b>INCOME (LOSS) BEFORE INCOME TAXES</b>                          | <b>(45,477)</b>            | <b>(8.7)%</b>  | <b>27,514</b>    | <b>4.6 %</b>   |
| Income tax expense  | 57                         | — %            | 3,386            | 0.6 %          |
| <b>NET INCOME (LOSS)</b>  | <b>(45,534)</b>            | <b>(8.7)%</b>  | <b>24,128</b>    | <b>4.1 %</b>   |
| Less: net income (loss) attributable to non-controlling interests | (3,376)                    | (0.6)%         | 4,301            | 0.7 %          |
| <b>NET INCOME (LOSS) ATTRIBUTABLE TO SHAKE SHACK INC.</b>         | <b>\$ (42,158)</b>         | <b>(8.1)%</b>  | <b>\$ 19,827</b> | <b>3.3 %</b>   |

(1) We operate on a 52/53 week fiscal year that ends on the last Wednesday of the calendar year. Fiscal year 2020 was a 53-week year with the extra operating week (the "53rd week") falling in our fiscal fourth quarter. Fiscal 2019 contained 52 weeks.

(2) 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.

| <i>(dollar amounts in thousands)</i>     | 2020        | 2019       |
|--|-------------|------------|
| Shack sales                              | \$ 506,339  | \$ 574,625 |
| Percentage of total revenue              | 96.8 %      | 96.7 %     |
| Dollar change compared to prior year     | \$ (68,286) |            |
| Percentage change compared to prior year | (11.9)%     |            |

Shack Sales for the fiscal year ended December 30, 2020 decreased 11.9% to \$506.3 million versus the prior year. This decrease is inclusive of the favorable impact of the 53rd week in the fourth quarter 2020, which resulted in incremental Shack sales of \$10.7 million. Excluding the 53rd week, Shack sales in fiscal year 2020 decreased 13.7%. The decrease in Shack sales for fiscal 2020 was primarily due a decline in same-Shack sales due to the impact from the COVID-19 pandemic, partially offset by the opening of 20 new domestic Company-operated Shacks during fiscal 2020.

Same-Shack sales improved across all regions on a sequential basis when compared to the third quarter, with performance driven by increases in in-Shack dining in both urban and suburban Shacks, combined with a high retention of digital sales. Most notably, same-Shack sales have improved sequentially over each of the last nine months of fiscal 2020. For fiscal 2020, same-Shack sales were down 27.8%, primarily driven by a 36.9% decrease in guest traffic partially offset by an increase in price mix of 9.1%. This increase in price mix was driven by an increase in average check, primarily from a higher digital sales mix combined with an overall increase in check, due to higher number of items per order since the start of the pandemic. For the purpose of calculating same-Shack sales growth for fiscal 2020, Shack sales for 114 Shacks were included in the comparable Shack base at the end of fiscal 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.

| <i>(dollar amounts in thousands)</i>     | 2020       | 2019      |
|--|------------|-----------|
| Licensing revenue                        | \$ 16,528  | \$ 19,894 |
| Percentage of total revenue              | 3.2 %      | 3.3 %     |
| Dollar change compared to prior year     | \$ (3,366) |           |
| Percentage change compared to prior year | (16.9)%    |           |

Licensed revenue for the fiscal year ended December 30, 2020 decreased 16.9% to \$16.5 million versus the prior year. This decrease is inclusive of the favorable impact of the 53rd week in the fourth quarter 2020, which resulted in incremental licensed revenue of \$0.4 million. Excluding the 53rd week, licensed revenue in fiscal year 2020 decreased 18.9%. The decrease in licensing revenue for fiscal 2020 was primarily due to reduced sales related to the COVID-19 pandemic, partially offset by a net increase of 16 Shacks opened during fiscal 2020. Our licensed business has shown gradual improvement, however the business continues to be impacted by the pandemic. Our domestic licensed business still faces significant headwinds, with airport and stadium Shacks still either closed or operating at significantly reduced traffic. As of the end of fiscal 2020, 17 licensed Shacks remained temporarily closed. Furthermore, approximately half of the UK Shacks were closed as of the end of fiscal 2020, as the government maintained lockdowns to control the virus spread.

## 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, changing with sales volume, and are impacted by menu mix and fluctuations in commodity costs, as well as geographic scale and proximity.

| <i>(dollar amounts in thousands)</i>     | 2020        | 2019       |
|--|-------------|------------|
| Food and paper costs                     | \$ 153,335  | \$ 168,176 |
| <i>Percentage of Shack sales</i>         | 30.3 %      | 29.3 %     |
| Dollar change compared to prior year     | \$ (14,841) |            |
| Percentage change compared to prior year | (8.8)%      |            |

The decrease in Food and paper costs for fiscal 2020 was primarily due to a decline in sales volume related to the COVID-19 pandemic, partially offset by the opening of 20 new domestic Company-operated Shacks during fiscal 2020.

As a percentage of Shack sales, the increase in Food and paper costs for fiscal 2020 was primarily due to higher paper and packaging costs, with all orders packaged as 'to go' orders since the start of the pandemic, and significant inflation in beef prices, partially offset by lower chicken costs. For a large part of the second quarter of fiscal 2020, we experienced significant inflation in beef, with costs nearly double that of last year for most of June. Beef prices returned to more normalized levels in the third quarter of fiscal 2020.

## 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.

| <i>(dollar amounts in thousands)</i>     | 2020       | 2019       |
|--|------------|------------|
| Labor and related expenses               | \$ 156,814 | \$ 160,811 |
| <i>Percentage of Shack sales</i>         | 31.0 %     | 28.0 %     |
| Dollar change compared to prior year     | \$ (3,997) |            |
| Percentage change compared to prior year | (2.5)%     |            |

The decrease in labor and related expenses for fiscal 2020 was primarily due to reductions in staffing expenses across all Shacks associated with the impact of COVID-19. These decreases were partially offset by the opening of 20 new domestic Company-operated Shacks during fiscal 2020, and a number of incremental payroll costs to support our Shack employees. These incremental payroll costs were related to a temporary 10% premium pay raise to hourly employees through the end of August, guaranteed bonuses for Shack teams, and payments related to scheduling changes for hourly team members as teams navigated the challenging operating conditions caused by COVID-19. This investment in our teams had an incremental impact of close to \$6 million on our results of operations during fiscal 2020.

As a percentage of Shack sales, the increase in labor and related expenses for fiscal 2020 was primarily due to sales deleverage associated with the impact of COVID-19 and, to a lesser extent, increases in bonuses and starting wages, partially offset by the reduction of labor hours.

## Other Operating Expenses

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

| <i>(dollar amounts in thousands)</i>     | <b>2020</b> | <b>2019</b> |
|--|-------------|-------------|
| Other operating expenses                 | \$ 73,220   | \$ 69,169   |
| <i>Percentage of Shack sales</i>         | 14.5 %      | 12.0 %      |
| Dollar change compared to prior year     | \$ 4,051    |             |
| Percentage change compared to prior year | 5.9 %       |             |

The increase in other operating expenses for fiscal 2020 was primarily due to higher delivery expense as a result of digital growth, as well as the opening of 20 new domestic Company-operated Shacks during fiscal 2020, partially offset by a reduction in expenses in our Shacks, including reduced maintenance expenses, as well as a reduction in credit card fees and other related expenses.

As a percentage of Shack sales, the increase in other operating expenses for fiscal 2020 was primarily due to higher delivery commissions as a result of digital growth and sales deleverage associated with the impact of COVID-19, partially offset by lower maintenance expenses.

## 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.

| <i>(dollar amounts in thousands)</i>     | <b>2020</b> | <b>2019</b> |
|--|-------------|-------------|
| Occupancy and related expenses           | \$ 51,592   | \$ 48,451   |
| <i>Percentage of Shack sales</i>         | 10.2 %      | 8.4 %       |
| Dollar change compared to prior year     | \$ 3,141    |             |
| Percentage change compared to prior year | 6.5 %       |             |

The increase in Occupancy and related expenses for fiscal 2020 was primarily due to the opening of 20 new domestic Company-operated Shacks during the fiscal year, partially offset by lower variable rent expense associated with lower revenue, as well as the impact of a \$0.9 million reduction in Occupancy and related expenses related to the impairment, and closing of our Penn Station Shack. In the fourth quarter 2020, we were notified by our landlord of its early termination of our lease at Penn Station, NY due to its plans to redevelop the Long Island Rail Road Concourse following the successful completion of the East End Gateway and opening of the Moynihan Train Hall. This closure was effective as of fiscal February 2021.

As a percentage of Shack sales, the increase in Occupancy and related expenses for fiscal 2020 was primarily due to sales deleverage associated with the impact of COVID-19.

## General and Administrative Expenses

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

| <i>(dollar amounts in thousands)</i>     |    | <b>2020</b> | <b>2019</b> |
|--|----|-------------|-------------|
| General and administrative expenses      | \$ | 64,250      | \$ 65,649   |
| <i>Percentage of total revenue</i>       |    | 12.3 %      | 11.0 %      |
| Dollar change compared to prior year     | \$ | (1,399)     |             |
| Percentage change compared to prior year |    | (2.1)%      |             |

The decrease in general and administrative expenses for fiscal 2020 was primarily due to disciplined cost reduction across the majority of discretionary spend categories and reduced home office compensation expense, partially offset by increased technology expenses to support our digital initiatives.

As a percentage of total revenue, the increase in general and administrative expenses for fiscal 2020 was primarily due to sales deleverage associated with the impact of COVID-19.

## Depreciation Expense

Depreciation expense consists of the depreciation of fixed assets, including leasehold improvements and equipment.

| <i>(dollar amounts in thousands)</i>     |    | <b>2020</b> | <b>2019</b> |
|--|----|-------------|-------------|
| Depreciation expense                     | \$ | 48,801      | \$ 40,392   |
| <i>Percentage of total revenue</i>       |    | 9.3 %       | 6.8 %       |
| Dollar change compared to prior year     | \$ | 8,409       |             |
| Percentage change compared to prior year |    | 20.8 %      |             |

The increase in depreciation expense for fiscal 2020 was primarily due to incremental depreciation of capital expenditures related to the opening of 20 new domestic Company-operated Shacks during fiscal 2020 and increased technology investments to support our digital initiatives. As a percentage of total revenue, the increase in depreciation expense for fiscal 2020 was primarily due to sales deleverage associated with the impact of COVID-19.

## 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.

| <i>(dollar amounts in thousands)</i>     |    | <b>2020</b> | <b>2019</b> |
|--|----|-------------|-------------|
| Pre-opening costs                        | \$ | 8,580       | \$ 14,834   |
| <i>Percentage of total revenue</i>       |    | 1.6 %       | 2.5 %       |
| Dollar change compared to prior year     | \$ | (6,254)     |             |
| Percentage change compared to prior year |    | (42.2)%     |             |

The decrease in pre-opening costs for fiscal 2020 was due to the lower number of new domestic Company-operated Shacks opened during fiscal 2020 compared to fiscal 2019.

## 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.

| <i>(dollar amounts in thousands)</i>      | 2020      | 2019     |
|---|-----------|----------|
| Impairment and loss on disposal of assets | \$ 10,151 | \$ 1,352 |
| Percentage of total revenue               | 1.9 %     | 0.2 %    |
| Dollar change compared to prior year      | \$ 8,799  |          |
| Percentage change compared to prior year  | 650.8 %   |          |

The increase in impairment and loss on disposal of assets in fiscal 2020 was primarily due to asset impairment charges on operating lease assets and property and equipment of \$7.6 million recorded during fiscal 2020, primarily relating to unused home office expansion space as well as the impairment of two Shacks — including the termination of our Penn Station Shack lease — and to a lesser extent, the number of maturing Shacks in our base.

## 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.

| <i>(dollar amounts in thousands)</i>     | 2020       | 2019     |
|--|------------|----------|
| Other income (expense), net              | \$ (786)   | \$ 2,263 |
| Percentage of total revenue              | (0.2)%     | 0.4 %    |
| Dollar change compared to prior year     | \$ (3,049) |          |
| Percentage change compared to prior year | (134.7)%   |          |

The decrease in other income (expense), net for fiscal 2020 was primarily due to a decrease in dividend income, the absence of other income related to the adjustment of liabilities under the Tax Receivable Agreement in fiscal 2019, as well as unrealized losses related to our investments in marketable securities.

## 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.

| <i>(dollar amounts in thousands)</i>     | 2020     | 2019     |
|--|----------|----------|
| Interest expense                         | \$ (815) | \$ (434) |
| Percentage of total revenue              | (0.2)%   | (0.1)%   |
| Dollar change compared to prior year     | \$ (381) |          |
| Percentage change compared to prior year | 87.8 %   |          |

The increase in interest expense for fiscal 2020 was primarily due to an increase in interest and fees associated with our Revolving Credit Facility in the current fiscal year.

## Income Tax Expense

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.

| <i>(dollar amounts in thousands)</i>     | 2020       | 2019     |
|--|------------|----------|
| Income tax expense                       | \$ 57      | \$ 3,386 |
| Percentage of total revenue              | — %        | 0.6 %    |
| Dollar change compared to prior year     | \$ (3,329) |          |
| Percentage change compared to prior year | (98.3)%    |          |

Our effective income tax rates for fiscal 2020 and fiscal 2019 were (0.1)% and 12.3%, respectively. The decrease in our effective income tax rate from fiscal 2019 to fiscal 2020 was primarily driven by lower tax rates for foreign and state taxes mainly in connection with lower pre-tax book income and remeasurement of deferred tax assets, partially offset by lower tax credits and an increase in valuation allowance.

## Net Income (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 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.

| <i>(dollar amounts in thousands)</i>                        | 2020       | 2019     |
|---|------------|----------|
| Net income (loss) attributable to non-controlling interests | \$ (3,376) | \$ 4,301 |
| Percentage of total revenue                                 | (0.6)%     | 0.7 %    |
| Dollar change compared to prior year                        | \$ (7,677) |          |
| Percentage change compared to prior year                    | (178.5)%   |          |

The decrease in net income (loss) attributable to non-controlling interests for fiscal 2020 was primarily due to lower pre-tax book income resulting in a net loss during fiscal 2020, and a decrease in the non-controlling interest holders' weighted average ownership, which was 7.7% and 15.9% for fiscal 2020 and fiscal 2019, respectively.

## Fiscal 2019 Compared to Fiscal 2018

The comparison of fiscal 2019 to fiscal 2018 has been omitted from this Form 10-K, but can be referenced in our Form 10-K for the fiscal year ended December 25, 2019, filed on February 24, 2020.

## NON-GAAP FINANCIAL MEASURES

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To supplement the consolidated financial statements, which are prepared and presented in accordance with U.S. generally accepted accounting principles (“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 (loss), adjusted pro forma earnings (loss) per fully exchanged and diluted share and adjusted pro forma effective tax rate (collectively the “non-GAAP financial measures”).

### Shack-Level Operating Profit

We define Shack-level operating profit 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 we believe are useful measures to evaluate the performance and profitability of our Shacks. Additionally, Shack-level operating profit and Shack-level operating profit margin are key metrics used internally by our management to develop internal budgets and forecasts, as well as assess the performance of our Shacks relative to budget and against prior periods. It is also used to evaluate employee compensation as it serves as a metric in certain of our performance-based employee bonus arrangements. We believe presentation of Shack-level operating profit and Shack-level operating profit margin provides investors with a supplemental view of our operating performance that can provide meaningful insights to the underlying operating performance of our Shacks, as these measures depict the operating results that are directly impacted by our Shacks and exclude items that may not be indicative of, or are unrelated to, the ongoing operations of our Shacks. It may also assist investors to evaluate our performance relative to peers of various sizes and maturities and provides greater transparency with respect to how our management evaluates our business, as well as our 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 our Shacks. Therefore, this measure may not provide a complete understanding of the operating results of our Company as a whole and Shack-level operating profit and Shack-level operating profit margin should be reviewed in conjunction with our GAAP financial results. A reconciliation of Shack-level operating profit to Operating income, the most directly comparable GAAP financial measure, is as follows.



| <i>(dollar amounts in thousands)</i>                     | 2020 <sup>(1)</sup> | 2019       | 2018       | 2017       | 2016       |
|--|---------------------|------------|------------|------------|------------|
| Operating income (loss) <sup>(2)</sup>                   | \$ (43,876)         | \$ 25,685  | \$ 31,711  | \$ 33,813  | \$ 27,805  |
| Less:  |                     |            |            |            |            |
| Licensing revenue  | 16,528              | 19,894     | 13,721     | 12,422     | 9,125      |
| Add:   |                     |            |            |            |            |
| General and administrative expenses                      | 64,250              | 65,649     | 52,720     | 39,003     | 30,556     |
| Depreciation expense                                     | 48,801              | 40,392     | 29,000     | 21,704     | 14,502     |
| Pre-opening costs  | 8,580               | 14,834     | 12,279     | 9,603      | 9,520      |
| Impairment and loss on disposal of assets <sup>(3)</sup> | 10,151              | 1,352      | 917        | 608        | 34         |
| Shack-level operating profit                             | \$ 71,378           | \$ 128,018 | \$ 112,906 | \$ 92,309  | \$ 73,292  |
| Total revenue  | \$ 522,867          | \$ 594,519 | \$ 459,310 | \$ 358,810 | \$ 268,475 |
| Less: Licensing revenue                                  | 16,528              | 19,894     | 13,721     | 12,422     | 9,125      |
| Shack sales  | \$ 506,339          | \$ 574,625 | \$ 445,589 | \$ 346,388 | \$ 259,350 |
| Shack-level operating profit margin <sup>(4)</sup>       | 14.1 %              | 22.3 %     | 25.3 %     | 26.6 %     | 28.3 %     |

(1) We operate on a 52/53 week fiscal year that ends on the last Wednesday of the calendar year. Fiscal year 2020 was a 53-week year with the extra operating week (the " 53rd week ") falling in our fiscal fourth quarter 2020. Fiscal 2019, fiscal 2018, fiscal 2017 and fiscal 2016 each contained 52 weeks.

(2) For fiscal 2020, Operating income (loss) included a \$0.9 million reduction in Occupancy and related expenses due to the closure of our Shack in Penn Station.

(3) For fiscal year 2020, this amount includes a non-cash impairment charge of \$7.6 million related to two Shacks and our home office.

(4) 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 costs, Impairment and loss on disposal of assets, amortization of cloud-based software implementation costs, as well as certain non-recurring items that we don't believe directly reflect our core operations and may not be indicative of our 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 we believe are useful measures to facilitate comparisons to historical performance and competitors' operating results. Adjusted EBITDA is a key metric used internally by our management to develop internal budgets and forecasts and also serves as a metric in our performance-based equity incentive programs and certain of our bonus arrangements. We believe presentation of EBITDA and adjusted EBITDA provides investors with a supplemental view of our operating performance that facilitates analysis and comparisons of our ongoing business operations because they exclude items that may not be indicative of our 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 our performance and should be reviewed in conjunction with our GAAP financial measures. A reconciliation of EBITDA and adjusted EBITDA to Net income (loss), the most directly comparable GAAP measure, is as follows.

| <i>(in thousands)</i>   | 2020 <sup>(1)</sup> | 2019             | 2018             | 2017             | 2016             |
|---|---------------------|------------------|------------------|------------------|------------------|
| Net income (loss)   | \$ (45,534)         | \$ 24,128        | \$ 21,948        | \$ 8,884         | \$ 22,146        |
| Depreciation expense  | 48,801              | 40,392           | 29,000           | 21,704           | 14,502           |
| Interest expense, net   | 815                 | 434              | 2,407            | 1,565            | 285              |
| Income tax expense  | 57                  | 3,386            | 8,862            | 151,409          | 6,350            |
| <b>EBITDA</b>   | <b>4,139</b>        | <b>68,340</b>    | <b>62,217</b>    | <b>183,562</b>   | <b>43,283</b>    |
| Equity-based compensation   | 5,560               | 7,600            | 6,067            | 5,623            | 5,354            |
| Amortization of cloud-based software implementation costs <sup>(2)</sup>  | 1,444               | 312              | —                | —                | —                |
| Deferred lease costs <sup>(3)</sup>   | 92                  | 2,608            | 876              | 983              | 2,251            |
| Impairment and loss on disposal of assets <sup>(4)</sup>  | 10,151              | 1,352            | 917              | 608              | 34               |
| Other (income) loss related to adjustment of liabilities under tax receivable agreement                                   | 1,147               | (808)            | (78)             | (1,362)          | (688)            |
| Other income related to adjustment of liabilities under tax receivable agreement resulting from the enactment of the TCJA | —                   | —                | —                | (125,859)        | —                |
| Executive transition costs <sup>(5)</sup>   | 150                 | 126              | 340              | 664              | —                |
| Project Concrete <sup>(6)</sup>   | (229)               | 2,111            | 1,292            | 181              | —                |
| Costs related to relocation of home office <sup>(7)</sup>   | —                   | —                | 1,019            | 264              | —                |
| Hong Kong office <sup>(8)</sup>   | —                   | 199              | —                | —                | —                |
| Legal Settlement <sup>(9)</sup>   | —                   | —                | 1,200            | —                | —                |
| Other <sup>(10)</sup>   | 285                 | —                | —                | —                | —                |
| <b>ADJUSTED EBITDA</b>  | <b>22,739</b>       | <b>\$ 81,840</b> | <b>\$ 73,850</b> | <b>\$ 64,664</b> | <b>\$ 50,234</b> |
| Adjusted EBITDA margin <sup>(11)</sup>  | 4.3 %               | 13.8 %           | 16.1 %           | 18.0 %           | 18.7 %           |

- (1) We operate on a 52/53 week fiscal year that ends on the last Wednesday of the calendar year. Fiscal year 2020 was a 53-week year with the extra operating week (the "53rd week") falling in our fiscal fourth quarter 2020. Fiscal 2019, fiscal 2018, fiscal 2017 and fiscal 2016 each contained 52 weeks.
- (2) Represents amortization of capitalized implementation costs related to cloud-based software arrangements that are included within General and administrative expenses.
- (3) Reflects the extent to which lease expense is greater than or less than contractual fixed base rent. As a result of adoption of the new lease accounting standard on December 27, 2018, these lease costs may also include certain additional lease components, such as common area maintenance costs and property taxes, that were previously not included in lease expense for prior periods. For fiscal 2020, this amount included a \$0.9 million reduction in Occupancy and related expenses due to the closing of our Shack in Penn Station.
- (4) For fiscal year 2020, this amount includes a non-cash impairment charge of \$7.6 million related to two Shacks and our home office.
- (5) Represents fees paid in connection with the search and hiring of certain executive and key management positions.
- (6) Represents consulting and advisory fees related to our enterprise-wide system upgrade initiative called Project Concrete.
- (7) Represents costs incurred in connection with our relocation to a new home office.
- (8) Represents costs associated with establishing our first international office in Hong Kong.
- (9) Expense incurred to establish an accrual related to the settlement of a legal matter.
- (10) Represents incremental expenses incurred related to an inventory adjustment and certain employee-related expenses.
- (11) Calculated as a percentage of total revenue, which was \$522.9 million, \$594.5 million, \$459.3 million, \$358.8 million, and \$268.5 million for fiscal 2020, fiscal 2019, fiscal 2018, fiscal 2017, and fiscal 2016, respectively.

## **Adjusted Pro Forma Net Income (Loss) and Adjusted Pro Forma Earnings (Loss) Per Fully Exchanged and Diluted Share**

Adjusted pro forma net income (loss) 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 do not believe are directly related to our core operations and may not be indicative of our recurring business operations. Adjusted pro forma earnings (loss) 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 the dilutive effect of outstanding equity-based awards.

### ***How These Measures Are Useful***

When used in conjunction with GAAP financial measures, adjusted pro forma net income (loss) and adjusted pro forma earnings (loss) 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 (loss) and adjusted pro forma earnings (loss) per fully exchanged and diluted share may differ from similarly titled measures used by other companies due to different methods of calculation. Presentation of adjusted pro forma net income (loss) and adjusted pro forma earnings (loss) 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, they do not account for the earnings attributable to the non-controlling interest holders and therefore do not provide a complete understanding of the net income (loss) attributable to Shake Shack Inc. Adjusted pro forma net income (loss) and adjusted pro forma earnings (loss) per fully exchanged and diluted share should be evaluated in conjunction with our GAAP financial results. A reconciliation of adjusted pro forma net income (loss) to net income (loss) attributable to Shake Shack Inc., the most directly comparable GAAP measure, and the computation of adjusted pro forma earnings (loss) per fully exchanged and diluted share are set forth below.

| <i>(in thousands, except per share amounts)</i>   | 2020 <sup>(1)</sup> | 2019             | 2018             | 2017             | 2016             |
|---|---------------------|------------------|------------------|------------------|------------------|
| <b>Numerator:</b>   |                     |                  |                  |                  |                  |
| Net income (loss) attributable to Shake Shack Inc.  | \$(42,158)          | \$ 19,827        | \$ 15,179        | \$ (320)         | \$ 12,446        |
| <b>Adjustments:</b>   |                     |                  |                  |                  |                  |
| Reallocation of net income (loss) attributable to non-controlling interests from the assumed exchange of LLC Interests <sup>(2)</sup> | \$ (3,376)          | 4,301            | 6,769            | 9,204            | 9,700            |
| Executive transition costs <sup>(3)</sup>   | 150                 | 126              | 340              | 664              | —                |
| Project Concrete <sup>(4)</sup>   | (229)               | 2,111            | 1,292            | 181              | —                |
| Costs related to relocation of home office <sup>(5)</sup>   | —                   | —                | 1,019            | 264              | —                |
| Other (income) loss related to the adjustment of liabilities under tax receivable agreement   | 1,147               | (808)            | (78)             | (1,362)          | (688)            |
| Other income related to the remeasurement of liabilities under tax receivable agreement resulting from the enactment of the TCJA      | —                   | —                | —                | (125,859)        | —                |
| Remeasurement of deferred tax assets  | —                   | —                | 3,794            | 138,636          | (1,526)          |
| Hong Kong office <sup>(6)</sup>   | —                   | 199              | —                | —                | —                |
| Legal settlement <sup>(7)</sup>   | —                   | —                | 1,200            | —                | —                |
| Asset impairment charge <sup>(8)</sup>  | 7,644               | —                | —                | —                | —                |
| Reduction in Occupancy and related expenses due to Shack closure <sup>(9)</sup>   | (897)               | —                | —                | —                | —                |
| Tax effect of change in tax basis related to the adoption of new accounting standards <sup>(10)</sup>                                 | —                   | 1,161            | (311)            | —                | —                |
| Income tax (expense) benefit <sup>(11)</sup>  | 15,089              | 446              | (2,290)          | (377)            | (3,164)          |
| Other <sup>(12)</sup>   | 285                 | —                | —                | —                | —                |
| <b>Adjusted pro forma net income (loss)</b>   | <b>\$(22,345)</b>   | <b>\$ 27,363</b> | <b>\$ 26,914</b> | <b>\$ 21,031</b> | <b>\$ 16,768</b> |
| <b>Denominator:</b>   |                     |                  |                  |                  |                  |
| Weighted-average shares of Class A common stock outstanding—diluted   | 37,129              | 32,251           | 29,179           | 25,876           | 23,449           |
| <b>Adjustments:</b>   |                     |                  |                  |                  |                  |
| Assumed exchange of LLC Interests for shares of Class A common stock <sup>(2)</sup>   | 3,096               | 5,921            | 8,663            | 10,773           | 13,360           |
| Dilutive effect of stock options  | —                   | —                | —                | 555              | —                |
| Adjusted pro forma fully exchanged weighted-average shares of Class A common stock outstanding—diluted                                | 40,225              | 38,172           | 37,842           | 37,204           | 36,809           |
| <b>Adjusted pro forma earnings (loss) per fully exchanged share—diluted</b>   | <b>\$ (0.56)</b>    | <b>\$ 0.72</b>   | <b>\$ 0.71</b>   | <b>\$ 0.57</b>   | <b>\$ 0.46</b>   |

|   | 2020 <sup>(1)</sup> | 2019    | 2018    | 2017      | 2016    |
|---|---------------------|---------|---------|-----------|---------|
| Earnings (loss) per share of Class A common stock - diluted                         | \$ (1.14)           | \$ 0.61 | \$ 0.52 | \$ (0.01) | \$ 0.53 |
| Assumed exchange of LLC Interests for shares of Class A common stock <sup>(2)</sup> | 0.01                | 0.02    | 0.06    | 0.26      | 0.07    |
| Non-GAAP adjustments <sup>(3)</sup>   | 0.57                | 0.09    | 0.13    | 0.33      | (0.14)  |
| Dilutive impact of stock options  | —                   | —       | —       | (0.01)    | —       |
| Adjusted pro forma earnings (loss) per fully exchanged share—diluted                | \$ (0.56)           | \$ 0.72 | \$ 0.71 | \$ 0.57   | \$ 0.46 |

- (1) We operate on a 52/53 week fiscal year that ends on the last Wednesday of the calendar year. Fiscal year 2020 was a 53-week year with the extra operating week (the " 53rd week ") falling in our fiscal fourth quarter 2020. Fiscal 2019, fiscal 2018, fiscal 2017 and fiscal 2016 each contained 52 weeks.
- (2) 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 income (loss) attributable to non-controlling interests.
- (3) Represents costs incurred in connection with our executive search, including fees paid to an executive recruiting firm.
- (4) Represents consulting and advisory fees related to our enterprise-wide system upgrade initiative called Project Concrete.
- (5) Represents costs incurred in connection with our relocation to a new home office.

- (6) Represents costs associated with establishing our first international office in Hong Kong.
- (7) Expense incurred to establish an accrual related to the settlement of a legal matter.
- (8) For fiscal year 2020, this amount includes a non-cash impairment charge of \$7.6 million related to two Shacks and our home office.
- (9) For fiscal year 2020, this amount included a reduction of \$0.9 million in Occupancy and related expenses due to the closure of our Shack in Penn Station.
- (10) Represents the tax effect of change in tax basis related to the adoption of the new lease accounting standard in fiscal 2019 and the adoption of the new revenue recognition standard in fiscal 2018.
- (11) For fiscal 2020, fiscal 2019, fiscal 2018, fiscal 2017 and fiscal 2016, amounts represent the tax effect of the aforementioned adjustments and pro forma adjustments to reflect corporate income taxes at assumed effective tax rates of 40.2%, 6.1%, 22.2%, 38.5% and 39.7%, respectively, which 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.
- (12) Represents incremental expenses incurred related to an inventory adjustment and certain employee-related expenses.
- (13) Represents the per share impact of non-GAAP adjustments for each period. Refer to the reconciliation of Adjusted Pro Forma Net Income (Loss) above for further details.

## LIQUIDITY AND CAPITAL RESOURCES

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### 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. As of December 30, 2020, we maintained a cash and cash equivalents balance of \$146.9 million and a short-term investments balance of \$36.9 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 digital and corporate infrastructure.

In addition, we are obligated to make payments to certain members of SSE Holdings under the Tax Receivable Agreement. As of December 30, 2020, such obligations totaled \$233.0 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.

### COVID-19 Update

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

- On April 17, 2020, we announced an 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 provides for a number of enhanced modifications to reflect the current and ongoing impact from COVID-19. 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 December 30, 2020, we were in compliance with all covenants.

We believe our existing cash and cash equivalents and marketable securities balances, combined with the actions we have taken in response to COVID-19, 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 and discussion presents, for the periods indicated, a summary of our key cash flows from operating, investing and financing activities.

| <i>(in thousands)</i>                            | 2020 <sup>1</sup> | 2019      |
|--|-------------------|-----------|
| Net cash provided by operating activities        | \$ 37,350         | \$ 89,857 |
| Net cash used in investing activities            | (69,397)          | (80,686)  |
| Net cash provided by financing activities        | 141,821           | 3,178     |
| Increase in cash and cash equivalents            | 109,774           | 12,349    |
| Cash and cash equivalents at beginning of period | 37,099            | 24,750    |
| Cash and cash equivalents at end of period       | \$ 146,873        | \$ 37,099 |

(1) We operate on a 52/53 week fiscal year that ends on the last Wednesday of the calendar year. Fiscal year 2020 was a 53-week year with the extra operating week (the "53rd week") falling in our fiscal fourth quarter. Fiscal 2019 contained 52 weeks.

### Operating Activities

For fiscal 2020, net cash provided by operating activities was \$37.4 million compared to \$89.9 million for fiscal 2019, a decrease of \$52.5 million. The decrease was primarily due to a decline in net income of \$69.7 million, and change in operating assets and liabilities of \$11.2 million, partially offset by the impact of non-cash charges of \$28.4 million.

The \$11.2 million change in our operating asset and liability balances was primarily driven by Accounts receivable being a source of cash of \$1.0 million in fiscal 2020, driven by timing of cash receipts of open receivables, as compared to a source of cash of \$10.7 million in fiscal 2019; Accrued expenses being a source of cash of \$2.2 million in fiscal 2020, primarily driven by higher accruals associated with incremental payroll costs for our hourly team members, and to a lesser extent, the timing of accruals, compared to a source of cash of \$9.9 million in fiscal 2019; partially offset by Other assets being a use of cash of \$2.9 million in fiscal 2020, driven by increased assets relating to cloud-software investments, compared to a use of cash of \$8.2 million in fiscal 2019.

### Investing Activities

For fiscal 2020, net cash used in investing activities was \$69.4 million compared to \$80.7 million for fiscal 2019, a decrease of \$11.3 million. This decrease was primarily due to a decrease of \$37.5 million in capital expenditures in fiscal 2020, partially offset by increased purchases of marketable securities of \$19.2 million.

### Financing Activities

For fiscal 2020, net cash provided by financing activities was \$141.8 million compared to \$3.2 million for fiscal 2019, an increase of \$138.6 million. This increase was primarily due to \$145.0 million in net cash proceeds from the issuance of Class A common stock, partially offset by increased payments made under the Tax Receivable Agreement.

### Cash Flows - Fiscal 2019 Compared to Fiscal 2018

The comparison of fiscal 2019 to fiscal 2018 has been omitted from this Form 10-K, but can be referenced in our Form 10-K for the fiscal year ended December 25, 2019, filed on February 24, 2020.

## Revolving Credit Facility

In August 2019, we terminated our previous revolving credit facility and entered into a new revolving credit facility agreement ("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 will mature and all amounts outstanding will be due and payable in August 2024. The Revolving Credit Facility also permits the issuance of letters of credit upon our request of up to \$15.0 million. Borrowings under the Revolving Credit Facility will bear interest at either: (i) LIBOR plus a percentage ranging from 1.0% to 1.5% or (ii) the base rate plus a percentage ranging from 0.0% to 0.5%, in each case depending on our net lease adjusted leverage ratio. To the extent the LIBOR reference rate is no longer available, the administrative agent, in consultation with us, will determine a replacement rate which will be generally in accordance with similar transactions in which it serves as administrative agent.

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 First Amendment to the Revolving Credit Facility described below. 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 December 30, 2020 we were in compliance with all covenants.

In May 2020, we entered into a first amendment to the Revolving Credit Facility ("First Amendment"), which, among other things, provides for modified financial covenant compliance requirements for a period of time. The First Amendment requires 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 bear 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 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.

## CONTRACTUAL OBLIGATIONS

The following table sets forth certain contractual obligations as of December 30, 2020 and the timing and effect that such commitments are expected to have on our liquidity and capital requirements in future periods.

| <i>(in thousands)</i>                                     | Total             | Less than<br>1 Year | 1-3<br>Years      | 3-5<br>Years      | More Than<br>5 Years |
|---|-------------------|---------------------|-------------------|-------------------|----------------------|
| Operating lease obligations <sup>(1)</sup>                | \$ 496,307        | \$ 45,961           | \$ 108,169        | \$ 107,446        | \$ 234,731           |
| Financing lease obligations <sup>(1)</sup>                | 5,983             | 2,169               | 2,711             | 931               | 172                  |
| Liabilities under tax receivable agreement <sup>(2)</sup> | 232,954           | —                   | 52,809            | 28,382            | 151,763              |
| Purchase obligations                                      | 106,299           | 58,919              | 18,292            | 5,510             | 23,578               |
| <b>TOTAL</b>  | <b>\$ 841,543</b> | <b>\$ 107,049</b>   | <b>\$ 181,981</b> | <b>\$ 142,269</b> | <b>\$ 410,244</b>    |

(1) See Note 10, Leases, to the consolidated financial statements included in Item 8 for further discussion of our operating and financing leases.

(2) See Notes 15, Income Taxes, and Note 18, Commitments and Contingencies, to the consolidated financial statements for further discussion of our Tax Receivable Agreement and related liabilities.

Purchase obligations include all legally binding contracts, including commitments for the purchase, construction or remodeling of real estate and facilities, firm minimum commitments for inventory purchases, future minimum lease payments under non-cancelable operating leases without a possession date, equipment purchases, marketing-related contracts, software acquisition/license commitments and service contracts.



Liabilities under Tax Receivable Agreement include amounts to be paid to the non-controlling interest holders, estimated over the next five years, assuming we will have sufficient taxable income over the term of the Tax Receivable Agreement to utilize the related tax benefits.

The above table excludes non-cash obligations for deferred lease costs and deferred property incentives. In addition, other unrecorded obligations that have been excluded from the contractual obligations table include contingent rent payments, property taxes, insurance payments and common area maintenance costs.

## OFF-BALANCE SHEET ARRANGEMENTS

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Except for operating leases entered into in the normal course of business where we have not yet taken physical possession of the leased property, certain letters of credit entered into as security under the terms of several of our leases and the unrecorded contractual obligations set forth above, we did not have any off-balance sheet arrangements as of December 30, 2020.

## CRITICAL ACCOUNTING POLICIES AND ESTIMATES

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The preparation of financial statements and related disclosures in conformity with U.S. generally accepted accounting principles (“GAAP”) requires that we make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and disclose contingent assets and liabilities. We base our estimates on past experience and other assumptions that we believe are reasonable under the circumstances, and we evaluate these estimates on an ongoing basis.

The critical accounting policies and estimates described below are those that materially affect or have the greatest potential impact on our consolidated financial statements, and involve difficult, subjective or complex judgments made by management. Because of the uncertainty inherent in these matters, actual results may differ from those estimates we use in applying our critical accounting policies and estimates. The following discussion should be read in conjunction with the consolidated financial statements included in Part II, Item 8 of this Form 10-K.

### Valuation of Long-Lived Assets

We assess potential impairments to our long-lived assets, which includes property and equipment and operating lease assets, whenever events or circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of an asset is measured by a comparison of the carrying amount of an asset group to the estimated undiscounted future cash flows expected to be generated by the asset. The evaluation is performed at the lowest level of identifiable cash flows, which is primarily at the individual Shack level. Significant judgment is involved in determining the assumptions used in estimating future cash flows, including projected sales growth and operating margins. If the carrying amount of the asset group exceeds its estimated undiscounted future cash flows, an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds the fair value of the asset, considering external market participant assumptions. Since the determination of future cash flows is an estimate of future performance, there may be future impairments in the event that future cash flows do not meet expectations.

### Leases

On December 27, 2018 we adopted ASU 2016-02, *Leases (Topic 842)*, using a modified retrospective approach. Refer to Note 10, Leases, for further details.

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. Upon the possession of a leased asset, we determine its classification as an operating or financing lease. All of our real estate leases are classified as operating leases and most of our equipment leases are classified as finance leases.

We make judgments regarding the probable term for each lease, which can impact the classification and accounting for a lease as financing or operating, as well as the amount of straight-lined rent expense in a particular period. 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 typically not included in the lease term 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 starting on the date we take possession of the leased property. Lease expense incurred before a Shack opens is recorded in Pre-opening costs. Once a Shack opens, we record the straight-line lease expense and any contingent rent, if applicable, in Occupancy and related expenses on the 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 Consolidated Statements of Income (Loss).

We calculate operating lease assets and lease liabilities as the present value of fixed lease payments over the reasonably certain lease term beginning at the commencement date. We measure the lease liability by discounting the future fixed contractual payments included in the lease agreement, using our incremental borrowing rate ("IBR"). There are no explicit rates provided in our leases. The IBR 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. 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.

For operating leases, fixed lease payments are recognized as operating lease cost on a straight-line basis over the lease term. For finance leases and impaired operating leases, the asset is depreciated on a straight-line basis over the remaining lease term, along with recognition of interest expense associated with accretion of the lease liability. For leases with a lease term of 12 months or less ("short-term lease"), any fixed lease payments are recognized on a straight-line basis over such term, and are not recognized on the Consolidated Balance Sheets. Variable lease cost for both operating and finance leases, if any, is recognized as incurred.

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 up-front 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.

## Self-Insurance Liabilities

We are self-insured for our employee medical and dental plans and we recognize a liability that represents our estimated cost of claims incurred but not reported as of the balance sheet date. Our estimated liability is based on a number of assumptions and factors, which requires significant judgment including historical claims experience, severity factors, litigation costs, inflation and other actuarial assumptions. Our history of claims experience is short and our significant growth rate could affect the accuracy of our estimates. If a greater amount of claims are reported, or if medical costs increase beyond our expectations, our liabilities may not be sufficient and we could recognize additional expense.

## Equity-Based Compensation

Equity-based compensation expense is measured based on the grant-date fair value of those awards. For awards with graded-vesting features and service conditions only, compensation expense is recognized on a straight-line basis over the total requisite service period for the entire award. For awards with graded-vesting features and a combination of service and performance conditions, compensation expense is recognized using a graded-vesting attribution method over the vesting period based on the most probable outcome of the performance conditions. Actual distributed shares are calculated upon conclusion of the service and performance periods. For stock option awards, the grant-date fair value of the awards is determined using the Black-Scholes

option pricing model and involves several assumptions, including the expected term of the option, expected volatility and risk-free interest rate. We have limited historical data of our own to utilize in determining our assumptions. As such, for stock options granted in fiscal 2020 and 2019, we based our volatility assumption on a combined weighted average of our own historical data and that of a selected peer group. The weighted-average volatility used in determining the grant date fair value of awards granted in fiscal 2020 and fiscal 2019 was 42.3% and 42.2%, respectively. Forfeitures are recognized as they occur for all equity awards.

## Income Taxes

We record valuation allowances against our deferred tax assets when it is more likely than not that all or a portion of a deferred tax asset will not be realized. In making such determination, we consider all available evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and results of operation. We routinely evaluate the realizability of our deferred tax assets by assessing the likelihood that our deferred tax assets will be recovered based on all available positive and negative evidence. Estimating future taxable income is inherently uncertain and requires judgment. In projecting future taxable income, we consider our historical results and incorporate certain assumptions, including projected Shack openings, revenue growth, and operating margins, among others. As of December 30, 2020, we had \$287.0 million of deferred tax assets, net of valuation allowances. We expect to realize future tax benefits related to the utilization of these assets. If we determine in the future that we will not be able to fully utilize all or part of these deferred tax assets, we would record a valuation allowance through earnings in the period the determination was made, which would have an adverse effect on our results of operations and earnings in future periods.

## Liabilities Under Tax Receivable Agreement

As described in Note 15 to the consolidated financial statements included in Item 8, we are a party to the Tax Receivable Agreement under which we are contractually committed to pay the non-controlling interest holders 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. 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. Therefore, we would only recognize a liability for TRA Payments if we determine it is probable that we will generate sufficient future taxable income over the term of the Tax Receivable Agreement to utilize the related tax benefits. Estimating future taxable income is inherently uncertain and requires judgment. In projecting future taxable income, we consider our historical results and incorporate certain assumptions, including projected Shack openings, revenue growth, and operating margins, among others. As of December 30, 2020, we recognized \$233.0 million of liabilities relating to our obligations under the Tax Receivable Agreement, after concluding that it was probable that we would have sufficient future taxable income to utilize the related tax benefits. 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 generated by all transactions that occurred in fiscal 2020. If we determine in the future that we will not be able to fully utilize all or part of the related tax benefits, we would de-recognize the portion of the liability related the benefits not expected to be utilized.

Additionally, we estimate the amount of TRA Payments expected to be paid within the next 12 months and classify this amount as current on our Consolidated Balance Sheets. This determination is based on our estimate of taxable income for the next fiscal year. To the extent our estimate differs from actual results, we may be required to reclassify portions of our liabilities under the Tax Receivable Agreement between current and non-current.

## Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

### COMMODITY PRICE RISKS

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We are exposed to commodity price risks. Many of the ingredients we use to prepare our food, as well as our packaging materials, are commodities or are affected by the price of other commodities. Factors that affect the price of commodities are generally outside of our control and include foreign currency exchange rates, foreign and domestic supply and demand, inflation, weather, and seasonality. For the majority of our major ingredients, we enter into supply contracts, obligating us to purchase specified quantities. However, the prices associated with these supply contracts are generally not fixed and are typically pegged to a commodity market price and, therefore, fluctuate with the market. Significant increases in the price of commodities could have a material impact on our operating results to the extent that such increases cannot be offset by menu price increases or other operating efficiencies.

### FOREIGN CURRENCY EXCHANGE RISK

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Although we conduct business outside of the United States, the majority of revenue and expenses associated with our international business are transacted in U.S. dollars, and therefore our foreign currency risk is not material. We are exposed to foreign exchange risk in the sales at our international licensed Shacks that are denominated in their local currencies and the amount of licensing revenue we earn is directly affected by fluctuations in currency exchange rates. Our international office in Hong Kong incurs a small portion of our operational expenses in its local currency, which are subject to foreign currency translation risk.

### INTEREST RATE RISK

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We are exposed to interest rate risk through fluctuations in interest rates on our debt obligations. Our Revolving Credit Facility carries interest at a floating rate. We seek to manage exposure to adverse interest rate changes through our normal operating and financing activities. As of December 30, 2020, we had no outstanding borrowings under the Revolving Credit Facility.

We are also exposed to interest rate risk through fluctuations of interest rates on our investments. Our equity securities primarily consist of fixed-income and equity instruments. Changes in interest rates affect the interest income we earn, and therefore impact our cash flows and results of operations.

## Item 8. Financial Statements and Supplementary Data.

### INDEX TO FINANCIAL STATEMENTS

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# MANAGEMENT'S REPORT

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## Management's Annual Report on the Consolidated Financial Statements

Management is responsible for the preparation, integrity and objectivity of the accompanying consolidated financial statements and related financial information. The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and necessarily include certain amounts that are based on estimates and informed judgments. Our management also prepared the related financial information included in this Annual Report on Form 10-K and is responsible for its accuracy and consistency with the consolidated financial statements.

Ernst & Young LLP, our independent registered public accounting firm, has audited the consolidated financial statements as of December 30, 2020, as stated in their report herein.

## Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with generally accepted accounting principles in the United States of America. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, we assessed the effectiveness of our internal control over financial reporting as of December 30, 2020, based on the framework in Internal Control—Integrated Framework (2013), issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Based on the results of our evaluation, management concluded that our internal control over financial reporting was effective as of December 30, 2020.

Our independent registered public accounting firm, Ernst & Young LLP, has issued an attestation report on the effectiveness of our internal control over financial reporting as of December 30, 2020, as stated in their report herein.



Randy Garutti  
*Chief Executive Officer and Director*  
*(duly authorized and principal executive officer)*



Tara Comonte  
*President and Chief Financial Officer*  
*(duly authorized and principal financial officer)*

# REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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To the Shareholders and the Board of Directors of Shake Shack Inc.

## Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Shake Shack Inc. (the Company) as of December 30, 2020 and December 25, 2019, the related consolidated statements of income (loss), comprehensive income (loss), stockholders' equity and cash flows for each of the three years in the period ended December 30, 2020, and the related notes and financial statement schedules listed in the Index at Item 15(a) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 30, 2020 and December 25, 2019, and the results of its operations and its cash flows for each of the three years in the period ended December 30, 2020, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 30, 2020, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 26, 2021 expressed an unqualified opinion thereon.

## Adoption of ASU No. 2016-02

As discussed in Note 2 to the consolidated financial statements, the Company changed its method of accounting for the recognition, measurement, presentation and disclosure of leases effective December 27, 2018 due to the adoption of Accounting Standards Update (ASU) No. 2016-02, Leases ("ASC 842") and the amendments in ASUs 2018-01, 2018-10, and 2018-11.

## Basis for Opinion

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

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

## Critical Audit Matters

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

### **Measurement of deferred tax assets related to the Company's investment in SSE Holdings LLC**

*Description of the Matter*

As discussed in Notes 12 and 15 of the consolidated financial statements, the noncontrolling interest holders of SSE Holdings LLC ("LLC") may redeem their equity interests in SSE Holdings LLC ("LLC interests") for shares of the Company's Class A common stock. For income tax purposes, these redemptions are treated as direct purchases of LLC equity and are recorded at their fair market value upon the date of the redemption. The resulting incremental tax basis in excess of the book basis arising from a redemption represents a deductible temporary difference for which a deferred tax asset is recorded. At December 30, 2020, the Company's total deferred tax asset related to the basis difference in its investment in LLC was \$139 million. The basis difference in the Company's investment in LLC changes through redemptions of LLC interests and other qualifying transactions.

Auditing management's accounting for the basis differences in its investment in LLC is especially complex and challenging as the Company's accounting requires timely identification of all historical basis differences and subsequent adjustments related to the redemptions, described above, and the related tax receivable agreement ("TRA") payments to the LLC holders, discussed below.

*How We Addressed the Matter in Our Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's process for determining the completeness and measurement of the Company's basis differences in the investment in LLC. For example, we tested management's review controls over the calculation of the change in tax basis resulting from the redemptions, including the determination of fair market value. In addition, we tested controls over management's communication of redemptions to the Company's stock transfer agent as detailed in redemption notices provided by the LLC holder.

To test the completeness and accuracy of the deferred tax asset related to the basis difference in the investment in the LLC, we performed audit procedures that included, among others, on a sample basis, testing redemptions of LLC interests by inspection of redemption notices, inquiry with legal counsel to verify the completeness of the redemption notices in the period, and external confirmation of LLC's and the Company's shares issued and outstanding with the stock transfer agent. Further, to test the measurement of the deferred tax asset, for a selection of redemptions, we recalculated the change in tax basis resulting from the redemptions, including the determination of fair value.

### **Measurement of the Tax Receivable Agreement liability**

*Description of the Matter*

As discussed in Note 15 of the consolidated financial statements, the Company has a Tax Receivable Agreement ("TRA") with certain current and historical holders of LLC interests, which is a contractual commitment to distribute 85% of any tax benefits ("TRA Payment"), realized or deemed to be realized by the Company to the parties to the TRA. The TRA payments are contingent upon, among other things, the generation of future taxable income over the term of the TRA and future changes in tax laws. At December 30, 2020, the Company's liability due to the holders of LLC interests under the TRA ("TRA liability"), was \$233 million.

Auditing management's accounting for the TRA liability is especially complex and judgmental as the Company's calculation of the TRA liability requires estimates of its future qualified taxable income over the term of the TRA as a basis to determine if the related tax benefits are expected to be realized. Significant changes in estimates could have a material effect on the Company's results of operations.



*How We  
Addressed the  
Matter in Our Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's process for determining the measurement of the Company's TRA obligation. Such controls include management review controls over the computation of the TRA liability, which is based on several inputs including the Company's share of the tax basis in the LLC, as discussed above, as well as the estimate of future qualified taxable income over the term of the TRA. We also tested management review control over the calculation of the TRA liability in accordance with the terms set out in the TRA.

We tested the measurement of the Company's TRA liability by performing procedures on the redemptions, as described above, and recalculating the Company's share of the tax basis in the net assets of LLC, as discussed above. To test the Company's position that there is sufficient future taxable income to realize the tax benefits related to the redemptions discussed above, we evaluated the assumptions used by management to develop the projections of future taxable income. For example, we compared management's projections of future taxable income with the actual results of prior periods, as well as management's consideration of current industry and economic trends. We also assessed the historical accuracy of management's projections and reconciled the projections of future taxable income with other forecasted financial information prepared by the Company. We also recalculated the TRA liability and verified the calculation of the TRA liability was in accordance with the terms set out in the TRA.

***Lease accounting, including impairment of right-of-use assets***

*Description of the  
Matter*

As discussed in Note 10 of the consolidated financial statements, domestic Company-operated Shacks are located on leased premises and the related equipment are leased assets on the premises. As of December 30, 2020, the Company's right-of-use assets and lease liability is \$312 million and \$385 million, respectively.

Auditing management's accounting and presentation for leases was especially complex and challenging as the Company's accounting for the right-of-use asset, and the lease liability involved the compilation and review of the details associated with the population of non-uniform leases as well as the determination of the incremental borrowing rate and the evaluation of impairment of the right-of-use assets.

*How We  
Addressed the  
Matter in Our Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's process for determining the classification, valuation and completeness of the right-of-use asset and the lease liability. Such controls include management's review of the completeness of the population of leases, including lease modifications, verification of the accuracy of the computation of the right-of-use asset and lease liability, including the determination of the incremental borrowing rate, and the evaluation of impairment of the right-of-use assets.

We tested the completeness of the lease population through the evidence obtained from inquiries of Company personnel and an assessment of leases on a location-by-location basis based upon our knowledge of the Company's openings of new Shake Shack restaurants and the related equipment leased for each location. For a sample of leases, we tested the accuracy of the data used in the calculation of the right-of-use asset and the lease liability by agreeing the underlying inputs, such as possession date, lease term and payment terms, to source documents, such as lease contracts. We recalculated the right-of-use asset and the lease liability and, with the support of a valuation specialist, we evaluated the key assumptions and methodologies used in the Company's selection of the incremental borrowing rate by developing a comparative calculation. We tested the Company's impairment evaluation, we involved our valuation specialists to assist in evaluating significant assumptions, including market rent assumptions, lease terms, and discount rate, used to estimate the fair value of right-of-use assets, and valuation methodologies used in the Company's models.

*Ernst + Young LLP*

We have served as the Company's auditor since 2014.

New York, New York  
February 26, 2021

# REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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To the Shareholders and the Board of Directors of Shake Shack Inc.

## Opinion on Internal Control Over Financial Reporting

We have audited Shake Shack Inc.'s (the Company's) internal control over financial reporting as of December 30, 2020, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 30, 2020, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 30, 2020 and December 25, 2019, the related consolidated statements of income (loss), comprehensive income (loss), stockholders' equity and cash flows for each of the three years in the period ended December 30, 2020, and the related notes and financial statement schedules listed in the Index at Item 15(a) (collectively referred to as the "consolidated financial statements") and our report dated February 26, 2021 expressed an unqualified opinion thereon.

## Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

## Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

*Ernst & Young LLP*

New York, New York  
February 26, 2021

# SHAKE SHACK INC.

## CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share amounts)

|   | December 30<br>2020 | December 25<br>2019 |
|---|---------------------|---------------------|
| <b>ASSETS</b>   |                     |                     |
| Current assets:   |                     |                     |
| Cash and cash equivalents   | \$ 146,873          | \$ 37,099           |
| Marketable securities   | 36,887              | 36,508              |
| Accounts receivable, net  | 9,464               | 9,970               |
| Inventories   | 2,888               | 2,221               |
| Prepaid expenses and other current assets   | 7,074               | 1,877               |
| Total current assets  | 203,186             | 87,675              |
| Property and equipment, net   | 336,541             | 314,862             |
| Operating lease assets  | 306,317             | 274,426             |
| Deferred income taxes, net  | 287,007             | 279,817             |
| Other assets  | 12,297              | 11,488              |
| <b>TOTAL ASSETS</b>   | <b>\$ 1,145,348</b> | <b>\$ 968,268</b>   |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>   |                     |                     |
| Current liabilities:  |                     |                     |
| Accounts payable  | \$ 23,487           | \$ 14,300           |
| Accrued expenses  | 25,920              | 24,140              |
| Accrued wages and related liabilities   | 10,441              | 11,451              |
| Operating lease liabilities, current  | 35,657              | 30,002              |
| Other current liabilities   | 14,200              | 19,499              |
| Total current liabilities   | 109,705             | 99,392              |
| Long-term operating lease liabilities   | 343,736             | 304,914             |
| Liabilities under tax receivable agreement, net of current portion  | 232,954             | 226,649             |
| Other long-term liabilities   | 24,460              | 15,328              |
| Total liabilities   | 710,855             | 646,283             |
| Commitments and contingencies   |                     |                     |
| Stockholders' equity:   |                     |                     |
| Preferred stock, no par value—10,000,000 shares authorized; none issued and outstanding as of December 30, 2020 and December 25, 2019, respectively.  | —                   | —                   |
| Class A common stock, \$0.001 par value—200,000,000 shares authorized; 38,717,790 and 34,417,302 shares issued and outstanding as of December 30, 2020 and December 25, 2019, respectively. | 39                  | 35                  |
| Class B common stock, \$0.001 par value—35,000,000 shares authorized; 2,951,188 and 3,145,197 shares issued and outstanding as of December 30, 2020 and December 25, 2019, respectively.    | 3                   | 3                   |
| Additional paid-in capital  | 395,067             | 244,410             |
| Retained earnings   | 12,209              | 54,367              |
| Accumulated other comprehensive income  | 3                   | 2                   |
| Total stockholders' equity attributable to Shake Shack Inc.   | 407,321             | 298,817             |
| Non-controlling interests   | 27,172              | 23,168              |
| Total equity  | 434,493             | 321,985             |
| <b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>   | <b>\$ 1,145,348</b> | <b>\$ 968,268</b>   |

See accompanying Notes to Consolidated Financial Statements.

# SHAKE SHACK INC.

## CONSOLIDATED STATEMENTS OF INCOME (LOSS)

(in thousands, except per share amounts)

|   | Fiscal Year Ended   |                     |                     |
|---|---------------------|---------------------|---------------------|
|   | December 30<br>2020 | December 25<br>2019 | December 26<br>2018 |
| Shack sales   | \$ 506,339          | \$ 574,625          | \$ 445,589          |
| Licensing revenue   | 16,528              | 19,894              | 13,721              |
| <b>TOTAL REVENUE</b>  | <b>522,867</b>      | <b>594,519</b>      | <b>459,310</b>      |
| Shack-level operating expenses:                                   |                     |                     |                     |
| Food and paper costs  | 153,335             | 168,176             | 126,096             |
| Labor and related expenses  | 156,814             | 160,811             | 122,094             |
| Other operating expenses  | 73,220              | 69,169              | 51,783              |
| Occupancy and related expenses                                    | 51,592              | 48,451              | 32,710              |
| General and administrative expenses                               | 64,250              | 65,649              | 52,720              |
| Depreciation expense  | 48,801              | 40,392              | 29,000              |
| Pre-opening costs   | 8,580               | 14,834              | 12,279              |
| Impairment and loss on disposal of assets                         | 10,151              | 1,352               | 917                 |
| <b>TOTAL EXPENSES</b>   | <b>566,743</b>      | <b>568,834</b>      | <b>427,599</b>      |
| <b>OPERATING INCOME (LOSS)</b>                                    | <b>(43,876)</b>     | <b>25,685</b>       | <b>31,711</b>       |
| Other income (expense), net                                       | (786)               | 2,263               | 1,514               |
| Interest expense  | (815)               | (434)               | (2,415)             |
| <b>INCOME (LOSS) BEFORE INCOME TAXES</b>                          | <b>(45,477)</b>     | <b>27,514</b>       | <b>30,810</b>       |
| Income tax expense  | 57                  | 3,386               | 8,862               |
| <b>NET INCOME (LOSS)</b>  | <b>(45,534)</b>     | <b>24,128</b>       | <b>21,948</b>       |
| Less: net income (loss) attributable to non-controlling interests | (3,376)             | 4,301               | 6,769               |
| <b>NET INCOME (LOSS) ATTRIBUTABLE TO SHAKE SHACK INC.</b>         | <b>\$ (42,158)</b>  | <b>\$ 19,827</b>    | <b>\$ 15,179</b>    |
| Earnings (loss) per share of Class A common stock:                |                     |                     |                     |
| Basic   | \$ (1.14)           | \$ 0.63             | \$ 0.54             |
| Diluted   | \$ (1.14)           | \$ 0.61             | \$ 0.52             |
| Weighted-average shares of Class A common stock outstanding:      |                     |                     |                     |
| Basic   | 37,129              | 31,381              | 28,299              |
| Diluted   | 37,129              | 32,251              | 29,179              |

See accompanying Notes to Consolidated Financial Statements.

**SHAKE SHACK INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**

(in thousands)

|   | Fiscal Year Ended   |                     |                     |
|---|---------------------|---------------------|---------------------|
|   | December 30<br>2020 | December 25<br>2019 | December 26<br>2018 |
| Net income (loss)   | \$ (45,534)         | \$ 24,128           | \$ 21,948           |
| Other comprehensive income, net of tax <sup>(1)</sup> :                           |                     |                     |                     |
| Change in foreign currency translation adjustment                                 | 1                   | 2                   | —                   |
| Equity securities:  |                     |                     |                     |
| Change in net unrealized holding losses   | —                   | —                   | (3)                 |
| Less: reclassification adjustments for net realized losses included in net income | —                   | —                   | 16                  |
| Net change  | 1                   | 2                   | 13                  |
| <b>OTHER COMPREHENSIVE INCOME</b>   | <b>1</b>            | <b>2</b>            | <b>13</b>           |
| <b>COMPREHENSIVE INCOME (LOSS)</b>  | <b>(45,533)</b>     | <b>24,130</b>       | <b>21,961</b>       |
| Less: comprehensive income (loss) attributable to non-controlling interests       | (3,376)             | 4,301               | 6,772               |
| <b>COMPREHENSIVE INCOME (LOSS) ATTRIBUTABLE TO SHAKE SHACK INC.</b>               | <b>\$ (42,157)</b>  | <b>\$ 19,829</b>    | <b>\$ 15,189</b>    |

(1) Net of tax benefit of \$0 for fiscal years ended December 30, 2020, December 25, 2019 and December 26, 2018.

See accompanying Notes to Consolidated Financial Statements.

**SHAKE SHACK INC.  
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

(in thousands, except share amounts)

|   | Class A<br>Common Stock |        | Class B<br>Common Stock |        | Additional<br>Paid-In<br>Capital | Retained<br>Earnings | Accumulated<br>Other<br>Comprehensive<br>Income (Loss) | Non-<br>Controlling<br>Interest | Total<br>Equity |
|---|-------------------------|--------|-------------------------|--------|----------------------------------|----------------------|--|---------------------------------|-----------------|
|   | Shares                  | Amount | Shares                  | Amount |                                  |                      |  |                                 |                 |
| <b>BALANCE, DECEMBER 27, 2017</b>   | 26,527,477              | 27     | 10,250,007              | 10     | 153,105                          | 16,399               | (49)   | 54,987                          | 224,479         |
| Cumulative effect of accounting changes   |                         |        |                         |        | (1,174)                          | (1,174)              | 39   | (439)                           | (1,574)         |
| Net income  |                         |        |                         |        | 15,179                           |                      |  | 6,769                           | 21,948          |
| Other comprehensive income:   |                         |        |                         |        |                                  |                      |  |                                 |                 |
| Net change related to equity securities   |                         |        |                         |        |                                  |                      | 10   | 3                               | 13              |
| Equity-based compensation   |                         |        |                         |        | 6,250                            |                      |  |                                 | 6,250           |
| Activity under stock compensation plans   | 300,696                 | 1      |                         |        | 2,509                            |                      |  | 2,013                           | 4,523           |
| Redemption of LLC interests   | 2,692,660               | 2      | (2,692,660)             | (2)    | 15,202                           |                      |  | (15,202)                        | —               |
| Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis |                         |        |                         |        | 18,567                           |                      |  |                                 | 18,567          |
| Distributions paid to non-controlling interest holders  |                         |        |                         |        |                                  |                      |  | (751)                           | (751)           |
| <b>BALANCE, DECEMBER 26, 2018</b>   | 29,520,833              | 30     | 7,557,347               | 8      | 195,633                          | 30,404               | —  | 47,380                          | 273,455         |
| Cumulative effect of accounting changes   |                         |        |                         |        | 4,136                            |                      |  | 1,059                           | 5,195           |
| Net income  |                         |        |                         |        | 19,827                           |                      |  | 4,301                           | 24,128          |
| Other comprehensive income:   |                         |        |                         |        |                                  |                      |  |                                 |                 |
| Net change in foreign currency translation adjustment   |                         |        |                         |        |                                  |                      | 2  | —                               | 2               |
| Equity-based compensation   |                         |        |                         |        | 7,700                            |                      |  |                                 | 7,700           |
| Activity under stock compensation plans   | 484,319                 |        |                         |        | 4,517                            |                      |  | 3,288                           | 7,805           |
| Redemption of LLC interests   | 1,721,887               | 2      | (1,721,887)             | (2)    | 11,934                           |                      |  | (11,934)                        | —               |
| Effect of GTC Merger  | 2,690,263               | 3      | (2,690,263)             | (3)    | 19,218                           |                      |  | (19,218)                        | —               |
| Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis |                         |        |                         |        | 5,408                            |                      |  | (1,708)                         | 5,408           |
| Distributions paid to non-controlling interest holders  |                         |        |                         |        |                                  |                      |  | (1,708)                         | (1,708)         |
| <b>BALANCE, DECEMBER 25, 2019</b>   | 34,417,302              | 35     | 3,145,197               | 3      | 244,410                          | 54,367               | 2  | 23,168                          | 321,985         |
| Net loss  |                         |        |                         |        | (42,158)                         |                      |  | (3,376)                         | (45,534)        |
| Other comprehensive income:   |                         |        |                         |        |                                  |                      |  |                                 |                 |
| Net change in foreign currency translation adjustment   |                         |        |                         |        |                                  |                      | 1  |                                 | 1               |
| Equity-based compensation   |                         |        |                         |        | 5,600                            |                      |  |                                 | 5,600           |
| Activity under stock compensation plans   | 456,942                 | 1      |                         |        | 5,909                            |                      |  | 305                             | 6,215           |
| Redemption of LLC interests   | 194,009                 | —      | (194,009)               | —      | 1,723                            |                      |  | (1,723)                         | —               |
| Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis |                         |        |                         |        | 1,707                            |                      |  | (478)                           | 1,707           |
| Distributions paid to non-controlling interest holders  |                         |        |                         |        |                                  |                      |  | (478)                           | (478)           |
| Issuance of Class A common stock sold in equity offerings, net of underwriting discounts, commissions and offering costs                      | 3,649,537               | 3      |                         |        | 135,718                          |                      |  | 9,276                           | 144,997         |
| <b>BALANCE, DECEMBER 30, 2020</b>   | 38,717,790              | 39     | 2,951,188               | 3      | 395,067                          | 12,209               | 3  | 27,172                          | 434,493         |

See accompanying Notes to Consolidated Financial Statements.

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

|  | Fiscal Year Ended   |                     |                     |
|--|---------------------|---------------------|---------------------|
|  | December 30<br>2020 | December 25<br>2019 | December 26<br>2018 |
| <b>OPERATING ACTIVITIES</b>  |                     |                     |                     |
| Net income (loss) (including amounts attributable to non-controlling interests)  | \$ (45,534)         | \$ 24,128           | \$ 21,948           |
| Adjustments to reconcile net income (loss) to net cash provided by operating activities:   |                     |                     |                     |
| Depreciation expense   | 48,801              | 40,392              | 29,000              |
| Amortization of cloud computing asset  | 1,444               | 312                 | —                   |
| Non-cash operating lease cost  | 44,910              | 40,068              | —                   |
| Equity-based compensation  | 5,560               | 7,505               | 6,143               |
| Deferred income taxes  | (1,356)             | (6,064)             | 788                 |
| Non-cash interest expense  | 66                  | 170                 | 72                  |
| (Gain) loss on sale of marketable securities   | (79)                | (22)                | 16                  |
| Impairment and loss on disposal of assets  | 10,151              | 1,352               | 917                 |
| Other non-cash expense (income)  | 1,937               | (338)               | (78)                |
| Unrealized (gain) loss on equity securities  | 59                  | (194)               | —                   |
| Net loss on sublease   | —                   | —                   | 672                 |
| Changes in operating assets and liabilities:   |                     |                     |                     |
| Accounts receivable  | 1,006               | 10,726              | 5,530               |
| Inventories  | (667)               | (472)               | (491)               |
| Prepaid expenses and other current assets  | (5,197)             | 134                 | (270)               |
| Other assets   | (2,940)             | (8,245)             | (2,726)             |
| Accounts payable   | 4,626               | 4,248               | 3,156               |
| Accrued expenses   | 2,170               | 9,856               | 7,979               |
| Accrued wages and related liabilities  | (1,010)             | 799                 | 4,424               |
| Other current liabilities  | 1,752               | 1,438               | 860                 |
| Deferred rent  | —                   | —                   | 1,247               |
| Long-term operating lease liabilities  | (33,724)            | (37,308)            | —                   |
| Other long-term liabilities  | 5,375               | 1,372               | 6,208               |
| <b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>   | <b>37,350</b>       | <b>89,857</b>       | <b>85,395</b>       |
| <b>INVESTING ACTIVITIES</b>  |                     |                     |                     |
| Purchases of property and equipment  | (69,038)            | (106,507)           | (87,525)            |
| Purchases of marketable securities   | (20,359)            | (1,179)             | (1,223)             |
| Sales of marketable securities   | 20,000              | 27,000              | 2,144               |
| <b>NET CASH USED IN INVESTING ACTIVITIES</b>   | <b>(69,397)</b>     | <b>(80,686)</b>     | <b>(86,604)</b>     |
| <b>FINANCING ACTIVITIES</b>  |                     |                     |                     |
| Proceeds from Revolving Credit Facility  | 50,000              | —                   | —                   |
| Payments on Revolving Credit Facility  | (50,000)            | —                   | —                   |
| Proceeds from deemed landlord financing  | —                   | —                   | 1,382               |
| Payments on deemed landlord financing  | —                   | —                   | (702)               |
| Deferred financing costs   | (64)                | (286)               | —                   |
| Proceeds from issuance of Class A common stock sold in equity offerings, net of underwriting discounts, commissions and offering costs | 144,997             | —                   | —                   |
| Payments on principal of finance leases  | (2,206)             | (1,926)             | —                   |
| Distributions paid to non-controlling interest holders   | (478)               | (1,708)             | (751)               |
| Payments under tax receivable agreement  | (6,643)             | (707)               | —                   |
| Net proceeds from stock option exercises   | 8,033               | 9,201               | 5,472               |
| Employee withholding taxes related to net settled equity awards  | (1,818)             | (1,396)             | (949)               |
| <b>NET CASH PROVIDED BY FINANCING ACTIVITIES</b>   | <b>141,821</b>      | <b>3,178</b>        | <b>4,452</b>        |
| <b>INCREASE IN CASH AND CASH EQUIVALENTS</b>   | <b>109,774</b>      | <b>12,349</b>       | <b>3,243</b>        |
| <b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>  | <b>37,099</b>       | <b>24,750</b>       | <b>21,507</b>       |
| <b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>  | <b>\$ 146,873</b>   | <b>\$ 37,099</b>    | <b>\$ 24,750</b>    |

Supplemental cash flow information and non-cash investing and financing activities are further described in the accompanying notes. See accompanying Notes to Consolidated Financial Statements.

# SHAKE SHACK INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share amounts)

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## NOTE 1: NATURE OF OPERATIONS

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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 December 30, 2020 we owned 92.9% 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 December 30, 2020, there were 311 Shacks in operation, system-wide, of which 183 were domestic Company-operated Shacks, 22 were domestic licensed Shacks and 106 were international licensed Shacks. As of December 30, 2020, two domestic Company-operated Shacks and 17 licensed Shacks were temporarily closed primarily due to COVID-19.

## NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

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### Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and include our accounts and the accounts of our subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. Certain reclassifications have been made to prior period amounts to conform to the current year presentation.

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 will continue to 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 December 30, 2020 and December 25, 2019, the net assets of SSE Holdings were \$383,669 and \$270,542, respectively. The assets of SSE Holdings are subject to certain restrictions in SSE Holdings' revolving credit agreements. See Note 9, Debt, for more information.

### Fiscal Year

We operate on a 52/53 week fiscal year ending on the last Wednesday in December. Fiscal year 2020 contained 53 weeks and ended on December 30, 2020 ("fiscal 2020"). Fiscal years 2019 and 2018 each contained 52 weeks and ended on December 25, 2019 ("fiscal 2019") and December 26, 2018 ("fiscal 2018"), respectively. Unless otherwise stated, references to years in this report relate to fiscal years.

### Use of Estimates

The preparation of these 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. Significant estimates inherent in the preparation of the consolidated financial statements include useful lives and impairments of long-lived tangible and intangible assets, accounting for income taxes and related uncertain tax positions, the valuation of equity-based compensation and awards, and reserves for litigation and other contingencies, amongst others. Actual results could differ from those estimates.

## Segment Reporting

We own and operate Shacks in the United States. We also have domestic and international licensed operations. Our chief operating decision makers (the "CODMs") are our Chief Executive Officer and our President and Chief Financial Officer. As the CODMs review financial performance and allocate resources at a consolidated level on a recurring basis, we have one operating segment and one reportable segment.

## Fair Value Measurements

We apply fair value accounting for all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. We categorize our assets and liabilities, based on the priority of the inputs to the valuation technique, into a three-level fair value hierarchy as set forth below. The three levels of the hierarchy are defined as follows:

- Level 1 — Unadjusted quoted prices in active markets for identical assets or liabilities
- Level 2 — Observable inputs other than quoted prices in active markets for identical assets or liabilities, quoted prices for identical assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities
- Level 3 — Inputs that are both unobservable and significant to the overall fair value measurements reflecting an entity's estimates of assumptions that market participants would use in pricing the asset or liability.

## Cash and Cash Equivalents

Cash and cash equivalents consist primarily of cash on hand, deposits with banks, and short-term, highly liquid investments that have original maturities of three months or less. Cash equivalents are stated at cost, which approximates fair value. In fiscal 2019, cash equivalents consist primarily of money market funds.

## Marketable Securities

Marketable securities consist of mutual funds that primarily invest in corporate bonds, certificates of deposits, asset-backed securities, commercial paper, U.S. Treasury obligations, and foreign government securities. Marketable securities are recorded at fair value, with unrealized gains and losses recorded in Other income, net. Dividend and interest income are recognized when earned and are recorded in Other income (expense), net on the consolidated statements of income (loss).

## Accounts Receivable, Net

Accounts receivable consist primarily of receivables from our licensees for licensing revenue and related reimbursements, credit card receivables and vendor rebates. We evaluate the collectibility of our accounts receivable based on a variety of factors, including historical experience, current economic conditions and other factors.

## Inventories

Inventories, which consist of food, paper goods, beverages, beer, wine and retail merchandise, are valued at the lower of weighted-average cost or net realizable value. No adjustment is deemed necessary to reduce inventory to net realizable value due to the rapid turnover and high utilization of inventory.

## Property and Equipment, Net

Property and equipment, net is stated at historical cost less accumulated depreciation. Property and equipment is depreciated based on the straight-line method over the estimated useful lives of the assets, generally ranging from five to seven years for both equipment, and furniture and fixtures, and two to five years for computer equipment and software. Leasehold improvements are depreciated over the shorter of their estimated useful lives or the related lease terms.

Costs incurred when constructing Shacks are capitalized. The cost of repairs and maintenance are expensed when incurred. Costs for refurbishments and improvements that significantly increase the productive capacity or extend the useful life of the asset are capitalized. When assets are disposed of, the resulting gain or loss is recognized in Impairment and loss on disposal of assets on the Consolidated Statements of Income (Loss).

### Valuation of Long-lived Assets

We assess potential impairments to our long-lived assets, which includes property and equipment and operating lease right-of-use assets, whenever events or circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of an asset is measured by a comparison of the carrying amount of the asset group to the estimated undiscounted future cash flows expected to be generated by the asset group. If the carrying amount of the asset group exceeds its estimated undiscounted future cash flows, an impairment charge is recognized as the amount by which the carrying amount of the asset exceeds the fair value of the asset, considering external market participant assumptions. Since the determination of future cash flows is an estimate of future performance, there may be future impairments in the event that future cash flows do not meet expectations. Refer to Note 4, Fair Value Measurements, for further details.

### Deferred Financing Costs

Deferred financing costs incurred in connection with the issuance of long-term debt and establishing credit facilities are capitalized and amortized to interest expense based on the related debt agreements. Deferred financing costs are included in Other assets on the Consolidated Balance Sheets.

### Other Assets

Other assets consist primarily of capitalized implementation costs from cloud computing arrangements, transferable liquor licenses, certain custom furniture pre-ordered for future Shacks and yet to be placed in service and security deposits.

The costs of obtaining non-transferable liquor licenses that are directly issued by local government agencies for nominal fees are expensed as incurred. The costs of purchasing transferable liquor licenses through open markets in jurisdictions with a limited number of authorized liquor licenses are capitalized as indefinite-lived intangible assets. Annual liquor license renewal fees are expensed over the renewal term. As of both December 30, 2020 and December 25, 2019, indefinite-lived intangible assets relating to transferable liquor licenses totaled \$1,437. We evaluate our indefinite-lived intangible assets for impairment annually during our fiscal fourth quarter, and whenever events or changes in circumstances indicate that an impairment may exist. When evaluating intangible assets for impairment, we may first perform a qualitative assessment to determine whether it is more likely than not that an intangible asset group is impaired. If we do not perform the qualitative assessment, or if we determine that it is not more likely than not that the fair value of the intangible asset group exceeds its carrying amount, we calculate the estimated fair value of the intangible asset group. If the carrying amount of the intangible asset group exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value. In addition, we continuously monitor and may revise our intangible asset useful lives if and when facts and circumstances change.

### 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.

### Equity-based Compensation

Equity-based compensation expense is measured based on the grant-date fair value of those awards. For awards with graded-vesting features and service conditions only, compensation expense is recognized on a straight-line basis over the total requisite service period for the entire award. For awards with graded-vesting features and a combination of service and performance conditions, compensation expense is recognized using a graded-vesting attribution method over the vesting period based on the most probable outcome of the performance conditions. Actual distributed shares are calculated upon conclusion of the service and performance periods. For stock option awards, the grant-date fair value of the awards is determined using the Black-Scholes option pricing model and involves several assumptions, including the expected term of the option, expected volatility and risk-free interest rate. Forfeitures are recognized as they occur for all equity awards. Equity-based compensation expense is included within General and administrative expenses and Labor and related expenses on the Consolidated Statements of Income (Loss).

### Advertising

The cost of advertising is expensed as incurred. Advertising costs amounted to \$1,449, \$857 and \$399 in fiscal 2020, fiscal 2019 and fiscal 2018, respectively, and are included in General and administrative expense and Other operating expenses on the Consolidated Statements of Income (Loss).

### Leases

On December 27, 2018 we adopted Accounting Standards Update (“ASU”) 2016-02, *Leases (Topic 842)*, using a modified retrospective approach. Refer to Note 10, Leases, for further details.

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. Upon the possession of a leased asset, we determine its classification as an operating or financing lease. All of 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 typically not included in the lease term 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 starting on the date we take possession of the leased property. Lease expense incurred before a Shack opens is recorded in Pre-opening costs. Once a Shack opens, we record the straight-line lease expense and any contingent rent, if applicable, in Occupancy and related expenses on the Consolidated Statements of Income. 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 Consolidated Statements of Income (Loss).

We calculate operating lease assets and lease liabilities as the present value of fixed lease payments over the reasonably certain lease term beginning at the commencement date. We measure the lease liability by discounting the future fixed

contractual payments included in the lease agreement, using our incremental borrowing rate ("IBR"). There are no explicit rates provided in our leases. The IBR 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. 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.

For operating leases, fixed lease payments are recognized as operating lease cost on a straight-line basis over the lease term. For finance leases, the asset is depreciated on a straight-line basis over the remaining lease term, along with recognition of interest expense associated with accretion of the lease liability. For leases with a lease term of 12 months or less ("short-term lease"), any fixed lease payments are recognized on a straight-line basis over such term, and are not recognized on the Consolidated Balance Sheets. Variable lease cost for both operating and finance leases, if any, is recognized as incurred.

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 up-front 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.

### Pre-opening Costs

Pre-opening costs are expensed as incurred and consist primarily of occupancy, manager and employee wages, legal fees, travel and related training costs, cookware and marketing expenses incurred prior to the opening of a Shack.

### Income Taxes

We account for income taxes pursuant to the asset and liability method which requires the recognition of deferred income tax assets and liabilities related to the expected future tax consequences arising from temporary differences between the carrying amounts and tax bases of assets and liabilities based on enacted statutory tax rates applicable to the periods in which the temporary differences are expected to reverse. Any effects of changes in income tax rates or laws are included in income tax expense in the period of enactment. A valuation allowance is recognized if we determine it is more likely than not that all or a portion of a deferred tax asset will not be recognized. In making such determination, the Company considers all available evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and recent and expected future results of operation.

## Recently Adopted Accounting Pronouncements

We adopted the Accounting Standards Update ("ASU") summarized below in fiscal 2020.

| ASU  | Description  | Date Adopted                             |
|--|--|--|
| Measurement of Credit Losses on Financial Instruments<br><br>(ASU 2016-13)                       | This standard replaces the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates.<br><br>The adoption of this standard did not have a material impact to our consolidated financial statements. | December 26, 2019                        |
| Facilitation of the Effects of Reference Rate Reform on Financial Reporting<br><br>(ASU 2020-04) | This standard provides optional guidance for a limited time to ease the potential accounting burden associated with transitioning away from reference rates that are expected to be discontinued.<br><br>The adoption of this standard did not have a material impact to our consolidated financial statements.  | Effective upon issuance (March 12, 2020) |

## Recently Issued Accounting Pronouncements

| ASU   | Description  | Expected Impact   | Effective Date  |
|---|--|---|---|
| Simplifying the Accounting for Income Taxes<br><br>(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", and clarifying certain aspects of the current guidance to promote consistency among reporting entities. | The adoption of this standard is not expected to have a material impact on our consolidated financial statements.         | December 31, 2020<br><br>Early adoption is permitted. |
| 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.<br><br>(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 are currently evaluating the impact of this standard on our consolidated financial statements and related disclosures. | December 30, 2021<br><br>Early adoption is permitted. |

## NOTE 3: REVENUE

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### Revenue Recognition

Revenue recognized during fiscal 2020, fiscal 2019 and fiscal 2018 disaggregated by type is as follows:

|                                    | 2020              | 2019              | 2018              |
|------------------------------------|-------------------|-------------------|-------------------|
| Shack sales                        | \$ 506,339        | \$ 574,625        | \$ 445,589        |
| Licensing revenue:                 |                   |                   |                   |
| Sales-based royalties              | 15,773            | 19,318            | 13,422            |
| Initial territory and opening fees | 755               | 576               | 299               |
| <b>Total revenue</b>               | <b>\$ 522,867</b> | <b>\$ 594,519</b> | <b>\$ 459,310</b> |

The aggregate amount of the transaction price allocated to performance obligations that are unsatisfied (or partially unsatisfied) as of December 30, 2020 is \$16,937. 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:

|   | December 30<br>2020 | December 25<br>2019 |
|---|---------------------|---------------------|
| Shack sales receivables                                       | \$ 5,373            | \$ 4,265            |
| Licensing receivables, net of allowance for doubtful accounts | 2,647               | 4,510               |
| Gift card liability   | 2,637               | 2,258               |
| Deferred revenue, current                                     | 608                 | 511                 |
| Deferred revenue, long-term                                   | 12,151              | 11,310              |

Revenue recognized during fiscal 2020 and fiscal 2019 that was included in their respective liability balances at the beginning of the period is as follows:

|                     | 2020   | 2019   |
|---------------------|--------|--------|
| Gift card liability | \$ 537 | \$ 524 |
| Deferred revenue    | 723    | 536    |

## NOTE 4: FAIR VALUE MEASUREMENTS

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### Assets and Liabilities Measured at Fair Value on a Recurring Basis

The following tables present information about our financial assets and liabilities measured at fair value on a recurring basis as of December 30, 2020 and December 25, 2019, and indicate the classification within the fair value hierarchy. Refer to Note 2, Summary of Significant Accounting Policies, for further information.

### Cash and Cash Equivalents and Marketable Securities

The following tables summarize our Cash and cash equivalents and Marketable securities by significant investment categories as of December 30, 2020 and December 25, 2019:

|                    | December 30, 2020 |                        |                         |                   |                           |                       |
|--------------------|-------------------|------------------------|-------------------------|-------------------|---------------------------|-----------------------|
|                    | Cost Basis        | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value        | Cash and Cash Equivalents | Marketable Securities |
| Cash               | \$ 146,873        | \$ —                   | \$ —                    | \$ 146,873        | \$ 146,873                | \$ —                  |
| Level 1:           |                   |                        |                         |                   |                           |                       |
| Money market funds | —                 | —                      | —                       | —                 | —                         | —                     |
| Mutual funds       | 36,874            | 13                     | —                       | 36,887            | —                         | 36,887                |
| <b>Total</b>       | <b>\$ 183,747</b> | <b>\$ 13</b>           | <b>\$ —</b>             | <b>\$ 183,760</b> | <b>\$ 146,873</b>         | <b>\$ 36,887</b>      |

|                    | December 25, 2019 |                        |                         |                  |                           |                       |
|--------------------|-------------------|------------------------|-------------------------|------------------|---------------------------|-----------------------|
|                    | Cost Basis        | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value       | Cash and Cash Equivalents | Marketable Securities |
| Cash               | \$ 32,094         | \$ —                   | \$ —                    | \$ 32,094        | \$ 32,094                 | \$ —                  |
| Level 1:           |                   |                        |                         |                  |                           |                       |
| Money market funds | 5,005             | —                      | —                       | 5,005            | 5,005                     | —                     |
| Mutual funds       | 36,436            | 72                     | —                       | 36,508           | —                         | 36,508                |
| <b>Total</b>       | <b>\$ 73,535</b>  | <b>\$ 72</b>           | <b>\$ —</b>             | <b>\$ 73,607</b> | <b>\$ 37,099</b>          | <b>\$ 36,508</b>      |

A summary of other income from equity securities recognized during fiscal 2020, fiscal 2019 and fiscal 2018 is as follows:

|   | 2020          | 2019            | 2018            |
|---|---------------|-----------------|-----------------|
| Equity securities:                          |               |                 |                 |
| Dividend income                             | \$ 359        | \$ 1,244        | \$ 1,392        |
| Interest income                             | —             | —               | 9               |
| Realized gain (loss) on sale of investments | 79            | 22              | (3)             |
| Unrealized gain (loss) on equity securities | (59)          | 194             | (61)            |
| <b>Total</b>                                | <b>\$ 379</b> | <b>\$ 1,460</b> | <b>\$ 1,337</b> |

A summary of equity securities sold and gross realized gains and losses recognized during fiscal 2020, fiscal 2019 and fiscal 2018 is as follows:

|  | 2020      | 2019      | 2018     |
|--|-----------|-----------|----------|
| Equity securities:   |           |           |          |
| Gross proceeds from sales and redemptions                        | \$ 20,000 | \$ 27,000 | \$ 2,144 |
| Cost basis of sales and redemptions                              | 19,921    | 26,978    | 2,160    |
| Gross realized gains included in net income (loss)               | 79        | 36        | 2        |
| Gross realized losses included in net income (loss)              | —         | (14)      | (18)     |
| Amounts reclassified out of accumulated other comprehensive loss | —         | —         | 16       |

Realized gains and losses are determined on a specific identification method and are included in Other income (expense), net on the Consolidated Statements of Income (Loss).



We periodically review our marketable securities for other-than-temporary impairment. We consider factors such as the duration, severity and the reason for the decline in value, the potential recovery period and our intent to sell. As of December 30, 2020 and December 25, 2019, the declines in the market value of our marketable securities investment portfolio are considered to be temporary in nature.

### **Other Financial Instruments**

The carrying value of our financial instruments, including accounts receivable, accounts payable and accrued expenses as of December 30, 2020 and December 25, 2019 approximated their fair value due to the short-term nature of these financial instruments.

### **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. When the Company evaluates its long-lived assets for impairment, the assessment is performed for the related asset group that represents the lowest level for which identifiable cash flows are independent of the cash flows of other assets. This determination requires judgment, and is dependent on the Company's overall operating strategy. During fiscal 2020, we recognized an impairment charge of \$7,644 at two Shacks, as well as our home office. Of the total impairment charge, \$5,698 was attributed to operating lease right-of-use assets, \$1,893 was attributed to property and equipment held and used, and \$53 was attributed to finance lease right-of-use assets. The asset impairment charge is included in Impairment and loss on disposal of assets on the 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 impairments recognized during fiscal 2019 and fiscal 2018.

## **NOTE 5: ACCOUNTS RECEIVABLE**

The components of accounts receivable as of December 30, 2020 and December 25, 2019 are as follows:

|                                 | December 30<br>2020 | December 25<br>2019 |
|---------------------------------|---------------------|---------------------|
| Licensing receivables           | \$ 2,675            | \$ 4,510            |
| Credit card receivables         | 2,989               | 3,417               |
| Delivery receivables            | 2,229               | 722                 |
| Other receivables               | 1,599               | 1,321               |
| Allowance for doubtful accounts | (28)                | —                   |
| <b>Accounts receivable, net</b> | <b>\$ 9,464</b>     | <b>\$ 9,970</b>     |

## NOTE 6: INVENTORIES

---

Inventories consisted of the following:

|                    | December 30<br>2020 | December 25<br>2019 |
|--------------------|---------------------|---------------------|
| Food               | \$ 1,947            | \$ 1,738            |
| Wine               | 75                  | 107                 |
| Beer               | 111                 | 114                 |
| Beverages          | 218                 | 233                 |
| Retail merchandise | 74                  | 29                  |
| Paper goods        | 463                 | —                   |
| <b>Inventories</b> | <b>\$ 2,888</b>     | <b>\$ 2,221</b>     |

## NOTE 7: PROPERTY AND EQUIPMENT

---

Property and equipment consisted of the following:

|   | December 30<br>2020 | December 25<br>2019 |
|---|---------------------|---------------------|
| Leasehold improvements                        | \$ 342,724          | \$ 302,204          |
| Equipment                                     | 60,064              | 54,404              |
| Furniture and fixtures                        | 20,178              | 18,082              |
| Computer equipment and software               | 30,477              | 24,226              |
| Financing equipment lease right-of-use assets | 9,622               | 7,442               |
| Construction in progress                      | 39,632              | 30,290              |
| Property and equipment, gross                 | 502,697             | 436,648             |
| Less: accumulated depreciation                | (166,156)           | (121,786)           |
| Property and equipment, net                   | \$ 336,541          | \$ 314,862          |

Depreciation expense was \$48,801, \$40,392 and \$29,000 for fiscal 2020, fiscal 2019 and fiscal 2018, respectively.

## NOTE 8: SUPPLEMENTAL BALANCE SHEET INFORMATION

The components of other current liabilities as of December 30, 2020 and December 25, 2019 are as follows:

|   | December 30<br>2020 | December 25<br>2019 |
|---|---------------------|---------------------|
| Sales tax payable   | \$ 4,285            | \$ 4,086            |
| Current portion of liabilities under tax receivable agreement | —                   | 7,777               |
| Gift card liability   | 2,637               | 2,258               |
| Current portion of financing equipment lease liabilities      | 1,998               | 1,873               |
| Other   | 5,280               | 3,505               |
| <b>Other current liabilities</b>                              | <b>\$ 14,200</b>    | <b>\$ 19,499</b>    |

The components of other long-term liabilities as of December 30, 2020 and December 25, 2019 are as follows:

|  | December 30<br>2020 | December 25<br>2019 |
|--|---------------------|---------------------|
| Deferred licensing revenue                                 | \$ 12,151           | \$ 11,310           |
| Long-term portion of financing equipment lease liabilities | 3,586               | 3,643               |
| Other <sup>(1)</sup>                                       | 8,723               | 375                 |
| <b>Other long-term liabilities</b>                         | <b>\$ 24,460</b>    | <b>\$ 15,328</b>    |

(1) As of December 30, 2020, Other included \$3,182 of deferred lease incentive liabilities related to leases with variable lease cost as well as \$5,214 of deferred social security taxes associated with the CARES Act. For further information relating to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), see Note 15, Income Taxes.

## NOTE 9: DEBT

### Revolving Credit Facility

In August 2019, we terminated our previous revolving credit facility and entered into a new 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 will mature and all amounts outstanding will be due and payable in August 2024. The Revolving Credit Facility also permits the issuance of letters of credit upon our request of up to \$15,000. Borrowings under the Revolving Credit Facility will bear interest at either: (i) LIBOR plus a percentage ranging from 1.0% to 1.5% or (ii) the base rate plus a percentage ranging from 0.0% to 0.5%, in each case depending on our net lease adjusted leverage ratio. To the extent the LIBOR reference rate is no longer available, the administrative agent, in consultation with us, will determine a replacement rate which will be generally in accordance with similar transactions in which it serves as administrative agent.

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 First Amendment to the Revolving Credit Facility described below. 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 December 30, 2020 we were in compliance with all covenants.

In May 2020, we entered into a first amendment to the Revolving Credit Facility ("First Amendment"), which, among other things, provides for modified financial covenant compliance requirements for a period of time. The First Amendment requires us to maintain minimum liquidity of \$25,000 through July 1, 2021 and outstanding borrowings during the applicable period covered by the First Amendment bear 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 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. As of December 30, 2020 and December 25, 2019, no amounts were outstanding under the revolving credit facility.

Total interest costs incurred were \$815, \$434 and \$2,572 in fiscal 2020, fiscal 2019 and fiscal 2018, respectively. Amounts capitalized into property and equipment were \$157 during fiscal 2018. No amounts were capitalized into property and equipment during fiscal 2020 and fiscal 2019, respectively.

### Paycheck Protection Program

In April 2020, we entered into a \$10,000 note payable with J.P. Morgan pursuant to the Paycheck Protection Program ("PPP Loan") under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") and returned the entire outstanding balance plus interest in April 2020.

## NOTE 10: LEASES

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### 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 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 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 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 December 30, 2020 and December 25, 2019 is as follows:

|                                  | <b>Classification</b>                 | <b>December 30, 2020</b> | <b>December 25, 2019</b> |
|----------------------------------|---------------------------------------|--------------------------|--------------------------|
| Finance leases                   | Property and equipment, net           | \$ 5,409                 | \$ 5,444                 |
| Operating leases                 | Operating lease assets                | 306,317                  | 274,426                  |
| <b>Total right-of-use assets</b> |                                       | <b>\$ 311,726</b>        | <b>\$ 279,870</b>        |
| Finance leases:                  |                                       |                          |                          |
|                                  | Other current liabilities             | \$ 1,998                 | \$ 1,873                 |
|                                  | Other long-term liabilities           | 3,586                    | 3,643                    |
| Operating leases:                |                                       |                          |                          |
|                                  | Operating lease liabilities, current  | 35,657                   | 30,002                   |
|                                  | Long-term operating lease liabilities | 343,736                  | 304,914                  |
| <b>Total lease liabilities</b>   |                                       | <b>\$ 384,977</b>        | <b>\$ 340,432</b>        |

The components of lease expense for fiscal 2020 and fiscal 2019 are as follows:

|                                     | Classification   | December 30<br>2020 | December 25<br>2019 |
|-------------------------------------|--|---------------------|---------------------|
| Finance lease cost:                 |  |                     |                     |
| Amortization of right-of-use assets | Depreciation expense   | \$ 2,257            | \$ 1,998            |
| Interest on lease liabilities       | Interest expense   | 213                 | 193                 |
| Operating lease cost                | Occupancy and related expenses<br>Pre-opening costs<br>General and administrative expenses                             | 44,910              | 40,068              |
| Short-term lease cost               | Occupancy and related expenses   | 494                 | 394                 |
| Variable lease cost                 | Occupancy and related expenses<br>Other operating expenses<br>Pre-opening costs<br>General and administrative expenses | 13,766              | 16,060              |
| <b>Total lease cost</b>             |  | <b>\$ 61,640</b>    | <b>\$ 58,713</b>    |

As of December 30, 2020, future minimum lease payments for finance and operating leases consisted of the following:

|                                | Finance<br>Leases | Operating<br>Leases |
|--------------------------------|-------------------|---------------------|
| 2021                           | \$ 2,169          | \$ 45,961           |
| 2022                           | 1,633             | 53,114              |
| 2023                           | 1,078             | 55,055              |
| 2024                           | 584               | 54,404              |
| 2025                           | 347               | 53,042              |
| Thereafter                     | 172               | 234,731             |
| <b>Total minimum payments</b>  | <b>5,983</b>      | <b>496,307</b>      |
| Less: imputed interest         | 399               | 116,914             |
| <b>Total lease liabilities</b> | <b>\$ 5,584</b>   | <b>\$ 379,393</b>   |

As of December 30, 2020 we had additional operating lease commitments of \$36,788 for non-cancelable leases without a possession date, which will begin to commence in fiscal 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 December 30, 2020 and December 25, 2019 is as follows:

|  | December 30<br>2020 | December 25<br>2019 |
|--|---------------------|---------------------|
| Weighted-average remaining lease term (years): |                     |                     |
| Finance leases                                 | 5.2                 | 5.1                 |
| Operating leases                               | 9.7                 | 10.1                |
| Weighted-average discount rate:                |                     |                     |
| Finance leases                                 | 3.6 %               | 3.7 %               |
| Operating leases                               | 4.2 %               | 5.4 %               |

Supplemental cash flow information related to leases as of December 30, 2020 and December 25, 2019 is as follows:

|   | December 30<br>2020 | December 25<br>2019 |
|---|---------------------|---------------------|
| Cash paid for amounts included in the measurement of lease liabilities: |                     |                     |
| Operating cash flows from finance leases                                | \$ 213              | \$ 193              |
| Operating cash flows from operating leases                              | 42,144              | 37,468              |
| Financing cash flows from finance leases                                | 2,206               | 1,926               |
| Right-of-use assets obtained in exchange for lease obligations:         |                     |                     |
| Finance leases  | 2,298               | 2,831               |
| Operating leases  | 59,969              | 65,556              |

## NOTE 11: EMPLOYEE BENEFIT PLANS

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### Defined Contribution Plan

Our employees are eligible to participate in a defined contribution savings plan maintained by Shake Shack. The plan is funded by employee and employer contributions. We pay our share of the employer contributions directly to the third party trustee. Employer contributions to the plan are at our discretion. We make contributions matching a portion of participants' contributions. We match 100% of participants' contributions for the first 3% of eligible compensation contributed and 50% of contributions made in excess of 3% of eligible compensation up to 5% of eligible compensation. Employer contributions totaled \$895, \$772 and \$509 for fiscal 2020, fiscal 2019 and fiscal 2018, respectively.

## NOTE 12: STOCKHOLDERS' EQUITY

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### Equity Offering

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 \$75,000 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 \$9,794 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 \$135,857 of proceeds, net of underwriting discounts and commissions. The proceeds were used to purchase newly-issued LLC Interests.

### Redemptions of LLC Interests

The SSE Holdings LLC Agreement 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 receive a corresponding number of LLC Interests, increasing our total ownership interest in SSE Holdings. Simultaneously, and in connection with a redemption, the corresponding number of shares of Class B common stock are surrendered and cancelled.

The following table summarizes redemptions of LLC Interests activity during fiscal 2020, fiscal 2019 and fiscal 2018:

|  | 2020    | 2019      | 2018      |
|--|---------|-----------|-----------|
| <b>Redemption and acquisition of LLC Interests</b>   |         |           |           |
| Number of LLC Interests redeemed by non-controlling interest holders                                   | 194,009 | 1,721,887 | 2,692,660 |
| Number of LLC Interests acquired in connection with the Gramercy Tavern Merger                         | —       | 2,690,263 | —         |
| Number of LLC Interests received by Shake Shack Inc.   | 194,009 | 4,412,150 | 2,692,660 |
| <b>Issuance of Class A common stock</b>  |         |           |           |
| Shares of Class A common stock issued in connection with redemptions of LLC Interests                  | 194,009 | 1,721,887 | 2,692,660 |
| Shares of Class A common stock issued in connection with the Gramercy Tavern Merger                    | —       | 2,690,263 | —         |
| <b>Cancellation of Class B common stock</b>  |         |           |           |
| Shares of Class B common stock surrendered and cancelled   | 194,009 | 1,721,887 | 2,692,660 |
| Shares of Class B common stock surrendered and cancelled in connection with the Gramercy Tavern Merger | —       | 2,690,263 | —         |

### Stock Compensation Plan Activity

We received an aggregate of 456,942, 484,319 and 300,696 LLC Interests in connection with the activity under our stock compensation plan during fiscal 2020, fiscal 2019 and fiscal 2018, respectively.

### Dividend Restrictions

We are a holding company with no direct operations. As a result, our ability to pay cash dividends on our common stock, if any, is dependent upon cash dividends, distributions or other transfers from SSE Holdings. The amounts available to us to pay cash dividends are subject to certain covenants and restrictions set forth in the Revolving Credit Facility. As of December 30, 2020, essentially all of the net assets of SSE Holdings were restricted. See Note 9, Debt, for more information regarding the covenants and restrictions set forth in the Revolving Credit Facility.

### Gramercy Tavern Corp. Merger

Pursuant to a Stockholders Agreement, dated as of February 4, 2015, as amended, by and among Daniel H. Meyer, the Daniel H. Meyer 2012 Gift Trust, now known as the DHM Gift Trust (the "Gift Trust"), other affiliates (collectively, the "Meyer Stockholders") and other parties thereto, the Meyer Stockholders had the right to cause all of the shares of Gramercy Tavern Corp. ("GTC") to be exchanged for shares of our Class A common stock pursuant to a tax-free reorganization. In August 2019, the Meyer Stockholders exercised their right with respect to GTC (the "GTC Merger"). To effect the GTC Merger, a newly-formed wholly-owned subsidiary of Shake Shack Inc. merged with and into GTC, with GTC as the surviving entity, which was then merged with and into Shake Shack Inc. Prior to the GTC Merger, GTC owned 2,690,263 LLC Interests and an equivalent number of shares of our Class B common stock. The stockholders of GTC, received on a one-for-one basis, 2,690,263 shares of Class A common stock based upon the amount of shares of GTC held by the stockholders; all of the shares of Class B common stock held by GTC were cancelled; and all of the LLC Interests held by GTC were transferred to us.

## NOTE 13: 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 December 30, 2020 and December 25, 2019:

|  | 2020              |                | 2019              |                |
|--|-------------------|----------------|-------------------|----------------|
|  | LLC Interests     | Ownership %    | LLC Interests     | Ownership %    |
| Number of LLC Interests held by Shake Shack Inc.                 | 38,717,790        | 92.9 %         | 34,417,302        | 91.6 %         |
| Number of LLC Interests held by non-controlling interest holders | 2,951,188         | 7.1 %          | 3,145,197         | 8.4 %          |
| <b>Total LLC Interests outstanding</b>                           | <b>41,668,978</b> | <b>100.0 %</b> | <b>37,562,499</b> | <b>100.0 %</b> |

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 fiscal 2020 and fiscal 2019 was 7.7% and 15.9%, respectively.

The following table summarizes the effects of changes in ownership in SSE Holdings on our equity during fiscal 2020, fiscal 2019 and fiscal 2018.

|  | 2020              | 2019             | 2018             |
|--|-------------------|------------------|------------------|
| Net income (loss) attributable to Shake Shack Inc.   | \$ (42,158)       | \$ 19,827        | \$ 15,179        |
| Other comprehensive income (loss):   |                   |                  |                  |
| Unrealized holding gains on equity securities  | —                 | —                | 10               |
| Unrealized gain on foreign currency translation adjustment   | 1                 | 2                | —                |
| Transfers (to) from non-controlling interests:   |                   |                  |                  |
| Increase in additional paid-in capital as a result of the redemption of LLC Interests  | 1,723             | 11,934           | 15,202           |
| Increase in additional paid-in-capital as a result of the GTC Merger   | —                 | 19,218           | —                |
| Increase in additional paid-in capital as a result of activity under the stock compensation plan and the related income tax effect | 5,909             | 4,517            | 2,509            |
| Increase in additional paid-in-capital as a result of the issuance of Class A common stock sold in equity offerings                | 135,718           | —                | —                |
| <b>Total effect of changes in ownership interest on equity attributable to Shake Shack Inc.</b>                                    | <b>\$ 101,193</b> | <b>\$ 55,498</b> | <b>\$ 32,900</b> |

During fiscal 2020, an aggregate of 194,009 LLC Interests were redeemed by the non-controlling interest holders for newly-issued shares of Class A common stock, and we received 194,009 LLC Interests, increasing our total ownership interest in SSE Holdings to 92.9%.

During fiscal 2019, an aggregate of 4,412,150 LLC Interests were redeemed by the non-controlling interest holders for newly-issued shares of Class A common stock, of which 2,690,263 were received through the Gramercy Tavern Merger as described in Note 12, Stockholders' Equity, and we received 4,412,150 LLC Interests, increasing our total ownership interest in SSE Holdings to 91.6%.

We received an aggregate of 456,942 and 484,319 LLC Interests in connection with the activity under our stock compensation plans during fiscal 2020 and fiscal 2019, respectively.

## NOTE 14: EQUITY-BASED COMPENSATION

A summary of equity-based compensation expense recognized during fiscal 2020, fiscal 2019 and fiscal 2018 is as follows:

|   | 2020            | 2019            | 2018            |
|---|-----------------|-----------------|-----------------|
| Stock options   | \$ 322          | \$ 2,626        | \$ 3,039        |
| Performance stock units   | 1,309           | 3,035           | 2,449           |
| Restricted stock units  | 3,929           | 1,844           | 655             |
| <b>Equity-based compensation expense</b>  | <b>\$ 5,560</b> | <b>\$ 7,505</b> | <b>\$ 6,143</b> |
| <b>Total income tax benefit recognized related to equity-based compensation</b> | <b>\$ 204</b>   | <b>\$ 188</b>   | <b>\$ 172</b>   |

Equity-based compensation expense is allocated to General and administrative expenses and Labor and related expenses on the Consolidated Statements of Income (Loss) during fiscal 2020, fiscal 2019 and fiscal 2018 as follows:

|  | 2020            | 2019            | 2018            |
|--|-----------------|-----------------|-----------------|
| General and administrative expenses      | \$ 5,039        | \$ 7,189        | \$ 5,991        |
| Labor and related expenses               | 521             | 316             | 152             |
| <b>Equity-based compensation expense</b> | <b>\$ 5,560</b> | <b>\$ 7,505</b> | <b>\$ 6,143</b> |

We capitalized \$40, \$195 and \$107 of equity-based compensation expense associated with the construction cost of our Shacks and our enterprise-wide system upgrade, Project Concrete, during fiscal 2020, fiscal 2019 and fiscal 2018, respectively.

### Stock Options

In January 2015, we adopted the 2015 Incentive Award Plan (the "2015 Plan") under which we may grant up to 5,865,522 stock options and other equity-based awards to employees, directors and officers. The stock options granted generally vest equally over periods ranging from one to five years. We do not use cash to settle any of our equity-based awards, and we issue new shares of Class A common stock upon the exercise of stock options.

The fair value of stock option awards was determined on the grant date using the Black-Scholes valuation model based on the following weighted-average assumptions:

|  | 2020   | 2019   | 2018   |
|--|--------|--------|--------|
| Expected term (years) <sup>(1)</sup>   | 7.5    | 7.5    | 7.5    |
| Expected volatility <sup>(2)</sup>     | 42.3 % | 42.2 % | 42.5 % |
| Risk-free interest rate <sup>(3)</sup> | 0.7 %  | 2.4 %  | 2.8 %  |
| Dividend yield <sup>(4)</sup>          | — %    | — %    | — %    |

(1) Expected term represents the estimated period of time until an award is exercised and was determined using the simplified method.

(2) Expected volatility is based on the historical volatility of a selected peer group over a period equivalent to the expected term.

(3) The risk-free rate is an interpolation of yields on U.S. Treasury securities with maturities equivalent to the expected term.

(4) We have assumed a dividend yield of zero as we have no plans to declare dividends in the foreseeable future.

A summary of stock option activity for fiscal years 2020 is as follows:

|  | Stock Options | Weighted Average Exercise Price | Aggregate Intrinsic Value | Weighted Average Remaining Contractual Life (Years) |
|--|---------------|---------------------------------|---------------------------|---|
| Outstanding as of December 25, 2019                    | 890,267       | \$ 21.44                        |                           |   |
| Granted  | 6,170         | 35.89                           |                           |   |
| Exercised  | (405,688)     | 21.20                           |                           |   |
| Forfeited  | (1,725)       | (21.00)                         |                           |   |
| Outstanding as of December 30, 2020                    | 489,024       | \$ 21.83                        | \$ 30,824                 | 4.2   |
| Options vested and exercisable as of December 30, 2020 | 474,744       | \$ 21.25                        | \$ 30,199                 | 4.1   |
| Options expected to vest as of December 30, 2020       | 14,280        | \$ 41.09                        | \$ 625                    | 8.2   |

As of December 30, 2020, total unrecognized compensation expense related to unvested stock options was \$223, which is expected to be recognized over a weighted-average period of 3.2 years. The weighted-average grant date fair value of options granted during fiscal 2020, fiscal 2019 and fiscal 2018 was \$16.21, \$26.42, \$19.86, respectively. The total intrinsic value of stock options exercised during fiscal 2020, fiscal 2019 and fiscal 2018 was \$25,824, \$16,905 and \$5,786, respectively. Cash received from stock option exercises was \$8,224 and the cash tax benefit realized for the tax deductions from these option exercises was \$229 for fiscal 2020. The total fair value of stock options vested during fiscal 2020, fiscal 2019 and fiscal 2018 was \$2,674, \$2,950 and \$3,483, respectively.

The total fair value of stock options vested during fiscal 2020, fiscal 2019 and fiscal 2018 was \$2,674, \$2,950 and \$3,483, respectively.

The following table summarizes information about stock options outstanding and exercisable as December 30, 2020:

| Exercise Price | Options Outstanding                     |   |                                 | Options Exercisable                     |   |                                 |
|----------------|---|---|---------------------------------|---|---|---------------------------------|
|                | Number Outstanding at December 30, 2020 | Weighted Average Remaining Contractual Life (Years) | Weighted Average Exercise Price | Number Exercisable at December 30, 2020 | Weighted Average Remaining Contractual Life (Years) | Weighted Average Exercise Price |
| \$21.00        | 466,225                                 | 4.1   | \$ 21.00                        | 466,225                                 | 4.1   | \$ 21.00                        |
| \$34.62        | 7,411                                   | 5.4   | \$ 34.62                        | 7,411                                   | 5.4   | \$ 34.62                        |
| \$36.41        | 1,108                                   | 5.9   | \$ 36.41                        | 1,108                                   | 5.9   | \$ 36.41                        |
| \$38.91        | 2,060                                   | 6.4   | \$ 38.91                        | —                                       | —   | \$ —                            |
| \$39.91        | 3,022                                   | 7.2   | \$ 39.91                        | —                                       | —   | \$ —                            |
| \$54.36        | 3,028                                   | 8.2   | \$ 54.36                        | —                                       | —   | \$ —                            |
| \$35.89        | 6,170                                   | 9.2   | \$ 35.89                        | —                                       | —   | \$ —                            |

## Performance Stock Units

Under the 2015 Plan, we may grant performance stock units and other types of performance-based equity awards that vest based on the outcome of certain performance criteria that are established and approved by the Compensation Committee of the Board of Directors. The actual number of equity awards earned is based on the level of performance achieved over a predetermined performance period, relative to established financial goals, none of which are considered market conditions.

For performance stock units granted during fiscal 2020, the amount of awards that can be earned ranges from 0% to 125% of the number of performance stock units granted, based on the achievement of approved financial goals over a one-year performance

period. In addition to the performance conditions, performance stock units are also subject to a requisite service period and the awards vest ratably over four years. The fair value of performance stock units is determined based on the closing market price of our Class A common stock on the date of grant. Compensation expense related to the performance stock units is recognized using a graded-vesting attribution method over the vesting period based on the most probable outcome of the performance conditions.

A summary of unvested performance stock unit activity for fiscal year 2020, is as follows:

|  | Performance<br>Stock<br>Units | Weighted<br>Average<br>Grant Date<br>Fair Value |
|--|-------------------------------|---|
| Outstanding as of December 25, 2019    | 117,517                       | \$ 51.97  |
| Granted                                | 79,388                        | 57.20   |
| Performance achievement <sup>(1)</sup> | 7,792                         | 52.47   |
| Vested                                 | (50,242)                      | 49.34   |
| Forfeited                              | (17,234)                      | 54.45   |
| Outstanding as of December 30, 2020    | 137,221                       | \$ 55.67  |

(1) Represents the incremental awards earned and/or awards forfeited based on the achievement of performance conditions.

As of December 30, 2020, there were 137,221 performance stock units outstanding, of which none were vested. The weighted average grant date fair value of share awards granted during fiscal 2020, fiscal 2019 and fiscal 2018 were \$57.20, \$52.47, and \$58.46, respectively. The total fair value of awards that vested during fiscal 2020, fiscal 2019 and fiscal 2018 was \$2,730, \$3,456 and \$2,310, respectively. As of December 30, 2020, total unrecognized compensation expense related to unvested performance stock units was \$966, which is expected to be recognized over a weighted-average period of 1.9 years.

## Restricted Stock Units

Under the 2015 Plan, we may grant restricted stock units to employees, directors and officers. The restricted stock units granted generally vest equally over periods ranging from one to five years. The fair value of restricted stock units is determined based on the closing market price of our Class A common stock on the date of grant. Compensation expense related to the restricted stock units is recognized using a straight-line attribution method over the vesting period.

A summary of unvested restricted stock unit activity for fiscal year 2020 is as follows:

|                                     | Restricted<br>Stock<br>Units | Weighted<br>Average<br>Grant Date<br>Fair Value |
|-------------------------------------|------------------------------|---|
| Outstanding as of December 25, 2019 | 152,098                      | \$ 49.87  |
| Granted                             | 170,528                      | 57.41   |
| Vested                              | (41,974)                     | 50.66   |
| Forfeited                           | (22,159)                     | 54.46   |
| Outstanding as of December 30, 2020 | 258,493                      | \$ 54.33  |

As of December 30, 2020, there were 258,493 restricted stock units outstanding, of which none were vested. The weighted average grant date fair value of share awards granted during fiscal 2020, fiscal 2019 and fiscal 2018 were \$57.41, \$52.51, and \$49.12, respectively. The total fair value of shares vested during fiscal 2020, fiscal 2019 and fiscal 2018 was \$2,463, \$947 and \$867, respectively. As of December 30, 2020, total unrecognized compensation expense related to unvested restricted stock units was \$10,654, which is expected to be recognized over a weighted-average period of 2.8 years.

## NOTE 15: 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.

### Income Tax Expense

The components of income (loss) before income taxes are follows:

|  | 2020               | 2019             | 2018             |
|--|--------------------|------------------|------------------|
| Domestic                                 | \$ (59,873)        | \$ 11,797        | \$ 21,595        |
| Foreign                                  | 14,396             | 15,717           | 9,215            |
| <b>Income (loss) before income taxes</b> | <b>\$ (45,477)</b> | <b>\$ 27,514</b> | <b>\$ 30,810</b> |

The components of income tax expense are as follows:

|                             | 2020         | 2019            | 2018            |
|-----------------------------|--------------|-----------------|-----------------|
| Current income taxes:       |              |                 |                 |
| Federal                     | \$ —         | \$ 2,984        | \$ 5,281        |
| State and local             | 190          | 4,283           | 858             |
| Foreign                     | 1,223        | 2,183           | 1,935           |
| Total current income taxes  | 1,413        | 9,450           | 8,074           |
| Deferred income taxes:      |              |                 |                 |
| Federal                     | (12,638)     | (5,643)         | (210)           |
| State and local             | 11,282       | (421)           | 998             |
| Total deferred income taxes | (1,356)      | (6,064)         | 788             |
| <b>Income tax expense</b>   | <b>\$ 57</b> | <b>\$ 3,386</b> | <b>\$ 8,862</b> |

Reconciliations of income tax expense computed at the U.S. federal statutory income tax rate to the recognized income tax expense and the U.S. statutory income tax rate to our effective tax rates are as follows:

|  | 2020         |               | 2019            |               | 2018            |               |
|--|--------------|---------------|-----------------|---------------|-----------------|---------------|
| Expected U.S. federal income taxes at statutory rate                           | \$ (9,550)   | 21.0 %        | \$ 5,778        | 21.0 %        | \$ 6,470        | 21.0 %        |
| State and local income taxes, net of federal benefit                           | 5,776        | (12.7)%       | 3,924           | 14.2 %        | 797             | 2.6 %         |
| Foreign withholding taxes  | 1,223        | (2.7)%        | 2,183           | 7.9 %         | 1,935           | 6.3 %         |
| Tax credits  | (1,533)      | 3.4 %         | (3,007)         | (10.9)%       | (2,151)         | (7.0)%        |
| Non-controlling interest   | 537          | (1.2)%        | (1,405)         | (5.1)%        | (1,908)         | (6.2)%        |
| Remeasurement of deferred tax assets in connection with other tax rate changes | 5,433        | (11.9)%       | 208             | 0.8 %         | 3,794           | 12.3 %        |
| Change in valuation allowance  | (2,264)      | 5.0 %         | (4,669)         | (17.0)%       | —               | — %           |
| Other  | 435          | (1.0)%        | 374             | 1.4 %         | (75)            | (0.2)%        |
| <b>Income tax expense</b>  | <b>\$ 57</b> | <b>(0.1)%</b> | <b>\$ 3,386</b> | <b>12.3 %</b> | <b>\$ 8,862</b> | <b>28.8 %</b> |

Our effective income tax rates for fiscal 2020, fiscal 2019 and fiscal 2018 were (0.1)%, 12.3% and 28.8%, respectively. The decrease in our effective income tax rate from fiscal 2019 to fiscal 2020 was primarily driven by lower tax rates for foreign and state taxes mainly in connection with lower pre-tax book income and remeasurement of deferred tax assets, partially offset by lower tax credits and an increase in valuation allowance. The decrease in our effective income tax rate from fiscal 2018 to fiscal 2019 was primarily due to higher tax credits, an increase in windfall benefits from equity-based compensation and a decrease in valuation allowance, partially offset by an increase in our ownership of SSE Holdings, which increases our share of taxable income of SSE Holdings.

## Deferred Tax Assets and Liabilities

The components of deferred tax assets and liabilities are as follows:

|  | December 30<br>2020 | December 25<br>2019 |
|--|---------------------|---------------------|
| <b>Deferred tax assets:</b>                                  |                     |                     |
| Investment in partnership                                    | \$ 139,379          | \$ 179,363          |
| Tax Receivable Agreement                                     | 63,853              | 65,679              |
| Operating lease liability                                    | 3,470               | 4,768               |
| Financing lease liability                                    | 51                  | 78                  |
| Deferred revenue   | 141                 | 199                 |
| Equity-based compensation                                    | 331                 | 347                 |
| Net operating loss carryforwards                             | 75,522              | 26,058              |
| Tax credits  | 9,610               | 8,419               |
| Other assets   | 457                 | 398                 |
| <b>Total gross deferred tax assets</b>                       | <b>292,814</b>      | <b>285,309</b>      |
| Valuation allowance  | (2,656)             | (954)               |
| <b>Total deferred tax assets, net of valuation allowance</b> | <b>290,158</b>      | <b>284,355</b>      |
| <b>Deferred tax liabilities:</b>                             |                     |                     |
| Property and equipment                                       | (300)               | (585)               |
| Operating lease right-of-use asset                           | (2,802)             | (3,876)             |
| Financing lease right-of-use asset                           | (49)                | (77)                |
| <b>Total gross deferred tax liabilities</b>                  | <b>(3,151)</b>      | <b>(4,538)</b>      |
| <b>Net deferred tax assets</b>                               | <b>\$ 287,007</b>   | <b>\$ 279,817</b>   |

As of December 30, 2020, our federal and state net operating loss carryforwards for income tax purposes were \$313,940 and \$183,829. If not utilized, \$262,073 of our federal net operating losses can be carried forward indefinitely, and the remainder will begin to expire in 2035. If not utilized \$40,695 of our state net operating loss carryforwards can be carried forward indefinitely, and the remainder will begin to expire in 2023. As of December 30, 2020, we had federal tax credit carryforwards of \$9,002 which will begin to expire in 2025 and state tax credits of \$608 which have an indefinite carryforward period.

As described in Note 12, Stockholders' Equity, we acquired an aggregate of 650,951 LLC Interests during fiscal 2020 through redemptions of LLC Interests and activity under stock-based compensation plans. We recognized a deferred tax asset in the amount of \$8,609 associated with the basis difference in our investment in SSE Holdings upon acquiring these LLC Interests. As of December 30, 2020, the total deferred tax asset related to the basis difference in our investment in SSE Holdings was \$139,379. 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. During fiscal 2020, the total valuation allowance established against this deferred tax asset to which it relates was \$77.

During fiscal 2020, we also recognized \$1,106 of deferred tax assets, and other loss of \$1,147, related to additional tax basis changes generated from expected future payments under the Tax Receivable Agreement and related deductions for imputed interest on such payments. See "—Tax Receivable Agreement" 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 December 30, 2020, 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 expected to result in a capital loss upon the eventual sale of our interest in SSE Holdings) are more likely than not to be realized, except for tax credits related to New York City UBT and certain foreign

tax credits no longer expected to be utilized before expiration. As such, a valuation allowance in the amount of \$2,579 was recognized. The net change in valuation allowance for fiscal 2020 was an increase of \$1,625.

## Uncertain Tax Positions

There were no reserves for uncertain tax positions as of December 30, 2020 and December 25, 2019. Shake Shack Inc. was formed in September 2014 and did not engage in any operations prior to the IPO and Organizational Transactions. The statute of limitations remains open for tax years beginning in 2015 for Shake Shack Inc. Additionally, although SSE Holdings is treated as a partnership for U.S. federal and state income taxes purposes, it is still required to file an annual U.S. Return of Partnership Income, which is subject to examination by the Internal Revenue Service ("IRS"). The statute of limitations has expired for tax years through 2016 for SSE Holdings.

## 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 non-controlling interest holders and other qualifying transactions. We plan to make an election under Section 754 of 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 by the non-controlling interest holders 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 the then-existing non-controlling interest holders (the "Tax Receivable Agreement") that provides for the payment by us to the non-controlling interest holders 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 non-controlling interest holder under the Tax Receivable Agreement are assignable to transferees of its LLC Interests.

During fiscal 2020, we acquired an aggregate of 194,009 LLC Interests in connection with the redemption of LLC Interests that 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 \$4,024 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 fiscal 2020 payments of \$6,643, inclusive of interest, were made to the members of SSE Holdings pursuant to the Tax Receivable Agreement. Payments of \$707 were made to members of SSE Holdings pursuant to the Tax Receivable Agreement during fiscal 2019. As of December 30, 2020, the total amount of TRA Payments due under the Tax Receivable Agreement was \$232,954, of which no amount was included in Other current liabilities on the Consolidated Balance Sheet. See Note 18, Commitments and Contingencies, for more information relating to our liabilities under the Tax Receivable Agreement.

On March 27, 2020, the U.S. government enacted the CARES Act to provide certain relief as a result of the COVID-19 pandemic. The CARES Act provides tax relief, along with other stimulus measures, including a retroactive technical correction of prior tax legislation for tax depreciation of certain qualified improvement property, among other changes.

During fiscal 2020, we recognized accelerated tax depreciation deductions of \$351 related to qualified improvement property assets placed in service in fiscal 2020, and are recorded as components within our Deferred income taxes, net on the Consolidated Balance Sheets. In addition, subsequent to the second quarter of 2020, we began deferring the employer-paid portion of social security taxes as permitted by the CARES Act.



## NOTE 16: EARNINGS (LOSS) PER SHARE

Basic earnings (loss) per share of Class A common stock is computed by dividing net income (loss) attributable to Shake Shack Inc. by the weighted-average number of shares of Class A common stock outstanding during the period. Diluted earnings (loss) per share of Class A common stock is computed by dividing net income (loss) attributable to Shake Shack Inc. by the weighted-average number of shares of Class A common stock outstanding adjusted to give effect to potentially dilutive securities.

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 for fiscal 2020, fiscal 2019 and fiscal 2018.

|   | 2020        | 2019      | 2018      |
|---|-------------|-----------|-----------|
| <b>Numerator:</b>   |             |           |           |
| Net income (loss)   | \$ (45,534) | \$ 24,128 | \$ 21,948 |
| Less: net income (loss) attributable to non-controlling interests   | (3,376)     | 4,301     | 6,769     |
| Net income (loss) attributable to Shake Shack Inc.                  | \$ (42,158) | \$ 19,827 | \$ 15,179 |
| <b>Denominator:</b>   |             |           |           |
| Weighted-average shares of Class A common stock outstanding—basic   | 37,129      | 31,381    | 28,299    |
| <b>Effect of dilutive securities:</b>                               |             |           |           |
| Stock options   | —           | 743       | 798       |
| Performance stock units   | —           | 70        | 63        |
| Restricted stock units  | —           | 57        | 19        |
| Weighted-average shares of Class A common stock outstanding—diluted | 37,129      | 32,251    | 29,179    |
| Earnings (loss) per share of Class A common stock—basic             | \$ (1.14)   | \$ 0.63   | \$ 0.54   |
| Earnings (loss) per share of Class A common stock—diluted           | \$ (1.14)   | \$ 0.61   | \$ 0.52   |

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.

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 fiscal 2020, fiscal 2019 and fiscal 2018.

|                                | 2020          | 2019          | 2018          |
|--------------------------------|---------------|---------------|---------------|
| Stock options                  | 489,024 (1)   | 946 (2)       | —             |
| Performance stock units        | 137,221 (1)   | 51,197 (3)    | 21,560 (3)    |
| Restricted stock units         | 258,493 (1)   | —             | —             |
| Shares of Class B common stock | 2,951,188 (4) | 3,145,197 (4) | 7,557,347 (4) |

(1) Represents number of instruments 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.

(2) Weighted-average number of securities 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").

(3) Weighted-average number of securities 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 for a portion of the fiscal year.

(4) Shares of our Class B common stock outstanding as of the end of the period are considered potentially dilutive shares of Class A common stock. Amounts have been excluded from the computations of diluted earnings (loss) per share of Class A common stock because the effect would have been anti-dilutive under the if-converted and two-class methods.

## NOTE 17: SUPPLEMENTAL CASH FLOW INFORMATION

The following table sets forth supplemental cash flow information for fiscal 2020, fiscal 2019 and fiscal 2018:

|   | 2020     | 2019     | 2018     |
|---|----------|----------|----------|
| Cash paid for:  |          |          |          |
| Income taxes, net of refunds  | \$ 1,612 | \$ 3,044 | \$ 3,272 |
| Interest, net of amounts capitalized  | 643      | 255      | 2,261    |
| Non-cash investing activities:  |          |          |          |
| Accrued purchases of property and equipment   | 15,515   | 12,620   | 17,443   |
| Capitalized landlord assets for leases where we are deemed the accounting owner         | —        | —        | 5,443    |
| Capitalized equity-based compensation   | 37       | 101      | 107      |
| Non-cash financing activities:  |          |          |          |
| Class A common stock issued in connection with the redemption of LLC Interests          | —        | 2        | 2        |
| Class A common stock issued in connection with the GTC Merger                           | —        | 3        | —        |
| Cancellation of Class B common stock in connection with the redemption of LLC Interests | —        | (2)      | (2)      |
| Cancellation of Class B common stock in connection with the GTC Merger                  | —        | (3)      | —        |
| Establishment of liabilities under tax receivable agreement                             | 4,024    | 32,065   | 44,338   |

## NOTE 18: 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 responsible for our proportionate share of real estate taxes, common area maintenance costs and other occupancy costs. See Note 10, Leases.

As security under the terms of one of our leases, we are obligated under a letter of credit totaling \$130 as of December 30, 2020, 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 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 elected to participate in the settlement for \$1,200. As of December 30, 2020, 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 December 30, 2020, the amount of the ultimate liability with respect to these matters was not material.

## Liabilities under Tax Receivable Agreement

As described in Note 15, Income Taxes, we are a party to the Tax Receivable Agreement under which we are contractually committed to pay the non-controlling interest holders 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 the transaction that gave rise to the payment 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. As of December 30, 2020, we recognized \$232,954 of liabilities relating to our obligations under the Tax Receivable Agreement, after concluding that it was probable that we would have sufficient future taxable income to utilize the related tax benefits. 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 generated by all transactions that occurred in fiscal 2020.

## NOTE 19: RELATED PARTY TRANSACTIONS

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### 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.

|                           | Classification    | 2020  | 2019   | 2018   |
|---------------------------|-------------------|-------|--------|--------|
| Amounts received from HYC | Licensing revenue | \$ 67 | \$ 571 | \$ 420 |

|                      | Classification      | December 30<br>2020 | December 25<br>2019 |
|----------------------|---------------------|---------------------|---------------------|
| Amounts due from HYC | Accounts receivable | \$ 8                | \$ 47               |

## 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.

|                                 | Classification                 | 2020   | 2019   | 2018   |
|---------------------------------|--------------------------------|--------|--------|--------|
| Amounts paid to MSP Conservancy | Occupancy and related expenses | \$ 846 | \$ 964 | \$ 877 |

|                                | Classification   | December 30<br>2020 | December 25<br>2019 |
|--------------------------------|------------------|---------------------|---------------------|
| Amounts due to MSP Conservancy | Accrued expenses | \$ —                | \$ 53               |

## Share Our Strength

The Chairman of our Board of Directors serves as a director of Share Our Strength, for which Shake Shack has held the "Great American Shake Sale" to raise money and awareness for childhood hunger. During the Great American Shake Sale, we encourage guests to donate money to Share Our Strength's No Kid Hungry campaign in exchange for a coupon for a free shake. All of the guest donations we collect go directly to Share Our Strength. No amounts were due to Share Our Strength as of both December 30, 2020 and December 25, 2019.

|                                  | Classification | 2020 | 2019   | 2018   |
|----------------------------------|----------------|------|--------|--------|
| Amounts raised through donations | —              | \$ — | \$ 190 | \$ 343 |

|   |                                     |      |       |       |
|---|-------------------------------------|------|-------|-------|
| Costs incurred for free shakes redeemed | General and administrative expenses | \$ — | \$ 30 | \$ 53 |
|---|-------------------------------------|------|-------|-------|

## 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 December 30, 2020 and December 25, 2019.

|                     | Classification           | 2020   | 2019   | 2018   |
|---------------------|--------------------------|--------|--------|--------|
| Amounts paid to Olo | Other operating expenses | \$ 242 | \$ 170 | \$ 111 |

## 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. No amounts were due to Square as of both December 30, 2020 and December 25, 2019.

|                        | Classification           | 2020     | 2019     | 2018   |
|------------------------|--------------------------|----------|----------|--------|
| Amounts paid to Square | Other operating expenses | \$ 1,697 | \$ 1,692 | \$ 445 |

## 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 December 30, 2020 and December 25, 2019.

## Tax Receivable Agreement

As described in Note 15, 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.

|   | Classification            | 2020     | 2019   | 2018 |
|---|---------------------------|----------|--------|------|
| Amounts paid to members (inclusive of interest) | Other current liabilities | \$ 6,643 | \$ 707 | \$ — |

|  | Classification  | December 30<br>2020 | December 25<br>2019 |
|--|---|---------------------|---------------------|
| Amounts due under the Tax Receivable Agreement | Other current liabilities<br>Liabilities under Tax Receivable Agreement, net of current portion | \$ 232,954          | \$ 234,426          |

## 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 December 30, 2020 and December 25, 2019.

|  | Classification            | 2020   | 2019     | 2018   |
|--|---------------------------|--------|----------|--------|
| Amounts paid to non-controlling interest holders | Non-controlling interests | \$ 478 | \$ 1,708 | \$ 751 |

## Gramercy Tavern Corp. Merger

Pursuant to a Stockholders Agreement, dated as of February 4, 2015, as amended, by and among Daniel H. Meyer, the Daniel H. Meyer 2012 Gift Trust dtd 10/31/12 (the "Gift Trust"), other affiliates (collectively, the "Meyer Stockholders") and other parties thereto, the Meyer Stockholders had the right to cause all of the shares of Gramercy Tavern Corp. ("GTC") to be exchanged for shares of our Class A common stock pursuant to a tax-free reorganization. In August 2019, the Meyer Stockholders exercised their right with respect to GTC (the "GTC Merger"). To effect the GTC Merger, a newly-formed wholly-owned subsidiary of Shake Shack Inc. merged with and into GTC, with GTC as the surviving entity, which was then merged with and into Shake Shack Inc. The stockholders of GTC received on a one-for-one basis shares of Class A common stock based upon the amount of shares of GTC held by the stockholders; all of the shares of Class B common stock held by GTC were canceled; and all of the LLC Interests held by GTC were transferred to us. See Note 12 for more information.

## NOTE 20: GEOGRAPHIC INFORMATION

Revenue by geographic area for fiscal 2020, fiscal 2019 and fiscal 2018 is as follows:

|                      | 2020              | 2019              | 2018              |
|----------------------|-------------------|-------------------|-------------------|
| United States        | \$ 508,292        | \$ 578,702        | \$ 447,575        |
| Other countries      | 14,575            | 15,817            | 11,735            |
| <b>Total revenue</b> | <b>\$ 522,867</b> | <b>\$ 594,519</b> | <b>\$ 459,310</b> |

Revenues are shown based on the geographic location of our customers and licensees. Our long-lived assets are primarily located in the United States.

## NOTE 21: SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

The following table sets forth certain unaudited financial information for each quarter of fiscal 2020 and fiscal 2019. The unaudited quarterly information includes all adjustments (consisting of normal recurring adjustments) that, in the opinion of management, are necessary for the fair presentation of the information presented. Operating results for interim periods are not necessarily indicative of the results that may be expected for a full fiscal year.

|   | 2020             |                   |                  |                   |
|---|------------------|-------------------|------------------|-------------------|
|   | First<br>Quarter | Second<br>Quarter | Third<br>Quarter | Fourth<br>Quarter |
| Total revenue                             | \$ 143,170       | \$ 91,786         | \$ 130,401       | \$ 157,510        |
| Operating loss                            | (787)            | (24,075)          | (6,798)          | (12,216)          |
| Net loss                                  | (1,079)          | (18,031)          | (6,110)          | (20,314)          |
| Net loss attributable to Shake Shack Inc. | (960)            | (16,211)          | (5,559)          | (19,428)          |
| Loss per share <sup>(1)</sup> :           |                  |                   |                  |                   |
| Basic                                     | \$ (0.03)        | \$ (0.43)         | \$ (0.15)        | \$ (0.50)         |
| Diluted                                   | \$ (0.03)        | \$ (0.43)         | \$ (0.15)        | \$ (0.50)         |

|  | 2019             |                   |                  |                   |
|--|------------------|-------------------|------------------|-------------------|
|  | First<br>Quarter | Second<br>Quarter | Third<br>Quarter | Fourth<br>Quarter |
| Total revenue                                      | \$ 132,609       | \$ 152,713        | \$ 157,762       | \$ 151,435        |
| Operating income                                   | 5,162            | 11,871            | 8,164            | 488               |
| Net income (loss)                                  | 3,607            | 11,171            | 11,423           | (2,073)           |
| Net income (loss) attributable to Shake Shack Inc. | 2,546            | 9,030             | 10,344           | (2,093)           |
| Earnings (loss) per share <sup>(1)</sup> :         |                  |                   |                  |                   |
| Basic  | \$ 0.09          | \$ 0.30           | \$ 0.32          | \$ (0.06)         |
| Diluted  | \$ 0.08          | \$ 0.29           | \$ 0.31          | \$ (0.06)         |

(1) Basic and diluted earnings (loss) per share are computed independently for each of the quarters presented. Therefore, the sum of quarterly basic and diluted earnings (loss) per share amounts may not equal annual basic and diluted earnings (loss) per share amounts.

# Schedule I: Condensed Financial Information of Registrant

**SHAKE SHACK INC.**  
**CONDENSED BALANCE SHEETS**  
**(PARENT COMPANY ONLY)**  
*(in thousands, except share and per share amounts)*

|   | December 30<br>2020 | December 25<br>2019 |
|---|---------------------|---------------------|
| <b>ASSETS</b>   |                     |                     |
| Current assets:   |                     |                     |
| Cash  | \$ 9,469            | \$ 9,223            |
| Accounts receivable   | —                   | 1                   |
| Prepaid expenses  | 45                  | 206                 |
| Total current assets  | 9,514               | 9,430               |
| Due from SSE Holdings   | 2,103               | 7,124               |
| Deferred income taxes, net  | 285,577             | 279,012             |
| Investment in subsidiaries  | 356,497             | 247,372             |
| <b>TOTAL ASSETS</b>   | <b>\$ 653,691</b>   | <b>\$ 542,938</b>   |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>   |                     |                     |
| Current liabilities:  |                     |                     |
| Accounts payable  | 3                   | 1                   |
| Accrued expenses  | 125                 | 44                  |
| Due to SSE Holdings   | 13,288              | 9,652               |
| Current portion of liabilities under tax receivable agreement   | —                   | 7,777               |
| Total current liabilities   | 13,416              | 17,474              |
| Liabilities under tax receivable agreement, net of current portion  | 232,954             | 226,649             |
| Total liabilities   | 246,370             | 244,123             |
| Commitments and contingencies   |                     |                     |
| Stockholders' equity:   |                     |                     |
| Preferred stock, no par value—10,000,000 shares authorized; none issued and outstanding as of December 30, 2020 and December 25, 2019, respectively.  | —                   | —                   |
| Class A common stock, \$0.001 par value—200,000,000 shares authorized; 38,717,790 and 34,417,302 shares issued and outstanding as of December 30, 2020 and December 25, 2019, respectively. | 39                  | 35                  |
| Class B common stock, \$0.001 par value—35,000,000 shares authorized; 2,951,188 and 3,145,197 shares issued and outstanding as of December 30, 2020 and December 25, 2019, respectively.    | 3                   | 3                   |
| Additional paid-in capital  | 395,067             | 244,410             |
| Retained earnings   | 12,209              | 54,367              |
| Accumulated other comprehensive loss  | 3                   | —                   |
| Total stockholders' equity  | 407,321             | 298,815             |
| <b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>   | <b>\$ 653,691</b>   | <b>\$ 542,938</b>   |

See accompanying Notes to Condensed Financial Statements.

# Schedule I: Condensed Financial Information of Registrant (continued)

**SHAKE SHACK INC.**  
**CONDENSED STATEMENTS OF INCOME (LOSS)**  
**(PARENT COMPANY ONLY)**  
*(in thousands)*

|   | Fiscal Year Ended   |                     |                     |
|---|---------------------|---------------------|---------------------|
|   | December 30<br>2020 | December 25<br>2019 | December 26<br>2018 |
| Intercompany revenue                        | \$ 1,560            | \$ 2,018            | \$ 2,055            |
| <b>TOTAL REVENUE</b>                        | 1,560               | 2,018               | 2,055               |
| General and administrative expenses         | 2,179               | 1,683               | 1,933               |
| <b>TOTAL EXPENSES</b>                       | 2,179               | 1,683               | 1,933               |
| <b>OPERATING INCOME (LOSS)</b>              | (619)               | 335                 | 122                 |
| Equity in net income (loss) of subsidiaries | (41,152)            | 19,831              | 21,537              |
| Other income (loss)                         | (1,147)             | 808                 | 78                  |
| Interest expense                            | —                   | (150)               | (14)                |
| <b>INCOME (LOSS) BEFORE INCOME TAXES</b>    | (42,918)            | 20,824              | 21,723              |
| Income tax expense (benefit)                | (760)               | 997                 | 6,544               |
| <b>NET INCOME (LOSS)</b>                    | <b>\$ (42,158)</b>  | <b>\$ 19,827</b>    | <b>\$ 15,179</b>    |

See accompanying Notes to Condensed Financial Statements.



# Schedule I: Condensed Financial Information of Registrant (continued)

**SHAKE SHACK INC.**  
**CONDENSED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
**(PARENT COMPANY ONLY)**  
*(in thousands)*

|   | Fiscal Year Ended   |                     |                     |
|---|---------------------|---------------------|---------------------|
|   | December 30<br>2020 | December 25<br>2019 | December 26<br>2018 |
| Net income (loss)   | \$ (42,158)         | \$ 19,827           | \$ 15,179           |
| Other comprehensive income, net of tax <sup>(1)</sup> :                           |                     |                     |                     |
| Change in foreign currency translation adjustment                                 | 1                   | —                   | —                   |
| Equity securities:  |                     |                     |                     |
| Change in net unrealized holding losses   | —                   | —                   | (3)                 |
| Less: reclassification adjustments for net realized losses included in net income | —                   | —                   | 13                  |
| Net change  | 1                   | —                   | 10                  |
| <b>OTHER COMPREHENSIVE INCOME</b>   | <b>1</b>            | <b>—</b>            | <b>10</b>           |
| <b>COMPREHENSIVE INCOME (LOSS)</b>  | <b>\$ (42,157)</b>  | <b>\$ 19,827</b>    | <b>\$ 15,189</b>    |

(1) Net of tax benefit of \$0 for fiscal years ended December 30, 2020, December 25, 2019 and December 26, 2018.

See accompanying Notes to Condensed Financial Statements.

# Schedule I: Condensed Financial Information of Registrant (continued)

## SHAKE SHACK INC. CONDENSED STATEMENTS OF CASH FLOWS (PARENT COMPANY ONLY) (in thousands)

|  | Fiscal Year Ended   |                     |                     |
|--|---------------------|---------------------|---------------------|
|  | December 30<br>2020 | December 25<br>2019 | December 26<br>2018 |
| <b>OPERATING ACTIVITIES</b>  |                     |                     |                     |
| Net income (loss)  | \$ (42,158)         | \$ 19,827           | \$ 15,179           |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:                                     |                     |                     |                     |
| Equity in net income of subsidiaries   | 41,152              | (19,831)            | (21,537)            |
| Equity-based compensation  | 555                 | 279                 | 252                 |
| Deferred income taxes  | (721)               | (5,317)             | 777                 |
| Non-cash interest expense  | —                   | 151                 | —                   |
| Other non-cash income  | 1,147               | (808)               | (78)                |
| Changes in operating assets and liabilities:   |                     |                     |                     |
| Accounts receivable  | 1                   | (1)                 | —                   |
| Prepaid expenses and other current assets  | 161                 | (71)                | —                   |
| Due to/from SSE Holdings   | (1,254)             | (5,190)             | (7,103)             |
| Accounts payable   | 2                   | 1                   | —                   |
| Accrued expenses   | (29)                | 6,003               | 5,669               |
| Other current liabilities  | —                   | —                   | 14                  |
| <b>NET CASH USED IN OPERATING ACTIVITIES</b>   | <b>(1,144)</b>      | <b>(4,957)</b>      | <b>(6,827)</b>      |
| <b>INVESTING ACTIVITIES</b>  |                     |                     |                     |
| Purchases of LLC Interests from SSE Holdings   | (171,180)           | (29,481)            | (11,142)            |
| Return of investment in SSE Holdings   | —                   | —                   | 2,053               |
| <b>NET CASH USED IN INVESTING ACTIVITIES</b>   | <b>(171,180)</b>    | <b>(29,481)</b>     | <b>(9,089)</b>      |
| <b>FINANCING ACTIVITIES</b>  |                     |                     |                     |
| Proceeds from issuance of Class A common stock sold in equity offerings, net of underwriting discounts, commissions and offering costs | 144,861             | —                   | —                   |
| Proceeds from issuance of Class A common stock to SSE Holdings upon settlement of equity awards  | 26,319              | 29,481              | 11,142              |
| Proceeds from stock option exercises   | 8,033               | 9,201               | 5,472               |
| Payments under tax receivable agreement  | (6,643)             | (707)               | —                   |
| <b>NET CASH PROVIDED BY FINANCING ACTIVITIES</b>   | <b>172,570</b>      | <b>37,975</b>       | <b>16,614</b>       |
| <b>INCREASE IN CASH</b>  | <b>246</b>          | <b>3,537</b>        | <b>698</b>          |
| <b>CASH AT BEGINNING OF PERIOD</b>   | <b>9,223</b>        | <b>5,686</b>        | <b>4,988</b>        |
| <b>CASH AT END OF PERIOD</b>   | <b>\$ 9,469</b>     | <b>\$ 9,223</b>     | <b>\$ 5,686</b>     |

See accompanying Notes to Condensed Financial Statements.

# Schedule I: Condensed Financial Information of Registrant (continued)

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## SHAKE SHACK INC. NOTES TO CONDENSED FINANCIAL STATEMENTS (PARENT COMPANY ONLY)

*(in thousands, except share and per share amounts)*

### NOTE 1: ORGANIZATION

Shake Shack Inc. (the "Parent Company") was formed on September 23, 2014 as a Delaware corporation and is a holding company with no direct operations. The Parent Company's assets consist primarily of its equity interest in SSE Holdings, LLC ("SSE Holdings") and certain deferred tax assets.

The Parent Company's cash inflows are primarily from cash dividends or distributions and other transfers from SSE Holdings. The amounts available to the Parent Company to fulfill cash commitments and pay cash dividends on its common stock are subject to certain restrictions in SSE Holdings' Revolving Credit Facility. See Note 9, Debt, to the Company's consolidated financial statements.

### NOTE 2: BASIS OF PRESENTATION

These condensed Parent Company financial statements should be read in conjunction with the consolidated financial statements of Shake Shack Inc. and the accompanying notes thereto, included in this Annual Report on Form 10-K. For purposes of these condensed financial statements, the Parent Company's interest in SSE Holdings is recorded based upon its proportionate share of SSE Holdings' net assets (similar to presenting them on the equity method).

The Parent Company is the sole managing member of SSE Holdings, and pursuant to the Third Amended and Restated LLC Agreement of SSE Holdings (the "SSE Holdings LLC Agreement"), receives compensation in the form of reimbursements for all costs associated with being a public company and maintaining its existence. Intercompany revenue consists of these reimbursement payments and is recognized when the corresponding expense to which it relates is recognized. Certain intercompany balances presented in these condensed Parent Company financial statements are eliminated in the consolidated financial statements. Intercompany receivables of \$2,103 and \$7,124 were eliminated in consolidation as of December 30, 2020 and December 25, 2019, respectively. Intercompany payables of \$13,288 and \$9,652 were eliminated in consolidation as of December 30, 2020 and December 25, 2019, respectively.

For fiscal 2020, \$1,560 and \$41,152 of intercompany revenue and equity in net loss of subsidiaries, respectively, was eliminated in consolidation. For fiscal 2019, \$2,018 and \$19,831 of intercompany revenue and equity in net income of subsidiaries, respectively, was eliminated in consolidation. Related party amounts that were not eliminated in the consolidated financial statements include the Parent Company's liabilities under the tax receivable agreement, which totaled \$232,954 and \$234,426 as of December 30, 2020 and December 25, 2019, respectively.

### NOTE 3: COMMITMENTS AND CONTINGENCIES

On February 4, 2015, the Parent Company entered into a tax receivable agreement with the non-controlling interest holders that provides for payments to the non-controlling interest holders of 85% of the amount of any tax benefits that the Parent Company actually realizes, or in some cases is deemed to realize, as a result of certain transactions. See Note 15, Income Taxes, to the consolidated financial statements for more information regarding the Parent Company's Tax Receivable Agreement. As described in Note 18, Commitments and Contingencies, to the consolidated financial statements, amounts payable under the Tax Receivable Agreement are contingent upon, among other things, (i) generation of future taxable income of Shake Shack Inc. over the term of the Tax Receivable Agreement and (ii) future changes in tax laws.

As of December 30, 2020 and December 25, 2019, liabilities under the tax receivable agreement totaled \$232,954 and \$234,426, respectively.

#### NOTE 4: SUPPLEMENTAL CASH FLOW INFORMATION

The following table sets forth supplemental cash flow information for fiscal 2020, fiscal 2019 and fiscal 2018:

|   | 2020   | 2019   | 2018   |
|---|--------|--------|--------|
| <b>Cash paid for:</b>   |        |        |        |
| Income taxes  | \$ 124 | \$ 233 | \$ 185 |
| <b>Non-cash investing activities:</b>   |        |        |        |
| Accrued contribution related to stock option exercises  | 8,094  | 9,227  | 5,472  |
| Class A common stock issued in connection with the acquisition of LLC Interests upon redemption by the non-controlling interest holders | 1,723  | 11,934 | 15,202 |
| Class A common stock issued in connection with the GTC merger   | —      | 19,218 | —      |
| Non-cash contribution made in connection with equity awards granted to employees of SSE Holdings  | 5,193  | 4,402  | 5,999  |
| <b>Non-cash financing activities:</b>   |        |        |        |
| Cancellation of Class B common stock in connection with the redemption of LLC Interests   | —      | (2)    | (2)    |
| Cancellation of Class B common stock in connection with the GTC merger  | —      | (3)    | —      |
| Establishment of liabilities under tax receivable agreement   | 4,024  | 32,065 | 44,338 |

## Schedule II: Valuation and Qualifying Accounts

| <i>(in thousands)</i>                          | Balance at beginning of period | Additions                     |                           | Reductions | Balance at end of period |
|--|--------------------------------|-------------------------------|---------------------------|------------|--------------------------|
|  |                                | Charged to costs and expenses | Charged to other accounts |            |                          |
| <b>Deferred tax asset valuation allowance:</b> |                                |                               |                           |            |                          |
| Fiscal year ended December 26, 2018            | \$ 10,114                      | \$ 782                        | \$ —                      | \$ (3,971) | \$ 6,925                 |
| Fiscal year ended December 25, 2019            | \$ 6,925                       | \$ (4,654)                    | \$ —                      | \$ (1,317) | \$ 954                   |
| Fiscal year ended December 30, 2020            | \$ 954                         | \$ (2,610)                    | \$ 4,312 (1)              | \$ —       | \$ 2,656                 |

(1) Amount relates to a valuation allowance established on deferred tax assets related to our investment in SSE Holdings.

## **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

## **Item 9A. Controls and Procedures.**

### **DISCLOSURE CONTROLS AND PROCEDURES**

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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.

### **MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

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For Management's Report on Internal Control over Financial Reporting, see Item 8, Financial Statements and Supplementary Data.

### **CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING**

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There were no changes to our internal control over financial reporting that occurred during the quarter ended December 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **Item 9B. Other Information.**

Not applicable.

# PART III

## Item 10. Directors, Executive Officers and Corporate Governance.

The information required by this item with respect to our directors is incorporated by reference to the sections entitled "Nominees for Election as Class III Directors" and "Continuing Directors" in our Proxy Statement to be filed in connection with our 2021 Annual Meeting of Shareholders (the "Proxy Statement"). The information required by this item with respect to our Code of Business Conduct and Audit Committee (including our "audit committee financial expert") is incorporated by reference to the sections entitled "Code of Ethics" and "Audit Committee Report."

The information required by this item with respect to our executive officers is set forth under the section entitled "Information About Our Executive Officers" in Part I, Item 1 of this Annual Report on Form 10-K.

The information required by this item with respect to Section 16(a) of the Exchange Act is incorporated by reference to the section of the Proxy Statement entitled "Delinquent 16(a) Reports."

## Item 11. Executive Compensation.

The information required by this item with respect to director and executive officer compensation is incorporated by reference to the section entitled "Compensation Discussion and Analysis" in our Proxy Statement.

## Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by this item with respect to security ownership of certain beneficial owners and management is incorporated by reference to the section entitled "Security Ownership of Certain Beneficial Owners and Management" in our Proxy Statement.

### SECURITIES AUTHORIZED FOR ISSUANCE UNDER EQUITY INCENTIVE PLANS

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The following table provides information about our compensation plans under which our Class A common stock is authorized for issuance, as of December 30, 2020:

| Plan Category   | Number of securities to be issued upon exercise of outstanding options, warrants and rights | Weighted-average exercise price of outstanding options, warrants and rights | Number of securities remaining available for future issuances under equity compensation plans <sup>(2)</sup> |
|---|---|---|--|
| Equity compensation plans approved by security holders <sup>(1)</sup> | 489,024   | \$ 21.83  | 3,115,614  |

(1) Includes awards granted and available to be granted under our 2015 Incentive Award Plan.

(2) This amount represents shares of common stock available for issuance under the 2015 Incentive Award Plan, which include stock options, performance stock units and restricted stock units.

## **Item 13. Certain Relationships and Related Transactions, and Director Independence.**

The information required by this item with respect to transactions with related persons and director independence is incorporated by reference to the sections entitled “Certain Relationships and Related Party Transactions” and “Composition of our Board of Directors” in our Proxy Statement.

## **Item 14. Principal Accounting Fees and Services.**

The information required by this item with respect to principal accountant’s fees and services is incorporated by reference to the sections entitled “Audit and Related Fees” and “Audit Committee Report” in our Proxy Statement.



# Part IV

## Item 15. Exhibits and Financial Statement Schedules.

(a) The following documents are filed as part of this report:

(1) **Financial Statements**

|  | <b>Page</b> |
|--|-------------|
| <u>Management's Report</u>                                     | <u>79</u>   |
| <u>Report of Independent Registered Public Accounting Firm</u> | <u>80</u>   |
| <u>Consolidated Balance Sheets</u>                             | <u>84</u>   |
| <u>Consolidated Statements of Income (Loss)</u>                | <u>85</u>   |
| <u>Consolidated Statements of Comprehensive Income (Loss)</u>  | <u>86</u>   |
| <u>Consolidated Statements of Stockholders' Equity</u>         | <u>87</u>   |
| <u>Consolidated Statements of Cash Flows</u>                   | <u>88</u>   |
| <u>Notes to Consolidated Financial Statements</u>              | <u>89</u>   |

(2) **Financial Statement Schedules**

|  | <b>Page</b> |
|--|-------------|
| <u>Schedule I: Condensed Financial Information of Registrant</u> | <u>120</u>  |
| <u>Schedule II: Valuation and Qualifying Accounts</u>            | <u>126</u>  |

All other financial statement schedules are omitted since they are not required or are not applicable, or the required information is included in the consolidated financial statements or notes thereto.

(1) **Exhibits**

The exhibits listed on the accompanying Exhibit Index are filed or incorporated by reference as part of this report and such Exhibit Index is incorporated herein by reference.

## Item 16. Form 10-K Summary

None.

# EXHIBIT INDEX

| Exhibit Number | Exhibit Description   | Incorporated by Reference |         |             | Filed Herewith # |
|----------------|---|---------------------------|---------|-------------|------------------|
|                |   | Form                      | Exhibit | Filing Date |                  |
| <u>3.1</u>     | <u>Amended and Restated Certificate of Incorporation of Shake Shack Inc., effective February 4, 2015</u>  | 8-K                       | 3.1     | 2/10/2015   |                  |
| <u>3.2</u>     | <u>Second Amended and Restated Bylaws of Shake Shack Inc., dated October 1, 2019</u>  | 8-K                       | 3.1     | 10/4/2019   |                  |
| <u>4.1</u>     | <u>Form of Class A Common Stock Certificate</u>   | S-1/A                     | 4.1     | 1/28/2015   |                  |
| <u>4.2</u>     | <u>Description of Securities</u>  |                           |         |             | #                |
| <u>10.1</u>    | <u>Third Amended and Restated Limited Liability Company Agreement of SSE Holdings, LLC, dated February 4, 2015 by and among SSE Holdings, LLC and its Members</u>   | 8-K                       | 10.3    | 2/10/2015   |                  |
| <u>10.1.1</u>  | <u>Amendment No. 1 to Third Amended and Restated Limited Liability Company Agreement of SSE Holdings, LLC, dated March 7, 2016, but effective as of February 4, 2015</u>  | POSAM                     | 10.1.1  | 3/10/2016   |                  |
| <u>10.1.2</u>  | <u>Amendment No. 2 to Third Amended and Restated Limited Liability Company Agreement of SSE Holdings, LLC, dated February 6, 2017</u>   | 10-K                      | 10.1.2  | 3/13/2017   |                  |
| <u>10.1.3</u>  | <u>Amendment No. 3 to Third Amended and Restated Limited Liability Company Agreement of SSE Holdings, LLC, dated March 31, 2020</u>   | 10-Q                      | 10.1    | 7/31/2020   |                  |
| <u>10.2</u>    | <u>Amended and Restated Management Services Agreement, effective as of January 15, 2015, by and between SSE Holdings, LLC and USHG, LLC</u>   | S-1                       | 10.13   | 12/29/2014  |                  |
| <u>10.3</u>    | <u>Tax Receivable Agreement, dated February 4, 2015, by and among Shake Shack Inc., SSE Holdings, LLC and each of the Members from time to time party thereto</u>   | 8-K                       | 10.1    | 2/10/2015   |                  |
| <u>10.4</u>    | <u>Registration Rights Agreement, dated February 4, 2015, by and among Shake Shack Inc. and each other person identified on the schedule of investors attached thereto</u>  | 8-K                       | 10.2    | 2/10/2015   |                  |
| <u>10.4.1</u>  | <u>Amendment No. 1 to Registration Rights Agreement, dated and effective as of October 8, 2015, by and among Shake Shack Inc., the Continuing SSE Equity Owners and affiliates of the Former SSE Equity Owners</u>    | 10-Q                      | 10.2    | 11/6/2015   |                  |
| <u>10.5</u>    | <u>Stockholders Agreement, dated February 4, 2015, by and among Shake Shack Inc., SSE Holdings, LLC, and the persons and entities listed on the schedules attached thereto</u>  | 8-K                       | 10.4    | 2/10/2015   |                  |
| <u>10.5.1</u>  | <u>Amendment No. 1 to Stockholders Agreement, dated and effective as of October 8, 2015, by and among Shake Shack Inc., SSE Holdings, LLC, the Meyer Stockholders, the LGP Stockholders and the SEG Stockholders</u>  | 10-Q                      | 10.1    | 11/6/2015   |                  |
| <u>10.5.2</u>  | <u>Amendment No. 2 to Stockholders Agreement, dated and effective as of May 11, 2017, by and among Shake Shack Inc., SSE Holdings, LLC, the Meyer Stockholders, the LGP Stockholders and the SEG Stockholders</u>     | 10-Q                      | 10.2    | 8/4/2017    |                  |
| <u>10.5.3</u>  | <u>Amendment No. 3 to Stockholders Agreement, dated and effective as of October 16, 2018, by and among Shake Shack Inc., SSE Holdings, LLC, the Meyer Stockholders, the LPG Stockholders and the SEG Stockholders</u> | 10-K                      | 10.5.3  | 2/25/2019   |                  |
| <u>10.6</u>    | <u>Form of Indemnification Agreement entered into between Shake Shack Inc. and each of its directors and officers, effective February 4, 2015</u>   | S-1/A                     | 10.21   | 1/20/2015   |                  |
| <u>10.7</u>    | † <u>Shake Shack Inc. 2015 Incentive Award Plan</u>   | S-8                       | 4.4     | 1/30/2015   |                  |
| <u>10.7.1</u>  | † <u>Amendment No. 1 to the Shake Shack Inc. 2015 Incentive Award Plan, dated April 26, 2016</u>  | 10-Q                      | 10.1    | 5/16/2016   |                  |
| <u>10.7.2</u>  | † <u>Amendment No. 2 to the Shake Shack Inc. 2015 Incentive Award Plan, dated February 5, 2019</u>  | 10-Q                      | 10.1    | 5/6/2019    |                  |
| <u>10.7.3</u>  | † <u>Form of Employee Option Agreement under the Shake Shack Inc. 2015 Incentive Award Plan, as amended</u>   | S-1/A                     | 10.19   | 1/20/2015   |                  |
| <u>10.7.4</u>  | † <u>Form of Director Option Agreement under the Shake Shack Inc. 2015 Incentive Award Plan, as amended</u>   | S-1/A                     | 10.20   | 1/20/2015   |                  |

| Exhibit Number | Exhibit Description   | Incorporated by Reference |         |             | Filed Herewith |
|----------------|---|---------------------------|---------|-------------|----------------|
|                |   | Form                      | Exhibit | Filing Date |                |
| <u>10.7.5</u>  | † <u>Form of Performance Stock Unit Award Agreement under the Shake Shack Inc., 2015 Incentive Award Plan, as amended</u>   | 10-Q                      | 10.2    | 5/16/2016   |                |
| <u>10.7.6</u>  | † <u>Form of Supplement to Performance Stock Unit Award Agreement under the Shake Shack Inc. 2015 Incentive Award Plan, as amended</u>  | 10-Q                      | 10.3    | 5/16/2016   |                |
| <u>10.7.7</u>  | † <u>Form of Employee Restricted Stock Unit Award Agreement under the Shake Shack Inc. 2015 Incentive Award Plan as amended</u>   | 10-K                      | 10.9.6  | 2/25/2019   |                |
| <u>10.7.8</u>  | † <u>Form of Employee Restricted Stock Unit Award Supplement under the Shake Shack Inc. 2015 Incentive Award Plan as amended</u>  | 10-K                      | 10.9.7  | 2/25/2019   |                |
| <u>10.7.9</u>  | † <u>Form of Director Restricted Stock Unit Award Agreement under the Shake Shack Inc. 2015 Incentive Award Plan as amended</u>   | 10-K                      | 10.9.8  | 2/25/2019   |                |
| <u>10.8</u>    | † <u>2015 Senior Executive Bonus Plan</u>   | S-1                       | 10.12   | 12/29/2014  |                |
| <u>10.9</u>    | † <u>Amended and Restated Employment Agreement, effective January 5, 2017, by and among Zach Koff, Shake Shack Inc. and SSE Holdings, LLC</u>   | 8-K                       | 10.1    | 1/5/2017    |                |
| <u>10.9.1</u>  | † <u>Employment Agreement, dated April 28, 2017, but effective as of a date to be agreed upon by the parties, no later than July 31, 2017, by and among Tara Comonte, Shake Shack Inc. and SSE Holdings, LLC</u>  | 8-K                       | 10.1    | 5/1/2017    |                |
| <u>10.9.2</u>  | † <u>Amended and Restated Employment Agreement, effective October 25, 2018, by and among Shake Shack Inc., SSE Holdings, LLC and Randy Garutti</u>  | 8-K                       | 10.1    | 10/26/2018  |                |
| <u>10.10</u>   | † <u>Non-Employee Director Compensation Policy</u>  | 10-K                      | 10.19   | 2/26/2018   |                |
| <u>10.10.1</u> | † <u>Amended &amp; Restated Non-Employee Director Compensation Policy, dated May 19, 2016</u>   | 10-K                      | 10.19.1 | 2/26/2018   |                |
| <u>10.10.2</u> | † <u>Second Amended &amp; Restated Non-Employee Director Compensation Policy, dated March 17, 2017</u>  | 10-K                      | 10.19.2 | 2/26/2018   |                |
| <u>10.11</u>   | <u>Credit Agreement, dated as of August 2, 2019, by and among SSE Holdings, LLC, the Guarantors party thereto, the Lenders referred to therein and Wells Fargo Bank, National Association, as Administrative Agent, Swingline Lender and Issuing Lender</u> | 8-K                       | 10.1    | 8/5/2019    |                |
| <u>10.11.1</u> | <u>First Amendment to Credit Agreement, dated as of May 4, 2020, by and among SSE Holdings, LLC, the Guarantors party thereto, the Lenders party thereto, and Wells Fargo Bank, National Association, as Administrative Agent</u>                           | 10-Q                      | 10.3    | 5/4/2020    |                |
| <u>10.12</u>   | <u>Security and Pledge Agreement, dated as of August 2, 2019, by and among SSE Holdings, LLC, the other Obligors party thereto, and Wells Fargo Bank, National Association, as Administrative Agent</u>   | 10-Q                      | 10.2    | 11/4/2019   |                |
| <u>10.13</u>   | <u>Distribution Agreement, dated April 17, 2020, by and between Shake Shack Inc., J.P. Morgan Securities LLC, BofA Securities, Inc. and Wells Fargo Securities LLC</u>  | 8-K                       | 1.1     | 4/17/2020   |                |
| <u>10.14</u>   | <u>Underwriting Agreement, dated April 17, 2020, by and between the Company and J.P. Morgan Securities LLC</u>  | 8-K                       | 1.1     | 4/21/2020   |                |
| <u>10.15</u>   | <u>Letter Agreement, dated June 18, 2020, by and between Tristan Walker and Shake Shack Inc.</u>  | 8-K                       | 1.1     | 6/18/2020   |                |
| <u>21</u>      | <u>Subsidiaries of Shake Shack Inc.</u>   |                           |         |             | *              |
| <u>23</u>      | <u>Consent of Independent Registered Public Accounting Firm</u>   |                           |         |             | *              |
| <u>31.1</u>    | <u>Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>   |                           |         |             | *              |
| <u>31.2</u>    | <u>Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>   |                           |         |             | *              |
| <u>32</u>      | <u>Certifications 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</u>   |                           |         |             | #              |
| 101.INS        | XBRL Instance Document  |                           |         |             | *              |
| 101.SCH        | XBRL Taxonomy Extension Schema Document   |                           |         |             | *              |
| 101.CAL        | XBRL Taxonomy Extension Calculation Linkbase Document   |                           |         |             | *              |
| 101.DEF        | XBRL Taxonomy Extension Definition Linkbase Document  |                           |         |             | *              |

| Exhibit Number | Exhibit Description   | Incorporated by Reference |         |             | Filed Herewith |
|----------------|---|---------------------------|---------|-------------|----------------|
|                |   | Form                      | Exhibit | Filing Date |                |
| 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 |                           |         |             | *              |

† Indicates a management contract or compensatory plan or arrangement.

# Furnished herewith.

# SIGNATURES

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

**Shake Shack Inc.**  
(Registrant)

By: /s/ Tara Comonte

Tara Comonte

President and Chief Financial Officer

Date: February 26, 2021

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

| <b><u>Signature</u></b>                                 | <b><u>Title</u></b>   | <b><u>Date</u></b> |
|---|---|--------------------|
| <u>/s/ Randy Garutti</u><br>Randy Garutti               | Chief Executive Officer and Director<br>(Principal Executive Officer)                 | February 26, 2021  |
| <u>/s/ Tara Comonte</u><br>Tara Comonte                 | President and Chief Financial Officer<br>(Principal Financial and Accounting Officer) | February 26, 2021  |
| <u>/s/ Daniel Meyer</u><br>Daniel Meyer                 | Chairman of the Board of Directors  | February 26, 2021  |
| <u>/s/ Sumaiya Balbale</u><br>Sumaiya Balbale           | Director  | February 26, 2021  |
| <u>/s/ Anna Fieler</u><br>Anna Fieler                   | Director  | February 26, 2021  |
| <u>/s/ Jeff Flug</u><br>Jeff Flug                       | Director  | February 26, 2021  |
| <u>/s/ Jenna Lyons</u><br>Jenna Lyons                   | Director  | February 26, 2021  |
| <u>/s/ Joshua Silverman</u><br>Joshua Silverman         | Director  | February 26, 2021  |
| <u>/s/ Jonathan D. Sokoloff</u><br>Jonathan D. Sokoloff | Director  | February 26, 2021  |
| <u>/s/ Robert Vivian</u><br>Robert Vivian               | Director  | February 26, 2021  |
| <u>/s/ Tristan Walker</u><br>Tristan Walker             | Director  | February 26, 2021  |

# CORPORATE INFORMATION

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## Board of Directors

### **Daniel Meyer (Chairman)**

Union Square Hospitality Group, LLC, chief executive officer

### **Sumaiya Balbale**

Sequoia Capital, chief marketing officer

### **Anna Fieler**

Madison Park Ventures, founder and partner

### **Jeff Flug**

Union Square Hospitality Group, LLC, former president

### **Randy Garutti**

Shake Shack Inc., chief executive officer

### **Jenna Lyons**

J.Crew Group Inc., former president, executive creative director

### **Joshua Silverman**

Etsy, Inc., chief executive officer

### **Jonathan D. Sokoloff**

Leonard Green & Partners, L.P., managing partner

### **Robert Vivian**

P.F. Chang's China Bistro, former co-chief executive officer

### **Tristan Walker**

Walker & Company Brands, founder and chief executive officer

## Senior Leadership Team

### **Randy Garutti\***

chief executive officer

### **Tara Comonte\***

chief financial officer (resigning May 7, 2021)

### **Zach Koff\***

chief operating officer

\*Named executive officer

## Stock Exchange Listing

Trading Symbol: SHAK

New York Stock Exchange

## Annual Meeting of Stockholders

June 9, 2021, 9:00 a.m. ET

[www.virtualshareholdermeeting.com/SHAK2021](http://www.virtualshareholdermeeting.com/SHAK2021)

## Independent Registered Public Accounting Firm

Ernst & Young LLP

## Transfer Agent & Registrar

American Stock Transfer & Trust Company, LLC

6201 15th Avenue

Brooklyn, New York 11219

[www.amstock.com](http://www.amstock.com)

Phone: 800-937-5449

Email: [info@amstock.com](mailto:info@amstock.com)

## Stockholder Information

Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements, statements of changes in beneficial ownership and amendments to those reports are available for free on our investor relations website at [investor.shakeshack.com](http://investor.shakeshack.com). To obtain copies of these reports, you may email, call or write to us:

Attn: Investor Relations

Shake Shack Inc.

225 Varick Street, Suite 301

New York, NY 10014

Phone: 844-SHACK-04

Email: [investor@shakeshack.com](mailto:investor@shakeshack.com)

We webcast our earnings calls and certain events we participate in or host with members of the investment community on our investor relations website. Additionally, we provide notifications of news or announcements regarding our financial performance, including SEC filings, investor events, press and earnings releases as part of our investor relations website. Investors and other interested parties can receive notifications of new information posted on our investor relations website in real time by subscribing to email alerts. We also make certain corporate governance documents available on our investor relations website, including our corporate governance guidelines, board committee charters, codes of conduct and ethics, as well as certain company policies.

