

SHAKE SHACK INC.

FORM S-1/A (Securities Registration Statement)

Filed 01/20/15

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Fiscal Year	12/31

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As filed with the Securities and Exchange Commission on January 20, 2015

Registration No. 333-201271

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1
to

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Shake Shack Inc.

(Exact name of registrant as specified in its charter)

Delaware	5810	47-1941186
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

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New York, NY 10003
Telephone: (646) 747-7200

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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Approximate date of commencement of proposed sale to the public:
As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer ☐ Accelerated filer ☐

Non-accelerated filer ☒
(Do not check if a
smaller reporting company)

Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to Be Registered(1)	Proposed Maximum Offering Price per Share(2)	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee(3)
Class A common Stock, \$0.01 par value per share	5,750,000	\$16.00	\$92,000,000	\$10,690.40

(1) Includes 750,000 shares of Class A common stock that may be sold if the underwriters' option to purchase additional shares granted by the Registrant is exercised.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(a) under the Securities Act of 1933, as amended.

(3) The Registrant previously paid \$11,620.00 in connection with a prior filing of this Registration Statement on December 29, 2014.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to completion, dated January 20, 2015

PRELIMINARY PROSPECTUS

5,000,000 Shares



Class A Common Stock

This is an initial public offering of Shake Shack Inc. We anticipate that the initial public offering price will be between \$14.00 and \$16.00 per share of our Class A common stock.

Prior to this offering, there has been no public market for our Class A common stock. We have applied to have our Class A common stock listed on the New York Stock Exchange under the symbol "SHAK."

We will use the net proceeds that we receive from this offering to purchase from SSE Holdings, LLC, which we refer to as "SSE Holdings," newly-issued common membership

interests of SSE Holdings, which we refer to as the "LLC Interests." There is no public market for the LLC Interests. The purchase price for the newly-issued LLC Interests will be equal to the public offering price of our Class A common stock. We intend to cause SSE Holdings to use the net proceeds it receives from us in connection with this offering as described in "Use of Proceeds." In connection with the closing of this offering, certain of the holders of LLC Interests received in exchange for existing membership interests in SSE Holdings, whom we refer to as "Former SSE Equity Owners," will exchange their indirect ownership of LLC Interests for shares of Class A common stock and certain other holders of LLC Interests received in exchange for existing membership interests in SSE Holdings, whom we refer to as "Continuing SSE Equity Owners," will continue to own their LLC Interests. In addition, certain individuals who hold existing awards under our Unit Appreciation Rights Plan, whom we refer to as the "Former UAR Plan Participants," will receive shares of Class A common stock in settlement of their awards.

We will have two classes of common stock outstanding after this offering: Class A common stock and Class B common stock. Each share of Class A common stock and Class B common stock entitles its holder to one vote on all matters presented to our stockholders generally. All of our Class B common stock will be held by the Continuing SSE Equity Owners, on a one-to-one basis with the number of LLC Interests they own. Immediately following this offering, the holders of our Class A common stock issued in this offering collectively will hold 44.5% of the economic interests in us and 14.1% of the voting power in us, the Former SSE Equity Owners and the Former UAR Plan Participants, through their ownership of Class A common stock, collectively will hold 55.5% of the economic interests in us and 17.5% of the voting power in us, and the Continuing SSE Equity Owners, through their ownership of all of the outstanding Class B common stock, collectively will hold no economic interest in us and the remaining 68.4% of the voting power in us. We will be a holding company, and upon consummation of this offering and the application of proceeds therefrom, our principal asset will be the LLC Interests we purchase from SSE Holdings and acquire from the Former SSE Equity Owners, representing an aggregate 31.6% economic interest in SSE Holdings. The remaining 68.4% economic interest in SSE Holdings will be owned by the Continuing SSE Equity Owners through their ownership of LLC Interests.

Although we will have a minority economic interest in SSE Holdings, because we will be the sole managing member of SSE Holdings, we will operate and control all of the business and affairs of SSE Holdings and, through SSE Holdings and its subsidiaries, conduct our business.

Following this offering, we will be a "controlled company" within the meaning of the corporate governance rules of the New York Stock Exchange. See "The Transactions" and "Management—Corporate Governance."

We are an "emerging growth company," as defined in Section 2(a) of the Securities Act of 1933, as amended, and will be subject to reduced public reporting requirements. This prospectus complies with the requirements that apply to an issuer that is an emerging growth company.

Investing in our Class A common stock involves risks. See "Risk Factors" beginning on page 22.

	Per Share	Total
Initial public offering price	\$	\$
Underwriting discounts and commissions(1)	\$	\$
Proceeds to us, before expenses	\$	\$

(1) See "Underwriting (Conflicts of Interest)" for additional information regarding underwriting compensation.

We have granted the underwriters an option for a period of 30 days to purchase up to an additional 750,000 shares of Class A common stock solely to cover over-allotments.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Delivery of the shares will be made on or about , 2015.

J.P. Morgan

Morgan Stanley

Barclays
William Blair

Goldman,
Sachs & Co.

Jefferies
Stifel

The date of this prospectus is , 2015.

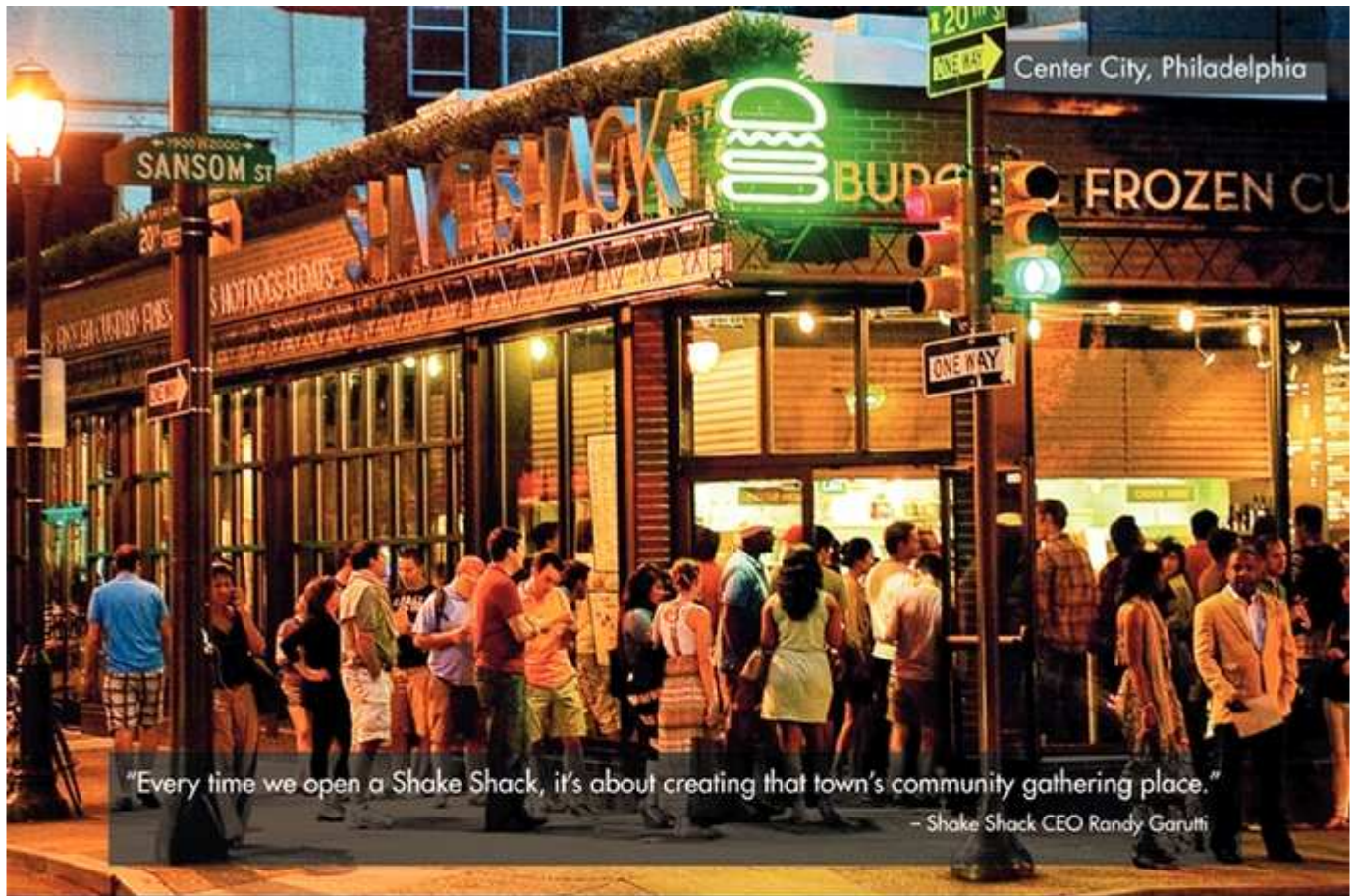


Madison Square Park, NYC

SHAKE  SHACK®
—
Stand For Something Good®











Grand Avenue, Kuwait City



Covent Garden, London

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You should rely only on the information contained in this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. We and the underwriters have not authorized anyone to provide you with different information. We are offering to sell, and seeking offers to buy, shares of our Class A common stock only in jurisdictions where offers and sales are permitted. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of shares of our Class A common stock.

For investors outside the United States: We have not and the underwriters have not done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of Class A common stock and the distribution of this prospectus outside the United States. See "Underwriting (Conflicts of Interest)."

BASIS OF PRESENTATION

In connection with the closing of this offering, we will effect certain organizational transactions. Unless otherwise stated or the context otherwise requires, all information in this prospectus reflects the consummation of the organizational transactions and this offering, which we refer to collectively as the "Transactions." See "The Transactions" for a description of the Transactions and a diagram depicting our organizational structure after giving effect to the Transactions, including this offering.

As used in this prospectus, unless the context otherwise requires, references to:

- "we," "us," "our," the "Company," "Shake Shack" and similar references refer: (i) following the consummation of the Transactions, including this offering, to Shake Shack Inc., and, unless otherwise stated, all of its subsidiaries, including SSE Holdings, LLC, which we refer to as "SSE Holdings," and, unless otherwise stated, all of its subsidiaries, and (ii) on or prior to the completion of the Transactions, including this offering, to SSE Holdings and, unless otherwise stated, all of its subsidiaries.
- "Continuing SSE Equity Owners" refer to those Original SSE Equity Owners (including USHG (as defined below), Daniel Meyer and the S Corporations (as defined below), certain affiliates of LGP (as defined below), certain affiliates of SEG (as defined below) and certain of our executive officers) that will continue to own LLC Interests (as defined below) after the Transactions and who may, following the consummation of this offering, exchange their LLC Interests for shares of our Class A common stock as described in "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement."
- "Former SSE Equity Owners" refer to those Original SSE Equity Owners who will transfer their LLC Interests for shares of our Class A common stock in connection with the consummation of this offering.
- "Former UAR Plan Participants" refer to certain individuals who hold existing awards under SSE Holdings' Unit Appreciation Rights Plan, which we refer to as the "UAR Plan," and will receive shares of Class A common stock in settlement of their awards under the UAR Plan in connection with the consummation of this offering.
- "LLC Interests" refer to the single class of newly-issued common membership interests of SSE Holdings.
- "Original SSE Equity Owners" refer to the owners of SSE Holdings prior to the Transactions, including, the members of the Voting Group (as defined below).
- "USHG" refer to Union Square Hospitality Group, LLC.
- "Voting Group" refer collectively to (i) Daniel Meyer (including a trust affiliate), (ii) Union Square Cafe Corp. and Gramercy Tavern Corp., each of which are controlled by Mr. Meyer, which we refer to collectively as the "S Corporations," (iii) USHG, which, together with Mr. Meyer and the S Corporations, we refer to collectively as the "Meyer Group," (iv) certain affiliates of Leonard Green & Partners, L.P., which we refer to as "LGP," (v) certain affiliates of Select Equity Group, which we refer to as "SEG," and (vi) certain other Original SSE Equity Owners, all of whom will be parties to the Stockholders Agreement as described in "Certain Relationships and Related Party Transactions—Stockholders Agreement." The Voting Group will hold Class A common stock and Class B common stock representing in the aggregate a majority of the combined voting power of our common stock.

We will be a holding company and the sole managing member of SSE Holdings, and upon completion of this offering and the application of proceeds therefrom, our principal asset will be LLC Interests of SSE Holdings. SSE Holdings, LLC is the predecessor of the issuer, Shake Shack Inc., for

financial reporting purposes. Shake Shack Inc. will be the audited financial reporting entity following this offering. Accordingly, this prospectus contains the following historical financial statements:

- *Shake Shack Inc.* Other than the inception balance sheet, dated as of September 23, 2014, and the unaudited balance sheet, dated as of September 24, 2014, the historical financial information of Shake Shack Inc. has not been included in this prospectus as it is a newly incorporated entity, has no business transactions or activities to date and had no assets or liabilities during the periods presented in this prospectus.
- *SSE Holdings, LLC.* As we will have no other interest in any operations other than those of SSE Holdings, LLC and its subsidiaries, the historical consolidated financial information included in this prospectus is that of SSE Holdings, LLC and its subsidiaries.

The unaudited pro forma financial information of Shake Shack Inc. presented in this prospectus has been derived by the application of pro forma adjustments to the historical consolidated financial statements of SSE Holdings, LLC and its subsidiaries included elsewhere in this prospectus. These pro forma adjustments give effect to the Transactions as described in "The Transactions," including the completion of this offering, as if all such transactions had occurred on December 27, 2012, in the case of the unaudited pro forma consolidated statement of operations data, and as of September 24, 2014, in the case of the unaudited pro forma consolidated balance sheet. See "Unaudited Pro Forma Consolidated Financial Information" for a complete description of the adjustments and assumptions underlying the pro forma financial information included in this prospectus.

SSE Holdings, LLC is, and Shake Shack Inc. will be, on a 52- or 53-week fiscal year ending on the last Wednesday of the calendar year. Accordingly, references to fiscal 2012 and fiscal 2013 represent the financial results of SSE Holdings, LLC and its subsidiaries for the fiscal years ended December 26, 2012 and December 25, 2013, respectively. In a 52-week fiscal year, each quarter contains 13 weeks of operations; in a 53-week fiscal year, each of the first, second and third quarters includes 13 weeks of operations and the fourth quarter includes 14 weeks of operations. Every five or six years, a 53-week fiscal year occurs. Fiscal 2012 and fiscal 2013 were both 52-week years. Fiscal 2014 was a 53-week year and ended on December 31, 2014, which may cause our revenue, expenses and other results of operations to be higher due to an additional week of operations.

TRADEMARKS

This prospectus includes our trademarks, trade names and service marks, such as "Shake Shack®," "ShackBurger®," "SHAKE  SHACK®," "  ®," "Shack-Cago Dog®," "SmokeShack®," "ShackMeister®," "Shack 2.0®," "Pooch-ini®" and "Stand for Something Good®," which are protected under applicable intellectual property laws and are our property. This prospectus also contains trademarks, trade names and service marks of other companies, which are the property of their respective owners. Solely for convenience, trademarks, trade names and service marks referred to in this prospectus may appear without the ®, ™ or SM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks, trade names and service marks. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

MARKET AND INDUSTRY DATA

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate is based on information from independent industry and research organizations, other third-party sources (including industry publications, surveys and forecasts, as well as market analyses and reports prepared for us by eSite, Inc.), and management estimates. Management estimates are derived from publicly available information released by independent

industry analysts and third-party sources, as well as data from our internal research, and are based on assumptions made by us upon reviewing such data and our knowledge of such industry and markets which we believe to be reasonable. Although we believe the data from these third-party sources is reliable, we have not independently verified any third-party information. In addition, projections, assumptions and estimates of the future performance of the industry in which we operate and our future performance are necessarily subject to uncertainty and risk due to a variety of factors, including those described in "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements." These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

NON-GAAP FINANCIAL MEASURES

Certain financial measures presented in this prospectus, such as same Shack sales, Average Unit Volumes, Shack-level operating profit margin, EBITDA and Adjusted EBITDA are not recognized under accounting principles generally accepted in the United States, which we refer to as "GAAP." We define these terms as follows:

- "Same Shack sales" means, for any reporting period, sales for the comparable Shack base, which we define as the number of domestic company-operated Shacks open for 24 months or longer. For the fiscal years ended December 26, 2012 and December 25, 2013 and the thirty-nine weeks ended September 25, 2013 and September 24, 2014, there were five, eight, eight and 12 Shacks, respectively, in our comparable Shack base.
- "Average Unit Volumes" or "AUVs" for any 12-month period consists of the average annualized sales of all domestic company-operated Shacks over that period. AUVs are calculated by dividing total sales from domestic company-operated Shacks by the number of domestic company-operated Shacks open during that period. For Shacks that are not open for the entire period, we make fractional adjustments to the number of Shacks open such that it corresponds to the period of associated sales. The measurement of AUVs allows us to assess changes in guest traffic and per transaction patterns at our domestic company-operated Shacks.

Because our AUVs are significantly higher in Manhattan, we analyze AUVs on both a domestic company-operated Manhattan Shack ("Manhattan Shack") basis and domestic company-operated non-Manhattan Shack ("non-Manhattan Shack") basis. Manhattan Shack AUVs have historically been higher than non-Manhattan Shack AUVs given the population density and overall familiarity with the Shake Shack brand. Given that the majority of our new domestic company-operated Shack growth is expected to occur outside of Manhattan, we believe that non-Manhattan Shack AUVs are a more representative measure of expected sales in new Shacks, compared to Manhattan Shack AUVs.

- "Shack-level operating profit margin" is defined as Shack sales less operating expenses, including food and paper costs, labor and related expenses, other operating expenses and occupancy and related expenses as a percentage of Shack sales. Shack-level operating profit margin is not required by, or presented in accordance with, GAAP. Shack-level operating profit margin is a supplemental measure of operating performance of our Shacks and our calculations thereof may not be comparable to similar measures reported by other companies. Shack-level operating profit margin has limitations as an analytical tool and should not be considered as a substitute for analysis of our results as reported under GAAP. We believe that Shack-level operating profit margin is an important measure to evaluate the performance and profitability of each Shack, individually and in the aggregate. We use Shack-level operating profit margin information to benchmark our performance versus competitors.
- "EBITDA" means, for any reporting period, net income before interest, taxes, depreciation, and amortization.

- "Adjusted EBITDA" is a supplemental measure of our performance and is also the basis for performance evaluation under our executive compensation programs. Adjusted EBITDA is defined as net income before depreciation and amortization, interest expense and provision for income taxes, adjusted for the impact of certain non-cash and other items that we do not consider in our evaluation of ongoing operating performance. These items include, among other things, equity-based compensation expense, non-cash deferred rent charges and pre-opening costs, as well as certain non-recurring charges. We believe that Adjusted EBITDA is an appropriate measure of operating performance because it eliminates the impact of expenses that do not relate to business performance.

EBITDA and Adjusted EBITDA are included in this prospectus because they are key metrics used by management and our board of directors to assess our financial performance. EBITDA and Adjusted EBITDA are frequently used by analysts, investors and other interested parties to evaluate companies in our industry.

EBITDA and Adjusted EBITDA are not GAAP measures of our financial performance or liquidity and should not be considered as alternatives to net income (loss) as a measure of financial performance or cash flows from operations as measures of liquidity, or any other performance measure derived in accordance with GAAP. Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Additionally, EBITDA and Adjusted EBITDA are not intended to be measures of free cash flow for management's discretionary use, as they do not reflect tax payments, debt service requirements, capital expenditures, Shack openings and certain other cash costs that may recur in the future, including, among other things, cash requirements for working capital needs and cash costs to replace assets being depreciated and amortized. Management compensates for these limitations by relying on our GAAP results in addition to using EBITDA and Adjusted EBITDA supplementally. Our measures of EBITDA and Adjusted EBITDA are not necessarily comparable to similarly titled captions of other companies due to different methods of calculation.

- "Cash-on-cash return" is defined as third year operating profits for our domestic company-operated Shacks open for at least three full years as of September 24, 2014, divided by their life-to-date associated build-out costs excluding any pre-opening costs. The small number of Shacks included in our calculation of our average cash-on-cash return may cause this measure to fluctuate and be subject to change.
- "Payback period" is defined as the length of time required to recover the original cash investment in a Shack. It is calculated as total build-out costs (excluding any pre-opening costs) for our domestic company-operated Shacks open for at least three full years as of September 24, 2014, divided by their associated third year operating profits.

ADDITIONAL FINANCIAL MEASURES AND OTHER DATA

- "Shack sales" represents the aggregate sales of food and beverages in 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.
- The "number of new Shack openings" reflects the number of Shacks opened during a particular reporting period. Before we open new Shacks, we incur pre-opening costs, as described below. We expect that, beginning in fiscal 2015, we will open at least 10 domestic company-operated Shacks each fiscal year for the foreseeable future, which is the primary driver of our expected sales growth. The total number of new Shacks per year and the timing of Shack openings has, and will continue to have, an impact on our results. New Shacks sometimes experience normal

inefficiencies in the form of higher labor and other operating expenses and, as a result, Shack-level operating profit margins are generally lower during the start-up period of operation.

- "Same Shack sales growth" means, for any reporting period, the change in same Shack sales as compared to the corresponding prior reporting period. Same Shack sales growth can be generated by an increase in the number of daily transactions and/or by increases in the average amount of each transaction resulting from a shift in menu mix and/or higher prices from new products or price increases. The small number of Shacks included in our comparable Shack base may cause same Shack sales growth to fluctuate and be unpredictable.

Given our focused marketing efforts surrounding each Shack opening, new Shacks often experience an initial start-up period with considerable sales volumes, which subsequently decrease to stabilized levels after approximately 12 months. As a result, the initial comparison of second year sales to first year sales is often higher than normal sales in the first year. Accordingly, we do not include Shacks in the comparable Shack base until they have been open 24 months or longer. We expect that this trend will continue into the foreseeable future as we continue to open and expand into new markets.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus. This summary does not contain all of the information that you should consider before deciding to invest in our Class A common stock. You should read the entire prospectus carefully, including the "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes included elsewhere in this prospectus, before making an investment decision. The principles of "Enlightened Hospitality," as defined by Danny Meyer, state that we prioritize our own people above all else, because we understand that taking care of each other is the foundation that enables us to provide uncommon excellence and hospitality to our team members, guests, our community, our suppliers and our investors. We refer to our customers as "guests," as we treat anyone who walks into our restaurants, or "Shacks," as if they were guests in our home. Except as specifically noted or as the context otherwise implies, the description of our menu, supply chain and operations in this prospectus applies to our domestic company-operated Shacks, as some of the Shacks operated by our licensees vary in menu, supply chain and operations.

Overview of Shake Shack

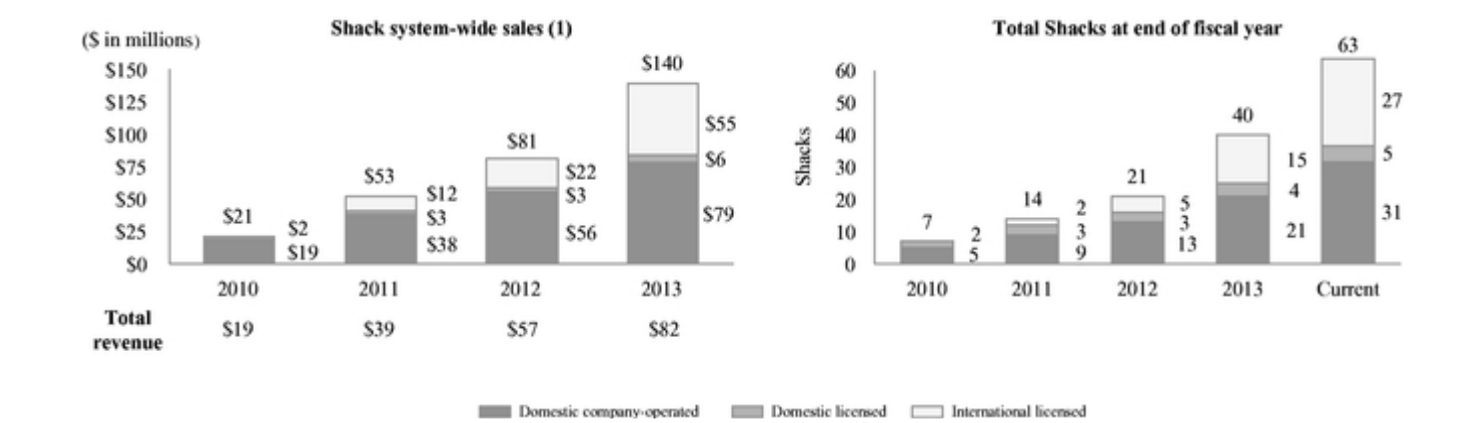
Shake Shack is a modern day "roadside" burger stand serving a classic American menu of premium burgers, hot dogs, crinkle-cut fries, shakes, frozen custard, beer and wine. Founded by Danny Meyer's Union Square Hospitality Group, LLC ("USHG"), Shake Shack was created leveraging USHG's expertise in community building, hospitality, fine dining, restaurant operations and sourcing premium ingredients. Danny's vision of Enlightened Hospitality guided the creation of the unique Shake Shack culture that, we believe, creates a differentiated experience for our guests across all demographics at each of the 63 Shacks around the world. As Shake Shack's Board Chairman and USHG's Chief Executive Officer, Danny has drawn from USHG's experience creating and operating some of New York City's most acclaimed and popular restaurants, including Union Square Cafe, Gramercy Tavern, Blue Smoke, The Modern, Maialino and Marta, to build what we believe is a new *fine casual* restaurant category in Shake Shack.

Shake Shack originated from a hot dog cart that USHG established in 2001 to support the rejuvenation of New York City's Madison Square Park through its Conservancy's first art installation—"I ♥ Taxi." The hot dog cart was an instant hit, with lines forming daily throughout the summer months for the next three years. In response to this success, 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 and immediately became a community gathering place for New Yorkers and visitors from all over the world. Over the last decade, Shake Shack has become a beloved New York City institution that generates significant media attention, critical acclaim and a passionately devoted following. We have since grown rapidly, with 63 Shacks in nine countries and 34 cities.

Our vision is to *Stand For Something Good* in all aspects of Shake Shack's 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 to 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 lasting connection with our guests. We continually invest in our "Shack Team," as we believe that team members who are treated and trained well will deliver Enlightened Hospitality and a superior guest experience. Through our leadership development program, *The Shackperience*, we teach our team members the principles of Enlightened Hospitality and how to live and breathe our *Shack Pact*, the agreement that encompasses our value system and brand ethos. Our people make all the difference, as they embody the sense of community necessary to create the complete Shake Shack experience. This vision reflects our goal to be the best burger company in the world, for the world and for our team.

We believe Shake Shack has become a compelling lifestyle brand and has helped to pioneer the creation of a new *fine casual* category in restaurants. *Fine casual* couples the ease, value and convenience of fast casual concepts with the high standards of excellence in thoughtful ingredient sourcing, preparation, hospitality and quality grounded in fine dining. As a pioneer in this new category, we strive to maintain the culinary traditions of the classic American burger stand, while providing our guests a menu of chef-inspired food and drinks. Our signature items are our all-natural, hormone and antibiotic-free burgers, hot dogs, crinkle-cut fries, shakes and frozen custard. We cook our burgers and spin our shakes to order and strive to use the freshest premium ingredients available. This core menu is supplemented with seasonal and innovative culinary offerings such as those featured during our annual *Shacktoberfest* event.

Of the 63 Shacks, there are 31 domestic company-operated Shacks, five domestic licensed Shacks and 27 international licensed Shacks. We open Shacks in areas where communities gather, often with high foot traffic and substantial commercial density such as New York City's Theater District, London's Covent Garden and Dubai's Mall of the Emirates. We have been able to successfully grow across a variety of locations due to our versatile Shack formats and designs that are tailored to reflect each Shack community's core attributes. During the three fiscal years ended December 25, 2013, we grew from seven Shacks in two states to 40 Shacks across six states, Washington, D.C. and eight other countries, representing a 79% compound annual growth rate ("CAGR"). In fiscal 2013, our domestic company-operated Shacks had AUVs of approximately \$5.0 million, of which our Manhattan Shacks had AUVs of approximately \$7.4 million and our non-Manhattan Shacks had AUVs of approximately \$3.8 million. During the three fiscal years ended December 25, 2013, our total revenue grew from \$19.5 million to \$82.5 million, a 62% CAGR, our net income grew from \$0.2 million to \$5.4 million, and Adjusted EBITDA grew to \$14.5 million. For a reconciliation of Adjusted EBITDA, a non-GAAP measure, to net income, see "— Summary Historical and Pro Forma Consolidated Financial and Other Data."



(1) Shack system-wide sales includes combined revenue from all of our domestic company-operated Shacks and our domestic and international licensed Shacks. Our total revenue is limited to Shack sales from domestic company-operated Shacks and licensing revenue from our domestic and international licensed Shacks.

The Burger Market

Shake Shack is part of the burger market of the restaurant industry, which is the largest dine-out segment in the United States with more than \$72 billion in 2013 sales, according to Technomic Inc. The burger industry is estimated to be twice the size of the pizza market, which is the next largest category. Given its role as the quintessential American meal, burgers have also proven to be the most portable concept internationally, with an estimated global market size of over \$135 billion.

With the majority of the burger restaurant segment comprised of quick service restaurant competitors, we believe that Shake Shack is well positioned to take market share, as we believe consumers will continue to trade up to higher quality offerings given an increasing consumer focus on responsible sourcing, ingredients and preparation. Additionally, we believe that consumers will continue to move away from the added time commitment and cost of traditional casual dining.

We believe that many consumers want to associate with brands whose ethos matches that of their own, and that Shake Shack's *fine casual* position, born and raised in Manhattan, creates a distinctly differentiated global lifestyle brand opportunity.

What Makes Shake Shack Special

1. Our culture of Enlightened Hospitality: taking care of each other. We believe that the culture of our team is the single most important factor in our success. We aim to recruit and develop a team with the innate "personality to please" that cannot be taught. We look for people who are warm, friendly, motivated, caring, self-aware and intellectually curious team members, or what we call "51%ers." We use the term "51%" to describe the emotional skills needed to thrive at the job and "49%" to describe the technical skills needed for the job. Our 51%ers are excited and committed to championship performance, remarkable and enriching hospitality, embodying our culture and actively growing themselves and the brand. 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. These principles have been championed by Danny Meyer throughout his career and are detailed in his *New York Times* best-selling book *Setting the Table : The Transforming Power of Hospitality in Business* ; they are fundamental to the way Shake Shack operates its business. We invest in our team through extensive leadership development programs to ensure that Shake Shack remains a great place to work and an exciting career choice for team members at every level. We have built a culture of active learning and we foster an environment of leadership development throughout the entire lifecycle of employment. We seek to be the employer of choice by offering above industry average compensation in most markets, comprehensive benefits and a variety of incentive programs, including a monthly revenue-sharing program with our employees. We believe that our culture of Enlightened Hospitality enables us to develop future leaders from within and deliver a consistent Shack experience as we continue to grow.

2. Fine Casual: inspired food and drink. We embrace our Company's fine-dining heritage and are committed to sourcing premium, sustainable ingredients, such as all-natural, hormone and antibiotic-free beef, while offering excellent value to our guests. Our core menu remains focused and is supplemented with targeted innovation inspired by the best versions of the classic American roadside burger stands. As a result of culinary creativity and excellence, we attract continued interest from partners such as award-winning chefs, talented bakers, farmers and artisanal purveyors who want to collaborate with us in different and engaging ways. We never stop looking for the best culinary ingredients and the best partners in order to exceed our guests' expectations in every aspect of their experience.

3. Beloved lifestyle brand. In Shake Shack's 10-year history, we have become a globally recognized brand with outsized consumer awareness relative to our current footprint. Shake Shack is a New York City institution, a vibrant and authentic community gathering place that delivers an unparalleled experience to loyal, passionate guests and a broad, global demographic. Born in 2004, Shake Shack grew up alongside the emergence of social media and has benefited from an ongoing love affair with passionate fans who share their real-time experiences with friends. We aim to establish genuine connections with our guests and the communities in which they live. Each Shack is localized with design and menu options that we believe drive a sense of appreciation and enthusiasm for the Shake Shack brand. Shake Shack has been recognized with numerous accolades, including *Bon Appétit's* "The 20 Most Important Restaurants in America" (ranked #16), *TIME Magazine's* "17 Most Influential

Burgers of All Time" (ranked #7 for the ShackBurger) and winning "Best Burger" in 2007 and 2014 at the South Beach Wine and Food Festival's Burger Bash.

4. Versatile real estate model built for growth. During fiscal 2013, we grew the number of our domestic company-operated Shacks by 62% with the opening of eight new Shacks, and opened 10 domestic company-operated Shacks during fiscal 2014. We will continue to not only fill in existing markets such as New York, Boston, Philadelphia, Washington, D.C., Atlanta, Chicago and South Florida to leverage operational effectiveness as we cluster in high-density markets, but also enter new markets, such as Austin, where we have signed leases. Although we currently have only 63 Shacks around the world, we have identified many attractive and differentiated markets for the Shake Shack experience. In major metropolitan areas, we seek locations where communities gather, often with characteristics such as high foot traffic, substantial commercial density, reputable co-tenants and other traffic drivers such as proximity to parks, museums, schools, hospitals and tourist attractions. For every potential domestic company-operated Shack we consider, we apply rigorous financial metrics to ensure we maintain our targeted profitability. We measure much of our financial success by analyzing Shack-level operating profit margins, cash-on-cash returns and payback periods. Our flexible model allows us to design our Shacks so that we can pursue a variety of property types. We have successfully launched different layouts and sizes of Shacks in varied locations throughout urban high density areas, suburban in-line and pad sites, regional malls, lifestyle centers, ballparks, airports and train stations. Each design is critical to the Shake Shack experience and we blend our core brand identifiers with features specifically designed for each Shack to be of its place and connect directly with its neighborhood. With a disciplined approach to new Shack development and a successful track record in site selection, we are positioned well for future growth.

5. Shack-onomics. Our brand power and thoughtful approach to growth have resulted in strong Shack performance across a variety of geographic areas and formats and during both strong and weak economic environments. Our Shack model is designed to generate attractive Shack-level operating profit margins, strong cash flow and high returns on invested capital. We have notable AUVs at both Manhattan Shacks and non-Manhattan Shacks. In fiscal 2013, our domestic company-operated Shacks had AUVs of approximately \$5.0 million, of which our Manhattan Shacks generated AUVs of approximately \$7.4 million with Shack-level operating profit margins of approximately 30% and our non-Manhattan Shacks generated AUVs of approximately \$3.8 million with Shack-level operating profit margins of approximately 22%. Historically, our domestic company-operated Shacks have delivered an attractive average cash-on-cash return of 65% and payback period of 1.5 years, of which our Manhattan Shacks generated an average cash-on-cash return of 82% and payback period of 1.2 years and our non-Manhattan Shacks generated an average cash-on-cash return of 31% and payback period of 3.2 years. Since the vast majority of future Shacks will be non-Manhattan locations, we are targeting AUVs in the \$2.8 to \$3.2 million range, Shack-level operating profit margins in the 18 to 22% range and cash-on-cash returns in the 30 to 33% range.

6. The Shack travels abroad. With 27 licensed Shacks outside the United States, we believe that we have proven to be an internationally desirable restaurant concept. Our track record of opening successful Shacks in both the United States and overseas demonstrates the global appeal of Shake Shack and validates our belief in our significant whitespace opportunity internationally. We currently have license agreements for four major international territories, with Shacks operating in eight countries. The Middle East has been our most prominent growth market with 20 Shacks in operation, followed by Turkey with four, Russia with two and the United Kingdom with one. In fiscal 2013, our international licensed Shacks had AUVs of approximately \$6.1 million, which resulted in license fees of approximately \$3.5 million. In addition to license fees, we also receive exclusive territory fees, which help us fund further domestic growth.

7. Leaders training future leaders. Our team is led by passionate and experienced senior leaders, balanced with professionals formerly from USHG's fine dining operations and industry veterans from

larger restaurant companies. Randy Garutti, our Chief Executive Officer, combines strategic multi-unit leadership experience with fine dining expertise. Randy has worked in restaurants since he was 13 and joined USHG in 2000 as General Manager of Tabla, followed by Union Square Cafe, and later took on the role of Director of Operations overseeing all USHG restaurants, prior to launching the first Shake Shack in 2004. Randy has led the development of the Shake Shack concept from its earliest stages and guided every aspect of the business. Jeff Uttz, our Chief Financial Officer, brings valuable experience managing high growth restaurant concepts drawing from his 22 years of restaurant finance experience, most recently as Chief Financial Officer at Yard House Restaurants. Jeff led the expansion of Yard House from three units when he began to over 40 units when Yard House was acquired by Darden Restaurants, Inc. Randy and Jeff are supported by a talented executive leadership team that has deep experience in operations, culinary arts, supply chain, finance and accounting, training and leadership development, people resources, real estate and design, construction and facilities, information technology, legal, marketing and communications.

Shake Shack is in the Very Early Stages of Growth

We believe that we are well-positioned to achieve significant, sustainable financial growth, primarily driven by:

Opening new domestic company-operated Shacks. This is where our greatest immediate opportunity for growth lies. We waited nearly five years to open our second Shack, and we are still in the very nascent stage of our story, with only 31 domestic company-operated and five domestic licensed Shacks in 10 states and Washington, D.C. We believe there is tremendous whitespace opportunity to expand in both existing and new U.S. markets, and we have invested in our infrastructure through new hires at our home office to enable us to continue to grow rapidly and with discipline. In fiscal 2013, we significantly expanded our domestic company-operated footprint by opening eight new Shacks representing 62% domestic unit growth. In fiscal 2014, we opened 10 domestic company-operated Shacks. We plan to open at least 10 new domestic company-operated Shacks each year, beginning in fiscal 2015, for the foreseeable future. Based on our experience, and analysis and research conducted for us by eSite, we believe that over the long-term we have the potential to grow our current domestic company-operated Shack footprint to at least 450 Shacks by opening domestic company-operated Shacks in new and existing markets. The rate of future Shack growth in any particular period is inherently uncertain and is subject to numerous factors that are outside of our control. As a result, we do not currently have an anticipated timeframe for such expansion. We believe we have a versatile real estate model built for growth. We have adopted a disciplined expansion strategy designed to leverage the strength of our business model and our significant brand awareness to successfully develop new Shacks in an array of markets that are primed for growth, including new and existing and small and large markets. We will use a portion of the proceeds from this offering to open new Shacks and renovate existing Shacks. See "Use of Proceeds." As we grow, we will continue to live by one principle to ensure the success of both our new and existing restaurants: "The Bigger We Get, The Smaller We Need To Act." This mantra is central to our *Stand For Something Good* vision and encompasses our commitment to continue to make decisions that focus on the core of who we are, staying true to the principles of Enlightened Hospitality.

Capitalizing on our outsized brand awareness. The Shake Shack experience has cultivated significant brand awareness relative to the small number of Shacks. We have worked tirelessly to establish a genuine connection with our guests and integrate into their communities through investment in innovative marketing and programming. We utilize various social media outlets to actively engage with our growing online following. In June 2014, we ranked #10 on *Restaurant Social Media Index's* top 250 restaurant brands, which is measured on influence, sentiment and engagement. Furthermore, we believe that our press and media impressions and industry recognition are a testament to the strength of our brand. We were named one of "The 25 Most Innovative Consumer and Retail Brands" in 2014 by

Entrepreneur.com, ranked #11 in *The Daily Meal*'s "101 Best Restaurants in America" for 2013, and were the winner of the 2013 "Most Loved Brand of the Year" from the RIZMY Awards, "Best Burger" at the 2014 South Beach Wine and Food Festival's Burger Bash and more. Additionally, we give back to the communities in which we operate, and strengthen awareness for philanthropic causes such as *Share Our Strength's No Kid Hungry* campaign. Our marketing focuses on interacting with our guests in an authentic, innovative manner which creates memorable, meaningful experiences. The experience that we provide for our guests and local communities has generated a growing loyal following who promote our brand through word-of-mouth. We believe that this outsized brand awareness will continue to fuel our growth in existing and new markets.

Growing Same Shack Sales. Given the significant awareness of our brand and the excitement we have been able to generate for our market launches, our Shacks have generally opened with higher volumes and operating profits relative to their second year, which have often shown a decline in sales and operating profit. In year three, our Shacks generally mature and continue to grow from the second year base and then retain these higher volumes over time. It is important to note that, while our goal is to grow same Shack sales over time, this is not our greatest growth opportunity. We expect our Shacks to deliver low same Shack sales growth for the foreseeable future as the number of new Shack openings relative to our comparable Shack base remains our primary driver of growth. We do, however, continually focus on improving our same Shack sales performance by providing an engaging and differentiated guest experience that includes new seasonal and Shack-specific offerings, unique and thoughtful integration with local communities and high standards of excellence and hospitality. We will continue to innovate around our core menu to keep our offerings fresh, while remaining focused on our signature items. For example, our SmokeShack, which debuted in 2012, has been a great success and helped drive sales.

Opportunistically increasing our licensed Shacks abroad. We will continue to grow our licensed portfolio by expanding further in the eight countries abroad in which we currently have internationally licensed operations. This strategy historically has been a low-cost, high-return method of growing our brand awareness and provides an increasing source of cash flow. We believe there are additional international markets that will embrace the Shake Shack concept. Given our position in New York and the success of our current licensed Shacks at home and abroad, we continue to attract substantial interest from potential international licensees around the world and have identified opportunities to expand our licensing footprint in existing and new international markets.

Summary Risk Factors

We are subject to a number of risks, including risks that may prevent us from achieving our business objectives or that may adversely affect our business, financial condition, results of operations, cash flows and prospects. You should carefully consider the risks discussed in the section entitled "Risk Factors," including the following risks, before investing in our Class A common stock:

- our long-term success is highly dependent on our ability to successfully identify and secure appropriate sites and timely develop and expand our operations in existing and new markets;
- damage to our reputation could negatively impact our business, financial condition and results of operations;
- food safety and food-borne illness incidents may have an adverse effect on our business by not only reducing demand but also increasing operating costs;
- shortages or interruptions in the supply or delivery of food products;
- risks related to our international operations and our international licensed Shacks; and
- we face significant competition for guests, and our inability to compete effectively may affect our traffic, Shack sales and Shack-level operating profit margins.

Summary of the Transactions

Prior to the consummation of this offering and the organizational transactions described below, the Original SSE Equity Owners are the only members of SSE Holdings. Shake Shack Inc. was incorporated as a Delaware corporation on September 23, 2014 to serve as the issuer of the Class A common stock offered hereby. On December 30, 2014, we paid a distribution to certain of the Original SSE Equity Owners in the amount of approximately \$21.9 million funded from borrowings under the Revolving Credit Facility (as defined in "Description of Indebtedness") in the same amount.

In connection with the closing of this offering we will consummate the following organizational transactions:

- we will amend and restate the second amended and restated limited liability company agreement of SSE Holdings, as amended, effective as of the completion of this offering (the "SSE Holdings LLC Agreement"), to, among other things, (i) provide for LLC Interests that will be the single class of common membership interests in SSE Holdings, (ii) exchange all of the Original SSE Equity Owners' existing membership interests in SSE Holdings for LLC Interests and (iii) appoint Shake Shack as the sole managing member of SSE Holdings;
- we will amend and restate Shake Shack's certificate of incorporation to, among other things, (i) provide for Class A common stock and Class B common stock and (ii) issue shares of Class B common stock to the Continuing SSE Equity Owners, on a one-to-one basis with the number of LLC Interests they own, for nominal consideration;
- we will issue 5,000,000 shares of our Class A common stock to the purchasers in this offering;
- we will use all of the net proceeds from this offering (including net proceeds received upon exercise of the underwriters' option to purchase additional shares of Class A common stock) to acquire newly-issued LLC Interests from SSE Holdings at a purchase price per interest equal to the initial public offering price per share of Class A common stock, collectively representing 14.1% of SSE Holdings' outstanding LLC Interests (or 15.9%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- SSE Holdings will use the proceeds from the sale of LLC Interests to Shake Shack as described in "Use of Proceeds," including (i) to pay fees and expenses of approximately \$3.0 million in connection with this offering and the Transactions, (ii) to repay the outstanding borrowings under our Revolving Credit Facility of approximately \$36.0 million, including approximately \$21.9 million of borrowings used to pay a distribution to certain of the Original SSE Equity Owners, and (iii) approximately \$30.8 million for general corporate purposes, including opening new Shacks and renovating existing Shacks. To the extent the gross proceeds of this offering exceed \$80.0 million (including as a result of the exercise by the underwriters of their option to purchase additional shares of Class A common stock), SSE Holdings will pay an additional distribution to certain of the Original SSE Equity Owners in an amount equal to the product of (A) the increase in the gross proceeds and (B) 0.273, and the balance of such additional net proceeds will be used for general corporate purposes, including opening new Shacks and renovating existing Shacks;
- the Former SSE Equity Owners will exchange their indirect ownership of LLC Interests for 5,918,417 shares of Class A common stock on a one-to-one basis;
- the Former UAR Plan Participants will receive 311,791 shares of Class A common stock in settlement of their awards under the UAR Plan, net of employee withholding taxes (and Shake Shack will receive a corresponding number of LLC Interests from SSE Holdings);
- the Continuing SSE Equity Owners will continue to own the LLC Interests they received in exchange for their existing membership interests in SSE Holdings and will have no economic

interests in Shake Shack despite their ownership of Class B common stock (where "economic interests" means the right to receive any distributions or dividends, whether cash or stock, in connection with common stock). LLC Interests, following this offering, will be redeemable, at the election of such members, for newly-issued shares of Class A common stock on a one-for-one basis (and their shares of Class B common stock will be cancelled on a one-for-one basis upon any such issuance). Shake Shack's board of directors, which will include directors who hold LLC Interests or are affiliated with holders of LLC Interests and may include such directors in the future, may, at its option, instead make a cash payment equal to a volume weighted average market price of one share of Class A common stock for each LLC Interest redeemed (subject to customary adjustments, including for stock splits, stock dividends and reclassifications) in accordance with the terms of the SSE Holdings LLC Agreement; and

- Shake Shack will enter into (i) a tax receivable agreement (the "Tax Receivable Agreement") with the Continuing SSE Equity Owners, (ii) a stockholders agreement (the "Stockholders Agreement") with the Voting Group and (iii) a registration rights agreement (the "Registration Rights Agreement") with the Continuing SSE Equity Owners who, upon the consummation of this offering, will own 24,269,792 shares of Shake Shack's Class B common stock, representing approximately 68.4% of the combined voting power of all of Shake Shack's common stock (or approximately 67.0%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), and the Former SSE Equity Owners.

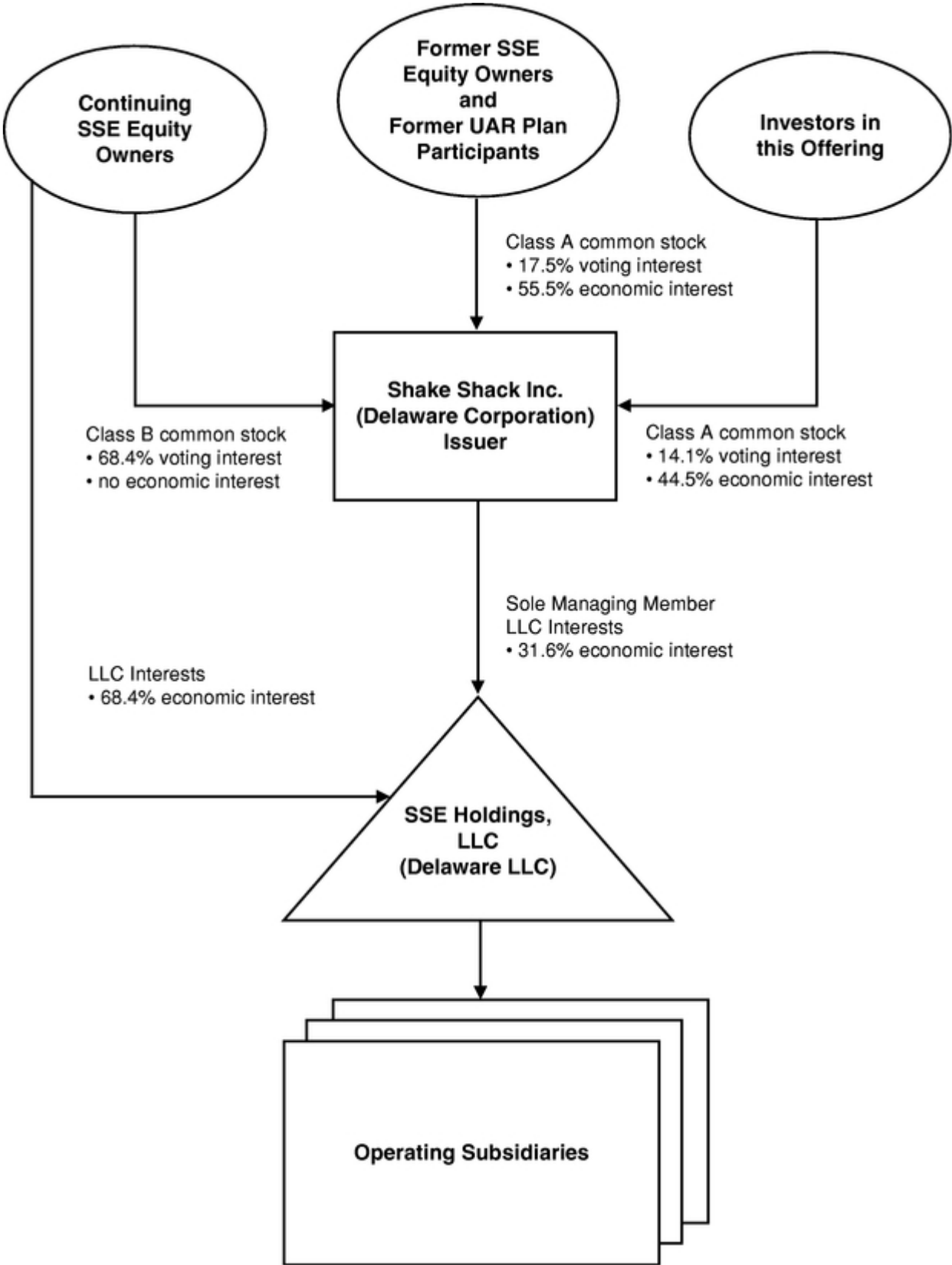
We refer to the foregoing distribution and organizational transactions collectively as the "Transactions." For more information regarding our structure after the completion of the Transactions, including this offering, see "The Transactions."

Immediately following this offering, Shake Shack will be a holding company and its principal asset will be the LLC Interests it purchases from SSE Holdings and acquires from the Former SSE Equity Owners. As the sole managing member of SSE Holdings, we will operate and control all of the business and affairs of SSE Holdings and, through SSE Holdings and its subsidiaries, conduct our business. Accordingly, although we will have a minority economic interest in SSE Holdings, we will have the sole voting interest in, and control the management of, SSE Holdings. As a result, we will consolidate SSE Holdings in our consolidated financial statements and will report a non-controlling interest related to the LLC Interests held by the Continuing SSE Equity Owners on our consolidated financial statements.

See "Description of Capital Stock" for more information about our certificate of incorporation and the terms of the Class A common stock and Class B common stock. See "Certain Relationships and Related Party Transactions" for more information about:

- the SSE Holdings LLC Agreement, including the terms of the LLC Interests and the redemption right of the Continuing SSE Equity Owners;
- the Tax Receivable Agreement;
- the Registration Rights Agreement; and
- the Stockholders Agreement.

The diagram below depicts our organizational structure after giving effect to the Transactions, including this offering, assuming no exercise by the underwriters of their option to purchase additional shares of Class A common stock.



Our Corporate Information

Shake Shack Inc., the issuer of the Class A common stock in this offering, was incorporated as a Delaware corporation on September 23, 2014. Our corporate headquarters are located at 24 Union Square East, 5th Floor, New York, NY 10003. Our telephone number is (646) 747-7200. Our principal website address is www.shakeshack.com. The information on any of our websites is deemed not to be incorporated in this prospectus or to be part of this prospectus.

Implications of Being an Emerging Growth Company

As a company with less than \$1.0 billion in revenue during our last fiscal year, we qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, or JOBS Act. An emerging growth company may take advantage of specified reduced reporting and other requirements that are otherwise applicable generally to public companies. These provisions include:

- we are required to have only two years of audited financial statements and only two years of related Management's Discussion and Analysis of Financial Condition and Results of Operations disclosure;
- we are not required to engage an auditor to report on our internal controls over financial reporting pursuant to Section 404 (b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act");
- we are not required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board (the "PCAOB") regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements (*i.e.* , an auditor discussion and analysis);
- we are not required to submit certain executive compensation matters to stockholder advisory votes, such as "say-on-pay," "say-on-frequency" and "say-on-golden parachutes;" and
- we are not required to disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of the chief executive officer's compensation to median employee compensation.

We may take advantage of these provisions until the last day of our fiscal year following the fifth anniversary of the completion of this offering or such earlier time that we are no longer an emerging growth company. We would cease to be an emerging growth company if we have more than \$1.0 billion in annual revenue, have more than \$700 million in market value of our Class A common stock held by non-affiliates, or issue more than \$1.0 billion of non-convertible debt over a three-year period. We may choose to take advantage of some but not all of these reduced burdens. We have elected to adopt the reduced disclosure with respect to financial statements and the related Management's Discussion and Analysis of Financial Condition and Results of Operations disclosure. As a result of this election, the information that we provide stockholders may be different than you might get from other public companies in which you hold equity.

The JOBS Act permits an emerging growth company like us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We are choosing to "opt out" of this provision and, as a result, we will comply with new or revised accounting standards as required when they are adopted. This decision to opt out of the extended transition period is irrevocable.

The Offering

Issuer in this offering	Shake Shack Inc.
Class A common stock offered by us	5,000,000 shares.
Underwriters' option to purchase additional shares of Class A common stock from us solely to cover overallocments	750,000 shares.
Class A common stock to be issued to the Former SSE Equity Owners and the Former UAR Plan Participants	6,230,208 shares.
Class A common stock to be outstanding after this offering	11,230,208 shares (or 11,980,208 shares, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Class B common stock to be outstanding after this offering	24,269,792 shares, all of which will be owned by the Continuing SSE Equity Owners.
Voting Rights	Holders of our Class A common stock and Class B common stock will vote together as a single class on all matters presented to stockholders for their vote or approval, except as otherwise required by law. Each share of Class A common stock and Class B common stock will entitle its holder to one vote per share on all such matters. See "Description of Capital Stock."
Voting power held by purchasers in this offering	14.1% (or 15.9%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Voting power held by the Former SSE Equity Owners and the Former UAR Plan Participants	17.5% (or 17.1%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Voting power held by all holders of Class A common stock after giving effect to this offering	31.6% (or 33.0%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Voting power held by all holders of Class B common stock after giving effect to this offering	68.4% (or 67.0%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).

Voting power held by the Original SSE Equity Owners and the Former UAR Plan Participants after giving effect to this offering

85.9% (or 84.1%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).

Ratio of shares of Class A common stock to LLC Interests

Our amended and restated certificate of incorporation and the SSE Holdings LLC Agreement will require that (i) we at all times maintain a ratio of one LLC Interest owned by us for each share of Class A common stock issued by us (subject to certain exceptions for treasury shares and shares underlying certain convertible or exchangeable securities), and (ii) SSE Holdings at all times maintain (x) a one-to-one ratio between the number of shares of Class A common stock issued by us and the number of LLC Interests owned by us and (y) a one-to-one ratio between the number of shares of Class B common stock owned by the Continuing SSE Equity Owners and the number of LLC Interests owned by the Continuing SSE Equity Owners. This construct is intended to result in the Continuing SSE Equity Owners having a voting interest in Shake Shack that is identical to the Continuing SSE Equity Owners' percentage economic interest in SSE Holdings. The Continuing SSE Equity Owners will own all of our outstanding Class B common stock.

Use of proceeds

We estimate that the net proceeds to us from this offering, after deducting underwriting discounts, but before estimated offering expenses, will be approximately \$69.8 million (or approximately \$80.2 million if the underwriters exercise in full their option to purchase additional shares of Class A common stock), assuming the shares are offered at \$15.00 per share (the midpoint of the price range listed on the cover page of this prospectus).

We intend to use the net proceeds that we receive from this offering to purchase 5,000,000 newly-issued LLC Interests from SSE Holdings at a purchase price per interest equal to the initial public offering price per share of Class A common stock.

We intend to cause SSE Holdings to use such proceeds as follows: (i) to pay fees and expenses of approximately \$3.0 million in connection with this offering and the Transactions, (ii) to repay the outstanding borrowings under our Revolving Credit Facility of approximately \$36.0 million, including approximately \$21.9 million of borrowings used to pay the distribution to certain of the Original SSE Equity Owners, and (iii) approximately \$30.8 million for general corporate purposes, including opening new Shacks and renovating existing Shacks. To the extent the gross proceeds of this offering exceed \$80.0 million (including as a result of the

	exercise by the underwriters of their option to purchase additional shares of Class A common stock), we will pay an additional distribution to certain of the Original SSE Equity Owners in an amount equal to the product of (A) the increase in the gross proceeds and (B) 0.273, and the balance of such additional net proceeds will be used for general corporate purposes, including opening new Shacks and renovating existing Shacks. See "Use of Proceeds."
Conflicts of interest	Because J.P. Morgan Securities LLC and/or certain of its affiliates are lenders under the Revolving Credit Facility and will receive more than 5% of the net proceeds of this offering due to the repayment of outstanding borrowings under the Revolving Credit Facility, J.P. Morgan Securities LLC is deemed to have a conflict of interest within the meaning of Rule 5121 of the Financial Industry Regulatory Authority, Inc. ("FINRA"). Accordingly, this offering will be conducted in accordance with Rule 5121. See "Underwriting (Conflicts of Interest)—Conflicts of Interest."
Redemption rights of holders of LLC Interests	The Continuing SSE Equity Owners, from time to time following the offering may require SSE Holdings to redeem or exchange all or a portion of their LLC Interests for newly-issued shares of Class A common stock on a one-for-one basis. Shake Shack's board of directors, which will include directors who hold LLC Interests or are affiliated with holders of LLC Interests and may include such directors in the future, may, at its option, instead make a cash payment equal to the volume weighted average market price of one share of our Class A common stock for each LLC Interest redeemed (subject to customary adjustments, including for stock splits, stock dividends and reclassifications) in accordance with the terms of the SSE Holdings LLC Agreement. See "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement." Shares of our Class B common stock will be cancelled on a one-for-one basis if we, at the election of a Continuing SSE Equity Owner, redeem or exchange LLC Interests of such Continuing SSE Equity Owner pursuant to the terms of the SSE Holdings LLC Agreement.
Registration Rights Agreement	Pursuant to the Registration Rights Agreement, we will, subject to the terms and conditions thereof, agree to register the resale of the shares of our Class A common stock that are issuable to the Continuing SSE Equity Owners upon redemption or exchange of their LLC Interests and the shares of our Class A common stock that are issued to the Former SSE Equity Owners in connection with the Transactions. See "Certain Relationships and Related Party Transactions—Registration Rights Agreement."

Directed share program	The underwriters have reserved for sale, at the initial public offering price, up to approximately 625,000 shares of our Class A common stock being offered for sale to our directors, officers and certain employees and other parties with a connection to the Company. We will offer these shares to the extent permitted under applicable regulations. The number of shares available for sale to the general public in this offering will be reduced to the extent these persons purchase reserved shares. Any reserved shares not purchased will be offered by the underwriters to the general public on the same terms as the other shares.
Controlled company	Following this offering we will be a "controlled company" within the meaning of the corporate governance rules of the New York Stock Exchange. See "Management—Corporate Governance."
Dividend policy	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. Any future determination to pay dividends to holders of 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. 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 us or of our subsidiaries. See "Dividend Policy."
Tax Receivable Agreement	We will enter into the Tax Receivable Agreement with SSE Holdings and the Continuing SSE Equity Owners that will provide for the payment by Shake Shack to the Continuing SSE Equity Owners of 85% of the amount of tax benefits, if any, that Shake Shack actually realizes (or in some circumstances is deemed to realize) as a result of (i) increases in the tax basis of assets of SSE Holdings resulting from any redemptions or exchanges of LLC Interests described above under "—The Offering—Redemption rights of holders of LLC Interests" or any prior sales of interests in SSE Holdings and (ii) certain other tax benefits related to our making payments under the Tax Receivable Agreement. See "Certain Relationships and Related Party Transactions—Tax Receivable Agreement."
Risk factors	Investing in shares of our Class A common stock involves a high degree of risk. See "Risk Factors" beginning on page 22 of this prospectus for a discussion of factors you should carefully consider before investing in shares of our Class A common stock.

Proposed New York Stock Exchange symbol**"SHAK."**

The number of shares of our Class A common stock to be outstanding after this offering is based on the membership interests of SSE Holdings and awards under the UAR plan outstanding as of January 16, 2015 and excludes:

- 5,952,917 shares of Class A common stock reserved for issuance under our 2015 Incentive Award Plan (as described in "Executive Compensation—New Employment Agreements and Incentive Plans"), consisting of (i) 2,689,486 shares of Class A common stock issuable upon the exercise of options to purchase shares of Class A common stock granted on the date of this prospectus to our directors and certain employees, including the named executive officers, in connection with this offering as described in "Executive Compensation—Director Compensation" and "Executive Compensation—New Equity Awards," and (ii) 3,263,431 additional shares of Class A common stock reserved for future issuance; and
- 24,269,792 shares of Class A common stock reserved as of the closing date of this offering for future issuance upon redemption or exchange of LLC Interests by the Continuing SSE Equity Owners.

Unless otherwise indicated, this prospectus assumes the shares of Class A common stock are offered at \$15.00 per share (the midpoint of the price range listed on the cover page of this prospectus). Although the number of shares being offered hereby to the public and the total number of shares outstanding after the offering will remain fixed regardless of the initial public offering price in this offering, certain share information presented in this prospectus will vary depending on the initial public offering price in this offering. For example, the relative allocation of the shares of common stock issued in the Transactions as among the Continuing SSE Equity Owners, the Former SSE Equity Owners and the Former UAR Plan Participants will vary, depending on the initial public offering price in this offering. An increase in the assumed initial public offering price would result in an increase in the amount of shares of Class A common stock issued to the Former UAR Plan Participants, a decrease in the amount of shares of Class A common stock issued to the Former SSE Equity Owners, a decrease in the amount of shares of Class B common stock issued to the Continuing SSE Equity Owners on an aggregate basis, and a reallocation of the shares of Class B common stock issued to the Continuing SSE Equity Owners among the various Continuing SSE Equity Owners. A decrease in the assumed initial public offering price would result in a decrease in the amount of shares of Class A common stock issued to the Former UAR Plan Participants, an increase in the amount of shares of Class A common stock issued to the Former SSE Equity Owners, an increase in the amount of shares of Class B common stock issued to the Continuing SSE Equity Owners on an aggregate basis, and a reallocation of the shares of Class B common stock issued to the Continuing SSE Equity Owners among the various Continuing SSE Equity Owners.

Unless otherwise indicated, this prospectus assumes no exercise by the underwriters of their option to purchase additional shares of Class A common stock.

Summary Historical and Pro Forma Consolidated Financial and Other Data

The following tables present the summary historical and pro forma consolidated financial and other data for SSE Holdings, LLC and its subsidiaries. SSE Holdings, LLC is the predecessor of the issuer, Shake Shack Inc., for financial reporting purposes. The summary consolidated statement of operations data for each of the years in the two-year period ended December 25, 2013 and the summary consolidated balance sheet data as of December 26, 2012 and December 25, 2013 are derived from the audited consolidated financial statements of SSE Holdings, LLC and its subsidiaries contained herein. The summary consolidated statements of operations data for the thirty-nine weeks ended September 25, 2013 and September 24, 2014 and the summary consolidated balance sheet data as of September 24, 2014 are derived from the unaudited condensed consolidated financial statements of SSE Holdings, LLC and its subsidiaries included in this prospectus. In the opinion of our management, such unaudited financial statements reflect all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of the results for those periods.

The results of operations for the periods presented below are not necessarily indicative of the results to be expected for any future period and the results for any interim period are not necessarily indicative of the results that may be expected for a full fiscal year. The information set forth below should be read together with the "Selected Historical Consolidated Financial and Other Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the accompanying notes appearing elsewhere in this prospectus.

The summary unaudited pro forma consolidated financial data of Shake Shack Inc. presented below have been derived from our unaudited pro forma consolidated financial statements included elsewhere in this prospectus. The summary unaudited pro forma financial data for the fiscal year ended December 25, 2013 and as of and for the thirty-nine weeks ended September 24, 2014 give effect to the Transactions as described in "The Transactions" and the completion of this offering as if all such transactions had occurred on December 27, 2012, in the case of the summary unaudited pro forma consolidated statements of operations data, and as of September 24, 2014, in the case of the summary unaudited pro forma consolidated balance sheet data. The unaudited pro forma financial information includes various estimates which are subject to material change and may not be indicative of what our operations or financial position would have been had this offering and related transactions taken place on the dates indicated, or that may be expected to occur in the future. See "Unaudited Pro Forma Consolidated Financial Information" for a complete description of the adjustments and assumptions underlying the summary unaudited pro forma consolidated financial data.

The summary historical consolidated financial and other data of Shake Shack Inc. have not been presented as Shake Shack Inc. is a newly incorporated entity, has had no business transactions or activities to date and had no assets or liabilities during the periods presented in this section.

	Historical SSE Holdings, LLC				Pro Forma Shake Shack Inc.(1)	
	Fiscal year ended		Thirty-nine weeks ended		Fiscal year ended	Thirty-nine weeks ended
	December 26, December 25,		September 25, September 24,		December 25,	September 24,
	(in thousands, except per share data)	2012	2013	2013	2013	2014
				(unaudited)	(unaudited)	
Consolidated statement of operations data:						
Revenues						
Shack sales	\$	55,591	\$	78,587	\$	78,988
Licensing revenue		1,447		3,869		4,770
Total revenue		57,038		82,456		83,758
Expenses						
Operating expenses						
Food and paper costs		16,774		23,865		24,248
Labor and related expenses		14,436		20,096		20,096
Other operating expenses		5,081		7,315		7,866
Occupancy and related expenses		5,053		6,892		6,794
General and administrative expenses		6,988		12,453		15,897
Depreciation expense		2,162		3,541		4,067
Pre-opening costs		1,858		2,334		3,828
Loss on disposal of property and equipment		—		25		28
Total expenses		52,352		76,521		79,965
Income from operations		4,686		5,935		2,491
Interest expense, net		156		52		214
Income before income taxes		4,530		5,883		2,439
Income tax expense		397		460		328
Net income	\$	4,133	\$	5,423	\$	2,111
Pro forma net income per share data (unaudited)(1)(2):						
Pro forma weighted average shares of Class A common stock outstanding:						
Basic					11,230	11,230
Diluted					35,500	35,500
Pro forma net income available to Class A common stock per share:						
Basic	\$				0.06	0.03
Diluted	\$				0.06	0.03
Supplemental pro forma net income per share data (unaudited)(3):						
Pro forma weighted average shares of Class A common stock outstanding:						
Basic					1,443	1,502
Diluted					1,443	1,502
Pro forma net income available to Class A common stock per share:						
Basic	\$				3.76	2.36
Diluted	\$				3.76	2.36

(in thousands)	Historical SSE Holdings, LLC			Pro Forma SSE Holdings, LLC(4)	Pro Forma Shake Shack Inc.(1)
	December 26, 2012	December 25, 2013	September 24, 2014 (unaudited)	September 24, 2014 (unaudited)	September 24, 2014
Consolidated balance sheet data:					
Cash	\$ 16,033	\$ 13,076	\$ 6,107	\$ 6,107	\$ 46,249
Total assets	44,068	55,219	65,537	65,537	104,861
Total liabilities	12,197	17,832	29,700	51,551	26,400
Total members'/stockholder equity	31,871	37,387	35,837	13,986	24,794

(Dollar amounts in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Other data:				
Number of Shacks	21	40	33	53
Domestic company-operated	13	21	16	26
Domestic licensed	3	4	4	5
International licensed	5	15	13	22
Same Shack sales growth	7.1%	5.9%	5.5%	3.0%
Average unit volumes				
Domestic company-operated Shacks	\$ 5,367	\$ 5,017		
Manhattan Shacks	7,034	7,387		
Non-Manhattan Shacks	3,791	3,840		
International licensed Shacks (5)	9,665	6,077		
Shack system-wide sales(5)	\$ 81,048	\$ 139,903	\$ 98,931	\$ 156,080
Shack-level operating profit margins(6)	25.6%	26.0%	27.2%	24.7%
Manhattan Shacks	29.0%	30.3%	31.7%	31.2%
Non-Manhattan Shacks	19.8%	21.9%	22.8%	20.8%
Adjusted EBITDA(7)	\$ 9,998	\$ 14,459	\$ 11,417	\$ 14,063
As a percentage of revenue	17.5%	17.5%	19.2%	16.8%
Capital expenditures	\$ 11,036	\$ 16,194	\$ 10,359	\$ 17,885

- (1) Pro forma figures give effect to the Transactions, including this offering. See "Unaudited Pro Forma Consolidated Financial Information" for a detailed presentation of the unaudited pro forma information, including a description of the transactions and assumptions underlying the pro forma adjustments.
- (2) See Note 5 to the unaudited pro forma consolidated statements of operations in "Unaudited Pro Forma Consolidated Financial Information" for the computations of the pro forma weighted-average shares of Class A common stock outstanding.
- (3) The supplemental pro forma net income per share data has been computed, assuming an initial public offering price of \$15.00 per share (the midpoint of the price range listed on the cover of this prospectus), to give effect to the number of shares whose proceeds would be necessary to pay (i) the \$21.9 million distribution paid on December 30, 2014 to certain of the Original SSE Equity Owners and (ii) the \$5.2 million distribution made during the thirty-nine weeks ended September 24, 2014, but only to the extent the aggregate amount of these distributions exceeded our

earnings for the preceding twelve-month period. The computations of the supplemental pro

forma weighted average shares of Class A common stock outstanding and net income per share of Class A common stock are based on Historical SSE Holdings, LLC financial information, which as a limited liability company did not have any shares of Class A common stock outstanding during the fiscal year ended December 25, 2013 or the thirty-nine weeks ended September 24, 2014. The supplemental pro forma weighted average shares of Class A common stock outstanding during (i) the fiscal year ended December 25, 2013 only include 1.4 million shares to pay such distributions and (ii) the thirty-nine weeks ended September 24, 2014 only include 1.5 million shares to pay such distributions. See Note 7 to the unaudited pro forma consolidated statements of operations in "Unaudited Pro Forma Consolidated Financial Information" for a complete description of the assumptions underlying the computations.

- (4) The pro forma data in this column gives effect to the payment of the \$21.9 million distribution paid on December 30, 2014 to certain of the Original SSE Equity Owners and the related borrowings under the Revolving Credit Facility used to fund the distribution as if such distribution was declared and paid on September 24, 2014. See Note 2 to the unaudited pro forma consolidated balance sheet as of September 24, 2014 in "Unaudited Pro Forma Consolidated Financial Information."
- (5) Shack system-wide sales includes combined revenue from all of our domestic company-operated Shacks and our domestic and international licensed Shacks. Our total revenue is limited to Shack sales from domestic company-operated Shacks and licensing revenue from our domestic and international licensed Shacks.
- (6) Shack-level operating profit margin is included in this prospectus because we believe that Shack-level operating profit margin is an important measure to evaluate the performance and profitability of each Shack, individually and in the aggregate. We use Shack-level operating profit margin information to benchmark our performance versus competitors. Shack-level operating profit margin is defined as Shack sales less operating expenses, including food and paper costs, labor and related expenses, other operating expenses and occupancy and related expenses as a percentage of Shack sales. Shack-level operating profit margin is not required by, or presented in accordance with, GAAP. Shack-level operating profit margin is a supplemental measure of operating performance of our Shacks and our calculations thereof may not be comparable to similar measures reported by other companies. Shack-level operating profit margin has limitations as an analytical tool and should not be considered as a substitute for analysis of our results as reported under GAAP.

The computation of Shack-level operating profit margin is set forth below:

	Fiscal year ended		Thirty-nine weeks ended	
	December 26,	December 25,	September 25,	September 24,
(Dollar amounts in thousands)	2012	2013	2013	2014
Shack sales	\$ 55,591	\$ 78,587	\$ 56,783	\$ 78,988
Food and paper costs	16,774	23,865	17,211	24,248
Labor and related expenses	14,436	20,096	14,161	20,605
Other operating expenses	5,081	7,315	5,072	7,866
Occupancy and related expenses	5,053	6,892	4,871	6,794
Shack-level operating profit	<u>\$ 14,247</u>	<u>\$ 20,419</u>	<u>\$ 15,468</u>	<u>\$ 19,475</u>
Shack-level operating profit margin	25.6%	26.0%	27.2%	24.7%

A reconciliation of Shack-level operating profit to income from operations, the most directly comparable GAAP measure, is set forth below.

(in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Shack-level operating profit	\$ 14,247	\$ 20,419	\$ 15,468	\$ 19,475
Add:				
Licensing revenue	1,447	3,869	2,721	4,770
Less:				
General and administrative expenses	6,988	12,453	9,164	12,192
Depreciation expense	2,162	3,541	2,472	4,067
Pre-opening costs	1,858	2,334	1,705	3,828
Loss on disposal of property and equipment	—	25	17	28
Income from operations	<u>\$ 4,686</u>	<u>\$ 5,935</u>	<u>\$ 4,831</u>	<u>\$ 4,130</u>

- (7) EBITDA and Adjusted EBITDA are included in this prospectus because they are key metrics used by management and our board of directors to assess our financial performance. EBITDA and Adjusted EBITDA are frequently used by analysts, investors and other interested parties to evaluate companies in our industry.

EBITDA and Adjusted EBITDA are not GAAP measures of our financial performance or liquidity and should not be considered as alternatives to net income (loss) as a measure of financial performance or cash flows from operations as measures of liquidity, or any other performance measure derived in accordance with GAAP. Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Additionally, EBITDA and Adjusted EBITDA are not intended to be measures of free cash flow for management's discretionary use, as they do not reflect tax payments, debt service requirements, capital expenditures, Shack openings and certain other cash costs that may recur in the future, including, among other things, cash requirements for working capital needs and cash costs to replace assets being depreciated and amortized. Management compensates for these limitations by relying on our GAAP results in addition to using EBITDA and Adjusted EBITDA supplementally. Our measures of EBITDA and Adjusted EBITDA are not necessarily comparable to similarly titled captions of other companies due to different methods of calculation.

A reconciliation of net income to EBITDA and Adjusted EBITDA is set forth below:

(in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Net income	\$ 4,133	\$ 5,423	\$ 4,426	\$ 3,545
Depreciation expense	2,162	3,541	2,472	4,067
Interest expense, net	156	52	31	219
Income tax expense	397	460	374	366
EBITDA	6,848	9,476	7,303	8,197
Equity-based compensation(a)	450	93	51	124
Deferred compensation(b)	—	2,054	2,032	—
Pre-opening costs(c)	1,623	1,737	941	2,260
Deferred rent(d)	839	975	1,023	1,934
Loss on disposal of property and equipment (e)	—	25	17	28
Costs associated with this offering(f)	—	—	—	1,495
Other non-cash items(g)	238	99	50	25
Adjusted EBITDA	\$ 9,998	\$ 14,459	\$ 11,417	\$ 14,063

- (a) Non-cash charges related to equity-based compensation programs, which vary from period to period depending on timing of awards.
- (b) For the periods presented, represents amounts accrued under a bonus agreement we entered into with an employee pursuant to which we agreed to pay a bonus in a future period.
- (c) Non-capital expenditures associated with opening new Shacks exclusive of deferred rent incurred prior to opening.
- (d) Reflects the extent to which our annual rent expense has been above or below our cash rent payments.
- (e) Includes the loss on disposal of assets in the ordinary course of business.
- (f) Costs incurred in connection with this offering, including legal, accounting and other related expenses.
- (g) For the periods presented, represents non-cash charges related to certain employee benefits.

RISK FACTORS

You should carefully consider the risks described below, together with all of the other information included in this prospectus, before making an investment decision. Our business, financial condition and results of operations could be materially and adversely affected by any of these risks or uncertainties. In that case, the trading price of our Class A common stock could decline, and you may lose all or part of your investment.

Risks Related to Our Business

Our long-term success is highly dependent on our ability to successfully identify and secure appropriate sites and timely develop and expand our operations in existing and new markets.

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 opened eight new domestic company-operated Shacks and 10 international licensed Shacks in fiscal 2013, and 10 domestic company-operated Shacks and 12 international licensed Shacks in fiscal 2014. We must identify target markets where we can enter or expand, taking into account numerous factors such as the location of our current Shacks, demographics, traffic patterns 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, without limitation:

- the identification and availability of attractive sites for new Shacks and the ability to negotiate suitable lease terms;
- the lack of development and overall decrease in commercial real estate due to a macroeconomic downturn;
- recruitment and training of qualified personnel in the local market;
- our ability to obtain all required governmental permits, including zonal approvals, on a timely basis;
- 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;
- 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 expenses.

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 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.

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 into 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;
- employment-related claims relating to alleged employment discrimination, wage and hour violations; labor standards or healthcare and benefit issues; or
- government or industry findings concerning our Shacks, restaurants operated by other foodservice 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, including weblogs (blogs), social media websites and other forms of Internet-based communications 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 our Company 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.

Food safety and food-borne illness incidents may have an adverse effect on our business by not only reducing demand but also increasing operating costs.

Food safety is a top priority, and we dedicate substantial resources to help ensure that our guests enjoy safe, quality food products. However, food-borne illnesses and other food safety issues have occurred in the food industry in the past, and could occur in the future. In addition, consumer preferences could be affected by health concerns about the consumption of beef, our key ingredient. A negative report or negative publicity, 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 decreased guest traffic to our Shacks. A decrease in guest traffic to our Shacks as a result of these health concerns or

negative publicity could materially harm our brand, business, financial condition and results of operations.

Furthermore, our reliance on third-party food suppliers and distributors increases the risk that food-borne illness incidents could be caused by factors outside of our control and that multiple Shacks would be affected rather than a single Shack. We cannot assure that all food items will be properly maintained during transport throughout the supply chain and that our employees will identify all products that may be spoiled and should not be used in our Shacks. If our guests become ill from food-borne illnesses, we could be forced to temporarily close some Shacks. Furthermore, any instances of food contamination, whether or not at our Shacks, could subject us or our suppliers to a food recall pursuant to the United States Food and Drug Administration's (the "FDA") recently enacted Food Safety Modernization Act ("FSMA").

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 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 alternative back up supply in the event of a disruption in their operations. In addition, our largest supplier of raw material has agreed to an emergency plan to supply us in the event of a disruption of operations at one of our beef grinders through our broadline distributor's distribution network, but it would not be able to do so immediately.

We currently have five approved sources of raw material in the United States. If there is a supply issue with all U.S. raw material, we have seven approved suppliers 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. However, it is our belief that only in the event of extreme disruptions would our operations be materially and adversely affected.

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

Our international licensed Shacks import most of our proprietary ingredients from the United States and the European Union (the "EU"). For example, our proprietary blend of beef patties and/or raw materials for beef patties originate from the United States and the EU as well as Australia. In addition, our potato buns are exclusively from the United States, and other key items such as crinkle-cut fries and American cheese originate within the United States or the EU. 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 one to three months of

inventory to allow for delays or interruptions in the supply chain. Specifically, we have had past and ongoing issues in ensuring that timely and adequate supplies reach our Middle East Shacks. In the Middle East, our licensee, Alshaya Trading Company W.L.L. ("Alshaya"), delegates the supply function to its third party logistics providers in each country in which Alshaya operates, with which we have limited and restricted communication, preventing us from exercising control or instruction over such entities. As a result, in the Middle East, Alshaya has a limited ability to achieve economies of scale and minimize production and freight costs.

The recent sanctions enacted by the Russian Federation on many imported ingredients from the United States, the EU and Australia have affected our licensee in Russia's ability to import such ingredients to our Russian Shack. As a result of the changing and uncertain nature of such sanctions, while our licensee in Russia has identified a back-up supplier, we are unable to guarantee that the licensee will be able to import our proprietary ingredients to supply this Shack. We have given our licensee in Russia approval to utilize alternative ingredients not affected by the sanctions, but there is a risk that these substitute ingredients may be inferior in taste and quality or come from suppliers that have not been vetted for food safety and quality assurance.

Our U.K. Shack faces challenges in obtaining potato buns and custard, which originate from our U.S. suppliers. While these ingredients have no trade restrictions, they must be shipped from the United States, which poses an ongoing risk of delay in supply deliveries.

Our Turkish Shacks currently import many key ingredients from both the EU and the United States. As is common in many developing markets, regulations are always subject to change which could potentially give rise to import risks should current importation legislation change. We are currently working on local Turkish alternatives to alleviate these risks in the future.

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 fees we receive from Alshaya, adversely impacting our business and results of operations.

We have a limited number of suppliers for our major products and rely on one distribution company for the majority of our domestic distribution program. 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 products, including beef patties, potato buns, custard, Portobello mushrooms and cheese sauce. In fiscal 2013, we purchased all of our (i) ground beef patties from two suppliers, with more than 87% of our ground beef patties supplied by one supplier, (ii) potato buns directly from one supplier, (iii) custard base from one supplier, (iv) 'Shroom Burgers from two suppliers, with approximately 50% of our 'Shroom Burgers supplied by each supplier and (v) ShackSauce from two suppliers, with approximately 87% of our ShackSauce supplied by one supplier. Due to this concentration of suppliers, the cancellation of our supply arrangements with 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 alternative 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 to provide virtually all of our food distribution services in the United States. Specifically, as of September 24, 2014, we consolidated approximately 89% of our core food and beverage ingredients, as well as 100% of our paper goods and chemicals with this distributor, which we refer to as our headline distributor, for distribution and delivery to each Shack. We currently utilize six affiliated distribution centers and plan to add three more by the end of fiscal 2014. 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 New York and New Jersey Shacks, we would be at immediate risk of product shortages because that distribution center supplies approximately 39% of our domestic company-operated Shacks, which collectively represented approximately 61% of our Shack sales, as of September 24, 2014. The other five distribution centers are all along the eastern seaboard and collectively supply the other approximately 61% of our domestic company-operated Shacks which represent the remaining approximately 39% of our total 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. See "Business—Operations—Sourcing and Supply Chain."

Security breaches of confidential guest information, in connection with our electronic processing of credit and debit card transactions, 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.

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 provider's 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.

We face significant competition for guests, and our inability to compete effectively may affect our traffic, Shack sales and Shack-level operating profit margins, which could adversely affect our business, financial condition and results of operations.

The restaurant industry is intensely competitive with many well-established companies that compete directly and indirectly with us with respect to food quality, service, price and value, design and location. We compete in the restaurant industry with national, regional and locally-owned and/or operated limited-service restaurants and full-service restaurants. We compete with (i) "better burger" restaurants, (ii) fast casual restaurants, (iii) quick service restaurants and (iv) casual dining restaurants. Some of our competitors have significantly greater financial, marketing, personnel and other resources than we do, and many of our competitors are well-established in markets in which we have existing Shacks or intend to locate new Shacks. In addition, many of our competitors have greater name

recognition nationally or in some of the local markets in which we have or plan to have Shacks. Any inability to successfully compete with the restaurants in our markets will place downward pressure on our guest traffic and may prevent us from increasing or sustaining our revenues and profitability.

Our continued success depends in part on the continued popularity of our menu and the experience we offer guests at our Shacks. Consumer tastes, nutritional and dietary trends, traffic patterns and the type, number, and location of competing restaurants often affect the restaurant business, and our competitors may react more efficiently and effectively to those conditions. In addition, some of our competitors in the past have implemented programs that provide price discounts on certain menu offerings, and they may continue to do so in the future. If we are unable to continue to compete effectively, 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.

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, are likely to be less profitable on average than our Manhattan 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 will have 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 into new international markets, which can pose similar and additional challenges in opening new Shacks.

New Shacks, once opened, may not be profitable, and the performance of our Shacks that we have experienced in the past may not be indicative of future results.

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 expenses associated with a given Shack within the three 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 commonly take eight to 12 weeks to reach planned 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. Accordingly, the volume and timing of new Shack openings may have a material adverse impact on our profitability.

In addition, the majority of our current domestic company-operated Shacks are located in Manhattan and other high revenue markets. As we expand, this percentage will decline and as a result we may not be able to maintain our current AUVs and Shack-level operating profit margins and our business, financial condition and results of operations may be adversely affected.

Although we target specified 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.

Our Shack sales and profit growth could be adversely affected if same Shack sales growth is less than we expect.

The level of same Shack sales growth, which represents the change in year-over-year revenues for domestic company-operated Shacks open for 24 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.

Opening new Shacks in existing markets may negatively affect Shack sales at our existing Shacks .

The consumer target area of our Shacks varies by location, depending on a number of factors, including population density, other local restaurants and attractions, area demographics and geography. As a result, 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. Shack sales cannibalization 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.

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

Our growth plan includes a significant number of new Shacks. Our existing 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 the 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.

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

Our growth strategy depends on opening new Shacks, which will require us to use cash flows from operations and a portion of the net proceeds of this offering. We cannot assure you that cash flows from operations and the net proceeds of this offering will be sufficient to allow us to implement our growth strategy. If this cash is 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, significantly curtail or eliminate planned Shack openings, which could have a material adverse

effect on our business, financial condition, results of operations and the price of our Class A common stock.

In addition, as our Shacks mature, our business will require capital expenditures for the maintenance, renovation and improvement of existing Shacks 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 at existing Shacks exceed budgeted amounts, and/or the time for building or renovation is longer than anticipated, our profits could be reduced. If we cannot access the capital we need, we may not be able to execute on our growth strategy, take advantage of future opportunities or respond to competitive pressures.

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 in leased premises. The leases for our Shacks generally have initial terms of 10 years and typically provide for two renewal options in five-year increments as well as for rent escalations. 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 nonetheless may be obligated to perform our monetary obligations under the applicable lease, including, among other things, payment of the base rent for the balance of the 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. As of September 24, 2014, we were a party to operating leases associated with our Shacks and administrative offices requiring future minimum lease payments of \$1.9 million for the remainder of fiscal 2014 and approximately \$164.9 million thereafter, which minimum lease commitments are not reflected as liabilities on our balance sheet. 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 under the Revolving Credit Facility (as defined in "Description of Indebtedness") or other sources, we may not be able to service our lease expenses or fund our other liquidity and capital needs, which would materially affect our business.

We depend on key executive management.

We depend on the leadership and experience of our key executive management. The loss of the services of any of our executive management members could have a material adverse effect on our business and prospects, as we may not be able to find suitable individuals to replace such personnel on a timely basis or without incurring increased costs, or at all. We do not maintain key man 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 inability to identify qualified individuals for our workforce could slow our growth and adversely impact our ability to operate our Shacks.

We believe that the "Enlightened Hospitality" culture of our Shack team is the single most important factor to our success. Accordingly, our success depends in part upon our ability to attract, motivate and retain a sufficient number of qualified managers and associates to meet the needs of our existing Shacks and to staff new Shacks. We aim to hire warm, friendly, motivated, caring, self-aware and intellectually curious individuals, who are excited and committed to championship performance, remarkable and enriching hospitality, embodying our culture and actively growing themselves and our brand. A sufficient number of qualified individuals to fill these positions and qualifications may be in short supply in some communities. Competition in these communities for qualified staff could require us to pay higher wages and provide greater benefits, especially if there is significant improvement in regional or national economic conditions. We place a heavy emphasis on the qualification and training of our personnel and spend a significant amount of time and money on 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. Any such inability to retain or recruit qualified employees, increased costs of attracting qualified employees or delays in Shack openings could adversely affect our business and results of operations.

Unionization activities may disrupt our operations and affect our profitability.

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.

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, certain regions of the United States experienced a significant drought in 2014, which increased the price of certain food commodities, including beef, dairy and produce. 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. 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 do not currently hedge our commodity risks. 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 also is 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.

Higher health care costs and labor costs could adversely affect our business.

With the passage in 2010 of the U.S. Patient Protection and Affordable Care Act (the "ACA"), we are required to provide affordable coverage, as defined in the ACA, to all employees, or otherwise be subject to a payment per employee based on the affordability criteria in the ACA. Many of these requirements will be phased in over a period of time, with the majority of the most impactful provisions affecting us presently anticipated to begin in the second quarter of fiscal 2015. 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 could have a material adverse effect on our business, financial condition and results of operations. In addition, changes in federal or state workplace regulations could adversely affect our ability to meet our financial targets.

Various federal and state labor laws govern our relationships with our employees and affect operating costs. These laws include employee classifications as exempt or non-exempt, minimum wage requirements, unemployment tax rates, workers' compensation rates, overtime, family leave, safety standards, payroll taxes, citizenship requirements and other wage and benefit requirements for employees classified as non-exempt. As our team members are paid at rates set above, but related to, the applicable minimum wage, further increases in the minimum wage could increase our labor costs. Significant additional government regulations could materially affect our business, financial condition and results of operations.

We are subject to many federal, state and local laws with which compliance is both costly and complex.

The restaurant industry is subject to extensive federal, state and local laws and regulations, including the recently enacted comprehensive health care reform legislation discussed above, those relating to building and zoning requirements and those relating to the preparation and sale of food. Such laws and regulations are subject to change from time to time. The failure to comply with these laws and regulations could adversely affect our operating results. 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.

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.

There is also 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 now 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. Many states have required restaurants to develop and implement HACCP Systems, and the United States government continues to expand the sectors of the food industry that must adopt and implement HACCP programs. For example, FSMA signed into law in January 2011, granted the FDA new authority regarding the safety of the entire food system, including through increased inspections and mandatory food recalls. Although restaurants are specifically exempted from or not directly implicated by some of these new requirements, we anticipate that the new requirements may impact our industry. 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.

We are subject to the Americans with Disabilities Act (the "ADA"), which, among other things, requires our Shacks to meet federally mandated requirements for the disabled. The ADA prohibits discrimination in employment and public accommodations on the basis of disability. Under the ADA, we could be required to expend funds to modify our Shacks to provide service to, or make reasonable accommodations for the employment of, disabled persons. In addition, our employment practices are subject to the requirements of the Immigration and Naturalization Service relating to citizenship and residency.

In addition, our licensing activities 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.

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

Shake Shack is a small, but growing brand. We incur costs and expend other resources in our marketing efforts to attract and retain guests. The brand's promotion includes public relations, digital and social media, promotions, and in-store messaging, which require less marketing spend as compared to traditional marketing programs. Currently, the amount of discounted promotions and advertising we do is nominal. As the number of Shacks increases, and as we expand into new markets, we expect to increase our investment in advertising and consider additional promotional activities. Accordingly, in the future, we will incur greater marketing expenditures, resulting in greater financial risk and a greater impact on our Company.

Some of these 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 results of operations and financial condition.

Changes in economic conditions, including continuing effects from the recent recession, could materially affect our business, financial condition and results of operations.

The restaurant industry depends on consumer discretionary spending. During the economic downturn starting in 2008, continuing disruptions in the overall economy, including the ongoing impacts of the housing crisis, high unemployment, and financial market volatility and unpredictability, caused a related reduction in consumer confidence, which negatively affected 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. If these economic conditions persist or worsen, 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. If such negative economic conditions persist for a long period of time or become more pervasive, consumer changes to their discretionary spending behavior, including the frequency with which they dine out, could be more permanent. If Shack sales decrease, our profitability could decline as we spread fixed costs across a lower level of Shack sales. Prolonged negative trends in Shack sales could cause us to, among other things, reduce the number and frequency of new Shack openings, close Shacks or delay remodeling of our existing Shacks or take asset impairment charges.

Changes to estimates related to our property, fixtures and equipment or operating results that are lower than our current estimates at certain Shacks may cause us to incur impairment charges on certain long-lived assets, which may adversely affect our results of operations.

In accordance with accounting guidance as it relates to the impairment of long-lived assets, we make certain estimates and projections with regard to individual Shack operations, as well as our overall performance, in connection with our impairment analyses for long-lived assets. If an impairment indicator was deemed to exist for a Shack, the estimated undiscounted future cash flows would be compared to its carrying value. If the carrying value exceeds the undiscounted cash flows, an impairment charge equal to the difference between the carrying value and the fair value. The projections of future cash flows used in these analyses require the use of judgment and a number of estimates and projections of future operating results. If actual results differ from our estimates, additional charges for asset impairments may be required in the future.

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 September 24, 2014, two licensees operated all of our domestic licensed Shacks and Alshaya, through affiliated and unaffiliated third party sublicensees, operated all of our international licensed Shacks. Our licensees are required to operate their Shacks according to the specific guidelines we set forth that are essential to maintaining brand integrity and reputation as well as in accordance with all laws and regulations applicable to Shake Shack and its subsidiaries, and all laws and regulations applicable in the countries in which we operate. We provide training to these

licensees to integrate them into our operating strategy and culture. However, since we do not have day-to-day control over all of these Shacks, we cannot give assurance that there will not be differences in product and service quality, operations, marketing or profitability 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.

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 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.

A challenging economic environment may affect our licensees, with adverse consequences to us.

Our operating results are impacted by the ability of our licensees to generate revenues at their licensed Shacks. It is possible that, in a challenging economic environment, some licensees could file for bankruptcy or become delinquent in their payments to us, which could have significant adverse impacts on our business due to loss or delay in payments of licensing and other fees. Bankruptcy or other adverse performance by our licensees could negatively impact our market share and operating results as we may have fewer well-performing Shacks, and adversely impact our ability to attract new licensees.

If we are unable to maintain good relationships with our licensees, revenues could decrease and we may be unable to expand our presence in certain markets.

Our licensees pay us a license fee and certain other fees pursuant to our license agreements. The viability of our licensing business depends on our ability to establish and maintain good relationships with our licensees. In particular, our relationship with our international licensee, who is our sole international licensee and has an exclusive right to open new Shacks in certain markets, is critical to our international operations.

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

Our license agreements require us and our licensees to comply with operational and performance conditions that are subject to interpretation and could result in disagreements. At any given time, we may be in disputes with one or more of our licensees. An adverse result in any such dispute could adversely impact our results of operations and business.

We rely heavily on information technology, and any material failure, weakness, interruption or breach of security could prevent us from effectively operating our business .

We rely heavily on information systems, including point-of-sale processing in our Shacks, for management of our supply chain, accounting, payment of obligations, collection of cash, credit and debit card transactions and other processes and procedures. Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of these 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.

Legislation and regulations requiring the display and provision of nutritional information for our menu offerings, and new information or attitudes regarding diet and health or adverse opinions about the health effects of consuming our menu offerings, could affect consumer preferences and negatively impact our business, financial condition and results of operations.

We serve burgers, hot dogs, crinkle-cut fries, shakes, frozen custard, beer and wine. Government regulation and consumer eating habits may impact our business as a result of changes in attitudes regarding diet and health or new information regarding the health effects of consuming our menu offerings. 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. Furthermore, the Patient Protection and Affordable Care Act of 2010 (the "PPACA") establishes a uniform, federal requirement for certain restaurants to post certain nutritional information on their menus. Specifically, the PPACA amended the Federal Food, Drug and Cosmetic Act to require certain chain restaurants to publish the total number of calories of standard menu items on menus and menu boards, along with a statement that puts this calorie information in the context of a total daily calorie intake. The PPACA also requires covered restaurants to provide to consumers, upon request, a written summary of detailed nutritional information for each standard menu item, and to provide a statement on menus and menu boards about the availability of this information. The PPACA further permits the FDA to require covered restaurants to make additional nutrient disclosures, such as disclosure of trans-fat content. 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.

We cannot make any assurances regarding our ability to effectively respond to changes in consumer health perceptions or our ability to successfully implement the nutrient content disclosure requirements and to adapt our menu offerings to trends in eating habits. The imposition of menu-labeling laws could have an adverse effect on our results of operations and financial position, as well as the hospitality industry in general.

Our insurance may not provide adequate levels of coverage against claims.

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.

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.

Twenty-seven of our 32 licensed Shacks 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 our licensees 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 varying levels of business corruption in 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, increases 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 and political policies of the U.S. government, including U.S. laws and regulations relating to economic sanctions, export controls and anti-boycott requirements;
- increases in anti-American sentiment and the identification of the licensed brand as an American brand;
- the effect of disruptions caused by severe weather, natural disasters, outbreak of disease or other events that make travel to a particular region less attractive or more difficult; and
- political and economic instability.

Any or all of these factors may adversely affect the performance of and licensing fees we receive from our licensed Shacks located in international markets. In particular, our international licensed Shacks operate in several volatile regions that are subject to geopolitical and sociopolitical factors that pose risk to our business operations. In addition, 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. 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.

Because of our international licensed operations, we could be adversely affected by violations of the U.S. Foreign Corrupt Practices Act and similar worldwide 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.

Changes in statutory, regulatory, accounting, and other legal requirements could potentially impact our operating and financial results.

We are subject to numerous statutory, regulatory and legal requirements, domestically and abroad. Our operating results could be negatively impacted by developments in these areas due to the costs of compliance in addition to possible government penalties and litigation in the event of deemed noncompliance. Changes in the regulatory environment in the area of food safety, privacy and information security, wage and hour laws, among others, could potentially impact our operations and financial results.

We lease all of our domestic company-operated Shacks, and each is classified as an operating lease. The Financial Accounting Standards Board ("FASB") has issued an exposure draft that will revise lease accounting and require many leases currently considered to be operating leases to instead be classified as capital leases. The primary impact to this exposure draft would be that such leases would be recorded on the balance sheet as debt, and they currently have an off-balance sheet classification as operating leases. The timeline for effectiveness of this pronouncement, as well as the final guidelines and potential financial impact, are unclear at this point.

Fluctuations in our tax obligations and effective tax rate and realization of our deferred tax assets may result in volatility of our operating results.

We are subject to income taxes in various U.S. and foreign jurisdictions. We record tax expense based on our estimates of future payments, which may include reserves for uncertain tax positions in multiple tax jurisdictions, and valuation allowances related to certain net deferred tax assets. At any one time, many tax years may be subject to audit by various taxing jurisdictions. The results of these audits and negotiations with taxing authorities may affect the ultimate settlement of these issues. We expect that throughout the year there could be ongoing variability in our quarterly tax rates as events occur and exposures are evaluated.

In addition, our effective tax rate in a given financial statement period may be materially impacted by a variety of factors including but not limited to changes in the mix and level of earnings, varying tax rates in the different jurisdictions in which we operate, fluctuations in the valuation allowance or by changes to existing accounting rules or regulations. Further, tax legislation may be enacted in the future which could negatively impact our current or future tax structure and effective tax rates.

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,

nondisclosure 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. 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.

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. While we have not been a party to any of these types of lawsuits in the past, there can be no assurance that we will not be named in any such lawsuit in the future or that we would not be required to pay substantial expenses and/or damages.

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, insurance may not be available at all or in sufficient amounts to cover any liabilities 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 money 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.

Our business is subject to seasonal fluctuations.

Our business is subject to seasonal fluctuations in that our Shack sales are typically nominally higher during the summer months affecting the second and third quarters of the fiscal year. Our quarterly results have been and will continue to be affected by the timing of new Shack openings and their associated pre-opening costs. As a result of these factors, our financial results for any single quarter or for periods of less than a year are not necessarily indicative of the results that may be achieved for a full fiscal year.

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.

Our financial performance is highly dependent on Shacks located in the Northeast and the New York City metropolitan area, which comprised approximately 58% (or 15 out of 26) of our total domestic company-operated Shacks as of September 24, 2014. As a result, adverse economic conditions in any of these areas 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. Recently, we have experienced temporary Shack closures on the east coast due to Superstorm Sandy, which resulted in the closing of 11 Shacks for at least one day. Temporary or prolonged Shack closures may occur and guest traffic may decline due to the actual or perceived effects of future weather related events.

Risks Related to Our Company and Our Organizational Structure

Our principal asset after the completion of this offering will be 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.

Upon the consummation of this offering, we will be a holding company and will have no material assets other than our ownership of LLC Interests of SSE Holdings. 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 financial results and cash flows of SSE Holdings and its subsidiaries and distributions we receive from SSE Holdings. There can be no assurance that our subsidiaries 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 will continue to be 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 holders of LLC Interests, 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 will be obligated to make tax distributions to holders of LLC Interests, 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 could be significant. See "Certain Relationships and Related Party Transactions—Tax Receivable Agreement." We intend, as its managing member, to cause SSE Holdings to make cash distributions to the owners of LLC Interests 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 tax or 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. See "Certain Relationships and Related Party Transactions—Tax Receivable Agreement" and "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement—Distributions." 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. See "—Risks Related to This Offering and Ownership of Our Class A Common Stock" and "Dividend Policy."

The Tax Receivable Agreement with the Continuing SSE Equity Owners requires us to make cash payments to them in respect of certain tax benefits to which we may become entitled, and we expect that the payments we will be required to make will be substantial.

Upon the closing of this offering, we will be a party to the Tax Receivable Agreement with the Continuing SSE Equity Owners. Under the Tax Receivable Agreement, we will be required to make cash payments to the Continuing SSE Equity Owners 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 (1) the increases in the tax basis of assets of SSE Holdings resulting from any redemptions or exchanges of LLC Interests from the Continuing SSE Equity Owners as described under "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement—LLC Interest Redemption Right," or any prior sales of interests in SSE Holdings and (2) certain other tax benefits related to our making payments under the Tax Receivable Agreement. The amount of the cash payments that we will be required to make under the Tax Receivable Agreement we expect will be significant. Any payments made by us to the Continuing SSE Equity Owners 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. For more information, see "Certain Relationships and Related Party Transactions—Tax Receivable Agreement." Payments under the Tax Receivable Agreement are not conditioned on any Continuing SSE Equity Owner's continued ownership of LLC Interests or our Class A common stock after this offering.

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.

Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the Continuing SSE Equity Owners that will not benefit Class A common stockholders to the same extent as it will benefit the Continuing SSE Equity Owners.

Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the Continuing SSE Equity Owners that will not benefit the holders of our Class A common stock to the same extent as it will benefit the Continuing SSE Equity Owners. We will enter into the Tax Receivable Agreement with SSE Holdings and the Continuing SSE Equity Owners and it will provide for the payment by Shake Shack to the Continuing SSE Equity Owners of 85% of the amount of tax benefits, if any, that Shake Shack actually realizes, or in some circumstances is deemed to realize, as a result of (1) the increases in the tax basis of assets of SSE Holdings resulting from any redemptions or exchanges of LLC Interests from the Continuing SSE Equity Owners as described under "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement—LLC Interest Redemption Right," or any prior sales of interests in SSE Holdings and (2) certain other tax benefits related to our making payments under the Tax Receivable Agreement. See "Certain Relationships and Related Party Transactions—Tax Receivable Agreement." Although Shake Shack will retain 15% of the amount of such tax benefits, this and other aspects of our organizational structure may adversely impact the future trading market for the Class A common stock.

In certain cases, payments under the Tax Receivable Agreement to the Continuing SSE Equity Owners 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, then 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.

We will not be reimbursed for any payments made to the Continuing SSE Equity Owners 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 Internal Revenue Service (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 Continuing SSE Equity Owner 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 Continuing SSE Equity Owners under the Tax Receivable Agreement in the event that any tax benefits initially claimed by us and for which payment has been made to a Continuing SSE Equity Owner are subsequently challenged by a taxing authority and are ultimately disallowed. Instead, any excess cash payments made by us to a Continuing SSE Equity Owner will be netted against any future cash payments that we might otherwise be required to make to such Continuing SSE Equity Owner under the terms of the Tax Receivable Agreement. However, we might not determine that we have effectively made an excess cash payment to a Continuing SSE Equity Owner 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 a Continuing SSE Equity Owner that are the subject of the Tax Receivable Agreement.

Unanticipated 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 allowances;
- tax effects of stock-based compensation;

- changes in tax laws, regulations or interpretations thereof; or
- future earnings being lower than anticipated in countries where we have lower statutory tax rates and higher than anticipated earnings in countries where we have higher statutory tax rates.

In addition, we may 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.

If we were deemed to be an investment company under the Investment Company Act of 1940, as amended (the "1940 Act"), as a result of our ownership of SSE Holdings, applicable restrictions could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.

Under Sections 3(a)(1)(A) and (C) of the 1940 Act, a company generally will be deemed to be an "investment company" for purposes of the 1940 Act if (i) it is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities or (ii) it engages, or proposes to engage, in the business of investing, reinvesting, owning, holding or trading in securities and it owns or proposes to acquire investment securities having a value exceeding 40% of the value of its total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis. We do not believe that we are an "investment company," as such term is defined in either of those sections of the 1940 Act.

As the sole managing member of SSE Holdings, we will control and operate SSE Holdings. On that basis, we believe that our interest in SSE Holdings is not an "investment security" as that term is used in the 1940 Act. However, if we were to cease participation in the management of SSE Holdings, our interest in SSE Holdings could be deemed an "investment security" for purposes of the 1940 Act.

We and SSE Holdings intend to conduct our operations so that we will not be deemed an investment company. However, if we were to be deemed an investment company, restrictions imposed by the 1940 Act, including limitations on our capital structure and our ability to transact with affiliates, could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.

Shake Shack is controlled by the Original SSE Equity Owners, whose interests may differ from those of our public stockholders.

Immediately following this offering and the application of net proceeds from this offering, the Original SSE Equity Owners will control approximately 85.0% of the combined voting power of our common stock through their ownership of both Class A common stock and Class B common stock. The Original SSE Equity Owners will, for the foreseeable future, have significant influence over corporate management and affairs, and will be able to control virtually all matters requiring stockholder approval. The Original SSE Equity Owners are able to, subject to applicable law, and the voting arrangements described in "Certain Relationships and Related Party Transactions," elect a majority of the members of our board of directors and control 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 Original SSE Equity Owners may in some circumstances conflict with our interests and the interests of our other stockholders, including you. For example, the Original SSE Equity Owners may have different tax positions from us, especially in light of the Tax Receivable Agreement, that 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 authority to our tax reporting positions may take into consideration these Original SSE Equity Owners' tax or other considerations, which may differ from the considerations of us or our other stockholders. See "Certain Relationships and Related Party Transactions—Tax Receivable Agreement."

In addition, certain of the Original SSE Equity Owners 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 will provide that, to the fullest extent permitted by law, none of the Original SSE Equity Owners or any director who is not employed by us or his or her affiliates will have any duty to refrain from engaging in a corporate opportunity in the same or similar lines of business as us. The Original SSE Equity Owners may also pursue acquisitions that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us.

We are a "controlled company" within the meaning of the New York Stock Exchange listing standards and, as a result, will qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections afforded to stockholders of companies that are subject to such requirements.

Substantially concurrent with the closing of this offering, the Voting Group, which will hold Class A common stock and Class B common stock representing approximately 85.0% of the combined voting power of our common stock, will enter into the Stockholders Agreement with us. Pursuant to the terms of the Stockholders Agreement, until such time as no members of the Voting Group are entitled to designate individuals to be included in the slate of nominees recommended by our board of directors for election to our board of directors, or the Stockholders Agreement is otherwise terminated in accordance with its terms, the parties to the Stockholders Agreement will agree to vote their shares of Class A common stock and Class B common stock in favor of the election of the nominees of certain members of the Voting Group to our board of directors upon their nomination by the nominating and corporate governance committee of our board of directors. See "Management—Corporate Governance—Composition of our Board of Directors." As a result, the Voting Group will have the ability to elect all of the members of our board of directors, and thereby, to control our management and affairs. The Stockholders Agreement will further provide that, for so long as the Meyer Group collectively owns at least 10% of the total shares of our Class A and Class B common stock owned by it immediately following the consummation of this offering, the approval of the Meyer Group will be required for certain corporate actions, including change in control transactions, equity issuances and the hiring or termination of our Chief Executive Officer. See "Certain Relationships and Related Party Transactions—Stockholders Agreement—Meyer Group Approvals."

Because of the Stockholders Agreement and the aggregate voting power of the Voting Group, we are considered a "controlled company" for the purposes of the New York Stock Exchange. As such, we are exempt from certain corporate governance requirements of the New York Stock Exchange, including (i) the requirement that a majority of the board of directors consist of independent directors, (ii) the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors and (iii) the requirement that we have a compensation committee that is composed entirely of independent directors. Following this offering, we intend to rely on some or all of these exemptions. As a result, we will not have a majority of independent directors and our compensation and nominating and corporate governance committees will not consist entirely of independent directors. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of the New York Stock Exchange.

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 they will be in effect upon completion of this offering, 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:

- authorizing the issuance of "blank check" preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt;
- establishing a classified board of directors so 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
- establishing advance notice and duration of ownership requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

These provisions could also discourage proxy contests and make it more difficult for 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, or the DGCL, to which we are subject, prohibits us, except under specified circumstances, from engaging in any mergers, significant sales of stock or assets or business combinations with any stockholder or group of stockholders who owns at least 15% of our common stock.

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

Our amended and restated certificate of incorporation will authorize us to issue one or more series of preferred stock. Our board of directors will have the authority to determine the preferences, limitations and relative rights of the shares of preferred stock and to fix the number of shares constituting any series and the designation of such series, without any further vote or action by our stockholders. Our preferred stock could be issued with voting, liquidation, dividend and other rights superior to the rights of our Class A common stock. The potential issuance of preferred stock may delay or prevent a change in control of us, discourage bids for our Class A common stock at a premium to the market price, and materially and adversely affect the market price and the voting and other rights of the holders of our Class A 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 will require, 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.

Risks Related to This Offering and Ownership of Our Class A Common Stock

Immediately following the consummation of this offering, the Continuing SSE Equity Owners will have the right to have their LLC Interests redeemed pursuant to the terms of the SSE Holdings LLC Agreement.

After this offering, we will have an aggregate of more than 188,769,792 shares of Class A common stock authorized but unissued, including approximately 24,269,792 shares of Class A common stock issuable upon redemption of LLC Interests that will be held by the Continuing SSE Equity Owners. SSE Holdings will enter into the SSE Holdings LLC Agreement and, subject to certain restrictions set forth therein and as described elsewhere in this prospectus, the Continuing SSE Equity Owners will be entitled to have their LLC Interests redeemed for shares of our Class A common stock. We also intend to enter into a Registration Rights Agreement pursuant to which the shares of Class A common stock issued to the Continuing SSE Equity Owners upon redemption of LLC Interests and the shares of Class A common stock issued to the Former SSE Equity Owners in connection with the Transactions will be eligible for resale, subject to certain limitations set forth therein. See "Certain Relationships and Related Party Transactions—Registration Rights Agreement."

We cannot predict the size of future issuances of our Class A common stock 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.

If you purchase shares of Class A common stock in this offering, you will incur immediate and substantial dilution.

Dilution is the difference between the offering price per share and the pro forma net tangible book value per share of our Class A common stock immediately after the offering. The price you pay for shares of our Class A common stock sold in this offering is substantially higher than our pro forma net tangible book value per share immediately after this offering. If you purchase shares of Class A common stock in this offering, you will incur immediate and substantial dilution in the amount of \$12.79 per share based upon an assumed initial public offering price of \$15.00 per share (the midpoint of the price range listed on the cover page of this prospectus). In addition, you may also experience additional dilution, or potential dilution, upon future equity issuances to investors or to our employees and directors under our 2015 Incentive Award Plan and any other equity incentive plans we may adopt. As a result of this dilution, investors purchasing shares of Class A common stock in this offering may receive significantly less than the full purchase price that they paid for the stock purchased in this offering in the event of liquidation. See "Dilution."

We do not know whether a market will develop for our Class A common stock or what the market price of our Class A common stock will be and as a result it may be difficult for you to sell your shares of our Class A common stock.

Before this offering, there was no public trading market for our Class A common stock. If a market for our Class A common stock does not develop or is not sustained, it may be difficult for you

to sell your shares of Class A common stock at an attractive price or at all. We cannot predict the prices at which our Class A common stock will trade. It is possible that in one or more future periods our results of operations may be below the expectations of public market analysts and investors and, as a result of these and other factors, the price of our Class A common stock may fall.

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

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

If securities analysts do not publish research or reports about our business or if they publish negative evaluations of our Class A common stock, the price of our Class A common stock could decline.

The trading market for our Class A common stock will rely in part on the research and reports that industry or financial analysts publish about us or our business. We do not currently have and may never obtain research coverage by industry or financial analysts. If no or few analysts commence coverage of us, the trading price of our stock would likely decrease. Even if we do obtain analyst coverage, if one or more of the analysts covering our business downgrade their evaluations of our stock, the price of our Class A common stock could decline. If one or more of these analysts cease to cover our Class A common stock, we could lose visibility in the market for our stock, which in turn could cause our Class A common stock price to decline.

Our common stock may be volatile or may decline regardless of our operating performance, and you may not be able to resell your shares at or above the initial public offering price.

After this offering, the market price for our common stock is likely to be volatile, in part because our shares have not been traded publicly. In addition, the market price of our common stock may fluctuate significantly in response to a number of factors, most of which we cannot control, including:

- low same Shack sales growth compared to market expectations;
- delays in the planned openings of new Shacks;
- temporary or prolonged Shack closures;
- quarterly variations in our operating results compared to market expectations;
- changes in preferences of our guests;
- adverse publicity about us, the industries we participate in or individual scandals;
- announcements of new offerings or significant price reductions by us or our competitors;
- stock price performance of our competitors;
- changes in the price and availability of food commodities, particularly beef and dairy;
- fluctuations in stock market prices and volumes;
- default on our indebtedness;
- actions by competitors;

- changes in senior management or key personnel;
- changes in financial estimates by securities analysts;
- the market's reaction to our reduced disclosure as a result of being an "emerging growth company" under the JOBS Act;
- negative earnings or other announcements by us or other restaurant companies;
- downgrades in our credit ratings or the credit ratings of our competitors;
- incurrence of indebtedness or issuances of capital stock;
- global economic, legal and regulatory factors unrelated to our performance; and
- the other factors listed in this "Risk Factors" section.

The initial public offering price of our Class A common stock will be determined by negotiations between us and the underwriters based upon a number of factors and may not be indicative of prices that will prevail following the closing of this offering. Volatility in the market price of our common stock may prevent investors from being able to sell their Class A common stock at or above the initial public offering price. As a result, you may suffer a loss on your investment.

In addition, stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies in our industry. In the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were involved in securities litigation, we could incur substantial costs and our resources and the attention of management could be diverted from our business.

Substantial future sales of our Class A common stock, or the perception in the public markets that these sales may occur, may depress our stock price.

Sales of substantial amounts of our Class A common stock in the public market after this offering, or the perception that these sales could occur, could adversely affect the price of our Class A common stock and could impair our ability to raise capital through the sale of additional shares. Upon the closing of this offering, we will have 11,230,208 shares of Class A common stock outstanding (or 11,980,208 if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and 24,269,792 authorized but unissued shares of Class A common stock that would be issuable upon redemption or exchange of LLC Interests. The shares of Class A common stock offered in this offering will be freely tradable without restriction under the Securities Act, except for any shares of our common stock that may be held or acquired by our directors, executive officers and other affiliates, as that term is defined in the Securities Act, which will be restricted securities under the Securities Act. Restricted securities may not be sold in the public market unless the sale is registered under the Securities Act or an exemption from registration is available.

We and each of our directors, executive officers and holders of substantially all of our outstanding common stock, which collectively will hold 85.7% of our outstanding capital stock (including shares of Class A common stock issuable upon redemption or exchange of LLC Interests) after giving effect to this offering, have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any shares of common stock or securities convertible into or exchangeable for (including the LLC Interests), or that represent the right to receive, shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC. See "Underwriting (Conflicts of Interest)." All of our shares of common stock outstanding as of the date of this prospectus (and shares of Class A common stock issuable upon redemption or exchange

of LLC Interests) may be sold in the public market by existing stockholders following the expiration of the applicable lock-up period, subject to applicable limitations imposed under federal securities laws.

We also intend to enter into a Registration Rights Agreement pursuant to which the shares of Class A common stock issued upon redemption or exchange of LLC Interests held by the Continuing SSE Equity Owners and the shares of Class A common stock issued to the Former SSE Equity Owners in connection with the Transactions will be eligible for resale, subject to certain limitations set forth therein. See "Certain Relationships and Related Party Transactions—Registration Rights Agreement."

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of Class A common stock (i) subject to outstanding options granted in connection with this offering, (ii) issued or issuable under our stock plans and (iii) issued to the Former UAR Plan Participants. Any such Form S-8 registration statements will automatically become effective upon filing. Accordingly, shares registered under such registration statements will be available for sale in the open market following the expiration of the applicable lock-up period. We expect that the initial registration statement on Form S-8 will cover 6,264,708 shares of our Class A common stock.

See "Shares Eligible for Future Sale" for a more detailed description of the restrictions on selling shares of our common stock after this offering.

In the future, we may also issue additional securities if we need to raise capital, which could constitute a material portion of our then-outstanding shares of common stock.

Taking advantage of the reduced disclosure requirements applicable to "emerging growth companies" may make our Class A common stock less attractive to investors.

The JOBS Act provides that, so long as a company qualifies as an "emerging growth company," it will, among other things:

- be exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") requiring that its independent registered public accounting firm provide an attestation report on the effectiveness of its internal control over financial reporting;
- be exempt from the "say on pay" and "say on golden parachute" advisory vote requirements of the Dodd-Frank Wall Street Reform and Customer Protection Act (the "Dodd-Frank Act");
- be exempt from certain disclosure requirements of the Dodd-Frank Act relating to compensation of its executive officers and be permitted to omit the detailed compensation discussion and analysis from proxy statements and reports filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and
- be exempt from any rules that may be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotations or a supplement to the auditor's report on the financial statements.

We currently intend to take advantage of each of the exemptions described above. We have irrevocably elected not to take advantage of the extension of time to comply with new or revised financial accounting standards available under Section 107(b) of the JOBS Act. We could be an emerging growth company for up to five years after this offering. We cannot predict if investors will find our Class A common stock less attractive if we elect to rely on these exemptions, or if taking advantage of these exemptions would result in less active trading or more volatility in the price of our Class A common stock.

We will incur increased costs as a result of becoming a public company and in the administration of our organizational structure.

As a public company, we will incur significant legal, accounting, insurance and other expenses that we have not incurred as a private company, including costs associated with public company reporting requirements. We also have incurred and will incur costs associated with the Sarbanes-Oxley Act and related rules implemented by the Securities and Exchange Commission ("SEC"). Following the completion of this offering, we will incur ongoing periodic expenses in connection with the administration of our organizational structure. The expenses incurred by public companies generally for reporting and corporate governance purposes have been increasing. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly, although we are currently unable to estimate these costs with any degree of certainty. In estimating these costs, we took into account expenses related to insurance, legal, accounting, and compliance activities, as well as other expenses not currently incurred. These laws and regulations could 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. These laws and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as our executive officers. Furthermore, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of our common stock, fines, sanctions and other regulatory action and potentially civil litigation.

Failure to establish and maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our business and stock price.

We are not currently required to comply with the rules of the SEC implementing Section 404 of the Sarbanes-Oxley Act and are therefore not required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. Upon becoming a public company, we will be required to comply with the SEC's rules implementing Sections 302 and 404 of the Sarbanes-Oxley Act, which will require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of controls over financial reporting. Though we will be required to disclose changes made in our internal controls and procedures on a quarterly basis, we will not be required to make our first annual assessment of our internal control over financial reporting pursuant to Section 404 until the year following our first annual report required to be filed with the SEC. However, as an emerging growth company, our independent registered public accounting firm will not be required to formally attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 until the later of the year following our first annual report required to be filed with the SEC or the date we are no longer an emerging growth company. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our controls are documented, designed or operating.

To comply with the requirements of being a public company, we have undertaken various actions, and may need to take additional actions, such as implementing new internal controls and procedures and hiring additional accounting or internal audit staff. Testing and maintaining internal control can divert our management's attention from other matters that are important to the operation of our business. Additionally, when evaluating our internal control over financial reporting, we may identify material weaknesses that we may not be able to remediate in time to meet the applicable deadline imposed upon us for compliance with the requirements of Section 404. For example, a material weakness was identified during fiscal 2014 relating to prior period financial statement close procedures. We have since remediated this material weakness. If we identify any additional material weaknesses in our internal control over financial reporting or are unable to comply with the requirements of

Section 404 in a timely manner or assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting once we are no longer an emerging growth company, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our Class A common stock could be negatively affected, and we could become subject to investigations by the stock exchange on which our securities are listed, the SEC or other regulatory authorities, which could require additional financial and management resources.

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 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 in this offering, 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.

We have broad discretion in the use of the net proceeds from this offering and may not use them effectively.

Shake Shack intends to use the proceeds of this offering to purchase newly issued LLC Interests as described in "The Transactions" and "Use of Proceeds." We cannot specify with certainty the particular uses of the net proceeds that SSE Holdings will receive from such purchase. Our management will have broad discretion in SSE Holdings' application of such proceeds, including for any of the purposes described in "Use of Proceeds." Accordingly, you will have to rely upon the judgment of our management with respect to the use of the proceeds, with only limited information concerning management's specific intentions. Our management may cause SSE Holdings to spend a portion or all of the net proceeds from this offering in ways that our stockholders may not desire or that may not yield a favorable return. The failure by our management to cause SSE Holdings, to apply these funds effectively could harm our business. Pending their use, SSE Holdings may invest the net proceeds from this offering in a manner that does not produce income or that loses value.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. All statements other than statements of historical facts contained in this prospectus may be forward-looking statements. Statements regarding our future results of operations and financial position, business strategy and plans and objectives of management for future operations, including, among others, statements regarding the Transactions, expected new Shack openings, future capital expenditures and debt service obligations, are forward-looking statements. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "targets," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions.

Forward-looking statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. We believe that these factors include, but are not limited to, the following:

- our inability to successfully identify and secure appropriate sites and timely develop and expand our operations;
- our inability to protect our brand and reputation;
- our failure to prevent food safety and food-borne illness incidents;
- shortages or interruptions in the supply or delivery of food products;
- our inability to maintain our international supply chain;
- our dependence on a small number of suppliers and a single distribution company for the majority of our domestic distribution program;
- our inability to protect against security breaches of confidential guest information;
- competition from other restaurants;
- changes in consumer tastes and nutritional and dietary trends;
- our inability to manage our growth;
- our inability to open profitable Shacks;
- our failure to generate projected same Shack sales growth;
- our inability to maintain sufficient levels of cash flow, or access to capital, to meet growth expectations;
- our dependence on long-term non-cancelable leases;
- our failure to meet the operational and financial performance guidance we provide to the public;
- our dependence on key executive management;
- our inability to identify qualified individuals for our workforce;
- labor relations difficulties;
- our vulnerability to increased food commodity and energy costs;
- our vulnerability to health care costs and labor costs;
- our vulnerability to global financial market conditions, including the continuing effects from the recent recession;

- our sale of alcoholic beverages;
- our dependence on a limited number of licensees;
- our inability to maintain good relationships with our licensees;
- violations of the U.S. Foreign Corrupt Practices Act and similar worldwide anti-bribery and anti-kickback laws;
- our ability to adequately protect our intellectual property;
- our business model being susceptible to litigation;
- failure to obtain and maintain required licenses and permits to comply with alcoholic beverage or food control regulations;
- our vulnerability to adverse weather conditions in local or regional areas where our Shacks are located;
- our realization of any benefit from the Tax Receivable Agreement and our organizational structure; and
- the Voting Group's control of us.

The forward-looking statements in this prospectus are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements.

These forward-looking statements speak only as of the date of this prospectus. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained in this prospectus after we distribute this prospectus, whether as a result of any new information, future events or otherwise.

THE TRANSACTIONS

Existing Organization

Prior to the consummation of this offering and the organizational transactions described below, the Original SSE Equity Owners are the only members of SSE Holdings. SSE Holdings is treated as a partnership for U.S. federal income tax purposes and, as such, is not subject to any U.S. federal entity-level income taxes. Rather, taxable income or loss is included in the U.S. federal income tax returns of SSE Holdings' members.

Shake Shack was incorporated as a Delaware corporation on September 23, 2014 to serve as the issuer of the Class A common stock offered hereby.

Transactions

On December 30, 2014, we paid a distribution to certain of the Original SSE Equity Owners in the amount of approximately \$21.9 million funded from borrowings under the Revolving Credit Facility in the same amount. We refer to the distribution as well as the organizational transactions below as the "Transactions." Following the offering, we will be a separate company from USHG, which will remain privately held.

In connection with the closing of this offering we will consummate the following organizational transactions:

- we will amend and restate the SSE Holdings LLC Agreement, to, among other things, (i) provide for LLC Interests that will be the single class of common membership interests in SSE Holdings, (ii) exchange all of the Original SSE Equity Owners' existing membership interests in SSE Holdings for LLC Interests and (iii) appoint Shake Shack as the sole managing member of SSE Holdings;
- we will amend and restate Shake Shack's certificate of incorporation to, among other things, (i) provide for Class A common stock and Class B common stock and (ii) issue shares of Class B common stock to the Continuing SSE Equity Owners, on a one-to-one basis with the number of LLC Interests they own, for nominal consideration;
- we will issue 5,000,000 shares of our Class A common stock to the purchasers in this offering (or 5,750,000 shares if the underwriters exercise in full their option to purchase additional shares of Class A common stock) in exchange for net proceeds of approximately \$69.8 million (or approximately \$80.2 million if the underwriters exercise in full their option to purchase additional shares of Class A common stock), assuming the shares are offered at \$15.00 per share (the midpoint of the price range listed on the cover page of this prospectus), after deducting underwriting discounts and commissions but before offering expenses;
- we will use all of the net proceeds from this offering (including net proceeds received upon exercise of the underwriters' option to purchase additional shares of Class A common stock) to acquire newly-issued LLC Interests from SSE Holdings at a purchase price per interest equal to the initial public offering price of Class A common stock, collectively representing 14.1% of SSE Holdings' outstanding LLC Interests (or 15.9%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- SSE Holdings will use the proceeds from the sale of LLC Interests to Shake Shack as follows: (i) to pay fees and expenses of approximately \$3.0 million in connection with this offering and the Transactions, (ii) to repay the outstanding borrowings under our Revolving Credit Facility of approximately \$36.0 million, including approximately \$21.9 million of borrowings used to pay the distribution to certain of the Original SSE Equity Owners, and (iii) approximately \$30.8 million for general corporate purposes, including opening new Shacks and renovating existing Shacks. To

the extent the gross proceeds of this offering exceed \$80.0 million (including as a result of the exercise by the underwriters of their option to purchase additional shares of Class A common stock), we will pay an additional distribution to certain of the Original SSE Equity Owners in an amount equal to the product of (A) the increase in the gross proceeds and (B) 0.273, and the balance of such additional net proceeds will be used for general corporate purposes, including opening new Shacks and renovating existing Shacks. See "Use of Proceeds."

- the Former SSE Equity Owners will exchange their indirect ownership of LLC Interests for 5,918,417 shares of Class A common stock on a one-to-one basis;
- the Former UAR Plan Participants will receive 311,791 shares of Class A common stock in settlement of their awards under the UAR Plan, net of employee withholding taxes (and Shake Shack will receive a corresponding number of LLC Interests from SSE Holdings);
- the Continuing SSE Equity Owners will continue to own the LLC Interests they received in exchange for their existing membership interests in SSE Holdings and will have no economic interests in Shake Shack despite their ownership of Class B common stock (where "economic interests" means the right to receive any distributions or dividends, whether cash or stock, in connection with common stock); and
- Shake Shack will enter into (i) the Tax Receivable Agreement with the Continuing SSE Equity Owners and (ii) the Registration Rights Agreement with the Continuing SSE Equity Owners who, upon the consummation of this offering, will own 24,269,792 shares of Shake Shack's Class B common stock, representing approximately 68.4% of the combined voting power of all of Shake Shack's common stock (or approximately 67.0%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), and the Former SSE Equity Owners. For a description of the terms of the Registration Rights Agreement and the Tax Receivable Agreement, see "Certain Relationships and Related Party Transactions."

Organizational Structure Following this Offering

Immediately following the completion of the Transactions, including this offering:

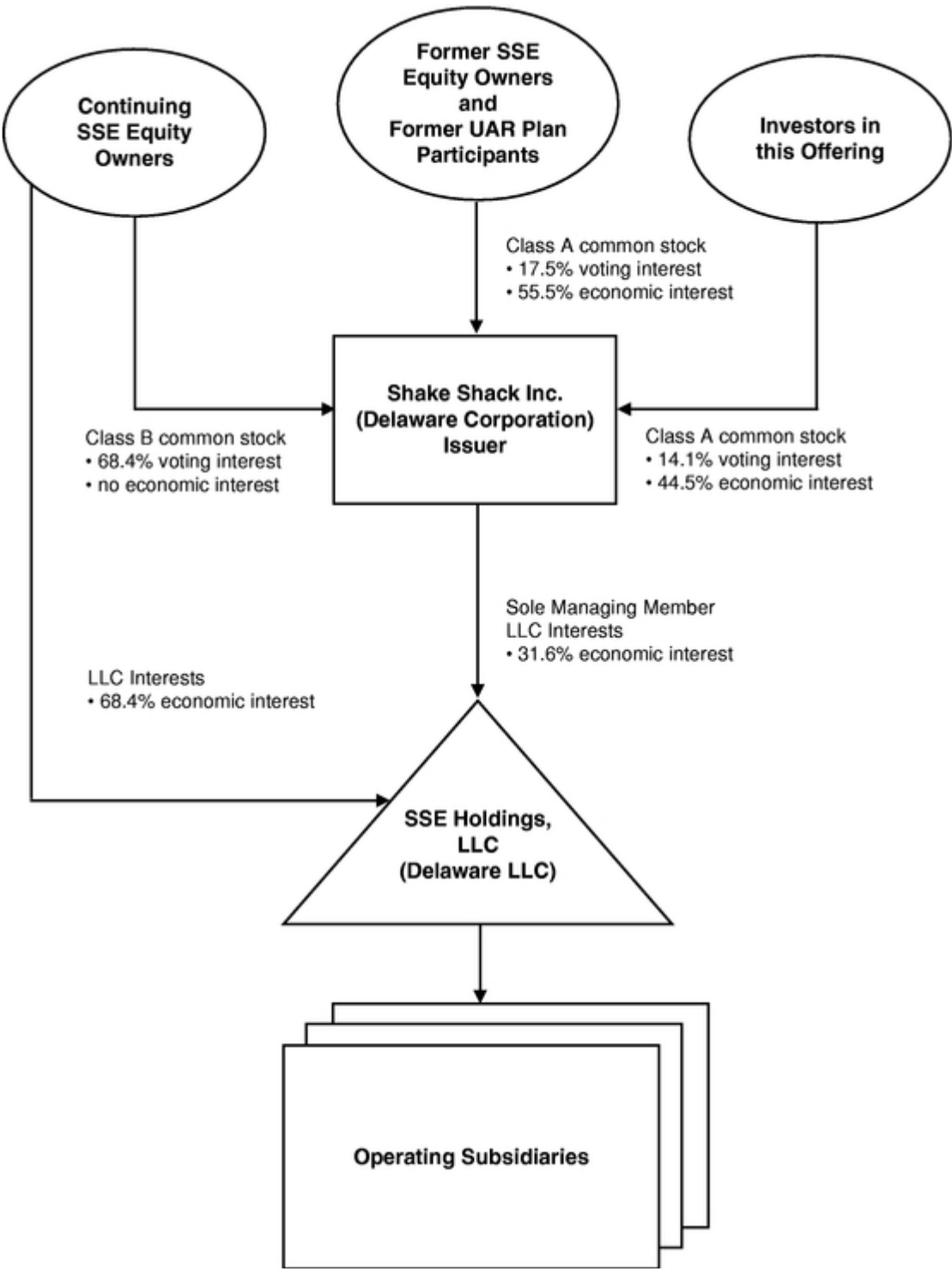
- Shake Shack will be a holding company and the principal asset of Shake Shack will be LLC Interests of SSE Holdings;
- Shake Shack will be the sole managing member of SSE Holdings and will control the business and affairs of SSE Holdings and its subsidiaries;
- our amended and restated certificate of incorporation and the SSE Holdings LLC Agreement will require that (i) we at all times maintain a ratio of one LLC Interest owned by us for each share of Class A common stock issued by us (subject to certain exceptions for treasury shares and shares underlying certain convertible or exchangeable securities), and (ii) SSE Holdings at all times maintain (x) a one-to-one ratio between the number of shares of Class A common stock issued by us and the number of LLC Interests owned by us and (y) a one-to-one ratio between the number of shares of Class B common stock owned by the Continuing SSE Equity Owners and the number of LLC Interests owned by the Continuing SSE Equity Owners;
- Shake Shack will own LLC Interests representing 31.6% of the economic interest in SSE Holdings (or 33.0%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- the purchasers in this offering (i) will own 5,000,000 shares of Class A common stock, representing approximately 14.1% of the combined voting power of all of Shake Shack's common stock (or approximately 15.9%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), (ii) will own 44.5% of the economic

interest in Shake Shack (or 48.0%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (iii) through Shake Shack's ownership of LLC Interests, indirectly will hold (applying the percentages in the preceding clause (ii) to Shake Shack's percentage economic interest in SSE Holdings) approximately 14.1% of the economic interest in SSE Holdings (or 15.9%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);

- the Former SSE Equity Owners and the Former UAR Plan Participants (i) will own 6,230,208 shares of Class A common stock, representing approximately 17.5% of the combined voting power of all of Shake Shack's common stock (or approximately 17.1%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), (ii) will own 55.5% of the economic interest in Shake Shack (or 52.0%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (iii) through Shake Shack's ownership of LLC Interests, indirectly will hold (applying the percentages in the preceding clause (ii) to Shake Shack's percentage economic interest in SSE Holdings) approximately 17.5% of the economic interest in SSE Holdings (or 17.1%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- the Continuing SSE Equity Owners will own (i) LLC Interests, representing 68.4% of the economic interest in SSE Holdings (or 67.0%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (ii) through their ownership of Class B common stock, approximately 68.4% of the voting power in Shake Shack (or approximately 67.0%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock). Following the offering, each LLC Interest held by the Continuing SSE Equity Owners will be redeemable, at the election of such members, for newly-issued shares of Class A common stock on a one-for-one basis. Shake Shack's board of directors, which will include directors who hold LLC Interests or are affiliated with holders of LLC Interests and may include such directors in the future, may, at its option, instead make a cash payment equal to a volume weighted average market price of one share of Class A common stock for each LLC Interest redeemed (subject to customary adjustments, including for stock splits, stock dividends and reclassifications) in accordance with the terms of the SSE Holdings LLC Agreement. See "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement;" and
- the Original SSE Equity Owners collectively (i) will own Class A and Class B common stock representing approximately 85.0% of the combined voting power of all of Shake Shack's common stock (or approximately 83.2%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (ii) will own 85.0% of the economic interest in SSE Holdings (or 83.2%, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), representing both a direct interest through the Continuing SSE Equity Owners' ownership of LLC Interests and an indirect interest through the Former SSE Equity Owners' ownership of Class A common stock.

Immediately following this offering, we will be a holding company and our principal asset will be the LLC Interests we purchase from SSE Holdings and acquire from the Former SSE Equity Owners. As the sole managing member of SSE Holdings, we will operate and control all of the business and affairs of SSE Holdings and, through SSE Holdings and its subsidiaries, conduct our business. Accordingly, although we will have a minority economic interest in SSE Holdings, we will have the sole voting interest in, and control the management of, SSE Holdings. As a result, we will consolidate SSE Holdings in our consolidated financial statements and will report a non-controlling interest related to the LLC Interests held by the Continuing SSE Equity Owners on our consolidated financial statements. Shake Shack will have a board of directors and executive officers, but will have no employees. The functions of all of our employees are expected to reside at SSE Holdings.

The following diagram shows our organizational structure after giving effect to the Transactions, including this offering, assuming no exercise by the underwriters of their option to purchase additional shares of Class A common stock:



USE OF PROCEEDS

We estimate that the net proceeds to us of the sale of the Class A common stock that we are offering will be approximately \$69.8 million, assuming an initial public offering price of \$15.00 per share, which is the midpoint of the price range listed on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions, but before estimated offering expenses. A \$1.00 increase (decrease) in the assumed initial public offering price of \$15.00 per share would increase (decrease) the net proceeds to us from this offering by approximately \$4.7 million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Our management will have broad discretion over the uses of the net proceeds in this offering.

We intend to use the net proceeds to us from this offering to purchase 5,000,000 newly-issued LLC Interests from SSE Holdings at a purchase price per interest equal to the initial public offering price per share of Class A common stock.

We intend to cause SSE Holdings to use the proceeds it receives as follows: (i) to pay fees and expenses of approximately \$3.0 million in connection with this offering and the Transactions, (ii) to repay the outstanding borrowings under our Revolving Credit Facility of approximately \$36.0 million, including approximately \$21.9 million of borrowings used to pay the distribution to certain of the Original SSE Equity Owners, and (iii) approximately \$30.8 million for general corporate purposes, including opening new Shacks and renovating existing Shacks. To the extent the gross proceeds of this offering exceed \$80.0 million (including as a result of the exercise by the underwriters of their option to purchase additional shares of Class A common stock), SSE Holdings will pay an additional distribution to certain of the Original SSE Equity Owners in an amount equal to the product of (A) the increase in the gross proceeds and (B) 0.273 and the balance of such additional net proceeds will be used for general corporate purposes, including opening new Shacks and renovating existing Shacks.

If the underwriters exercise their option to purchase additional shares of Class A common stock in full, we estimate that our additional net proceeds will be approximately \$10.5 million. We will use the additional net proceeds we receive pursuant to any exercise of the underwriters' option to purchase additional shares of Class A common stock to purchase additional LLC Interests from SSE Holdings to maintain the one-to-one ratio between the number of shares of Class A common stock issued by us and the number of LLC Interests owned by us. We intend to cause SSE Holdings to use the proceeds it receives (i) to pay the additional distribution described above and (ii) for general corporate purposes, including opening new Shacks and renovating existing Shacks.

The Revolving Credit Facility matures in April 2019 and as of September 24, 2014, the interest rate for the Revolving Credit Facility was 3.2% per annum.

CAPITALIZATION

The following table sets forth the cash and capitalization as of September 24, 2014, as follows:

- of SSE Holdings and its subsidiaries on an actual basis;
- of SSE Holdings and its subsidiaries on a pro forma basis to give effect to the incurrence of approximately \$21.9 million of borrowings under the Revolving Credit Facility and the payment of the distribution in the same amount to certain of the Original SSE Equity Owners on December 30, 2014; and
- of Shake Shack and its subsidiaries on a pro forma basis to give effect to the Transactions, including our issuance and sale of shares of Class A common stock in this offering at an assumed initial public offering price of \$15.00 per share, the midpoint of the price range listed on the cover page of this prospectus, after (i) deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us and (ii) the application of the proceeds from the offering, each as described under "Use of Proceeds."

For more information, please see "The Transactions," "Use of Proceeds" and "Unaudited Pro Forma Consolidated Financial Information" elsewhere in this prospectus. You should read this information in conjunction with our consolidated financial statements and the related notes appearing at the end of this prospectus and the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section and other financial information contained in this prospectus.

	As of September 24, 2014		
	Historical SSE Holdings, LLC	Pro Forma SSE Holdings, LLC(3)	Pro Forma Shake Shack Inc.(4)
(in thousands, except share and per share data)			
Cash	\$ 6,107	\$ 6,107	\$ 46,249
Indebtedness:			
Revolving Credit Facility(1)	\$ 5,000	\$ 26,851	\$ —
Promissory note	313	313	313
Total indebtedness	5,313	27,164	313
Total equity:			
Members' equity	35,837	13,986	—
Class A common stock, par value \$0.01 per share; no shares authorized, issued and outstanding, actual; 200,000,000 shares authorized, 11,230,208 issued and outstanding, pro forma	—	—	112
Class B common stock, par value \$0.01 per share; no shares authorized, issued and outstanding, actual; 35,000,000 shares authorized, 24,269,792 issued and outstanding, pro forma	—	—	243
Additional paid-in capital	—	—	32,281
Accumulated deficit	—	—	(7,842)
Total members' equity/stockholders' equity	35,837	13,986	24,794
Noncontrolling interest(2)	—	—	53,667
Total capitalization	\$ 41,150	\$ 41,150	\$ 78,774

- (1) On December 28, 2014, SSE Holdings entered into an amendment to the Revolving Credit Facility, which, among other things, increased the total commitment amount to \$50.0 million. As of January 20, 2015, we had availability of \$13.9 million under the Revolving Credit Facility, after

giving effect to \$0.1 million of outstanding letters of credit. The Revolving Credit Facility will be amended in connection with this offering (the "New Credit Facility"). SSE Holdings will enter into the New Credit Facility concurrently with the consummation of this offering. See "Description of Indebtedness."

- (2) On a pro forma basis, includes the LLC Interests not owned by us, which represents 68.4% of SSE Holdings, LLC's outstanding common equity. The Continuing SSE Equity Owners will hold the noncontrolling interest in SSE Holdings, LLC. Shake Shack Inc. will hold 31.6% of the economic interests in SSE Holdings, LLC and the Continuing SSE Equity Owners will hold 68.4% of the economic interests in SSE Holdings, LLC.
- (3) The pro forma data in this column gives effect to the payment of the \$21.9 million distribution paid on December 30, 2014 to certain of the Original SSE Equity Owners and the related borrowings under the Revolving Credit Facility used to fund the distribution as if such distribution was declared and paid on September 24, 2014. See Note 2 to the unaudited pro forma consolidated balance sheet as of September 24, 2014 in "Unaudited Pro Forma Consolidated Financial Information."
- (4) A \$1.00 increase (decrease) in the assumed initial public offering price of \$15.00 per share, which is the midpoint of the price range listed on the cover page of this prospectus, would increase (decrease) the pro forma amount of each of cash, additional paid-in capital, total stockholders' equity and total capitalization by approximately \$4.7 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The table above does not include (i) 5,952,917 shares of Class A common stock reserved for issuance under our 2015 Incentive Award Plan (as described in "Executive Compensation—New Employment Agreements and Incentive Plans"), consisting of (x) 2,689,486 shares of Class A common stock issuable upon exercise of options to purchase shares of Class A common stock granted on the date of this prospectus to our directors and certain employees, including the named executive officers, in connection with this offering as described in "Executive Compensation—Director Compensation" and "Executive Compensation—New Equity Awards," and (y) 3,263,431 additional shares of Class A common stock reserved for future issuance and (ii) 24,269,792 shares of Class A common stock issuable to the Continuing SSE Equity Owners upon redemption or exchange of their LLC Interests as described in "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement." The table assumes no exercise by the underwriters of their option to purchase additional shares of Class A common stock.

DIVIDEND POLICY

Except for the distributions described under "The Transactions," 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 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. 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 us or our subsidiaries. See "Risk Factors—We do not currently expect to pay any cash dividends."

DILUTION

The Continuing SSE Equity Owners will maintain their LLC Interests in SSE Holdings after the Transactions. Because the Continuing SSE Equity Owners do not own any Class A common stock or have any right to receive distributions from Shake Shack, we have presented dilution in pro forma net tangible book value per share after this offering assuming that all of the holders of LLC Interests (other than Shake Shack) had their LLC Interests redeemed or exchanged for newly-issued shares of Class A common stock on a one-for-one basis (rather than for cash) and the cancellation for no consideration of all of their shares of Class B common stock (which are not entitled to receive distributions or dividends, whether cash or stock from Shake Shack) in order to more meaningfully present the dilutive impact on the investors in this offering. We refer to the assumed redemption or exchange of all LLC Interests for shares of Class A common stock as described in the previous sentence as the "Assumed Redemption."

Dilution is the amount by which the offering price paid by the purchasers of the Class A common stock in this offering exceeds the pro forma net tangible book value per share of Class A common stock after the offering. SSE Holdings' net tangible book value as of September 24, 2014 was \$35.8 million. Net tangible book value per share is determined at any date by subtracting our total liabilities from the total book value of our tangible assets and dividing the difference by the number of shares of Class A common stock deemed to be outstanding at that date.

If you invest in our Class A common stock in this offering, your ownership interest will be immediately diluted to the extent of the difference between the initial public offering price per share and the pro forma net tangible book value per share of our Class A common stock after this offering.

Pro forma net tangible book value per share is determined at any date by subtracting our total liabilities from the total book value of our tangible assets and dividing the difference by the number of shares of Class A common stock, after giving effect to the Transactions, including this offering, and the Assumed Redemption. Our pro forma net tangible book value as of September 24, 2014 would have been approximately \$78.5 million, or \$2.21 per share of Class A common stock. This amount represents an immediate increase in pro forma net tangible book value of \$1.88 per share to our existing stockholders and an immediate dilution in pro forma net tangible book value of approximately \$12.79 per share to new investors purchasing shares of Class A common stock in this offering. We determine dilution by subtracting the pro forma net tangible book value per share after this offering from the amount of cash that a new investor paid for a share of Class A common stock. The following table illustrates this dilution:

Assumed initial public offering price per share	\$ 15.00
Pro forma net tangible book value per share as of September 24, 2014 before this offering(1)	\$ 0.33
Increase per share attributable to investors in this offering	<u>1.88</u>
Pro forma net tangible book value per share after this offering	<u>2.21</u>
Dilution per share to new Class A common stock investors	<u><u>\$ 12.79</u></u>

(1) Gives pro forma effect to the Transactions (other than this offering) and the Assumed Redemption.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$15.00 per share, which is the midpoint of the price range listed on the cover page of this prospectus, would increase (decrease) the pro forma net tangible book value per share after this offering by approximately \$0.13, and dilution in pro forma net tangible book value per share to new investors by approximately \$0.87, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same

and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional shares of our Class A common stock in full in this offering, the pro forma net tangible book value after the offering would be \$2.45 per share, the increase in pro forma net tangible book value per share to existing stockholders would be \$2.12 and the dilution per share to new investors would be \$12.55 per share, in each case assuming an initial public offering price of \$15.00 per share, which is the midpoint of the price range listed on the cover page of this prospectus.

The following table summarizes, as of September 24, 2014 after giving effect to this offering, the differences between the Original SSE Equity Owners and the Former UAR Plan Participants and new investors in this offering with regard to:

- the number of shares of Class A common stock purchased from us by investors in this offering and the number of shares issued to the Original SSE Equity Owners and the Former UAR Plan Participants after giving effect to the Assumed Redemption,
- the total consideration paid to us in cash by investors purchasing shares of Class A common stock in this offering and by the Original SSE Equity Owners and the Former UAR Plan Participants including historical cash contributions, and
- the average price per share of Class A common stock that such Original SSE Equity Owners and Former UAR Plan Participants and new investors paid.

The calculation below is based on an assumed initial public offering price of \$15.00 per share, which is the midpoint of the price range listed on the cover page of this prospectus, before deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	Shares purchased		Total consideration		Average price per share
	Number	Percent	Amount	Percent	
Original SSE Equity Owners	30,188,209	85.0%	\$ 11,574,817	13.4%	\$ 0.38
Former UAR Plan Participants	311,791	0.9	—	—	—
New investors	5,000,000	14.1	75,000,000	86.6	15.00
Total	35,500,000	100.0%	\$ 86,574,817	100.0%	\$ 2.44

Each \$1.00 increase (decrease) in the assumed initial public offering price of \$15.00 per share would increase (decrease) the total consideration paid by new investors and the total consideration paid by all shareholders by \$4.7 million, assuming the number of shares offered by us remains the same and after deducting estimated underwriting discounts and commissions but before estimated offering expenses.

Except as otherwise indicated, the discussion and the tables above assume no exercise of the underwriters' option to purchase additional shares of Class A common stock. In addition, the discussion and tables above exclude shares of Class B common stock, because holders of the Class B common stock are not entitled to distributions or dividends, whether cash or stock, from Shake Shack. The number of shares of our Class A common stock outstanding after this offering as shown in the tables above is based on the number of shares outstanding as of September 24, 2014, after giving effect to the Transactions and the Assumed Redemption, and excludes 5,952,917 shares of Class A common stock reserved for issuance under our 2015 Incentive Award Plan (as described in "Executive Compensation—New Employment Agreements and Incentive Plans"), consisting of (i) 2,689,486 shares of Class A common stock issuable upon the exercise of options to purchase shares of Class A common stock granted on the date of this prospectus to our directors and certain employees, including the named executive officers, in connection with this offering as described in "Executive Compensation—

Director Compensation" and "Executive Compensation—New Equity Awards," and (ii) 3,263,431 additional shares of Class A common stock reserved for future issuance.

To the extent any of these outstanding options are exercised, there will be further dilution to new investors. To the extent all of such outstanding options had been exercised as of September 24, 2014 the pro forma net tangible book value per share after this offering would be \$3.11, and total dilution per share to new investors would be \$2.78.

If the underwriters exercise their option to purchase additional shares of Class A common stock in full:

- the percentage of shares of Class A common stock held by Original SSE Equity Owners and Former UAR Plan Participants will decrease to approximately 84.1% of the total number of shares of our Class A common stock outstanding after this offering; and
- the number of shares held by new investors will increase to 5,750,000, or approximately 15.9% of the total number of shares of our Class A common stock outstanding after this offering.

SELECTED CONSOLIDATED FINANCIAL AND OTHER DATA

The following table presents the selected historical consolidated financial data for SSE Holdings, LLC and its subsidiaries. SSE Holdings, LLC is the predecessor of the issuer, Shake Shack Inc., for financial reporting purposes. The selected consolidated statement of operations data for each of the years in the two-year period ended December 25, 2013 and the selected consolidated balance sheet data as of December 26, 2012 and December 25, 2013 are derived from the audited consolidated financial statements of SSE Holdings, LLC and its subsidiaries contained herein. The selected consolidated statements of operations data for the thirty-nine weeks ended September 25, 2013 and September 24, 2014, and the selected consolidated balance sheet data as of September 24, 2014 are derived from the unaudited condensed consolidated financial statements of SSE Holdings, LLC and its subsidiaries contained herein. In the opinion of our management, such unaudited financial statements reflect all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of the results for those periods.

The results of operations for the periods presented below are not necessarily indicative of the results to be expected for any future period and the results for any interim period are not necessarily indicative of the results that may be expected for a full fiscal year. The information set forth below should be read together with the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section and the consolidated financial statements and the accompanying notes included elsewhere in this prospectus.

The selected historical financial data of Shake Shack Inc. have not been presented as Shake Shack Inc. is a newly incorporated entity, has had no business transactions or activities to date and had no assets or liabilities during the periods presented in this section.

	Fiscal year ended		Thirty-nine weeks ended	
(in thousands, except per share data)	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
			(unaudited)	
Consolidated statement of operations data:				
Revenues				
Shack sales	\$ 55,591	\$ 78,587	\$ 56,783	\$ 78,988
Licensing revenue	1,447	3,869	2,721	4,770
Total revenue	57,038	82,456	59,504	83,758
Expenses				
Operating expenses				
Food and paper costs	16,774	23,865	17,211	24,248
Labor and related expenses	14,436	20,096	14,161	20,605
Other operating expenses	5,081	7,315	5,072	7,866
Occupancy and related expenses	5,053	6,892	4,871	6,794
General and administrative expenses	6,988	12,453	9,164	12,192
Depreciation expense	2,162	3,541	2,472	4,067
Pre-opening costs	1,858	2,334	1,705	3,828
Loss on disposal of property and equipment	—	25	17	28
Total expenses	52,352	76,521	54,673	79,628
Income from operations	4,686	5,935	4,831	4,130
Interest expense, net	156	52	31	219
Income before income taxes	4,530	5,883	4,800	3,911
Income tax expense	397	460	374	366
Net income	\$ 4,133	\$ 5,423	\$ 4,426	\$ 3,545
Pro forma net income per share data (unaudited)(1)(2):				
Pro forma weighted average shares of Class A common stock outstanding:				
Basic		11,230		11,230
Diluted		35,500		35,500
Pro forma net income available to Class A common stock per share:				
Basic		\$ 0.06		\$ 0.03
Diluted		\$ 0.06		\$ 0.03
Supplemental pro forma net income per share data (unaudited)(3):				
Pro forma weighted average shares of Class A common stock outstanding:				
Basic		1,443		1,502
Diluted		1,443		1,502
Pro forma net income available to Class A common stock per share:				
Basic		\$ 3.76		\$ 2.36
Diluted		\$ 3.76		\$ 2.36

(in thousands)	Historical SSE Holdings, LLC			Pro Forma SSE Holdings, LLC(4)	Pro Forma Shake Shack Inc.(1)
	December 26, 2012	December 25, 2013	September 24, 2014 (unaudited)	September 24, 2014 (unaudited)	September 24, 2014
Consolidated balance sheet data:					
Cash	\$ 16,033	\$ 13,076	\$ 6,107	\$ 6,107	\$ 46,249
Total assets	44,068	55,219	65,537	65,537	104,861
Total liabilities	12,197	17,832	29,700	51,551	26,400
Total members'/stockholder equity	31,871	37,387	35,837	13,986	24,794
	Fiscal year ended		Thirty-nine weeks ended		
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014	
Other data:					
Number of Shacks		21	40	33	53
Domestic company-operated		13	21	16	26
Domestic licensed		3	4	4	5
International licensed		5	15	13	22
Same Shack sales growth		7.1%	5.9%	5.5%	3.0%
Average unit volumes					
Domestic company-operated Shacks	\$ 5,367	\$ 5,017			
Manhattan Shacks	7,034	7,387			
Non-Manhattan Shacks	3,791	3,840			
International licensed Shacks(5)	9,665	6,077			
Shack system-wide sales(5)	\$ 81,048	\$ 139,903	\$ 98,931	\$ 156,080	
Shack-level operating profit margin(6)	25.6%	26.0%	27.2%	24.7%	
Manhattan Shacks	29.0%	30.3%	31.7%	31.2%	
Non-Manhattan Shacks	19.8%	21.9%	22.8%	20.8%	
Adjusted EBITDA(7)	\$ 9,998	\$ 14,459	\$ 11,417	\$ 14,063	
As a percentage of revenue	17.5%	17.5%	19.2%	16.8%	
Capital expenditures	\$ 11,036	\$ 16,194	\$ 10,359	\$ 17,885	

- (1) Pro forma figures give effect to the Transactions, including this offering. See "Unaudited Pro Forma Consolidated Financial Information" for a detailed presentation of the unaudited pro forma information, including a description of the transactions and assumptions underlying the pro forma adjustments.
- (2) See Note 5 to the unaudited pro forma consolidated statements of operations in "Unaudited Pro Consolidated Financial Information" for the computations of the pro forma weighted-average shares of Class A common stock outstanding.
- (3) The supplemental pro forma net income per share data has been computed, assuming an initial public offering price of \$15.00 per share, to give effect to the number of shares whose proceeds would be necessary to pay (i) the \$21.9 million distribution paid on December 30, 2014 to certain of the Original SSE Equity Owners and (ii) the \$5.2 million distribution made during the thirty-nine weeks ended September 24, 2014, but only to the extent the aggregate amount of these distributions exceeded our earnings for the preceding twelve-month period. The computations of the supplemental pro forma weighted average shares of Class A common stock outstanding and net income per share of Class A common stock are based on Historical SSE Holdings, LLC financial information, which as a limited liability company did not have any shares of Class A common stock outstanding during the fiscal year ended December 25, 2013 or the thirty-nine weeks ended September 24, 2014. The supplemental pro forma weighted average shares of Class A common stock outstanding during (i) the fiscal year ended December 25, 2013 only include 1.4 million shares to pay such distributions and (ii) the thirty-nine

weeks ended September 24, 2014 only include 1.5 million shares to pay such distributions. See Note 7 to the unaudited pro forma consolidated statements of operations in "Unaudited Pro Forma Consolidated Financial Information" for a complete description of the assumptions underlying the computations.

- (4) The pro forma data in this column gives effect to the payment of the \$21.9 million distribution paid on December 30, 2014 to certain of the Original SSE Equity Owners and the related borrowings under the Revolving Credit Facility used to fund the distribution as if such distribution was declared and paid on September 24, 2014. See Note 2 to the unaudited pro forma consolidated balance sheet as of September 24, 2014 in "Unaudited Pro Forma Consolidated Financial Information."
- (5) Shack system-wide sales includes combined revenue from all of our domestic company-operated Shacks and our domestic and international licensed Shacks. Our total revenue is limited to Shack sales from domestic company-owned operated Shacks and licensing revenue from domestic and international licensed Shacks.
- (6) Shack-level operating profit margin is included in this prospectus because we believe that Shack-level operating profit margin is an important measure to evaluate the performance and profitability of each Shack, individually and in the aggregate. We use Shack-level operating profit margin information to benchmark our performance versus competitors. Shack-level operating profit margin is defined as Shack sales less operating expenses, including food and paper costs, labor and related expenses, other operating expenses and occupancy and related expenses as a percentage of Shack sales. Shack-level operating profit margin is not required by, or presented in accordance with, GAAP. Shack-level operating profit margin is a supplemental measure of operating performance of our Shacks and our calculations thereof may not be comparable to similar measures reported by other companies. Shack-level operating profit margin has limitations as an analytical tool and should not be considered as a substitute for analysis of our results as reported under GAAP.

The computation of Shack-level operating profit margin is set forth below:

(Dollars amounts in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Shack sales	\$ 55,591	\$ 78,587	\$ 56,783	\$ 78,988
Food and paper costs	16,774	23,865	17,211	24,248
Labor and related expenses	14,436	20,096	14,161	20,605
Other operating expenses	5,081	7,315	5,072	7,866
Occupancy and related expenses	5,053	6,892	4,871	6,794
Shack-level operating profit	\$ 14,247	\$ 20,419	\$ 15,468	\$ 19,475
Shack-level operating profit margin	25.6%	26.0%	27.2%	24.7%

A reconciliation of Shack-level operating profit to income from operations, the most directly comparable GAAP measure, is set forth below.

(in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Shack-level operating profit	\$ 14,247	\$ 20,419	\$ 15,468	\$ 19,475
Add:				
Licensing revenue	1,447	3,869	2,721	4,770
Less:				
General and administrative expenses	6,988	12,453	9,164	12,192
Depreciation expense	2,162	3,541	2,472	4,067
Pre-opening costs	1,858	2,334	1,705	3,828
Loss on disposal of property and equipment	—	25	17	28
Income from operations	\$ 4,686	\$ 5,935	\$ 4,831	\$ 4,130

- (7) EBITDA and Adjusted EBITDA are included in this prospectus because they are key metrics used by management and our board of directors to assess our financial performance. EBITDA and Adjusted EBITDA are frequently used by analysts, investors and other interested parties to evaluate companies in our industry.

EBITDA and Adjusted EBITDA are not GAAP measures of our financial performance or liquidity and should not be considered as alternatives to net income (loss) as a measure of financial performance or cash flows from operations as measures of liquidity, or any other performance measure derived in accordance with GAAP. Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Additionally, EBITDA and Adjusted EBITDA are not intended to be measures of free cash flow for management's discretionary use, as they do not reflect tax payments, debt service requirements, capital expenditures, Shack openings and certain other cash costs that may recur in the future, including, among other things, cash requirements for working capital needs and cash costs to replace assets being depreciated and amortized. Management compensates for these limitations by relying on our GAAP results in addition to using EBITDA and Adjusted EBITDA supplementally. Our measures of EBITDA and Adjusted EBITDA are not necessarily comparable to similarly titled captions of other companies due to different methods of calculation.

A reconciliation of net income to EBITDA and Adjusted EBITDA is set forth below:

(in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Net income	\$ 4,133	\$ 5,423	\$ 4,426	\$ 3,545
Depreciation expense	2,162	3,541	2,472	4,067
Interest expense, net	156	52	31	219
Income tax expense	397	460	374	366
EBITDA	6,848	9,476	7,303	8,197
Equity-based compensation				
(a)	450	93	51	124
Deferred compensation(b)	—	2,054	2,032	—
Pre-opening costs(c)	1,623	1,737	941	2,260
Deferred rent(d)	839	975	1,023	1,934
Loss on disposal of property and equipment(e)	—	25	17	28
Costs incurred with this offering(f)	—	—	—	1,495
Other non-cash items(g)	238	99	50	25
Adjusted EBITDA	\$ 9,998	\$ 14,459	\$ 11,417	\$ 14,063

- (a) Non-cash charges related to equity-based compensation programs, which vary from period to period depending on timing of awards.
- (b) For the periods presented, represents amounts accrued under a bonus agreement we entered into with an employee pursuant to which we agreed to pay a bonus in a future period.
- (c) Non-capital expenditures associated with opening new Shacks exclusive of deferred rent incurred prior to opening.
- (d) Reflects the extent to which our annual rent expense has been above or below our cash rent payments.
- (e) Includes the loss on disposal of assets in the ordinary course of business.
- (f) Costs incurred in connection with this offering, including legal, accounting and other related expenses.
- (g) For the periods presented, represents non-cash charges related to certain employee benefits.

UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION

The following unaudited pro forma consolidated statement of operations for the year ended December 25, 2013 and the thirty-nine weeks ended September 24, 2014 give effect to the Transactions, including this offering, as if the same had occurred on December 27, 2012. The unaudited pro forma consolidated balance sheet as of September 24, 2014 gives effect to the Transactions, including this offering, as if the same had occurred on September 24, 2014.

We have derived the unaudited pro forma consolidated statement of operations for the year ended December 25, 2013 from the audited consolidated financial statements of SSE Holdings, LLC and its subsidiaries as of and for the year ended December 25, 2013 set forth elsewhere in this prospectus. We have derived the unaudited pro forma consolidated statement of operations for the thirty-nine weeks ended September 24, 2014 and the unaudited pro forma consolidated balance sheet as of September 24, 2014 from the unaudited condensed consolidated financial statements of SSE Holdings, LLC and its subsidiaries as of and for the thirty-nine weeks ended September 24, 2014 set forth elsewhere in this prospectus. The pro forma financial information is qualified in its entirety by reference to, and should be read in conjunction with, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes included elsewhere in this prospectus.

The pro forma adjustments related to the Transactions other than this offering, which we refer to as the Transaction Adjustments, are described in the notes to the unaudited pro forma consolidated financial information, and principally include the following:

- the payment of the \$21.9 million distribution on December 30, 2014 to certain of the Original SSE Equity Owners, which was funded with borrowings under the Revolving Credit Facility;
- the amendment and restatement of the SSE Holdings LLC Agreement to, among other things, (i) provide for LLC Interests that will be the single class of common membership interests in SSE Holdings, (ii) exchange all of the Original SSE Equity Owners' existing membership interests in SSE Holdings for LLC Interests and (iii) appoint Shake Shack as the sole managing member of SSE Holdings;
- the amendment and restatement of Shake Shack's certificate of incorporation to, among other things, (i) provide for Class A common stock and Class B common stock and (ii) issue shares of Class B common stock to the Continuing SSE Equity Owners, on a one-to-one basis with the number of LLC Interests they own, for nominal consideration;
- the exchange by the Former SSE Equity Owners of their LLC Interests for 5,918,417 shares of Class A common stock on a one-to-one basis;
- the receipt by the Former UAR Plan Participants of 311,791 shares of Class A common stock in settlement of their awards under the UAR Plan, net of employee withholding taxes (and the receipt by Shake Shack of a corresponding number of LLC Interests from SSE Holdings); and
- a provision for federal and state income taxes of Shake Shack as a taxable corporation at an effective rate of 13.4% and 13.2% for the fiscal year ended December 25, 2013 and the thirty-nine weeks ended September 24, 2014, respectively.

The pro forma adjustments related to this offering, which we refer to as the Offering Adjustments, are described in the notes to the unaudited pro forma consolidated financial information, and principally include the following:

- the issuance of shares of our Class A common stock to the purchasers in this offering in exchange for net proceeds of approximately \$69.8 million, assuming that the shares are offered at \$15.00 per share (the midpoint of the price range listed on the cover page of this prospectus), after deducting underwriting discounts and commissions but before offering expenses;

- the application of all of the net proceeds from this offering to acquire newly-issued LLC Interests from SSE Holdings at a purchase price per interest equal to the initial public offering price of Class A common stock;
- the application by SSE Holdings of the proceeds from the sale of LLC Interests to Shake Shack (i) to pay fees and expenses of approximately \$3.0 million in connection with this offering and (ii) to repay the outstanding borrowings under our Revolving Credit Facility of approximately \$26.9 million as of September 24, 2014, including approximately \$21.9 million of borrowings used to pay the distribution to certain of the Original SSE Equity Owners; and
- the grant of options to purchase shares of Class A common stock under our 2015 Incentive Award Plan in connection with this offering.

Except as otherwise indicated, the unaudited pro forma consolidated financial information presented assumes no exercise by the underwriters of their option to purchase additional shares of Class A common stock from us.

As described in greater detail under "Certain Relationships and Related Party Transactions—Tax Receivable Agreement," in connection with the closing of this offering, we will enter into the Tax Receivable Agreement with the Continuing SSE Equity Owners that will provide for the payment by Shake Shack to the Continuing SSE Equity Owners of 85% of the amount of tax benefits, if any, that Shake Shack actually realizes as a result of (i) increases in the tax basis of assets of SSE Holdings resulting from any redemptions or exchanges of LLC Interests as described under "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement—LLC Interest Redemption Right" or any prior sales of interests in SSE Holdings and (ii) certain other tax benefits related to our making payments under the Tax Receivable Agreement. Due to the uncertainty in the amount and timing of future exchanges of LLC Interests by the Continuing SSE Equity Owners, the unaudited pro forma consolidated financial information assumes that no exchanges of LLC Interests have occurred and therefore no increases in tax basis in SSE Holdings' assets or other tax benefits that may be realized thereunder have been assumed in the unaudited pro forma consolidated financial information. However, if all of the Continuing SSE Equity Owners were to exchange their LLC Interests, we would recognize a deferred tax asset of approximately \$208.5 million and a liability of approximately \$177.3 million, assuming (i) all exchanges occurred on the same day; (ii) a price of \$15.00 per share (the midpoint of the price range listed on the cover page of this prospectus); (iii) a constant corporate tax rate of 41.0%; (iv) we will have sufficient taxable income to fully utilize the tax benefits; and (v) no material changes in tax law. For each 5% increase (decrease) in the amount of LLC Interests exchanged by the Continuing SSE Equity Owners, our deferred tax asset would increase (decrease) by approximately \$10.4 million and the related liability would increase (decrease) by approximately \$8.9 million, assuming that the price per share and corporate tax rate remain the same. For each \$1.00 increase (decrease) in the assumed share price of \$15.00 per share, our deferred tax asset would increase (decrease) by approximately \$15.3 million and the related liability would increase (decrease) by approximately \$13.0 million, assuming that the number of LLC Interests exchanged by the Continuing SSE Equity Owners and the corporate tax rate remain the same. These amounts are estimates and have been prepared for informational purposes only. The actual amount of deferred tax assets and related liabilities that we will recognize will differ based on, among other things, the timing of the exchanges, the price of our shares of Class A common stock at the time of the exchange, and the tax rates then in effect.

As a public company, we will be implementing additional procedures and processes for the purpose of addressing the standards and requirements applicable to public companies. We expect to incur additional annual expenses related to these steps and, among other things, additional directors' and officers' liability insurance, director fees, reporting requirements of the SEC, transfer agent fees, hiring additional accounting, legal and administrative personnel, increased auditing and legal fees and similar expenses. We have not included any pro forma adjustments relating to these costs.

The pro forma adjustments are based upon available information and methodologies that are factually supportable and directly related to the Transactions, including this offering. The unaudited pro forma consolidated financial information includes various estimates which are subject to material change and may not be indicative of what our operations or financial position would have been had the Transactions, including this offering, taken place on the dates indicated, or that may be expected to occur in the future. For further discussion of these matters, see "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the historical consolidated financial statements and related notes included elsewhere in this prospectus.

Shake Shack Inc. and Subsidiaries
Unaudited Pro Forma Consolidated Balance Sheet as of September 24, 2014

(in thousands)	Historical SSE Holdings, LLC(1)	Distribution Adjustments	Pro Forma SSE Holdings, LLC	Transaction Adjustments	As Adjusted Before Offering	Offering Adjustments	Pro Forma Shake Shack Inc.
Assets							
Cash	\$ 6,107	\$ —	\$ 6,107	\$ 243(6)	\$ 6,350	\$ 39,899(4)	\$ 46,249
Accounts receivable	2,313	—	2,313	—	2,313	—	2,313
Inventories	357	—	357	—	357	—	357
Prepaid expenses	311	—	311	—	311	—	311
Total current assets	9,088	—	9,088	243	9,331	39,899	49,230
Property and equipment, net	53,041	—	53,041	—	53,041	—	53,041
Deferred financing costs	432	—	432	—	432	—	432
Security deposits	970	—	970	—	970	—	970
Deferred tax asset	67	—	67	—	67	—	67
Other assets	1,939	—	1,939	—	1,939	(818(4)	1,121
Total assets	<u>\$65,537</u>	<u>\$ —</u>	<u>\$65,537</u>	<u>\$ 243</u>	<u>\$65,780</u>	<u>\$ 39,081</u>	<u>\$104,861</u>
Liabilities and Members'/Stockholder Equity							
Short-term debt	\$ 5,000	\$ 21,851(2)	\$26,851	\$ —	\$26,851	\$ (26,851(2)	\$ —
Accounts payable	3,493	—	3,493	—	3,493	—	3,493
Accrued expenses	3,556	—	3,556	—	3,556	(818(4)	2,738
Accrued wages and related liabilities	1,947	—	1,947	2,518(7)	4,465	—	4,465
Sales tax payable	383	—	383	—	383	—	383
Due to affiliates	359	—	359	—	359	—	359
Deferred revenue	517	—	517	—	517	—	517
Total current liabilities	15,255	21,851	37,106	2,518	39,624	(27,669)	11,955
Deferred revenue, net of current portion	1,500	—	1,500	—	1,500	—	1,500
Long-term debt	313	—	313	—	313	—	313
Deferred compensation	2,119	—	2,119	—	2,119	—	2,119
Deferred rent	10,482	—	10,482	—	10,482	—	10,482
Other long-term liabilities	31	—	31	—	31	—	31
Total liabilities	29,700	21,851	51,551	2,518	54,069	(27,669)	26,400
Commitments and contingencies							
Members'/Stockholders' Equity							
Members' equity	35,837	(21,851)(2)	13,986	(13,986(6)	—	—(5)	—
Class A common stock	—	—	—	62(7)	62	50(3)	112
Class B common stock	—	—	—	243(6)	243	—	243
Additional paid-in capital	—	—	—	11,238(7)	11,238	21,043(4)	32,281
Accumulated deficit	—	—	—	(7,842)(7)	(7,842)	—	(7,842)
Members' equity/stockholders' equity attributable to Shake Shack Inc.	35,837	(21,851)	13,986	(10,285(5)	3,701	21,093	24,794
Non-controlling interest	—	—	—	8,010	8,010	45,657(5)	53,667
Total liabilities and members'/stockholder:							

equity	<u>\$65,537</u>	<u>\$ —</u>	<u>\$65,537</u>	<u>\$ 243</u>	<u>\$65,780</u>	<u>\$ 39,081</u>	<u>\$104,861</u>

See accompanying Notes to Unaudited Pro Forma Consolidated Balance Sheet.

Shake Shack Inc. and Subsidiaries
Notes to Unaudited Pro Forma Consolidated Balance Sheet

- (1) Shake Shack Inc. was formed on September 23, 2014 and will have no material assets or results of operations until the completion of this offering and therefore its historical financial position is not shown in a separate column in this unaudited pro forma consolidated balance sheet.
- (2) On December 30, 2014, SSE Holdings made a distribution in the amount of approximately \$21.9 million to certain of the Original SSE Equity Owners. The distribution was financed with borrowings under our Revolving Credit Facility, which will be repaid with a portion of the proceeds from this offering. This adjustment represents the recognition of the distribution and the related borrowings under our Revolving Credit Facility as if the distribution was declared and paid on September 24, 2014. It does not include any additional distributions in the event the gross proceeds from the offering exceed the anticipated gross proceeds (including as a result of the exercise by the underwriters of their option to purchase additional shares of Class A common stock). If an additional distribution is paid because the underwriters exercise their option to purchase additional shares of Class A common stock, members' equity would decrease by \$1.7 million. Such additional distribution, if any, would be paid subsequent to the closing with a portion of the proceeds from this offering.
- (3) We estimate that the net proceeds to us from this offering, after deducting underwriting discounts and commissions but before estimated offering expenses, will be approximately \$69.8 million, based on an assumed initial public offering price of \$15.00 per share, which is the midpoint of the price range listed on the cover page of this prospectus. This amount has been determined based on the assumption that the underwriters' option to purchase additional shares of our Class A common stock is not exercised. A reconciliation of the gross proceeds from this offering to the net cash proceeds is set forth below.

Assumed initial public offering price per share	\$ 15.00
Shares of Class A common stock issued in this offering	5,000,000
Gross proceeds	<u>\$ 75,000,000</u>
Less: underwriting discounts and commissions	(5,250,000)
Less: offering expenses (including amounts previously deferred)	<u>(3,000,000)</u>
Net cash proceeds	<u><u>\$ 66,750,000</u></u>

- (4) We are deferring certain costs associated with this offering, including certain legal, accounting and other related expenses, which have been recorded in other assets on our consolidated balance sheet. Upon completion of this offering, these deferred costs will be charged against the proceeds from this offering with a corresponding reduction to additional paid-in capital.
- (5) Upon completion of the Transactions, we will become the sole managing member of SSE Holdings. Although we will have a minority economic interest in SSE Holdings, we will have the sole voting interest in, and control the management of, SSE Holdings. As a result, we will consolidate the financial results of SSE Holdings and will report a non-controlling interest related to the LLC Interests held by the Continuing SSE Equity Owners on our consolidated balance sheet. The

computation of the non-controlling interest following the consummation of this offering, based on the assumed initial public offering price, is as follows:

	<u>Units</u>	<u>Percentage</u>
Interest in SSE Holdings held by Shake Shack Inc.	11,230,208	31.6%
Non-controlling interest in SSE Holdings held by Continuing SSE Equity Owners	24,269,792	68.4%
	<u>35,500,000</u>	<u>100.0%</u>

If the underwriters were to exercise their option to purchase additional shares of our Class A common stock, Shake Shack Inc. would own 33.0% of the economic interest of SSE Holdings and the Continuing SSE Equity Owners would own the remaining 67.0% of the economic interest of SSE Holdings.

Following the consummation of this offering, the LLC Interests held by the Continuing SSE Equity Owners, representing the non-controlling interest, will be redeemable at the election of the members, for, at our option, shares of Class A common stock on a one-for-one basis or a cash payment equal to a volume weighted average market price of one share of Class A common stock for each LLC Interest redeemed (subject to customary adjustments, including for stock splits, stock dividends and reclassifications) in accordance with the terms of the SSE Holdings LLC Agreement.

- (6) In connection with this offering, we will issue 24,269,792 shares of Class B common stock to the Continuing SSE Equity Owners, on a one-to-one basis with the number of LLC Interests they own, for nominal consideration. Holders of Class B common stock will have the same voting rights as holders of Class A common stock but holders of the Class B common stock will not be entitled to receive any distributions from or participate in any dividends declared by our board of directors.
- (7) This adjustment represents the total increase in compensation expense we expect to incur following the completion of this offering as a result of the following:
- \$7.2 million of compensation expense to be recognized in connection with the settlement of the outstanding awards held by the Former UAR Plan Participants. As described in "The Transactions," the Former UAR Plan Participants will receive shares of Class A common stock in settlement of their awards under the UAR Plan, net of employee withholding taxes. Upon the occurrence of a qualifying transaction, each holder of an award under the UAR Plan will receive shares of Class A common stock. The related compensation expense is determined by multiplying (i) the excess, if any, of the qualifying transaction price over the base price of the award under the UAR Plan, by (ii) the stated number of Class B units deemed covered by the award under the UAR Plan. As of September 24, 2014, there were 22,214 awards outstanding under the UAR Plan, with a weighted average base price of \$192.44. The adjustment was calculated assuming an initial public offering price of \$15.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), resulting in a qualifying transaction price of \$442.4 million, which was divided by the total common units outstanding as of January 16, 2015 of 863,077, resulting in a price per unit of \$512.53; and
 - \$0.6 million of compensation expense to be recognized in connection with the accelerated vesting of the outstanding restricted Class B Units in connection with this offering.

These adjustments are non-recurring in nature and, as such, have not been included as adjustments in the unaudited pro forma consolidated statements of operations.

Shake Shack Inc. and Subsidiaries
Unaudited Pro Forma Consolidated Statement of Operations for the
Year Ended December 25, 2013

(in thousands, except per share data)	Historical SSE Holdings, LLC(1)	Transaction Adjustments	As Adjusted Before Offering	Offering Adjustments	Pro Forma Shake Shack Inc.
Revenues					
Shack sales	\$ 78,587	\$ —	\$ 78,587	\$ —	\$ 78,587
Licensing revenue	3,869	—	3,869	—	3,869
Total revenue	82,456	—	82,456	—	82,456
Expenses					
Operating expenses:					
Food and paper costs	23,865	—	23,865	—	23,865
Labor and related expenses	20,096	—	20,096	—	20,096
Other operating expenses	7,315	—	7,315	—	7,315
Occupancy and related expenses	6,892	—	6,892	—	6,892
General and administrative expenses	12,453	—	12,453	3,444(2)	15,897
Depreciation expense	3,541	—	3,541	—	3,541
Pre-opening costs	2,334	—	2,334	—	2,334
Loss on disposal of property and equipment	25	—	25	—	25
Total expenses	76,521	—	76,521	3,444	79,965
Income from operations	5,935	—	5,935	(3,444)	2,491
Interest expense, net	52	—	52	—(6)	52(6)
Income before income taxes	5,883	—	5,883	(3,444)	2,439
Income tax expense	460	330(3)	790	(463)(3)	327
Net income	\$ 5,423	\$ (330)	\$ 5,093	\$ (2,981)	\$ 2,112
Net income attributable to non-controlling interests	—	—	—	1,445(4)	1,445
Net income attributable to Shake Shack Inc.	\$ 5,423	\$ (330)	\$ 5,093	\$ (4,426)	\$ 667
Pro forma net income per share data(5):					
Weighted-average shares of Class A common stock outstanding					
Basic					11,230
Diluted					35,500
Net income available to Class A common stock per share					
Basic					\$ 0.06
Diluted					\$ 0.06
Supplemental pro forma net income per share data(7):					
Weighted-average shares of Class A common stock outstanding					
Basic					1,443
Diluted					1,443
Net income available to Class A common stock per share					
Basic					\$ 3.76
Diluted					\$ 3.76

See accompanying Notes to Unaudited Pro Forma Consolidated Statements of Operations.

Shake Shack Inc. and Subsidiaries
Unaudited Pro Forma Consolidated Statement of Operations for the
Thirty-Nine Weeks Ended September 24, 2014

(in thousands, except per share data)	Historical SSE Holdings, LLC(1)	Transaction Adjustments	As Adjusted Before Offering	Offering Adjustments	Pro Forma Shake Shack Inc.
Revenues					
Shack sales	\$ 78,988	\$ —	\$ 78,988	\$ —	\$ 78,988
Licensing revenue	4,770	—	4,770	—	4,770
Total revenue	83,758	—	83,758	—	83,758
Expenses					
Operating expenses:					
Food and paper costs	24,248	—	24,248	—	24,248
Labor and related expenses	20,605	—	20,605	—	20,605
Other operating expenses	7,866	—	7,866	—	7,866
Occupancy and related expenses	6,794	—	6,794	—	6,794
General and administrative expenses	12,192	—	12,192	2,583(2)	14,775
Depreciation expense	4,067	—	4,067	—	4,067
Pre-opening costs	3,828	—	3,828	—	3,828
Loss on disposal of property and equipment	28	—	28	—	28
Total expenses	79,628	—	79,628	2,583	82,211
Income from operations	4,130	—	4,130	(2,583)	1,547
Interest expense, net	219	(5)(6)	214	—(6)	214(6)
Income before income taxes	3,911	5	3,916	(2,583)	1,333
Income tax expense	366	151(3)	517	(341)(3)	176
Net income	\$ 3,545	\$ (146)	\$ 3,399	\$ (2,242)	\$ 1,157
Net income attributable to non-controlling interests	—	—	—	791(4)	791
Net income attributable to Shake Shack Inc.	\$ 3,545	\$ (146)	\$ 3,399	\$ (3,033)	\$ 366
Pro forma net income per share data(5):					
Weighted-average shares of Class A common stock outstanding					
Basic					11,230
Diluted					35,500
Net income available to Class A common stock per share					
Basic					\$ 0.03
Diluted					\$ 0.03
Supplemental pro forma net income per share data(7):					
Weighted-average shares of Class A common stock outstanding					
Basic					1,502
Diluted					1,502
Net income available to Class A common stock per share					
Basic					\$ 2.36
Diluted					\$ 2.36

See accompanying Notes to Unaudited Pro Forma Consolidated Statements of Operations.

Shake Shack Inc. and Subsidiaries
Notes to Unaudited Pro Forma Consolidated Statements of Operations

- (1) Shake Shack Inc. was formed on September 23, 2014 and will have no material assets or results of operations until the completion of this offering and therefore its historical financial position is not shown in a separate column in these unaudited pro forma consolidated statements of operations.
- (2) This adjustment represents the increase in compensation expense we expect to incur following the completion of this offering. We expect to grant 2,689,486 stock options to our directors and certain employees in connection with this offering. This amount was calculated assuming the stock options were granted on December 27, 2012 at an exercise price equal to \$15.00 per share, the assumed initial public offering price. The grant date fair value was determined using the Black-Scholes valuation model using the following assumptions:

Expected volatility	35.37%
Expected dividend yield	—%
Expected term (in years)	7.5
Risk-free interest rate	2.31%

- (3) SSE Holdings has been, and will continue to be, treated as a partnership for U.S. federal and state income tax purposes. As such, income generated by SSE Holdings will flow through to its partners, including us, and is generally not subject to tax at the SSE Holdings level. Following the Transactions, we will be subject to U.S. federal income taxes, in addition to state, local and foreign income taxes with respect to our allocable share of any taxable income of SSE Holdings. As a result, the unaudited pro forma consolidated statements of operations reflect adjustments to our income tax expense to reflect an effective income tax rate of 13.4% and 13.2% for the fiscal year ended December 25, 2013 and the thirty-nine weeks ended September 24, 2014, respectively, which were calculated assuming the U.S. federal rates currently in effect and the highest statutory rates apportioned to each applicable state, local and foreign jurisdiction.
- (4) Upon completion of the Transactions, Shake Shack Inc. will become the sole managing member of SSE Holdings. Although we will have a minority economic interest in SSE Holdings, we will have the sole voting interest in, and control the management of, SSE Holdings. As a result, we will consolidate the financial results of SSE Holdings and will report a non-controlling interest related to the LLC Interests held by the Continuing SSE Equity Owners on our consolidated statements of operations. Following this offering, assuming the underwriters do not exercise their option to purchase additional shares of Class A common stock, Shake Shack Inc. will own 31.6% of the economic interest of SSE Holdings and the Continuing SSE Equity Owners will own the remaining 68.4% of the economic interest of SSE Holdings. Net income attributable to non-controlling interests will represent 68.4% of the income before income taxes of Shake Shack. These amounts have been determined based on the assumption that the underwriters' option to purchase 750,000 additional shares of our Class A common stock is not exercised. If the underwriters exercise their option to purchase additional shares of our Class A common stock in full, Shake Shack Inc. will own 33.0% of the economic interest of SSE Holdings and the Continuing SSE Equity Owners will own the remaining 67.0% of the economic interest of SSE Holdings and net income attributable to non-controlling interests would represent 67.0% of the income before income taxes of Shake Shack.
- (5) Pro forma basic net income per share is computed by dividing the net income available to Class A common stockholders by the weighted-average shares of Class A common stock outstanding during the period. Pro forma diluted net income per share is computed by adjusting the net income available to Class A common stockholders and the weighted-average shares of Class A common stock outstanding to give effect to potentially dilutive securities. Shares of our Class B common stock are not entitled to receive any distributions or dividends and are therefore not included in the computation of pro forma basic or diluted net income per share. The following table sets forth

a reconciliation of the numerators and denominators used to compute pro forma basic and diluted net income per share.

	Pro Forma Shake Shack Inc.	
	Fiscal year ended December 25, 2013	Thirty-nine weeks ended September 24, 2014
(in thousands, except per share amounts)		
Basic net income per share:		
Numerator		
Net income	\$ 2,112	\$ 1,157
Less: Net income attributable to non-controlling interests	(1,445)	(791)
Net income attributable to Class A common stockholders—basic	\$ 667	\$ 366
Denominator		
Shares of Class A common stock held by the Former SSE Equity Owners	5,918	5,918
Shares of Class A common stock held by the Former UAR Plan Participants	312	312
Shares of Class A common stock sold in this offering(a)	5,000	5,000
Weighted-average shares of Class A common stock outstanding—basic	11,230	11,230
Basic net income per share	\$ 0.06	\$ 0.03
Diluted net income per share:		
Numerator		
Net income available to Class A common stockholders	\$ 667	\$ 366
Reallocation of net income assuming conversion of LLC Interests(b)	1,445	791
Net income attributable to Class A common stockholders—diluted	\$ 2,112	\$ 1,157
Denominator		
Weighted-average shares of Class A common stock outstanding—basic	11,230	11,230
Weighted-average effect of dilutive securities(c):		
Assumed conversion of LLC Interests to shares of Class A common stock(b)	24,270	24,270
Weighted-average shares of Class A common stock outstanding—diluted	35,500	35,500
Diluted net income per share	\$ 0.06	\$ 0.03

- (a) We plan to use a portion of the net proceeds from this offering to repay outstanding borrowings under our Revolving Credit Facility of approximately \$36.0 million, including approximately \$21.9 million of borrowings used to pay the distribution to certain of the Original SSE Equity Owners. The following table sets forth the number of weighted-average shares of Class A common stock whose proceeds will be used for the purposes mentioned above and general corporate purposes.

Repayment of the outstanding borrowings under the Revolving Credit Facility used for:

The distribution to certain of the Original SSE Equity Owners	1,457
Other revolver borrowings	943
General corporate purposes	2,050
Subtotal	4,450
Underwriting discounts and commissions and expenses	550
Shares of Class A common stock sold in this offering	5,000

- (b) The LLC Interests held by the Continuing SSE Equity Owners are potentially dilutive securities and the computations of pro forma diluted net income per share assume that all LLC interests were exchanged for shares of Class A common stock at the beginning of the period. This adjustment was made for purposes of calculating pro forma diluted net income per share only and does not necessarily reflect the amount of exchanges that may occur subsequent to this offering.
- (c) We expect to grant 2,689,486 stock options to our directors and certain employees in connection with this offering, at an exercise price equal to the initial public offering price. Under the treasury stock method, assuming the stock options were granted at the beginning of the period at an exercise price equal to \$15.00 per share (the assumed initial public offering price), the effect of these stock options is anti-dilutive and has therefore been excluded from the computations of pro forma diluted net income per share.

- (6) As described in "Use of Proceeds," we plan to repay the outstanding borrowings under our Revolving Credit Facility with the net proceeds from this offering. As of December 25, 2013, there were no amounts outstanding under the Revolving Credit Facility. Additionally, there were no borrowings under the Revolving Credit Facility during the fiscal year ended December 25, 2013. As such, no interest expense was incurred and no adjustment has been made to the unaudited pro forma consolidated statement of operations for the fiscal year ended December 25, 2013. As of September 24, 2014, there were \$5.0 million of borrowings under the Revolving Credit Facility. This adjustment reflects a reduction in interest expense of \$0.01 million, computed at a weighted-average interest rate of 3.2%, as if the outstanding borrowings had been repaid on December 27, 2012. We estimate that the outstanding borrowings under the Revolving Credit Facility immediately prior to the closing of this offering will be approximately \$36.0 million, including approximately \$21.9 million of borrowings used to pay the distribution to certain of the Original SSE Equity Owners. These borrowings bear interest at a weighted-average rate of 3.3% and we expect to incur additional interest expense in the amount of \$0.1 million from September 25, 2014 through the closing of this offering.

Additionally, in connection with this offering, we anticipate that SSE Holdings will enter into an amendment to the Revolving Credit Facility, which we refer to as the "New Credit Facility." The New Credit Facility is expected to provide for a revolving line of credit of \$20.0 million. The New Credit Facility is expected to allow for incremental commitments not to exceed \$30.0 million. We anticipate that borrowings under the New Credit Facility will bear interest, at our option, at either the prime rate or LIBOR plus, in each case, an applicable margin determined according to a grid based on a net funded debt to Adjusted EBITDA ratio. We anticipate that the New Credit Facility will mature and all amounts outstanding will be due and payable five years from the effective date of the New Credit Facility. Assuming the New Credit Facility was in place as of December 27, 2012, interest expense for the thirty-nine weeks ended September 24, 2014 would have been \$0.004 million.

- (7) On December 30, 2014, SSE Holdings paid a distribution in the amount of approximately \$21.9 million to certain of the Original SSE Equity Owners. The distribution was funded with borrowings under our Revolving Credit Facility, which will be repaid with a portion of the proceeds from this offering. Distributions declared in the year preceding an initial public offering are deemed to be in contemplation of the offering with the intention of repayment out of offering proceeds to the extent that the dividends exceeded earnings during such period. This distribution, along with the \$5.2 million distribution made during the thirty-nine weeks ended September 24, 2014, are significant relative to the reported equity as of September 24, 2014 and are in excess of our earnings of \$5.4 million and \$4.5 million for the twelve-month periods ended December 25, 2013 and September 24, 2014, respectively. Earnings for the twelve-month period ended September 24, 2014 is comprised of (i) net income for the thirty-nine weeks ended September 24, 2014 of \$3.5 million and (ii) net income for the thirteen weeks ended December 25, 2013 of \$1.0 million. The supplemental pro forma information has been computed, assuming an initial public offering price of \$15.00 per share (the midpoint of the price range set forth on the cover

page of this prospectus), to give effect to the number of shares whose proceeds would be necessary to pay (i) the distribution to certain of the Original SSE Equity Owners and (ii) the \$5.2 million distribution made during the thirty-nine weeks ended September 24, 2014, but only to the extent the aggregate amount of these distributions exceeded our earnings for the preceding twelve-month period. The computations of the supplemental pro forma weighted average shares outstanding and net income per share are set forth below.

	Fiscal year ended December 25, 2013	Thirty-nine weeks ended September 24, 2014
Basic and diluted supplemental pro forma net income per share:		
Numerator		
Net income	\$ 5,423	\$ 3,545
Denominator		
The distribution to certain of the Original SSE Equity Owners	\$ 21,851	\$ 21,851
Distributions made during the thirty-nine weeks ended September 24, 2014	5,219	5,219
Less: Earnings for the preceding twelve-month period	(5,423)	(4,542)
Excess of distributions over earnings	21,647	22,528
Divided by: Assumed initial public offering price	\$ 15.00	\$ 15.00
Number of shares whose proceeds would be necessary to pay the distributions	1,443	1,502
Basic and diluted pro forma net income per share	\$ 3.76	\$ 2.36

As SSE Holdings has no potentially dilutive securities, the supplemental pro forma basic and diluted net income per share amounts are the same.

The supplemental pro forma weighted average shares outstanding and net income per share amounts have been computed assuming there will be no additional distribution in the event the gross proceeds from the offering exceed \$80.0 million (including as a result of the exercise by the underwriters of their option to purchase additional shares of Class A common stock). If an additional distribution is paid because the underwriters exercise their option to purchase additional shares of our Class A common stock, the supplemental pro forma weighted average shares outstanding would be 1,557 and 1,616 and supplemental pro forma net income per share would be \$3.48 and \$2.19 for the fiscal year ended December 25, 2013 and thirty-nine weeks ended September 24, 2014, respectively.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with the "Selected Historical Consolidated Financial and Other Data" and our consolidated financial statements and the related notes and other financial information included elsewhere in this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should review the "Cautionary Note Regarding Forward-Looking Statements" and "Risk Factors" sections of this prospectus for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

The following discussion contains references to fiscal 2012 and fiscal 2013, which represent the financial results of our predecessor, SSE Holdings, LLC, for the fiscal years ended December 26, 2012 and December 25, 2013, respectively. We operate on a 52- or 53-week fiscal year ending on the last Wednesday of the calendar year. In a 52-week fiscal year, each quarter contains 13 weeks of operations; in a 53-week fiscal year, each of the first, second and third quarters includes 13 weeks of operations and the fourth quarter includes 14 weeks of operations. Every five or six years, a 53-week fiscal year occurs. Fiscal 2012 and fiscal 2013 were both 52-week years. Fiscal 2014 was a 53-week year and ended on December 31, 2014, which may cause our revenue, expenses and other results of operations to be higher due to an additional week of operations.

Overview

Shake Shack is a modern day "roadside" burger stand serving a classic American menu of premium burgers, hot dogs, crinkle-cut fries, shakes, frozen custard, beer and wine. There currently are 63 Shacks worldwide, comprised of:

- 31 domestic company-operated Shacks;
- five domestic licensed Shacks; and
- 27 international licensed Shacks.

During the three fiscal years ended December 25, 2013, we grew from seven Shacks in two states to 40 Shacks across six states, Washington, D.C. and eight other countries, representing a 79% compound annual growth rate ("CAGR"). As a result, our total revenue grew from \$19.5 million to \$82.5 million, a 62% CAGR, our net income grew from \$0.2 million to \$5.4 million, and Adjusted EBITDA grew to \$14.5 million over the same period. For a reconciliation of Adjusted EBITDA, a non-GAAP measure, to net income, see "—Results of Operations." Our brand power and thoughtful approach to growth have resulted in strong Shack performance across a variety of geographic areas and formats. Our Shacks generate attractive Shack-level operating profit margins, strong cash flow and high returns on invested capital. We have notable AUVs in both domestic company-operated Manhattan Shacks ("Manhattan Shacks") and domestic company-operated non-Manhattan Shacks ("non-Manhattan Shacks"). Because our AUVs are higher in Manhattan, due in large part to population density and overall familiarity with the brand in Manhattan, we typically look at AUVs on both a Manhattan Shack and non-Manhattan Shack basis. There currently are 31 domestic company-operated Shacks, comprised of:

- seven Manhattan Shacks; and
- 24 Non-Manhattan Shacks.

While we believe that there is still ample room to grow our Shack-base in Manhattan, the majority of our domestic company-operated Shack growth is expected to occur outside of Manhattan, and thus we believe that non-Manhattan Shack AUVs are a better measure of expected sales at new Shacks. In fiscal 2013, our domestic company-operated Shacks had AUVs of approximately \$5.0 million, of which our Manhattan Shacks had AUVs of approximately \$7.4 million with Shack-level operating profit

margins of approximately 30%. Our non-Manhattan Shacks had AUVs of approximately \$3.8 million with Shack-level operating profit margins of approximately 22% during the same period.

Historically, our domestic company-operated Shacks have delivered an attractive average cash-on-cash return of approximately 65% and payback period of 1.5 years of which our Manhattan Shacks generated an average cash-on-cash return of 82% and payback period of 1.2 years and our non-Manhattan Shacks generated an average cash-on-cash return of 31% and payback period of 3.2 years. This performance is driven by our approach in targeting areas where communities gather, often with high foot traffic and substantial commercial density. The small number of Shacks included in our calculation of our average cash-on-cash return and payback period may cause these measures to fluctuate and be subject to change.

Growth Strategies and Outlook

We plan to continue to expand our business, drive Shack sales and enhance our competitive positioning by executing on the following strategies:

- *Open new domestic company-operated Shacks.* Our domestic company-operated Shack growth strategy is focused on both existing and new markets. Given that we are still in a nascent stage of growth, a substantial portion of our growth will come from opening Shacks in markets where we have little to no presence currently. In fiscal 2014, we opened 10 domestic company-operated Shacks. Given that our primary growth driver will be the opening of new domestic company-operated Shacks, we are keenly focused on maintaining a rigorous site selection process. In addition to evaluating key new Shack criteria, our management team personally visits each potential Shack to determine if the prospective location is likely to meet certain Shack-level operating profit margin and cash-on-cash return targets.
- *Capitalize on our outsized brand awareness.* The Shake Shack experience has cultivated significant brand awareness relative to the small number of Shacks. We have worked tirelessly to establish a genuine connection with our guests and integrate into their communities through investment in innovative marketing and programming.
- *Grow same Shack sales.* We continually focus on improving our same Shack sales performance by providing an engaging and differentiated guest experience that includes great food, unique and thoughtful integration with local communities and high standards of excellence and hospitality.
- *Opportunistically increase our licensed Shacks abroad.* We will continue to grow our licensed portfolio by expanding further in the eight countries abroad in which we currently have internationally licensed operations. This strategy historically has been a low-cost, high-return method of growing our brand awareness and providing an increasing source of cash flow. We believe there are additional international markets that will embrace the Shake Shack concept.

With only 63 Shacks around the world, we have identified many attractive new markets for the Shake Shack experience. We have successfully launched different layouts and sizes of Shacks in varied locations throughout urban high density areas, suburban in-line and pad sites, regional malls, lifestyle centers, ballparks, airports and train stations. Each design is critical to the Shake Shack experience and we blend our core brand identifiers with features specifically designed for each Shack to be of its place and connect directly with its neighborhood. With a disciplined approach to new Shack development and a successful track record in site selection, we believe that we are positioned well for future growth.

Our profitability depends in part on our ability to anticipate and react to changes in the price and availability of food commodities. Prices for these commodities may be affected by market changes, increased competition, shortages or interruptions in supply due to weather, disease or other conditions beyond our control. In particular, certain regions of the United States experienced a significant drought in 2014, which has increased, and we expect to continue to increase, the price we pay for our beef and dairy commodities. We do not currently hedge our commodity risks, and we may not be able to pass on these increased costs to our guests. If we cannot offset these costs, our operating margins and profitability may be adversely impacted.

Post-Offering Taxation and Expenses

After consummation of this offering, we will become subject to U.S. federal, state and local income taxes with respect to our allocable share of any taxable income of SSE Holdings and will be taxed at the prevailing corporate tax rates. In addition to tax expenses, we also will incur expenses related to our operations, plus payments under the Tax Receivable Agreement, which we expect to be significant. We intend to cause SSE Holdings to make distributions in an amount sufficient to allow us to pay our tax obligations and operating expenses, including distributions to fund any ordinary course payments due under the Tax Receivable Agreement. See "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement—Distributions."

In addition, as a public company, we will be implementing additional procedures and processes for the purpose of addressing the standards and requirements applicable to public companies. We expect to incur additional annual expenses related to these steps and, among other things, additional directors' and officers' liability insurance, director fees, reporting requirements of the SEC, transfer agent fees, hiring additional accounting, legal and administrative personnel, increased auditing and legal fees and similar expenses.

Key Performance Indicators

To evaluate the performance of our business, we utilize a variety of financial and performance measures. These key measures include Shack sales, new Shack openings, average unit volumes, same Shack sales growth, Shack-level operating profit margin, growth in licensing fees and Adjusted EBITDA.

Shack Sales

Shack sales represent the aggregate sales of food and beverages in 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.

New Shack Openings

The number of new Shack openings reflects the number of Shacks opened during a particular reporting period. Before we open new Shacks, we incur pre-opening costs, as described below. We expect that, beginning in fiscal 2015, we will open at least 10 domestic company-operated Shacks each fiscal year for the foreseeable future, which is the primary driver of our expected sales growth. The total number of new Shacks per year and the timing of Shack openings has, and will continue to have, an impact on our results. New Shacks sometimes experience normal inefficiencies in the form of higher labor and other operating expenses and, as a result, Shack-level operating profit margins are generally lower during the start-up period of operation. See "Risk Factors—New Shacks, once opened may not be profitable, and the performance of our Shacks that we have experienced in the past may not be indicative of future results."

Average Unit Volumes ("AUVs")

Average Unit Volumes or AUVs for any 12-month period consist of the average annualized sales of all domestic company-operated Shacks over that period. AUVs are calculated by dividing total sales from domestic company-operated Shacks by the number of domestic company-operated Shacks open during that period. For Shacks that are not open for the entire period, we make fractional adjustments to the number of Shacks open such that it corresponds to the period of associated sales. The measurement of AUVs allows us to assess changes in guest traffic and per transaction patterns at our domestic company-operated Shacks.

Because our AUVs are significantly higher in Manhattan, we analyze AUVs on both a Manhattan Shack and non-Manhattan Shack basis. Manhattan Shack AUVs have historically been higher than non-Manhattan Shack AUVs given the population density and overall familiarity with the Shake Shack brand. Given that the majority of our new domestic company-operated Shack growth is expected to

occur outside of Manhattan, we believe that non-Manhattan Shack AUVs are a more representative measure of expected sales at new Shacks, compared to Manhattan Shack AUVs.

Same Shack Sales Growth

Same Shack sales growth reflects the change in year-over-year sales ("same Shack sales") for the comparable Shack base, which we define as the number of domestic company-operated Shacks open for 24 months or longer. For the fiscal years ended December 26, 2012 and December 25, 2013 and the thirty-nine weeks ended September 25, 2013 and September 24, 2014, there were five, eight, eight and 12 Shacks, respectively, in our comparable Shack base. The small number of Shacks included in our comparable Shack base may cause same Shack sales growth to fluctuate and be unpredictable.

Given our focused marketing efforts surrounding each opening, new Shacks often experience an initial start-up period with considerable sales volumes, which subsequently decrease to stabilized levels after approximately 12 months. As a result, the initial comparison of second year sales to first year sales is often to higher than normal sales in the first year. Thus, we do not include Shacks in the comparable Shack base until they have been open 24 months or longer. We expect that this trend will continue for the foreseeable future as we continue to open and expand into new markets.

Shack-level Operating Profit Margin

Shack-level operating profit margin is defined as sales less operating expenses, including food and paper costs, labor and related expenses, other operating expenses and occupancy and related expenses as a percentage of Shack sales. Shack-level operating profit margin is not required by, or presented in accordance with, GAAP. Shack-level operating profit margin is a supplemental measure of operating performance of our Shacks and our calculations thereof may not be comparable to similar measures reported by other companies. Shack-level operating profit margin has limitations as an analytical tool and should not be considered as a substitute for analysis of our results as reported under GAAP. We believe that Shack-level operating profit margin is an important measure to evaluate the performance and profitability of each Shack, individually and in the aggregate. We use Shack-level operating profit margin information to benchmark our performance versus competitors.

Growth in Licensing Fees

We currently have five domestic licensed Shacks and 27 international licensed Shacks. Internationally, we have license agreements for four major territories, with Shacks operating in eight countries. The Middle East has been our most prominent growth market with 20 Shacks in operation, followed by Turkey with four, Russia with two and the United Kingdom with one. In fiscal 2013, our international licensed Shacks had AUVs of approximately \$6.1 million, which resulted in license fees of approximately \$3.5 million. We also receive territory fees for the exclusive right to develop Shacks in a specific geographic area.

Adjusted EBITDA

We use Adjusted EBITDA as a supplemental measure of our performance. Adjusted EBITDA is also the basis for performance evaluation under our executive compensation programs. Adjusted EBITDA is defined as net income before depreciation and amortization, interest expense and provision for income taxes, adjusted for the impact of certain non-cash and other items that we do not consider in our evaluation of ongoing operating performance. These items include equity-based compensation expense, non-cash deferred rent charges and pre-opening costs, as well as certain non-recurring charges. We believe that Adjusted EBITDA is an appropriate measure of operating performance because it eliminates the impact of expenses that do not relate to business performance.

Adjusted EBITDA as presented in this prospectus is a supplemental measure of our performance that is neither required by, nor presented in accordance with, GAAP. Adjusted EBITDA should not be considered as a substitute for GAAP metrics such as net income or any other performance measures derived in accordance with GAAP. Also, in the future we may incur expenses or charges such as those added back to calculate Adjusted EBITDA. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or nonrecurring items.

Results of Operations

The following tables summarize key components of our results of operations for the periods indicated:

(in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Revenues				
Shack sales	\$ 55,591	\$ 78,587	\$ 56,783	\$ 78,988
Licensing revenue	1,447	3,869	2,721	4,770
Total revenue	57,038	82,456	59,504	83,758
Expenses				
Operating expenses				
Food and paper costs	16,774	23,865	17,211	24,248
Labor and related expenses	14,436	20,096	14,161	20,605
Other operating expenses	5,081	7,315	5,072	7,866
Occupancy and related expenses	5,053	6,892	4,871	6,794
General and administrative expenses	6,988	12,453	9,164	12,192
Depreciation expense	2,162	3,541	2,472	4,067
Pre-opening costs	1,858	2,334	1,705	3,828
Loss on disposal of property and equipment	—	25	17	28
Total expenses	52,352	76,521	54,673	79,628
Income from operations	4,686	5,935	4,831	4,130
Interest expense, net	156	52	31	219
Income before income taxes	4,530	5,883	4,800	3,911
Income tax expense	397	460	374	366
Net income	\$ 4,133	\$ 5,423	\$ 4,426	\$ 3,545
(Dollar amounts in thousands)				
Other data:				
Number of Shacks	21	40	33	53
Domestic company-operated	13	21	16	26
Domestic licensed	3	4	4	5
International licensed	5	15	13	22
Same Shack sales growth	7.1%	5.9%	5.5%	3.0%
Average unit volumes				
Domestic company-operated Shacks	\$ 5,367	\$ 5,017		
Manhattan Shacks	7,034	7,387		
Non-Manhattan Shacks	3,791	3,840		
International licensed Shacks(1)	9,665	6,077		
Shack system-wide sales(1)	\$ 81,048	\$ 139,903	\$ 98,931	\$ 156,080
Shack-level operating profit margin(2)	25.6%	26.0%	27.2%	24.7%
Manhattan Shacks	29.0%	30.3%	31.7%	31.2%
Non-Manhattan Shacks	19.8%	21.9%	22.8%	20.8%
Adjusted EBITDA(3)	\$ 9,998	\$ 14,459	\$ 11,417	\$ 14,063
As a percentage of revenue	17.5%	17.5%	19.2%	16.8%
Capital expenditures	\$ 11,036	\$ 16,194	\$ 10,359	\$ 17,885

- (1) Shack system-wide sales includes combined revenue from all of our domestic company-operated Shacks and our domestic and international licensed Shacks. Our total revenue is limited to Shack sales from domestic company-operated Shacks and licensing revenue from our domestic and international licensed Shacks.

- (2) The computation of Shack-level operating profit margin is set forth below:

(Dollar amounts in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Shack sales	\$ 55,591	\$ 78,587	\$ 56,783	\$ 78,988
Food and paper costs	16,774	23,865	17,211	24,248
Labor and related expenses	14,436	20,096	14,161	20,605
Other operating expenses	5,081	7,315	5,072	7,866
Occupancy and related expenses	5,053	6,892	4,871	6,794
Shack-level operating profit	<u>\$ 14,247</u>	<u>\$ 20,419</u>	<u>\$ 15,468</u>	<u>\$ 19,475</u>
Shack-level operating profit margin	25.6%	26.0%	27.2%	24.7%

A reconciliation of Shack-level operating profit to income from operations, the most directly comparable GAAP measure, is set forth below.

(in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Shack-level operating profit	\$ 14,247	\$ 20,419	\$ 15,468	\$ 19,475
Add:				
Licensing revenue	1,447	3,869	2,721	4,770
Less:				
General and administrative expenses	6,988	12,453	9,164	12,192
Depreciation expense	2,162	3,541	2,472	4,067
Pre-opening costs	1,858	2,334	1,705	3,828
Loss on disposal of property and equipment	—	25	17	28
Income from operations	<u>\$ 4,686</u>	<u>\$ 5,935</u>	<u>\$ 4,831</u>	<u>\$ 4,130</u>

- (3) A reconciliation of net income to EBITDA and Adjusted EBITDA is set forth below:

(in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Net income	\$ 4,133	\$ 5,423	\$ 4,426	\$ 3,545
Depreciation expense	2,162	3,541	2,472	4,067
Interest expense, net	156	52	31	219
Income tax expense	397	460	374	366
EBITDA	6,848	9,476	7,303	8,197
Equity-based compensation(a)	450	93	51	124
Deferred compensation(b)	—	2,054	2,032	—
Pre-opening costs(c)	1,623	1,737	941	2,260
Deferred rent(d)	839	975	1,023	1,934
Loss on disposal of property and equipment(e)	—	25	17	28
Costs associated with this offering (f)	—	—	—	1,495

Other non-cash

items(g)	238	99	50	25
Adjusted EBITDA	<u>\$ 9,998</u>	<u>\$ 14,459</u>	<u>\$ 11,417</u>	<u>\$ 14,063</u>

- (a) Non-cash charges related to equity-based compensation programs, which vary from period to period depending on timing of awards.

- (b) For the periods presented, represents amounts accrued under a bonus agreement we entered into with an employee pursuant to which we agreed to pay a bonus in a future period.
- (c) Non-capital expenditures associated with opening new Shacks exclusive of deferred rent incurred prior to opening.
- (d) Reflects the extent to which our annual rent expense has been above or below our cash rent.
- (e) Includes the loss on disposal of assets in the ordinary course of business.
- (f) Costs incurred in connection with this offering, including legal, accounting and other related expenses.
- (g) For the periods presented, represents non-cash charges for certain employee benefits.

The following is a description of certain key financial definitions and a discussion of our results of operations for fiscal 2013 compared to fiscal 2012 and the thirty-nine weeks ended September 24, 2014 compared to the thirty-nine weeks ended September 25, 2013.

Shack Sales

Shack sales represent the aggregate sales of food and beverages in 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.

Shack sales were \$78.6 million for fiscal 2013 compared to \$55.6 million for fiscal 2012, an increase of \$23.0 million or 41.4%. The growth in Shack sales was primarily driven by the opening of eight new domestic company-operated Shacks during fiscal 2013. Shacks in the comparable Shack base contributed \$2.3 million of this increase while new domestic company-operated Shacks contributed \$20.7 million. Same Shack sales growth increased 5.9% during fiscal 2013. For purposes of calculating same Shack sales growth, Shack sales for eight Shacks were included in the comparable Shack base. For fiscal 2013, AUVs for Manhattan Shacks were \$7.4 million and AUVs for non-Manhattan Shacks were \$3.8 million.

For the thirty-nine weeks ended September 24, 2014, Shack sales were \$79.0 million compared to \$56.8 million for the thirty-nine weeks ended September 25, 2013, an increase of \$22.2 million or 39.1%, primarily driven by the opening of 10 new domestic company-operated Shacks between September 25, 2013 and September 24, 2014. Shacks in the comparable Shack base contributed \$1.0 million of this increase while new domestic company-operated Shacks contributed \$21.2 million. Same Shack sales increased 3.0% during the thirty-nine weeks ended September 24, 2014. For purposes of calculating same Shack sales growth, Shack sales for 12 Shacks were included in the comparable Shack base.

Licensing Revenue

Licensing revenue is comprised of license fees 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.

Licensing revenue was \$3.9 million for fiscal 2013 compared to \$1.4 million for fiscal 2012, an increase of \$2.5 million or 167.4%. This increase was primarily driven by the opening of 10 international licensed and one domestic licensed Shack during fiscal 2013. AUVs at international licensed Shacks declined over the same period due to the opening of lower-volume Shacks during fiscal 2013.

For the thirty-nine weeks ended September 24, 2014, licensing revenue was \$4.8 million compared to \$2.7 million in the thirty-nine weeks ended September 25, 2013, an increase of \$2.1 million or 75.3%. This increase was primarily driven by the opening of nine international licensed Shacks between September 25, 2013 and September 24, 2014.

Food and Paper Costs

Food and paper costs include the direct costs associated with food, beverage and packaging of our menu items. The components of food and paper costs are variable by nature, change with sales volume, are impacted by menu mix and are subject to increases or decreases in commodity costs.

Food and paper costs were \$23.9 million for fiscal 2013 compared to \$16.8 million for fiscal 2012, an increase of \$7.1 million or 42.3%, primarily due to the opening of eight new domestic company-operated Shacks during fiscal 2013. As a percentage of Shack sales, food and paper costs increased slightly to 30.4% for fiscal 2013 compared to 30.2% for fiscal 2012. This increase was due to an increase in the cost of certain food items, primarily beef, which was partially offset by menu price increases and purchasing efficiencies of other items.

For the thirty-nine weeks ended September 24, 2014, food and paper costs were \$24.2 million compared to \$17.2 million for the thirty-nine weeks ended September 25, 2013, an increase of \$7.0 million or 40.9%. This increase was primarily due to the opening of 10 new domestic company-operated Shacks between September 25, 2013 and September 24, 2014. As a percentage of Shack sales, food and paper cost increased to 30.7% for the thirty-nine weeks ended September 24, 2014 from 30.3% for the thirty-nine weeks ended September 25, 2013. This increase was due to an increase in the cost of certain food items, primarily beef, which was partially offset by menu price increases.

Labor and Related Expenses

Labor and related expenses include domestic company-operated Shack-level hourly and management wages, bonuses, payroll taxes, 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 and the performance of our domestic company-operated Shacks.

Labor and related expenses were \$20.1 million for fiscal 2013 compared to \$14.4 million for fiscal 2012, an increase of \$5.7 million or 39.2%. This increase was primarily due to the opening of eight new domestic company-operated Shacks during fiscal 2013. As a percentage of Shack sales, labor and related expenses decreased to 25.6% in fiscal 2013 compared to 26.0% in fiscal 2012. This decrease was due to certain operational efficiencies and strategies implemented at the Shacks in fiscal 2013.

For the thirty-nine weeks ended September 24, 2014, labor and related expenses were \$20.6 million compared to \$14.2 million for the thirty-nine weeks ended September 25, 2013, an increase of \$6.4 million or 45.5%. This increase was primarily due to the opening of 10 new domestic company-operated Shacks between September 25, 2013 and September 24, 2014. As a percentage of Shack sales, labor and related expenses increased to 26.1% for the thirty-nine weeks ended September 24, 2014 compared to 24.9% for the thirty-nine weeks ended September 25, 2013. This increase was due to a decision by the Company to increase the starting rate of pay for Shack team members at the start of fiscal 2014, as well as the impact of lower-volume Shacks opening and the impact of fixed management labor at these Shacks.

Other Operating Expenses

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

Other operating expenses were \$7.3 million for fiscal 2013 compared to \$5.1 million for fiscal 2012, an increase of \$2.2 million or 44.0%, primarily due to the opening of eight new domestic company-operated Shacks in fiscal 2013. As a percentage of Shack sales, other operating expenses increased to

9.3% in fiscal 2013 compared to 9.1% in fiscal 2012. This increase was due to the opening of lower-volume non-Manhattan Shacks and the impact of fixed operating expenses at these lower-volume non-Manhattan Shacks.

For the thirty-nine weeks ended September 24, 2014, other operating expenses were \$7.9 million compared to \$5.1 million for the thirty-nine weeks ended September 25, 2013, an increase of \$2.8 million or 55.1%, primarily due to the opening of 10 new domestic company-operated Shacks between September 25, 2013 and September 24, 2014. As a percentage of Shack sales, other operating expenses increased to 10.0% for the thirty-nine weeks ended September 24, 2014 compared to 8.9% for the thirty-nine weeks ended September 25, 2013. This increase was due to the impact of certain fixed operating expenses at new lower-volume Shacks.

Occupancy and Related Expenses

Occupancy and related expenses consist of Shack-level occupancy expenses (including rent, common area expenses and certain local taxes), excluding pre-opening costs, which are recorded separately.

Occupancy and related expenses were \$6.9 million for fiscal 2013 compared to \$5.1 million for fiscal 2012, an increase of \$1.8 million or 36.4%, primarily due to the opening of eight new domestic company-operated Shacks in fiscal 2013. As a percentage of Shack sales, occupancy and related expenses decreased to 8.8% in fiscal 2013 compared to 9.1% in fiscal 2012, primarily due to the opening of non-Manhattan Shacks, where occupancy and related expenses are typically lower.

Occupancy and related expenses were \$6.8 million for the thirty-nine weeks ended September 24, 2014 compared to \$4.9 million for the thirty-nine weeks ended September 25, 2013, an increase of \$1.9 million or 39.5%, primarily due to the opening of 10 new domestic company-operated Shacks between September 25, 2013 and September 24, 2014. As a percentage of Shack sales, occupancy and related expenses remained unchanged at 8.6% for both the thirty-nine weeks ended September 24, 2014 and the thirty-nine weeks ended September 25, 2013.

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 for certain executives.

General and administrative expenses were \$12.5 million for fiscal 2013 compared to \$7.0 million for fiscal 2012, an increase of \$5.5 million or 78.2%. As a percentage of total revenue, general and administrative expenses increased to 15.1% in fiscal 2013 from 12.3% in fiscal 2012. This increase was due primarily to an increase in payroll related to building our infrastructure through new hires at our home office to support our planned growth as well as a \$2.1 million charge for a deferred bonus payable to a member of our executive team.

For the thirty-nine weeks ended September 24, 2014, general and administrative expenses were \$12.2 million compared to \$9.2 million for the thirty-nine weeks ended September 25, 2013, an increase of \$3.0 million or 33.0%. As a percentage of total revenue, general and administrative expenses decreased to 14.6% for the thirty-nine weeks ended September 24, 2014 from 15.4% for the thirty-nine weeks ended September 25, 2013. This decrease was primarily due to the aforementioned charge of \$2.1 million accrued during the thirty-nine weeks ended September 25, 2013. There was no such charge during the thirty-nine weeks ended September 24, 2014. Also contributing to the decrease was a reduction in the management fee paid to USHG, offset by increases in management payroll and training costs.

Depreciation Expense

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

Depreciation expense was \$3.5 million for fiscal 2013 compared to \$2.2 million for fiscal 2012, an increase of \$1.3 million or 63.8%. This increase was due primarily to depreciation of capital expenditures related to the opening of eight new domestic company-operated Shacks during fiscal 2013. As a percentage of total revenue, depreciation expense increased to 4.3% in fiscal 2013 compared to 3.8% in fiscal 2012 due to the introduction of lower-volume non-Manhattan Shacks into the Shack system.

For the thirty-nine weeks ended September 24, 2014, depreciation expense was \$4.1 million compared to \$2.5 million for the thirty-nine weeks ended September 25, 2013, an increase of \$1.6 million or 64.5%. This increase was primarily due to depreciation of capital expenditures related to the opening of 10 new domestic company-operated Shacks between September 25, 2013 and September 24, 2014. As a percentage of total revenue, depreciation expense increased to 4.9% for the thirty-nine weeks ended September 24, 2014 from 4.2% for the thirty-nine weeks ended September 25, 2013 due to the introduction of lower-volume non-Manhattan Shacks into the system.

Pre-opening Costs

Pre-opening costs consist primarily of legal fees, rent, managers' salaries, training costs, employee payroll and related expenses, all 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 support 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 will 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.

Pre-opening costs were \$2.3 million in fiscal 2013 compared to \$1.9 million in fiscal 2012, an increase of \$0.4 million or 25.6% as a result of an increase in the number of new domestic company-operated Shacks opened in fiscal 2013.

For the thirty-nine weeks ended September 24, 2014, pre-opening costs were \$3.8 million compared to \$1.7 million for the thirty-nine weeks ended September 25, 2013, an increase of \$2.1 million or 124.5% as a result of an increase in the number of new domestic company-operated Shacks during the thirty-nine weeks ended September 24, 2014, as well as pre-opening costs incurred at Shacks scheduled to open in the fourth quarter of fiscal 2014.

Loss on Disposal of Property and Equipment

Loss on disposal of property and equipment represents the net book value of assets that have been retired and consists primarily of furniture and fixtures that were replaced in the normal course of business.

For all periods presented, loss on disposal of property and equipment was immaterial.

Interest Expense

Interest expense consists of interest on the Revolving Credit Facility (as defined below) as well as the amortization of deferred financing costs incurred in connection with the Revolving Credit Facility.

For all periods presented, interest expense was immaterial.

Income Tax Expense

Income tax expense consists of unincorporated business tax payable to the City of New York as well as other various state and local taxes. We are also subject to tax withholding in other foreign jurisdictions. SSE Holdings is currently taxed as a partnership. See "—Critical Accounting Policies—Income Taxes."

Income tax expense was \$0.5 million in fiscal 2013 compared to \$0.4 million in fiscal 2012. Our effective income tax rate decreased to 7.8% in fiscal 2013 from 8.8% in fiscal 2012, primarily due to lower state and local income taxes.

Income tax expense was \$0.4 million for both the thirty-nine weeks ended September 24, 2014 and the thirty-nine weeks ended September 25, 2013. Our effective income tax rate increased to 9.4% for the thirty-nine weeks ended September 24, 2014 from 7.8% for the thirty-nine weeks ended September 25, 2013, primarily due to increased foreign withholding taxes.

Liquidity and Capital Resources

We have continued to experience increases in Shack-level operating profit margin, Adjusted EBITDA, the number of domestic company-operated Shack openings, same Shack sales growth and AUVs. However, the restaurant industry continues to be challenged, and uncertainty exists as to the sustainability of these favorable trends. We believe that cash provided by operating activities, cash on hand and the Revolving Credit Facility are adequate to fund our debt service requirements, operating lease obligations, capital expenditures and working capital obligations for the next 12 months. However, our ability to continue to meet these requirements and obligations will depend on, among other things, our ability to achieve anticipated levels of revenue and cash flow from operations and our ability to manage costs and working capital successfully.

We desire to maintain a strong balance sheet to support our growth initiatives and increase same Shack sales with financial flexibility; to provide the financial resources necessary to protect and enhance the competitiveness of our brand and guest experience at our Shacks; and to provide a prudent level of financial capacity to manage the risks and uncertainties of operating our business in the current volatile economic environment and through future economic and industry cycles. Our ongoing capital expenditures are principally related to opening new Shacks, existing Shack capital investments (both for remodels and maintenance), as well as investment in our corporate infrastructure.

In addition, following the consummation of this offering, we will be obligated to make payments under the Tax Receivable Agreement. Although the actual timing and amount of any payments that may be made under the Tax Receivable Agreement will vary, we expect that the payments that we will be required to make to the Continuing SSE Equity Owners will be significant. Any payments made by us to Continuing SSE Equity Owners under the Tax Receivable Agreement will generally reduce the amount of overall cash flow that might have otherwise been available to us or to SSE Holdings and, to the extent that we are unable to make payments under the Tax Receivable Agreement for any reason, the unpaid amounts generally will be deferred and will accrue interest until paid by us.

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. Any future determination to pay dividends to holders of 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. See "Dividend Policy." Holders of Class B common stock will have the same voting rights as holders of Class A common stock but holders of Class B common stock will not be entitled to receive any distributions from or participate in any dividends declared by Shake Shack Inc.'s board of directors.

We utilize operating lease arrangements for all of our domestic company-operated Shacks. We believe that our operating lease arrangements continue to provide the appropriate leverage for our capital structure in a financially efficient manner. Because we lease all of the properties related to our domestic company-operated Shacks, as well as our home office, we do not have any debt that is secured by real property.

Summary of Cash Flows

Our primary sources of liquidity and capital resources have been cash provided from operating activities, cash on hand and the Revolving Credit Facility. Aside from the capital expenditures noted above, our primary requirements for liquidity are for lease obligations, working capital and general corporate needs. Our requirement for working capital is 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.

The following table and discussion presents, for the periods indicated, a summary of our key cash flows from operating, investing and financing activities.

(in thousands)	Fiscal year ended		Thirty-nine weeks ended	
	December 26, 2012	December 25, 2013	September 25, 2013	September 24, 2014
Net cash flows provided by operating activities	\$ 11,678	\$ 12,924	\$ 9,989	\$ 11,433
Net cash flows used in investing activities	(11,036)	(16,194)	(10,359)	(17,885)
Net cash (used in) provided by financing activities	(2,171)	313	—	(517)
Net decrease in cash	(1,529)	(2,957)	(370)	(6,969)
Cash at beginning of period	17,562	16,033	16,033	13,076
Cash at the end of period	<u>\$ 16,033</u>	<u>\$ 13,076</u>	<u>\$ 15,663</u>	<u>\$ 6,107</u>

Operating Activities

For fiscal 2013, net cash provided by operating activities was \$12.9 million compared to \$11.7 million for fiscal 2012, an increase of \$1.2 million, primarily due to cash generated by increased revenue as a result of new domestic company-operated Shack openings.

For the thirty-nine weeks ended September 24, 2014, net cash provided by operating activities was \$11.4 million compared to \$10.0 million for the thirty-nine weeks ended September 25, 2013, an increase of \$1.4 million. This increase was due primarily to cash generated by increased revenue as a result of new domestic company-operated Shack openings.

Investing Activities

For fiscal 2013, net cash used in investing activities was \$16.2 million compared to \$11.0 million for fiscal 2012, an increase of \$5.2 million. The increase was due to an increase in capital expenditures to construct new domestic company-operated Shacks in the current year period.

For the thirty-nine weeks ended September 24, 2014, net cash used in investing activities was \$17.9 million compared to \$10.4 million for the thirty-nine weeks ended September 25, 2013, an increase of \$7.5 million. This increase was due to an increase in capital expenditures to construct new domestic company-operated Shacks in such period compared to the thirty-nine weeks ended September 25, 2013.

Financing Activities

For fiscal 2013, net cash provided by financing activities was \$0.3 million. For fiscal 2012, net cash used in financing activities was \$2.2 million, an increase of \$2.5 million, primarily due to the repayment of approximately \$1.9 million of long-term debt as well as the payment of deferred financing charges.

For the thirty-nine weeks ended September 24, 2014, net cash used in financing activities was \$0.5 million, resulting from distributions to members and the payment of debt issuance costs, offset by proceeds from borrowings under the Revolving Credit Facility. For the thirty-nine weeks ended September 25, 2013, there was no cash provided by or used in financing activities.

Revolving Credit Facility

On December 30, 2013, SSE Holdings entered into a second amended and restated credit agreement with JPMorgan Chase Bank, NA as administrative agent and the lenders party thereto, which became effective in April 2014 (such date, the "Effective Date") and was subsequently amended on December 28, 2014 (the "Revolving Credit Facility"). The December 28, 2014 amendment increased the revolving total commitment amount to \$50.0 million. The Revolving Credit Facility will mature and all amounts outstanding will be due and payable five years from the Effective Date. The Revolving Credit Facility permits the issuance of letters of credit upon our request of up to \$10.0 million. Borrowings under the Revolving Credit Facility bear interest at either: (i) LIBOR plus a percentage ranging from 3.0% to 4.0%, or (ii) the prime rate plus a percentage ranging from 0.0% to 1.0%. As of September 24, 2014, we had \$5.0 million of borrowings outstanding under the Revolving Credit Facility and \$24.9 million of availability, after giving effect to \$0.1 million in letters of credit.

The Revolving Credit Facility is secured by a first-priority security interest in substantially all of our assets and is guaranteed by USHG.

The Revolving Credit Facility contains a number of covenants that, among other things, restrict our ability to, subject to specified exceptions, incur additional debt; incur additional liens and contingent liabilities; sell or dispose of assets; merge with or acquire other companies; liquidate or dissolve ourselves; engage in businesses that are not in a related line of business; make loans, advances or guarantees; pay dividends or make other distributions (with an exception so long as no event of default (as such term is defined in the Revolving Credit Facility) exists and subject to pro forma compliance with a funded net debt to Adjusted EBITDA ratio); engage in transactions with affiliates; and make investments. In addition, the Revolving Credit Facility contains certain cross-default provisions. We are required to maintain a specified consolidated fixed-charge coverage ratio and a specified funded net debt to Adjusted EBITDA Ratio. As of September 24, 2014, we were in compliance with all covenants.

In connection with this offering, we anticipate obtaining the New Credit Facility. See "Description of Indebtedness."

Off-Balance Sheet Arrangements

As of September 24, 2014, we did not have any off-balance sheet arrangements, except for operating leases entered into in the normal course of business.

Contractual Obligations

The following table and discussion presents contractual obligations and commercial commitments as of December 25, 2013.

(in thousands)	Payments due by period				
	Total	Fiscal 2014	Fiscal 2015-2016	Fiscal 2017-2018	Thereafter
Operating lease obligations	\$ 166,215	\$ 6,464	\$ 23,078	\$ 27,568	\$ 109,105
Deferred compensation	\$ 2,450	—	—	\$ 2,450	—
Total	\$ 168,665	\$ 6,464	\$ 23,078	\$ 30,018	\$ 109,105

The above table excludes long-term, exclusive contracts we enter into with certain vendors to supply us with food, beverages and paper goods, obligating us to purchase specified quantities. These volume commitments are not subject to any time limit and there are no material financial penalties associated with these agreements in the event of early termination. We also enter into purchase commitments related to construction, marketing and other service-related arrangements that occur in the normal course of business. Such commitments are excluded from the above table as they are typically short-term in nature and are not material as of December 25, 2013.

Other long-term liabilities excluded from the above table include non-cash obligations for deferred rent 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.

Critical Accounting Policies and Use of Estimates

Our discussion and analysis of operating results and financial condition are based upon our consolidated financial statements included elsewhere in this prospectus. The preparation of our financial statements in accordance with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures of 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. Actual results may differ from those estimates.

Our critical accounting policies are those that materially affect our consolidated financial statements and involve difficult, subjective or complex judgments by management. A thorough understanding of these critical accounting policies is essential when reviewing our consolidated financial statements. We believe that the critical accounting policies listed below are the most difficult management decisions as they involve the use of significant estimates and assumptions as described above.

Revenue Recognition

Revenue consists of Shack sales and licensing revenues. Revenue from Shacks are presented net of discounts and recognized when food and beverage products are sold. Sales taxes collected from customers are excluded from revenues and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Revenues from our gift cards are deferred and recognized upon redemption. Licensing revenues include exclusive territory fees and ongoing licensing

fees from all licensed Shacks. Territory fees are recorded as deferred revenue when received and proportionate amounts are recognized as revenue when a Shack is opened as all material services and conditions related to the fee have been substantially performed. Ongoing licensing fees from these Shacks are recognized as revenue in the period the related Shacks' revenues are earned.

Property and Equipment

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

We assess potential impairments to our long-lived assets, which includes property and equipment, 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. 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. Shack-level assets are grouped together for the purpose of the impairment assessment. There were no impairment charges recorded during fiscal 2012, fiscal 2013 or the thirty-nine weeks ended September 24, 2014.

Leases

We currently lease all of our domestic company-operated Shacks and the home office. At the inception of each lease, we determine its appropriate classification as an operating or capital lease. As of December 25, 2013 and September 24, 2014 there were no leases classified as capital leases. For operating leases that include rent escalations, we record the base rent expense on a straight-line basis over the term of the lease and the difference between the base cash rents paid and the straight-line rent expense is recorded as deferred rent. Certain leases contain contingent rent provisions that require additional rental payments based upon sales volume. When achievement of such sales volume target is probable, contingent rent is accrued in proportion to the sales recognized during the period that are attributable to the expected achievement of the sales volume target. It is our policy to record straight-line rent expense from possession date through the opening date as pre-opening expense. Once a domestic company-operated Shack opens, we record the straight-line rent plus contingent rent, if applicable, as occupancy and related expenses.

We expend cash for leasehold improvements and to build out and equip our leased premises. We may also expend cash for structural additions that we make to leased premises. Generally, a portion of the leasehold improvements and building costs are reimbursed to us by our landlords as construction contributions pursuant to agreed-upon terms in our leases. If obtained, landlord construction contributions usually take the form of up-front cash, full or partial credits against our future minimum or percentage rents otherwise payable by us, or a combination thereof. When contractually due to us, we classify tenant improvement allowances as deferred rent on the consolidated balance sheets and amortize the tenant improvement allowance on a straight-line basis over the lease term as a credit to occupancy and related expenses.

Income Taxes

SSE Holdings is currently, and will be through the consummation of this offering, treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, taxable income or loss is passed through to and included in the taxable income of its members,

including us. Accordingly, the consolidated financial statements included in this prospectus do not include a provision for federal income taxes. SSE Holdings is liable for various other state and local taxes and is subject to tax withholding in foreign jurisdictions. After the consummation of this offering, pursuant to the SSE Holdings LLC Agreement, SSE Holdings will generally make pro rata tax distributions to holders of LLC Interests in an amount sufficient to fund all or part of their tax obligations with respect to the taxable income of SSE Holdings that is allocated to them. See "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement—Distributions."

After consummation of this offering, we will become subject to U.S. federal, state and local income taxes with respect to our allocable share of any taxable income of SSE Holdings and will be taxed at the prevailing corporate tax rates. In addition to tax expenses, we also will incur expenses related to our operations, plus payments under the Tax Receivable Agreement, which will be significant. We intend to cause SSE Holdings to make distributions in an amount sufficient to allow us to pay our tax obligations and operating expenses, including distributions to fund any ordinary course payments due under the Tax Receivable Agreement. See "Certain Relationships and Related Party Transactions—SSE Holdings LLC Agreement—Distributions."

Equity-Based Compensation

Equity-based compensation expense is measured based on fair value. We recognize compensation expense on a straight-line basis over the requisite service period. 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.

Class B Units

Certain of our employees have received grants of Class B Units in SSE Holdings. The Class B Units generally vest annually over five years from the applicable grant date. If not fully vested, awards will become fully vested (i) upon the occurrence of a change in control or (ii) upon the occurrence of an initial public offering, each as defined in the grant agreements with respect to such awards. Upon consummation of this offering, the vesting of all outstanding awards will accelerate and each Class B Unit will be exchanged for LLC Interests in SSE Holdings. The potential compensation expense to be recorded for the awards upon consummation of this offering is approximately \$0.6 million, the amount of unrecognized compensation expense related to non-vested awards as of September 24, 2014. We will recognize non-cash equity-based compensation expense with respect to these awards in the period in which the offering is consummated.

Unit Appreciation Rights

SSE Holdings currently maintains a phantom equity plan, which we refer to as the Unit Appreciation Rights Plan, or "UAR Plan," whereby it may grant up to 31,303 unit appreciation rights ("UARs") to employees. The UARs terminate on the tenth anniversary of the grant date or upon termination of employment, if earlier. UARs are subject to continued employment and are only exercisable upon a qualifying transaction, which is either a change of control or an initial public offering, each as defined in the UAR Plan. Upon the occurrence of a qualifying transaction, participants are entitled to receive a payment determined by multiplying (i) the excess, if any, of the qualifying transaction price over the base price per UAR, as specified in each participant's award agreement, by (ii) the stated number of Class B Units deemed covered by the UARs held by the participant. The consummation of this offering will constitute a qualifying transaction under the terms of the UAR Plan and will result in the recognition of approximately \$7.2 million of compensation expense, which we will recognize in the period in which the offering is consummated. All UARs outstanding under the UAR Plan will be paid out in connection with this offering in the form of shares of our Class A common stock.

Compensation expense is included within general and administrative expenses on the consolidated statements of operations.

Jumpstart Our Business Startups Act of 2012

The JOBS Act permits us, as an "emerging growth company," to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We are choosing to "opt out" of this provision and, as a result, we will comply with new or revised accounting standards as required when they are adopted. This decision to opt out of the extended transition period under the JOBS Act is irrevocable.

Quantitative and Qualitative Disclosure of Market Risks

Commodity and Food Price Risks

Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including food and beverage, energy and other commodities. We have been able to partially offset cost increases resulting from a number of factors, including market conditions, shortages or interruptions in supply due to weather or other conditions beyond our control, governmental regulations and inflation, by increasing our menu prices, as well as making other operational adjustments that increase productivity. However, substantial increases in costs and expenses could impact our operating results to the extent that such increases cannot be offset by menu price increases.

Labor and Benefits Costs

At our domestic company-operated Shacks, we have historically provided a starting wage that is above the minimum wage in place for that particular state. For instance, in Manhattan Shacks, we start our new employees at \$10.00 per hour even though the minimum wage in New York is \$8.00 per hour. We believe that this enables us to attract a higher caliber employee and this translates directly to better guest service. Our desire is to continue to do so and, as such, there can be no assurance that we will generate same Shack sales growth in an amount sufficient to offset increases in minimum wage or other inflationary pressures.

Interest Rate Risk

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 September 24, 2014, we had \$5.0 million in outstanding borrowings under the Revolving Credit Facility.

Foreign Currency Exchange Risk

Although we conduct business outside of the United States, the revenue and expenses associated with our international business are transacted in U.S. dollars and accordingly we do not have material foreign currency risk.

Impact of Inflation

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.

Substantially all of the leases for our domestic company-operated Shacks provide for contingent rent obligations based on a percentage of sales. As a result, an increase in occupancy and related expenses will offset a proportionate share of any menu price increases at our domestic company-operated Shacks.

Seasonality and Quarterly Results

Our business is subject to seasonal fluctuations in that our Shack sales are typically nominally higher during the summer months affecting the second and third quarters of the fiscal year. Our quarterly results have been and will continue to be affected by the timing of new Shack openings and their associated pre-opening costs. As a result of these factors, our financial results for any single quarter or for periods of less than a year are not necessarily indicative of the results that may be achieved for a full fiscal year.

The following table sets forth certain unaudited financial and operating information for each fiscal quarter during fiscal 2012, fiscal 2013 and each of the first three fiscal quarters of fiscal 2014. The unaudited quarterly information includes all adjustments (consisting of normal recurring adjustments) that, in the opinion of management, are necessary for a fair presentation of the information presented. This information should be read in conjunction with the consolidated financial statements and related notes thereto included elsewhere in this prospectus. Operating results for interim periods are not necessarily indicative of the results that may be expected for a full fiscal year.

(Dollar amounts in thousands)	Fiscal 2012				Fiscal 2013				Fiscal 2014		
	Second				Second				Second		
	First quarter	Second quarter	Third quarter	Fourth quarter	First quarter	Second quarter	Third quarter	Fourth quarter	First quarter	Second quarter	Third quarter
Total revenue	\$11,815	\$13,936	\$16,070	\$15,217	\$15,749	\$20,952	\$22,803	\$22,952	\$24,196	\$27,737	\$31,825
Income from operations	\$ 1,222	\$ 1,729	\$ 1,733	\$ 2	\$ 1,283	\$ 2,936	\$ 612	\$ 1,104	\$ 1,229	\$ 2,142	\$ 759
Other data:											
Same Shack sales growth	27.0%	7.7%	8.2%	-0.1%	0.8%	5.9%	8.2%	6.8%	3.9%	4.5%	1.2%
Number of Shacks	14	15	17	21	24	28	33	40	44	48	53
Domestic company-operated	9	10	12	13	14	16	16	21	21	23	26
Domestic licensed	3	3	3	3	3	4	4	4	4	4	5
International licensed	2	2	2	5	7	8	13	15	19	21	22

LETTER FROM OUR FOUNDER AND CHAIRMAN AND OUR CHIEF EXECUTIVE OFFICER

Dear Prospective Stockholders,

One of the things that may get lost among all the hubbub when a company is "going public" is that the business can now be owned, in part, by its greatest fans. We have always been so incredibly grateful for the enormous number of people from all walks of life who genuinely love Shake Shack, and who already feel as if it's theirs. And we're excited that now it actually can be.

There's a good reason there are such stringent standards for a registration statement and if you're interested in owning part of Shake Shack, you will no doubt want to read every word of this prospectus. This letter is just to let you know a little more about our story and how grateful we are for your interest in being part of our future. We pledge to keep doing business with the same set of values and employee first culture that brought us to this point and to stay focused on achieving our long term goals for the company.

Shake Shack was born "public"—at least in the middle of a public park—first as a hot dog cart, and then three years later, as a humble kiosk. We first conceived of our hot dog cart, not as the basis for a business, but rather as a small experiment to see if something as simple as selling delicious hot dogs could have the power to express what matters most in our Union Square Hospitality Group culture of Enlightened Hospitality: caring for our team members, guests, community, suppliers, and investors.

What if those hot dogs—part of a public art exhibit—could help draw more people to New York's Madison Square Park? What if—just like in USHG's fine dining restaurants—the cart could cultivate a legion of regular guests? What if we could remember people's names, what they like as toppings for their hot dog, and when they had last visited us? What if we could source the best possible ingredients and even raise a few dollars for the park in the process?

Well, the hot dog cart was so popular—with epic lines to match—that all three major TV networks and CNN covered it in their nightly news reports. The New York Times even sent their restaurant critic to write a review! We repeated the cart for three years (2001-2003), before finally deciding to collaborate with the Madison Square Park Conservancy and winning a public bid to build a more permanent kiosk in the park. We entertained a bunch of names for the kiosk (most of them pretty bad—like *Custard's First Stand*, *Dog Run* and *Madison Mixer*) and ultimately settled on Shake Shack.

Our vision was for Shake Shack to be a "community wealth venture." We would raise the money philanthropically to build the kiosk, then we'd gift it to the park, which would in turn become our landlord. We would own the business, and the park would receive rent as a percentage of our sales. If it worked, we'd employ people, give food lovers a great reason to visit the park from 11:00am-11:00pm, and we'd sell a lot of wonderful food from our favorite suppliers. And if it really worked, the park would feel safer, and much needed dollars would be generated to provide funding for the park's robust budget for ongoing maintenance, horticulture, and public programming.

And then something unexpected happened. Shake Shack became so beloved, that just before its fifth birthday, we decided to do something we'd never done before in our nearly 25-year history as a fine dining restaurant company. We opened a second one—this time in Manhattan's Upper West Side. Our hope was that the second Shake Shack would work so well that we might shorten up the long lines in the park. The second one worked, alright, but, for some reason, more people than ever stood in line in the park.

Back in those days we asked ourselves every day, "what is it about this place that people love so much?" It's an amazing burger and those frozen custard shakes are incredible—but after all, why would New Yorkers, who are famously rushed, wait in a line for a burger and fries? What was the big deal?

We looked at that line as a responsibility. A responsibility to assure that if our guests were going to invest time waiting to get their hands and mouths on our burgers, then we owed it to each one of

them to bring the exact same level of hospitality, thoughtfulness, and flavor we bring to USHG's New York Times-starred restaurants.

At just about the time we decided to grow Shake Shack, the Great Recession hit. Intriguingly, there were some advantages for us. First, our value allowed guests to trade down in price without giving up one ounce of flavor—or even prestige. We were selling wines and really good beer at fair prices—so you could get away with using Shake Shack as a date place and have money left over relative to going out to a full service restaurant. We also found lots of great employees almost instantly as the marketplace was loaded with talent—great hospitality folks who knew our company from our other restaurants, and were intrigued to grow with us in an unexpected way.

We've never believed that Shake Shack only thrives in a down economy, but growing from one to 15 Shacks smack dab in the heart of the recession told us that we also don't need a robust economy to build our business.

One of our favorite parts of Shake Shack—a story that is infrequently told—is how it has served as a jobs training program for hundreds of first-time employees, many of whom have then gone on to become managers and leaders in our company. It feels so good to help people learn to take accountability for their role as team members, and then to grow and prosper right alongside Shake Shack.

Another tradition we're proud of and intend to continue is to connect Shake Shack to its broader community. Our biggest initiative is the *Great American Shake Sale*, which raised over \$300,000 this year for Share Our Strength's *No Kid Hungry Campaign*. Additionally, we invite each one of our general managers to select a local not-for-profit to partner with. That community organization receives a percentage of sales from one of our frozen custard "concretes"—whose recipe is always derived from local tradition and flavor, often using mix-in ingredients made by a local culinary artisan.

Shake Shack has also become our passport to seeing the world. Instead of waiting to try our hand internationally until after we'd saturated the U.S., we partnered with a well-respected operator and opened our first international Shack when we had just a handful of restaurants in our own country. We were curious to learn whether our burgers, shakes and hospitality would successfully translate to other cultures. It has. Among our busiest and most popular Shake Shacks in the world are ones in Dubai, Istanbul, London and Kuwait.

That early international growth has been a superb education for us in how to hire, teach, and train our culture of Enlightened Hospitality across the globe. It has taught us all kinds of things about distribution of food, allowing us to purchase locally whenever possible, and to remain consistent with the flavor people expect from us. We've learned to design our Shacks in a way that is harmonious with other cultures, and we've learned to tell our story in a way that has influenced other local businesses on how to take great care of people and communities and to earn profits at the same time.

We are both humbled and proud of the success Shake Shack has enjoyed to date. We began with a mission to do something good for a park and a community. We continue to feel a huge responsibility for each one of our stakeholders, and as we continue to grow by standing for something good, our motto will remain, "the bigger we get, the smaller we need to act."

If our story and values resonate with you, we'd be more than honored to count you among our stockholders. Thank you for wanting to learn more about how to help us keep this beautiful journey going, and hope to see you soon at Shake Shack!

Sincerely,



Danny Meyer
Founder and Chairman of the Board



Randy Garutti
Chief Executive Officer

BUSINESS

Except as specifically noted or as the context otherwise implies, the description of our menu, supply chain and operations in this prospectus applies to our domestic company-operated Shacks, as some of the Shacks operated by our licensees vary in menu, supply chain and operations.

Overview of Shake Shack

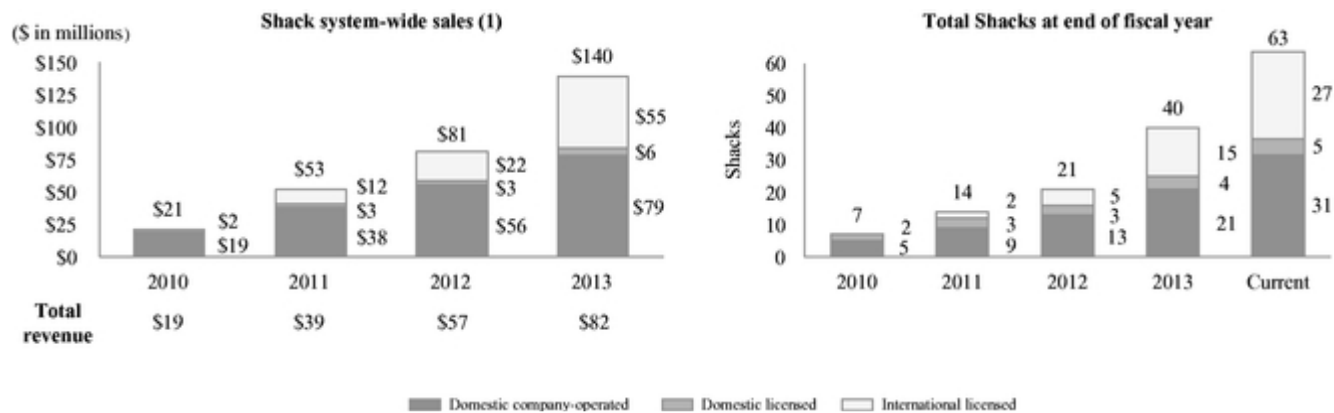
Shake Shack is a modern day "roadside" burger stand serving a classic American menu of premium burgers, hot dogs, crinkle-cut fries, shakes, frozen custard, beer and wine. Founded by Danny Meyer's USHG, Shake Shack was created leveraging USHG's expertise in community building, hospitality, fine dining, restaurant operations and sourcing premium ingredients. Danny's vision of Enlightened Hospitality guided the creation of the unique Shake Shack culture that, we believe, creates a differentiated experience for our guests across all demographics at each of the 63 Shacks around the world. As Shake Shack's Board Chairman and USHG's Chief Executive Officer, Danny has drawn from USHG's experience creating and operating some of New York City's most acclaimed and popular restaurants, including Union Square Cafe, Gramercy Tavern, Blue Smoke, The Modern, Maialino and Marta, to build what we believe is a new *fine casual* restaurant category in Shake Shack.

Shake Shack originated from a hot dog cart that USHG established in 2001 to support the rejuvenation of New York City's Madison Square Park through its Conservancy's first art installation—"I ♥ Taxi." The hot dog cart was an instant hit, with lines forming daily throughout the summer months for the next three years. In response to this success, 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 and immediately became a community gathering place for New Yorkers and visitors from all over the world. Over the last decade, Shake Shack has become a beloved New York City institution that generates significant media attention, critical acclaim and a passionately devoted following. We have since grown rapidly with 63 Shacks in nine countries and 34 cities.

Our vision is to *Stand For Something Good* in all aspects of Shake Shack's 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 to 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 lasting connection with our guests. We continually invest in our "Shack Team," as we believe that team members who are treated and trained well will deliver Enlightened Hospitality and a superior guest experience. Through our leadership development program, *The Shacksperience*, we teach our team members the principles of Enlightened Hospitality and how to live and breathe our *Shack Pact*, the agreement that encompasses our value system and brand ethos. Our people make all the difference, as they embody the sense of community necessary to create the complete Shake Shack experience. This vision reflects our goal to be the best burger company in the world, for the world and for our team.

We believe Shake Shack has become a compelling lifestyle brand and has helped to pioneer the creation of a new *fine casual* category in restaurants. *Fine casual* couples the ease, value and convenience of fast casual concepts with the high standards of excellence in thoughtful ingredient sourcing, preparation, hospitality and quality grounded in fine dining. As a pioneer in this new category, we strive to maintain the culinary traditions of the classic American burger stand, while providing our guests a menu of chef-inspired food and drinks. Our signature items are our all-natural, hormone and antibiotic-free burgers, hot dogs, crinkle-cut fries, shakes and frozen custard. We cook our burgers and spin our shakes to order and strive to use the freshest premium ingredients available. This core menu is supplemented with seasonal and innovative culinary offerings such as those featured during our annual *Shacktoberfest* event.

Of the 63 Shacks, there are 31 domestic company-operated Shacks, five domestic licensed Shacks and 27 international licensed Shacks. We open Shacks in areas where communities gather, often with high foot traffic and substantial commercial density such as New York City's Theater District, London's Covent Garden and Dubai's Mall of the Emirates. We have been able to successfully grow across a variety of locations due to our versatile Shack formats and designs that are tailored to reflect each Shack community's core attributes. During the three fiscal years ended December 25, 2013, we grew from seven Shacks in two states to 40 Shacks across six states, Washington, D.C. and eight other countries, representing a 79% CAGR. In fiscal 2013, our domestic company-operated Shacks had AUVs of approximately \$5.0 million, of which our Manhattan Shacks had AUVs of approximately \$7.4 million and our non-Manhattan Shacks had AUVs of approximately \$3.8 million. During the three fiscal years ended December 25, 2013, our total revenue grew from \$19.5 million to \$82.5 million, a 62% CAGR, our net income grew from \$0.2 million to \$5.4 million, and Adjusted EBITDA grew to \$14.5 million. For a reconciliation of Adjusted EBITDA, a non-GAAP measure, to net income, see "Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data."



(1) Shack system-wide sales includes combined revenue from all of our domestic company-operated Shacks and our domestic and international licensed Shacks. Our total revenue is limited to Shack sales from domestic company-operated Shacks and licensing revenue from our domestic and international licensed Shacks.

The Burger Market

Shake Shack is part of the burger market of the restaurant industry, which is the largest dine-out segment in the United States with more than \$72 billion in 2013 sales, according to Technomic Inc. The burger industry is estimated to be twice the size of the pizza market, which is the next largest category. Given its role as the quintessential American meal, burgers have also proven to be the most portable concept internationally, with an estimated global market size of over \$135 billion.

With the majority of the burger restaurant segment comprised of quick service restaurant competitors, we believe that Shake Shack is well positioned to take market share, as we believe consumers will continue to trade up to higher quality offerings given an increasing consumer focus on responsible sourcing, ingredients and preparation. Additionally, we believe that consumers will continue to move away from the added time commitment and cost of traditional casual dining.

We believe that many consumers want to associate with brands whose ethos matches that of their own, and that Shake Shack's *fine casual* position, born and raised in Manhattan, creates a distinctly differentiated global lifestyle brand opportunity.

What Makes Shake Shack Special

1. Our Culture of Enlightened Hospitality: Taking Care of Each Other

We believe that the culture of our team is the single most important factor in our success. We aim to recruit and develop a team with the innate "personality to please" that cannot be taught. We look for people who are warm, friendly, motivated, caring, self-aware and intellectually curious team members, or what we call "51%'ers." We use the term "51%" to describe the emotional skills needed to thrive at the job and "49%" to describe the technical skills needed for the job. Our 51%'ers are excited and committed to championship performance, remarkable and enriching hospitality, embodying our culture and actively growing themselves and the brand. 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. These principles have been championed by Danny Meyer throughout his career and are detailed in his *New York Times* best-selling book *Setting the Table : The Transforming Power of Hospitality in Business* ; they are fundamental to the way Shake Shack operates its business. We invest in our team through extensive leadership development programs to ensure that Shake Shack remains a great place to work and an exciting career choice for team members at every level. We have built a culture of active learning and we foster an environment of leadership development throughout the entire lifecycle of employment. We seek to be the employer of choice by offering above industry average compensation in most markets, comprehensive benefits and a variety of incentive programs, including a monthly revenue-sharing program with our employees. We believe that our culture of Enlightened Hospitality enables us to develop future leaders from within and deliver a consistent Shack experience as we continue to grow.

Culture

Our culture is rooted in the 29-year history of USHG. Our commitment to *Stand For Something Good* permeates throughout every Shack and every team member we hire. Expounding on the principles of USHG's Enlightened Hospitality and *Stand For Something Good* is our *Shack Pact* , which is prominently displayed in the team member areas of every Shack, on the inside cover of the *Shackademics* book (our training manual) and on the template for every pre-meal meeting agenda (daily Shack team meeting). It is the agreement we make with ourselves and with each other to uphold our principles and to hold each other accountable. Our *Shack Pact* is summarized below:

- **Hospitality** —We stand for following the 5 Tenets of Enlightened Hospitality (Taking care of Each Other, Our Guests, Our Community, Our Suppliers and Our Investors) to create raves through every stakeholder interaction.
- **Team**— We stand to hire 51%'ers to create teams that are excited and committed to championship performance, remarkable and enriching hospitality, embodying our culture and actively growing themselves and the brand.
- **Food & Drink**— We stand to be a worldwide culinary leader in our interpretation of the classic American roadside burger stand.
- **The Shack** —We stand to design, build and maintain the most engaging, thoughtful, safe and clean environment for our teams to work in and our guests to gather in.
- **Communication** —We stand to be aligned with each other every day so that mutual understanding leads to progress.

The unity that we have built amongst our Shack Teams and within the Company as a whole is a key driver of our ability to deliver a great guest experience and, therefore, continue to successfully grow our footprint. Each Shack has a "Caught Doing Right" board where team members are encouraged to post notes when they have witnessed other team members go above and beyond what is expected. At

Shake Shack, we celebrate our successes, no matter how small, and this is practiced at every level of the Company. We also believe that team members will perform their best when they feel like the rest of the team is "on their side"—a belief ingrained in Shake Shack's DNA that began in the early stages of our fine dining history.

Leadership Development

The goal of training is to develop leaders and to cross utilize team members throughout the operation. We call our team member life cycle, *The Shackperience*. This model clarifies and outlines growth opportunities at all levels of the organization and furthers our philosophy of hiring and developing 51%'ers, growing from within and "leaders training future leaders." We train our culture and guiding principles first, and then move to menu knowledge, followed by a focus on station training. We believe that everyone learns differently and our training uses various formats: online interactive, video, hands-on and paper-based. Every team member has access to *ShackSource*, our proprietary online training portal, following his or her hire. *ShackSource* is used not only as a learning platform, but also as a communication tool for our team. As an example, *ShackSource* is a way for team members to send recognition messages, comments, praise and thanks to their fellow team members across the Company.

The Bigger We Get, The Smaller We Need To Act

This mantra, which was developed from our *Stand For Something Good* vision, is what guides our decision-making and keeps us connected to our roots. As we grow, it is our passion to continue the ethos that led to the creation of USHG and Shake Shack and to never veer too far from that original vision. We make decisions that focus on the core of who we are, staying true to the principles of Enlightened Hospitality. It is these decisions that drive us to seek out what we believe to be the finest team members, the tastiest ingredients, the best suppliers, the best community partners and the right investors.

2. Fine Casual: Inspired Food and Drink

We embrace our Company's fine-dining heritage and are committed to sourcing premium, sustainable ingredients, such as all-natural, hormone and antibiotic-free beef, while offering excellent value to our guests. Our core menu remains focused and is supplemented with targeted innovation inspired by the best versions of the classic American roadside burger stands. As a result of culinary creativity and excellence, we attract continued interest from partners such as award-winning chefs, talented bakers, farmers and artisanal purveyors who want to collaborate with us in different and engaging ways. We never stop looking for the best ingredients and the best culinary partners in order to exceed our guests' expectations in every aspect of their experience.

Menu

Shake Shack's 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. The domestic menu includes a variety of signature items, such as the ShackBurger, SmokeShack, Shack-cago Dog, 'Shroom Burger, seasonal Frozen Custard, Shakes, Concretes, ShackMeister Ale and Shack Red and White

wines. The Shake Shack concept and core menu items have not materially changed since 2004, which speaks to the timelessness and universal appeal of our food offerings.

Burgers



Shake Shack uses a proprietary whole-muscle blend of all-natural, hormone and antibiotic-free beef in its hamburgers, which are ground fresh daily. Shake Shack's flagship item is the ShackBurger, which is a four-ounce cheeseburger topped with lettuce, tomato and ShackSauce. We take great care in the preparation of our burgers, from sourcing to handling to cooking to ensure that the quality of the burgers we serve drives new and repeat visits. The burger section of our menu also includes the SmokeShack, 'Shroom Burger (our vegetarian burger), Shack Stack and Hamburger.

Fries



Our classic and passionately loved crinkle-cut fries are made from premium golden potatoes and are prepared 100% free of artificial trans fat. Guests also have the option to order Cheese Fries, which are our crinkle-cut fries topped with a proprietary blend of cheddar and American cheese sauce. We believe the tactile pleasure and emotional attachment that our guests have to the crispiness and ridges of our crinkle-cut fries is a nostalgic ode to the roadside burger stand of yesteryear.

Hot Dogs



Shake Shack was born from a hot dog cart in 2001 and we believe that our hot dog options give our guests another premium category from which to choose. Both our beef hot dogs and our chicken dogs are made from 100% all-natural, hormone and antibiotic-free beef and chicken, respectively. Our signature Shack-cago Dog is "dragged through the garden" and topped with Shack relish, onion, cucumber, pickle, tomato, sport pepper, celery salt and mustard. The DogMeister is topped with Cheese Sauce and ShackMeister Ale-marinated shallots.

Frozen Custard



Our premium, dense, rich and creamy ice cream, spun daily on-site, is crafted from Shake Shack's proprietary vanilla and chocolate recipes using 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 are scooped and spun to order. Our concretes are made by blending frozen custard at high speed with premium mix-ins. Since each Shake Shack intends to mirror its community, each Shack has signature concretes, distinct to its location, and uses locally-sourced mix-ins made by artisanal producers whenever possible. Also, each month Shake Shack unveils a specialized custard calendar with seasonally changing flavors. The flavors change every month, with favorites repeating throughout the year. Our culinary team also uses the custard menu to highlight local, seasonal and premium ingredients. Not only does the custard calendar keep the custard section of the menu varied and bolster guest frequency, but it also helps distinguish our menu relative to other burger chains.

Beer, Wine and Beverages



Our proprietary ShackMeister Ale, brewed by Brooklyn Brewery, was specifically crafted to complement the flavor profile of a ShackBurger, and our local beer selections are tailored to each Shack's geography. When it comes to wine, we believe that our Shack Red and Shack White, grown and bottled exclusively by Frog's Leap Vineyards in Napa Valley, accentuate our fine dining ethos and provide our guests with premium beverage options not commonly found at burger concepts. In addition, we serve draft Root Beer, seasonal freshly-squeezed lemonade, organic iced tea and Shack 20 bottled water, 1% of sales from which support the cleanup of water sources around the world.

Dogs are Welcome Too



We believe that many dog owners treat their four-legged friends as family members. From our first Shack at Madison Square Park, we wanted to invite dogs to be part of the community gathering experience and developed the "Woof" section on our menu. ShackBurger dog biscuits, peanut butter sauce and vanilla custard make up our signature Pooch-ini, which is available at Shacks with outdoor space. We also serve dog biscuits to-go, handcrafted exclusively for us by a New York-based bakery.

Culinary Innovation

Shake Shack continues to innovate around our core menu. Our team is led by Culinary Director Mark Rosati whose cooking pedigree began at USHG's Gramercy Tavern. We are constantly experimenting with seasonal and local products, to enhance our menu and drive revenue. Our fine dining heritage has afforded Shake Shack a unique opportunity to team up with some of the world's best chefs for short-term specials such as Daniel Boulud's "Piggie Shack" to celebrate our 10th birthday at Madison Square Park or Marc Vetri's "Carbonara Burger" that ran only in Philadelphia. We devote significant resources to menu innovation and are frequently invited to participate and compete in chef events such as the South Beach Wine and Food Festival's Burger Bash, which presents opportunities for us to test new creations that can often lead to the introduction of new items. For example, the SmokeShack, a cheeseburger topped with all-natural bacon, chopped cherry peppers and ShackSauce, which debuted in 2012, has become a popular menu item and helped drive sales.

3. Beloved Lifestyle Brand

In Shake Shack's 10-year history, we have become a globally recognized brand with outsized consumer awareness relative to our current footprint. Shake Shack is a New York City institution, a vibrant and authentic community gathering place that delivers an unparalleled experience to loyal, passionate guests and a broad, global demographic. Born in 2004, Shake Shack grew up alongside the emergence of social media and has benefited from an ongoing love affair with passionate fans who share their real-time experiences with friends. We aim to establish genuine connections with our guests and the communities in which they live. Each Shack is localized with design and menu options that we believe drive a sense of appreciation and enthusiasm for the Shake Shack brand. Shake Shack has been recognized with numerous accolades, including *Bon Appétit's* "The 20 Most Important Restaurants in America" (ranked #16), *TIME Magazine's* "17 Most Influential Burgers of All Time" (ranked #7 for the ShackBurger) and winning "Best Burger" in 2007 and 2014 at the South Beach Wine and Food Festival's Burger Bash.

Marketing Strategy

We are today's roadside burger stand and this identity anchors our marketing efforts. The premium positioning and brand voice, derived from the spirit, integrity and humor of Shake Shack, are reinforced by our contemporary, responsible designs and hospitable team members who *Stand For Something Good*. We believe that our guests appreciate the experience of coming to Shake Shack as a community gathering place and, thus, the heart of our marketing strategy is to communicate and connect with our guests both at our Shacks and through social media.

Stand For Something Good

Stand For Something Good is an invitation for our guests to align with Shake Shack's commitment to all that is good in the world and a reflection of how Shake Shack embraces these values both internally and externally. We are dedicated to using sustainable materials and equipment, such as handmade tabletops constructed from reclaimed bowling alleys. We source all-natural, hormone and antibiotic-free beef to make our proprietary burger blend because we believe there are no shortcuts to quality. Recently, we have added a *Stand For Something Good* TV at each Shack to tell our story to our guests through photos, graphics and informative imagery containing information on our suppliers, community relationships and company initiatives.

The essential components of *Stand For Something Good* are displayed in each Shack and listed below:

- **Good Ingredients** —All-natural proteins, vegetarian fed, humanely raised and source verified, with no hormones or antibiotics. We pride ourselves on sourcing premium ingredients from like-minded producers.
- **Good n' Green** —Sustainable sourcing and business practices throughout the supply chain.
- **Good Bones** —Caring enough to design the Shack experience so people want to stay and using reclaimed materials whenever possible.
- **Good Neighbors** —We are all about our hood! We strive to be the best employer and citizen of each community we call home.

Social Media

Much like we design our Shacks to be community gathering places, we execute a social media strategy that creates an online, on-brand community gathering place. Our guests and fans easily connect with us through Facebook, Instagram, Twitter, Tumblr and Pinterest. We recognize the impact of social media on today's consumers and we use these platforms to share information with our guests about new menu items, new Shack openings and other relevant Shake Shack information. Currently, we have approximately 126,000 Facebook fans, 139,000 Instagram followers, and 33,000 Twitter followers. We communicate with our fans in creative and organic ways that both strengthen our connection with them and increase brand awareness. In June 2014, we ranked #10 on *Restaurant Social Media Index's* top 250 restaurant brands, which is measured on influence, sentiment and engagement.

Community and Charitable Partners

As a mirror of its community, each Shack focuses on conveying a consistent national brand message and on tailoring marketing efforts to each Shack. We always have menu items that feature local ingredients and beers that are specific to each Shack's community. We also aim marketing efforts at local events which help position Shake Shack as a premium brand that is connected to the community through participating in local celebrations and developing relationships with local chefs and restaurants. For instance, from June 9-13, 2014, our Madison Square Park Shack celebrated *The Decade*

of *Shack*, its 10-year anniversary. We collaborated with five well-known chefs, each of whom crafted a special-edition burger for one day during the week. Outside of local events, each Shack has one regionally-themed concrete, which has the added benefit of driving semi-annual charitable contributions. The Shack in Miami Beach, for instance, features the "Vice Crispy Treat," and donates 5% of this item's sales to the Miami Children's Hospital.

Shack-wide Events

Shake Shack promotes annual events to drive repeat visits, add limited-time-offers and build intrigue among staff and guests. *Shacktoberfest*, for example, is Shake Shack's ode to traditional Oktoberfest in which special sausages, beers and desserts are added to the menu for a 10-day period in October. Throughout the year, we offer playful items that surprise and delight our guests such as When Irish Fries Are Smiling on St. Patrick's Day, as well as Corn Dogs during Memorial Day, the 4th of July and Labor Day weekends.

Since 2012, Shake Shack has held *The Great American Shake Sale* during the month of May to raise money and awareness for childhood hunger. During *The Great American Shake Sale*, we encourage guests to donate \$2 in exchange for a free cake-themed shake (a \$5 value) at their next visit. 100% of these donations go directly to *Share Our Strength's No Kid Hungry* campaign. In May 2014, we raised \$338,000 across our domestic company-operated Shacks for this initiative.

Product Placement

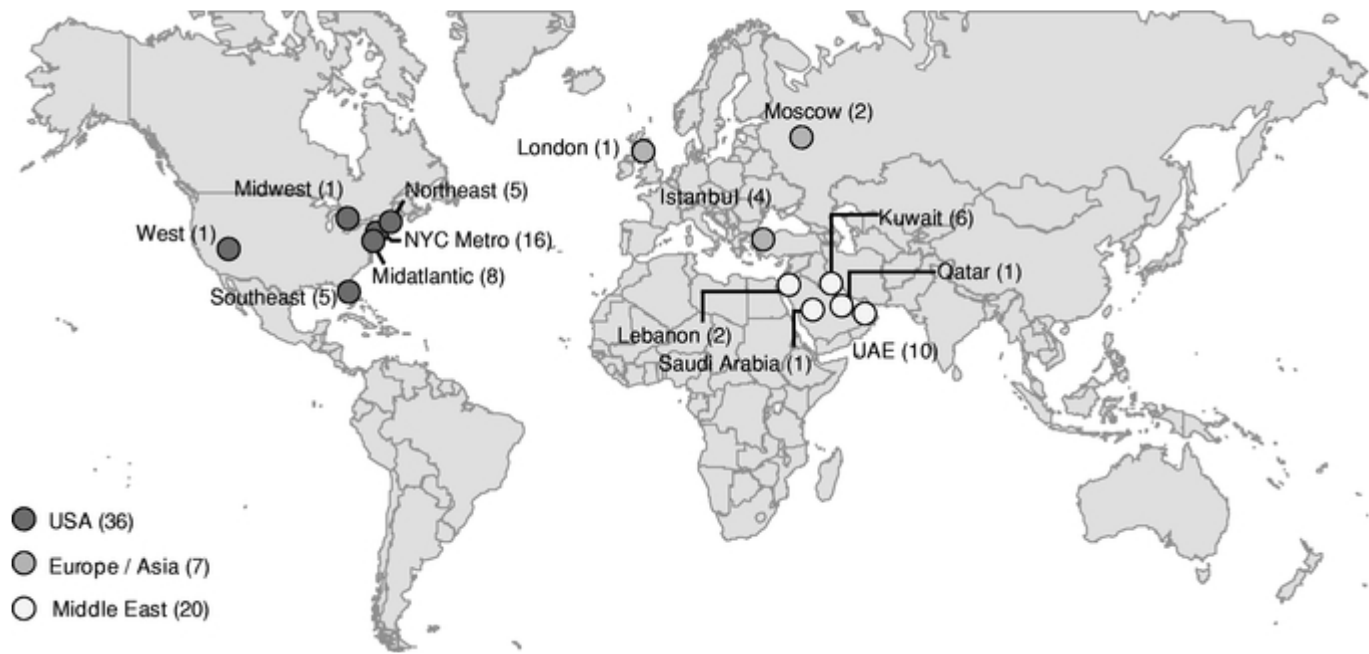
Shake Shack has been fortunate to receive considerable product placement in movies, TV shows and other media without any cost to the Company. In fact, Shake Shack has been able to charge fees for these location shoots, which have included scenes from the motion pictures *Something Borrowed* and *Tower Heist*, as well as the acclaimed HBO series *The Newsroom*. We have also been featured in segments on *The Daily Show*, *Saturday Night Live*, *CBS Sunday Morning* and *Late Night with Jimmy Fallon*.

4. Versatile Real Estate Model Built for Growth

During fiscal 2013, we grew the number of our domestic company-operated Shacks by 62% with the opening of eight new Shacks, and opened 10 domestic company-operated Shacks during fiscal 2014. We will continue to not only fill in existing markets such as New York, Boston, Philadelphia, Washington, D.C., Atlanta, Chicago and South Florida to leverage operational effectiveness as we cluster in high-density markets, but also enter new markets, such as Austin, where we have signed leases. Although we currently have only 63 Shacks around the world, we have identified many attractive and differentiated markets for the Shake Shack experience. In major metropolitan areas, we seek locations where communities gather, often with characteristics such as high foot traffic, substantial commercial density, reputable co-tenants and other traffic drivers such as proximity to parks, museums, schools, hospitals and tourist attractions. For every potential domestic company-operated Shack we consider, we apply rigorous financial metrics to ensure we maintain our targeted profitability. We measure much of our financial success by analyzing Shack-level operating profit margins, cash-on-cash returns and payback periods. Our flexible model allows us to design our Shacks so that we can pursue a variety of property types. We have successfully launched different layouts and sizes of Shacks in varied locations throughout urban high density areas, suburban in-line and pad sites, regional malls, lifestyle centers, ballparks, airports and train stations. Each design is critical to the Shake Shack experience and we blend our core brand identifiers with features specifically designed for each Shack to be of its place and connect directly with its neighborhood. With a disciplined approach to new Shack development and a successful track record in site selection, we are positioned well for future growth.

Existing Shacks

Our Shack system consists of 63 Shacks comprised of 31 domestic company-operated Shacks, five licensed domestic Shacks and 27 licensed international Shacks. To date, we have never permanently closed or relocated a Shack. In addition, we lease our home office, which consists of approximately 10,500 square feet in New York, New York.



DOMESTIC

State	Company-operated	Licensed	Total
Connecticut	2	—	2
District of Columbia	3	1	4
Florida	4	—	4
Georgia	1	—	1
Illinois	1	—	1
Massachusetts	2	—	2
Nevada	1	—	1
New Jersey	2	—	2
New York	11	4	15
Pennsylvania	3	—	3
Virginia	1	—	1
Total Domestic	31	5	36

INTERNATIONAL

<u>Country</u>	<u>Company-operated</u>	<u>Licensed</u>	<u>Total</u>
Kuwait	—	6	6
Lebanon	—	2	2
Qatar	—	1	1
Russia	—	2	2
Saudi Arabia	—	1	1
Turkey	—	4	4
United Arab Emirates	—	10	10
United Kingdom	—	1	1
Total International	—	27	27
TOTAL SYSTEM-WIDE	31	32	63

Real Estate

A typical domestic company-operated Shack is between 3,000 and 3,500 square feet with interior seating for between 80 and 100 guests. Additionally, whenever possible, our domestic company-operated Shacks feature either outdoor seating or easy access to a park or green space. We believe that these attributes facilitate the community gathering experience that our guests love and associate with our brand. We lease all of our domestic company-operated Shacks. Our leases typically have initial terms of 10 years with two five-year renewal options.

Site Selection

Shake Shack is ultimately about the guest experience and our site selection focuses on choosing great sites where people want to be together. Our site selection process is actively led by our Real Estate Committee, consisting of our CEO, CFO, Director of Real Estate & Design and Director of Construction & Facilities. The Real Estate Committee meets regularly and follows a detailed approval process to ensure quality, fiduciary responsibility and overall adherence to the Company's strategic growth goals. We invest in site analytics tools 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 use a national real estate broker to manage a network of regional brokers in order to leverage external resources in pursuit of pipeline development and consistent deal flow.

Construction

A typical Shack takes between 14 and 16 weeks to build. We expect that the cost to build a new Shack will range from \$1.5 to \$2.5 million, with an average near-term build cost of approximately \$1.9 million, excluding start-up costs. 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. Often during the construction of new Shacks, particularly those in new markets, we reimagine the often uninspiring plywood walls that surround a construction site and use this space as a canvas to begin the process of integrating the Shake Shack brand into the community prior to it even opening. For instance, during the third quarter of fiscal 2014, as we were constructing our first Shack in Chicago, we unveiled six interactive life-size sliding puzzles with illustrated pieces that celebrate Chicago landmarks, while revealing the burgers, hot dogs and frozen custards that Shake Shack guests have enjoyed over the past decade.

Design

The original Shake Shack in Madison Square Park was designed by SITE Architecture and Design, led by James Wines and Denise Lee, in collaboration with Pentagram, led by Paula Scher. This design set the tone for a dynamic dialogue inside the park and our surrounding neighborhood that continues to drive our designs today. The overall atmosphere and design of our new Shacks evoke the very best from the design of the original park kiosk, as well as the best of the fine dining experience in terms of the quality of design, material used, lighting and music. We are mindful that each new Shack should embody the experience of the Madison Square Park Shake Shack—the line, the kiosk style, the experience of ordering food made just for you and the energetic open kitchen.

While each Shack is specifically designed to be of its place and connect with its neighborhood, Shake Shack has developed a number of iconic brand identifiers common to every Shack, including wrap-around steel beams, open kitchens, magnetic menu boards and tables made from reclaimed bowling lanes. Although no two Shacks are alike, we believe that these brand identifiers are critical to the expression of the brand and the experience of Shake Shack.

Domestic Licensing

We have five licensed domestic Shacks: one in Citi Field where the New York Mets play; one in Nationals Park where the Washington Nationals play; one at the Saratoga Race track; and two in the Delta Airlines terminal at John F. Kennedy International Airport ("JFK"). The three licensed Shacks in sporting venues are operated by Hudson Yards Sports and Entertainment LLC ("HYSE") doing business as Union Square Events, another subsidiary of USHG. The two Shacks in JFK are licensed to a third party, though they are managed by Shake Shack employees. All five licensed domestic Shacks provide regular license fees based on sales and bolster brand equity. Additionally, the Shacks at JFK serve breakfast and a number of "grab-and-go" items such as freshly-made yogurt parfaits and all-natural chocolate fudge brownies.

5. Shack-onomics

Our brand power and thoughtful approach to growth have resulted in strong Shack performance across a variety of geographic areas and formats and during both strong and weak economic environments. Our Shack model is designed to generate attractive Shack-level operating profit margins, strong cash flow and high returns on invested capital. We have notable AUVs in both Manhattan and non-Manhattan domestic company-operated Shacks. For fiscal 2013, our domestic company-operated Shacks had AUVs of approximately \$5.0 million, of which our Manhattan Shacks had AUVs of approximately \$7.4 million with Shack-level operating profit margins of approximately 30% and our non-Manhattan Shacks had AUVs of approximately \$3.8 million with Shack-level operating profit margins of approximately 22%. Historically, our domestic company-operated Shacks have delivered an attractive average cash-on-cash return of 65% and payback period of 1.5 years of which our Manhattan Shacks generated an average cash-on-cash return of 82% and payback period of 1.2 years and our non-Manhattan Shacks generated an average cash-on-cash return 31% and payback period of 3.2 years. Since the vast majority of future Shacks will be non-Manhattan locations, we are targeting AUVs in the \$2.8 to \$3.2 million range, Shack-level operating profit margins in the 18 to 22% range and cash-on-cash returns in the 30 to 33% range.

Our Shacks

As an early stage company, we believe that it is important to show the varied models with which we have already had success. Our revenue varies considerably across geographic lines and our AUVs remain high. Because of our New York City history and roots as a fine-dining company, our base of

Shacks was initially built in Manhattan. Of the 31 domestic company-operated Shacks, we currently have seven located in Manhattan and 24 located outside of Manhattan.

We have a balanced lunch/dinner mix, which is reflective of steady guest traffic throughout the day and further differentiates Shake Shack from a number of competitive restaurants that tend to skew towards a more heavily-weighted lunch period.

6. The Shack Travels Abroad

With 27 licensed Shacks outside the United States, we believe that we have proven to be an internationally desirable restaurant concept. Our track record of opening successful Shacks in both the United States and overseas demonstrates the global appeal of Shake Shack and validates our belief in our significant whitespace opportunity internationally. We currently have license agreements for four major international territories, with Shacks operating in eight countries. The Middle East has been our most prominent growth market with 20 Shacks in operation, followed by Turkey with four, Russia with two and the United Kingdom with one. In fiscal 2013, our international licensed Shacks had AUVs of \$6.1 million, which resulted in license fees of approximately \$3.5 million. In addition to license fees, we also receive exclusive territory fees, which help us fund further domestic growth.

International Licensing

The international mission of Shake Shack is to export the best of the American *fine casual* experience, spreading Enlightened Hospitality to communities around the world, while generating cash flow to help fuel the Company's growth. Being a New York-based brand, with USHG's history of creating some of New York City's favorite restaurants, Shake Shack has had a distinct and early opportunity to grow internationally. Shake Shack seeks partners whose values and standards of excellence are fully aligned with our vision, culture and brand. Shake Shack's domestic company-operated development plan is complemented by a focused effort to increase its international footprint with operationally-experienced, proven licensees. Because of Shake Shack's compelling unit economics and global brand strength, the Company attracts substantial interest from large international retail operators.

In fiscal 2009, when there were just two domestic company-operated Shacks, we were pursued by Alshaya, an experienced and well-respected operator of licensed brands, with whom we subsequently entered into an area development agreement. Under its terms, Alshaya paid Shake Shack a territory fee for the exclusive right to operate Shake Shacks in select countries within the Middle East, as well as ongoing license fees based on sales. In fiscal 2012, we amended the area development agreement to expand the license rights into Turkey, the United Kingdom, and Russia, for which we also received territory fees and receive ongoing license fees based on sales. Outside of the Middle East, Alshaya sublicenses its Shake Shack operations to affiliates and unaffiliated third parties with which it has long-standing commercial relationships. We work closely with Alshaya to open Shacks in new markets, implementing the same conceptual strategies that we employ domestically to ensure that our Shacks have brand consistency and provide a community gathering place for our guests.

7. Leaders Training Future Leaders

Our team is led by passionate and experienced senior leaders, balanced with professionals formerly from USHG's fine dining operations and industry veterans from larger restaurant companies. Randy Garutti, our Chief Executive Officer, combines strategic multi-unit leadership experience with fine dining expertise. Randy has worked in restaurants since he was 13 and joined USHG in 2000 as General Manager of Tabla, followed by Union Square Cafe, and later took on the role of Director of Operations overseeing all USHG restaurants, prior to launching the first Shake Shack in 2004. Randy has led the development of the Shake Shack concept from its earliest stages and guided every aspect of

the business. Jeff Uttz, our Chief Financial Officer, brings valuable experience managing high growth restaurant concepts drawing from his 22 years of restaurant finance experience, most recently as Chief Financial Officer at Yard House Restaurants. Jeff led the expansion of Yard House from three units when he began to over 40 units when Yard House was acquired by Darden Restaurants, Inc. Randy and Jeff are supported by a talented executive leadership team that has deep experience in operations, culinary arts, supply chain, finance and accounting, training and leadership development, people resources, real estate and design, construction and facilities, information technology, legal, marketing and communications.

Shake Shack is in the Very Early Stages of Growth

We believe that we are well-positioned to achieve significant, sustainable financial growth, primarily driven by:

Opening New Domestic Company-Operated Shacks

This is where our greatest immediate opportunity for growth lies. We waited nearly five years to open our second Shack, and we are still in the very nascent stage of our story, with only 31 domestic company-operated and five domestic licensed Shacks in 10 states and Washington, D.C. We believe there is tremendous whitespace opportunity to expand in both existing and new U.S. markets, and we have invested in the infrastructure that will enable us to continue to grow rapidly and with discipline. In fiscal 2013, we significantly expanded our domestic company-operated footprint by opening eight new Shacks representing 62% domestic unit growth. In fiscal 2014, we opened 10 domestic company-operated Shacks. We plan to open at least 10 new domestic company-operated Shacks each year, beginning in fiscal 2015, for the foreseeable future. Based on our experience, and analysis and research conducted for us by eSite, we believe that over the long-term we have the potential to grow our current domestic company-operated Shack footprint to at least 450 Shacks by opening domestic company-operated Shacks in new and existing markets. The rate of future Shack growth in any particular period is inherently uncertain and is subject to numerous factors that are outside of our control. As a result, we do not currently have an anticipated timeframe for such expansion. We believe we have a versatile real estate model built for growth. We have adopted a disciplined expansion strategy designed to leverage the strength of our business model and our significant brand awareness to successfully develop new Shacks in an array of markets that are primed for growth, including new and existing and small and large markets. We will use a portion of the proceeds from this offering to open new Shacks and renovate existing Shacks. See "Use of Proceeds." As we grow, we will continue to live by one principle to ensure the success of both our new and existing restaurants: "The Bigger We Get, The Smaller We Need To Act." This mantra is central to our *Stand For Something Good* vision and encompasses our commitment to continue to make decisions that focus on the core of who we are, staying true to the principles of Enlightened Hospitality.

Capitalizing on Our Outsized Brand Awareness

The Shake Shack experience has cultivated significant brand awareness relative to the small number of Shacks. We have worked tirelessly to establish a genuine connection with our guests and integrate into their communities through investment in innovative marketing and programming. We utilize various social media outlets to actively engage with our growing online following. In June 2014, we ranked #10 on *Restaurant Social Media Index's* top 250 restaurant brands, which is measured on influence, sentiment and engagement. Furthermore, we believe that our press and media impressions and industry recognition are a testament to the strength of our brand. We were named one of "The 25 Most Innovative Consumer and Retail Brands" in 2014 by *Entrepreneur.com*, ranked #11 in *The Daily Meal's* "101 Best Restaurants in America" for 2013, and were the winner of the 2013 "Most Loved Brand of the Year" from the RIZMY Awards, "Best Burger" at the 2014 South Beach Wine and Food

Festival's Burger Bash and more. Additionally, we give back to the communities in which we operate, and strengthen awareness for philanthropic causes such as *Share Our Strength's No Kid Hungry* campaign. Our marketing focuses on interacting with our guests in an authentic, innovative manner which creates memorable, meaningful experiences. The experience that we provide for our guests and local communities has generated a growing loyal following who promote our brand through word-of-mouth. We believe that this outsized brand awareness will continue to fuel our growth in existing and new markets.

Growing Same Shack Sales

Given the significant awareness of our brand and the excitement we have been able to generate for our market launches, our Shacks have generally opened with higher volumes and operating profits relative to their second year, which have often shown a decline in sales and operating profit. In year three, our Shacks generally mature and continue to grow from the second year base and then retain these higher volumes over time. It is important to note that, while our goal is to grow same Shack sales over time, this is not our greatest growth opportunity. We expect our Shacks to deliver low same Shack sales growth for the foreseeable future as the number of new Shack openings relative to our comparable Shack base remains our primary driver of growth. We do, however, continually focus on improving our same Shack sales performance by providing an engaging and differentiated guest experience that includes new seasonal and Shack-specific offerings, unique and thoughtful integration with local communities and high standards of excellence and hospitality. We will continue to innovate around our core menu to keep our offerings fresh, while remaining focused on our signature items. For example, our SmokeShack, which debuted in 2012, has been a great success and helped drive sales.

Opportunistically Increasing Our Licensed Shacks Abroad

We will continue to grow our licensed portfolio by expanding further in the eight countries abroad in which we currently have internationally licensed operations. This strategy historically has been a low-cost, high-return method of growing our brand awareness and providing an increasing source of cash flow. We believe there are additional international markets that will embrace the Shake Shack concept. Given our position in New York and the success of our current licensed Shacks at home and abroad, we continue to attract substantial interest from potential international licensees around the world and have identified opportunities to expand our licensing footprint in existing and new international markets.

Operations

Sourcing and Supply Chain

Shake Shack has always been committed to seeking out and working with best-in-class suppliers, artisanal purveyors, cattle ranchers and distribution networks. Our *Stand For Something Good* vision guides us in how we source and develop our ingredients, always looking for the best ways to provide top quality food that is a value and accessible to all. All of our proteins are raised without added hormones and we never use antibiotics. The Supply Chain team has developed a reliable supply chain and continues to focus on identifying additional backups to avoid any possible interruptions of service and product.

We have a regional strategy for ground beef production to ensure that we are always serving freshly ground and never frozen beef. We have had the same butcher for the New York City metropolitan area, Mid-Atlantic and Northeast Shacks since opening our first Shack, which helped create our proprietary beef blend. We will continue to partner with and develop regional suppliers in new markets as we grow.

We have entered into a distribution agreement with one broadline distributor. Shake Shack utilizes nine distribution centers from our broadline distributor. This broadline distributor is the main purchasing link in the United States among many of our suppliers and distributes most of our dry, refrigerated and frozen goods, non-alcoholic beverages, paper goods and cleaning supplies. We use another broadline distributor to distribute the majority of our products to our international licensed Shacks.

Food Safety and Quality Assurance

Our commitment to food safety is strengthened through the direct relationship between our Supply Chain, Culinary and Quality Assurance teams. All supplier and ingredient decisions go through a review of the supplier's internal and external quality audits, insurance coverage, track record and physical site inspection. We have a Food Safety Site Inspection process in place and a dedicated Quality Assurance Manager to ensure food safety across all domestic company-operated Shacks.

Management Information Systems

Our domestic company-operated Shacks use computerized point-of-sale and back-office systems created by NCR Corporation, which we believe are scalable to support our growth plans. These point-of-sale systems are designed specifically for the restaurant industry and we use many customized features to increase operational effectiveness, internal communication and data analysis. This system provides 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 is used to collect daily transaction data, which generates information about daily sales, product mix and average transaction size.

Our Shack back-office computer system is designed to 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 access to detailed business data and reduces restaurant managers' time spent on administrative needs. The system provides our restaurant managers the ability to submit orders electronically with our distribution network. The system also supplies sales, bank deposit and variance data to our accounting department on a daily basis. We use this data to generate daily sales information and weekly consolidated reports regarding sales and other key measures, as well as preliminary weekly detailed profit and loss statements for each Shack with final reports following the end of each period.

Competition

We compete in the restaurant industry, which is highly competitive and fragmented. We compete primarily with "better burger" restaurants and, to a lesser extent, fast casual restaurants, quick service restaurants and casual dining restaurants. The number, size and strength of competitors vary by region. Our competition includes a wide variety of locally owned restaurants and national and regional chains. Our competition in the broadest perspective includes fast casual and fine dining restaurants, convenience food stores, delicatessens, supermarkets and club stores. Some of our competitors, including some of our "better burger" competitors, have significantly greater financial, marketing, personnel and other resources than we do, and many of our competitors are well-established in markets in which we have existing Shacks or intend to locate new Shacks. In addition, many of our competitors have greater name recognition nationally or in some of the local markets in which we have or plan to have Shacks. However, we specifically target guests that appreciate our engaging and differentiated guest experience that includes great food, unique and thoughtful integration with local communities and high standards of excellence and hospitality. We believe that we compete primarily based on experience, product quality, restaurant concept, service, location and value perception. Our competition continues to intensify as competitors enter the burger segment and open new restaurants. Additionally,

we compete with local and national restaurant concepts and other retail concepts for prime restaurant locations.

Intellectual Property

Since our inception, we have undertaken to strategically and proactively develop our intellectual property portfolio by registering our trademarks and service marks worldwide. As such, Shake Shack currently has 15 registered marks domestically, including registrations in its core marks ("Shake Shack", "Shack Burger", "  SHACK ", and "  ") and certain other marks, such as *Stand for Something Good*, which reflects the brand's ethos. Internationally, Shake Shack currently has registered its core marks in over 80 countries spanning six continents. These marks are registered in multiple international trademark classes, including for restaurant services, food services, non-alcoholic beverages and apparel. Shake Shack also owns the domain www.shakeshack.com as well as over 60 other domain names for use in other markets.

In addition, we have agreements with the suppliers of our proprietary products that the recipes for 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 and the patty grinding procedure and the product formulations for our ShackSauce, 'Shroom Burger, cheese sauce, unflavored custard base, chocolate custard base, and certain toppings and custard mix-ins. We also have exclusive arrangements with our suppliers of ShackMeister Ale, Shack Red wine, Shack White wine, all-natural hot dog and all-natural chicken sausage.

Government Regulations and Environmental Matters

We are subject to extensive federal, state and local government regulation, including those relating to, among others, public health and safety, zoning and fire codes, and franchising. Failure to obtain or retain food or other licenses and registrations or exemptions would adversely affect the operations of our Shacks. Although we have not experienced and do not anticipate any significant problems in obtaining required licenses, permits or approvals, any difficulties, delays or failures in obtaining such licenses, permits, registrations, exemptions or approvals could delay or prevent the opening of, or adversely impact the viability of, a Shack in a particular area. The development and construction of additional Shacks will be subject to compliance with applicable zoning, land use and environmental regulations. We believe federal and state environmental regulations have not had a material effect on operations, but more stringent and varied requirements of local government bodies with respect to zoning, land use and environmental factors could delay construction and increase development costs for new Shacks.

We are also subject to the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986 and various federal and state laws governing such matters as minimum wages, overtime, unemployment tax rates, workers' compensation rates, citizenship requirements and other working conditions. We are also subject to the Americans With Disabilities Act, which prohibits discrimination on the basis of disability in public accommodations and employment, which may require us to design or modify our Shacks to make reasonable accommodations for disabled persons.

Approximately 3% of revenues from our domestic company-operated Shacks is attributable to the sale of alcoholic beverages, namely beer and wine. Alcoholic beverage control regulations require each of 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 the 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. 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. One of our domestic company-operated Shacks does not have a liquor license because of the high cost of a liquor license in that jurisdiction, which has a liquor license quota. We may decide not to obtain liquor licenses in certain jurisdictions due to the high costs associated with obtaining liquor licenses in such jurisdictions.

Our licensing activities are subject to the rules and regulations of the Federal Trade Commission ("FTC") and various state laws regulating the offer and sale of licenses. Substantive state laws that regulate the licensor-licensee relationship exist in a substantial number of states, and bills have been introduced in Congress from time to time that would provide for federal regulation of the licensor-licensee relationship. The state laws often limit, among other things, the duration and scope of non-competition provisions, the ability of a licensor to terminate or refuse to renew a license and the ability of a licensor to designate sources of supply. We believe that our licensing procedures comply in all material respects with both the FTC license rule and all applicable state laws regulating franchising in those states in which we have offered licenses.

For a discussion of the various risks we face from regulation and compliance matters, see "Risk Factors."

Employees

As of December 27, 2014, Shake Shack has approximately 1,680 employees, of whom approximately 1,450 are hourly team members, 160 are Shack-level managers and 70 are home office personnel.

Legal Proceedings

We are involved in various claims and legal actions that arise in the ordinary course of business. We do not believe that the ultimate resolution of these actions will have a material adverse effect on our financial position, results of operations, liquidity and capital resources.

MANAGEMENT

Below is a list of the names and ages, as of January 20, 2015, of our directors and executive officers and a description of the business experience of each of them.

Name	Age	Position
Daniel Meyer	56	Chairman of the Board of Directors
Randy Garutti	39	Chief Executive Officer and Director
Jeff Uttz	45	Chief Financial Officer
Peggy Rubenzer	51	Vice President, People Resources
Jeff Flug	52	Director
Evan Guillemin	49	Director
Jenna Lyons	46	Director
Jonathan D. Sokoloff	57	Director
Robert Vivian	56	Director

Executive Officers and Directors

Daniel Meyer has served as the Chairman of the board of directors of Shake Shack since its formation and as the Chairman of the board of directors of SSE Holdings since January 2010. Mr. Meyer is the founder and Chief Executive Officer of USHG, which owns and operates the following restaurants: Union Square Cafe, Gramercy Tavern, Blue Smoke, Jazz Standard, The Modern, Maialino, Untitled, North End Grill and Marta; its event services business, Union Square Events; and its learning and consulting business, Hospitality Quotient. The restaurants have earned 25 James Beard Awards among them. Mr. Meyer previously served as a member of the board of directors of OpenTable.com from 2000 through 2014. Mr. Meyer co-authored the best-selling *Union Square Cafe Cookbook* and authored the New York Times bestseller *Setting the Table: The Transforming Power of Hospitality in Business*. Mr. Meyer is currently a member of the board of directors of The Container Store Group, Inc. and Sotheby's, as well as the following not-for-profit organizations: Share Our Strength, Madison Square Park Conservancy and the Irving Harris Foundation. Mr. Meyer has also served as a board member of City Harvest, New Yorkers for Parks, Union Square Partnership and NYC & Co. Mr. Meyer was selected to our board of directors because of his role in our founding and long career in hospitality and because he possesses particular knowledge and experience in strategic planning and leadership of complex organizations, hospitality businesses and board practices of other major corporations.

Randy Garutti has served as Shake Shack's Chief Executive Officer and on the board of directors since its formation and as the Chief Executive Officer and on the board of directors of SSE Holdings since April 2012. Prior to becoming Chief Executive Officer, Mr. Garutti served as Chief Operating Officer of SSE Holdings since January 2010. Mr. Garutti has worked with USHG and Mr. Meyer for 15 years. Prior to leading Shake Shack, Mr. Garutti was the Director of Operations, overseeing the operations for all USHG 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. Mr. Garutti was selected to our board of directors because of his leadership role in our development and growth and because he possesses particular knowledge and experience in strategic planning and leadership in the hospitality business.

Jeff Uttz has served as Shake Shack's Chief Financial Officer since its formation and as Chief Financial Officer of SSE Holdings since September 2013. Mr. Uttz has over 22 years of restaurant finance experience. Prior to joining Shake Shack, Mr. Uttz was the Chief Financial Officer of Yard House, where he led the expansion of Yard House from three units when he began to over 40 units when Yard House was acquired by Darden Restaurants, Inc. Prior to Yard House, Mr. Uttz held a number of

positions at CKE Restaurants, Inc., working his way up from Manager of Corporate Banking to Vice President of Finance. During his tenure, Mr. Uttz participated in two major acquisitions, when CKE purchased the Hardee's chain as well as the units owned by Hardee's largest franchisee. Mr. Uttz began his career at KPMG where he served a number of clients within the restaurant and hospitality sector and attained his C.P.A. Mr. Uttz attended California State University, Fullerton, where he earned a Bachelor of Arts in Business Administration, Accounting Concentration.

Peggy Rubenzer has served as our Vice President, People Resources since our formation and as Vice President, People Resources of SSE Holdings since November 2013. Ms. Rubenzer has over 23 years of human resources and training expertise. As Vice President, People Resources at Shake Shack, Ms. Rubenzer leads the company's training, leadership development and human resources functions and supports the success of the teams through training, tools and resources. Prior to joining us in December 2011, Ms. Rubenzer spent 10 years at P.F. Chang's China Bistro in VP roles in both HR and Training. During her tenure at P.F. Chang's, Ms. Rubenzer was instrumental in growing the full and quick service concepts unit count from 82 to 360, supporting a head count of 30,000 employees. Prior to that, Ms. Rubenzer spent 10 years at Southwest Airlines, during which time she oversaw the recruiting and human resources functions for the Mid West region supporting the operation in 15 cities, as well as the company's growth and expansion to the North East.

Jeff Flug has served on the board of directors of Shake Shack since its formation and on the board of directors of SSE Holdings since January 2010. Mr. Flug has served as the President of USHG since January 2011 and, prior to that, as USHG's Chief Financial Officer and Chief Operating Officer since December 2009. Mr. Flug has over 25 years of leadership and management experience primarily in the financial industry, as well as in the non-profit sector. After graduating from the University of Massachusetts/Amherst in 1984, with a B.B.A. in Accounting, summa cum laude, Mr. Flug began his career as an accountant at Pricewaterhouse Coopers where he attained his C.P.A. in 1986. Mr. Flug attended Columbia Business School, where he received his M.B.A. in Finance in 1988. In 1988, Mr. Flug joined Goldman, Sachs & Co., and ultimately served as a Managing Director and Head of Fixed Income Financial Futures and Options Sales. In 2000, Mr. Flug became the Head of North America Fixed Income Institutional Sales for JPMorgan Chase & Co. In 2006, Mr. Flug served as CEO and Executive Director for Millennium Promise, a nonprofit organization whose mission is to end extreme poverty and Malaria in Africa. Mr. Flug currently serves as a board director of Pennant Park Investment Corporation, Sears Hometown & Outlet Stores and The Mountain School of Milton Academy. Mr. Flug was selected to our board of directors because he brings financial experience and possesses particular knowledge and experience in strategic planning and leadership of complex organizations.

Evan Guillemain has served on the board of directors of Shake Shack since its formation and on the board of directors of SSE Holdings since April 2013. Mr. Guillemain joined Select Equity Group in April 2004 as the firm's Chief Financial Officer and has managed the firm's finance and operations groups. He is now a Senior Analyst/Associate Portfolio Manager with the firm, focusing on private company investments, as well as public company analysis. Mr. Guillemain is a member of the firm's Management Committee. Prior to joining the firm, he was Chief Financial Officer and then Chief Operating Officer of Delia's Inc., a publicly-traded retailing company. He also served as Director of Acquisitions at Primedia, and he was a founding editor of SDC Publishing, a financial publishing division of the Thomson Corp. Mr. Guillemain currently serves on the board of directors of Mesa Labs Inc., where he chairs the audit committee and sits on the compensation committee. He also serves on the advisory board of several start-up and non-profit organizations. Mr. Guillemain received a B.A. from Yale University and an M.B.A. with distinction from Harvard Business School. Mr. Guillemain was selected to our board of directors because he brings financial experience and possesses particular knowledge and experience in strategic planning and leadership of complex organizations.

Jenna Lyons has served on the board of directors of Shake Shack since December 2014. Ms. Lyons has been the President, Executive Creative Director of J.Crew Group, Inc. since July 2010, and before

that served as Executive Creative Director since April 2010. Prior to that, she was Creative Director since 2007 and, before that, was Senior Vice President of Women's Design since 2005. Ms. Lyons joined J.Crew Group, Inc. in 1990 as an Assistant Designer and has held a variety of positions within J.Crew Group, Inc., including Designer from 1994 to 1995, Design Director from 1996 to 1998, Senior Design Director in 1999, and Vice President of Women's Design from 1999 to 2005. Ms. Lyons was selected to our board of directors because she possesses particular knowledge and experience in strategic planning and leadership of complex organizations and retail businesses.

Jonathan D. Sokoloff has served on the board of directors of Shake Shack since its formation and on the board of directors of SSE Holdings since December 2012. Mr. Sokoloff is currently a Managing Partner with LGP, one of our significant stockholders, and joined in 1990. Before joining LGP, he was a Managing Director in Investment Banking at Drexel Burnham Lambert. Mr. Sokoloff serves on the board of the parent holding companies of BJ's Wholesale Club, Advantage Sales & Marketing and Jetro Cash & Carry and serves on the board of The Container Store Group Inc., USHG, Whole Foods Market, Inc., J.Crew Group, Inc., The Sports Authority, Inc., Jo-Ann Stores, Inc., The Tire Rack, Inc. and Top Shop/Top Man Limited. He co-chairs the Endowment Committee for Private Equity at his alma mater, Williams College. Mr. Sokoloff was selected to our board of directors because he possesses particular knowledge and experience in accounting, finance and capital structure, strategic planning and leadership of complex organizations, retail businesses and board practices of other major corporations.

Robert Vivian has served on the board of directors of Shake Shack since its formation and on the board of directors of SSE Holdings since June 2010. Mr. Vivian served as the Co-Chief Executive Officer of P.F. Chang's China Bistro from January 2009 through December 2011. Prior to that time, he served as P.F. Chang's President from December 2000 through January 2009 and as its Chief Financial Officer from 1996 through December 2000. He also served as a director of P.F. Chang's China Bistro from January 2009 through April 2011 when he retired. Before joining P.F. Chang's, Mr. Vivian served in a variety of positions with Brinker International, Inc. Mr. Vivian was selected to our board of directors because he possesses particular knowledge and experience in strategic planning and leadership of complex organizations, hospitality businesses and board practices of other major corporations.

Corporate Governance

Composition of our Board of Directors

Our amended and restated certificate of incorporation and bylaws will provide for the division of our board of directors into three classes, as nearly equal in number as possible, with the directors in each class serving for a three-year term, and one class being elected each year by our stockholders.

When considering whether directors and nominees have the experience, qualifications, attributes or skills, taken as a whole, to enable our board of directors to satisfy its oversight responsibilities effectively in light of our business and structure, the board of directors focuses primarily on each person's background and experience as reflected in the information discussed in each of the directors' individual biographies set forth above. We believe that our directors provide an appropriate mix of experience and skills relevant to the size and nature of our business.

Pursuant to the Stockholders Agreement described under "Certain Relationships and Related Party Transactions—Stockholders Agreement," members of the Voting Group will be entitled to designate individuals to be included in the slate of nominees recommended by our board of directors for election to our board of directors as follows:

- so long as the Meyer Group owns, in the aggregate, (i) at least 50% of the total outstanding shares of our Class A and Class B common stock owned by it immediately following the consummation of this offering, the Meyer Group will be entitled to nominate five directors, (ii) less than 50%, but at least 25% of the total outstanding shares of our Class A and Class B

common stock owned by it immediately following the consummation of this offering, it will be entitled to nominate four directors, (iii) less than 25% but at least 10% of the total outstanding shares of our Class A and Class B common stock owned by it immediately following the consummation of this offering, it will be entitled to nominate two directors and (iv) less than 10% but at least 5% of the total outstanding shares of our Class A and Class B common stock owned by it immediately following the consummation of this offering, it will be entitled to nominate one director;

- so long as LGP owns, in the aggregate, at least 50% of the total outstanding shares of Class A and Class B common stock owned by it immediately following the consummation of this offering, LGP will be entitled to designate one individual to be included in the slate of nominees recommended by our board of directors for election to the board of directors; and
- so long as SEG owns, in the aggregate, at least 50% of the total outstanding shares of Class A and Class B common stock owned by it immediately following the consummation of this offering, SEG will be entitled to designate one individual to be included in the slate of nominees recommended by our board of directors for election to the board of directors.

The members of the Voting Group will agree to vote their shares in favor of the directors nominated as set forth above.

The Meyer Group has been deemed to have nominated Mr. Meyer, Mr. Garutti, Mr. Flug, Ms. Lyons and Mr. Vivian for election to our board of directors, LGP has been deemed to have nominated Mr. Sokoloff for election to our board of directors and SEG has been deemed to have nominated Mr. Guillemin for election to our board of directors.

In accordance with our amended and restated certificate of incorporation and the Stockholders Agreement, each of which will be in effect upon the closing of this offering, our board of directors will be divided into three classes with staggered three year terms. At each annual meeting of stockholders after the initial classification, the successors to the directors whose terms will then expire will be elected to serve from the time of election and qualification until the third annual meeting following their election. Our directors will be divided among the three classes as follows:

- the Class I directors will be Messrs. Meyer, Flug and Guillemin, and their terms will expire at the annual meeting of stockholders to be held in 2016;
- the Class II directors will be Messrs. Garutti and Sokoloff, and their terms will expire at the annual meeting of stockholders to be held in 2017; and
- the Class III directors will be Ms. Lyons and Mr. Vivian and their terms will expire at the annual meeting of stockholders to be held in 2018.

Any increase or decrease in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. This classification of our board of directors may have the effect of delaying or preventing changes in control of our Company.

Pursuant to the terms of the Stockholders Agreement, directors nominated by the Meyer Group, LGP or SEG may only be removed with or without cause at the request of the party entitled to nominate such director. In all other cases and at any other time, directors may only be removed for cause by the affirmative vote of at least a majority of the combined voting power of our Class A and Class B common stock.

Director Independence

Prior to the consummation of this offering, our board of directors undertook a review of the independence of our directors and considered whether any director has a material relationship with us

that could compromise that director's ability to exercise independent judgment in carrying out that director's responsibilities. Our board of directors has affirmatively determined that Mr. Guillemin, Ms. Lyons, Mr. Sokoloff and Mr. Vivian are each an "independent director," as defined under the rules of the New York Stock Exchange.

Board Committees

Our board has established three standing committees—audit, compensation, and nominating and corporate governance—each of which operates under a charter that has been approved by our board of directors. Current copies of each committee's charter are posted on our website, www.shakeshack.com. The information on any of our websites is deemed not to be incorporated in this prospectus or to be part of this prospectus.

Prior to the consummation of this offering, the Voting Group, which will hold Class A common stock and Class B common stock collectively representing a majority of the combined voting power of our total common stock outstanding, will enter into the Stockholders Agreement with us, pursuant to which it will among other things, elect the nominees of certain members of the Voting Group to our board of directors. See "—Composition of our Board of Directors." As a result, we will be a "controlled company" under the New York Stock Exchange corporate governance standards. As a controlled company, exemptions under the standards will mean that we are not required to comply with certain corporate governance requirements, including the following requirements:

- that a majority of our board of directors consists of "independent directors," as defined under the rules of the New York Stock Exchange;
- that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities;
- that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- for an annual performance evaluation of the nominating and governance committee and compensation committee.

These exemptions do not modify the independence requirements for our audit committee, and we intend to comply with the applicable requirements of the Sarbanes-Oxley Act and rules with respect to our audit committee within the applicable time frame.

Pursuant to the terms of the Stockholders Agreement, the Meyer Group will have the right to designate a majority of the members of each committee of the board of directors for so long as the Meyer Group has the ability to designate at least four individuals for nomination to the board of directors. At all other times that the Meyer Group has the ability to designate at least one individual for nomination to the Board of Directors, the Meyer Group will have the ability to designate at least one-third, but in no event fewer than one, of the members of each committee.

Audit Committee

The audit committee will be responsible for, among other matters:

- appointing, compensating, retaining, evaluating, terminating and overseeing our independent registered public accounting firm;
- discussing with our independent registered public accounting firm their independence from management;

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

Upon the closing of this offering, our audit committee will consist of Messrs. Vivian, Flug and Guillemín with Mr. Vivian serving as chair. Rule 10A-3 of the Exchange Act and the New York Stock Exchange rules require us to have one independent audit committee member upon the listing of our common stock, a majority of independent directors on our audit committee within 90 days of the date of this prospectus and an audit committee composed entirely of independent directors within one year of the date of this prospectus. Our board of directors has affirmatively determined that Messrs. Vivian and Guillemín meet the definition of "independent director" for purposes of serving on an audit committee under Rule 10A-3 and the New York Stock Exchange rules, and we intend to comply with the other independence requirements within the time periods specified. In addition, our board of directors has determined that Mr. Vivian will qualify as an "audit committee financial expert," as such term is defined in Item 407(d)(5) of Regulation S-K.

Compensation Committee

The compensation committee's responsibilities include:

- reviewing and approving the compensation of our directors, Chief Executive Officer and other executive officers; and
- appointing and overseeing any compensation consultants.

Upon the closing of this offering, our compensation committee will consist of Mr. Guillemín, Ms. Lyons and Mr. Sokoloff with Mr. Guillemín serving as chair. As a controlled company, we will rely upon the exemption from the requirement that we have a compensation committee composed entirely of independent directors.

Nominating and Corporate Governance Committee

The nominating and corporate governance committee's responsibilities include:

- identifying individuals qualified to become members of our board of directors, consistent with criteria approved by our board of directors and in accordance with the terms of the Stockholders Agreement; and
- developing and recommending to our board of directors a set of corporate governance guidelines and principles.

The members of our nominating and corporate governance committee are Messrs. Meyer, Garutti and Flug with Mr. Flug serving as chair. As a controlled company, we will rely upon the exemption from the requirement that we have a nominating and corporate governance committee composed entirely of independent directors.

Risk Oversight

Our board of directors is responsible for overseeing our risk management process. Our board of directors focuses on our general risk management strategy, the most significant risks facing us, and oversees the implementation of risk mitigation strategies by management. Our board of directors is also apprised of particular risk management matters in connection with its general oversight and approval of corporate matters and significant transactions.

Risk Considerations in our Compensation Program

We conducted an assessment of our compensation policies and practices for our employees and concluded that these policies and practices are not reasonably likely to have a material adverse effect on our Company.

Director Compensation

None of our directors received compensation as a director during fiscal 2014. We intend to approve and implement a compensation policy that, effective upon the closing of this offering, will be applicable to all of our non-employee directors.

Compensation Committee Interlocks and Insider Participation

During fiscal 2014, the members of SSE Holdings' compensation committee were Mr. Flug, Mr. Vivian and Mr. Guillemin. No member of our compensation committee is or has been a current or former officer or employee of Shake Shack or had any related person transaction involving Shake Shack. None of our executive officers served as a director or a member of a compensation committee (or other committee serving an equivalent function) of any other entity, one of whose executive officers served as a director or member of SSE Holdings' compensation committee during fiscal 2014.

Code of Ethics and Code of Conduct

We have adopted a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. We have posted a current copy of the code on our website, www.shakeshack.com. In addition, we intend to post on our website all disclosures that are required by law or the New York Stock Exchange listing standards concerning any amendments to, or waivers from, any provision of the code.

EXECUTIVE COMPENSATION

This section discusses the material components of the executive compensation program for our executive officers who are named in the "2014 Summary Compensation Table" below. In fiscal 2014, our "named executive officers" and their positions were as follows:

- Randy Garutti, Chief Executive Officer;
- Jeff Uttz, Chief Financial Officer; and
- Peggy Rubenzer, Vice President, People Resources.

This discussion may contain forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt following the completion of this offering may differ materially from the currently planned programs summarized in this discussion. See "Cautionary Note Regarding Forward-Looking Statements."

2014 Summary Compensation Table

The following table sets forth information concerning the compensation of our named executive officers for the years ended December 31, 2014 and December 25, 2013.

Name and Principal Position	Year	Salary (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan	All Other Compensation	Total (\$)
					Compensation (\$)	(\$)	
Randy Garutti <i>Chief Executive Officer</i>	2014	330,095	—	—	42,919	—	373,014
	2013	312,450	—	—	70,545	—	382,995
Jeff Uttz <i>Chief Financial Officer</i>	2014	305,769	—	—	79,512	—	385,281
	2013	93,462(1)	825,635(2)	—	42,997	—	962,094
Peggy Rubenzer <i>Vice President, People Resources</i>	2014	197,022	—	—(3)	34,156	6,812(4)	237,990
	2013	188,062	—	—(3)	56,617	—	244,679

- (1) Mr. Uttz commenced employment with the Company on September 3, 2013. The amount reflected in the "Salary" column represents the pro-rated amount of his annual base salary earned following commencement of employment.
- (2) Amount reflects the full grant date fair value of the Class B Units in SSE Holdings granted during 2013 computed in accordance with ASC Topic 718, rather than the amounts paid to or realized by the named individual. The assumptions used in the valuation of the Class B Unit awards are set forth in Note 12 to the audited consolidated financial statements included in this prospectus.
- (3) Ms. Rubenzer was granted 525 unit appreciation rights in 2014 and 350 unit appreciation rights in 2013. Such awards were not accounted for under ASC Topic 718 and no accounting expense was recorded in respect of such award.
- (4) Amount reflects reimbursements for airfare in connection with commuting to and from the Company's office.

Narrative to Summary Compensation Table

Employment Agreements

During 2014, the employment of our named executive officers was not subject to the terms and conditions of any employment agreements. However, in 2014 in connection with this offering, we entered into employment agreements with Mr. Garutti and Mr. Uttz to be effective as of the date of the consummation of this offering. For a description of the terms and conditions of such employment agreements, please see the section entitled "—New Employment Agreements and Incentive Plans" below.

2014 Salaries

The named executive officers receive a base salary to compensate them for services rendered to our Company. The base salary payable to each named executive officer is intended to provide a fixed component of compensation reflecting the executive's skill set, experience, role and responsibilities.

2014 Bonuses

In fiscal 2014, each of our named executive officers was eligible to earn an annual performance-based cash bonus from the Company. This 2014 bonus for each of our named executive officers consisted of three components: 40% was based upon the achievement of Company adjusted EBITDA, 40% was based upon the achievement of Company revenue targets and 20% was based upon the achievement of individual performance goals. Mr. Garutti was eligible to receive a target bonus in the amount of 15% of his annual base salary, Mr. Uttz was eligible to receive a target bonus in the amount of 30% of his annual base salary, and Ms. Rubenzer was eligible to receive a target bonus in the amount of 20% of her annual base salary upon the achievement of the applicable objectives. In fiscal 2014, our Company adjusted EBITDA was 103% of the target amount and our total revenue was 97% of the target amount, resulting in a payment to Mr. Garutti of 87% of his target bonus, to Mr. Uttz of 87% of his target bonus and to Ms. Rubenzer of 87% of her target bonus. The actual amount of the performance-based cash bonuses paid to each named executive officer for fiscal 2014 performance are set forth above in the Summary Compensation Table in the column entitled "Non-Equity Incentive Plan Compensation."

Equity-Based Compensation

Class B Units

Certain of our named executive officers currently hold Class B Units in SSE Holdings. The Class B Units generally vest annually over five years from the applicable grant date, subject to acceleration upon the occurrence of a change in control or an initial public offering. None of our named executive officers were granted Class B Units in 2014. In connection with the offering, each Class B Unit will be exchanged for LLC Interests.

Unit Appreciation Rights

SSE Holdings currently maintains a phantom equity plan, which we call the Unit Appreciation Rights Plan, or "UAR Plan." The UAR Plan was adopted in order to foster and promote our long-term success by helping attract and maintain a superior management team and to motivate superior performance by employees selected to participate in the UAR Plan. Ms. Rubenzer is our only named executive officer who participates in the UAR Plan and, in 2014, Ms. Rubenzer was granted 525 unit appreciation rights. Under the UAR Plan, participants have the right to receive a payment in the form of securities of SSE Holdings or one of its affiliates upon a change in control or an initial public offering, subject to the participant's continued employment through the date of the change in control or initial public offering. The amount of the payment is equal to the number of unit appreciation rights held by the participant multiplied by the excess of the transaction price of a Class B Unit over a "base price" per unit specified in each participant's award agreement. Individual participants in the UAR Plan are selected by, and the UAR Plan is administered by, the SSE Holdings board of directors or the compensation committee of the board.

The following table sets forth the unit appreciation rights granted to our named executive officers in the 2014 fiscal year.

<u>Named Executive Officer</u>	<u>2014 Unit Appreciation Rights Granted</u>
Randy Garutti	—
Jeff Uttz	—
Peggy Rubenzer	525(1)

- (1) As of December 31, 2014, all unit appreciation rights held by Ms. Rubenzer were unvested. Subject to Ms. Rubenzer's continued employment, she will be entitled to payment in respect of her unit appreciation rights upon a change in control or an initial public offering.

All obligations of SSE Holdings under the UAR Plan and awards thereunder will be assigned from SSE Holdings to the Company, effective on the effective date of this registration statement. Following the offering, we expect that the Compensation Committee will provide that all unit appreciation rights outstanding under the UAR Plan will be paid out in connection with this offering in the form of shares of our Class A common stock. On and after the completion of this offering, no further grants will be made under the UAR Plan.

New Equity-Based Compensation

We have adopted the 2015 Incentive Award Plan in order to facilitate the grant of cash and equity incentives to directors, employees (including our named executive officers) and consultants of our Company and certain of its affiliates and to enable our Company and certain of its affiliates to obtain and retain services of these individuals, which is essential to our long-term success. In connection with this offering, we intend to grant options to purchase shares of Class A common stock under the 2015 Incentive Award Plan to certain of our employees, including the named executive officers. For additional information about the 2015 Incentive Award Plan and the intended grants to be made under this plan in connection with this offering, please see the section titled "—New Employment Agreements and Incentive Plans" below.

In addition, in connection with this offering, we adopted an executive stock ownership policy encouraging Mr. Garutti and Mr. Uttz to hold shares of our common stock with a value equal to two and one times each of their annual base salaries, respectively.

Retirement Plans

USHG currently maintains a 401(k) retirement savings plan, the "401(k) plan," in which our employees, including our named executive officers, who satisfy certain eligibility requirements may participate. The Internal Revenue Code allows eligible employees to defer a portion of their compensation, within prescribed limits, on a pre-tax basis through contributions to the 401(k) plan. USHG does not currently match contributions made under the 401(k) plan by our named executive officers and other highly compensated employees. We believe that providing a vehicle for tax-deferred retirement savings through the 401(k) plan adds to the overall desirability of our executive compensation package and further incentivizes our employees, including our named executive officers, in accordance with our compensation policies. Following the consummation of this offering, we anticipate that Company employees will continue to be eligible to participate in a 401(k) plan maintained by USHG or the Company.

Employee Benefits and Perquisites

All of our full-time employees, including our named executive officers, are eligible to participate in health and welfare plans maintained by USHG, including:

- medical, dental and vision benefits;
- medical and dependent care flexible spending accounts; and
- short-term and long-term disability insurance.

Our named executive officers participate in these plans on the same basis as other eligible employees. We do not maintain any supplemental health and welfare plans for our named executive officers. We believe the benefits described above are necessary and appropriate to provide a competitive compensation package to our named executive officers.

In addition, in 2014, Ms. Rubenzer was entitled to reimbursement in an aggregate amount equal to \$6,812 for airfare in connection with commuting to and from our Company's office.

No Tax Gross-Ups

We do not make gross-up payments to cover our named executive officers' personal income taxes that may pertain to any of the compensation or perquisites paid or provided by our Company.

Outstanding Equity Awards at Fiscal Year-End

The following table summarizes the number of Class B Units and unit appreciation rights underlying outstanding equity incentive plan awards for our named executive officers as of December 31, 2014.

Name	Unit Appreciation Rights				Class B Unit Awards	
	Number of Class B Unit Underlying Unit Appreciation Rights (#) Vested	Number of Class B Unit Underlying Unit Appreciation Rights (#) Unvested	Unit Appreciation Right Base Amount (\$)	Unit Appreciation Right Expiration Date	Number of Class B Units That Have Not Vested (#)	Market Value of Class B Units That Have Not Vested (\$)
Randy Garutti	—	—	—	—	—(1)	—
Jeff Uttz	—	—	—	—	7,227(2)	1,715,200(3)
Peggy Rubenzer	—	525(4)	237.04	3/3/2024	—	—
	—	626(4)	122.99	2/1/2022	—	—
	—	350(4)	183.00	2/11/2023	—	—

- (1) As of December 31, 2014, Mr. Garutti held 31,303 Class B Units and 4,277 membership interests in SSE Holdings, all of which were vested.
- (2) Mr. Uttz was granted 9,034 Class B Units on August 22, 2013. As of December 31, 2014, 80% of the Class B Units held by Mr. Uttz were unvested. Subject to Mr. Uttz's continued employment, all of his unvested Class B Units will vest ratably over the next four years, subject to acceleration upon a change in control or an initial public offering (including this offering).
- (3) There is no public market for the Class B Units. Third-party financial institutions valued the Class B Units in connection with this offering. The amount reported above under the heading "Market Value of Class B Units That Have Not Vested" reflects the intrinsic value of the Class B Units according to such valuation. In connection with the offering, the Class B Units will be exchanged for LLC Interests.
- (4) Ms. Rubenzer was granted 626 unit appreciation rights on February 1, 2012, 350 unit appreciation rights on February 11, 2013 and 525 unit appreciation rights on March 3, 2014. As of December 31, 2014, all unit appreciation rights held by Ms. Rubenzer were unvested. Subject to Ms. Rubenzer's continued employment, she will be entitled to payment in respect of her unit appreciation rights upon a change in control or an initial public offering (including this offering).

Director Compensation

Members of the SSE Holdings board of directors have not historically received compensation for their services as board members. In connection with this offering, we intend to approve and implement a compensation policy that, effective upon the closing of this offering, will be applicable to all of our non-employee directors. Under the compensation policy, no non-employee director shall be entitled to a cash retainer or other cash compensation in consideration for his service on our board of directors or a committee thereof. Each non-employee director will, however, be entitled to certain equity-based compensation as described below.

On the date the shares subject to this offering are priced, each non-employee director who, as of the date of this offering, is serving on our board of directors and is expected to continue his or her service following this offering will be granted (a) an option to purchase shares of our Class A common stock with a grant date fair value of \$50,000 (or, if such director is unaffiliated with any significant stockholder of the Company, \$75,000) and (b) to the extent such director is (i) unaffiliated with any significant stockholder of the Company and (ii) the chairman of any committee of our board of directors, an additional option to purchase shares of our Class A common stock with a fair value of \$10,000 with respect to each such chairmanship.

Commencing with fiscal 2016, each non-employee director will be entitled to an annual option grant which shall consist of the following: (a) an option to purchase shares of our Class A common stock with a grant date fair value of \$50,000 (or, if such director is unaffiliated with any significant stockholder of the Company, \$75,000) and (b) to the extent such director is (i) unaffiliated with any significant stockholder of the Company and (ii) the chairman of any committee of our board of directors, an additional option to purchase shares of our Class A common stock with a fair value of \$10,000 with respect to each such chairmanship.

The terms of each award described above will be set forth in a written award agreement between the applicable non-employee director and us, which will generally provide for vesting after one year of continued service as a director subject to acceleration upon a change of control.

The non-employee director compensation policy (including the compensation described above) may be amended, modified or terminated by our board of directors at any time in its sole discretion.

In addition to the non-employee director compensation policy, in connection with this offering, we adopted a director stock ownership policy encouraging non-employee directors to hold shares of our Class A common stock with a value equal to at least one times the fair value of the director's annual equity award.

Special Bonus Agreements

In March 2011, Mr. Garutti entered into a Special Bonus Agreement (as amended, the "Special Bonus Agreement") with USHG with respect to Mr. Garutti's services to SSE Holdings. This Special Bonus Agreement provides for the payment of a special bonus in the amount of \$2.45 million by USHG to Mr. Garutti in the event of a change in control or an initial public offering of SSE Holdings prior to March 11, 2018, which will be payable to him in March 2018. On October 30, 2014, USHG, Mr. Garutti and SSE Holdings entered into an Assignment and Assumption Agreement, pursuant to which USHG assigned this obligation to SSE Holdings. The Special Bonus Agreement contains restrictive covenants prohibiting Mr. Garutti from competing with us and from soliciting any of our or of USHG's employees or contractors for one year following his termination of employment. The restrictive covenants also prohibit the unauthorized use of confidential information.

In addition to the Special Bonus Agreement, Mr. Garutti entered into two other bonus arrangements in July 2013 with SSE Holdings (the "Incentive Bonus Agreement") and USHG (the "Supplemental Bonus Agreement"), respectively. Such agreements provide for a bonus payment equal to the value of the special bonus under the Special Bonus Agreement and may become payable in the event a change in control or an initial public offering does not occur on or before March 11, 2018,

subject to and conditioned upon certain other conditions specified in the Supplemental Bonus Agreement and Incentive Bonus Agreement, as applicable.

Mr. Garutti will only be entitled to receive payment under one of the Special Bonus Agreement, the Incentive Bonus Agreement or the Supplemental Bonus Agreement. Any such payment will have a value equal to \$2.45 million and paid in cash and/or equity pursuant to the terms of the applicable agreement.

New Employment Agreements and Incentive Plans

New Employment Agreements

In connection with this offering, we entered into employment agreements with Messrs. Garutti and Uttz, which will become effective as of the date of the consummation of this offering. The material terms of such agreements are summarized below.

Employment Term and Position

The term of employment of each of Messrs. Garutti and Uttz will be three years from the date of this offering, subject to automatic one-year extensions provided that neither party provides written notice of non-extension within ninety days of the expiration of the then-current term. During their respective terms of employment, Mr. Garutti will serve as Chief Executive Officer of the Company and SSE Holdings and Mr. Uttz will serve as Chief Financial Officer of the Company and SSE Holdings. Further, Mr. Garutti will be appointed to our board of directors and will be proposed for re-election during his term of employment.

Base Salary, Annual Bonus and Equity Compensation

Pursuant to their employment agreements, Messrs. Garutti and Uttz will be entitled to initial base salaries of \$400,000 and \$330,000, respectively.

In addition, Messrs. Garutti and Uttz will be eligible to receive annual performance-based cash bonuses upon the attainment of individual and Company performance goals established by our board of directors or the compensation committee. The amount of the annual performance-based cash bonus that may be received by Messrs. Garutti and Uttz upon attainment of target performance for any fiscal year will be 50% of base salary and 35% of base salary, respectively, and the maximum amount of the annual performance-based cash bonus that may be received by Messrs. Garutti and Uttz for any fiscal year will be 100% of base salary and 70% of base salary, respectively.

Under the employment agreements, Messrs. Garutti and Uttz will also be eligible for annual equity awards, the form and terms of which will be determined by our board of directors or the compensation committee in its discretion.

Severance

Each employment agreement will provide for severance upon a termination by us without cause or by Messrs. Garutti or Uttz for good reason, in each case, subject to the execution and non-revocation of a waiver and release of claims by Messrs. Garutti or Uttz, as applicable.

Upon a termination of employment by us without cause or by Messrs. Garutti or Uttz for good reason, Messrs. Garutti or Uttz, as applicable, will be entitled to severance consisting of (a) continued base salary through the first anniversary of the termination of his employment, (b) a prorated annual cash bonus for the year of termination based on actual individual and Company performance, (c) accelerated vesting of a prorated portion of the annual equity awards that would have vested at the end of the year of termination absent such termination, such portion to be based on the number of full fiscal months elapsed during such fiscal year, and (d) reimbursement of COBRA premiums such that the cost of coverage is equal to the cost for then current employees for a period of up to 12 months.

For purposes of the employment agreements, the Company will have "cause" to terminate Messrs. Garutti or Uttz's employment upon (a) his willful misconduct, gross negligence or act of dishonesty with regard to the Company or any of its affiliates, which in either case, results in or could reasonably be expected to result in material harm to the Company or such affiliate, (b) his willful and continued failure to attempt to perform his duties with the Company or any of its affiliates (other than any such failure resulting from disability), which failure is not remedied within 30 days after receiving written notice thereof, (c) his conviction of (or his plea of guilty or *nolo contendere* to) any felony involving moral turpitude (other than traffic related offenses or as a result of vicarious liability), or (d) his material breach of any material provision of the employment agreement, which breach is not remedied within 10 days after receiving written notice thereof.

For purposes of the employment agreements, each of Messrs. Garutti and Uttz will have "good reason" to terminate his employment after the occurrence, without his consent, of (a) any material adverse change in base salary, position, duties, responsibilities, authority, title or reporting obligations, or the assignment of duties that are materially inconsistent with his position, (b) a relocation of principal business location by more than 50 miles from its then current location, or (c) any other material breach by the Company of the employment agreement or any other agreement with him. However, no termination for good reason will be effective unless (i) Messrs. Garutti or Uttz, as applicable, provides the Company with at least thirty (30) days prior written notice of his intent to resign for good reason (which notice must be provided within sixty (60) days following the occurrence of the event(s) purported to constitute good reason); (ii) the Company has not remedied the alleged violation (s) within the thirty (30) day period; and (iii) Messrs. Garutti or Uttz's resignation, as applicable, becomes effective no later than thirty (30) days after the Company has either failed to cure such event or indicated that it will not cure such event.

Restrictive Covenants

Pursuant to their respective employment agreements, Messrs. Garutti and Uttz will be subject to certain non-competition and non-solicitation restrictions for a twelve-month period after termination of employment. During the restricted period, Messrs. Garutti and Uttz may not compete, directly or indirectly, with the Company in the business of developing, managing, and/or operating of (a) "better burger" restaurants, (b) "quick service" or "fast food" restaurants with an emphasis on hamburgers, or (c) "fast casual" restaurants. No severance payments or benefits described above shall be paid following the first date that Messrs. Garutti or Uttz, as applicable, violates his restrictive covenants; provided that, if employment is terminated by the Company without cause or by Messrs. Garutti or Uttz for good reason, Messrs. Garutti or Uttz, as applicable, may compete in the "fast casual" restaurant business during the restricted period without violating his employment agreement but he will not receive any severance after the date that he began to compete in the "fast casual" restaurant business.

2015 Incentive Award Plan

We have adopted the 2015 Incentive Award Plan, or the "Plan," under which we may grant cash and equity incentive awards to eligible service providers in order to attract, motivate and retain the talent for which we compete. The material terms of the Plan are summarized below.

Eligibility and Administration. Our employees, consultants and directors, and employees, consultants and directors of our affiliates will be eligible to receive awards under the Plan. Following our initial public offering, the Plan will be administered by our board of directors with respect to awards to non-employee directors and by our compensation committee with respect to other participants, each of which may delegate its duties and responsibilities to committees of our directors and/or officers (referred to collectively as the plan administrator below), subject to certain limitations that may be imposed under Section 162(m) of the Code, Section 16 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and/or stock exchange rules, as applicable. The plan administrator will have the authority to make all determinations and interpretations under, prescribe all forms for use with, and adopt rules for the administration of, the Plan, subject to its express terms and

conditions. The plan administrator will also set the terms and conditions of all awards under the Plan, including any vesting and vesting acceleration conditions.

Limitation on Awards and Shares Available. An aggregate of 5,952,917 shares of our Class A common stock will be available for issuance under awards granted pursuant to the Plan, which shares may be authorized but unissued shares, or shares purchased in the open market. If an award under the Plan is forfeited, expires or is settled for cash, any shares subject to such award may, to the extent of such forfeiture, expiration or cash settlement, be used again for new grants under the Plan. However, the following shares may not be used again for grants under the Plan: (1) shares tendered or withheld to satisfy grant or exercise price or tax withholding obligations associated with an option or stock appreciation right, or "SAR;" (2) shares subject to an SAR that are not issued in connection with the stock settlement of the SAR on its exercise; and (3) shares purchased on the open market with the cash proceeds from the exercise of options.

Awards granted under the Plan upon the assumption of, or in substitution for, awards authorized or outstanding under a qualifying equity plan maintained by an entity with which we enter into a merger or similar corporate transaction will not reduce the shares available for grant under the Plan. The maximum number of shares of our Class A common stock that may be subject to one or more awards granted to any person pursuant to the Plan during any calendar year will be 1,500,000 and the maximum amount that may be paid in cash under an award pursuant to the Plan to any one participant during any calendar year period will be \$5,000,000. Further, the maximum aggregate grant date fair value of awards granted to any non-employee director during any calendar year will be \$500,000.

Awards. The Plan provides for the grant of stock options, including incentive stock options, or "ISOs," and nonqualified stock options, or "NSOs," restricted stock, dividend equivalents, stock payments, restricted stock units, or "RSUs," deferred stock, deferred stock units, performance awards and SARs. No determination has been made as to the types or amounts of awards that will be granted to specific individuals pursuant to the Plan. Certain awards under the Plan may constitute or provide for a deferral of compensation, subject to Section 409A of the Code, which may impose additional requirements on the terms and conditions of such awards. All awards under the Plan will be set forth in award agreements, which will detail all terms and conditions of the awards, including any applicable vesting and payment terms and post-termination exercise limitations. Awards generally will be settled in shares of our Class A common stock, but the plan administrator may provide for cash settlement of any award. A brief description of each award type follows.

- *Stock Options.* Stock options provide for the right to purchase shares of our Class A common stock in the future at an exercise price set on the grant date. ISOs, by contrast to NSOs, may provide tax deferral beyond exercise and favorable capital gains tax treatment to their holders if certain holding period and other requirements of the Code are satisfied. The exercise price of a stock option may not be less than 100% of the fair market value of the underlying share on the date of grant (or 110% in the case of ISOs granted to certain significant stockholders), except with respect to certain substitute options granted in connection with a corporate transaction. The term of a stock option may not be longer than ten years (or five years in the case of ISOs granted to certain significant stockholders). Vesting conditions determined by the plan administrator may apply to stock options and may include continued service, performance and/or other conditions.
- *SARs.* SARs entitle their holder, upon exercise, to receive from us an amount equal to the appreciation of the shares subject to the award between the grant date and the exercise date. The exercise price of a SAR may not be less than 100% of the fair market value of the underlying share on the date of grant (except with respect to certain substitute SARs granted in connection with a corporate transaction) and the term of a SAR may not be longer than ten years. Vesting conditions determined by the plan administrator may apply to SARs and may include continued service, performance and/or other conditions.

- *Restricted Stock and RSUs.* Restricted stock is an award of nontransferable shares of our Class A common stock that remain forfeitable unless and until specified conditions are met, and which may be subject to a purchase price. RSUs are contractual promises to deliver shares of our Class A common stock in the future, which may also remain forfeitable unless and until specified conditions are met. Delivery of the shares underlying RSUs may be deferred under the terms of the award or at the election of the participant, if the plan administrator permits such a deferral. Conditions applicable to restricted stock and RSUs may be based on continuing service, the attainment of performance goals and/or such other conditions as the plan administrator may determine.
- *Stock Payments.* Stock payments are awards of fully vested shares of our Class A common stock that may, but need not, be made in lieu of base salary, bonus, fees or other cash compensation otherwise payable to any individual who is eligible to receive awards. Other incentive awards are awards other than those enumerated in this summary that are denominated in, linked to or derived from shares of our Class A common stock or value metrics related to our shares, and may remain forfeitable unless and until specified conditions are met.
- *Dividend Equivalents.* Dividend equivalents represent the right to receive the equivalent value of dividends paid on shares of our Class A common stock and may be granted alone or in tandem with awards other than stock options or SARs. Dividend equivalents are credited as of dividend record dates occurring during the period between the date an award is granted and the date such award vests, is exercised, is distributed or expires, as determined by the plan administrator. Dividend equivalents may not be paid on awards granted under the Plan subject to performance based vesting unless and until such awards have vested.
- *Deferred Stock Awards:* Deferred stock awards represent the right to receive shares of our Class A common stock on a future date. The Plan provides that deferred stock may not be sold or otherwise hypothecated or transferred until issued. Deferred stock will not be issued until the deferred stock award has vested, and recipients of deferred stock generally will have no voting or dividend rights prior to the time when the vesting conditions are satisfied and the shares are issued. Deferred stock awards generally will be forfeited, and the underlying shares of deferred stock will not be issued, if the applicable vesting conditions and other restrictions are not met.
- *Deferred Stock Units:* Deferred stock units will be awarded to any eligible individual selected by the administrator, typically without payment of consideration, but may be subject to vesting conditions based on continued employment or service or on performance criteria established by the administrator. Each deferred stock unit shall entitle the holder thereof to receive one share of Class A common stock on the date the deferred stock unit becomes vested or upon a specified settlement date thereafter. The Plan provides that, like deferred stock, deferred stock units may not be sold, or otherwise transferred or hypothecated, until vesting conditions are removed or expire. Unlike deferred stock, deferred stock units may provide that shares of stock underlying the deferred stock units will not be issued until a specified date or event following the vesting date. Recipients of deferred stock units generally will have no voting or dividend rights prior to the time when vesting conditions are satisfied and the shares underlying the award have been issued to the holder.
- *Performance Awards.* Performance Awards will be granted by the administrator in its discretion on an individual or group basis. Generally, these awards will be based upon specific performance targets and will be paid in cash or in Class A common stock or in a combination of both. The Plan provides that performance awards may include "phantom" stock awards that provide for payments based upon the value of our Class A common stock and that performance awards may also include bonuses that may be granted by the administrator on an individual or group basis and which may be payable in cash or in Class A common stock or in a combination of both.

Section 162(m). Section 162(m) of the Code imposes a \$1.0 million cap on the compensation deduction that a public company may take in respect of compensation paid to our "covered employees"

(which includes our Chief Executive Officer and our next three most highly compensated employees other than our Chief Financial Officer), but excludes from the calculation of amounts subject to this limitation any amounts that constitute "qualified performance-based compensation," or "QPBC," within the meaning of Section 162(m) of the Code. Under current tax law, we do not expect Section 162(m) of the Code to apply to certain awards under the Plan until the earliest to occur of (1) our annual stockholders' meeting at which members of our board of directors are to be elected that occurs after the close of the third calendar year following the calendar year in which occurred the first registration of our equity securities under Section 12 of the Exchange Act; (2) a material modification of the Plan; (3) an exhaustion of the share supply under the Plan; or (4) the expiration of the Plan. However, QPBC performance criteria may be used with respect to performance awards that are not intended to constitute QPBC. In addition, the Company may issue awards that are not intended to constitute QPBC even if such awards might be non-deductible as a result of Section 162(m) of the Code.

In order to constitute QPBC under Section 162(m) of the Code, in addition to certain other requirements, the relevant amounts must be payable only upon the attainment of pre-established, objective performance goals set by our compensation committee and linked to stockholder-approved performance criteria. For purposes of the Plan, one or more of the following performance criteria will be used in setting performance goals applicable to QPBC, and may be used in setting performance goals applicable to other performance awards: (i) net earnings or losses (either before or after one or more of the following: (A) interest, (B) taxes, (C) depreciation and (D) amortization); (ii) gross or net sales or revenue; (iii) revenue growth or product revenue growth; (iv) net income (either before or after taxes); (v) adjusted net income; (vi) operating earnings or profit (either before or after taxes); (vii) cash flow (including, but not limited to, operating cash flow and free cash flow); (viii) return on assets or net assets; (ix) return on capital and cost of capital; (x) return on stockholders' equity; (xi) total stockholder return; (xii) return on sales; (xiii) gross or net profit or operating margin; (xiv) costs, reductions in costs and cost control measures; (xv) funds from operations or funds available for distributions; (xvi) expenses; (xvii) working capital; (xviii) earnings or loss per share; (xix) adjusted earnings per share; (xx) price per share of common stock or appreciation in and/or maintenance of such price; (xxi) economic value added models or similar metrics; (xxii) regulatory achievements or compliance (including, without limitation, regulatory body approval for commercialization of a product); (xxiii) implementation or completion of critical projects or processes; (xxiv) sales or market share; (xxv) licensing revenue; (xxvi) brand recognition/acceptance; (xxvii) inventory turns or cycle time and supply chain achievements (including, without limitation, establishing relationships with manufacturers or suppliers of component materials and manufacturers of the Company's products); (xxviii) strategic initiatives (including, without limitation, with respect to market penetration, geographic business expansion, manufacturing, commercialization, production and productivity, guest satisfaction and growth, employee satisfaction, recruitment and maintenance of personnel, human resources management, supervision of litigation and other legal matters, information technology, strategic partnerships and transactions (including acquisitions, dispositions, joint ventures, in-licensing and out-licensing of intellectual property, and establishment of relationships with commercial entities with respect to the marketing, distribution and sale of Company products, and factoring transactions, research and development and related activity, and financial or other capital raising transactions); (xxix) new or existing store results and operations and new store openings; and (xxx) financial ratios (including, without limitation, those measuring liquidity, activity, profitability or leverage), any of which may be measured either in absolute terms or as compared to any incremental increase or decrease or as compared to results of a peer group or to market performance indicators or indices. The Plan also permits the plan administrator to provide for objectively determinable adjustments to the applicable performance criteria in setting performance goals for QPBC awards.

Certain Transactions. The plan administrator has broad discretion to take action under the Plan, as well as make adjustments to the terms and conditions of existing and future awards, to prevent the dilution or enlargement of intended benefits and facilitate necessary or desirable changes in the event of certain transactions and events affecting our common stock, such as stock dividends, stock splits,

mergers, acquisitions, consolidations and other corporate transactions. In addition, in the event of certain non-reciprocal transactions with our stockholders known as "equity restructurings," the plan administrator will make equitable adjustments to the Plan and outstanding awards. In the event of a change in control of our Company (as defined in the Plan), to the extent that the surviving entity declines to continue, convert, assume or replace outstanding awards, then the administrator may cause any or all of such awards to become fully vested and exercisable in connection with the transaction. Upon or in anticipation of a change of control, the plan administrator may cause any outstanding awards to terminate at a specified time in the future and give the participant the right to exercise such awards during a period of time determined by the plan administrator in its sole discretion. Individual award agreements may provide for additional accelerated vesting and payment provisions.

Foreign Participants, Claw-Back Provisions, Transferability, and Participant Payments. The plan administrator may modify award terms, establish subplans and/or adjust other terms and conditions of awards, subject to the share limits described above, in order to facilitate grants of awards subject to the laws and/or stock exchange rules of countries outside of the United States. All awards will be subject to the provisions of any claw-back policy implemented by our Company to the extent set forth in such claw-back policy and/or in the applicable award agreement. With limited exceptions for estate planning, domestic relations orders, certain beneficiary designations and the laws of descent and distribution, awards under the Plan are generally non-transferable prior to vesting, and are exercisable only by the participant. With regard to tax withholding, exercise price and purchase price obligations arising in connection with awards under the Plan, the plan administrator may, in its discretion, accept cash or check, shares of our Class A common stock that meet specified conditions, a "market sell order" or such other consideration as it deems suitable.

Plan Amendment and Termination. Our board of directors may amend or terminate the Plan at any time; however, except in connection with certain changes in our capital structure, stockholder approval will be required for any amendment that increases the number of shares available under the Plan, "reprices" any stock option or SAR, or cancels any stock option or SAR in exchange for cash or another award when the option or SAR price per share exceeds the fair market value of the underlying shares. No award may be granted pursuant to the Plan after the tenth anniversary of the date on which our board of directors adopts the Plan.

New Equity Awards

In connection with this offering, we intend to grant options to purchase 2,689,486 shares of Class A common stock under the Plan to certain of our employees, including the named executive officers (the "offering grants"). The offering grants are expected to vest in substantially equal installments over time, subject to continued employment.

2015 Senior Executive Bonus Plan

We have adopted the 2015 Senior Executive Incentive Bonus Plan (the "Executive Bonus Plan"), to be effective as of the day immediately prior to this offering. The Executive Bonus Plan is intended to provide an incentive for superior work and to motivate covered key executives toward even greater achievement and business results, to tie their goals and interests to those of us and our stockholders and to enable us to attract and retain highly qualified executives. The principal features of the Executive Bonus Plan are summarized below.

The Executive Bonus Plan is an incentive bonus plan under which certain key executives, including our named executive officers, will be eligible to receive bonus payments. Bonuses will generally be payable under the Executive Bonus Plan upon the attainment of pre-established performance goals. Notwithstanding the foregoing, we may pay bonuses (including, without limitation, discretionary bonuses) to participants under the Executive Bonus Plan based upon such other terms and conditions as our compensation committee may in its sole discretion determine. The payment of a bonus under the Executive Bonus Plan to a participant with respect to a performance period will generally be

conditioned on such participant's continued employment on the last day of such performance period, provided that our compensation committee may make exceptions to this requirement in its sole discretion.

The performance goals under the Executive Bonus Plan will relate to one or more financial, operational or other metrics with respect to individual or company performance with respect to us or any of our affiliates, including but not limited to the following possible performance goals: (i) net earnings or losses (either before or after one or more of the following: (A) interest, (B) taxes, (C) depreciation and (D) amortization); (ii) gross or net sales or revenue; (iii) revenue growth or product revenue growth; (iv) net income (either before or after taxes); (v) adjusted net income; (vi) operating earnings or profit (either before or after taxes); (vii) cash flow (including, but not limited to, operating cash flow and free cash flow); (viii) return on assets or net assets; (ix) return on capital and cost of capital; (x) return on stockholders' equity; (xi) total stockholder return; (xii) return on sales; (xiii) gross or net profit or operating margin; (xiv) costs, reductions in costs and cost control measures; (xv) funds from operations or funds available for distributions; (xvi) expenses; (xvii) working capital; (xviii) earnings or loss per share; (xix) adjusted earnings per share; (xx) price per share of common stock of the Company or appreciation in and/or maintenance of such price; (xxi) economic value added models or similar metrics; (xxii) regulatory achievements or compliance (including, without limitation, regulatory body approval for commercialization of a product); (xxiii) implementation or completion of critical projects or processes; (xxiv) sales or market share; (xxv) licensing revenue; (xxvi) brand recognition/acceptance; (xxvii) inventory turns or cycle time and supply chain achievements (including, without limitation, establishing relationships with manufacturers or suppliers of component materials and manufacturers of the Company's products); (xxviii) strategic initiatives (including, without limitation, with respect to market penetration, geographic business expansion, manufacturing, commercialization, production and productivity, guest satisfaction and growth, employee satisfaction, recruitment and maintenance of personnel, human resources management, supervision of litigation and other legal matters, information technology, strategic partnerships and transactions (including acquisitions, dispositions, joint ventures, in-licensing and out-licensing of intellectual property, and establishment of relationships with commercial entities with respect to the marketing, distribution and sale of Company products, and factoring transactions, research and development and related activity, and financial or other capital raising transactions); (xxix) new or existing store results and operations and new store openings; and (xxx) financial ratios (including, without limitation, those measuring liquidity, activity, profitability or leverage), any of which may be measured either in absolute terms or as compared to any incremental increase or decrease or as compared to results of a peer group or to market performance indicators or indices. The Plan also permits the plan administrator to provide for objectively determinable adjustments to the applicable performance criteria in setting performance goals for Executive Bonus Plan awards.

The Executive Bonus Plan is administered by our compensation committee. Our compensation committee will select the participants in the Executive Bonus Plan and any performance goals to be utilized with respect to the participants, establish the bonus formulas for each participant's annual bonus, and certify whether any applicable performance goals have been met with respect to a given performance period. The Executive Bonus Plan provides that we may amend or terminate the Executive Bonus Plan at any time in our sole discretion. Any amendments to the Executive Bonus Plan will require stockholder approval only to the extent required by applicable law, rule or regulation. The Executive Bonus Plan will expire on the earliest of:

- the first material modification of the Executive Bonus Plan;
- the first stockholders meeting at which members of our board of directors are elected during 2019; or
- such other date required by Section 162(m) of the Code.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Since December 26, 2012, we or SSE Holdings have engaged in certain transactions with our directors and executive officers and holders of more than 5% of our voting securities and affiliates of our directors, executive officers and holders of more than 5% of our voting securities.

The following are summaries of certain provisions of our related party agreements and are qualified in their entirety by reference to all of the provisions of such agreements. Because these descriptions are only summaries of the applicable agreements, they do not necessarily contain all of the information that you may find useful. We therefore urge you to review the agreements in their entirety. Copies of the agreements (or forms of the agreements) have been filed as exhibits to the registration statement of which this prospectus is a part, and are available electronically on the website of the SEC at www.sec.gov.

Related Party Agreements in Effect Prior to this Offering

Revolving Credit Facility

SSE Holdings is a party to the Revolving Credit Facility, which provides for a revolving total commitment of \$50.0 million. The Revolving Credit Facility is secured by a first-priority security interest in substantially all of the assets of SSE Holdings and the guarantors (excluding stock in foreign subsidiaries in excess of 65% and assets of non-guarantors and subject to certain other exceptions). Obligations under the Revolving Credit Facility are guaranteed by USHG and each of SSE Holdings' wholly-owned subsidiaries.

Special Bonus Agreements

In March 2011, Mr. Garutti entered into a Special Bonus Agreement, with USHG with respect to Mr. Garutti's services to SSE Holdings (as amended, the "Special Bonus Agreement"). This Special Bonus Agreement provides for the payment of a special bonus in the amount of \$2.45 million by USHG to Mr. Garutti in the event of a change in control or an initial public offering of SSE Holdings prior to March 11, 2018, which will be payable to him in March 2018. On October 30, 2014, USHG, Mr. Garutti and SSE Holdings entered into an Assignment and Assumption Agreement, pursuant to which USHG assigned this obligation to SSE Holdings. The Special Bonus Agreement contains restrictive covenants prohibiting Mr. Garutti from competing with us and from soliciting any of our or of USHG's employees or contractors for one year following his termination of employment. The restrictive covenants also prohibit the unauthorized use of confidential information.

In addition to the Special Bonus Agreement, Mr. Garutti entered into two other bonus arrangements in July 2013 with SSE Holdings (the "Incentive Bonus Agreement") and USHG (the "Supplemental Bonus Agreement"), respectively. Such agreements provide for a bonus payment equal to the value of the special bonus under the Special Bonus Agreement and may become payable in the event a change in control or an initial public offering does not occur on or before March 11, 2018, subject to and conditioned upon certain other conditions specified in the Supplemental Bonus Agreement and Incentive Bonus Agreement, as applicable.

Mr. Garutti will only be entitled to receive payment under one of the Special Bonus Agreement, the Incentive Bonus Agreement or the Supplemental Bonus Agreement. Any such payment will be in an amount equal to \$2.45 million and paid in cash and/or equity pursuant to the terms of the applicable agreement.

Management Services Agreement

On October 16, 2009, we entered into a Management Services Agreement with USHG, LLC, another subsidiary of USHG (the "Management Company"), pursuant to which the Management Company has provided management services to SSE Holdings, including executive leadership, strategic development, real estate, financial, legal, administrative, operations and human resources services. In

exchange for those services, we have paid the Management Company a monthly fee based on our sales for such period. In fiscal 2012 and fiscal 2013 and the thirty-nine weeks ended September 24, 2014, we paid \$1.7 million, \$2.5 million and \$2.1 million, respectively, in management services under the Management Services Agreement. In addition, we indemnified the Management Company to the fullest extent permitted by law from and against all losses arising from its performance under the Management Services Agreement.

We entered into the Amended and Restated Management Services Agreement with the Management Company, effective January 2015, pursuant to which the Management Company provides reduced management services to SSE Holdings comprised of executive leadership from USHG's Chief Executive Officer, Daniel Meyer, and other members of USHG's senior management; menu innovation advisory services by Mr. Meyer; strategic development advisory services by Mr. Meyer; leadership development services; and limited human resources services. There will be no fees payable by us to the Management Company in connection with these services. The initial term of the Amended and Restated Management Services Agreement will be through December 31, 2019, with renewal periods. We will also indemnify the Management Company to the fullest extent permitted by law from and against all losses arising from its performance under the Amended and Restated Management Services Agreement.

Master License Agreement with Union Square Events

HYSE doing business as Union Square Events, another subsidiary of USHG, operates our three domestic licensed Shacks located in sporting venues pursuant to a Master License Agreement (the "Master License Agreement"), which grants Union Square Events the exclusive right to open Shake Shack-branded limited menu concession stands in sports and entertainment venues in the United States. In each of fiscal 2012 and fiscal 2013, Union Square Events paid \$0.2 million in license fees pursuant to the Master License Agreement.

The Transactions

In connection with the Transactions, we will engage in certain transactions with certain of our directors, executive officers and other persons and entities which are or will become holders of 5% or more of our voting securities upon the consummation of the Transactions, including the exchange of their indirect ownership interest in LLC Interests by Former SSE Equity Owners for shares of our Class A common stock in connection with this offering and entering into the Tax Receivable Agreement, the SSE Holdings LLC Agreement, the Stockholders Agreement and the Registration Rights Agreement. These transactions are described in "The Transactions."

The exchange of their indirect ownership interest in LLC Interests by Former SSE Equity Owners will occur as a result of two mergers, whereby, in each case, a newly formed subsidiary of Shake Shack will merge into an entity that holds LLC Interests (and of which the Former SSE Equity Owners are owners) with each entity becoming a wholly owned subsidiary of Shake Shack and the Former SSE Equity Owners receiving Class A common stock. Each Former SSE Equity Owner and/or one or more its affiliates will agree, pursuant to their respective merger agreement, to indemnify us against all historic liabilities of the entity transferred in the applicable merger. Subsequent to these mergers, each such entity will merge into Shake Shack resulting in Shake Shack owning directly the LLC Interests exchanged by the Former SSE Equity Owners pursuant to the initial mergers.

Tax Receivable Agreement

We expect to obtain an increase in our share of the tax basis of the assets of SSE Holdings when a Continuing SSE Equity Owner receives shares of our Class A common stock or cash at our election in connection with an exercise of such Continuing SSE Equity Owner's right to have LLC Interests held by such Continuing SSE Equity Owner redeemed by SSE Holdings or, at the election of Shake Shack, exchanged (such basis increase, the "Basis Adjustments"). We intend to treat such acquisition of LLC

Interests as our direct purchase of LLC Interests from a Continuing SSE Equity Owner for U.S. federal income and other applicable tax purposes, regardless of whether such LLC Interests are surrendered by a Continuing SSE Equity Owner to SSE Holdings for redemption or sold to us upon the exercise of our election to acquire such LLC Interests directly. A Basis Adjustment may have the effect of reducing the amounts that we would otherwise pay in the future to various tax authorities. The Basis Adjustments 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.

In connection with the transactions described above, we will enter into the Tax Receivable Agreement (the "TRA") with the Continuing SSE Equity Owners. The TRA will provide for the payment by us to such persons of 85% of the amount of tax benefits, if any, that we actually realize, or in some circumstances are deemed to realize, as a result of the transactions described above, including increases in the tax basis of the assets of SSE Holdings arising from such transactions or any prior sales of interests in SSE Holdings and tax basis increases attributable to payments made under the TRA and deductions attributable to imputed interest and other payments of interest pursuant to the TRA. SSE Holdings will have in effect an election under Section 754 of the Code effective for each taxable year in which a redemption or exchange of LLC Interests for shares of our Class A common stock or cash occurs. These TRA payments are not conditioned upon any continued ownership interest in either SSE Holdings or us by any Continuing SSE Equity Owner. The rights of each Continuing SSE Equity Owner under the TRA are assignable to transferees of its LLC Interests (other than Shake Shack as transferee pursuant to subsequent redemptions (or exchanges) of the transferred LLC Interests). We expect to benefit from the remaining 15% of tax benefits, if any, that we may actually realize.

The actual Basis Adjustments, as well as any amounts paid to the Continuing SSE Equity Owners under the TRA, will vary depending on a number of factors, including:

- *the timing of any subsequent redemptions or exchanges* —for instance, the increase in any tax deductions will vary depending on the fair value, which may fluctuate over time, of the depreciable or amortizable assets of SSE Holdings at the time of each redemption or exchange;
- *the price of shares of our Class A common stock at the time of redemptions or exchanges* —the Basis Adjustments, as well as any related increase in any tax deductions, is directly related to the price of shares of our Class A common stock at the time of each redemption or exchange;
- *the extent to which such redemptions or exchanges are taxable* —if a redemption or exchange is not taxable for any reason, increased tax deductions will not be available; and
- *the amount and timing of our income* —the TRA generally will require Shake Shack to pay 85% of the tax benefits as and when those benefits are treated as realized under the terms of the TRA. If Shake Shack does not have taxable income, it generally will not be required (absent a change of control or other circumstances requiring an early termination payment) to make payments under the TRA for that taxable year because no tax benefits will have been actually realized. However, any tax benefits that do not result in realized tax benefits in a given taxable year will likely generate tax attributes that may be utilized to generate tax benefits in previous or future taxable years. The utilization of any such tax attributes will result in payments under the TRA.

For purposes of the TRA, cash savings in income and franchise tax will be computed by comparing our actual income and franchise tax liability to the amount of such taxes that we would have been required to pay (with an assumed tax rate for state tax purposes) had there been no Basis Adjustments and had the TRA not been entered into. The TRA will generally apply to each of our taxable years, beginning with the first taxable year ending after the consummation of the offering. There is no maximum term for the TRA; however, the TRA may be terminated by us pursuant to an early termination procedure that requires us to pay the Continuing SSE Equity Owners an agreed upon amount equal to the estimated present value of the remaining payments to be made under the

agreement (calculated based on certain assumptions, including regarding tax rates and utilization of the Basis Adjustments).

The payment obligations under the TRA are obligations of Shake Shack and not of SSE Holdings. Although the actual timing and amount of any payments that may be made under the TRA will vary, we expect that the payments that we may be required to make to the Continuing SSE Equity Owners could be substantial. Any payments made by us to Continuing SSE Equity Owners under the TRA will generally reduce the amount of overall cash flow that might have otherwise been available to us or to SSE Holdings and, to the extent that we are unable to make payments under the TRA for any reason, the unpaid amounts generally will be deferred and will accrue interest until paid by us.

Decisions made by us in the course of running our business, such as with respect to mergers, asset sales, other forms of business combinations or other changes in control, may influence the timing and amount of payments that are received by a Continuing SSE Equity Owner under the TRA. For example, the earlier disposition of assets following a transaction that results in a Basis Adjustment will generally accelerate payments under the TRA and increase the present value of such payments.

The TRA provides that if (i) we materially breach any of our material obligations under the TRA, (ii) certain mergers, asset sales, other forms of business combination, or other changes of control were to occur, or (iii) we elect an early termination of the TRA, then our obligations, or our successor's obligations, under the TRA would accelerate and become due and payable, 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 TRA.

As a result, (i) we could be required to make cash payments to the Continuing SSE Equity Owners 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 TRA, and (ii) if we elect to terminate the TRA 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 TRA, 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 TRA could have a material adverse effect on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combination, or other changes of control. There can be no assurance that we will be able to finance our obligations under the TRA.

Payments under the TRA will be based on the tax reporting positions that we determine. If any such position is subject to a challenge by a taxing authority the outcome of which would reasonably be expected to materially affect a recipient's payments under the TRA, 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 Continuing SSE Equity Owner 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 any Continuing SSE Equity Owner pursuant to the TRA if any tax benefits initially claimed by us are subsequently challenged by a taxing authority and ultimately disallowed. Instead, in such circumstances, any excess cash payments made by us to a Continuing SSE Equity Owner will be netted against any future cash payments that we might otherwise be required to make under the terms of the TRA. However, we might not determine that we have effectively made an excess cash payment to the Continuing SSE Equity Owners for a number of years following the initial time of such payment and, if our tax reporting positions are challenged by a taxing authority, we will not be permitted to reduce any future cash payments under the TRA until any such challenge is finally settled or determined. As a result, it is possible that we could make cash payments under the TRA that are substantially greater than our actual cash tax savings.

Payments are generally due under the TRA within a specified period of time following the filing of our tax return for the taxable year with respect to which the payment obligation arises, although interest on such payments will begin to accrue at a rate of LIBOR plus 100 basis points from the due date (without extensions) of such tax return. Any late payments that may be made under the TRA will

continue to accrue interest at LIBOR plus 500 basis points until such payments are made, including any late payments that we may subsequently make because we did not have enough available cash to satisfy our payment obligations at the time at which they originally arose.

SSE Holdings LLC Agreement

We will operate our business through SSE Holdings and its subsidiaries. In connection with the completion of this offering, we and the Original SSE Equity Owners will enter into SSE Holdings' third amended and restated limited liability company agreement, which we refer to as the "SSE Holdings LLC Agreement." The operations of SSE Holdings, and the rights and obligations of the holders of LLC Interests, will be set forth in the SSE Holdings LLC Agreement.

Appointment as Manager. Under the SSE Holdings LLC Agreement, we will become a member and the sole manager of SSE Holdings. As the sole manager, we will be able to control all of the day-to-day business affairs and decision-making of SSE Holdings without the approval of any other member, unless otherwise stated in the SSE Holdings LLC Agreement. As such, we, through our officers and directors, will be responsible for all operational and administrative decisions of SSE Holdings and the day-to-day management of SSE Holdings' business. Pursuant to the terms of the SSE Holdings LLC Agreement, we cannot, under any circumstances, be removed as the sole manager of SSE Holdings except by our election.

Compensation. We will not be entitled to compensation for our services as manager. We will be entitled to reimbursement by SSE Holdings for fees and expenses incurred on behalf of SSE Holdings, including all expenses associated with this offering and maintaining our corporate existence.

Recapitalization. The SSE Holdings LLC Agreement recapitalizes the units currently held by the existing members of SSE Holdings into a new single class of common membership units, which we refer to as the "LLC Interests." The SSE Holdings LLC Agreement will also reflect a split of LLC Interests such that one LLC Interest can be acquired with the net proceeds received in the initial offering from the sale of one share of our Class A common stock. Each LLC Interest will entitle the holder to a pro rata share of the net profits and net losses and distributions of SSE Holdings.

Distributions. The SSE Holdings LLC Agreement will require "tax distributions," as that term is defined in the SSE Holdings LLC Agreement, to be made by SSE Holdings to its "members," as that term is defined in the SSE Holdings LLC Agreement. Tax distributions will be made annually to each member of SSE Holdings, including us, based on such member's allocable share of the taxable income of SSE Holdings and at a tax rate that will be determined by us. For this purpose, the taxable income of SSE Holdings, and Shake Shack's allocable share of such taxable income, shall be determined without regard to any tax basis adjustments that result from our deemed or actual purchase of LLC Interests from the Continuing SSE Equity Owners (as described above under "—Tax Receivable Agreement"). For tax distributions made in the 2015 fiscal year, the tax rate that we expect to use for purposes of determining tax distributions from SSE Holdings to its members will equal the combined federal, state, and local statutory tax rate applicable to us for the 2015 fiscal year (taking into account the deductibility of state and local taxes for federal purposes). For each subsequent fiscal year, the tax rate applicable to us for the 2015 fiscal year will apply with respect to tax distributions made during such fiscal year unless we determine (through our board of directors) otherwise. The tax rate used to determine tax distributions will apply regardless of the actual final tax liability of any such member. Tax distributions will also be made only to the extent all distributions from SSE Holdings for the relevant period were otherwise insufficient to enable each member to cover its tax liabilities as calculated in the manner described above. The SSE Holdings LLC Agreement will also allow for distributions to be made by SSE Holdings to its members on a pro rata basis out of "distributable cash," as that term is defined in the SSE Holdings LLC Agreement. We expect SSE Holdings may make distributions out of distributable cash periodically to the extent permitted by our agreements governing our indebtedness and necessary to enable us to cover our operating expenses and other obligations, including our tax

liability and obligations under the Tax Receivable Agreement, as well as to make dividend payments, if any, to the holders of our Class A common stock.

LLC Interest Redemption Right. The SSE Holdings LLC Agreement provides a redemption right to the Continuing SSE Equity Owners which entitles them to have their LLC Interests redeemed, at the election of each such person, for, at our option, as determined by or at the direction of our board of directors, which will include directors who hold LLC Interests or are affiliated with holders of LLC Interests and may include such directors in the future, newly-issued shares of our Class A common stock on a one-for-one basis or a cash payment equal to a volume weighted average market price of one share of Class A common stock for each LLC Interest redeemed (subject to customary adjustments, including for stock splits, stock dividends and reclassifications). If we decide to make a cash payment, the Continuing SSE Equity Owner has the option to rescind its redemption request within a specified time period. Upon the exercise of the redemption right, the redeeming member will surrender its LLC Interests to SSE Holdings for cancellation. The SSE Holdings LLC Agreement requires that we contribute cash or shares of our Class A common stock to SSE Holdings in exchange for an amount of newly-issued LLC Interests in SSE Holdings that will be issued to us equal to the number of LLC Interests redeemed from the Continuing SSE Equity Owner. SSE Holdings will then distribute the cash or shares of our Class A common stock to such Continuing SSE Equity Owner to complete the redemption. In the event of such election by a Continuing SSE Equity Owner, we may, at our option, effect a direct exchange of cash or our Class A common stock for such LLC Interests in lieu of such a redemption. Whether by redemption or exchange, we are obligated to ensure that at all times the number of LLC Interests that we own equals the number of shares of Class A common stock issued by us (subject to certain exceptions for treasury shares and shares underlying certain convertible or exchangeable securities).

Issuance of LLC Interests Upon Exercise of Options or Issuance of Other Equity Compensation. Upon the exercise of options issued by us, or the issuance of other types of equity compensation by us (such as the issuance of restricted or non-restricted stock, payment of bonuses in stock or settlement of stock appreciation rights in stock), we will be required to acquire from SSE Holdings a number of LLC Interests equal to the number of shares of Class A common stock being issued in connection with the exercise of such options or issuance of other types of equity compensation. When we issue shares of Class A common stock in settlement of stock options granted to persons that are not officers or employees of SSE Holdings or its subsidiaries, we will make, or be deemed to make, a capital contribution to SSE Holdings equal to the aggregate value of such shares of Class A common stock, and SSE Holdings will issue to us a number of LLC Interests equal to the number of shares of Class A common stock we issued. When we issue shares of Class A common stock in settlement of stock options granted to persons that are officers or employees of SSE Holdings or its subsidiaries, we will be deemed to have sold directly to the person exercising such award a portion of the value of each share of Class A common stock equal to the exercise price per share, and we will be deemed to have sold directly to SSE Holdings (or the applicable subsidiary of SSE Holdings) the difference between the exercise price and market price per share for each such share of Class A common stock. In cases where we grant other types of equity compensation to employees of SSE Holdings or its subsidiaries, on each applicable vesting date we will be deemed to have sold to SSE Holdings (or such subsidiary) the number of vested shares at a price equal to the market price per share, SSE Holdings (or such subsidiary) will deliver the shares to the applicable person, and we will be deemed to have made a capital contribution in SSE Holdings equal to the purchase price for such shares in exchange for an equal number of LLC Interests.

Maintenance of one-to-one ratio of shares of Class A common stock and LLC Interests owned by Shake Shack. Our amended and restated certificate of incorporation and the SSE Holdings LLC Agreement will require that (i) we at all times maintain a ratio of one LLC Interest owned by us for each share of Class A common stock issued by us (subject to certain exceptions for treasury shares and shares underlying certain convertible or exchangeable securities), and (ii) SSE Holdings at all times

maintain (x) a one-to-one ratio between the number of shares of Class A common stock issued by us and the number of LLC Interests owned by us and (y) a one-to-one ratio between the number of shares of Class B common stock owned by the Continuing SSE Equity Owners and the number of LLC Interests owned by the Continuing SSE Equity Owners. This construct is intended to result in the Continuing SSE Equity Owners having a voting interest in Shake Shack that is identical to the Continuing SSE Equity Owners' percentage economic interest in SSE Holdings.

Transfer Restrictions. The SSE Holdings LLC Agreement generally does not permit transfers of LLC Interests by members, subject to limited exceptions. Any transferee of LLC Interests must assume, by operation of law or written agreement, all of the obligations of a transferring member with respect to the transferred units, even if the transferee is not admitted as a member of SSE Holdings.

Dissolution. The SSE Holdings LLC Agreement will provide that the unanimous consent of all members holding voting units will be required to voluntarily dissolve SSE Holdings. In addition to a voluntary dissolution, SSE Holdings will be dissolved upon a change of control transaction under certain circumstances, as well as upon the entry of a decree of judicial dissolution or other circumstances in accordance with Delaware law. Upon a dissolution event, the proceeds of a liquidation will be distributed in the following order: (i) first, to pay the expenses of winding up SSE Holdings; (ii) second, to pay debts and liabilities owed to creditors of SSE Holdings, other than members; (iii) third, to pay debts and liabilities owed to members; and (iv) fourth, to the members pro-rata in accordance with their respective percentage ownership interests in SSE Holdings (as determined based on the number of LLC Interests held by a member relative to the aggregate number of all outstanding LLC Interests).

Confidentiality. Each member will agree to maintain the confidentiality of SSE Holdings' confidential information. This obligation excludes information independently obtained or developed by the members, information that is in the public domain or otherwise disclosed to a member, in either such case not in violation of a confidentiality obligation or disclosures required by law or judicial process or approved by our chief executive officer.

Indemnification and Exculpation. The SSE Holdings LLC Agreement provides for indemnification of the manager, members and officers of SSE Holdings and their respective subsidiaries or affiliates. To the extent permitted by applicable law, SSE Holdings will indemnify us, as its managing member, its authorized officers, its other employees and agents from and against any losses, liabilities, damages, costs, expenses, fees or penalties incurred by any acts or omissions of these persons, provided that the acts or omissions of these indemnified persons are not the result of fraud, intentional misconduct or a violation of the implied contractual duty of good faith and fair dealing, or any lesser standard of conduct permitted under applicable law.

We, as the managing member, and the authorized officers and other employees and agents of SSE Holdings will not be liable to SSE Holdings, its members or their affiliates for damages incurred by any acts or omissions of these persons, provided that the acts or omissions of these exculpated persons are not the result of fraud, or intentional misconduct.

Amendments. The SSE Holdings LLC Agreement may be amended with the consent of the holders of a majority in voting power of the outstanding LLC Interests; provided that if the managing member holds greater than 33% of the LLC Interests, then it may be amended with the consent of the managing member together with holders of at least 50% of the outstanding LLC Interests, excluding LLC Interests held by the managing member. Notwithstanding the foregoing, no amendment to any of the provisions that expressly require the approval or action of certain members may be made without the consent of such members and no amendment to the provisions governing the authority and actions of the managing member or the dissolution of SSE Holdings may be amended without the consent of the managing member.

Stockholders Agreement

Prior to the consummation of this offering, we will enter into a Stockholders Agreement with each member of the Voting Group. The Stockholders Agreement, as further described below, will contain specific rights, obligations and agreements of these parties as owners of our Class A common stock and Class B common stock.

Voting Agreement. Under the Stockholders Agreement, the members of the Voting Group will agree to take all necessary action, including casting all votes to which such members are entitled to cast at any annual or special meeting of stockholders, so as to ensure that the composition of our board of directors and its committees complies with the provisions of the Stockholders Agreement related to the composition of our board of directors and its committees, which are discussed under "Management—Corporate Governance—Composition of our Board of Directors" and "Management—Corporate Governance—Board Committees."

Meyer Group Approvals. Under the Stockholders Agreement the actions listed below by us or any of our subsidiaries will require the approval of the Meyer Group for so long as the Meyer Group collectively owns at least 10% of the total shares of Class A and Class B common stock owned by it immediately following the consummation of this offering. The actions include:

- change in control transactions;
- the sale, lease or exchange of all or a substantial amount of the property and assets of Shake Shack, SSE holdings or any of SSE Holdings' subsidiaries, taken as a whole
- initiating any liquidation, dissolution, bankruptcy or other insolvency proceeding involving Shake Shack, SSE Holdings or any of their respective subsidiaries;
- terminating the employment of our Chief Executive Officer or hiring a new Chief Executive Officer;
- any authorization or issuance of equity securities of Shake Shack or its subsidiaries other than (i) pursuant to any equity incentive plans or arrangements approved by our Board of Directors or (ii) upon an exchange of shares of Class B Common Stock together with SSE Holdings Units for Shares of Class A Common Stock;
- increasing or decreasing the size of our board of directors; and
- any amendment or amendments to the organizational documents of Shake Shack or SSE Holdings.

Registration Rights Agreement

We intend to enter into a Registration Rights Agreement with the Original SSE Equity Owners in connection with this offering. The Registration Rights Agreement will provide the Original SSE Equity Owners certain registration rights whereby, at any time following our initial public offering and the expiration of any related lock-up period, the Continuing SSE Equity Owners can require us to register under the Securities Act shares of Class A common stock issuable to them, at our election, upon redemption or exchange of their LLC Interests and the Former SSE Equity Owners can require us to register under the Securities Act the shares of Class A common stock issued to them in connection with the Transactions. The Registration Rights Agreement will also provide for piggyback registration rights for the Original SSE Equity Owners.

Indemnification Agreements

Our bylaws, as will be in effect prior to the closing of this offering, provide that we will indemnify our directors and officers to the fullest extent permitted by the DGCL, subject to certain exceptions contained in our bylaws. In addition, our certificate of incorporation, as will be in effect prior to the

closing of this offering, will provide that our directors will not be liable for monetary damages for breach of fiduciary duty.

Prior to the closing of this offering, we will enter into indemnification agreements with each of our executive officers and directors. The indemnification agreements will provide the executive officers and directors with contractual rights to indemnification, and expense advancement and reimbursement, to the fullest extent permitted under the DGCL, subject to certain exceptions contained in those agreements.

There is no pending litigation or proceeding naming any of our directors or officers to which indemnification is being sought, and we are not aware of any pending litigation that may result in claims for indemnification by any director or officer.

Policies and Procedures for Related Person Transactions

Our board of directors recognizes the fact that transactions with related persons present a heightened risk of conflicts of interests and/or improper valuation (or the perception thereof). Prior to the closing of this offering, our board of directors will adopt a written policy on transactions with related persons that is in conformity with the requirements for issuers having publicly-held common stock that is listed on the New York Stock Exchange. Under the new policy:

- any related person transaction, and any material amendment or modification to a related person transaction, must be reviewed and approved or ratified by a committee of the board of directors composed solely of independent directors who are disinterested or by the disinterested members of the board of directors; and
- any employment relationship or transaction involving an executive officer and any related compensation must be approved by the compensation committee of the board of directors or recommended by the compensation committee to the board of directors for its approval.

In connection with the review and approval or ratification of a related person transaction:

- management must disclose to the committee or disinterested directors, as applicable, the name of the related person and the basis on which the person is a related person, the material terms of the related person transaction, including the approximate dollar value of the amount involved in the transaction, and all the material facts as to the related person's direct or indirect interest in, or relationship to, the related person transaction;
- management must advise the committee or disinterested directors, as applicable, as to whether the related person transaction complies with the terms of our agreements governing our material outstanding indebtedness that limit or restrict our ability to enter into a related person transaction;
- management must advise the committee or disinterested directors, as applicable, as to whether the related person transaction will be required to be disclosed in our applicable filings under the Securities Act or the Exchange Act, and related rules, and, to the extent required to be disclosed, management must ensure that the related person transaction is disclosed in accordance with such Acts and related rules; and
- management must advise the committee or disinterested directors, as applicable, as to whether the related person transaction constitutes a "personal loan" for purposes of Section 402 of the Sarbanes-Oxley Act.

In addition, the related person transaction policy provides that the committee or disinterested directors, as applicable, in connection with any approval or ratification of a related person transaction involving a non-employee director or director nominee, should consider whether such transaction would compromise the director or director nominee's status as an "independent," "outside," or "non-employee" director, as applicable, under the rules and regulations of the SEC, the New York Stock Exchange and the Code.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our Class A common stock and Class B common stock, after the consummation of the Transactions, including this offering, for:

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

As described in "The Transactions" and "Certain Relationships and Related Party Transactions," each Continuing SSE Equity Owner will be entitled to have their LLC Interests redeemed for Class A common stock on a one-for-one basis, or, at the option of Shake Shack, cash equal to the market value of the applicable number of our shares of Class A common stock. In addition, at Shake Shack's election, Shake Shack may effect a direct exchange of such Class A common stock or such cash for such LLC Interests. In connection with this offering, we will issue to each Continuing SSE Equity Owner for nominal consideration one share of Class B common stock for each LLC Interest it owns. As a result, the number of shares of Class B common stock listed in the table below correlates to the number of LLC Interests each such Continuing SSE Equity Owner will own immediately after this offering. See "The Transactions." Although the number of shares being offered hereby to the public and the total number of shares outstanding after the offering will remain fixed regardless of the initial public offering price in this offering, the shares of common stock held by the beneficial owners set forth in the table below after the consummation of the Transactions will vary, depending on the initial public offering price in this offering. The table below assumes the shares of Class A common stock are offered at \$15.00 per share (the midpoint of the price range listed on the cover page of this prospectus). See "The Offering."

The number of shares beneficially owned by each stockholder is determined under rules issued by the Securities and Exchange Commission and includes voting or investment power with respect to securities. Under these rules, beneficial ownership includes any shares as to which the individual or entity has sole or shared voting power or investment power. In computing the number of shares beneficially owned by an individual or entity and the percentage ownership of that person, shares of common stock subject to options, or other rights, including the redemption right described above, held by such person that are currently exercisable or will become exercisable within 60 days of the date of this prospectus, are considered outstanding, although these shares are not considered outstanding for purposes of computing the percentage ownership of any other person. Unless otherwise indicated, the address of all listed stockholders is c/o Shake Shack Inc.; 24 Union Square East, 5th Floor; New York, NY 10003. Each of the stockholders listed has sole voting and investment power with respect to the

shares beneficially owned by the stockholder unless noted otherwise, subject to community property laws where applicable.

Name of beneficial owner	Shares of Class A Common Stock Beneficially Owned		Shares of Class B Common Stock Beneficially Owned		Total Common Stock Beneficially Owned†
	Number	Percentage	Number	Percentage	Percentage
5% Stockholders					
Green Equity Investors VI, L.P., Green Equity Investors Side VI, L.P., and LGP Malted Coinvest LLC(1)(2)	3,444,774	30.7%	5,818,284	24.0%	26.1%
Daniel Meyer(2)	—	—	7,571,504	31.2%	21.3%
SEG Partners, L.P., SEG Partners II, L.P. and SEG Partners Offshore Master Fund, Ltd.(2) (3)	2,473,643	22.0%	1,903,175	7.8%	12.3%
ACG Shack LLC(2)(4)	—	—	2,168,946	8.9%	6.1%
Jeff Flug(2)	—	—	1,625,988	6.7%	4.6%
Named Executive Officers and Directors					
Randy Garutti	—	—	942,137	3.9%	2.7%
Jeff Uttz	—	—	156,571	0.6%	0.4%
Peggy Rubenzer(5)	21,832	*%	—	*%	*%
Evan Guillemin	—	—	—	—	—
Jenna Lyons	—	—	—	—	—
Jonathan D. Sokoloff(1)	3,444,774	30.7%	5,818,284	24.0%	26.1%
Robert Vivian	—	—	—	—	—
All directors, director designees and executive officers as a group (nine persons)	3,466,606	30.9%	16,114,484	66.4%	55.4%

† Assumes no exercise by the underwriters of their option to purchase additional shares of Class A common stock.

* Represents beneficial ownership of less than 1%.

- (1) Voting and investment power with respect to the shares of our common stock held by Green Equity Investors VI, L.P. and Green Equity Investors Side VI, L.P. (collectively, the "Green Funds") and LGP Malted Coinvest LLC ("Malted"), may be deemed to be shared by certain affiliated entities. GEI Capital VI, LLC ("GEIC"), is the general partner of the Green Funds. Green VI Holdings, LLC ("Holdings") is a limited partner of the Green Funds. Leonard Green & Partners, L.P. ("LGP") is the management company of the Green Funds and Holdings. Peridot LLC ("Peridot"), an affiliate of LGP, is the Manager of Malted. Each of the Green Funds, Holdings, Malted, LGP, and Peridot disclaims such shared beneficial ownership of our common stock. Jonathan D. Sokoloff may also be deemed to share voting and investment power with respect to such shares due to his position with LGP and Peridot, and he disclaims beneficial ownership of such shares. Each of Messrs. John G. Danhaki, Peter J. Nolan, Jonathan D. Sokoloff, Jonathan A. Seiffer, John M. Baumer, Timothy J. Flynn, James D. Halper, Todd M. Purdy, Michael S. Solomon, and W. Christian McCollum either directly (whether through ownership interest or position) or indirectly, through one or more intermediaries, may be deemed to control GEIC, LGP and Peridot. As such, these individuals may be deemed to have shared voting and investment power with respect to all shares beneficially owned by Green Funds, Holdings, Malted, LGP, and Peridot. These individuals each disclaim beneficial ownership of the securities held by Green Funds, Holdings, Malted, LGP, and Peridot. Each of the foregoing individual's address is c/o Leonard Green & Partners, L.P., 11111 Santa Monica Boulevard, Suite 2000, Los Angeles, California 90025.
- (2) As discussed in "Certain Relationships and Related Party Transactions—Stockholders Agreement," prior to the closing of this offering, the members of the Voting Group intend to enter into a Stockholders Agreement with us, pursuant to which the Voting Group will agree to vote their shares of Class A common stock and Class B common stock in favor of the election of the nominees of certain members of the Voting Group to our board of directors upon their nomination by the nominating and corporate governance committee of our board of directors.

- (3) Select Equity Group, L.P. ("Select Equity"), a limited partnership controlled by George S. Loening, has the power to vote or direct the vote of, and dispose or direct the disposition of, the shares beneficially owned by SEG Partners L.P., SEG Partners II, L.P. and SEG Partners Offshore Master Fund, Ltd. Select Equity is an investment adviser and possesses sole power to vote or direct the vote of, and dispose or direct the disposition of, 4,376,818 shares. George S. Loening is a control person and possesses sole power to vote or direct the vote of, and dispose or direct the disposition of, 4,376,818 shares. The address for Select Equity is Select Equity Group, L.P., 380 Lafayette Street New York, New York 10003.
- (4) ACG Shack LLC is managed by Alliance Consumer Growth LLC, the investment manager for Alliance Consumer Growth Fund, LP. Each of Josh Goldin, Julian Steinberg and Trevor Nelson may be deemed to control Alliance Consumer Growth LLC. As such, these individuals may be deemed to have shared voting and investment power with respect to all shares beneficially owned by ACG Shack LLC. The address for each of ACG Shake Shack LLC, Alliance Consumer Growth LLC and Alliance Consumer Growth Fund, LP. is c/o Alliance Consumer Growth LLC 655 Madison Avenue, 20th Floor New York, New York 10065.
- (5) Ms. Rubenzer currently holds 1,501 unit appreciation rights which are expected to be settled in exchange for 21,832 shares of Class A common stock within 10 days following the offering.

DESCRIPTION OF CAPITAL STOCK

The following descriptions of our capital stock and provisions of our amended and restated certificate of incorporation, and our bylaws, each of which will be in effect prior to the completion of this offering, are summaries and are qualified by reference to the amended and restated certificate of incorporation and the bylaws, which are filed as exhibits to the registration statement of which this prospectus forms a part.

Our current authorized capital stock consists of 100 shares of Common Stock, par value \$0.01 per share. As of the consummation of this offering, our authorized capital stock will consist of 200,000,000 shares of Class A common stock, par value \$0.01 per share, 35,000,000 shares of Class B common stock, par value \$0.01 per share, and 10,000,000 shares of blank check preferred stock.

Common Stock

Upon consummation of this offering, there will be 11,230,208 shares of our Class A common stock issued and outstanding and 24,269,792 shares of our Class B common stock issued and outstanding.

Class A Common Stock

Voting Rights

Holders of our Class A common stock will be entitled to cast one vote per share. Holders of our Class A common stock will not be entitled to cumulate their votes in the election of directors. Generally, all matters to be voted on by stockholders must be approved by a majority (or, in the case of election of directors, by a plurality) of the votes entitled to be cast by all stockholders present in person or represented by proxy, voting together as a single class. Except as otherwise provided by law, amendments to the amended and restated certificate of incorporation must be approved by a majority or, in some cases, a super-majority of the combined voting power of all shares entitled to vote, voting together as a single class.

Dividend Rights

Holders of Class A common stock will share ratably (based on the number of shares of Class A common stock held) if and when any dividend is declared by the board of directors out of funds legally available therefor, subject to any statutory or contractual restrictions on the payment of dividends and to any restrictions on the payment of dividends imposed by the terms of any outstanding preferred stock.

Liquidation Rights

On our liquidation, dissolution or winding up, each holder of Class A common stock will be entitled to a pro rata distribution of any assets available for distribution to common stockholders.

Other Matters

No shares of Class A common stock will be subject to redemption or have preemptive rights to purchase additional shares of Class A common stock. Holders of shares of our Class A common stock do not have subscription, redemption or conversion rights. There will be no redemption or sinking fund provisions applicable to the Class A common stock. Upon consummation of this offering, all the outstanding shares of Class A common stock will be validly issued, fully paid and non-assessable.

Class B Common Stock

Issuance of Class B common stock with LLC Interests

Shares of Class B common stock will only be issued in the future to the extent necessary to maintain a one-to-one ratio between the number of LLC Interests held by Continuing SSE Equity Owners and the number of shares of Class B common stock issued to Continuing SSE Equity Owners. Shares of Class B common stock are transferable only together with an equal number of LLC Interests. Shares of Class B common stock will be cancelled on a one-for-one basis if we, at the election of a Continuing SSE Equity Owner, redeem or exchange LLC Interests of such Continuing SSE Equity Owners pursuant to the terms of the SSE Holdings LLC Agreement.

Voting Rights

Holders of Class B common stock will be entitled to cast one vote per share, with the number of shares of Class B common stock held by each Continuing SSE Equity Owner being equivalent to the number of LLC Interests held by such Continuing SSE Equity Owner. Holders of our Class B common stock will not be entitled to cumulate their votes in the election of directors.

Generally, all matters to be voted on by stockholders must be approved by a majority (or, in the case of election of directors, by a plurality) of the votes entitled to be cast by all stockholders present in person or represented by proxy, voting together as a single class. Except as otherwise provided by law, amendments to the amended and restated certificate of incorporation must be approved by a majority or, in some cases, a super-majority of the combined voting power of all shares entitled to vote, voting together as a single class.

Dividend Rights

Holders of our Class B common stock will not participate in any dividend declared by the board of directors.

Liquidation Rights

On our liquidation, dissolution or winding up, holders of Class B common stock will not be entitled to receive any distribution of our assets.

Transfers

Pursuant to our amended and restated certificate of incorporation and the SSE Holdings LLC Agreement, each holder of Class B common stock agrees that:

- the holder will not transfer any shares of Class B common stock to any person unless the holder transfers an equal number of LLC Interests to the same person; and
- in the event the holder transfers any LLC Interests to any person, the holder will transfer an equal number of shares of Class B common stock to the same person.

Other Matters

No shares of Class B common stock will be subject to redemption rights or have preemptive rights to purchase additional shares of Class B common stock. Holders of shares of our Class B common stock do not have subscription, redemption or conversion rights. There will be no redemption or sinking fund provisions applicable to the Class B common stock. Upon consummation of this offering, all outstanding shares of Class B common stock will be validly issued, fully paid and non-assessable.

Preferred Stock

Our amended and restated certificate of incorporation provides that our board of directors has the authority, without action by the stockholders, to designate and issue up to 10,000,000 shares of preferred stock in one or more classes or series and to fix the powers, rights, preferences, and privileges of each class or series of preferred stock, including dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences and the number of shares constituting any class or series, which may be greater than the rights of the holders of the common stock. There will be no shares of preferred stock outstanding immediately after this offering.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or could discourage a third party from seeking to acquire, a majority of our outstanding voting stock. Additionally, the issuance of preferred stock may adversely affect the holders of our Class A common stock by restricting dividends on the Class A common stock, diluting the voting power of the Class A common stock or subordinating the liquidation rights of the Class A common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of our Class A common stock.

Exclusive Venue

Our amended and restated certificate of incorporation, as it will be in effect upon the closing of this offering, will require, 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.

Anti-takeover Effects of Provisions of our Amended and Restated Certificate of Incorporation, our Bylaws and Delaware Law

Our certificate of incorporation and bylaws, as they will be in effect upon completion of this offering, also contain provisions that may delay, defer or discourage another party from acquiring control of us. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give our board of directors the power to discourage acquisitions that some stockholders may favor.

Classified Board of Directors

Our amended and restated certificate of incorporation will provide that our board of directors will be divided into three classes, with the classes as nearly equal in number as possible and each class serving three-year staggered terms. Pursuant to the terms of the Stockholders Agreement, directors designated by the Meyer Group, LGP or SEG may only be removed with or without cause by the request of the party entitled to designate such director. In all other cases and at any other time, directors may only be removed from our board of directors for cause by the affirmative vote of at least

a majority of the confirmed voting power of our Class A and Class B common stock. See "Management—Corporate Governance—Composition of our Board of Directors." These provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control of us or our management.

Authorized but Unissued Shares

The authorized but unissued shares of common stock and preferred stock are available for future issuance without stockholder approval, subject to any limitations imposed by the listing standards of the New York Stock Exchange. These additional shares may be used for a variety of corporate finance transactions, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could make more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

Requirements for Advance Notification of Stockholder Meetings, Nominations and Proposals

Our amended and restated certificate of incorporation will provide that stockholders at an annual meeting may only consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of our board of directors or by a qualified stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has delivered timely written notice in proper form to our secretary of the stockholder's intention to bring such business before the meeting. Our amended and restated certificate of incorporation will provide that, subject to applicable law, special meetings of the stockholders may be called only by a resolution adopted by the affirmative vote of the majority of the directors then in office. Our bylaws will prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting. In addition, any stockholder who wishes to bring business before an annual meeting or nominate directors must comply with the advance notice and duration of ownership requirements set forth in our bylaws and provide us with certain information. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers or changes in control of us or our management.

Stockholder Action by Written Consent

Pursuant to Section 228 of the DGCL, any action required to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of our stock entitled to vote thereon were present and voted, unless our amended and restated certificate of incorporation provides otherwise. Our amended and restated certificate of incorporation will provide that stockholder action by written consent will be permitted only if the action to be effected by such written consent and the taking of such action by such written consent have been previously approved by the board of directors.

Amendment of Amended and Restated Certificate of Incorporation or Bylaws

The DGCL provides generally that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. Upon completion of this offering, our bylaws may be amended or repealed by a majority vote of our board of directors or by the affirmative vote of the holders of at least $66\frac{2}{3}\%$ of the votes which all our stockholders would be entitled to cast in any annual election of directors. In addition, the affirmative vote of the holders of at least $66\frac{2}{3}\%$ of the votes which all our stockholders would be entitled to cast in any election of directors will be required to amend or repeal or to adopt any provisions inconsistent with any of the provisions of our certificate described above.

The foregoing provisions of our amended and restated certificate of incorporation and bylaws could discourage potential acquisition proposals and could delay or prevent a change in control. These provisions are intended to enhance the likelihood of continuity and stability in the composition of our board of directors and in the policies formulated by our board of directors and to discourage certain types of transactions that may involve an actual or threatened change of control. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares of Class A common stock that could result from actual or rumored takeover attempts. Such provisions also may have the effect of preventing changes in our management or delaying or preventing a transaction that might benefit you or other minority stockholders.

In addition, we are subject to Section 203 of the DGCL. Subject to certain exceptions, Section 203 prevents a publicly held Delaware corporation from engaging in a "business combination" with any "interested stockholder" for three years following the date that the person became an interested stockholder, unless the interested stockholder attained such status with the approval of our board of directors or unless the business combination is approved in a prescribed manner. A "business combination" includes, among other things, a merger or consolidation involving us and the "interested stockholder" and the sale of more than 10% of our assets. In general, an "interested stockholder" is any entity or person beneficially owning 15% or more of our outstanding voting stock and any entity or person affiliated with or controlling or controlled by such entity or person.

Limitations on Liability and Indemnification of Officers and Directors

Our amended and restated certificate of incorporation and bylaws provide indemnification for our directors and officers to the fullest extent permitted by the DGCL. Prior to the completion of this offering, we intend to enter into indemnification agreements with each of our directors that may, in some cases, be broader than the specific indemnification provisions contained under Delaware law. In addition, as permitted by Delaware law, our amended and restated certificate of incorporation includes provisions that eliminate the personal liability of our directors for monetary damages resulting from breaches of certain fiduciary duties as a director. The effect of this provision is to restrict our rights and the rights of our stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director, except that a director will be personally liable for:

- any breach of his duty of loyalty to us or our stockholders;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- any transaction from which the director derived an improper personal benefit; or
- improper distributions to stockholders.

These provisions may be held not to be enforceable for violations of the federal securities laws of the United States.

Corporate Opportunities

In recognition that partners, principals, directors, officers, members, managers and/or employees of the Original SSE Equity Owners and their affiliates and investment funds, which we refer to as the Corporate Opportunity Entities, may serve as our directors and/or officers, and that the Corporate Opportunity Entities may engage in activities or lines of business similar to those in which we engage, our amended and restated certificate of incorporation provides for the allocation of certain corporate opportunities between us and the Corporate Opportunity Entities. Specifically, none of the Corporate Opportunity Entities has any duty to refrain from engaging, directly or indirectly, in the same or similar

business activities or lines of business that we do. In the event that any Corporate Opportunity Entity acquires knowledge of a potential transaction or matter which may be a corporate opportunity for itself and us, we will not have any expectancy in such corporate opportunity, and the Corporate Opportunity Entity will not have any duty to communicate or offer such corporate opportunity to us and may pursue or acquire such corporate opportunity for itself or direct such opportunity to another person. In addition, if a director of our Company who is also a partner, principal, director, officer, member, manager or employee of any Corporate Opportunity Entity acquires knowledge of a potential transaction or matter which may be a corporate opportunity for us and a Corporate Opportunity Entity, we will not have any expectancy in such corporate opportunity. In the event that any other director of ours acquires knowledge of a potential transaction or matter which may be a corporate opportunity for us we will not have any expectancy in such corporate opportunity unless such potential transaction or matter was presented to such director expressly in his or her capacity as such.

By becoming a stockholder in our Company, you will be deemed to have notice of and consented to these provisions of our amended and restated certificate of incorporation. Any amendment to the foregoing provisions of our amended and restated certificate of incorporation requires the affirmative vote of at least 66 ² / 3 % of the votes which all our stockholders would be entitled to cast in any annual election of directors.

Dissenters' Rights of Appraisal and Payment

Under the DGCL, with certain exceptions, our stockholders will have appraisal rights in connection with a merger or consolidation of Shake Shack. Pursuant to the DGCL, stockholders who properly request and perfect appraisal rights in connection with such merger or consolidation will have the right to receive payment of the fair value of their shares as determined by the Delaware Court of Chancery.

Stockholders' Derivative Actions

Under the Delaware General Corporation Law, any of our stockholders may bring an action in our name to procure a judgment in our favor, also known as a derivative action, provided that the stockholder bringing the action is a holder of our shares at the time of the transaction to which the action relates or such stockholder's stock thereafter devolved by operation of law and such suit is brought in the Court of Chancery in the State of Delaware. See "—Exclusive Venue" above.

Stockholders Agreement

In connection with this offering, the Company will enter into the Stockholders Agreement with the Voting Group pursuant to which the Voting Group will have specified board representation rights, governance rights and other rights. See "Certain Relationships and Related Party Transactions—Stockholders Agreement."

Registration Rights Agreement

In connection with this offering, the Company will enter into the Registration Rights Agreement with the Original SSE Equity Owners pursuant to which the Original SSE Equity Owners will have specified rights to require the Company to register all or any portion of their shares under the Securities Act. See "Certain Relationships and Related Party Transactions—Registration Rights Agreement."

Transfer Agent and Registrar

The transfer agent and registrar for our Class A common stock will be American Stock Transfer & Trust Company, LLC.

The New York Stock Exchange

We have applied to have our Class A common stock listed on the New York Stock Exchange under the symbol "SHAK."

DESCRIPTION OF INDEBTEDNESS

Revolving Credit Facility

On December 30, 2013, SSE Holdings entered into a second amended and restated credit agreement with JPMorgan Chase Bank, NA as administrative agent and the lenders party thereto, which became effective in April 2014 (such date, the "Effective Date") and was subsequently amended on December 28, 2014 (the "Revolving Credit Facility").

The Revolving Credit Facility provides for a revolving total commitment of \$50.0 million and bears interest, at our option, at either the prime rate or LIBOR plus, in each case, an applicable margin determined according to a grid based on a net funded debt to Adjusted EBITDA ratio. The Revolving Credit Facility will mature and all amounts outstanding will be due and payable five years from the Effective Date. The Revolving Credit Facility permits the issuance of letters of credit upon our request of up to \$10.0 million. As of September 24, 2014, we had \$5.0 million of borrowings outstanding under the Revolving Credit Facility and \$24.9 million of availability, after giving effect to \$0.1 million in letters of credit outstanding. The December 28, 2014 amendment increased the revolving total commitment amount to \$50.0 million.

The Revolving Credit Facility is secured by a first-priority security interest in substantially all of the assets of SSE Holdings and the guarantors (excluding stock in foreign subsidiaries in excess of 65% and assets of non-guarantors and subject to certain other exceptions). Obligations under the Revolving Credit Facility are guaranteed by USHG and each of SSE Holdings' wholly-owned domestic subsidiaries.

The Revolving Credit Facility contains a number of covenants that, among other things, restrict SSE Holdings' ability to, subject to specified exceptions, incur additional debt; incur additional liens and contingent liabilities; sell or dispose of assets; merge with or acquire other companies; liquidate or dissolve itself, engage in businesses that are not in a related line of business; make loans, advances or guarantees; pay dividends or make other distributions (with an exception so long as no event of default (as such term is defined in the Revolving Credit Facility) exists and subject to pro forma compliance with a funded net debt to Adjusted EBITDA ratio); engage in transactions with affiliates; and make investments. In addition, the Revolving Credit Facility contains certain cross-default provisions. SSE Holdings is required to maintain a specified consolidated fixed-charge coverage ratio and a specified funded net debt to Adjusted EBITDA ratio. As of September 24, 2014, SSE Holdings was in compliance with all covenants and no event of default (as such term is defined in the Revolving Credit Facility) had occurred.

Events of default under the Revolving Credit Facility include, but are not limited to: (i) nonpayment of principal, interest, fees or other amounts, including a mandatory prepayment of at least \$15.0 million by April 30, 2015; (ii) failure to perform or observe covenants; (iii) cross-defaults to certain material indebtedness; (iv) bankruptcy or insolvency of borrowers, guarantors or subsidiaries; (v) inability of the borrowers, guarantors, or their material subsidiaries to pay debts; (vi) certain monetary judgments against borrowers, guarantors or their material subsidiaries and material non-monetary judgments; and (vii) any change of control occurrence.

New Credit Facility

In connection with this offering, we anticipate that SSE Holdings will enter into an amendment to the Revolving Credit Facility, which we refer to as the "New Credit Facility." We are still in preliminary discussions with potential arrangers and lenders with respect to the terms of the New Credit Facility. The actual terms of the New Credit Facility will depend on the results of negotiations with lenders. We expect that affiliates of J.P. Morgan Securities LLC will, and affiliates of certain of the other underwriters may, participate as arrangers and/or lenders under the New Credit Facility.

The New Credit Facility is expected to provide for a revolving line of credit of \$20.0 million. The New Credit Facility is expected to allow for incremental commitments not to exceed \$30.0 million, which may be obtained with the consent of the lenders. We anticipate that borrowings under the New Credit Facility will bear interest, at our option, at either the prime rate or LIBOR plus, in each case, an applicable margin determined according to a grid based on a net funded debt to Adjusted EBITDA ratio. We anticipate that the New Credit Facility will mature and all amounts outstanding will be due and payable five years from the effective date of the New Credit Facility (the "New Credit Facility Effective Date"). We anticipate that the New Credit Facility will permit the issuance of letters of credit upon our request of up to \$10.0 million.

The New Credit Facility will be secured by a first-priority security interest in substantially all of the assets of SSE Holdings and the guarantors (excluding stock in foreign subsidiaries in excess of 65% and assets of non-guarantors and subject to certain other exceptions). It is anticipated that obligations under the New Credit Facility will be guaranteed by each of SSE Holdings' wholly-owned domestic subsidiaries (with certain exceptions).

We expect that the New Credit Facility will contain a number of covenants that, among other things, restrict SSE Holdings' ability to, subject to specified exceptions, incur additional debt; incur additional liens and contingent liabilities; sell or dispose of assets; merge with or acquire other companies; liquidate or dissolve itself, engage in businesses that are not in a related line of business; make loans, advances or guarantees; pay dividends or make other distributions (with certain exceptions, including tax distributions and repurchases of management equity); engage in transactions with affiliates; and make investments. In addition, the New Credit Facility will contain certain cross-default provisions. We anticipate that SSE Holdings will be required to maintain a specified consolidated fixed-charge coverage ratio and a specified funded net debt to Adjusted EBITDA ratio.

We expect that events of default under the New Credit Facility will include, but not be limited to: (i) nonpayment of principal, interest, fees or other amounts; (ii) failure to perform or observe covenants; (iii) cross-defaults to certain material indebtedness; (iv) bankruptcy or insolvency of borrowers, guarantors or subsidiaries; (v) inability of the borrowers, guarantors, or their material subsidiaries to pay debts; (vi) certain monetary judgments against borrowers, guarantors or their material subsidiaries and material non-monetary judgments; and (vii) any change of control occurrence.

SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to this offering, there was no public market for our Class A common stock. Future sales of substantial amounts of Class A common stock in the public market (including shares of Class A common stock issuable upon redemption or exchange of LLC Interests), or the perception that such sales may occur, could adversely affect the market price of our Class A common stock. Although we have applied to have our Class A common stock listed on the New York Stock Exchange, we cannot assure you that there will be an active public market for our Class A common stock.

Upon the closing of this offering, we will have outstanding an aggregate of 11,230,208 shares of Class A common stock, assuming the issuance of 5,000,000 shares of Class A common stock offered by us in this offering and the issuance of 6,230,208 shares of Class A common stock to the Former SSE Equity Owners and the Former UAR Plan Participants in the Transactions. Of these shares, all shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any shares purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act, whose sales would be subject to the Rule 144 resale restrictions described below, other than the holding period requirement.

The remaining 6,230,208 shares of Class A common stock (or 30,500,000 shares of Class A common stock, including 24,269,792 shares of Class A common stock issuable upon redemption or exchange of LLC Interests) will be "restricted securities," as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rules 144 or 701 under the Securities Act, which are summarized below.

Lock-Up Agreements

We and each of our directors, executive officers and holders of substantially all of our outstanding common stock (including securities convertible into or exchangeable or exercisable for shares of our common stock), have agreed that, without the prior written consent of J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC on behalf of the underwriters, we and they will not, subject to limited exceptions, during the period ending 180 days after the date of this prospectus, subject to extension in specified circumstances:

- offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, or, in the case of the Company, file with the SEC a registration statement under the Securities Act relating to, any shares of our common stock or any securities convertible into or exercisable or exchangeable for shares of common stock;
- enter into any swap or other arrangement that transfers to another, all or a portion of the economic consequences of ownership of our common stock or any securities convertible into or exercisable or exchangeable for shares of common stock; or
- in the case of our directors, executive officers and holders of substantially all of our common stock (including securities convertible into or exchangeable or exercisable for our common stock), make any demand for or exercise any right with respect to the registration of any shares of our common stock or any security convertible into or exercisable or exchangeable for our common stock,

whether any transaction described above is to be settled by delivery of our Class A common stock or such other securities, in cash or otherwise.

Upon the expiration of the applicable lock-up periods, substantially all of the shares subject to such lock-up restrictions will become eligible for sale, subject to the limitations discussed above.

Rule 144

Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is an affiliate of ours, or who was an affiliate at any time during the 90 days before a sale, who has beneficially owned shares of our Class A common stock for at least six months would be entitled to sell in "broker's transactions" or certain "riskless principal transactions" or to market makers, a number of shares within any three-month period that does not exceed the greater of:

- 1% of the number of shares of our Class A common stock then outstanding, which will equal approximately 112,302 shares immediately after this offering; or
- the average weekly trading volume in our Class A common stock on the New York Stock Exchange during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Affiliate resales under Rule 144 are also subject to the availability of current public information about us. In addition, if the number of shares being sold under Rule 144 by an affiliate during any three-month period exceeds 5,000 shares or has an aggregate sale price in excess of \$50,000, the seller must file a notice on Form 144 with the Securities and Exchange Commission and the New York Stock Exchange concurrently with either the placing of a sale order with the broker or the execution directly with a market maker.

Non-Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is not an affiliate of ours at the time of sale, and has not been an affiliate at any time during the 90 days preceding a sale, and who has beneficially owned shares of our Class A common stock for at least six months but less than a year, is entitled to sell such shares subject only to the availability of current public information about us. If such person has held our shares for at least one year, such person can resell under Rule 144(b)(1) without regard to any Rule 144 restrictions, including the 90-day public company requirement and the current public information requirement.

Non-affiliate resales are not subject to the manner of sale, volume limitation or notice filing provisions of Rule 144.

Rule 701

In general, under Rule 701, any of an issuer's employees, directors, officers, consultants or advisors who purchases shares from the issuer in connection with a compensatory stock or option plan or other written agreement before the effective date of a registration statement under the Securities Act is entitled to sell such shares 90 days after such effective date in reliance on Rule 144. An affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirement, and non-affiliates of the issuer can resell shares in reliance on Rule 144 without having to comply with the current public information and holding period requirements.

The Securities and Exchange Commission has indicated that Rule 701 will apply to typical stock options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, along with the shares acquired upon exercise of such options, including exercises after an issuer becomes subject to the reporting requirements of the Exchange Act.

Equity Plans

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of Class A common stock (i) subject to outstanding stock options granted in connection with this offering, (ii) issued or issuable under our stock plans and (iii) issued to the Former UAR Plan Participants. We expect to file the registration statement covering shares offered pursuant to our stock plans shortly after the date of this prospectus, permitting the resale of such shares by nonaffiliates in the public market without restriction under the Securities Act and the sale by affiliates in the public market subject to compliance with the resale provisions of Rule 144.

Registration Rights

Upon the closing of this offering, the holders of 5,918,417 shares of Class A common stock or 30,188,209 shares of Class A common stock, including 24,269,792 shares of Class A common stock issuable upon redemption or exchange of LLC Interests, or their transferees will be entitled to various rights with respect to the registration of these shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares becoming fully tradable without restriction under the Securities Act immediately upon the effectiveness of the registration. See "Certain Relationships and Related Party Transactions—Registration Rights Agreement" for additional information. Shares covered by a registration statement will be eligible for sale in the public market upon the expiration or release from the terms of the lock-up agreement.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS OF CLASS A COMMON STOCK

The following discussion is a summary of the material U.S. federal income tax consequences to Non-U.S. Holders (as defined below) of the purchase, ownership and disposition of our Class A common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or non-U.S. tax laws are not discussed. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service (the "IRS"), in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a Non-U.S. Holder of our Class A common stock. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the purchase, ownership and disposition of our Class A common stock.

This discussion is limited to Non-U.S. Holders that hold our Class A common stock as a "capital asset" within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a Non-U.S. Holder's particular circumstances, including the impact of the Medicare contribution tax on net investment income. In addition, it does not address consequences relevant to Non-U.S. Holders subject to special rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;
- persons subject to the alternative minimum tax;
- persons holding our Class A common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- brokers, dealers or traders in securities;
- "controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;
- partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- persons deemed to sell our Class A common stock under the constructive sale provisions of the Code;
- persons who hold or receive our Class A common stock pursuant to the exercise of any employee stock option or otherwise as compensation; and
- tax-qualified retirement plans.

If an entity treated as a partnership for U.S. federal income tax purposes holds our Class A common stock, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships holding our Class A common stock and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

THIS DISCUSSION IS NOT TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS

TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR CLASS A COMMON STOCK ARISING UNDER THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.

Definition of a Non-U.S. Holder

For purposes of this discussion, a "Non-U.S. Holder" is any beneficial owner of our Class A common stock that is neither a "U.S. person" nor an entity treated as a partnership for U.S. federal income tax purposes. A U.S. person is any person that, for U.S. federal income tax purposes, is or is treated as any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code), or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

Distributions

As described in the section entitled "Dividend Policy," we do not currently expect to make any cash distributions to holders of our Class A common stock. However, if we do make distributions of cash or property on our Class A common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts of distributions not treated as dividends for U.S. federal income tax purposes will first constitute a return of capital and be applied against and reduce a Non-U.S. Holder's adjusted tax basis in its Class A common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described below under "—Sale or Other Taxable Disposition."

Subject to the discussion below regarding effectively connected income, backup withholding and payments made to certain foreign accounts, dividends paid to a Non-U.S. Holder of our Class A common stock will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends, or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. Holder furnishes a valid IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate. A Non-U.S. Holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

If dividends paid to a Non-U.S. Holder are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such dividends are attributable), the Non-U.S. Holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. Holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that the dividends are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States. Any such

effectively connected dividends will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on its effectively connected earnings and profits for the taxable year that are attributable to such dividends, as adjusted for certain items. Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules or rates.

Sale or Other Taxable Disposition

Subject to the discussions below regarding backup withholding and payments made to certain foreign accounts, a Non-U.S. Holder will not be subject to U.S. federal income tax on any gain realized upon the sale or other taxable disposition of our Class A common stock unless:

- the gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable);
- the Non-U.S. Holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our Class A common stock constitutes a U.S. real property interest ("USRPI") by reason of our status as a U.S. real property holding corporation ("USRPHC") for U.S. federal income tax purposes.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on a portion of its effectively connected earnings and profits for the taxable year that are attributable to such gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the United States), provided the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we currently are not, and do not anticipate becoming, a USRPHC. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our USRPIs relative to the fair market value of our non-U.S. real property interests and our other business assets, there can be no assurance we currently are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a Non-U.S. Holder of our Class A common stock will not be subject to U.S. federal income tax if our Class A common stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, and such Non-U.S. Holder owned, actually or constructively, 5% or less of our Class A common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the Non-U.S. Holder's holding period.

Non-U.S. Holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

Information Reporting and Backup Withholding

Subject to the discussion below regarding payments made to certain foreign accounts, payments of dividends on our Class A common stock to a Non-U.S. Holder will not be subject to backup

withholding, provided the applicable withholding agent does not have actual knowledge or reason to know that such holder is a United States person and such holder either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any dividends on our Class A common stock paid to the Non-U.S. Holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of our Class A common stock within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such holder is a United States person, or such holder otherwise establishes an exemption. Proceeds of a disposition of our Class A common stock conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund, or a credit against a Non-U.S. Holder's U.S. federal income tax liability, provided that the required information is timely furnished to the IRS.

Additional Withholding Tax on Payments Made to Foreign Accounts

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code, the Treasury Regulations promulgated hereunder and other official guidance (commonly referred to as "FATCA") on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on, or gross proceeds from the sale or other disposition of, our Class A common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence, reporting and withholding obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence, reporting and withholding requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain "specified United States persons" or "United States-owned foreign entities" (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Accordingly, the entity through which our Class A common stock is held will affect the determination of whether such withholding is required. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules. Future Treasury Regulations or other official guidance may modify these requirements.

Under the applicable Treasury Regulations, withholding under FATCA generally applies to payments of dividends on our Class A common stock and will apply to payments of gross proceeds from the sale or other disposition of such stock on or after January 1, 2017. The FATCA withholding tax will apply to all withholdable payments without regard to whether the beneficial owner of the payment would otherwise be entitled to an exemption from imposition of withholding tax pursuant to an applicable tax treaty with the United States or U.S. domestic law. We will not pay additional amounts to holders of our Class A common stock in respect of amounts withheld.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our Class A common stock.

UNDERWRITING (CONFLICTS OF INTEREST)

We are offering the shares of Class A common stock described in this prospectus through a number of underwriters. J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC are acting as joint book-running managers of the offering and as representatives of the underwriters. We have entered into an underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to the underwriters, and each underwriter has severally and not jointly agreed to purchase, at the initial public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, the number of shares of Class A common stock listed next to its name in the following table:

<u>Name</u>	<u>Number of shares</u>
J.P. Morgan Securities LLC	
Morgan Stanley & Co. LLC	
Barclays Capital Inc.	
Goldman, Sachs & Co.	
Jefferies LLC	
William Blair & Company, L.L.C.	
Stifel, Nicolaus & Company, Incorporated	
Total	<u>5,000,000</u>

The underwriters are committed to purchase all the shares of Class A common stock offered by us if they purchase any shares. The underwriting agreement also provides that if an underwriter defaults, the purchase commitments of non-defaulting underwriters may also be increased or the offering may be terminated.

The underwriters propose to offer the shares of Class A common stock directly to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of \$ per share. After the initial public offering of the shares, the offering price and other selling terms may be changed by the underwriters.

We have agreed to indemnify the underwriters and their controlling persons against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

Option to Purchase Additional Shares

The underwriters have an option to buy up to 750,000 additional shares of Class A common stock from us. The underwriters have 30 days from the date of this prospectus to exercise this option to purchase additional shares. If any shares are purchased with this option, the underwriters will purchase shares in approximately the same proportion as shown in the table above. If any additional shares of Class A common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered.

Directed Share Program

At our request, the underwriters have reserved for sale at the initial public offering price up to 625,000 shares of our Class A common stock being offered for sale to our directors, officers, certain employees and other parties with a connection to the Company. We will offer these shares to the extent permitted under applicable regulations in the United States and in various countries. Pursuant to the underwriting agreement, the sales will be made by the representatives through a directed share program. The number of shares of common stock available for sale to the general public will be

reduced to the extent that such persons purchase such reserved shares. Any reserved shares not so purchased will be offered by the underwriters to the general public on the same basis as the other shares offered hereby. We have agreed to indemnify the representatives in connection with the directed share program, including for the failure of any participant to pay for its shares. Other than the underwriting discount described on the front cover of this prospectus, the underwriters will not be entitled to any commission with respect to shares of Class A common stock sold pursuant to the directed share program. Shares offered in the directed share program will not be subject to lock-up agreements, with the exception of the shares to be issued to directors, officers and certain existing stockholders who are already subject to lock-up agreements, as described below.

Underwriting Discounts and Expenses

The underwriting fee is equal to the public offering price per share of Class A common stock less the amount paid by the underwriters to us per share of Class A common stock. The underwriting fee is \$ per share. The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

	Without option exercise	With full option exercise
Per share	\$	\$
Total	\$	\$

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the underwriting discounts and commissions, will be approximately \$3,000,000. We have agreed to reimburse the underwriters for certain expenses, including up to an aggregate of \$60,000 in connection with the clearance of this offering with the Financial Industry Regulatory Authority, Inc. ("FINRA"). Such reimbursement is deemed to be underwriting compensation by FINRA.

The underwriters have agreed to reimburse us for certain expenses related to the offering.

Lock-up

We have agreed that we will not:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly (regardless of whether any such transaction is to be settled by the delivery of shares of our common stock or such other securities, in cash or otherwise), or file with the SEC a registration statement under the Securities Act relating to, any shares of our common stock or any securities convertible into or exercisable or exchangeable for any shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing; or
- enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences associated with the ownership of any shares of our common stock or any such other securities (regardless of whether any such transaction is to be settled by the delivery of shares of our common stock or such other securities, in cash or otherwise),

in each case without the prior written consent of J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC for a period of 180 days after the date of this prospectus, other than the shares of our Class A common stock to be sold hereunder and any shares of our Class A common stock issued upon the exercise of options granted under our equity incentive plans.

Our directors, executive officers and holders of substantially all of our common stock and securities convertible into or exchangeable or exercisable into our common stock have entered into lock-up agreements with the underwriters prior to the commencement of this offering pursuant to which each of these persons or entities, with limited exceptions, for a period of 180 days after the date of this prospectus, may not, without the prior written consent of J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly (regardless of whether any such transaction is to be settled by delivery of our common stock or such other securities, in cash or otherwise), any shares of our common stock or any securities convertible into or exercisable or exchangeable for any shares of our common stock (including, without limitation, our common stock or such other securities which may be deemed to be beneficially owned by such directors, executive officers and shareholders in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant), or publicly disclose the intention to make any offer, sale, pledge or disposition;
- enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences associated with ownership of any shares of our common stock or such other securities, regardless of whether any such transaction is to be settled by delivery of our common stock or such other securities, in cash or otherwise; or
- make any demand for, or exercise any right with respect to, the registration of any shares of our common stock or any security convertible into or exercisable or exchangeable for our common stock.

Listing

We have applied to have our Class A common stock listed on the New York Stock Exchange under the symbol "SHAK."

Price Stabilization and Short Positions

In connection with this offering, the underwriters may engage in stabilizing transactions, which involves making bids for, purchasing and selling shares of Class A common stock in the open market for the purpose of preventing or retarding a decline in the market price of the Class A common stock while this offering is in progress. These stabilizing transactions may include making short sales of the Class A common stock, which involves the sale by the underwriters of a greater number of shares of Class A common stock than they are required to purchase in this offering, and purchasing shares of Class A common stock on the open market to cover positions created by short sales. Short sales may be "covered" shorts, which are short positions in an amount not greater than the underwriters' option to purchase additional shares referred to above, or may be "naked" shorts, which are short positions in excess of that amount. The underwriters may close out any covered short position either by exercising their option to purchase additional shares, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which the underwriters may purchase shares through the option to purchase additional shares. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the Class A common stock in the open market that could adversely affect investors who purchase in this offering. To the extent that the underwriters create a naked short position, they will purchase shares in the open market to cover the position.

The underwriters have advised us that, pursuant to Regulation M of the Securities Act, they may also engage in other activities that stabilize, maintain or otherwise affect the price of the Class A common stock, including the imposition of penalty bids. This means that if the representatives of the underwriters purchase Class A common stock in the open market in stabilizing transactions or to cover short sales, the representatives can require the underwriters that sold those shares as part of this offering to repay the underwriting discount received by them.

These activities may have the effect of increasing or maintaining the market price of the Class A common stock or preventing or retarding a decline in the market price of the Class A common stock, and, as a result, the price of the Class A common stock may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time. The underwriters may carry out these transactions on the New York Stock Exchange, in the over-the-counter market or otherwise.

New Issue of Securities

Prior to this offering, there has been no public market for our Class A common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. In determining the initial public offering price, we and the representatives of the underwriters expect to consider a number of factors including:

- the information set forth in this prospectus and otherwise available to the representatives;
- our prospects for future earnings and the history and prospects for the industry in which we compete;
- an assessment of our management;
- the general condition of the securities markets at the time of this offering;
- the recent market prices of, and demand for, publicly traded common stock of generally comparable companies; and
- other factors deemed relevant by the underwriters and us.

Neither we nor the underwriters can assure investors that an active trading market will develop for our Class A common stock, or that the shares will trade in the public market at or above the initial public offering price.

A prospectus in electronic format may be made available on the websites maintained by one or more underwriters, or selling group members, if any, participating in the offering. The underwriters may agree to allocate a number of shares to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters and selling group members that may make Internet distributions on the same basis as other allocations.

Sales of shares made outside of the United States may be made by affiliates of the underwriters. The representatives have advised us that the underwriters do not intend to confirm discretionary sales in excess of 5% of the shares offered in this offering.

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves

about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Notice to Prospective Investors in the United Kingdom

This document is only being distributed to and is only directed at (i) persons who are outside the United Kingdom or (ii) to investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (iii) high net worth entities, and other persons to whom it may lawfully be communicated, falling with Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). The securities are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such securities will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

Notice to Prospective Investors in the European Economic Area

In relation to each Member State of the European Economic Area that has implemented the Prospectus Directive (each, a "Relevant Member State"), from and including the date on which the EU Prospectus Directive (as defined below) was implemented in that Relevant Member State (the "Relevant Implementation Date") an offer of securities described in this prospectus may not be made to the public in that Relevant Member State prior to the publication of a prospectus in relation to the shares that has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the EU Prospectus Directive, except that, with effect from and including the Relevant Implementation Date, an offer of securities described in this prospectus may be made to the public in that Relevant Member State at any time:

- to any legal entity that is a qualified investor as defined under the EU Prospectus Directive;
- to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the EU Prospectus Directive); or
- in any other circumstances falling within Article 3(2) of the EU Prospectus Directive, provided that no such offer of securities described in this prospectus shall result in a requirement for the publication by us of a prospectus pursuant to Article 3 of the EU Prospectus Directive.

For the purposes of this provision, the expression an "offer of securities to the public" in relation to any securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe for the securities, as the same may be varied in that Member State by any measure implementing the EU Prospectus Directive in that Member State. The expression "EU Prospectus Directive" means European Union Prospectus Directive 2003/71/EC (and any amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State) and includes any relevant implementing measure in each Relevant Member State, and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

Notice to Prospective Investors in Australia

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission ("ASIC"), in relation to the offering. This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the "Corporations Act"), and does not purport

to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the securities may only be made to persons (the "Exempt Investors") who are "sophisticated investors" (within the meaning of section 708(8) of the Corporations Act), "professional investors" (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the securities without disclosure to investors under Chapter 6D of the Corporations Act.

The securities applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring securities must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

Notice to Prospective Investors in the Dubai International Financial Centre

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The securities to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

Notice to Prospective Investors in Hong Kong

The securities have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that Ordinance; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance. No advertisement, invitation or document relating to the securities has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to securities which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the Securities and Futures Ordinance and any rules made under that Ordinance.

Notice to Prospective Investors in Switzerland

We have not and will not register with the Swiss Financial Market Supervisory Authority ("FINMA") as a foreign collective investment scheme pursuant to Article 119 of the Federal Act on

Collective Investment Scheme of 23 June 2006, as amended ("CISA"), and accordingly the securities being offered pursuant to this prospectus have not and will not be approved, and may not be licenseable, with FINMA. Therefore, the securities have not been authorized for distribution by FINMA as a foreign collective investment scheme pursuant to Article 119 CISA and the securities offered hereby may not be offered to the public (as this term is defined in Article 3 CISA) in or from Switzerland. The securities may solely be offered to "qualified investors," as this term is defined in Article 10 CISA, and in the circumstances set out in Article 3 of the Ordinance on Collective Investment Scheme of 22 November 2006, as amended ("CISO"), such that there is no public offer. Investors, however, do not benefit from protection under CISA or CISO or supervision by FINMA. This prospectus and any other materials relating to the securities are strictly personal and confidential to each offeree and do not constitute an offer to any other person. This prospectus may only be used by those qualified investors to whom it has been handed out in connection with the offer described herein and may neither directly or indirectly be distributed or made available to any person or entity other than its recipients. It may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in Switzerland or from Switzerland. This prospectus does not constitute an issue prospectus as that term is understood pursuant to Article 652a and/or 1156 of the Swiss Federal Code of Obligations. We have not applied for a listing of the securities on the SIX Swiss Exchange or any other regulated securities market in Switzerland, and consequently, the information presented in this prospectus does not necessarily comply with the information standards set out in the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore, or the SFA, (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the shares under Section 275 except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law.

Notice to Prospective Investors in Japan

No registration pursuant to Article 4, paragraph 1 of the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948, as amended) (the "FIEL") has been made or will be made with respect to the solicitation of the application for the acquisition of the shares of common stock.

Accordingly, the shares of common stock have not been, directly or indirectly, offered or sold and will not be, directly or indirectly, offered or sold in Japan or to, or for the benefit of, any resident of

Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan) or to others for re-offering or re-sale, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan except pursuant to an exemption from the registration requirements, and otherwise in compliance with, the FIEL and the other applicable laws and regulations of Japan.

For Qualified Institutional Investors ("QII")

Please note that the solicitation for newly-issued or secondary securities (each as described in Paragraph 2, Article 4 of the FIEL) in relation to the shares of common stock constitutes either a "QII only private placement" or a "QII only secondary distribution" (each as described in Paragraph 1, Article 23-13 of the FIEL). Disclosure regarding any such solicitation, as is otherwise prescribed in Paragraph 1, Article 4 of the FIEL, has not been made in relation to the shares of common stock. The shares of common stock may only be transferred to QIIs.

For Non-QII Investors

Please note that the solicitation for newly-issued or secondary securities (each as described in Paragraph 2, Article 4 of the FIEL) in relation to the shares of common stock constitutes either a "small number private placement" or a "small number private secondary distribution" (each as is described in Paragraph 4, Article 23-13 of the FIEL). Disclosure regarding any such solicitation, as is otherwise prescribed in Paragraph 1, Article 4 of the FIEL, has not been made in relation to the shares of common stock. The shares of common stock may only be transferred en bloc without subdivision to a single investor.

Conflicts of Interest

J.P. Morgan Securities LLC and/or certain of its affiliates are lenders under the Revolving Credit Facility. As described in "Use of Proceeds," a portion of the net proceeds from this offering will be used to repay outstanding borrowings under the Revolving Credit Facility and J.P. Morgan Securities LLC and/or certain affiliates will receive more than 5% of the net proceeds of this offering due to the repayment of borrowings under the Revolving Credit Facility. Therefore, such underwriter is deemed to have a conflict of interest within the meaning of FINRA Rule 5121. Accordingly, this offering is being conducted in accordance with Rule 5121, which requires, among other things, that a "qualified independent underwriter" participate in the preparation of, and exercise the usual standards of "due diligence" with respect to, the registration statement and this prospectus. Morgan Stanley & Co. LLC has agreed to act as a qualified independent underwriter for this offering and to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act, specifically including those inherent in Section 11 thereof. Morgan Stanley & Co. LLC will not receive any additional fees for serving as a qualified independent underwriter with this offering. We have agreed to indemnify Morgan Stanley & Co. LLC against liabilities incurred in connection with acting as a qualified independent underwriter, including liabilities under the Securities Act.

Pursuant to Rule 5121, J.P. Morgan Securities LLC will not confirm any sales to any account over which it exercises discretionary authority without the specific written approval of the account holder. See "Use of Proceeds" for additional information.

Other Relationships

The underwriters and their respective affiliates are full-service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing, and brokerage activities. Certain of the underwriters and their affiliates have provided in the past to us and

our affiliates and may provide from time to time in the future certain commercial banking, financial advisory, investment banking and other services for us and such affiliates in the ordinary course of their business, for which they have received and may continue to receive customary fees and commissions. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future. J.P. Morgan Securities LLC and/or certain of its affiliates are lenders, and act as Administrative Agent, under our Revolving Credit Facility. Affiliates of J.P. Morgan Securities LLC will, and affiliates of certain of the other underwriters may, participate as arrangers and/or lenders under the New Credit Facility.

LEGAL MATTERS

The validity of the shares of Class A common stock offered hereby will be passed upon for us by Latham & Watkins LLP, New York, New York. Fried, Frank, Harris, Shriver & Jacobson LLP, New York, New York, has acted as counsel for the underwriters in connection with certain legal matters related to this offering.

EXPERTS

The consolidated financial statements of SSE Holdings, LLC and subsidiaries at December 25, 2013 and December 26, 2012 and for the years ended December 25, 2013 and December 26, 2012 and the balance sheet of Shake Shack Inc. at September 23, 2014, appearing in this Prospectus and Registration Statement have been audited by Ernst and Young, LLP, independent registered public accounting firm, as set forth in their reports thereon appearing elsewhere herein, and are included in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 under the Securities Act with respect to the shares of Class A common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith. For further information about us and the Class A common stock offered hereby, we refer you to the registration statement and the exhibits and schedules filed thereto. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. Upon the closing of this offering, we will be required to file periodic reports, proxy statements, and other information with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934. You may read and copy this information at the Public Reference Room of the Securities and Exchange Commission, 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may obtain information on the operation of the public reference rooms by calling the Securities and Exchange Commission at 1-800-SEC-0330. The Securities and Exchange Commission also maintains an Internet website that contains reports, proxy statements and other information about registrants, like us, that file electronically with the Securities and Exchange Commission. The address of that site is www.sec.gov.

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Report of Independent Registered Public Accounting Firm

The Board of Directors and Management of
Shake Shack Inc.

We have audited the accompanying consolidated balance sheet of Shake Shack Inc. (the Company) as of September 23, 2014. The balance sheet is the responsibility of the Company's management. Our responsibility is to express an opinion on the balance sheet based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the balance sheet referred to above presents fairly, in all material respects, the consolidated financial position of Shake Shack Inc. at September 23, 2014, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

New York, New York

September 30, 2014

Shake Shack Inc.

Balance Sheets

September 23, 2014 and September 24, 2014 (unaudited)

	<u>September 23, 2014</u>	<u>September 24, 2014</u> (unaudited)
Assets	\$ —	\$ —
Commitments and Contingencies		
Stockholder's Equity		
Common Stock, par value \$0.01 per share, 100 shares authorized, none issued and outstanding	—	—
Total Stockholder's Equity	\$ —	\$ —

**Notes to Balance Sheets
(Unaudited)**

1. ORGANIZATION

Shake Shack Inc. (the "Corporation") was formed as a Delaware corporation on September 23, 2014. The Corporation was formed for the purpose of completing a public offering and related transactions in order to carry on the business of SSE Holdings, LLC. The Corporation will be the sole managing member of SSE Holdings, LLC and will operate and control all of the businesses and affairs of SSE Holdings, LLC and, through SSE Holdings, LLC and its subsidiaries, continue to conduct the business now conducted by these subsidiaries.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting —The Balance Sheets are presented in accordance with accounting principles generally accepted in the United States of America. Separate statements of operations, comprehensive income, changes in stockholder's equity, and cash flows have not been presented in the financial statements because there have been no activities in this entity.

3. STOCKHOLDER'S EQUITY

The Corporation is authorized to issue 100 shares of Common Stock, par value \$0.01 per share, none of which have been issued or are outstanding.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Members of
SSE Holdings, LLC and Subsidiaries

We have audited the accompanying consolidated balance sheets of SSE Holdings, LLC and Subsidiaries (the Company) as of December 25, 2013 and December 26, 2012, and the related consolidated statements of operations, changes in members' equity, and cash flows for the years ended December 25, 2013 and December 26, 2012. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of SSE Holdings, LLC and Subsidiaries at December 25, 2013 and December 26, 2012, and the consolidated results of its operations and its cash flows for the years ended December 25, 2013 and December 26, 2012, in conformity with U.S. generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

New York, New York
September 30, 2014

SSE Holdings, LLC and Subsidiaries

Consolidated Balance Sheets

December 25, 2013 and December 26, 2012

<u>(in thousands)</u>	<u>2013</u>	<u>2012</u>
Assets		
Current assets:		
Cash	\$ 13,076	\$ 16,033
Accounts receivable	1,527	1,553
Inventories	331	243
Prepaid expenses	273	155
Total current assets	15,207	17,984
Property and equipment, net	37,938	25,075
Deferred financing costs	209	246
Security deposits	891	624
Deferred income taxes	67	74
Other assets	907	65
Total assets	<u>\$ 55,219</u>	<u>\$ 44,068</u>
Liabilities and Members' Equity		
Current liabilities:		
Accounts payable	\$ 2,393	\$ 1,174
Accrued expenses	1,489	1,967
Accrued wages and related liabilities	1,994	1,128
Sales tax payable	399	436
Due to affiliate	300	234
Deferred revenue	630	628
Total current liabilities	7,205	5,567
Deferred revenue, net of current portion	1,575	1,725
Promissory note	313	—
Deferred compensation	2,054	—
Deferred rent	6,647	4,905
Other long term liabilities	38	—
Total liabilities	17,832	12,197
Commitments and contingencies		
Members' equity	37,387	31,871
Total liabilities and members' equity	<u>\$ 55,219</u>	<u>\$ 44,068</u>

See Notes to Consolidated Financial Statements.

SSE Holdings, LLC and Subsidiaries

Consolidated Statements of Operations

Years Ended December 25, 2013 and December 26, 2012

(in thousands)	2013	2012
Revenues		
Shack sales	\$ 78,587	\$ 55,591
Licensing revenue	3,869	1,447
Total revenue	82,456	57,038
Expenses		
Operating expenses		
Food and paper costs	23,865	16,774
Labor and related expenses	20,096	14,436
Other operating expenses	7,315	5,081
Occupancy and related expenses	6,892	5,053
General and administrative expenses	12,453	6,988
Depreciation expense	3,541	2,162
Pre-opening costs	2,334	1,858
Loss on disposal of property and equipment	25	—
Total expenses	76,521	52,352
Income from operations	5,935	4,686
Interest expense, net	52	156
Income before income taxes	5,883	4,530
Income tax expense	460	397
Net income	\$ 5,423	\$ 4,133
Pro forma weighted average shares of Class A common stock outstanding (Note 13, unaudited)		
Basic	1,443	
Diluted	1,443	
Pro forma net income available to Class A common stock per share (Note 13, unaudited)		
Basic	\$ 3.76	
Diluted	\$ 3.76	

See Notes to Consolidated Financial Statements.

SSE Holdings, LLC and Subsidiaries
Consolidated Statements of Changes in Members' Equity
Years Ended December 25, 2013 and December 26, 2012

(in thousands)

Members' equity, December 28, 2011	\$ 27,288
Net income	4,133
Equity-based compensation	450
Members' equity, December 26, 2012	31,871
Net income	5,423
Equity-based compensation	93
Members' equity, December 25, 2013	<u>\$ 37,387</u>

See Notes to Consolidated Financial Statements.

SSE Holdings, LLC and Subsidiaries

Consolidated Statements of Cash Flows

Years Ended December 25, 2013 and December 26, 2012

<u>(in thousands)</u>	<u>2013</u>	<u>2012</u>
Operating activities:		
Net income	\$ 5,423	\$ 4,133
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation expense	3,541	2,162
Amortization of debt issuance costs	37	96
Loss on disposal of assets	25	—
Equity-based compensation	93	450
Deferred income taxes	7	(34)
Changes in operating assets and liabilities:		
Accounts receivable	26	(1,076)
Inventories	(88)	(35)
Prepaid expenses	(118)	(93)
Security deposits	(267)	(16)
Other assets	(842)	(65)
Accounts payable	1,219	(210)
Accrued expenses	(713)	1,032
Accrued wages and related liabilities	866	557
Sales tax payable	(37)	182
Due to affiliate	66	30
Deferred rent	1,742	2,409
Other long term liabilities	38	—
Deferred compensation	2,054	—
Deferred revenue	(148)	2,156
Net cash provided by operating activities	<u>12,924</u>	<u>11,678</u>
Investing activities:		
Purchases of property and equipment	(16,194)	(11,036)
Net cash used in investing activities	<u>(16,194)</u>	<u>(11,036)</u>
Financing activities:		
Promissory note	313	—
Payments on credit facility	—	(1,925)
Deferred financing costs	—	(246)
Net cash provided by (used in) financing activities	<u>313</u>	<u>(2,171)</u>
Net decrease in cash	(2,957)	(1,529)
Cash, beginning of year	16,033	17,562
Cash, end of year	<u>\$ 13,076</u>	<u>\$ 16,033</u>
Supplemental disclosure of cash flow data:		
Interest paid	<u>\$ 19</u>	<u>\$ 59</u>
Income taxes paid	<u>\$ 639</u>	<u>\$ 198</u>

See Notes to Consolidated Financial Statements.

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 1—Business

SSE Holdings, LLC and Subsidiaries (referred to herein as the "Company") operates and licenses restaurants in the global restaurant industry, serving hamburgers, hot dogs, crinkle-cut fries, shakes, frozen custard, beer and wine. The Company owns and operates Shake Shack restaurants ("Shacks") in six states and the District of Columbia. As of December 25, 2013, the Company had 21 company-operated Shacks in operation in the United States. The Company also has license agreements with affiliated and unaffiliated operators to develop and operate Shacks. As of December 25, 2013, 19 licensed Shacks were in operation under license agreements in North America, Europe and Asia.

Note 2—Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements of SSE Holdings, LLC and Subsidiaries include the accounts of SSE Holdings, LLC and its wholly-owned subsidiaries, SSE IP, LLC, Shake Shack Domestic Licensing LLC, Shake Shack Enterprises International, LLC and its subsidiaries and Shake Shack Enterprises, LLC and its subsidiaries. All significant intercompany balances and transactions for the periods presented have been eliminated in consolidation.

The Company does not have any components of other comprehensive income recorded within its consolidated financial statements, and, therefore, does not separately present a statement of comprehensive income in its consolidated financial statements.

Fiscal Year

The Company uses a 52/53 week fiscal year ending on the last Wednesday in December. The 52-weeks ended December 25, 2013 and December 26, 2012 are referred to in these consolidated financial statements as "fiscal 2013" and "fiscal 2012," respectively.

Segment Reporting

The Company owns and operates Shacks in the United States. The Company also has domestic and international licensed operations. The Company's chief operating decision maker (the "CODM") is its Chief Executive Officer. As the CODM reviews financial performance and allocates resources at a consolidated level on a recurring basis, the Company has one operating segment and one reportable segment.

Use of Estimates

The Company prepares its consolidated financial statements in conformity with generally accepted accounting principles in the United States of America ("GAAP"), which requires it to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of sales and expenses during the reporting period. Actual results could differ from those estimates.

Fair Value Measurements

The Company applies fair value accounting for all financial assets and liabilities and nonfinancial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 2—Summary of Significant Accounting Policies (Continued)

recurring basis. Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities that are required to be recorded at fair value, the Company assumes the highest and best use of the asset by market participants in which the Company would transact and the market-based risk measurements or assumptions that market participants would use in pricing the asset or liability, such as inherent risk, transfer restrictions, and credit risk.

The Company applies the following fair value hierarchy, which prioritizes the inputs used to measure fair value into three levels, and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

- Level 1—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 or similar 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.

Financial Instruments

The Company records all financial instruments at cost, which is the fair value at the date of transaction. The amounts reported on the consolidated balance sheets for cash, accounts receivable, accounts payable and accrued liabilities approximate their fair value because of the short-term nature of these instruments.

Cash and Cash Equivalents

The Company considers all highly liquid investment instruments with an initial maturity of three months or less when purchased to be cash equivalents. The Company maintains its cash in bank deposit accounts that, at times, may exceed federally insured limits; however, the Company has not experienced any losses in these accounts. The Company believes it is not exposed to any significant credit risk. The Company's money market funds are valued at the closing price reported by the fund sponsor from an actively traded exchange. These are included within cash equivalents as Level 1 measurements.

Accounts Receivable

Accounts receivable consists primarily of receivables for licensing revenue, tenant improvement allowances and credit card receivables.

Inventories

The Company's inventories consist of food, beer, wine, other beverages and retail merchandise and are valued at the lower of cost, on a first-in, first-out basis, or market.

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 2—Summary of Significant Accounting Policies (Continued)

Property and Equipment

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

The Company assesses potential impairments to its long-lived assets, which includes property and equipment, 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 its estimated undiscounted future cash flows expected to be generated by the asset. 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. There were no impairment charges recorded in fiscal years 2013 and 2012.

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.

Other Assets

Other assets consist primarily of transferable liquor licenses and amounts expended for the design and build of future units, including fixed assets.

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. Liquor licenses are tested annually and reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. Annual liquor license renewal fees are expensed over the renewal term.

Equity-based Compensation

Equity-based compensation expense is measured based on fair value. The Company recognizes compensation expense on a straight-line basis over the requisite service period. 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. Equity-based compensation expense is included within general and administrative expenses on the consolidated statements of operations.

Leases

The Company currently leases all of its domestic company-operated Shacks and the home office under operating leases. Rent expense for the Company's leases, which generally include rent escalations over the term of the lease, is recorded on a straight-line basis over the lease term. The lease term

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 2—Summary of Significant Accounting Policies (Continued)

begins when the Company has the right to control the use of the property, which is typically before rent payments are due under the lease. The difference between the rent expense and rent paid is recorded as deferred rent on the consolidated balance sheets. Pre-opening rent is included in pre-opening costs on the consolidated statements of operations.

Additionally, certain of the Company's operating leases contain clauses that provide additional contingent rent based on a percentage of sales greater than certain specified target amounts. The Company recognizes contingent rent expense provided the achievement of that target is considered probable.

The Company expends cash for leasehold improvements and to build out and equip the Company's leased premises. The Company may also expend cash for structural additions that the Company makes to leased premises. Generally, a portion of the leasehold improvements and building costs are reimbursed to the Company by the Company's landlords as construction contributions pursuant to agreed-upon terms in the Company's leases. If obtained, landlord construction contributions usually take the form of up-front cash, full or partial credits against the Company's future minimum or contingent rents otherwise payable by the Company, or a combination thereof. When contractually due to the Company, the Company classifies tenant improvement allowances as deferred rent on the consolidated balance sheets and amortizes the tenant improvement allowances on a straight-line basis over the lease term as a reduction of occupancy costs and related expenses or pre-opening costs.

Revenue Recognition

Revenue consists of Shack sales and licensing revenues. Revenue from Shack sales are presented net of discounts and recognized when food and beverage products are sold. Sales tax collected from customers is excluded from revenues and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Revenues from the Company's gift cards are deferred and recognized upon redemption. Licensing revenues include initial territory fees and ongoing licensing fees from all licensed Shacks. Initial territory fees are recorded as deferred revenue when received and proportionate amounts are recognized as revenue when a licensed Shack is opened and all material services and conditions related to the fee have been substantially performed. Ongoing licensing fees from these Shacks are based on a percentage of sales and are recognized as revenue as the fees are earned and become receivable from the licensee.

Income Taxes

The Company is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, the Company's taxable income or loss is passed through to and included in the taxable income of its members. Accordingly, no income tax expense has been recorded for federal and most state and local jurisdictions. The Company is also subject to tax withholding in other foreign jurisdictions but does not have additional filing requirements.

The Company accounts for income taxes pursuant to the asset and liability method which requires deferred income tax assets and liabilities to be computed for temporary differences between the consolidated financial statement and tax basis of assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax laws and rates applicable to the periods in

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 2—Summary of Significant Accounting Policies (Continued)

which the temporary differences are expected to affect taxable income. A valuation allowance is recognized if the Company determines it is more likely than not that all or some portion of the deferred tax asset will not be recognized. No valuation allowance was recorded against deferred tax assets during fiscal 2013 and fiscal 2012.

The Company has no unrecognized tax benefits as of December 25, 2013. The Company's local income tax returns prior to fiscal 2010 are closed and management continually evaluates expiring statutes of limitations, audits, proposed settlements, changes in tax law and new authoritative rulings.

Pre-Opening Costs

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

Advertising

The Company expenses the cost of advertising and promotions as incurred. Advertising costs included in other operating expenses amounted to \$794 and \$564 in fiscal 2013 and fiscal 2012, respectively.

Recent Accounting Pronouncements

Recently Issued Accounting Pronouncements

In August 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2014-15, Presentation of Financial Statements—Going Concern ("ASU 2014-15"). ASU 2014-15 provides guidance in GAAP about management's responsibility to evaluate whether there is substantial doubt about an entity's ability to continue as a going concern and to provide related footnote disclosures. ASU 2014-15 is effective for reporting periods ending after December 15, 2016. Early adoption is permitted. The adoption of ASU 2014-15 is not expected to affect the Company's consolidated financial position, results of operations or cash flows.

In May 2014, the FASB issued Accounting Standards Update No. 2014-09, Revenue from Contracts with Customers ("ASU 2014-09"). ASU 2014-09 supersedes the existing revenue recognition guidance and clarifies the principles for recognizing revenue. The core principle of ASU 2014-09 is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods and services. ASU 2014-09 is effective, on a retrospective basis, for reporting periods beginning after December 15, 2016 for public entities and for reporting periods beginning after December 15, 2017 for non-public entities. Early adoption is permitted, subject to certain conditions. The Company is currently evaluating the impact ASU 2014-09 will have on its consolidated financial position, results of operations and cash flows.

In April 2014, the FASB issued Accounting Standards Update No. 2014-08, Presentation of Financial Statements and Property, Plant, and Equipment ("ASU 2014-08"). ASU 2014-08 changes the requirements for reporting discontinued operations and enhances disclosures. ASU 2014-08 is effective

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 2—Summary of Significant Accounting Policies (Continued)

for reporting periods beginning after December 15, 2014. The adoption of ASU 2014-08 is not expected to affect the Company's consolidated financial position, results of operations or cash flows.

Recently Adopted Accounting Pronouncements

In February 2013, the FASB issued Accounting Standards Update No. 2013-03, Clarifying the Scope and Applicability of a Particular Disclosure to Nonpublic Entities ("ASU 2013-03"). ASU 2013-03 clarifies that the requirement to disclose the "level of the fair value hierarchy within which the fair value measurements are categorized in their entirety (Level 1, 2 or 3)" does not apply to nonpublic entities for items that are not measured at fair value in the statement of financial position but for which fair value is disclosed. The Company adopted ASU 2013-03 upon issuance. The adoption did not impact the Company's consolidated financial position, results of operations or cash flows.

In May 2011, the FASB issued Accounting Standards Update No. 2011-04, Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs ("ASU 2011-04"). ASU 2011-04 amended the existing fair value guidance to improve consistency in the application and disclosure of fair value measurements under U.S. GAAP and International Financial Reporting Standards. ASU 2011-04 provided certain clarifications to the existing guidance, changed certain fair value principles, and enhanced disclosure requirements. Effective December 29, 2011, the Company adopted ASU 2011-04. The adoption did not affect the Company's consolidated financial position, results of operations or cash flows.

Note 3—Inventories

Inventories consist of the following:

	2013	2012
Food	\$ 181	\$ 147
Wine	23	28
Beer	21	18
Beverage	27	19
Retail merchandise	79	31
Total	<u>\$ 331</u>	<u>\$ 243</u>

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 4—Property and equipment

Property and equipment consist of the following:

	2013	2012
Leasehold improvements	\$ 32,403	\$ 20,856
Equipment	7,781	5,121
Furniture and fixtures	1,859	1,118
Computer equipment and software	1,951	1,133
Construction-in-progress	2,277	1,663
	46,271	29,891
Less accumulated depreciation	(8,333)	(4,816)
Total	<u>\$ 37,938</u>	<u>\$ 25,075</u>

Depreciation expense amounted to \$3,541 and \$2,162 in fiscal 2013 and fiscal 2012, respectively.

Note 5—Related Party Transactions

Included in due to affiliate are management fees, health costs and amounts advanced for other general operating expenses by USHG, LLC, another subsidiary of USHG and a related party under common control (the "Management Company"). The amounts are temporary and non-interest bearing in nature.

Under the terms of the management agreement with the Management Company, as amended, in fiscal 2013 and fiscal 2012, the Company paid a 3% management fee to the Management Company based on sales. In addition, in fiscal 2013, there was an additional \$5 management fee per month between April-August, for a total of \$25 in additional management fee expense. Management fees on sales, which are included in general and administrative expenses, amounted to \$2,383 and \$1,670 in fiscal 2013 and fiscal 2012, respectively. In fiscal 2013 and fiscal 2012, the Company also paid a 3% management fee to the Management Company based on licensing net income generated from the license agreements with unaffiliated entities. Management fees on licensing net income, included in general and administrative expenses, amounted to \$72 and \$22 in fiscal 2013 and fiscal 2012, respectively. Commencing in fiscal 2014, management fees were reduced to 2.5%. Amounts payable to the Management Company at December 25, 2013 and December 26, 2012 were \$300 and \$234, respectively.

The Company sub-leased office space from the Management Company on a month-to-month basis. The sub-lease covered certain of the Management Company's leased office space on the 6th floor of 24 Union Square East, New York, New York. Included in occupancy and related expenses is rent paid to the Management Company that amounted to \$236 and \$60 in fiscal 2013 and fiscal 2012, respectively.

The Company is included in the Management Company's self-insurance health plan and pays its portion of the plan costs on a monthly basis. In fiscal 2013 and fiscal 2012, the amounts paid to the Management Company for these health costs were \$865 and \$546, respectively.

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 5—Related Party Transactions (Continued)

In fiscal 2009, the Company began leasing space from Hudson Yards Catering LLC ("HYC"), a related party, on a month-to-month basis, which terminated on October 31, 2012. Included in occupancy and related expenses is rent paid to HYC that amounted to \$49 in fiscal 2012.

In fiscal 2011, the Company entered into a Master License Agreement (an "MLA") with Hudson Yards Sports and Entertainment LLC ("HYSE"), a related party, to operate Shake Shack branded limited menu concession stands in certain sports and entertainment venues within the United States. The agreement is through December 31, 2027, with five consecutive 5-year renewal options at HYSE's option. In consideration of the rights, HYSE shall pay the Company an annual license fee based on a percentage of net food sales, as defined in the MLA. HYSE also shall pay the Company a percentage of profits on sales of branded beverages, as defined in the MLA. Included in licensing revenue is concession income from HYSE in the amount of \$215 and \$213 in fiscal 2013 and fiscal 2012, respectively.

Note 6—Long-term Debt

On December 28, 2011, the Company entered into a credit agreement, consisting of a term loan and a revolving credit facility. The term loan was repaid on December 17, 2012. On November 29, 2012, the Company executed the First Amendment to the Credit Agreement that became effective March 28, 2013 ("Revolving Credit Facility"). The Revolving Credit Facility provides for a revolving total commitment of \$20,000 of which \$15,000 was available immediately and can be increased to \$20,000 on or after the first anniversary of the effective date upon the Company's election and satisfaction of certain conditions. Three years after the effective date of the agreement, the outstanding revolving amounts will be converted to term loans with an amortization period of 60 months. Borrowings under the Revolving Credit Facility bear interest at the prime rate plus 0.75% or the one-month LIBOR plus 3.75%. As of December 25, 2013 and December 26, 2012, the Company had no borrowings outstanding under the Revolving Credit Facility.

The Revolving Credit Facility is secured by a first-priority security interest in substantially all of the assets of the Company and is guaranteed by Union Square Hospitality Group, LLC ("USHG").

The Revolving Credit Facility contains a number of covenants that, among other things, restrict the Company's ability to, subject to specified exceptions, incur additional debt; incur additional liens and contingent liabilities; sell or dispose of assets; merge with or acquire other companies; liquidate or dissolve itself, engage in businesses that are not in a related line of business; make loans, advances or guarantees; pay dividends or make other distributions (with an exception so long as no event of default (as such term is defined in the Revolving Credit Facility) exists and subject to pro forma compliance with a funded net debt to Adjusted EBITDA ratio); engage in transactions with affiliates; and make investments. In addition, the Revolving Credit Facility contains certain cross-default provisions. The Company is required to maintain a specified consolidated fixed-charge coverage ratio and a specified funded net debt to Adjusted EBITDA Ratio. As of December 25, 2013, the Company was in compliance with all covenants.

On March 20, 2013, the Company entered into a promissory note in the amount of \$313 in connection with the purchase of a liquor license. Interest on the outstanding principal balance of this note is due and payable on a monthly basis from the effective date at a rate of 5.0% per year.

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 6—Long-term Debt (Continued)

commencing on April 1, 2013. The entire principal balance and interest is due and payable on the earlier of the maturity date, which is the expiration of the lease on June 16, 2023, or date of the sale of the license. As of December 25, 2013, \$313 remains outstanding.

Note 7—Retirement Plan

The Company maintains a profit-sharing plan covering all eligible employees in accordance with Section 401(k) of the Internal Revenue Code. The plan is funded by employee and employer contributions. Employer contributions to the plan are at the discretion of the Company. There were no employer contributions in fiscal 2013 and fiscal 2012.

Note 8—Income Taxes

The provision for income taxes consist of the following:

	2013	2012
Current:		
State and local	\$ 266	\$ 308
Foreign	187	123
	453	431
Deferred—state and local	7	(34)
Total	<u>\$ 460</u>	<u>\$ 397</u>

A reconciliation of the statutory income tax rate to the effective tax rate is as follows:

	2013	2012
Statutory rate	35.0%	35.0%
State and local income taxes, net of federal benefit	3.0%	3.9%
Foreign withholding tax	3.2%	2.7%
LLC flow-through structure	(33.4)%	(32.8)%
Effective tax rate	<u>7.8%</u>	<u>8.8%</u>

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 8—Income Taxes (Continued)

The components of the Company's deferred tax assets and liabilities is as follows:

	<u>2013</u>	<u>2012</u>
Deferred tax assets:		
Deferred rent	\$ 100	\$ 94
Deferred revenue	33	50
Accrued expenses	14	—
Other assets	21	25
Total deferred tax assets	<u>\$ 168</u>	<u>\$ 169</u>
Deferred tax liabilities:		
Property and equipment	\$ (100)	\$ (92)
Other liabilities	(1)	(3)
Total deferred tax liabilities	<u>\$ (101)</u>	<u>\$ (95)</u>
Total net deferred tax asset	<u>\$ 67</u>	<u>\$ 74</u>

Note 9—Commitments and Contingencies

The Company is obligated under several operating leases for the Shacks and office space, expiring in various years through June 2031. Under certain of these leases, the Company is liable for additional rent based on a percentage of sales in excess of a base amount and is responsible for its proportionate share of real estate taxes and utilities.

As security under the terms of several of the leases, the Company is obligated under letters of credit totaling approximately \$160 at December 25, 2013. The letters of credit expire April 23, 2014 and February 28, 2026. In addition, in December 2013, the Company entered into an irrevocable standby letter of credit in conjunction with its office lease in the amount of \$80. The letter of credit expires in September 2014 and renews automatically for one-year periods through September 30, 2019.

Rent expense (including contingent rent of \$1,626 and \$1,299) amounted to \$6,349 and \$4,540 in fiscal 2013 and fiscal 2012, respectively, included in occupancy and related expenses, pre-opening costs and general and administrative expenses.

SSE Holdings, LLC and Subsidiaries**Notes to Consolidated Financial Statements (Continued)****December 25, 2013 and December 26, 2012****(in thousands, except share amounts and unless otherwise stated)****Note 9—Commitments and Contingencies (Continued)**

Minimum future rental commitments under the lease in each of the five years subsequent to December 25, 2013 and thereafter are as follows:

<u>Fiscal Year Ending</u>	<u>Amount</u>
2014	\$ 6,464
2015	10,349
2016	12,729
2017	13,595
2018	13,973
Thereafter	109,105
Total	<u>\$ 166,215</u>

The Company is subject to 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 25, 2013 and December 26, 2012, the amount of ultimate liability with respect to those actions was not material.

Note 10—Deferred Compensation

During fiscal 2013, the Company entered into an Incentive Bonus Agreement with an executive, whereby the executive is entitled to receive a deferred compensation award by the Company in the amount of \$2,450. The bonus is payable by the Company in March 2018. A compensation charge of \$2,054 was recorded in fiscal 2013 to approximate the present value of the Incentive Bonus Agreement.

Note 11—Members' Equity

The Company created a Unit Appreciation Rights Plan (the "Plan"), effective in 2012, and as amended, whereby the Company may grant up to 31,303 unit appreciation rights ("UARs") to employees. The UARs granted are subject to continued employment and are only exercisable upon a qualifying transaction, which is either a change of control or an initial public offering, each as defined in the Plan. Upon the occurrence of a qualifying transaction, each UAR entitles the holder to receive a payment from the Company with such payment, and related compensation expense, would be determined by multiplying (i) the excess, if any, of the qualifying transaction price over the base amount of the UAR, by (ii) the stated number of Class B units deemed covered by the UAR. The UARs terminate on the tenth anniversary of the grant date or upon termination of employment, if earlier. During fiscal 2013 and fiscal 2012, 7,530 and 6,153 UARs, respectively, were granted. The planned public offering constitutes a qualifying transaction under the terms of the Plan and would result in the recognition of compensation expense. The Company would recognize such compensation expense in the period in which the planned public offering is consummated. During the fiscal 2013 and fiscal 2012, 412 and 0 UARs, respectively, were forfeited. No compensation expense has been recorded in fiscal 2013 and fiscal 2012 related to the outstanding UARs as the Company determined it is not probable that a qualifying transaction would occur. As of December 25, 2013, there were 13,379 UARs outstanding with a weighted average base amount of \$156.10.

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 12—Equity-based Compensation

In December 2010, the Company granted an executive of the Company 31,303.32 restricted Class B units as profits interests, which represent a 3.5% interest in the Company. These units vested in equal installments on February 1, 2011, February 1, 2012 and February 1, 2013. In August 2013, the Company granted 9,034.1479 restricted Class B units as profits interests to another executive of the Company, which represent a 1% interest in the Company. These units will vest in equal installments on August 21, 2014, August 27, 2015, August 25, 2016, August 24, 2017 and August 23, 2018. If not already 100% vested, these units shall become fully vested (i) upon the occurrence of a change in control event or (ii) upon the occurrence of an initial public offering, each as defined in the grant agreement, and any unrecognized compensation expense related to these non-vested units would be subject to acceleration. The planned public offering constitutes a transaction under the terms of the restricted Class B units that would result in the acceleration of the unrecognized compensation expense.

A summary of equity award activity for fiscal 2013 is as follow:

	<u>2013</u>
Outstanding at beginning of year	31,303.3200
Granted	9,034.1479
Repurchased	—
Forfeited	—
Outstanding at the end of the year	<u>40,337.4679</u>
Units vested	31,303.3200
Units expected to vest	<u>9,034.1479</u>
	<u>40,337.4679</u>

The Company is unable to calculate specific stock price volatility as a private company, and as such, the Company used a blended volatility rate for comparable publicly traded companies.

In fiscal 2013 and fiscal 2012, the Company recognized equity-based compensation of \$93 and \$450, respectively, related to the restricted Class B units.

The weighted-average grant date fair value of units granted in fiscal 2013 was \$92.31 per unit. No units were granted, repurchased or forfeited in fiscal 2012. The total fair value of units that vested during fiscal 2013 and fiscal 2012 was \$450 and \$450, respectively. As of December 25, 2013, total unrecognized compensation expense related to non-vested awards was \$771, which is expected to be recognized over weighted-average period of 4.7 years, or upon the occurrence of a change in control or an initial public offering.

SSE Holdings, LLC and Subsidiaries

Notes to Consolidated Financial Statements (Continued)

December 25, 2013 and December 26, 2012

(in thousands, except share amounts and unless otherwise stated)

Note 12—Equity-based Compensation (Continued)

The fair value of the Company's equity awards were based on a valuation prepared by a third-party and was based on contemporaneous information using the Black-Scholes formula. Key assumptions used during fiscal 2013 to estimate the fair value of the awards are as follow:

	<u>2013</u>
Expected volatility	40.1%
Expected dividend yield	0.0%
Expected term (in years)	4.5
Risk-free interest rate	1.3%

Note 13—Pro Forma Net Income Per Share (unaudited)

Unaudited pro forma net income per share has been computed to give effect to the number of shares whose proceeds would be necessary to pay the distribution to its members totaling \$21,851, along with the \$5,219 distribution made during the thirty-nine weeks ended September 24, 2014, as if such distributions occurred on December 27, 2012 to the extent they are in excess of the Company's earnings of \$5,403 for the twelve-month period ended December 25, 2013. The supplemental pro forma information has been computed, assuming an initial public offering price of \$15.00 per share, to give effect to the number of shares whose proceeds would be necessary to pay (i) the \$21,851 distribution to its members and (ii) the \$5,219 distribution made during the thirty-nine weeks ended September 24, 2014, but only to the extent the aggregate amount of these distributions exceeded the Company's earnings for the preceding twelve-month period. The Company has assumed that the initial public offering price is \$15.00, the midpoint in the estimated price range set forth on the cover of the prospectus included in the Company's Form S-1 Registration Statement. The computations assume there will be no additional distribution in the event the gross proceeds from the offering exceed the anticipated gross proceeds (including as a result of the exercise by the underwriters of their option to purchase additional shares of Class A common stock).

Note 14—Subsequent Events

The Company has evaluated subsequent events through the date that the consolidated financial statements were available to be issued. For purposes of these financial statements, the Company has not evaluated any subsequent events after this date.

On December 30, 2013, the Company executed the Second Amended and Restated Credit Agreement, which became effective in April 2014. The amendment provides for an increase in the revolving total commitment amount to \$50,000 of which \$30,000 was available immediately and can be increased to the full amount on or after the first anniversary of the effective date of the agreement upon the Company's election and satisfaction of certain conditions.

On September 12, 2014, the Company borrowed \$5,000 in principal amount under the Second Amended and Restated Credit Agreement. The proceeds will be used for general corporate purposes and new Shack openings. Subsequent to the borrowing, the remaining credit available under the credit facility was \$24,920.

SSE Holdings, LLC and Subsidiaries
Condensed Consolidated Balance Sheets
September 24, 2014 and December 25, 2013
(Unaudited)

(in thousands)	Pro Forma 2014 (Note 12)	2014	2013
Assets			
Current assets:			
Cash	\$ 6,107	\$ 6,107	\$ 13,076
Accounts receivable	2,313	2,313	1,527
Inventories	357	357	331
Prepaid expenses	311	311	273
Total current assets	9,088	9,088	15,207
Property and equipment, net	53,041	53,041	37,938
Deferred financing costs	432	432	209
Security deposits	970	970	891
Deferred income taxes	67	67	67
Other assets	1,939	1,939	907
Total assets	<u>\$ 65,537</u>	<u>\$ 65,537</u>	<u>\$ 55,219</u>
Liabilities and Members' Equity			
Current liabilities:			
Short-term debt	\$ 26,851	\$ 5,000	\$ —
Accounts payable	3,493	3,493	2,393
Accrued expenses	3,556	3,556	1,489
Accrued wages and related liabilities	1,947	1,947	1,994
Sales tax payable	383	383	399
Distributions payable	—	—	—
Due to affiliates	359	359	300
Deferred revenue	517	517	630
Total current liabilities	37,106	15,255	7,205
Deferred revenue, net of current portion	1,500	1,500	1,575
Promissory note	313	313	313
Deferred compensation	2,119	2,119	2,054
Deferred rent	10,482	10,482	6,647
Other long-term liabilities	31	31	38
Total liabilities	51,551	29,700	17,832
Commitments and contingencies			
Members' equity	13,986	35,837	37,387
Total liabilities and members' equity	<u>\$ 65,537</u>	<u>\$ 65,537</u>	<u>\$ 55,219</u>

See Notes to Condensed Consolidated Financial Statements.

SSE Holdings, LLC and Subsidiaries

Condensed Consolidated Statements of Operations

For the Thirty-Nine Weeks Ended September 24, 2014 and September 25, 2013

(Unaudited)

(in thousands except per share amounts)	2014	2013
Revenues		
Shack sales	\$ 78,988	\$ 56,783
Licensing revenue	4,770	2,721
Total revenue	83,758	59,504
Expenses		
Operating expenses		
Food and paper costs	24,248	17,211
Labor and related expenses	20,605	14,161
Other operating expenses	7,866	5,072
Occupancy and related expenses	6,794	4,871
General and administrative expenses	12,192	9,164
Depreciation expense	4,067	2,472
Pre-opening costs	3,828	1,705
Loss on disposal of property and equipment	28	17
Total expenses	79,628	54,673
Income from operations	4,130	4,831
Interest expense, net	219	31
Income before income taxes	3,911	4,800
Income tax expense	366	374
Net income	\$ 3,545	\$ 4,426
Pro forma weighted average shares of Class A common stock outstanding (Note 12)		
Basic	1,502	
Diluted	1,502	
Pro forma net income available to Class A common stock per share (Note 12)		
Basic	\$ 2.36	
Diluted	\$ 2.36	

See Notes to Condensed Consolidated Financial Statements.

SSE Holdings, LLC and Subsidiaries**Condensed Consolidated Statements of Changes in Members' Equity****For the Thirty-Nine Weeks Ended September 24, 2014 and September 25, 2013****(Unaudited)****(in thousands)**

Members' equity, December 26, 2012	\$ 31,871
Net income	4,426
Equity-based compensation	51
Members' equity, September 25, 2013	<u>\$ 36,348</u>
Members' equity, December 25, 2013	\$ 37,387
Net income	3,545
Equity-based compensation	124
Members' distributions	(5,219)
Members' equity, September 24, 2014	<u>\$ 35,837</u>

See Notes to Condensed Consolidated Financial Statements.

SSE Holdings, LLC and Subsidiaries

Condensed Consolidated Statements of Cash Flows

For the Thirty-Nine Weeks Ended September 24, 2014 and September 25, 2013

(Unaudited)

(in thousands)	2014	2013
Operating activities:		
Net income	\$ 3,545	\$ 4,426
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation expense	4,067	2,472
Amortization of debt issuance costs	75	25
Loss on disposal of assets	28	17
Equity-based compensation	124	51
Deferred income taxes	—	15
Changes in operating assets and liabilities:		
Accounts receivable	(786)	126
Inventories	(26)	(21)
Prepaid expenses	(38)	(29)
Security deposits	(79)	(58)
Other assets	(1,041)	(108)
Accounts payable	(204)	(6)
Accrued expenses	2,067	(524)
Accrued wages and related liabilities	(47)	464
Sales tax payable	(16)	(34)
Due to affiliates	59	83
Deferred rent	3,835	1,354
Other long term liabilities	(7)	—
Deferred compensation	65	2,032
Deferred revenue	(188)	(296)
Net cash provided by operating activities	<u>11,433</u>	<u>9,989</u>
Investing activities:		
Purchase of property and equipment	(17,885)	(10,359)
Net cash used in investing activities	<u>(17,885)</u>	<u>(10,359)</u>
Financing activities:		
Proceeds from revolving credit facility	5,000	—
Members' distributions	(5,219)	—
Deferred financing costs	(298)	—
Net cash used in financing activities	<u>(517)</u>	<u>—</u>
Net decrease in cash	(6,969)	(370)
Cash, beginning of year	13,076	16,033
Cash, end of period	<u>\$ 6,107</u>	<u>\$ 15,663</u>

See Notes to Condensed Consolidated Financial Statements.

SSE Holdings, LLC and Subsidiaries
Notes to Condensed Consolidated Financial Statements
September 24, 2014 and September 25, 2013

(Unaudited)

(in thousands, except share amounts and unless otherwise stated)

Note 1—Business

SSE Holdings, LLC and Subsidiaries (referred to herein as the "Company") operates and licenses restaurants in the global restaurant industry, serving hamburgers, hot dogs, crinkle-cut fries, shakes, frozen custard, beer and wine. The Company owns and operates Shake Shack restaurants ("Shacks") in eight states and the District of Columbia. As of September 24, 2014, the Company had 26 company-operated Shacks in operation in the United States. The Company also has license arrangements with affiliated and unaffiliated operators to develop and operate Shacks. As of September 24, 2014, 27 licensed Shacks were in operation under license agreements in North America, Europe and Asia.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") for interim financial information. In the opinion of management, all adjustments (consisting of normal recurring adjustments) necessary for a fair presentation of the results of operations, financial position and cash flows for the periods presented have been included.

The condensed consolidated financial statements as of and for the periods ended September 24, 2014 and September 25, 2013 are unaudited. The consolidated balance sheet as of December 25, 2013 has been derived from the audited financial statements at that date but does not include all of the disclosures required by GAAP. These interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements as of and for the year ended December 25, 2013 and related notes thereto included elsewhere in this prospectus. Operating results for interim periods are not necessarily indicative of the results that may be expected for a full fiscal year.

The Company does not have any components of other comprehensive income recorded within its condensed consolidated financial statements, and, therefore, does not separately present a statement of comprehensive income in its condensed consolidated financial statements.

Principles of Consolidation

The accompanying condensed consolidated financial statements of SSE Holdings, LLC and Subsidiaries include the accounts of SSE Holdings, LLC and its wholly-owned subsidiaries, SSE IP, LLC, Shake Shack Domestic Licensing LLC, Shake Shack Enterprises International, LLC and its subsidiaries and Shake Shack Enterprises, LLC and its subsidiaries. All significant intercompany balances and transactions for the periods presented have been eliminated in consolidation.

Fiscal Year

The Company uses a 52/53 week fiscal year ending on the last Wednesday in December.

SSE Holdings, LLC and Subsidiaries

Notes to Condensed Consolidated Financial Statements (Continued)

September 24, 2014 and September 25, 2013

(Unaudited)

(in thousands, except share amounts and unless otherwise stated)

Note 2—Summary of Significant Accounting Policies (Continued)

Use of Estimates

The preparation of these condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of sales and expenses during the reporting period. Actual results could differ from those estimates.

Recent Accounting Pronouncements

In August 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2014-15, Presentation of Financial Statements—Going Concern ("ASU 2014-15"). ASU 2014-15 provides guidance in GAAP about management's responsibility to evaluate whether there is substantial doubt about an entity's ability to continue as a going concern and to provide related footnote disclosures. ASU 2014-15 is effective for reporting periods ending after December 15, 2016. Early adoption is permitted. The adoption of ASU 2014-15 is not expected to affect the Company's consolidated financial position, results of operations or cash flows.

In May 2014, the FASB issued Accounting Standards Update No. 2014-09, Revenue from Contracts with Customers ("ASU 2014-09"). ASU 2014-09 supersedes the existing revenue recognition guidance and clarifies the principles for recognizing revenue. The core principle of ASU 2014-09 is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods and services. ASU 2014-09 is effective, on a retrospective basis, for reporting periods beginning after December 15, 2016 for public entities and for reporting periods beginning after December 15, 2017 for non-public entities. Early adoption is permitted, subject to certain conditions. The Company is currently evaluating the impact ASU 2014-09 will have on its consolidated financial position, results of operations and cash flows.

In April 2014, the FASB issued Accounting Standards Update No. 2014-08, Presentation of Financial Statements and Property, Plant, and Equipment ("ASU 2014-08"). ASU 2014-08 changes the requirements for reporting discontinued operations and enhances disclosures. ASU 2014-08 is effective for reporting periods beginning after December 15, 2014. The adoption of ASU 2014-08 is not expected to affect the Company's consolidated financial position, results of operations or cash flows.

Note 3—Fair Value Measurements

The Company records all financial instruments at cost, which is the fair value at the date of transaction. The amounts reported on the consolidated balance sheets for cash, accounts receivable, short-term debt, accounts payable and accrued liabilities approximate their fair value because of the short-term nature of these instruments.

SSE Holdings, LLC and Subsidiaries

Notes to Condensed Consolidated Financial Statements (Continued)

September 24, 2014 and September 25, 2013

(Unaudited)

(in thousands, except share amounts and unless otherwise stated)

Note 4—Inventories

Inventories consisted of the following:

	September 24, 2014	December 25, 2013
Food	\$ 211	\$ 181
Wine	22	23
Beer	25	21
Beverage	36	27
Retail merchandise	63	79
Total	\$ 357	\$ 331

Note 5—Related Party Transactions

Included in due to affiliates at September 24, 2014 and December 25, 2013 are management fees, health costs and amounts advanced for other general operating expenses by USHG, LLC another subsidiary of USHG (the "Management Company"), of \$454 and \$300 respectively, less licensing revenue and amounts advanced for other general operating expenses to Hudson Yards Sports and Entertainment LLC ("HYSE"), a related party, of \$95 and \$0, respectively. Both entities are related parties under common control and the amounts are temporary and non-interest bearing in nature.

Under the terms of the management agreement with the Management Company, as amended, in fiscal year 2014, the Company paid a 2.5% management fee to the Management Company based on sales. Under the terms of the agreement, as amended, in fiscal year 2013, the Company paid a 3.0% management fee to the Management Company based on sales. In addition, in fiscal year 2013, there was an additional \$5 management fee per month between April and August, for a total of \$25 in additional management fee expense. Management fees on sales, which are included in general and administrative expenses, amounted to \$1,975 and \$1,728 for the thirty-nine weeks ended September 24, 2014 and September 25, 2013, respectively. In fiscal year 2014 and fiscal year 2013, the Company also paid a 2.5% and 3.0% management fee, respectively, to the Management Company based on net licensing revenue generated from their license agreements with unaffiliated entities. Management fees on net license income, included in general and administrative expenses amounted to \$98 and \$51 for the thirty-nine weeks ended September 24, 2014 and September 25, 2013, respectively.

Previously, the Company sub-leased certain office space from the Management Company on a month-to-month basis. Amounts paid to the Management Company totaled \$44 and \$181 for the thirty-nine weeks ended September 24, 2014 and September 25, 2013, respectively. These amounts are included in occupancy and related expenses on the condensed consolidated statements of operations.

The Company is included in the Management Company's self-insurance health plan and pays its portion of the plan costs on a monthly basis. Amounts expensed for these health costs were \$913 and \$587 for the thirty-nine weeks ended September 24, 2014 and September 25, 2013, respectively.

In fiscal 2011, the Company entered into a Master License Agreement (an "MLA") with HYSE to operate Shake Shack branded limited menu concession stands in certain sports and entertainment

SSE Holdings, LLC and Subsidiaries

Notes to Condensed Consolidated Financial Statements (Continued)

September 24, 2014 and September 25, 2013

(Unaudited)

(in thousands, except share amounts and unless otherwise stated)

Note 5—Related Party Transactions (Continued)

venues within the United States. The agreement is through December 31, 2027, with five consecutive 5-year renewal options at HYSE's option. In consideration of the rights, HYSE shall pay the Company an annual license fee based on percentage of net food sales, as defined in the MLA. HYSE also shall pay the Company a percentage of profits on sales of branded beverages, as defined in the MLA. Included in licensing revenue is concession income from HYSE in the amount of \$206 and \$195 during the thirty-nine weeks ended September 24, 2014 and September 25, 2013, respectively.

Note 6—Long-term Debt

On December 30, 2013, the Company executed an amendment to its existing revolving credit agreement, which became effective in April 2014 ("Revolving Credit Facility"). The amendment provides for a revolving total commitment amount of \$50,000, of which \$30,000 was available immediately and can be increased to the full amount on or after the first anniversary of the effective date of the agreement upon the Company's election and satisfaction of certain conditions, including compliance with a funded net debt to Adjusted EBITDA ratio of 2.0 to 1.0. The Revolving Credit Facility will mature and all amounts outstanding will be due and payable five years from the effective date. The Revolving Credit Facility permits the issuance of letters of credit upon the Company's request of up to \$10,000. Borrowings under the Revolving Credit Facility bear interest at either: (i) LIBOR plus a percentage ranging from 3.0% to 4.0%, or (ii) the prime rate plus a percentage ranging from 0.0% to 1.0%. As of September 24, 2014, the interest rate was 3.2%. As of December 25, 2013, the Company had no borrowings outstanding under the Revolving Credit Facility. As of September 24, 2014, the Company had \$5,000 of borrowings outstanding under the Revolving Credit Facility, classified as short-term debt on the condensed consolidated balance sheet, and \$24,920 of availability, after giving effect to \$80 in letters of credit.

The Revolving Credit Facility is secured by a first-priority security interest in substantially all of the assets of the Company and is guaranteed by Union Square Hospitality Group, LLC ("USHG").

The Revolving Credit Facility contains a number of covenants that, among other things, restrict the Company's ability to, subject to, specified exceptions, incur additional debt; incur additional liens and contingent liabilities; sell or dispose of assets; merge with or acquire other companies; liquidate or dissolve itself; pay dividends or make distributions; engage in businesses that are not in a related line of business; make loans, advances or guarantees; engage in transactions with affiliates; and make investments. In addition, the Revolving Credit Facility contains certain cross-default provisions. The Company is required to maintain a specified consolidated fixed-charge coverage ratio and a specified funded net debt to Adjusted EBITDA Ratio. As of September 24, 2014, the Company was in compliance with all covenants.

On March 20, 2013, the Company entered into a promissory note in the amount of \$313 in connection with the purchase of a liquor license. Interest on the outstanding principal balance of this note will be due and payable on a monthly basis from the effective date at a rate of 5.00% per year commencing on April 1, 2013. The entire principal balance and interest is due and payable on the earlier of the maturity date, which is the expiration of the lease on June 16, 2023, or date of the sale of

SSE Holdings, LLC and Subsidiaries

Notes to Condensed Consolidated Financial Statements (Continued)

September 24, 2014 and September 25, 2013

(Unaudited)

(in thousands, except share amounts and unless otherwise stated)

Note 6—Long-term Debt (Continued)

the license. As of September 24, 2014 and December 25, 2013, the outstanding balance of the promissory note was \$313.

Note 7—Income Taxes

A reconciliation of the statutory income tax rate to the effective tax rate is as follows:

	Thirty-Nine Weeks Ended	
	September 24, 2014	September 25, 2013
Statutory rate	35.0%	35.0%
State and local income taxes, net of federal benefit	3.3%	3.0%
Non-deductible expenses	0.9%	0.0%
Foreign withholding tax	6.1%	3.2%
LLC flow-through structure	-35.9%	-33.4%
Effective tax rate	9.4%	7.8%

Note 8—Commitments and Contingencies

The Company is obligated under several operating leases for the Shacks and office space, expiring in various years through June 2031. Under certain of these leases, the Company is liable for additional rent based on a percentage of sales in excess of a base amount and is responsible for its proportionate share of real estate taxes and utilities.

As security under the terms of several of the leases, the Company is obligated under letters of credit totaling \$160 at December 25, 2013. The letters of credit expire on April 23, 2015 and February 28, 2026. In addition, in December 2013, the Company entered into an irrevocable standby letter of credit in conjunction with its office lease in the amount of \$80. The letter of credit expires in September 2015 and renews automatically for one-year periods through September 30, 2019.

The Company is subject to 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 September 24, 2014, the amount of ultimate liability with respect to those actions was not material.

Note 9—Deferred Compensation

During fiscal year 2013, the Company entered into an Incentive Bonus Agreement with an executive, whereby the executive is entitled to receive a deferred compensation award in the amount of \$2,450. The bonus is payable by the Company in March 2018. Deferred compensation expense of \$2,032 was recognized during the thirty-nine weeks ended September 25, 2013 and is included within general and administrative expense on the condensed consolidated statement of operations. No such expense was recognized during the thirty-nine weeks ended September 24, 2014.

SSE Holdings, LLC and Subsidiaries**Notes to Condensed Consolidated Financial Statements (Continued)****September 24, 2014 and September 25, 2013****(Unaudited)****(in thousands, except share amounts and unless otherwise stated)****Note 10—Member's Equity**

The Company created a Unit Appreciation Rights Plan (the "Plan"), effective in fiscal year 2012, and as amended, whereby the Company may grant up to 31,303 unit appreciation rights ("UARs") to employees. The UARs granted are subject to continued employment and are only exercisable upon a qualifying transaction, which is either a change of control or an initial public offering, each as defined in the Plan. Upon the occurrence of a qualifying transaction, each UAR entitles the holder to receive a payment from the Company with such payment, and related compensation expense, determined by multiplying (i) the excess, if any, of the qualifying transaction price over the base amount of the UAR, by (ii) the stated number of Class B units deemed covered by the UAR. Effective October 30, 2014, the Plan was amended to provide that the payment to which UAR holders are entitled upon the occurrence of a qualifying transaction will be in the form of securities of the Company or one of its affiliates or such other form of payment as the Company may determine in its sole discretion. The UARs terminate on the tenth anniversary of the grant date or upon termination of employment, if earlier. The planned public offering constitutes a qualifying transaction under the terms of the Plan and would result in the recognition of compensation expense. The Company would recognize such compensation expense in the period in which the planned public offering is consummated. During the thirty-nine weeks ended September 24, 2014 and September 25, 2013, 10,260 and 7,530 UARs, respectively, were granted. During the thirty-nine weeks ended September 24, 2014 and September 25, 2013, 1,425 and 327 UARs, respectively, were forfeited. No compensation expense has been recorded in fiscal year 2014 and fiscal year 2013 related to the outstanding UARs as the Company determined it is not probable that a qualifying transaction would occur. As of September 24, 2014, there were 22,214 UARs outstanding with a weighted average base amount of \$192.44.

Note 11—Equity-based Compensation

In December 2010, the Company granted an executive of the Company 31,303.32 restricted Class B units as profits interests, which represented a 3.5% interest in the Company. These units vested in equal installments on February 1, 2011, February 1, 2012 and February 1, 2013. In August 2013, the Company granted 9,034.1479 restricted Class B units as profits interests to another executive of the Company, which represent a 1% interest in the Company. These units will vest in equal installments on August 21, 2014, August 25, 2016, August 24, 2017 and August 23, 2018. If not already 100% vested, these units shall become fully vested (i) upon the occurrence of a change in control event, or (ii) upon the occurrence of an initial public offering, each as defined in the grant agreement, and any unrecognized compensation expense related to these non-vested units would be subject to acceleration. The planned public offering constitutes a transaction under the terms of the restricted Class B units that would result in the acceleration of the unrecognized compensation expense.

SSE Holdings, LLC and Subsidiaries

Notes to Condensed Consolidated Financial Statements (Continued)

September 24, 2014 and September 25, 2013

(Unaudited)

(in thousands, except share amounts and unless otherwise stated)

Note 11—Equity-based Compensation (Continued)

A summary of equity award activity for the thirty-nine weeks ended September 24, 2014 is as follows:

	September 24, 2014
Outstanding at beginning of the period	40,337.4679
Granted	—
Repurchased	—
Forfeited	—
Outstanding at the end of the period	<u>40,337.4679</u>
Units vested	33,110.1496
Units expected to vest	<u>7,227.3183</u>
	<u>40,337.4679</u>

During the thirty-nine weeks ended September 24, 2014 and September 25, 2013, the Company recognized equity-based compensation of \$124 and \$51, respectively, related to the restricted Class B units.

No units were granted, repurchased or forfeited during the thirty-nine weeks ended September 24, 2014. As of September 24, 2014, total unrecognized compensation expense related to non-vested awards was \$647, which is expected to be recognized over a weighted average period of 3.9 years, or upon the occurrence of a change in control or an initial public offering. The fair value of the Company's equity awards were based on a valuation prepared by a third party and was based on contemporaneous information using the Black-Scholes formula.

Note 12—Pro Forma Information (Unaudited)

Balance Sheet

In connection with this offering and subsequent to September 24, 2014, SSE Holdings will make a distribution to its members in the amount of \$21,851. The distribution is expected to be funded with borrowings under the Revolving Credit Facility, which will be repaid with a portion of the proceeds from this offering. The unaudited pro forma balance sheet as of September 24, 2014 reflects the recognition of the distribution and related borrowings under the Revolving Credit Facility as if such distribution were declared and paid on September 24, 2014. The adjustment assumes there will be no additional distribution in the event the gross proceeds from the offering exceed the anticipated gross proceeds (including as a result of the exercise by the underwriters of their option to purchase additional shares of Class A common stock).

Statement of Operations

Unaudited pro forma net income per share has been computed to give effect to the number of shares whose proceeds would be necessary to pay the distribution to its members totaling \$21,851,

SSE Holdings, LLC and Subsidiaries

Notes to Condensed Consolidated Financial Statements (Continued)

September 24, 2014 and September 25, 2013

(Unaudited)

(in thousands, except share amounts and unless otherwise stated)

Note 12—Pro Forma Information (Unaudited) (Continued)

along with the \$5,219 distribution made during the thirty-nine weeks ended September 24, 2014, as if such distributions occurred on December 26, 2013 to the extent they are in excess of the Company's earnings of \$4,542 for the twelve-month period ended September 24, 2014. The supplemental pro forma information has been computed, assuming an initial public offering price of \$15.00 per share, to give effect to the number of shares whose proceeds would be necessary to pay (i) the \$21,851 distribution to its members and (ii) \$5,219 distribution made during the thirty-nine weeks ended September 24, 2014, but only to the extent the aggregate amount of these distributions exceeded the Company's earnings for the preceding twelve-month period. The Company has assumed that the initial public offering price is \$15.00, the midpoint in the estimated price range set forth on the cover of the prospectus included in the Company's Form S-1 Registration Statement. The computations assume there will be no additional distribution in the event the gross proceeds from the offering exceed the anticipated gross proceeds (including as a result of the exercise by the underwriters of their option to purchase additional shares of Class A common stock).

Note 13—Subsequent Events

The Company has evaluated subsequent events through the date that the condensed consolidated financial statements were available to be issued. For purposes of these financial statements, the Company has not evaluated any subsequent events after this date.

On November 20, 2014, the Company borrowed \$5,000 in principal amount under the Revolving Credit Facility. The proceeds will be used for general corporate purposes and new Shack openings. Subsequent to the borrowing, the remaining credit available under the Revolving Credit Facility was \$19,920.

On December 15, 2014, the Company's board of directors approved a distribution to its members in the amount of approximately \$21.9 million, which was paid on December 30, 2014. The Company's board of directors also approved an additional distribution to its members, to the extent the gross proceeds of the Company's planned initial public offering exceed the anticipated gross proceeds (including as a result of the exercise by the underwriters of their option to purchase additional shares of Class A common stock), in an amount equal to the product of (A) the increased gross proceeds and (B) 0.273, to be paid from the proceeds of the Company's planned initial public offering.

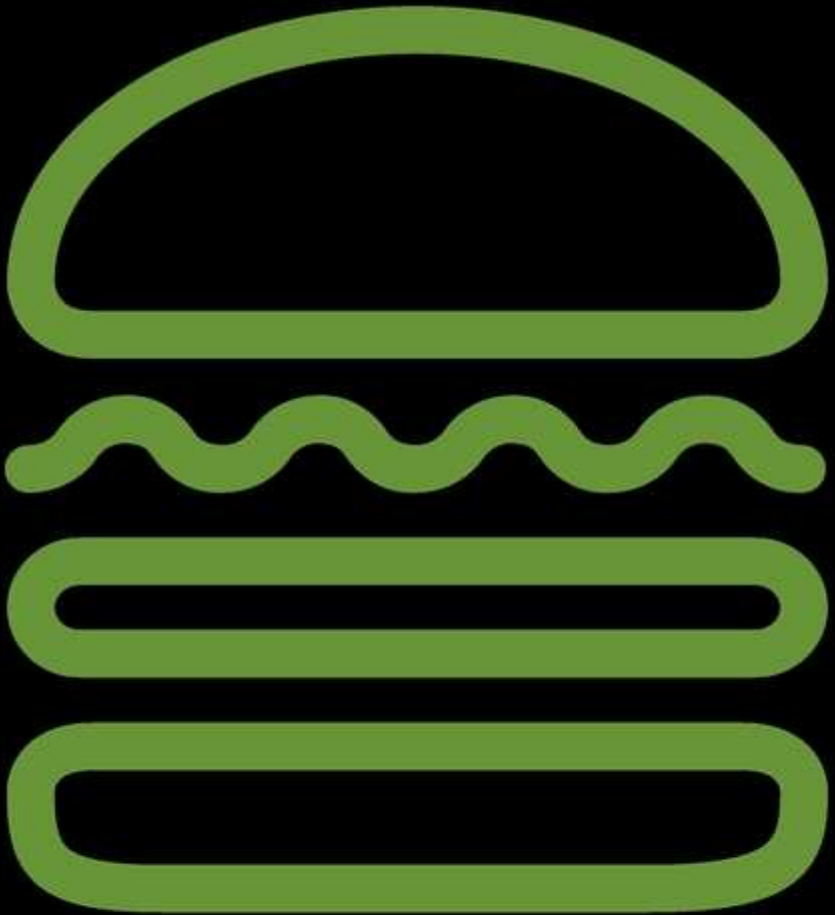
On December 28, 2014 the Company executed an amendment to the Revolving Credit Facility, which became effective immediately. The amendment provides for, among other things, the acceleration of the delayed total commitment effective date, resulting in an immediate increase in the total commitment amount to \$50,000. The amendment also provides for a mandatory prepayment of at least \$15,000 by April 30, 2015. Additionally, on December 29, 2014 the Company borrowed \$22,000 in principal amount under the amended Revolving Credit Facility. The proceeds will be used to pay the aforementioned distribution to its members. Subsequent to the borrowing, the remaining credit available under the Revolving Credit Facility was \$17,920.

On January 14, 2015, the Company borrowed \$4,000 in principal amount under the amended Revolving Credit Facility. The proceeds will be used for general corporate purposes and new Shack openings. Subsequent to the borrowing, the remaining credit available under the amended Revolving Credit Facility was \$13,920.



Through and including _____, 2015 (25 days after the date of this prospectus), all dealers that buy, sell or trade shares of our Class A common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their

unsold allotments or subscriptions.



SHAKE SHACK®

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table indicates the expenses to be incurred in connection with the offering described in this registration statement, other than underwriting discounts and commissions, all of which will be paid by us. All amounts are estimated except the Securities and Exchange Commission registration fee, the FINRA filing fee and the New York Stock Exchange listing fee.

	<u>Amount</u>
Securities and Exchange Commission registration fee	\$ 11,620
FINRA filing fee	14,850
New York Stock Exchange listing fee	25,000
Accountants' fees and expenses	825,000
Legal fees and expenses	1,650,000
Blue Sky fees and expenses	10,000
Transfer agent's fees and expenses	5,000
Printing and engraving expenses	450,000
Miscellaneous	8,530
Total expenses	<u>\$ 3,000,000</u>

Item 14. Indemnification of Directors and Officers.

Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our certificate of incorporation provides that no director of the Registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Upon completion of this offering, our amended and restated certificate of incorporation and bylaws will provide indemnification for our directors and officers to the fullest extent permitted by the DGCL. We will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of us) by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an "Indemnatee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnatee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. Our amended and restated certificate of incorporation and bylaws will provide that we will indemnify any Indemnatee who was or is a party to an action or suit by or in the right of us to procure a judgment in our favor by reason of the fact that the Indemnatee is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnatee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to us, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnatee has been successful, on the merits or otherwise, he or she will be indemnified by us against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnatee under certain circumstances.

Prior to the completion of this offering, we intend to enter into separate indemnification agreements with each of our directors and certain officers. Each indemnification agreement will provide, among other things, for indemnification to the fullest extent permitted by law and our amended and restated certificate of incorporation and bylaws against any and all expenses, judgments, fines, penalties and amounts paid in settlement of any claim. The indemnification agreements will provide for the advancement or payment of all expenses to the indemnitee and for the reimbursement to us if it is found that such indemnitee is not entitled to such indemnification under applicable law and our amended and restated certificate of incorporation and bylaws.

We maintain a general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement we enter into in connection with the sale of Class A common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act of 1933, as amended (the "Securities Act"), against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

On January 15, 2015, the registrant agreed to issue a single share of common stock, par value \$0.01 per share, which will be redeemed upon the closing of this offering, to an officer of the registrant

in exchange for \$0.01. The issuance was exempt from registration under Section 4(a)(2) of the Securities Act, as a transaction by an issuer not involving any public offering.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

The exhibit index attached hereto is incorporated herein by reference.

(b) Financial Statement Schedules.

All schedules have been omitted because the information required to be set forth in the schedules is either not applicable or is shown in the financial statements or notes thereto.

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriter, at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) For the purpose of determining liability under the Securities Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(4) In a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on this 20th day of January, 2015.

SHAKE SHACK INC.

By: /s/ RANDY GARUTTI

Randy Garutti
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities held on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
_____ /s/ RANDY GARUTTI Randy Garutti	Chief Executive Officer and Director (principal executive officer)	January 20, 2015
_____ /s/ JEFF UTTZ Jeff Uttz	Chief Financial Officer (principal financial and accounting officer)	January 20, 2015
_____ * Daniel Meyer	Chairman of the Board of Directors	January 20, 2015
_____ * Jeff Flug	Director	January 20, 2015
_____ * Evan Guillemin	Director	January 20, 2015
_____ * Jenna Lyons	Director	January 20, 2015
_____ * Jonathan D. Sokoloff	Director	January 20, 2015
_____ * Robert Vivian	Director	January 20, 2015
*By: _____ /s/ RANDY GARUTTI Randy Garutti <i>Attorney-in-fact</i>		

EXHIBIT INDEX

Exhibit number	Description of exhibit
1.1	Form of Underwriting Agreement.
3.1	Form of Amended and Restated Certificate of Incorporation of Shake Shack Inc., to be effective upon the closing of this offering.
3.2	Form of Amended and Restated Bylaws of Shake Shack Inc., to be effective upon the closing of this offering.
4.1	Specimen Stock Certificate evidencing the shares of Class A common stock.
5.1	Opinion of Latham & Watkins LLP.
10.1	Form of Tax Receivable Agreement, to be effective upon the closing of this offering.
10.2	Form of Registration Rights Agreement, to be effective upon the closing of this offering.
10.3	Form of Third Amended and Restated LLC Agreement of SSE Holdings, LLC, to be effective upon the closing of this offering.
10.4	Form of Stockholders Agreement, to be effective upon the closing of this offering.
10.5	Form of Credit Agreement, to be effective upon the closing of this offering.
10.6	Form of Security Agreement, to be effective upon the closing of this offering.
10.7 ^{†*}	SSE Holdings, LLC Unit Appreciation Rights Plan
10.8 ^{†*}	Amendment No. 1 to the SSE Holdings, LLC Unit Appreciation Rights Plan.
10.9 ^{†*}	Amendment No. 2 to the SSE Holdings, LLC Unit Appreciation Rights Plan.
10.10 ^{†*}	Form of Unit Appreciation Right Agreement.
10.11 ^{†*}	2015 Incentive Award Plan.
10.12 ^{†*}	2015 Senior Executive Bonus Plan.
10.13 ^{†*}	Amended and Restated Management Services Agreement, to be effective as of January 1, 2015, by and between SSE Holdings, LLC and USHG, LLC.
10.14 ^{†*}	Special Bonus Agreement by and between Union Square Hospitality Group, LLC and Randall Garutti, entered into on March 11, 2011.
10.15 ^{†*}	Amendment to Special Bonus Agreement by and between Union Square Hospitality Group, LLC and Randall Garutti, entered into on March 11, 2011, effective as of July 25, 2013.
10.16 ^{†*}	Assignment and Assumption Agreement, effective as of October 30, 2014, among Union Square Hospitality Group, LLC, Randall Garutti and SSE Holdings, LLC.
10.17 ^{†*}	Employment Agreement, dated as of November 25, 2014, by and between Shake Shack Inc., SSE Holdings, LLC and Randall Garutti.
10.18 ^{†*}	Employment Agreement, dated as of December 1, 2014, by and between Shake Shack Inc., SSE Holdings, LLC and Jeff Uttz.
10.19 [†]	Form of employee option agreement under the 2015 Incentive Award Plan.

- 10.20[†] Form of director option agreement under the 2015 Incentive Award Plan.
- 10.21 Form of Indemnification Agreement to be entered into between Shake Shack Inc. and certain of its directors and officers, to be effective upon the closing of this offering.

Exhibit number	Description of exhibit
10.22†	Assignment and Assumption Agreement, dated as of January 15, 2015, by and among SSE Holdings, LLC and Shake Shack Inc.
21.1*	List of Subsidiaries of Shake Shack Inc.
23.1	Consent of Ernst & Young LLP as to SSE Holdings LLC.
23.2	Consent of Ernst & Young LLP as to Shake Shack Inc.
23.3	Consent of Latham & Watkins LLP (included in Exhibit 5.1).
23.4*	Consent of eSite, Inc.
24.1*	Power of Attorney.

* Previously filed.

† Indicates a management contract or compensatory plan or arrangement.

UNDERWRITING AGREEMENT

SHAKE SHACK INC.

[] Shares of Class A Common Stock

Underwriting Agreement

[], 2015

J. P. Morgan Securities LLC
Morgan Stanley & Co. LLC
As Representatives of the
several Underwriters listed
in Schedule 1 hereto

c/o J. P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179
c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

Shake Shack Inc., a Delaware corporation (the “Company”), proposes to issue and sell to the several underwriters listed in Schedule 1 hereto (the “Underwriters”), for whom you are acting as representatives (the “Representatives”), an aggregate of [] shares of Class A common stock, par value \$0.01 per share, of the Company (the “Underwritten Shares”) and, at the option of the Underwriters, up to an additional [] shares of Class A common stock of the Company (the “Option Shares”). The Underwritten Shares and the Option Shares are herein referred to as the “Shares”. The shares of Class A common stock of the Company to be outstanding after giving effect to the sale of the Shares are referred to herein as the “Stock”.

On the date hereof, the business of the Company is conducted through SSE Holdings, LLC, a Delaware limited liability company (“SSE Holdings”), and its subsidiaries. Immediately prior to the Closing Date (as hereinafter defined), SSE Holdings will appoint the Company as the sole managing member of SSE Holdings. As the sole managing member of SSE Holdings, the Company will operate and control all of the business and affairs of SSE Holdings and, through SSE Holdings and its subsidiaries, conduct its business. The Company and SSE Holdings are collectively referred to herein as the “Shake Shack Parties.”

The Company hereby confirms its engagement of Morgan Stanley & Co. LLC, and Morgan Stanley & Co. LLC hereby confirms its agreement with the Company to render services, as the “qualified independent underwriter” within the meaning of Rule 5121 of the Financial Industry Regulatory Authority, Inc. (“FINRA”) with respect to the offering and sale of the Shares.

The Representatives have agreed to reserve a portion of the Shares to be purchased by it under this Agreement, up to [] Shares, for sale to the Company's directors and officers and certain employees of SSE Holdings and other parties related to the Company (collectively, "Participants"), as set forth in the Prospectus (as hereinafter defined) under the heading "Underwriting (Conflicts of Interest)" (the "Directed Share Program"). The Shares to be sold by the Representatives and their respective affiliates pursuant to the Directed Share Program are referred to hereinafter as the "Directed Shares". Any Directed Shares not orally confirmed for purchase by any Participant by 8:00 A.M., New York City time on the business day following the day on which this Agreement is executed will be offered to the public by the Underwriters as set forth in the Prospectus.

Each Shake Shack Party hereby confirms its agreement with the several Underwriters concerning the purchase and sale of the Shares, as follows:

1. Registration Statement. The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Securities Act"), a registration statement (File No. 333-201271), including a prospectus, relating to the Shares. Such registration statement, as amended at the time it became effective, including the information, if any, deemed pursuant to Rule 430A under the Securities Act to be part of the registration statement at the time of its effectiveness ("Rule 430 Information"), is referred to herein as the "Registration Statement"; and as used herein, the term "Preliminary Prospectus" means each prospectus included in such registration statement (and any amendments thereto) before effectiveness, any prospectus filed with the Commission pursuant to Rule 424(a) under the Securities Act and the prospectus included in the Registration Statement at the time of its effectiveness that omits Rule 430 Information, and the term "Prospectus" means the prospectus in the form first used (or made available upon request of purchasers pursuant to Rule 173 under the Securities Act) in connection with confirmation of sales of the Shares. If the Company has filed an abbreviated registration statement pursuant to Rule 462(b) under the Securities Act (the "Rule 462 Registration Statement"), then any reference herein to the term "Registration Statement" shall be deemed to include such Rule 462 Registration Statement. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Registration Statement and the Prospectus.

At or prior to the Applicable Time (as defined below), the Company had prepared the following information (collectively with the pricing information set forth on Annex A, the "Pricing Disclosure Package"): a Preliminary Prospectus dated [], 2015 and each "free-writing prospectus" (as defined pursuant to Rule 405 under the Securities Act) listed on Annex A hereto.

"Applicable Time" means [A/P.M.], New York City time, on [], 2015.

2. Purchase of the Shares by the Underwriters.

(a) The Company agrees to issue and sell the Underwritten Shares to the several Underwriters as provided in this Agreement, and each Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees, severally and not jointly, to purchase from the Company the respective number of Underwritten Shares set forth opposite such Underwriter's name in Schedule 1 hereto at a price per share (the "Purchase Price") of \$[].

In addition, the Company agrees to issue and sell the Option Shares to the several Underwriters as provided in this Agreement, and the Underwriters, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, shall have the option to purchase, severally and not jointly, from the Company the Option Shares at the Purchase Price less an

amount per share equal to any dividends or distributions declared by the Company and payable on the Underwritten Shares but not payable on the Option Shares.

If any Option Shares are to be purchased, the number of Option Shares to be purchased by each Underwriter shall be the number of Option Shares which bears the same ratio to the aggregate number of Option Shares being purchased as the number of Underwritten Shares set forth opposite the name of such Underwriter in Schedule 1 hereto (or such number increased as set forth in Section 10 hereof) bears to the aggregate number of Underwritten Shares being purchased from the Company by the several Underwriters, subject, however, to such adjustments to eliminate any fractional Shares as the Representatives in their sole discretion shall make.

The Underwriters may exercise the option to purchase Option Shares at any time in whole, or from time to time in part, on or before the thirtieth day following the date of the Prospectus, by written notice from the Representatives to the Company. Such notice shall set forth the aggregate number of Option Shares as to which the option is being exercised and the date and time when the Option Shares are to be delivered and paid for, which may be the same date and time as the Closing Date but shall not be earlier than the Closing Date or later than the tenth full business day (as hereinafter defined) after the date of such notice (unless such time and date are postponed in accordance with the provisions of Section 10 hereof). Any such notice shall be given at least two business days prior to the date and time of delivery specified therein.

(b) The Company understands that the Underwriters intend to make a public offering of the Shares as soon after the effectiveness of this Agreement as in the judgment of the Representatives is advisable, and initially to offer the Shares on the terms set forth in the Prospectus. The Company acknowledges and agrees that the Underwriters may offer and sell Shares to or through any affiliate of an Underwriter.

(c) Payment for the Shares shall be made by wire transfer in immediately available funds to the account specified by the Company to the Representatives in the case of the Underwritten Shares, at the offices of Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004 at 10:00 A.M., New York City time, on [], 2015, or at such other time or place on the same or such other date, not later than the fifth business day thereafter, as the Representatives and the Company may agree upon in writing or, in the case of the Option Shares, on the date and at the time and place specified by the Representatives in the written notice of the Underwriters' election to purchase such Option Shares. The time and date of such payment for the Underwritten Shares is referred to herein as the "Closing Date", and the time and date for such payment for the Option Shares, if other than the Closing Date, is herein referred to as the "Additional Closing Date".

Payment for the Shares to be purchased on the Closing Date or the Additional Closing Date, as the case may be, shall be made against delivery to the Representatives for the respective accounts of the several Underwriters of the Shares to be purchased on such date. Delivery of the Shares shall be made through the facilities of The Depository Trust Company ("DTC") unless the Representatives shall otherwise instruct. The certificates for the Shares will be made available for inspection and packaging by the Representatives at the office of DTC or its designated custodian not later than 1:00 P.M., New York City time, on the business day prior to the Closing Date or the Additional Closing Date, as the case may be.

(d) Each Shake Shack Party acknowledges and agrees that the Underwriters are acting solely in the capacity of an arm's length contractual counterparty to the Shake Shack Parties with respect to the offering of Shares contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Shake Shack Parties or any

other person. Additionally, neither the Representatives nor any other Underwriter is advising the Shake Shack Parties or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Shake Shack Parties shall consult with their own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to the Shake Shack Parties with respect thereto. Any review by the Underwriters of the Shake Shack Parties, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Shake Shack Parties.

3. Representations and Warranties of the Shake Shack Parties. Each Shake Shack Party represents and warrants, jointly and severally, to each Underwriter that:

(a) *Preliminary Prospectus*. No order preventing or suspending the use of any Preliminary Prospectus has been issued by the Commission, and each Preliminary Prospectus included in the Pricing Disclosure Package, at the time of filing thereof, complied in all material respects with the Securities Act, and no Preliminary Prospectus, at the time of filing thereof, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Shake Shack Parties make no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in any Preliminary Prospectus, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(b) *Pricing Disclosure Package*. The Pricing Disclosure Package as of the Applicable Time did not, and as of the Closing Date and as of the Additional Closing Date, as the case may be, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Shake Shack Parties make no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in such Pricing Disclosure Package, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(c) *Issuer Free Writing Prospectus*. Other than the Registration Statement, the Preliminary Prospectus and the Prospectus, the Company (including its agents and representatives, other than the Underwriters in their capacity as such) has not prepared, used, authorized, approved or referred to and will not prepare, use, authorize, approve or refer to any “written communication” (as defined in Rule 405 under the Securities Act) that constitutes an offer to sell or solicitation of an offer to buy the Shares (each such communication by the Company or its agents and representatives (other than a communication referred to in clause (i) below) an “Issuer Free Writing Prospectus”) other than (i) any document not constituting a prospectus pursuant to Section 2(a)(10)(a) of the Securities Act or Rule 134 under the Securities Act or (ii) the documents listed on Annex A hereto, each electronic road show and any other written communications approved in writing in advance by the Representatives. Each such Issuer Free Writing Prospectus complied in all material respects with the Securities Act, has been or will be (within the time period specified in Rule 433) filed in accordance with the Securities Act (to the extent required thereby) and, when taken together with the Preliminary Prospectus accompanying, or delivered prior to delivery of, such Issuer Free Writing Prospectus, did not, and as of the Closing Date and as of the Additional Closing Date, as the case may be, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Shake Shack Parties make

no representation and warranty with respect to any statements or omissions made in each such Issuer Free Writing Prospectus or Preliminary Prospectus in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in such Issuer Free Writing Prospectus or Preliminary Prospectus, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(d) *Emerging Growth Company*. From the time of initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and is an “emerging growth company,” as defined in Section 2(a) of the Securities Act (an “Emerging Growth Company”). “Testing-the-Waters Communication” means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act.

(e) *Testing-the-Waters Materials*. The Company (i) has not alone engaged in any Testing-the-Waters Communications and (ii) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company reconfirms that the Representatives have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed or approved for distribution any Written Testing-the-Waters Communications. “Written Testing-the-Waters Communication” means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

(f) *Registration Statement and Prospectus*. The Registration Statement has been declared effective by the Commission. No order suspending the effectiveness of the Registration Statement has been issued by the Commission, and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering of the Shares has been initiated or, to the Shake Shack Parties’ knowledge, threatened by the Commission; as of the applicable effective date of the Registration Statement and any post-effective amendment thereto, the Registration Statement and any such post-effective amendment complied and will comply in all material respects with the Securities Act, and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and as of the date of the Prospectus and any amendment or supplement thereto and as of the Closing Date and as of the Additional Closing Date, as the case may be, the Prospectus will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Shake Shack Parties make no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in the Registration Statement and the Prospectus and any amendment or supplement thereto, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 7(b) hereof.

(g) *Financial Statements*. The financial statements (including the related notes thereto) included in the Registration Statement, the Pricing Disclosure Package and the Prospectus comply in all material respects with the applicable requirements of the Securities Act and present fairly in all material respects the financial position of the entities indicated as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis throughout the periods covered thereby, and any supporting schedules included in the Registration Statement present fairly the information required to be stated therein; and the other financial

information included in the Registration Statement, the Pricing Disclosure Package and the Prospectus has been derived from the accounting records of the Shake Shack Parties and their consolidated subsidiaries, as applicable, and presents fairly in all material respects the information shown thereby; and the *pro forma* financial information and the related notes thereto included in the Registration Statement, the Pricing Disclosure Package and the Prospectus have been prepared in accordance with the applicable requirements of the Securities Act and the assumptions underlying such *pro forma* financial information are reasonable and are set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(h) *No Material Adverse Change.* Since the date of the most recent financial statements included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except as otherwise disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (i) there has not been any material change in the capital stock (other than the issuance of shares of common stock upon exercise of stock options and warrants described as outstanding in, and the grant of options and awards under existing equity incentive plans described in, the Registration Statement, the Pricing Disclosure Package and the Prospectus), short-term debt or long-term debt of any Shake Shack Party or any of its subsidiaries (other than borrowings, if any, under the Revolving Credit Facility (as defined in the Prospectus)), or any dividend or distribution of any kind declared, set aside for payment, paid or made by any Shake Shack Party on any class of capital stock, or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, stockholders' equity or results of operations of the Shake Shack Parties and their subsidiaries taken as a whole; (ii) none of the Shake Shack Parties or any of their respective subsidiaries has entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Shake Shack Parties and their subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Shake Shack Parties and their subsidiaries taken as a whole; and (iii) none of the Shake Shack Parties or any of their respective subsidiaries has sustained any loss or interference with its business that is material to the Shake Shack Parties and their subsidiaries taken as a whole and that is either from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority.

(i) *Organization and Good Standing.* Each Shake Shack Party and each of its subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, properties, management, financial position, stockholders' equity or results of operations of the Shake Shack Parties and their subsidiaries taken as a whole or on the performance by the Shake Shack Parties of their respective obligations under this Agreement and the Transaction Documents (a "Material Adverse Effect"). The Shake Shack Parties do not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21 to the Registration Statement.

(j) *Capitalization.* Each Shake Shack Party has an authorized capitalization as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus under the heading "Capitalization"; all the outstanding shares of capital stock of each Shake Shack Party have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights which have not been duly and validly waived or satisfied; except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no outstanding rights

(including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in any Shake Shack Party or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of any such Shake Shack Party or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options; the capital stock of each Shake Shack Party conforms in all material respects to the descriptions thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus; and all the outstanding shares of capital stock or other equity interests of each subsidiary owned, directly or indirectly, by each Shake Shack Party have been duly and validly authorized and issued, are fully paid and non-assessable (except, in the case of any foreign subsidiary, for directors' qualifying shares and except as otherwise described in the Registration Statement, the Pricing Disclosure Package and the Prospectus,) and are owned directly or indirectly by the Shake Shack Parties, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party, except for any lien charge, encumbrance, security interest, restriction on voting or transfer or any other claim under the Revolving Credit Facility.

(k) *Equity-Based Awards* . With respect to the stock options and any other equity-based awards (collectively, the "Equity-Based Grants") granted pursuant to the equity-based compensation plans of any Shake Shack Party or its subsidiaries (collectively, the "Company Stock Plans"), (i) each Equity-Based Grant intended to qualify as an "incentive stock option" under Section 422 of the Code so qualifies, (ii) each grant of an Equity-Based Grant was duly authorized no later than the date on which the grant of such Equity-Based Grant was by its terms to be effective (the "Grant Date") by all necessary corporate action, including, as applicable, approval by the board of directors or managers (or a duly constituted and authorized committee thereof) of the applicable Shake Shack Party and any required stockholder or member approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto, (iii) each such grant was made in accordance with the terms of the Company Stock Plans, the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Exchange Act") and all other applicable laws and regulatory rules or requirements, including the rules of the New York Stock Exchange and any other exchange on which Company securities are traded, and (iv) each such grant was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the applicable Shake Shack Party, except, in the case of clauses (i) through (iv) above, as would not reasonably be expected to have a Material Adverse Effect.

(l) *Due Authorization*. Each Shake Shack Party has full right, power and authority to execute and deliver, to the extent a party thereto, (a) this Agreement; (b) the Third Amended and Restated Limited Liability Company Agreement of SSE Holdings, to become effective on or prior to the Closing Date (as so amended and restated, the "SSE Holdings LLC Agreement"); (c) the amended and restated certificate of incorporation of the Company (the "Amended and Restated Charter"); (d) the tax receivable agreement (the "Tax Receivable Agreement") between the Company, SSE Holdings and certain holders of limited liability company interests in SSE Holdings who will retain their limited liability company interests in SSE Holdings (the "Continuing SSE Equity Owners"); and (e) the Registration Rights Agreement (the "Registration Rights Agreement") between the Company, the Continuing SSE Equity Owners and certain holders of Class A common stock of the Company (collectively, the "Transaction Documents"), and to perform its obligations hereunder and thereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and each of the Transaction Documents to which it is a party and the consummation by it of the transactions contemplated hereby and thereby has been duly and validly taken.

(m) *Underwriting Agreement*. This Agreement has been duly authorized, executed and delivered by each Shake Shack Party.

(n) *The Shares.* The Shares to be issued and sold by the Company hereunder have been duly authorized and, when issued and delivered and paid for as provided herein, will be duly and validly issued, will be fully paid and nonassessable and will conform to the descriptions thereof in the Registration Statement, the Pricing Disclosure Package and the Prospectus; and the issuance of the Shares is not subject to any preemptive or similar rights .

(o) *Other Transaction Documents.* Each of the SSE Holdings LLC Agreement, the Amended and Restated Charter, the Tax Receivable Agreement and the Registration Rights Agreement to which it is a party has been duly authorized by each Shake Shack Party and, when duly executed and delivered in accordance with its respective terms by each of the parties thereto, will constitute a valid and legally binding agreement of each such Shake Shack Party enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability.

(p) *Description of the Transaction Documents .* Each Transaction Document conforms in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(q) *No Violation or Default.* None of the Shake Shack Parties or any of their respective subsidiaries is (i) in violation of its respective charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which any Shake Shack Party or any of its subsidiaries is a party or by which any Shake Shack Party or any of its subsidiaries is bound or to which any of the property or assets of any Shake Shack Party or any of its subsidiaries is subject; or (iii) in violation of any law or statute applicable to any Shake Shack Party or any of its subsidiaries or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority having jurisdiction over any Shake Shack Party or any of its subsidiaries, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(r) *No Conflicts.* The execution, delivery and performance by each Shake Shack Party of each of the Transaction Documents to which it is a party, the issuance and sale of the Shares and the consummation of the transactions contemplated by the Transaction Documents or the Pricing Disclosure Package and the Prospectus will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of any Shake Shack Party or any of its subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which any Shake Shack Party or any of its subsidiaries is a party or by which any Shake Shack Party or any of its subsidiaries is bound or to which any of the property or assets of any Shake Shack Party or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of any Shake Shack Party or any of its subsidiaries or (iii) result in the violation of any law or statute applicable to any Shake Shack Party or any of its subsidiaries or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority having jurisdiction over any Shake Shack Party or any of its subsidiaries, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(s) *No Consents Required.* No consent, approval, authorization, order, license, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by each Shake Shack Party of each of the Transaction

Documents to which it is a party, the issuance and sale of the Shares and the consummation of the transactions contemplated by each of the Transaction Documents, except for the registration of the Shares under the Securities Act and such consents, approvals, authorizations, orders and registrations or qualifications as may be required by the Listing Exchange, the Financial Industry Regulatory Authority, Inc. (“FINRA”) and under applicable state securities laws in connection with the purchase and distribution of the Shares by the Underwriters.

(t) *Legal Proceedings.* Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which any Shake Shack Party or any of its subsidiaries is or, to the knowledge of the Shake Shack Parties, may be a party or to which any property of any Shake Shack Party or any of its subsidiaries is or, to the knowledge of the Shake Shack Parties, may be the subject that, individually or in the aggregate, if determined adversely to any Shake Shack Party or any of its subsidiaries, could reasonably be expected to have a Material Adverse Effect; to the knowledge of the Shake Shack Parties, no such investigations, actions, suits or proceedings are threatened or contemplated by any governmental or regulatory authority or threatened by others; and (i) there are no current or pending legal, governmental or regulatory actions, suits or proceedings that are required under the Securities Act to be described in the Registration Statement, the Pricing Disclosure Package or the Prospectus that are not so described in the Registration Statement, the Pricing Disclosure Package and the Prospectus and (ii) there are no statutes, regulations or contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement or described in the Registration Statement, the Pricing Disclosure Package or the Prospectus that are not so filed as exhibits to the Registration Statement or described in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(u) *Independent Accountants.* Ernst & Young LLP, who have certified certain financial statements of the Company, SSE Holdings and their respective subsidiaries, is an independent registered public accounting firm with respect to the Company, SSE Holdings and their respective subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(v) *Title to Real and Personal Property.* Each Shake Shack Party and its subsidiaries have good and marketable title in fee simple (in the case of real property) to, or have valid and marketable rights to lease or otherwise use, all items of real and personal property and assets that are material to their respective businesses, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the applicable Shake Shack Party and its subsidiaries or (ii) could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(w) *Title to Intellectual Property.* Each Shake Shack Party and its subsidiaries own or possess adequate rights to use all material patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of their respective businesses as currently conducted and as currently proposed to be conducted, and the conduct of their respective businesses will not conflict in any material respect with any such rights of others. None of the Shake Shack Parties or any of their respective subsidiaries has received any notice of any claim of infringement, misappropriation or conflict with any such rights of others in connection with its patents, patent rights, licenses, inventions, trademarks, service marks, trade names, copyrights and know-how, which would reasonably be expected to result in a Material Adverse Effect.

(x) *No Undisclosed Relationships* . No relationship, direct or indirect, exists between or among any Shake Shack Party or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of any Shake Shack Party or any of its subsidiaries, on the other, that is required by the Securities Act to be described in the Registration Statement and the Prospectus and that is not so described in such documents and in the Pricing Disclosure Package.

(y) *Investment Company Act* . Each Shake Shack Party is not and, after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, will not be required to register as an “investment company” or an entity “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (collectively, the “Investment Company Act”).

(z) *Taxes*. Each Shake Shack Party and its subsidiaries have paid all federal, state, local and foreign taxes and filed all tax returns required to be paid or filed through the date hereof, except for any taxes which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP, or where the failure to pay or file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and except as otherwise disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there is no tax deficiency that has been asserted in writing against any Shake Shack Party or any of its subsidiaries or any of their respective properties or assets, except for such deficiencies as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(aa) *Licenses and Permits*. Each Shake Shack Party and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except where the failure to possess or make the same would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, none of the Shake Shack Parties or any of their respective subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course, in each case, except where such revocation, modification, or non-renewal would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(bb) *No Labor Disputes*. No labor disturbance by or dispute with employees of any Shake Shack Party or any of its subsidiaries exists or, to the knowledge of the Shake Shack Parties, is contemplated or threatened, and no Shake Shack Party is aware of any existing or imminent labor disturbance by, or dispute with, the employees of any of its or its subsidiaries’ principal suppliers, contractors or customers, except as would not reasonably be expected to have a Material Adverse Effect.

(cc) *Compliance with and Liability under Environmental Laws*. (i) Each Shake Shack Party and its subsidiaries (a) are, and at all prior times were, in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions, judgments, decrees, orders and the common law relating to pollution or the protection of the environment, natural resources or human health or safety, including those relating to the generation, storage, treatment, use, handling, transportation, Release or threat of Release of Hazardous Materials (collectively, “Environmental Laws”), (b) have received and are in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses,

(c) have not received notice of any actual or potential liability under or relating to, or actual or potential violation of, any Environmental Laws, including for the investigation or remediation of any Release or threat of Release of Hazardous Materials, and have no knowledge of any event or condition that would reasonably be expected to result in any such notice, (d) are not conducting or paying for, in whole or in part, any investigation, remediation or other corrective action pursuant to any Environmental Law at any location, and (e) are not a party to any order, decree or agreement that imposes any obligation or liability under any Environmental Law, and (ii) there are no costs or liabilities associated with Environmental Laws of or relating to any Shake Shack Party or its subsidiaries, except in the case of each of (i) and (ii) above, for any such matter, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (iii) except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (a) there are no proceedings that are pending, or that are known to be contemplated, against any Shake Shack Party or any of its subsidiaries under any Environmental Laws in which a governmental entity is also a party, other than such proceedings regarding which it is reasonably believed no monetary sanctions of \$100,000 or more will be imposed, (b) none of the Shake Shack Parties or any of their respective subsidiaries is aware of any issues regarding compliance with Environmental Laws, or liabilities or other obligations under Environmental Laws, including the Release or threat of Release of Hazardous Materials, that could reasonably be expected to have a material effect on the capital expenditures, earnings or competitive position of the Shake Shack Parties and their subsidiaries, and (c) none of the Shake Shack Parties or any of their respective subsidiaries currently anticipates material capital expenditures relating to any Environmental Laws.

(dd) *Hazardous Materials* . There has been no storage, generation, transportation, use, handling, treatment, Release or threat of Release of Hazardous Materials by, relating to or caused by any Shake Shack Party or any of its subsidiaries (or, to the knowledge of the Shake Shack Parties and their subsidiaries, any predecessor) for whose acts or omissions any Shake Shack Party or any of its subsidiaries is or could reasonably be expected to be liable) at, on, under or from any property or facility now or previously owned, operated or leased by any Shake Shack Party or any of its subsidiaries, or at, on, under or from any other property or facility, in violation of any Environmental Laws or in a manner or amount or to a location that could reasonably be expected to result in any liability under any Environmental Law, except for any violation or liability which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. “Hazardous Materials” means any material, chemical, substance, waste, pollutant, contaminant, compound, mixture, or constituent thereof, in any form or

amount, including petroleum (including crude oil or any fraction thereof) and petroleum products, natural gas liquids, asbestos and asbestos containing materials, naturally occurring radioactive materials, brine, and drilling mud, regulated or which can give rise to liability under any Environmental Law. “Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, or migrating in, into or through the environment, or in, into from or through any building or structure.

(ee) *Compliance with ERISA.* (i) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), for which any Shake Shack Party or any member of its “Controlled Group” (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the “Code”)) would have any liability (each, a “Plan”) has been maintained in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Code, except for noncompliance that could not reasonably be expected to result in material liability to the Shake Shack Parties or their subsidiaries; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption that could reasonably be expected to result in a material liability to the Shake Shack Parties or their subsidiaries; (iii) for each Plan that is subject to the funding rules of Section 412 of the Code or Section

302 of ERISA, the minimum funding standard of Section 412 of the Code or Section 302 of ERISA, as applicable, has been satisfied (without taking into account any waiver thereof or extension of any amortization period) and is reasonably expected to be satisfied in the future (without taking into account any waiver thereof or extension of any amortization period); (iv) the fair market value of the assets of each Plan exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan); (v) no “reportable event” (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur that either has resulted, or could reasonably be expected to result, in material liability to the Shake Shack Parties or their subsidiaries; (vi) no Shake Shack Party or any member of its Controlled Group has incurred, nor reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the PBGC, in the ordinary course and without default) in respect of a Plan (including a “multiemployer plan”, within the meaning of Section 4001(a)(3) of ERISA); and (vii) there is no pending audit or investigation by the Internal Revenue Service, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any other governmental agency or any foreign regulatory agency with respect to any Plan that could reasonably be expected to result in material liability to the Shake Shack Parties or their subsidiaries. None of the following events has occurred or is reasonably likely to occur: (x) a material increase in the aggregate amount of contributions required to be made to all Plans by the Shake Shack Parties or their subsidiaries in the current fiscal year of the Shake Shack Parties and their subsidiaries compared to the amount of such contributions made in the Shake Shack Parties and their subsidiaries’ most recently completed fiscal year; or (y) a material increase in the Shake Shack Parties and their subsidiaries’ “accumulated post-retirement benefit obligations” (within the meaning of Statement of Financial Accounting Standards 106) compared to the amount of such obligations in the Shake Shack Parties and their subsidiaries’ most recently completed fiscal year.

(ff) *Disclosure Controls*. Each Shake Shack Party and its subsidiaries maintain an effective system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the applicable requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the applicable Shake Shack Parties’ management as appropriate to allow timely decisions regarding required disclosure. Each Shake Shack Party and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(gg) *Accounting Controls*. Each Shake Shack Party and its subsidiaries maintain systems of “internal control over financial reporting” (as defined in Rule 13a-15(f) of the Exchange Act) that comply with the applicable requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, 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, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no material weaknesses in any Shake Shack Party’s internal controls. The auditors and the Audit Committee of the Board of Directors of each Shake Shack Party have been advised of: (i) all significant deficiencies

and material weaknesses in the design or operation of internal controls over financial reporting which have adversely affected or are reasonably likely to adversely affect such Shake Shack Party's ability to record, process, summarize and report financial information; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in such Shake Shack Party's internal controls over financial reporting.

(hh) *Insurance.* Each Shake Shack Party and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, including business interruption insurance, which insurance is in amounts and insures against such losses and risks as are customary for businesses such as the Shake Shack Parties' and their subsidiaries'; and none of the Shake Shack Parties or any of their respective subsidiaries has (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business.

(ii) *No Unlawful Payments.* None of the Shake Shack Parties or any of their respective subsidiaries or, to the knowledge of the Shake Shack Parties, after due inquiry, any director, officer, affiliate or employee of any Shake Shack Party or any of its subsidiaries or any agent or other person acting on behalf of any Shake Shack Party or any of its subsidiaries has, (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offence under the Bribery Act 2010 of the United Kingdom or any other applicable anti-bribery or anti-corruption law; or (iv) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. Each Shake Shack Party and its subsidiaries have instituted, maintain and enforce, and will continue to maintain and enforce policies and procedures designed to promote and ensure compliance with all applicable anti-bribery and anti-corruption laws.

(jj) *Compliance with Anti-Money Laundering Laws .* The operations of each Shake Shack Party and its subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions where any Shake Shack Party or any of its subsidiaries conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, the "Anti-Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving any Shake Shack Party or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Shake Shack Parties, threatened.

(kk) *No Conflicts with Sanctions Laws .* None of the Shake Shack Parties or any of their respective subsidiaries or, to the knowledge of the Shake Shack Parties, after due inquiry, any director, officer, affiliate or employee of any Shake Shack Party or any of its subsidiaries or any agent or other person acting on behalf of any Shake Shack Party or any of its subsidiaries is, (i) currently the subject or the

target of any sanctions administered or enforced by the U.S. government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council (“UNSC”), the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority (collectively, “Sanctions”), or (ii) located, organized or resident in a country or territory that is the subject or target of Sanctions, including without limitation, Cuba, Iran, North Korea, Sudan and Syria (each, a “Sanctioned Country”); and the Company will not, directly or indirectly, use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions. For the past five years, the Shake Shack Parties and their subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(ll) *No Restrictions on Subsidiaries* . No subsidiary of any Shake Shack Party is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to any Shake Shack Party, from making any other distribution on such subsidiary’s capital stock, from repaying to any Shake Shack Party any loans or advances to such subsidiary from such Shake Shack Party or from transferring any of such subsidiary’s properties or assets to any Shake Shack Party or any other subsidiary of any Shake Shack Party except as such may be restricted under the Revolving Credit Facility.

(mm) *No Broker’s Fees*. None of the Shake Shack Parties or any of their respective subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any Shake Shack Party or any of its subsidiaries or any Underwriter for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Shares.

(nn) *No Registration Rights* . Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, no person has the right to require any Shake Shack Party or any of its subsidiaries to register any securities for sale under the Securities Act by reason of the filing of the Registration Statement with the Commission or the issuance and sale of the Shares.

(oo) *No Stabilization*. The Company has not taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Shares.

(qq) *Margin Rules* . The application of the proceeds received by the Company from the issuance, sale and delivery of the Shares as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(rr) *Forward-Looking Statements*. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(ss) *Statistical and Market Data.* Nothing has come to the attention of any Shake Shack Party that has caused such Shake Shack Party to believe that the statistical and market-related data included in the Registration Statement, the Pricing Disclosure Package and the Prospectus is not based on or derived from sources that are reliable and accurate in all material respects.

(tt) *Sarbanes-Oxley Act.* There is and has been no failure on the part of the Company or , to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002, as amended and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), applicable as of the effective date of the Registration Statement, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(uu) *Status under the Securities Act.* At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or any offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Shares and at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405 under the Securities Act. The Company has paid the registration fee for this offering pursuant to Rule 456(b)(1) under the Securities Act or will pay such fee within the time period required by such rule (without giving effect to the proviso therein) and in any event prior to the Closing Date.

(vv) *Directed Share Program.* Each Shake Shack Party represents and warrants, jointly and severally, that (i) the Registration Statement, the Pricing Disclosure Package and the Prospectus, any Preliminary Prospectus and any Issuer Free Writing Prospectuses comply in all material respects, and any further amendments or supplements thereto will comply in all material respects, with any applicable laws or regulations of foreign jurisdictions in which the Pricing Disclosure Package, the Prospectus, any Preliminary Prospectus and any Issuer Free Writing Prospectus, as amended or supplemented, if applicable, are distributed in connection with the Directed Share Program, and that (ii) no authorization, approval, consent, license, order, registration or qualification of or with any government, governmental instrumentality or court, other than such as have been obtained, is necessary under the securities laws and regulations of foreign jurisdictions in which the Directed Shares are offered outside the United States. The Company has not offered, or caused the Underwriters to offer, Shares to any person pursuant to the Directed Share Program with the specific intent to unlawfully influence (i) a customer or supplier of any Shake Shack Party to alter the customer's or supplier's level or type of business with such Shake Shack Party, or (ii) a trade journalist or publication to write or publish favorable information about any Shake Shack Party or its products.

(ww) *No rated debt.* There are no debt securities or preferred stock issued, or guaranteed by, any Shake Shack Party or any of its subsidiaries that are rated by a "nationally recognized statistical rating organization," as such term is defined in Section 3(a)(62) of the Exchange Act.

4. Further Agreements of the Company. The Company covenants and agrees with each Underwriter that:

(a) *Required Filings.* The Company will file the final Prospectus with the Commission within the time periods specified by Rule 424(b) and Rule 430A under the Securities Act, will file any Issuer Free Writing Prospectus to the extent required by Rule 433 under the Securities Act; and will use its best efforts to furnish copies of the Prospectus and each Issuer Free Writing Prospectus (to the extent not previously delivered) to the Underwriters in New York City prior to 5:00 P.M., New York City time, on the business day next succeeding the date of this Agreement in such quantities as the Representatives may reasonably request.

(b) *Delivery of Copies.* The Company will deliver, without charge, (i) to the Representatives, four signed copies of the Registration Statement as originally filed and each amendment thereto, in each case including all exhibits and consents filed therewith; and (ii) to each Underwriter (A) a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) and (B) during the Prospectus Delivery Period (as defined below), as many copies of the Prospectus (including all amendments and supplements thereto and each Issuer Free Writing Prospectus) as the Representatives may reasonably request. As used herein, the term “Prospectus Delivery Period” means such period of time after the first date of the public offering of the Shares as in the opinion of counsel for the Underwriters a prospectus relating to the Shares is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Shares by any Underwriter or dealer.

(c) *Amendments or Supplements, Issuer Free Writing Prospectuses.* Before preparing, using, authorizing, approving, referring to or filing any Issuer Free Writing Prospectus, and before filing any amendment or supplement to the Registration Statement or the Prospectus, the Company will furnish to the Representatives and counsel for the Underwriters a copy of the proposed Issuer Free Writing Prospectus, amendment or supplement for review and will not prepare, use, authorize, approve, refer to or file any such Issuer Free Writing Prospectus or file any such proposed amendment or supplement to which the Representatives reasonably object.

(d) *Notice to the Representatives.* The Company will advise the Representatives promptly, and confirm such advice in writing, (i) when the Registration Statement has become effective; (ii) when any amendment to the Registration Statement has been filed or becomes effective; (iii) when any supplement to the Prospectus, any Issuer Free Writing Prospectus or any Written Testing-the-Waters Communication or any amendment to the Prospectus has been filed or distributed; (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or the receipt of any comments from the Commission relating to the Registration Statement or any other request by the Commission for any additional information including, but not limited to, any request for information concerning any Testing-the-Waters Communication; (v) of the issuance by the Commission of any order suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Preliminary Prospectus, any of the Pricing Disclosure Package, the Prospectus or any Written Testing-the-Waters Communication or the initiation or threatening of any proceeding for that purpose or pursuant to Section 8A of the Securities Act; (vi) of the occurrence of any event or development within the Prospectus Delivery Period as a result of which the Prospectus, the Pricing Disclosure Package, any Issuer Free Writing Prospectus or any Written Testing-the-Waters Communication as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus, the Pricing Disclosure Package, any such Issuer Free Writing Prospectus or Written Testing-the-Waters Communication is delivered to a purchaser, not misleading; and (vii) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Shares for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its best efforts to prevent the issuance of any such order suspending the effectiveness of the Registration Statement, preventing or suspending the use of any Preliminary Prospectus, any of the Pricing Disclosure Package or the Prospectus or any Written Testing-the-Waters Communication or suspending any such qualification of the Shares and, if any such order is issued, will obtain as soon as possible the withdrawal thereof.

(e) *Ongoing Compliance.* (1) If during the Prospectus Delivery Period (i) any event or development shall occur or condition shall exist as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the

Prospectus is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Prospectus to comply with law, the Company will promptly notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission and furnish to the Underwriters and to such dealers as the Representatives may designate such amendments or supplements to the Prospectus as may be necessary so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus will comply with law and (2) if at any time prior to the Closing Date (i) any event or development shall occur or condition shall exist as a result of which the Pricing Disclosure Package as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Pricing Disclosure Package is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Pricing Disclosure Package to comply with law, the Company will promptly notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Representatives may designate such amendments or supplements to the Pricing Disclosure Package as may be necessary so that the statements in the Pricing Disclosure Package as so amended or supplemented will not, in the light of the circumstances existing when the Pricing Disclosure Package is delivered to a purchaser, be misleading or so that the Pricing Disclosure Package will comply with law.

(f) *Blue Sky Compliance.* The Company will qualify the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives shall reasonably request and will continue such qualifications in effect so long as required for distribution of the Shares; provided that the Company shall not be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(g) *Earning Statement.* The Company will make generally available to its security holders and the Representatives as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 of the Commission promulgated thereunder covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the “effective date” (as defined in Rule 158) of the Registration Statement.

(h) *Clear Market.* For a period of 180 days after the date of the Prospectus, the Company will not (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, or file with the Commission a registration statement under the Securities Act relating to, any shares of Stock or Class B common stock, par value \$0.01 per share, of the Company (together with the Stock, the “Common Stock”) or any securities convertible into or exercisable or exchangeable for Common Stock, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing (other than filings on Form S-8 relating to the Company Stock Plans), or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such other securities, regardless of whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, without the prior written consent of the Representatives, other than (i) the Shares to be sold hereunder (ii) any shares of Common Stock of the Company issued upon the exercise of options granted under Company Stock Plans and (iii) pursuant to the SSE Holdings LLC Agreement.

If the Representatives, in their sole discretion, agree to release or waive the restrictions set forth in a lock-up letter described in Section 6(k) hereof for an officer or director of the Company and provide the Company with notice of the impending release or waiver substantially in the form of Exhibit B hereto

at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit C hereto through a major news service at least two business days before the effective date of the release or waiver.

(i) *Use of Proceeds.* The Company will apply the net proceeds from the sale of the Shares as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus under the heading “Use of proceeds”.

(j) *No Stabilization.* The Company will not take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Stock.

(k) *Exchange Listing.* The Company will use its best efforts to list, subject to notice of issuance, the Shares on the New York Stock Exchange (the “Listing Exchange”).

(l) *Reports.* For a period of three years from the date of this Agreement, so long as the Shares are outstanding, the Company will furnish to the Representatives, as soon as they are available, copies of all reports or other communications (financial or other) furnished to holders of the Shares, and copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange or automatic quotation system; provided the Company will be deemed to have furnished such reports and financial statements to the Representatives to the extent they are filed on the Commission’s Electronic Data Gathering, Analysis, and Retrieval system.

(m) *Record Retention .* The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Securities Act.

(n) *Filings.* The Company will file with the Commission such reports as may be required by Rule 463 under the Securities Act.

(o) *Directed Share Program.* The Company will comply with all applicable securities and other laws, rules and regulations in each jurisdiction in which the Directed Shares are offered in connection with the Directed Share Program.

(p) *Emerging Growth Company .* The Company will promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to the later of (i) completion of the distribution of Shares within the meaning of the Securities Act and (ii) completion of the 180-day restricted period referred to in Section 4(h) hereof.

5. Certain Agreements of the Underwriters. Each Underwriter hereby represents and agrees that:

(a) It has not used, authorized use of, referred to or participated in the planning for use of, and will not use, authorize use of, refer to or participate in the planning for use of, any “free writing prospectus”, as defined in Rule 405 under the Securities Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) other than (i) a free writing prospectus that contains no “issuer information” (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the Preliminary Prospectus or a previously filed Issuer Free Writing Prospectus, (ii) any Issuer Free Writing Prospectus listed on Annex B or prepared pursuant to Section 3 (c) or Section 4(c) above (including any electronic road show approved

in advance by the Company), or (iii) any free writing prospectus prepared by such underwriter and approved by the Company in advance in writing (each such free writing prospectus referred to in clauses (i) or (iii), an “Underwriter Free Writing Prospectus”).

(b) It has not and will not distribute any Underwriter Free Writing Prospectus referred to in clause (a)(i) in a manner reasonably designed to lead to its broad unrestricted dissemination.

(c) It has not and will not, without the prior written consent of the Company, use any free writing prospectus that contains the final terms of the Shares unless such terms have previously been included in a free writing prospectus filed with the Commission.

(d) It is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the Prospectus Delivery Period).

6. Conditions of Underwriters’ Obligations. The obligation of each Underwriter to purchase the Underwritten Shares on the Closing Date or the Option Shares on the Additional Closing Date, as the case may be, as provided herein is subject to the performance by the Company of its covenants and other obligations hereunder and to the following additional conditions:

(a) *Registration Compliance; No Stop Order.* No order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose or pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission; the Prospectus and each Issuer Free Writing Prospectus shall have been timely filed with the Commission under the Securities Act (in the case of an Issuer Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act) and in accordance with Section 4 (a) hereof; and all requests by the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representatives.

(b) *Representations and Warranties.* The representations and warranties of each Shake Shack Party contained herein shall be true and correct on the date hereof and on and as of the Closing Date or the Additional Closing Date, as the case may be; and the statements of each Shake Shack Party and its officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date or the Additional Closing Date, as the case may be.

(c) *No Material Adverse Change.* No event or condition of a type described in Section 3(h) hereof shall have occurred or shall exist, which event or condition is not described in the Pricing Disclosure Package (excluding any amendment or supplement thereto) and the Prospectus (excluding any amendment or supplement thereto) and the effect of which in the judgment of the Representative s makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Shares on the Closing Date or the Additional Closing Date, as the case may be, on the terms and in the manner contemplated by this Agreement, the Pricing Disclosure Package and the Prospectus.

(d) *Officer’s Certificate.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, a certificate of the chief financial officer or chief accounting officer of each Shake Shack Party and one additional senior executive officer of each Shake Shack Party who is satisfactory to the Representatives (i) confirming that such officers have carefully reviewed the Registration Statement, the Pricing Disclosure Package and the Prospectus and, to the knowledge of such officers, the representations set forth in Sections 3(b) and 3(f) hereof are true and correct, (ii) confirming that the other representations and warranties of each Shake Shack Party in this Agreement are true and correct and that each Shake Shack Party has complied in all material respects

with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date or the Additional Closing Date, as the case may be, and (iii) to the effect set forth in paragraphs (a) and (c) above.

(e) *Comfort Letters.* (i) On the date of this Agreement and on the Closing Date or the Additional Closing Date, as the case may be, Ernst & Young LLP shall have furnished to the Representatives, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus; provided, that the letter delivered on the Closing Date or the Additional Closing Date, as the case may be, shall use a "cut-off" date no more than three business days prior to such Closing Date or such Additional Closing Date, as the case may be.

(ii) On the date of this Agreement and on the Closing Date or the Additional Closing Date, as the case may be, each Shake Shack Party shall have furnished to the Representatives a certificate, dated the respective dates of delivery thereof and addressed to the Underwriters, of its chief financial officer with respect to certain financial data contained in the Pricing Disclosure Package and the Prospectus, in form and substance reasonably satisfactory to the Representatives.

(f) *Opinion and 10b-5 Statement of Counsel for the Company.* Latham & Watkins LLP, counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinion and 10b-5 statement, dated the Closing Date or the Additional Closing Date, as the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex C hereto.

(g) *Opinion and 10b-5 Statement of Counsel for the Underwriters.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, an opinion and 10b-5 statement of Fried, Frank, Harris, Shriver & Jacobson LLP, counsel for the Underwriters, with respect to such matters as the Representatives may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(h) *No Legal Impediment to Issuance.* No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date or the Additional Closing Date, as the case may be, prevent the issuance or sale of the Shares; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date or the Additional Closing Date, as the case may be, prevent the issuance or sale of the Shares.

(i) *Good Standing.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, satisfactory evidence of the good standing of each Shake Shack Party and its subsidiaries in their respective jurisdictions of organization and their good standing as foreign entities in such other jurisdictions as the Representatives may reasonably request, in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(j) *Exchange Listing.* The Shares to be delivered on the Closing Date or Additional Closing Date, as the case may be, shall have been approved for listing on the Listing Exchange, subject to official notice of issuance.

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(k) *Lock-up Agreements.* The "lock-up" agreements, each substantially in the form of Exhibit A hereto, between you and certain shareholders, officers and directors of the Shake Shack Parties relating to sales and certain other dispositions of shares of Stock or certain other securities, delivered to you on or before the date hereof, shall be full force and effect on the Closing Date or Additional Closing Date, as the case may be.

(l) *Additional Documents.* On or prior to the Closing Date or the Additional Closing Date, as the case may be, the Shake Shack Parties shall have furnished to the Representatives such further certificates and documents as the Representatives may reasonably request.

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters on the Closing Date or the Additional Closing Date, as applicable, it being agreed that payment for and delivery of the Shares will be conclusive evidence that such documents are satisfactory.

7. Indemnification and Contribution.

(a) *Indemnification of the Underwriters.* Each Shake Shack Party agrees, jointly and severally, to indemnify and hold harmless each Underwriter, its affiliates, directors and officers and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, not misleading, or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus, any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act, any Written Testing-the-Waters Communication, any road show as defined

in Rule 433(h) under the Securities Act (a “road show”) or any Pricing Disclosure Package (including any Pricing Disclosure Package that has subsequently been amended), or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (b) below.

Each Shake Shack Party also agrees, jointly and severally, to indemnify and hold harmless Morgan Stanley & Co. LLC, its affiliates, directors and officers and each person, if any, who controls Morgan Stanley & Co. LLC within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred) that arise out of, or are based upon, Morgan Stanley & Co. LLC’s participation as a “qualified independent underwriter” within the meaning of FINRA Rule 5121 in connection with the offering of the Shares.

(b) *Indemnification of the Shake Shack Parties* . Each Underwriter agrees, severally and not

jointly, to indemnify and hold harmless each Shake Shack Party, the directors of the Company, the officers of the Company who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in the Registration Statement, the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, any road show or any Pricing Disclosure Package (including any Pricing Disclosure Package that has subsequently been amended), it being understood and agreed upon that the only such information furnished by any Underwriter consists of the following information in the Prospectus furnished on behalf of each Underwriter: the concession and reallowance figures appearing in the third paragraph under the caption “Underwriting (Conflicts of Interest),” the information contained in the thirteenth and fourteenth paragraphs and the second and third sentences of the fifteenth paragraph under the caption “Underwriting (Conflicts of Interest).”

(c) *Notice and Procedures.* If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such person (the “Indemnified Person”) shall promptly notify the person against whom such indemnification may be sought (the “Indemnifying Person”) in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under paragraph (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided, further, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under paragraph (a) or (b) above. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be paid or reimbursed as they are incurred ; provided, however, that if indemnity may be sought pursuant to the second paragraph of paragraph (a) above in respect of such proceeding, then in addition to such separate firm of the Underwriters, their affiliates and such control persons of the Underwriters, the indemnifying party shall be liable for the fees and expenses of not more than one separate firm (in addition to any local counsel) for Morgan Stanley & Co. LLC in its capacity as a “qualified independent underwriter,” its affiliates, directors, officers and all persons, if any, who control Morgan Stanley & Co. LLC within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act. Any such separate firm for any Underwriter, its affiliates, directors and officers and any control persons of such

Underwriter shall be designated in writing by the Representatives and any such separate firm for the Shake Shack Parties, the directors of the Company, the officers of the Company who signed the Registration Statement and any control persons of the Company shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than (A) 60 days after receipt by the Indemnifying Person of such request and (B) more than 60 days after receipt by the Indemnifying Person of the proposed terms of such settlement and (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement, unless, in each case, the amount of such fees and expenses is being actively disputed in good faith. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (x) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) *Contribution.* If the indemnification provided for in paragraphs (a) and (b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein (other than as a result of the limitations imposed on indemnification described in such preceding sections of this Section 9), then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Shake Shack Parties, on the one hand, and the Underwriters on the other, from the offering of the Shares or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Shake Shack Parties, on the one hand, and the Underwriters on the other, in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Shake Shack Parties, on the one hand, and the Underwriters or Morgan Stanley & Co. LLC in its capacity as a “qualified independent underwriter”, as the case may be, on the other, shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Company from the sale of the Shares and the total underwriting discounts and commissions received by the Underwriters in connection therewith, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate offering price of the Shares. The relative fault of the Shake Shack Parties, on the one hand, and the Underwriters or Morgan Stanley & Co. LLC as a “qualified independent underwriter”, as the case may be, on the other, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Shake Shack Parties, by the Underwriters or by Morgan Stanley & Co. LLC as a “qualified independent underwriter”, as the case may be, and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) *Limitation on Liability.* The Shake Shack Parties and the Underwriters agree that it would not be just and equitable if contribution pursuant to paragraph (d) above were determined by pro

rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any reasonable legal or other expenses incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of paragraphs (d) and (e), in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Shares exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to paragraphs (d) and (e) are several in proportion to their respective purchase obligations hereunder and not joint.

(f) *Non-Exclusive Remedies.* The remedies provided for in this Section 7 paragraphs (a) through (e) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity.

(g) *Directed Share Program Indemnification.* Each Shake Shack Party agrees, jointly and severally, to indemnify and hold harmless the Representatives, their respective affiliates, directors and officers and each person, if any, who controls the Representatives within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act (each a "DSP Indemnified Entity") from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal fees and other expenses reasonably incurred in connection with defending or investigating any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred) (i) caused by any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to Participants in connection with the Directed Share Program or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (ii) caused by the failure of any Participant to pay for and accept delivery of Directed Shares that the Participant agreed to purchase; or (iii) related to, arising out of, or in connection with the Directed Share Program, other than losses, claims, damages or liabilities (or expenses relating thereto) that are finally judicially determined to have resulted from the bad faith or gross negligence of the DSP Indemnified Entities.

(h) In case any proceeding (including any governmental investigation) shall be instituted involving any DSP Indemnified Entity in respect of which indemnity may be sought pursuant to paragraph (g) above, the DSP Indemnified Entity seeking indemnity shall promptly notify the Company in writing and the Shake Shack Parties, upon request of the DSP Indemnified Entity, shall retain counsel reasonably satisfactory to the DSP Indemnified Entity to represent the DSP Indemnified Entity and any others the Shake Shack Parties may designate in such proceeding and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any DSP Indemnified Entity shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such DSP Indemnified Entity unless (i) the Shake Shack Parties and such DSP Indemnified Entity shall have mutually agreed to the retention of such counsel, (ii) the Shake Shack Parties have failed within a reasonable time to retain counsel reasonably satisfactory to such DSP Indemnified Entity, (iii) the DSP Indemnified Entity shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to any Shake Shack Party or (iv) the named parties to any such proceeding (including any impleaded parties) include any Shake Shack Party and the DSP Indemnified Entity and representation of both parties by the same counsel

would be inappropriate due to actual or potential differing interests between them. The Shake Shack Parties shall not, in respect of the legal expenses of the DSP Indemnified Entities in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all DSP Indemnified Entities. The Shake Shack Parties shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, each Shake Shack Party agrees, severally and jointly, to indemnify the DSP Indemnified Entities from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time a DSP Indemnified Entity shall have requested that any Shake Shack Party reimburse the DSP Indemnified Entity for fees and expenses of counsel as contemplated by this paragraph, the Shake Shack Parties shall be liable for any settlement of any proceeding effected without their written consent if (i) such settlement is entered into more than (A) 60 days after receipt by the Company of such request and (B) more than 60 days after receipt by the Company of the proposed terms of such settlement and (ii) the Shake Shack Parties shall not have reimbursed the DSP Indemnified Entity in accordance with such request prior to the date of such settlement, unless, in each case, the amount of such fees and expenses is being actively disputed in good faith. No Shake Shack Party shall, without the prior written consent of the Representatives effect any settlement of any pending or threatened proceeding in respect of which any DSP Indemnified Entity is or could have been a party and indemnity could have been sought hereunder by such DSP Indemnified Entity, unless (x) such settlement includes an unconditional release of the DSP Indemnified Entities from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of the DSP Indemnified Entity.

(i) To the extent the indemnification provided for in paragraph (g) above is unavailable to a DSP Indemnified Entity or insufficient in respect of any losses, claims, damages or liabilities referred to therein (other than as a result of the limitations imposed on indemnification described in paragraph (g) above), then the Shake Shack Parties in lieu of indemnifying the DSP Indemnified Entity thereunder, shall contribute to the amount paid or payable by the DSP Indemnified Entity as a result of such losses, claims, damages or liabilities (1) in such proportion as is appropriate to reflect the relative benefits received by the Shake Shack Parties on the one hand and the DSP Indemnified Entities on the other hand from the offering of the Directed Shares or (2) if the allocation provided by clause 7(i)(1) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 7(i)(1) above but also the relative fault of the Shake Shack Parties on the one hand and of the DSP Indemnified Entities on the other hand in connection with any statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Shake Shack Parties on the one hand and the DSP Indemnified Entities on the other hand in connection with the offering of the Directed Shares shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Directed Shares (before deducting expenses) and the total underwriting discounts and commissions received by the DSP Indemnified Entities for the Directed Shares, bear to the aggregate public offering price of the Directed Shares. If the loss, claim, damage or liability is caused by an untrue or alleged untrue statement of material fact or the omission or alleged omission to state a material fact, the relative fault of the Shake Shack Parties on the one hand and the DSP Indemnified Entities on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement or the omission or alleged omission relates to information supplied by any Shake Shack Party or by the DSP Indemnified Entities and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(j) The Shake Shack Parties and the DSP Indemnified Entities agree that it would be not just or equitable if contribution pursuant to paragraph (i) above were determined by pro rata allocation (even if the DSP Indemnified Entities were treated as one entity for such purpose) or by any other method of

allocation that does not take account of the equitable considerations referred to in paragraph (i) above. The amount paid or payable by the DSP Indemnified Entities as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by the DSP Indemnified Entities in connection with investigating or defending such any action or claim. Notwithstanding the provisions of paragraph (i) above, no DSP Indemnified Entity shall be required to contribute any amount in excess of the amount by which the total price at which the Directed Shares distributed to the public were offered to the public exceeds the amount of any damages that such DSP Indemnified Entity has otherwise been required to pay. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in paragraphs (g) through (j) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(k) The indemnity and contribution provisions contained in paragraphs (g) through (j) shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any DSP Indemnified Entity or any Shake Shack Party, the officers or directors of the Company or any person controlling the Company and (iii) acceptance of and payment for any of the Directed Shares.

8. Effectiveness of Agreement. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

9. Termination. This Agreement may be terminated in the absolute discretion of the Representatives, by notice to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date or, in the case of the Option Shares, prior to the Additional Closing Date (i) trading generally shall have been suspended or materially limited on or by any of the New York Stock Exchange or the Nasdaq Stock Market; (ii) trading of any securities issued or guaranteed by the Company shall have been suspended on any exchange or in any over-the-counter market; (iii) a general moratorium on commercial banking activities shall have been declared by federal or New York State authorities; or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Representatives, is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Shares on the Closing Date or the Additional Closing Date, as the case may be, on the terms and in the manner contemplated by this Agreement, the Pricing Disclosure Package and the Prospectus.

10. Defaulting Underwriter.

(a) If, on the Closing Date or the Additional Closing Date, as the case may be, any Underwriter defaults on its obligation to purchase the Shares that it has agreed to purchase hereunder on such date, the non-defaulting Underwriters may in their discretion arrange for the purchase of such Shares by other persons satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Shares, then the Company shall be entitled to a further period of 36 hours within which to procure other persons reasonably satisfactory to the non-defaulting Underwriters to purchase such Shares on such terms. If other persons become obligated or agree to purchase the Shares of a defaulting Underwriter, either the non-defaulting Underwriters or the Company may postpone the Closing Date or the Additional Closing Date, as the case may be, for up to five full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the Registration Statement and the Prospectus or in any other document or arrangement, and the

Company agrees to promptly prepare any amendment or supplement to the Registration Statement and the Prospectus that effects any such changes. As used in this Agreement, the term "Underwriter" includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in Schedule 1 hereto that, pursuant to this Section 10, purchases Shares that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate number of Shares that remain unpurchased on the Closing Date or the Additional Closing Date, as the case may be, does not exceed one-eleventh of the aggregate number of Shares to be purchased on such date, then the Company shall have the right to require each non-defaulting Underwriter to purchase the number of Shares that such Underwriter agreed to purchase hereunder on such date plus such Underwriter's pro rata share (based on the number of Shares that such Underwriter agreed to purchase on such date) of the Shares of such defaulting Underwriter or Underwriters for which such arrangements have not been made.

(c) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate number of Shares that remain unpurchased on the Closing Date or the Additional Closing Date, as the case may be, exceeds one-eleventh of the aggregate amount of Shares to be purchased on such date, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement or, with respect to any Additional Closing Date, the obligation of the Underwriters to purchase Shares on the Additional Closing Date shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 10 shall be without liability on the part of the Shake Shack Parties, except that each Shake Shack Party will continue to be jointly and severally liable for the payment of expenses as set forth in Section 11 hereof and except that the provisions of Section 7 hereof shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Shake Shack Parties or any non-defaulting Underwriter for damages caused by its default.

11. Payment of Expenses.

(a) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Shake Shack Parties will, jointly and severally, pay or cause to be paid all costs and expenses incident to the performance of its obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Shares and any taxes payable in that connection; (ii) the costs incident to the preparation, printing and filing under the Securities Act of the Registration Statement, the Preliminary Prospectus, any Issuer Free Writing Prospectus, any Pricing Disclosure Package and the Prospectus (including all exhibits, amendments and supplements thereto) and the distribution thereof; (iii) the fees and expenses of the Company's counsel and independent accountants; (iv) the fees and expenses incurred in connection with the registration or qualification of the Shares under the state or foreign securities or blue sky laws of such jurisdictions as the Representatives may reasonably designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the related reasonable fees and expenses of counsel for the Underwriters); (v) the cost of preparing stock certificates; (vi) the costs and charges of any transfer agent and any registrar; (vii) all expenses and application fees incurred in connection with any filing with, and clearance of the offering by, FINRA; (viii) all expenses incurred by the Company in connection with any "road show" presentation to potential investors; *provided* that any expenses or costs associated with any chartered plane used in connection with any "road show" presentation to potential investors will be paid 50% by the Company and 50% by the Underwriters; (ix) all expenses and application fees related to the listing of the Shares on

the Listing Exchange and (x) all of the fees and disbursements of counsel incurred by the Underwriters in connection with the Directed Share Program and stamp duties, similar taxes or duties or other taxes, if any, incurred by the Underwriters in connection with the Directed Share Program; *provided* that the fees and expenses of counsel for the Underwriters to be reimbursed by the Company pursuant to clauses (iv), (vii) and (x) hereof shall not exceed \$60,000 in the aggregate.

(b) If (i) this Agreement is terminated pursuant to Section 9, (ii) the Company for any reason fails to tender the Shares for delivery to the Underwriters or (iii) the Underwriters decline to purchase the Shares for any reason permitted under this Agreement, each Shake Shack Party agrees, jointly and severally, to reimburse the Underwriters (in the case of a termination pursuant to Section 10, only such Underwriters as have so terminated this Agreement with respect to themselves severally and are not in default hereunder) for all out-of-pocket costs and expenses (including the fees and expenses of their counsel) reasonably incurred by the Underwriters in connection with this Agreement and the offering contemplated hereby.

12. Persons Entitled to Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and any controlling persons referred to in Section 7 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Shares from any Underwriter shall be deemed to be a successor merely by reason of such purchase.

13. Survival. The respective indemnities, rights of contribution, representations, warranties and agreements of the Shake Shack Parties, the Underwriters and Morgan Stanley & Co. LLC as a “qualified independent underwriter” contained in this Agreement or made by or on behalf of the Shake Shack Parties, the Underwriters or Morgan Stanley & Co. LLC as a “qualified independent underwriter” pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Shares and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of the Shake Shack Parties, the Underwriters or Morgan Stanley & Co. LLC as a “qualified independent underwriter”.

14. Certain Defined Terms. For purposes of this Agreement, (a) except where otherwise expressly provided, the term “affiliate” has the meaning set forth in Rule 405 under the Securities Act; (b) the term “business day” means any day other than a day on which banks are permitted or required to be closed in New York City; and (c) the term “subsidiary” has the meaning set forth in Rule 405 under the Securities Act.

15. Miscellaneous.

(a) *Notices*. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Underwriters shall be given to the Representatives c/o J. P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179 (fax: (212) 622-8358), Attention Equity Syndicate Desk; and c/o Morgan Stanley & Co. LLC 1585 Broadway New York, New York 10036, Attention Equity Syndicate Desk, with a copy to the Legal Department. Notices to the Company shall be given to it at Shake Shack Inc., 24 Union Square East, New York, NY 10003, (fax: [() -]); Attention: Ronald Palmese, Jr., Esq.

(b) *Governing Law*. This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in such state.

(c) *Counterparts.* This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

(d) *Amendments or Waivers.* No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

(e) *Headings.* The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

SHAKE SHACK INC.

By: _____
Name:
Title:

SSE HOLDINGS, LLC

By: _____
Name:
Title:

Accepted: [_____], 2015

J. P. MORGAN SECURITIES LLC

By: _____
Authorized Signatory

MORGAN STANLEY & CO. LLC

By: _____
Authorized Signatory

For themselves and on behalf of theseveral Underwriters listed in
Schedule 1 hereto.

Underwriter	Number of Shares
J.P. Morgan Securities LLC	
Morgan Stanley & Co. LLC	
Barclays Capital Inc.	
Goldman, Sachs & Co.	
Jefferies LLC	
William Blair & Company, L.L.C.	
Stifel, Nicolaus & Company, Incorporated	
Total	

a. **Pricing Disclosure Package**

[*List any Issuer Free Writing Prospectus to be included in the Pricing Disclosure Package*]

b. **Pricing Information Provided Orally by Underwriters**

Public offering price per share: \$[]

Number of Underwritten Shares:

Written Testing-the-Waters Communications

None.

[Form of Opinion of Counsel for the Company]

FORM OF LOCK-UP AGREEMENT

, 2014

J. P. Morgan Securities LLC
Morgan Stanley & Co., LLC
As Representatives of the
several Underwriters listed
in Schedule 1 to the
Underwriting Agreement
referred to below
c/o J. P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179
c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Re: SHAKE SHACK INC. — Public Offering

Ladies and Gentlemen:

The undersigned understands that you, as Representatives of the several Underwriters, propose to enter into an Underwriting Agreement (the “Underwriting Agreement”) with Shake Shack Inc., a Delaware corporation (the “Company”), providing for the public offering (the “Public Offering”) by the several Underwriters named in Schedule 1 to the Underwriting Agreement (the “Underwriters”), of Class A common stock (the “Securities”) of the Company (the “Class A Common Stock”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Underwriting Agreement.

In consideration of the Underwriters’ agreement to purchase and make the Public Offering of the Securities, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned hereby agrees that, without the prior written consent of the Representatives on behalf of the Underwriters, the undersigned will not, during the period ending 180 days after the date of the prospectus relating to the Public Offering (the “Prospectus”), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Class A Common Stock or Class B common stock of the Company (the “Class B Common Stock” and, together with the Class A Common Stock, the “Common Stock”) or any securities convertible into or exercisable or exchangeable for any shares of Common Stock (including without limitation, Common Stock, limited liability company interests in SSE Holdings, LLC (the “SSE Interests”) or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant), or publicly disclose the intention to make any offer, sale, pledge or disposition, (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences associated with ownership of any shares of Common Stock, SSE Interests or such other securities, regardless of whether

any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock, SSE Interests or such other securities, in cash or otherwise or (3) make any demand for, or exercise any right with respect to, the registration of any shares of Common Stock, SSE Interests or any security convertible into or exercisable or exchangeable for Common Stock, in each case other than (A) transfers of shares of Common Stock or SSE Interests as a bona fide gift or gifts, (B) transfers of shares of Common Stock or SSE Interests by will or intestacy, (C) transfers of shares of Common Stock or SSE Interests to any trust, the beneficiaries of which are exclusively the undersigned's or a member or members of his or her immediate family or to any other entity that is wholly-owned by such persons, or (D) transfers of shares of Common Stock or SSE Interests to a corporation, partnership, limited liability company or other entity that controls or is controlled by, or is under common control with, the undersigned, or is wholly-owned by the undersigned and/or by members of the undersigned's immediate family, (E) distributions of shares of Common Stock or SSE Interests to members, limited partners or stockholders of the undersigned, (F) exchanges of SSE Interests for shares of Common Stock pursuant to the SSE Holdings LLC Agreement or by the Former SSE Equity Owners (as defined in the Pricing Disclosure Package) in the manner set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (G) transfers of shares of Common Stock to the Company (1) pursuant to the exercise, in each case on a "cashless" or "net exercise" basis, of any option to purchase shares of Common Stock granted by the Company to employee benefit plans or arrangements described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or (2) for the purpose of satisfying any withholding taxes (including estimated taxes) due as a result of the exercise of any option to purchase shares of Common Stock or the vesting of any restricted stock awards granted by the Company pursuant to employee benefit plans or arrangements described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, in each case on a "cashless" or "net exercise" basis (the term "cashless" or "net" exercise being intended to include the sale of a portion of the option shares of Common Stock or previously owned Common Stock to the Company or in the open market to cover payment of the exercise price or withholding taxes, as the case may be), (H) transfers of shares of Common Stock that were acquired in open market transactions following the completion of the distribution of the Shares by the Underwriters or (I) entering into a written plan meeting the requirements of Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock that does not provide for the transfer of shares of Common Stock during the 180-day period referred to above; provided that in the case of any transfer, donation or distribution pursuant to clauses (A) through (F), each transferee, donee or distributee shall execute and deliver to the Representatives a lock-up letter in the form of this paragraph; and provided, further, that in the case of any transfer, donation or distribution pursuant to clauses (A) through (E), (G) and (H) or the entry into any plan contemplated by clause (I), no filing by any party (the Company, donor, donee, transferor, transferee or plan entrant) under the Securities Exchange Act of 1934, as amended, or other public announcement shall be required or shall be made voluntarily in connection with such transfer, donation, distribution or plan entrance (other than a filing on a Form 5 made after the expiration of the 180-day period referred to above), unless, in the case of entry into a plan contemplated by clause (I), such announcement or filing shall prominently include a statement to the effect that no transfer of Common Stock may be made under such plan during the restricted period. If the undersigned is an officer or director of the Company, the undersigned further agrees that the foregoing provisions shall be equally applicable to any Company-directed Securities the undersigned may purchase in the Public Offering. The foregoing provisions shall not apply to any Company-directed Securities in the Public Offering purchased by a person that is not an officer or director of the Company; provided that no filing by any party under the Exchange Act or other public announcement shall be required or shall be made voluntarily in connection with any transfer (other than a filing on a Form 5 made after the expiration of the 180-day period referred to above).

If the undersigned is an officer or director of the Company, (i) the Representatives on behalf of the Underwriters agree that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of Common Stock, the Representatives on behalf of the Underwriters will notify the Company of the impending release or waiver, and (ii) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the

release or waiver. Any release or waiver granted by the Representatives on behalf of the Underwriters hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer not for consideration and (b) the transferee has agreed in writing to be bound by the same terms described in this letter to the extent and for the duration that such terms remain in effect at the time of the transfer.

In furtherance of the foregoing, the Company, and any duly appointed transfer agent for the registration or transfer of the securities described herein, are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Letter Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Letter Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that, if the Underwriting Agreement has not been executed by June 30, 2015 or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, the undersigned shall be released from, all obligations under this Letter Agreement. The undersigned understands that the Underwriters are entering into the Underwriting Agreement and proceeding with the Public Offering in reliance upon this Letter Agreement.

This Letter Agreement and any claim, controversy or dispute arising under or related to this Letter Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

Very truly yours,
[NAME OF STOCKHOLDER]

By: _____
Name:
Title:

[Form of Waiver of Lock-up]

J.P. MORGAN SECURITIES LLC
MORGAN STANLEY & CO. LLC

Corporation
Public Offering of Common Stock

, 2015

[Name and Address of
Officer or Director
Requesting Waiver]

Dear Mr./Ms. [Name]:

This letter is being delivered to you in connection with the offering by Shake Shack Inc. (the “Company”) of _____ shares of Class A common stock, \$0.01 par value (the “Common Stock”), of the Company and the lock-up letter dated _____, 2015 (the “Lock-up Letter”), executed by you in connection with such offering, and your request for a [waiver] [release] dated _____, 2015, with respect to shares of Common Stock (the “Shares”).

Each of J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC hereby agrees to [waive] [release] the transfer restrictions set forth in the Lock-up Letter, but only with respect to the Shares, effective _____, 2015; provided, however, that such [waiver] [release] is conditioned on the Company announcing the impending [waiver] [release] by press release through a major news service at least two business days before effectiveness of such [waiver] [release]. This letter will serve as notice to the Company of the impending [waiver] [release].

Except as expressly [waived] [released] hereby, the Lock-up Letter shall remain in full force and effect.

Yours very truly,

[Signature of J.P. Morgan Securities LLC Representative]

[Name of J.P. Morgan Securities LLC Representative]

[Signature of Morgan Stanley & Co. LLC Representative]

[Name of Morgan Stanley & Co. LLC Representative]

[Form of Press Release]**Shake Shack Inc.****[Date]**

Shake Shack Inc. (the "Company") announced today that J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC, the joint book-running managers in the Company's recent public sale of [] shares of Class A common stock, are [waiving] [releasing] a lock-up restriction with respect to [] shares of the Company's Class A common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver] [release] will take effect on 2015, and the shares may be sold on or after such date.

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SHAKE SHACK INC.**

Shake Shack Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”) hereby certifies as follows:

1. The name of the Corporation is Shake Shack Inc. The original Certificate of Incorporation of the Corporation was filed with the Office of the Secretary of State of the State of Delaware on September 23, 2014. The name under which the Corporation was originally incorporated was Shake Shack Inc.
2. This Amended and Restated Certificate of Incorporation of the Corporation was duly adopted by the stockholder of the Corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.
3. Immediately prior to the effective time of this Amended and Restated Certificate of Incorporation, the Corporation has authorized 100 shares of common stock, par value \$0.01 per share (the “Original **Common Stock**”), and has issued one share of Original Common Stock.
4. The text of the Certificate of Incorporation of the Corporation, is hereby amended and restated to read in full as follows:

ARTICLE 1.

The name of the corporation is Shake Shack Inc. (the “**Corporation**”).

ARTICLE 2.

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE 3.

The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by it are as follows: To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “**DGCL**”).

ARTICLE 4.

A. The total number of shares of all classes of stock that the Corporation is authorized to issue is 245 million (245,000,000), consisting of:

200 million (200,000,000) shares of Class A common stock, with a par value of \$0.01 per share (the “**Class A Common Stock**”);

35 million (35,000,000) shares of Class B common stock, with a par value of \$0.01 per share (the “ **Class B Common Stock** ”, and together with the Class A Common Stock, the “ **Common Stock** ”); and

10 million (10,000,000) shares of preferred stock, with a par value of \$0.00 per share as of the effective time of this Amended and Restated Certificate of Incorporation and thereafter as may be established by the Board of Directors with respect to any series thereof in the applicable Preferred Stock Designation (the “ **Preferred Stock** ”).

Immediately prior to the effective time of this Amended and Restated Certificate of Incorporation, (i) no shares of Class A Common Stock were authorized, issued or outstanding, no shares of Class B Common Stock were authorized, issued or outstanding and no shares of Preferred Stock were authorized, issued or outstanding and (ii) one share of Original Common Stock was authorized and outstanding, which share of Original Common Stock is being redeemed for the par value thereof upon the Effective Time of this Amended and Restated Certificate of Incorporation in accordance with Section 151(b) General Corporation Law of the State of Delaware, and immediately following the redemption of such share of Original Common Stock, shares of Class A Common Stock and Class B Common Stock will be issued in accordance with Section 151(b) of the General Corporation Law of the State of Delaware.

B. The Board of Directors of the Corporation (the “ **Board of Directors** ”) is authorized, subject to any limitations prescribed by law or that certain stockholders agreement, dated as of [•], 2015, by and among the Corporation, the LLC and the other persons party thereto (as it may be amended from time to time, the “ **Stockholders Agreement** ”), to provide for the issuance of shares of Preferred Stock in one or more series, and by filing a certificate pursuant to the applicable law of the State of Delaware (such certificate being hereinafter referred to as a “ **Preferred Stock Designation** ”), to establish from time to time the number of shares to be included in each such series, and to fix the par value thereof and to fix the powers, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation, the authority to fix or alter the dividend rights, dividend rates, conversion rights, exchange rights, voting rights, rights and terms of redemption (including sinking and purchase fund provisions), the redemption price or prices, the dissolution preferences and the rights in respect to any distribution of assets of any wholly unissued series of Preferred Stock and the number of shares constituting any such series, and the designation thereof, or any of them and to increase or decrease the number of shares of any series so created, subsequent to the issue of that series but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series. There shall be no limitation or restriction on any variation between any of the different series of Preferred Stock as to the designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof; and the several series of Preferred Stock may vary in any and all respects as fixed and determined by the resolution or resolutions of the Board of Directors or by a committee of the Board of Directors, providing for the issuance of the various series of Preferred Stock.

C. The number of authorized shares of any of the Class A Common Stock, Class B Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of stock of the Corporation entitled to vote thereon, without a separate vote of any holders of the Class A Common Stock, Class B Common Stock or Preferred Stock, or of any series thereof, unless a separate vote of any such holders is required pursuant to the terms of any Preferred Stock Designation, irrespective of the provisions of Section 242(b)(2) of the DGCL.

D. Except as otherwise required by law,

1. Each share of Class A Common Stock shall entitle the record holder thereof to one vote on all matters on which stockholders generally are entitled to vote.
2. Each share of Class B Common Stock shall entitle the record holder thereof to one vote on all matters on which stockholders generally are entitled to vote.
3. Except as otherwise required in this Amended and Restated Certificate of Incorporation or by applicable law, the holders of Common Stock shall vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with such holders of Preferred Stock).
4. Except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation or to a Preferred Stock Designation that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other series of Preferred Stock, to vote thereon as a separate class pursuant to this Amended and Restated Certificate of Incorporation or a Preferred Stock Designation or pursuant to the DGCL as currently in effect or as the same may hereafter be amended.

E. From and after the effective time of this Amended and Restated Certificate of Incorporation, additional shares of Class B Common Stock may be issued only to, and registered in the name of, the Existing Owners, their respective successors and assigns as well as their respective transferees permitted in accordance with Article 4.H (including all subsequent successors, assigns and permitted transferees) (the Existing Owners together with such persons, collectively, “ **Permitted Class B Owners** ”) in accordance with Article 6 and the aggregate number of shares of Class B Common Stock following any such issuance registered in the name of each such Permitted Class B Owner must be equal to the aggregate number of Common Units (as defined below) held of record by such Permitted Class B Owner under the LLC Agreement (as defined below). As used in this Amended and Restated Certificate of Incorporation (i) “ **Existing Owner** ” means each of the holders of Common Units of SSE Holdings LLC, a

Delaware limited liability company, or any successor entities thereto (the “**LLC**”) as set forth on Schedule A hereto, (ii) “**Common Unit**” means a membership interest in the LLC, authorized and issued under its Third Amended and Restated Limited Liability Company Agreement, dated as of [•], 2015, as such agreement may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time (the “**LLC Agreement**”), and constituting a “Common Unit” as defined in the LLC Agreement as in effect as of the effective time of this Amended and Restated Certificate of Incorporation.

F. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Class A Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Class A Common Stock out of the assets of the Corporation that are by law available therefor, at such times and in such amounts as the Board of Directors in its discretion shall determine. Dividends shall not be declared or paid on the Class B Common Stock.

G. Subject to applicable law and the rights, if any, of the holders of any class or series of capital stock of the Corporation, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock shall be entitled, the holders of all outstanding shares of Class A Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder. The holders of shares of Class B Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. A consolidation, reorganization or merger of the Corporation with any other person or persons, or a sale of all or substantially all of the assets of the Corporation, shall not be considered to be a dissolution, liquidation or winding up of the Corporation within the meaning of this Article 4.G.

H. Transfer of Class B Common Stock:

1. A holder of Class B Common Stock may surrender shares of Class B Common Stock to the Corporation for no consideration at any time. Following the surrender of any shares of Class B Common Stock to the Corporation, the Corporation will take all actions necessary to retire such shares and such shares shall not be re-issued by the Corporation.
2. A holder of Class B Common Stock may transfer shares of Class B Common Stock to any transferee (other than the Corporation) only if, and only to the extent permitted by the LLC Agreement, such holder also simultaneously transfers an equal number of such holder’s Common Units (as such numbers may be adjusted to reflect equitably any stock split, subdivision, combination or similar change with respect to the Class B Common Stock or Common Units) to such transferee in compliance with the LLC Agreement. The transfer restrictions described in this Article 4.H.2 are referred to as the “**Restrictions**”.

3. Any purported transfer of shares of Class B Common Stock in violation of the Restrictions shall be null and void. If, notwithstanding the Restrictions, a person shall, voluntarily or involuntarily, purportedly become or attempt to become, the purported owner (“ **Purported Owner** ”) of shares of Class B Common Stock in violation of the Restrictions, then the Purported Owner shall not obtain any rights in and to such shares of Class B Common Stock (the “ **Restricted Shares** ”), and the purported transfer of the Restricted Shares to the Purported Owner shall not be recognized by the Corporation’s transfer agent (the “ **Transfer Agent** ”).
4. Upon a determination by the Board of Directors that a person has attempted or may attempt to transfer or to acquire Restricted Shares in violation of the Restrictions, the Board of Directors may take such action as it deems advisable to refuse to give effect to such transfer or acquisition on the books and records of the Corporation, including without limitation to cause the Transfer Agent to record the Purported Owner’s transferor as the record owner of the Restricted Shares, and to institute proceedings to enjoin or rescind any such transfer or acquisition.
5. The Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind, by bylaw or otherwise, regulations and procedures that are consistent with the provisions of this Article 4.H for determining whether any transfer or acquisition of shares of Class B Common Stock would violate the Restrictions and for the orderly application, administration and implementation of the provisions of this Article 4.H. Any such procedures and regulations shall be kept on file with the Secretary of the Corporation and with its Transfer Agent and shall be made available for inspection by any prospective transferee and, upon written request, shall be mailed to holders of shares of Class B Common Stock.
6. The Board of Directors shall have all powers necessary to implement the Restrictions, including without limitation the power to prohibit the transfer of any shares of Class B Common Stock in violation thereof.

I. To the extent that any Permitted Class B Owner exercises its right pursuant to the LLC Agreement to have its Common Units redeemed by the LLC in accordance with the LLC Agreement, then simultaneous with the payment of, at the Corporation’s election, cash or Class A Common Stock consideration to such Permitted Class B Owner by the LLC (in the case of a redemption) or the Corporation (in the case of an election by the Corporation pursuant to the LLC Agreement to effect a direct exchange with such Permitted Class B Owner), the Corporation shall cancel for no consideration a number of shares of Class B Common Stock registered in the name of the redeeming or exchanging Permitted Class B Owner equal to the number of Common Units held by such Permitted Class B Owner that are redeemed or exchanged in such redemption or exchange transaction. Notwithstanding the Restrictions, (i) in the event that any outstanding share of Class B Common Stock shall cease to be held by a registered holder of Common Units, such share of Class B Common Stock shall automatically

and without further action on the part of the Corporation or any holder of Class B Common Stock be cancelled for no consideration, and the Corporation will take all actions necessary to retire such share and such share shall not be re-issued by the Corporation, (ii) in the event that any registered holder of the Class B Common Stock no longer holds an interest in the Common Units, the shares of Class B Common Stock registered in the name of such holder shall automatically and without further action on the part of the Corporation or any holder of Class B Common Stock be cancelled for no consideration, and the Corporation will take all actions necessary to retire such shares and such shares shall not be re-issued by the Corporation and (iii) in the event that no Permitted Class B Owner owns any Common Units that are redeemable pursuant to the LLC Agreement, then all shares of Class B Common Stock will be cancelled for no consideration, and the Corporation will take all actions necessary to retire such shares and such shares shall not be re-issued by the Corporation.

J. All certificates or book entries representing shares of Class B Common Stock, as the case may be, shall bear a legend substantially in the following form (or in such other form as the Board of Directors may determine):

THE SECURITIES REPRESENTED BY THIS [CERTIFICATE][BOOK ENTRY] ARE SUBJECT TO THE RESTRICTIONS (INCLUDING RESTRICTIONS ON TRANSFER) SET FORTH IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND SHALL BE PROVIDED FREE OF CHARGE TO ANY STOCKHOLDER MAKING A REQUEST THEREFOR).

K. The Class B Common Stock may be issued and transferred in fractions of a share which shall entitle the holder to exercise voting rights and to have the benefit of all other rights of holders of Class B Common Stock. Subject to the Restrictions, holders of shares of Class B Common Stock shall be entitled to transfer fractions thereof and the Corporation shall, and shall cause the Transfer Agent to, facilitate any such transfers, including by issuing certificates or making book entries representing any such fractional shares. For all purposes of this Amended and Restated Certificate of Incorporation (including, without limitation, Article 4.D, Article 4.G, Article 4.H, Article 4.I, this Article 4.K, Article 6.D and Article 6.E hereof), all references to the Class B Common Stock or any share thereof (whether in the singular or plural) shall be deemed to include references to any fraction of a share of Class B Common Stock.

ARTICLE 5.

The Corporation shall at all times reserve and keep available out of its authorized but unissued shares or other securities the number of shares or securities required pursuant to the LLC Agreement; *provided* that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such exchange by delivery of shares of Class A Common Stock which are held in the treasury of the Corporation. The Corporation covenants that all shares of Class A Common Stock issued upon any such exchange will, upon issuance, be validly issued, fully paid and non-assessable.

ARTICLE 6.

A. The Corporation shall undertake all actions, including, without limitation, a reclassification, dividend, division or recapitalization, with respect to the shares of Class A Common Stock necessary to maintain at all times a one-to-one ratio between the number of Common Units owned by the Corporation and the number of outstanding shares of Class A Common Stock, disregarding, for purposes of maintaining the one-to-one ratio, (i) shares of Class A Common Stock issued pursuant to the Shake Shack Inc. 2014 Incentive Award Plan, and any other stock incentive plan adopted by the Corporation from time to time, that have not vested thereunder, (ii) treasury stock, or (iii) Preferred Stock or other debt or equity securities (including without limitation warrants, options and rights) issued by the Corporation that are convertible or exercisable or exchangeable for Class A Common Stock.

B. The Corporation shall undertake all actions, including, without limitation, a reclassification, dividend, division or recapitalization, with respect to the shares of Class B Common Stock necessary to maintain at all times a one-to-one ratio between the number of Common Units owned by all Permitted Class B Owners and the number of outstanding shares of Class B Common Stock owned by all Permitted Class B Owners.

C. The Corporation shall not undertake or authorize (i) any subdivision (by any stock split, stock dividend, reclassification, recapitalization or similar event) or combination (by reverse stock split, reclassification, recapitalization or similar event) of the Class A Common Stock that is not accompanied by an identical subdivision or combination of the Common Units to maintain at all times a one-to-one ratio between the number of Common Units owned by the Corporation and the number of outstanding shares of Class A Common Stock; or (ii) any subdivision (by any stock split, stock dividend, reclassification, recapitalization or similar event) or combination (by reverse stock split, reclassification, recapitalization or similar event) of the Class B Common Stock that is not accompanied by an identical subdivision or combination of the Common Units to maintain at all times, subject to the provisions of this Amended and Restated Certificate of Incorporation, a one-to-one ratio between the number of Common Units owned by the Permitted Class B Owners and the number of outstanding shares of Class B Common Stock, unless, in the case of clause (i) or (ii) of this Article 6.C, such action is necessary to maintain at all times both a one-to-one ratio between the number of Common Units owned by the Corporation and the number of outstanding shares of Class A Common Stock and a one-to-one ratio between the number of Common Units owned by the Permitted Class B Owners and the number of outstanding shares of Class B Common Stock.

D. The Corporation shall not issue, transfer or deliver from treasury stock or repurchase shares of Class A Common Stock unless in connection with any such issuance, transfer, delivery or repurchase the Corporation takes or authorizes all requisite action such that, after giving effect to all such issuances, transfers, deliveries or repurchases, the number of Common Units owned by the Corporation will equal on a one-for-one basis the number of outstanding shares of Class A Common Stock, disregarding, for purposes of maintaining the one-to-one ratio, (i) shares of Class A Common Stock issued pursuant to the Shake Shack Inc. 2014 Incentive Award Plan, and any other stock incentive plan adopted by the Corporation from time to time, that have not vested thereunder, (ii) treasury stock or (iii) Preferred Stock or other debt or equity securities (including without limitation warrants, options and rights) issued by the

Corporation that are convertible or exercisable or exchangeable for Class A Common Stock (except to the extent the net proceeds from such other securities, including without limitation any exercise or purchase price payable upon conversion, exercise or exchange thereof, has been contributed by the Corporation to the equity capital of the LLC). The Corporation shall not issue, transfer or deliver from treasury stock or repurchase or redeem shares of Preferred Stock unless in connection with any such issuance, transfer, delivery, repurchase or redemption the Corporation takes all requisite action such that, after giving effect to all such issuances, transfers, repurchases or redemptions, the Corporation holds (in the case of any issuance, transfer or delivery) or ceases to hold (in the case of any repurchase or redemption) equity interests in the LLC which (in the good faith determination by the Board of Directors) are in the aggregate substantially equivalent in all respects to the outstanding Preferred Stock so issued, transferred, delivered, repurchased or redeemed.

E. The Corporation shall not consolidate, merge, combine or consummate any other transaction (other than an action or transaction for which an adjustment is provided in one of the preceding paragraphs of this Article 6 or in Article 4) in which shares of Class A Common Stock are exchanged for or converted into other stock or securities, or the right to receive cash and/or any other property, unless in connection with any such consolidation, merger, combination or other transaction each Common Unit shall be entitled to be exchanged for or converted into (without duplication of any corresponding share of Class A common stock which the Corporation may elect to issue upon a redemption of such Common Unit by the holder thereof) the same kind and amount of stock or securities, cash and/or any other property, as the case may be, into which or for which each share of Class A Common Stock is exchanged or converted, in each case to maintain at all times a one-to-one ratio between (x) the stock or securities, or rights to receive cash and/or any other property issuable in such transaction in exchange for or conversion of one share of Class A common stock and (y) the stock or securities, or rights to receive cash and/or any other property issuable in such transaction in exchange for or conversion of one Common Unit. The foregoing provisions of this Article 6.E shall not apply to any action or transaction (including any consolidation, merger or combination) approved by the holders of a majority of the voting power of the Class A Common Stock and Class B Common Stock, each voting as a separate class.

ARTICLE 7.

A. Subject to the Stockholders Agreement, the Board of Directors is expressly authorized to adopt, amend and repeal the bylaws of the Corporation (the “**Bylaws**”).

ARTICLE 8.

A. Elections of the directors comprising the Board of Directors (each such director, in such capacity, a “**Director**”) need not be by written ballot unless the Bylaws shall so provide.

B. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors which shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the Whole Board. For purposes of this Amended and Restated Certificate of Incorporation, the term

“**Whole Board**” shall mean the total number of authorized directors for the Board of Directors whether or not there exist any vacancies in previously authorized directorships.

C. Except as otherwise required by law or the Stockholders Agreement and subject to the rights of the holders of any series of Preferred Stock then outstanding, unless the Board of Directors otherwise determines, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of Directors resulting from the death, resignation, retirement, disqualification, removal from office or other cause shall be filled only by a majority vote of the Directors then in office and entitled to vote thereon, though less than a quorum, or by a sole remaining Director entitled to vote thereon, and not by the stockholders. Subject to the Stockholders Agreement, any Director so chosen shall hold office until the next election of the class for which such Director shall have been chosen and until his successor shall be elected and qualified.

D. Subject to the rights of the holders of any series of Preferred Stock then outstanding and subject to the Stockholders Agreement, any Director, or the entire Board of Directors, may be removed from office, but only for cause, at a meeting called for that purpose.

E. The Board of Directors shall be divided into three classes, as nearly equal in numbers as possible, designated Class I, Class II and Class III. Upon the effectiveness of this Amended and Restated Certificate of Incorporation including this Article 8.E, each Director then in office shall be designated as a Class I Director, a Class II Director or a Class III Director. The initial Class I Directors shall serve for a term expiring at the first annual meeting of stockholders of the Corporation following the effective time of this Amended and Restated Certificate of Incorporation; the initial Class II Directors shall serve for a term expiring at the second annual meeting of stockholders following the effective time of this Amended and Restated Certificate of Incorporation; and the initial Class III Directors shall serve for a term expiring at the third annual meeting of stockholders following the effective time of this Amended and Restated Certificate of Incorporation. At each annual meeting of stockholders beginning with the first annual meeting of stockholders following the effective time of this Amended and Restated Certificate of Incorporation, the successors of the class of Directors whose term expires at that meeting shall be elected to hold office for a term expiring at the third annual meeting of stockholders to be held following their election, with each Director in each such class to hold office until his or her successor is duly elected and qualified. Subject the Stockholders Agreement, the Board of Directors is authorized to assign Directors already in office at the effectiveness of this Amended and Restated Certificate of Incorporation to Class I, Class II and Class III. The provisions of this Article 8.E are subject to the rights of the holders of any class or series of Preferred Stock to elect directors.

F. Advance notice of stockholder nominations for election of Directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws.

ARTICLE 9.

Any action required or permitted to be taken at any annual or special meeting of stockholders may be taken upon the vote of stockholders at an annual or special meeting duly

noticed and called in accordance with the DGCL, as amended from time to time, and may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, are signed by the holders of outstanding shares of the relevant class(es) or series of stock of the Corporation representing not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of stock of the Corporation then issued and outstanding (other than treasury stock) entitled to vote thereon were present and voted and delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded; *provided, however*, that, subject to the rights of any series of Preferred Stock, no action by stockholders may be taken by written consent in lieu of a meeting of stockholders unless such written consent and the taking of the action specified therein have been previously approved by the affirmative vote of Directors constituting a majority of the Whole Board. Special meetings of the stockholders may be called only by a resolution adopted by the affirmative vote of Directors constituting a majority of the Whole Board.

ARTICLE 10.

Subject to any limitations prescribed by the Stockholders Agreement, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation; *provided* that any amendment to Article 9 shall be effective only upon the affirmative vote of the holders of Common Stock and Preferred Stock then outstanding representing $66\frac{2}{3}\%$ or more of the votes eligible to be cast in an election of Directors.

If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any sentence of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

ARTICLE 11.

The Corporation is authorized to indemnify, and to advance expenses to, each current, former or prospective Director, officer, employee or agent of the Corporation to the fullest extent permitted by Section 145 of the DGCL. To the fullest extent permitted by the laws of the State of Delaware, no Director shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to, or modification or repeal of, this Article 11 shall adversely affect any right or protection of a Director or of any officer, employee or agent of the Corporation existing hereunder with respect to any act or omission occurring prior to such amendment, modification or repeal.

ARTICLE 12.

To the fullest extent permitted by the laws of the State of Delaware, (a) the Corporation hereby renounces all interest and expectancy that it otherwise would be entitled to have in, and all rights to be offered an opportunity to participate in, any business opportunity that from time to time may be presented to (i) the Board of Directors or any Director, (ii) any stockholder, officer or agent of the Corporation, or (iii) any affiliate of any person or entity identified in the preceding clause (i) or (ii), but in each case excluding any such person in its capacity as an employee of the Corporation or its subsidiaries; (b) no holder of Class A Common Stock or Class B Common Stock and no Director that is not an employee of the Corporation or its subsidiaries will have any duty to refrain from (i) engaging in a corporate opportunity in the same or similar lines of business in which the Corporation or its subsidiaries from time to time is engaged or proposes to engage or (ii) otherwise competing, directly or indirectly, with the Corporation or any of its subsidiaries; and (c) if any holder of Class A Common Stock or Class B Common Stock or any Director that is not an employee of the Corporation or its subsidiaries acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity both for such holder of Class A Common Stock or Class B Common Stock or such Director or any of their respective affiliates, on the one hand, and for the Corporation or its subsidiaries, on the other hand, such holder of Class A Common Stock or Class B Common Stock or Director shall have no duty to communicate or offer such transaction or business opportunity to the Corporation or its subsidiaries and such holder of Class A Common Stock or Class B Common Stock or Director may take any and all such transactions or opportunities for itself or offer such transactions or opportunities to any other person or entity. The preceding sentence of this Article 12 shall not apply to any potential transaction or business opportunity that is expressly offered to a Director, who is not an employee of the Corporation or its subsidiaries, solely in his or her capacity as a Director.

To the fullest extent permitted by the laws of the State of Delaware, no potential transaction or business opportunity may be deemed to be a potential corporate opportunity of the Corporation or its subsidiaries unless (a) the Corporation and its subsidiaries would be permitted to undertake such transaction or opportunity in accordance with this Amended and Restated Certificate of Incorporation, (b) the Corporation and its subsidiaries at such time have sufficient financial resources to undertake such transaction or opportunity and (c) such transaction or opportunity would be in the same or similar line of business in which the Corporation and its subsidiaries are then engaged or a line of business that is reasonably related to, or a reasonable extension of, such line of business.

No holder of Class A Common Stock or Class B Common Stock and no Director will be liable to the Corporation or its subsidiaries or stockholders for breach of any duty (contractual or otherwise) by reason of any activities or omissions of the types referred to in this Article 12, except to the extent such actions or omissions are in breach of this Agreement.

ARTICLE 13.

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (the “***Court of Chancery***”) shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative

action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any Director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, any Director or the Corporation's officers or employees arising pursuant to any provision of the DGCL or the Corporation's Amended and Restated Certificate of Incorporation or Bylaws, or (iv) any action asserting a claim against the Corporation, any Director or the Corporation's officers or employees governed by the internal affairs doctrine, except, as to each of clauses (i) through (iv) above, for any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten (10) days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction.

ARTICLE 14.

The Corporation expressly elects to be governed by Section 203 of the DGCL.

ARTICLE 15.

The effective time of this Amended and Restated Certificate of Incorporation shall be the date and time that this Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation, which has been duly adopted in accordance with Sections 242 and 245 of the DGCL, to be signed by [•], its [•], on this [•] day of [•], 2015.

SHAKE SHACK INC.

By: _____
Name: Randy Garutti
Title: Chief Executive Officer

SCHEDULE A

Union Square Hospitality Group, LLC
Union Square Cafe Corp.
Gramercy Tavern Corp.
Daniel H. Meyer
Daniel H. Meyer 2012 Gift Trust U/A/D 10/31/12
Jeff Flug
Flug 2012 GS Trust U/A/D 9/14/12
Gulf Five LLC
Richard Coraine
The Richard D. Coraine 2012 Family Trust
David A. Swinghamer
The David A. Swinghamer Grat
Karen Kochevar
Walter Robb
Erin Moran
Ashley Campbell
Randall Garutti
The Randall J. Garutti 2014 GST Trust
Jeff Uttz
Roxanne H. Frank Revocable Trust Dated 9/30/75
RHF-NM 1999 Descendants Trust Dated 1/1/2006
Marc Weiss Revocable Trust U/A/D 8/11/2003
RHF-TM 1999 Descendants Trust Dated 1/1/2006
VHP Special Trust For Jack Dated 12/31/12
Jean Polsky Investment Trust Dated 3/21/97
Joan W. Harris Revocable Trust Dated 4/1/93
Benjamin Harris Family Trust Dated 12/23/92
David Harris Family Trust Dated 12/23/92
Amy Weiss-Meyer Qualified Minor's Trust Dated 12/22/05
Isaac Weiss-Meyer Qualified Minor's Trust Dated 12/22/05
Hallie Meyer Qualified Minor's Trust Dated 11/23/05
Gretchen Meyer Qualified Minor's Trust Dated 11/23/05
Charles Meyer Qualified Minor's Trust Dated 11/23/05
Peyton Meyer Qualified Minor's Trust Dated 11/23/05
Beth Stephens
Orrin Devinsky
Laura Sloate
Bert Vivian
Jamie Welch and Fiona Angelini
Granite Point Capital
Thomas O'Neal Ryder Family Trust
ACG Shack LLC
[Malted Holdings II Entities]
SEG Partners, L.P.

SEG Partners II, L.P.
SEG Partners Offshore Master Fund Ltd.
SEGPO Investment Corp. LLC

AMENDED AND RESTATED BYLAWS

OF

SHAKE SHACK INC.

Dated as of [•], 2015

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ARTICLE I.
MEETINGS OF STOCKHOLDERS

Section 1.01 Place of Meetings. Meetings of Stockholders of Shake Shack Inc., a Delaware corporation (the “**Corporation**”; and such Stockholders, the “**Stockholders**”), may be held at any place, within or without the State of Delaware, as may be designated by the board of directors of the Corporation (the “**Board of Directors**”). In the absence of such designation, meetings of Stockholders shall be held at the principal executive office of the Corporation. The Board of Directors may, in its sole discretion, determine that a meeting of Stockholders shall not be held at any place, but may instead be held solely by means of remote communication authorized by and in accordance with Section 211(a) (2) of the General Corporation Law of the State of Delaware.

Section 1.02 Annual Meetings. If required by applicable law, an annual meeting of Stockholders shall be held for the election of directors at such date and time as may be designated by resolution of the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting. The Corporation may postpone, reschedule or cancel any annual meeting of Stockholders previously scheduled by the Board of Directors.

Section 1.03 Special Meetings. Special meetings of Stockholders for any purpose or purposes may be called only in the manner provided in the Amended and Restated Certificate of Incorporation of the Corporation dated as of [•], 2015 (as the same may be further amended, restated, amended and restated or otherwise modified from time to time, the “**Certificate of Incorporation**”). Special meetings validly called in accordance with Article 9 of the Certificate of Incorporation may be held at such date and time as specified in the applicable notice. Business transacted at any special meeting of Stockholders shall be limited to the purposes stated in the notice. The Corporation may postpone, reschedule or cancel any special meeting of Stockholders previously scheduled by the Board of Directors.

Section 1.04 Notice of Meetings. Whenever Stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the Stockholders entitled to vote at the meeting (if such date is different from the record date for Stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these amended and restated bylaws adopted by the Board of Directors as of [•], 2015 (as the same may be further amended, restated, amended and restated or otherwise modified from time to time, these “**Bylaws**”), the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each Stockholder entitled to vote at the meeting as of the record date for determining the Stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the Stockholder at such Stockholder’s address as it appears on the records of the Corporation.

Section 1.05 Adjournments. Any meeting of Stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, if any, and notice need

not be given of any such adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each Stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of Stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix the record date for determining Stockholders entitled to notice of such adjourned meeting as provided in Section 1.09(a) of these Bylaws, and shall give notice of the adjourned meeting to each Stockholder of record as of the record date so fixed for notice of such adjourned meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the Stockholder at such Stockholder's address as it appears on the records of the Corporation.

Section 1.06 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of Stockholders the presence or participation in person or by proxy of the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation (" **Stock** ") entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the Chairperson or Stockholders so present may, by a majority in voting power thereof, adjourn the meeting from time to time in the manner provided in Section 1.05 of these Bylaws until a quorum shall attend or participate. Shares of Stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; *provided, however* , that the foregoing shall not limit the right of the Corporation or any subsidiary of the Corporation to vote shares of Stock held by it in a fiduciary capacity.

Section 1.07 Organization. Meetings of Stockholders shall be presided over by the Chairperson, or in his or her absence by any Vice Chairperson, if any, or in his or her absence by the Chief Executive Officer, or in his or her absence by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board of Directors, or in the absence of such designation by a chairperson chosen at the meeting by vote of a majority of the Stockholders entitled to vote at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 1.08 Voting; Proxies. Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, each Stockholder entitled to vote at any meeting of Stockholders shall be entitled to one vote for each share of Stock held by such Stockholder which has voting power upon the matter in question. Each Stockholder entitled to vote at a meeting of Stockholders or express consent to corporate action in writing without a meeting (if permitted by the Certificate of Incorporation) may authorize another person or persons to act for such Stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A Stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of Stockholders need not be by

written ballot. Unless otherwise provided in the Certificate of Incorporation, at all meetings of Stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect directors. All other elections and questions presented to the Stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of Stock which are present in person or by proxy and entitled to vote thereon.

Section 1.09 Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the Stockholders entitled to notice of any meeting of Stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the Stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining Stockholders entitled to notice of or to vote at a meeting of Stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of Stockholders of record entitled to notice of or to vote at a meeting of Stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of Stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for Stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of Stockholders entitled to vote in accordance herewith at the adjourned meeting.

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

(c) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the Stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for

determining Stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law or the Certificate of Incorporation, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law or the Certificate of Incorporation, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 1.10 List of Stockholders Entitled to Vote. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of Stockholders, a complete list of the Stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the Stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the Stockholders entitled to vote as of a date that is no more than 10 days before the meeting date), arranged in alphabetical order, and showing the address of each Stockholder and the number of shares registered in the name of each Stockholder as of the record date (or such other date). Such list shall be open to the examination of any Stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of Stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any Stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any Stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the Stockholders entitled to examine the list of Stockholders required by this Section 1.10 or to vote in person or by proxy at any meeting of Stockholders.

Section 1.11 Action by Written Consent of Stockholders. Except as provided by, and in accordance with, the Certificate of Incorporation, no action that is required or permitted to be taken by the Stockholders at any annual or special meeting of Stockholders may be effected by written consent of Stockholders in lieu of a meeting of Stockholders.

Section 1.12 Inspectors of Election. The Corporation may, and shall if required by law, in advance of any meeting of Stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of Stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of Stock outstanding and the voting power of each such share, (ii) determine the shares of Stock

represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of Stock represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of Stockholders, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 1.13 Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of Stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of Stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to Stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of Stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of Stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.14 Notice of Stockholder Business and Nominations.

(a) *Annual Meetings of Stockholders*.

(i) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the Stockholders may be made at an annual meeting of Stockholders only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors or the nominating and corporate governance committee thereof or (C) by any Stockholder who was a Stockholder of record at the time the notice provided for in this Section 1.14 is delivered to the Secretary, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.14.

(ii) For any nominations or other business to be properly brought before an annual meeting by a Stockholder pursuant to Section 1.14(a)(i)(C) of these Bylaws, the Stockholder must have given timely notice thereof in writing to the Secretary and any such proposed business (other than the nominations of persons for election to the Board of Directors) must constitute a proper matter for Stockholder action. To be timely, a Stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day, nor earlier than the close of business on the one hundred twentieth (120th) day, prior to the first anniversary of the preceding year's annual meeting (*provided, however* , that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the Stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a Stockholder's notice as described above. To be in proper form, such Stockholder's notice must:

- (A) as to each person whom the Stockholder proposes to nominate for election as a director of the Corporation, set forth (I) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14 (a) of the Securities Exchange Act of 1934, as amended (the “ **Exchange Act** ”), and the rules and regulations promulgated thereunder, and (II) such person's written consent to being named in the proxy statement as a nominee and to serving as a director of the Corporation if elected;
- (B) with respect to each nominee for election or reelection to the Board of Directors, include the completed and signed questionnaire, representation and agreement required by Section 1.15 of these Bylaws;
- (C) as to any other business that the Stockholder proposes to bring before the meeting, set forth a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such Stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and
- (D) as to the Stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, set forth (I) the name and address of such Stockholder, as they appear on the Corporation's

books, and of such beneficial owner, (II) the class or series and number of shares of Stock which are owned beneficially and of record by such Stockholder and such beneficial owner, (III) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such Stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including, in the case of a nomination, the nominee, (IV) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the Stockholder's notice by, or on behalf of, such Stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of Stock, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such Stockholder or such beneficial owner, with respect to securities of the Corporation, (V) a representation that the Stockholder is a holder of record of Stock entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (VI) a representation whether the Stockholder or the beneficial owner, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of outstanding Stock required to approve or adopt the proposal or elect the nominee and/or (y) otherwise to solicit proxies or votes from Stockholders in support of such proposal or nomination, and (VII) any other information relating to such Stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

The foregoing notice requirements of this Section 1.14(a) shall be deemed satisfied by a Stockholder with respect to business other than a nomination for election as a director of the Corporation if the Stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such Stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. The Corporation may require any proposed nominee for election as a director of the Corporation to furnish such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

(iii) Notwithstanding anything in the second sentence of Section 1.14(a)(ii) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors at the annual meeting is increased effective after the time period for

which nominations would otherwise be due under Section 1.14(a)(ii) of these Bylaws and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a Stockholder's notice required by this Section 1.14 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) *Special Meetings of Stockholders* . Except to the extent required by law, special meetings of Stockholders may be called only in accordance with Article 9 of the Certificate of Incorporation. Only such business shall be conducted at a special meeting of Stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of Stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or the nominating and corporate governance committee thereof or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any Stockholder who is a Stockholder of record at the time the notice provided for in this Section 1.14 is delivered to the Secretary, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 1.14. In the event the Corporation calls a special meeting of Stockholders for the purpose of electing one or more directors to the Board of Directors, any such Stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the Stockholder's notice required by Section 1.14(a)(ii) of these Bylaws (including the completed and signed questionnaire, representation and agreement required by Section 1.15 of these Bylaws and any other information, documents, affidavits, or certifications required by the Corporation) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a Stockholder's notice as described above.

(c) *General* .

(i) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 1.14 shall be eligible to be elected at an annual or special meeting of Stockholders to serve as directors and only such business shall be conducted at a meeting of Stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.14. Except as otherwise provided by law, the chairperson of the meeting shall have the power and duty (A) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the

procedures set forth in this Section 1.14 (including whether the Stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made or solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such Stockholder's nominee or proposal in compliance with such Stockholder's representation as required by Section 1.14(a)(ii)(D)(VI) of these Bylaws) and (B) if any proposed nomination or business was not made or proposed in compliance with this Section 1.14, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 1.14, unless otherwise required by law, if the Stockholder (or a qualified representative of the Stockholder) does not appear at the annual or special meeting of Stockholders to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.14, to be considered a qualified representative of the Stockholder, a person must be a duly authorized officer, manager or partner of such Stockholder or must be authorized by a writing executed by such Stockholder or an electronic transmission delivered by such Stockholder to act for such Stockholder as proxy at the meeting of Stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of Stockholders.

(ii) For purposes of this Section 1.14, "**public announcement**" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(iii) Notwithstanding the foregoing provisions of this Section 1.14, a Stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 1.14; *provided, however*, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 1.14 (including clause (a)(i)(C) hereof and clause (b) hereof), and compliance with clauses (a)(i)(C) and (b) of this Section 1.14 shall be the exclusive means for a Stockholder to make nominations or submit other business (other than, as provided in the penultimate sentence of clause (a)(ii) hereof, business other than nominations brought properly under and in compliance with Rule 14a-8 promulgated under the Exchange Act, as may be amended from time to time). Nothing in this Section 1.14 shall be deemed to affect any rights (x) of Stockholders to request inclusion of proposals or nominations in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (y) of the holders of any series of

preferred Stock of the Corporation (“ ***Preferred Stock*** ”) to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Section 1.15 Submission of Questionnaire, Representation and Agreement . To be eligible to be a nominee for election or reelection as a director of the Corporation, the candidate

for nomination must have previously delivered (in accordance with the time periods prescribed for delivery of notice under Section 1.14 of these Bylaws), to the Secretary at the principal executive offices of the Corporation, (a) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee and (b) a written representation and agreement (in form provided by the Corporation) that such candidate for nomination (i) is not and, if elected as a director during his or her term of office, will not become a party to (A) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a “ **Voting Commitment** ”) or (B) any Voting Commitment that could limit or interfere with such proposed nominee’s ability to comply, if elected as a director of the Corporation, with such proposed nominee’s fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director and (iii) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person’s term in office as a director of the Corporation (and, if requested by any candidate for nomination, the Secretary shall provide to such candidate for nomination all such policies and guidelines then in effect).

ARTICLE II. BOARD OF DIRECTORS

Section 2.01 Number; Qualifications. Subject to the Certificate of Incorporation, the total number of directors constituting the entire Board of Directors shall be fixed from time to time solely by resolution adopted by a majority of the Whole Board. For purposes of these Bylaws the term “ **Whole Board** ” shall mean the total number of authorized directors for the Board of Directors whether or not there exist any vacancies in previously authorized directorships. Directors need not be Stockholders.

Section 2.02 Election; Resignation; Vacancies. The Board of Directors shall be divided into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. Commencing with the first annual meeting of Stockholders following the original effectiveness of Article 8.E of the Certificate of Incorporation, directors of each class the term of which shall then expire shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office. Any director may resign at any time upon notice to the Corporation. Except as otherwise required by law or that certain stockholders agreement, dated as of [•], 2015, by and among the Corporation, the LLC and the other persons party thereto (as it may be amended from time to time, the “ **Stockholders Agreement** ”) and subject to the rights of the holders of any series of Preferred Stock then outstanding, unless the Board of Directors otherwise determines, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of Directors resulting from the death, resignation, retirement, disqualification, removal from office or other cause shall be filled only by a majority vote of the directors then in office and entitled to vote thereon, though less than a quorum, or by a sole remaining director entitled to vote thereon, and not by the Stockholders. Subject to the Stockholders Agreement, any director so chosen shall

hold office until the next election of the class for which such director shall have been chosen and until his successor shall be duly elected and qualified.

Section 2.03 Regular Meetings. Regular meetings of the Board of Directors may be held at such places, if any, within or without the State of Delaware and at such times as the Board of Directors may from time to time determine.

Section 2.04 Special Meetings. Special meetings of the Board of Directors may be held at any time or place, if any, within or without the State of Delaware whenever called by the Chairperson, a Vice Chairperson, the Chief Executive Officer, the Secretary, or by any two members of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting at least twenty-four hours before the special meeting.

Section 2.05 Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.05 shall constitute presence in person at such meeting.

Section 2.06 Quorum; Vote Required for Action. At all meetings of the Board of Directors the directors entitled to cast a majority of the votes of the Whole Board shall constitute a quorum for the transaction of business; *provided* that, solely for the purposes of filling vacancies pursuant to Section 2.02 of these Bylaws, a meeting of the Board of Directors may be held if a majority of the directors then in office participate in such meeting. Except in cases in which the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, a majority of the votes entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.07 Organization. Meetings of the Board of Directors shall be presided over by the Chairperson, or in his or her absence by any Vice Chairperson, if any, or in his or her absence by the Chief Executive Officer, or in his or her absence the Chief Executive Officer, or in his or her absence by a Vice President or by a chairperson chosen at the meeting by the affirmative vote of a majority of the directors present at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.08 Action by Unanimous Consent of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or such committee in accordance with applicable law.

Section 2.09 Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the

compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary or other compensation as a director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings. Any director of the Corporation may decline any or all such compensation payable to such director in his or her discretion.

ARTICLE III. COMMITTEES

Section 3.01 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Subject to the Stockholders Agreement, the Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of any committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Section 3.02 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

ARTICLE IV. OFFICERS

Section 4.01 Officers. The officers of the Corporation shall consist of a chairperson of the Board of Directors (the “**Chairperson**”), a chief executive officer (the “**Chief Executive Officer**”), a chief financial officer (the “**Chief Financial Officer**”), one or more vice presidents (each, a “**Vice President**”), a Secretary (the “**Secretary**”), a treasurer (the “**Treasurer**”), a controller (the “**Controller**”) and such other officers as the Board of Directors may from time to time determine, each of whom shall be appointed by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Subject to the Stockholders Agreement, each officer shall be chosen by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person’s successor shall have been duly chosen and qualified, or until such person’s earlier death, disqualification, resignation or removal. The Board of Directors, in its discretion, from time to time may determine not to appoint one or more of the officers identified in the first sentence of this Section 4.01 or to leave such officer position vacant.

Section 4.02 Removal, Resignation and Vacancies. Subject to the Stockholders Agreement, any officer of the Corporation may be removed, with or without cause, by the Board of Directors, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon written or electronic notice to the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, subject to the Stockholders Agreement, the Board of Directors may appoint a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly chosen and qualified.

Section 4.03 Chairperson. The Chairperson shall be deemed an officer of the Corporation, subject to the control of the Board of Directors, and shall report directly to the Board of Directors. The Board of Directors may, in its sole discretion, from time to time appoint one or more vice chairpersons (each, a “**Vice Chairperson**”) each of whom shall be deemed an officer of the Corporation, subject to the control of the Board of Directors, and shall report directly to the Chairperson.

Section 4.04 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Chairperson. Unless otherwise provided in these Bylaws, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairperson or any Vice Chairperson, preside at meetings of the Stockholders and of the Board of Directors.

Section 4.05 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.06 Vice Presidents. The Vice President shall have such powers and duties as shall be prescribed by his or her superior officer or the Chief Executive Officer. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine. In accordance with Sections 4.01 and 4.11 of these Bylaws, the Board of Directors, the Chief Executive Officer and/or the Chief Financial Officer may, in his, her or their discretion, from time to time appoint one or more executive vice presidents of the Corporation (each, an “**Executive Vice President**”) and/or assistant vice presidents of the Corporation (each, an “**Assistant Vice President**”).

Section 4.07 Treasurer. The Treasurer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all moneys and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its

funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall report to the Chief Financial Officer and, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer, the Chief Financial Officer or as the Board of Directors may from time to time determine. In accordance with Sections 4.01 and 4.11 of these Bylaws, the Board of Directors, the Chief Executive Officer and/or the Chief Financial Officer may, in his, her or their discretion, from time to time appoint one or more assistant treasurers of the Corporation (each, an “**Assistant Treasurer**”).

Section 4.08 Controller. The Controller shall be the chief accounting officer of the Corporation. The Controller shall report to the Chief Financial Officer and, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or the Chief Financial Officer or as the Board of Directors may from time to time determine.

Section 4.09 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the Stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of Stock and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine. In accordance with Sections 4.01 and 4.11 of these Bylaws, the Board of Directors, the Chief Executive Officer and/or the Chief Financial Officer may, in his, her or their discretion, from time to time appoint one or more assistant secretaries of the Corporation (each, an “**Assistant Secretary**”).

Section 4.10 Appointing Attorneys and Agents; Voting Securities of Other Entities. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairperson, any Vice Chairperson, the Chief Executive Officer or the Chief Financial Officer may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to (a) cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation or other entity, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consents, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper and (b) exercise the rights of the Corporation in its capacity as a general partner of a partnership or in its capacity as a managing member of a limited liability company as to which the Corporation, in such capacity, is entitled to exercise pursuant to the

applicable partnership agreement or limited liability company operating agreement, including without limitation to take or refrain from taking any action, or to consent in writing, in each case in the name of the Corporation as such general partner or managing member, to any action by such partnership or limited liability company, and may instruct the person or persons so appointed as to the manner of taking such actions or giving such consents, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper. Unless otherwise provided by resolution adopted by the Board of Directors, any of the rights set forth in this Section 4.10 which may be delegated to an attorney or agent may also be exercised directly by the Chairperson, a Vice Chairperson, the Chief Executive Officer or the Chief Financial Officer.

Section 4.11 Additional Matters. The Chief Executive Officer and the Chief Financial Officer shall have the authority to designate employees of the Corporation to have the title of Executive Vice President, Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. A person designated as an Executive Vice President, Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary shall not be deemed to be an officer of the Corporation unless the Board of Directors has adopted a resolution approving such person in such capacity as an officer of the Corporation (including by means of direct appointment by the Board of Directors pursuant to Section 4.01 of these Bylaws).

ARTICLE V. STOCK

Section 5.01 Certificates. The shares of Stock shall be represented by certificates, *provided* that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of Stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of Stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by (a) any one officer of the Corporation who is the Chairperson, a Vice Chairperson, the Chief Executive Officer or a Vice President, and (b) by any one officer of the Corporation who is the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary, with such signatories certifying the number of shares of the applicable class or series of Stock owned by such holder in the Corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Section 5.02 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate for shares of Stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made

against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

ARTICLE VI.
INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 6.01 Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law (including as it presently exists or may hereafter be amended), any person (a “**Covered Person**”) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (any such action, suit or proceeding, a “**proceeding**”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.03 of these Bylaws, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors.

Section 6.02 Advancement of Expenses. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys’ fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 6.03 Claims. If a claim for indemnification under this Article VI (following the final disposition of such proceeding) is not paid in full within sixty (60) days after the Corporation has received a claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Article VI is not paid in full within thirty (30) days after the Corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action, the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.04 Non-exclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquires under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of Stockholders or disinterested directors or otherwise.

Section 6.05 Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, limited liability company, joint venture, trust, enterprise or non-profit enterprise.

Section 6.06 Amendment or Repeal. Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these Bylaws after the occurrence of the act or omission that is the subject of the proceeding for which indemnification or advancement of expenses is sought.

Section 6.07 Other Indemnification and Advancement of Expenses. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VII. MISCELLANEOUS

Section 7.01 Fiscal Year. The fiscal year of the Corporation shall be the last Wednesday of each December, unless otherwise determined by a resolution of the Board of Directors.

Section 7.02 Seal. The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 7.03 Manner of Notice. Except as otherwise provided herein or permitted by applicable law, notices to directors and Stockholders shall be in writing and delivered personally or mailed to the directors or Stockholders at their addresses appearing on the books of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to Stockholders, and except as prohibited by applicable law, any notice to Stockholders given by the Corporation under any provision of applicable law, the Certificate of Incorporation, or these Bylaws shall be effective if given by a single written notice to Stockholders who share an address if consented to by the Stockholders at that address to whom such notice is given. Any such consent shall be revocable by the Stockholder by written notice to the Corporation. Any Stockholder who fails to object in writing to the Corporation, within sixty (60) days of having been given written notice by the Corporation of its intention to send the single notice permitted under this Section 7.03, shall be deemed to have consented to receiving such single written notice. Notice to directors may be given in person, by mail or by e-mail, telephone, telecopier or other means of electronic transmission.

Section 7.04 Waiver of Notice of Meetings of Stockholders, Directors and Committees. Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the

express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Stockholders, Board of Directors, or members of a committee of the Board of Directors need be specified in a waiver of notice.

Section 7.05 Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

Section 7.06 Amendment of Bylaws. Subject to the Stockholders Agreement, these Bylaws may be altered, amended or repealed, and new bylaws made, only by the affirmative vote of (a) a majority of the Board of Directors or (b) Stockholders representing at least $66\frac{2}{3}\%$ of the votes eligible to be cast in an election of directors of the Corporation.

* * *

**Class A
Common Stock**

NUMBER

0000



SHAKE SHACK®

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

SHARES

0000

SEE REVERSE SIDE
FOR CERTAIN DEFINITIONS

CUSIP

This Certifies that

SPECIMEN

is the owner of

FULLY PAID AND NON-ASSESSABLE SHARES OF CLASS A COMMON STOCK, (\$.01) PAR VALUE, OF

SHAKE SHACK INC.

transferable on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this certificate properly endorsed. This certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.

IN WITNESS WHEREOF, the said Corporation has caused this certificate to be signed by facsimile signatures of its duly authorized officers.

DATED:

COUNTERSIGNED AND REGISTERED:
AMERICAN STOCK TRANSFER & TRUST COMPANY
(Brooklyn, New York)

TRANSFER AGENT
AND REGISTRAR



CHIEF EXECUTIVE OFFICER

SECRETARY

THE CORPORATION WILL FURNISH TO ANY STOCKHOLDER, UPON REQUEST AND WITHOUT CHARGE, A FULL STATEMENT OF THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF THE SHARES OF EACH CLASS AND SERIES AUTHORIZED TO BE ISSUED, SO FAR AS THE SAME HAVE BEEN DETERMINED, AND OF THE AUTHORITY, IF ANY, OF THE BOARD TO DIVIDE THE SHARES INTO CLASSES OR SERIES AND TO DETERMINE AND CHANGE THE RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF ANY CLASS OR SERIES. SUCH REQUEST MAY BE MADE TO THE SECRETARY OF THE CORPORATION OR TO THE TRANSFER AGENT NAMED ON THIS CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by entireties

JT TEN - as joint tenants with right of survivorship
and not as tenants in common

UTMA - _____ Custodian _____
(Cust) (Minor)
under Uniform Transfers to Minors
Act _____
(State)

Additional abbreviations may also be used though not in the above list.

For value received _____ hereby sell, assign, and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE)

_____ **Shares**
of the capital stock represented by the within Certificate,
and do hereby irrevocably constitute and appoint _____
Attorney
to transfer the said stock on the books of the within-named
Corporation with full power of substitution in the premises.

Dated _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

SIGNATURE GUARANTEED

ALL GUARANTEES MUST BE MADE BY A FINANCIAL INSTITUTION (SUCH AS A BANK OR BROKER) WHICH IS A PARTICIPANT IN THE SECURITIES TRANSFER AGENTS' MEDALLION PROGRAM ("STAMP"), THE NEW YORK STOCK EXCHANGE, INC. MEDALLION SIGNATURE PROGRAM ("NSMP"), OR THE STOCK EXCHANGES MEDALLION PROGRAM ("SEMP") AND MUST NOT BE DATED. GUARANTEES BY A NOTARY PUBLIC ARE NOT ACCEPTABLE.

LATHAM & WATKINS LLP

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 New York, New York 10022-4834
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January 20, 2015

Shake Shack Inc.
 24 Union Square East
 5th Floor
 New York, NY 10003

FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

Re: Registration Statement No. 333-201271; 5,750,000 shares of Common Stock, par value \$0.01 per share

Ladies and Gentlemen:

We have acted as special counsel to Shake Shack Inc., a Delaware corporation (the “**Company**”), in connection with the proposed issuance of up to 5,750,000 shares (the “**Shares**”) of common stock, \$0.01 par value per share (the “**Common Stock**”). The Shares are included in a registration statement on Form S—1 under the Securities Act of 1933, as amended (the “**Act**”), filed with the Securities and Exchange Commission (the “**Commission**”) on December 29, 2014 (Registration No. 333—201271) (as amended, the “**Registration Statement**”). The term “Shares” shall include any additional shares of Common Stock registered by the Company pursuant to Rule 462(b) under the Act in connection with the offering contemplated by the Registration Statement. This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related Prospectus, other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to General Corporation Law of the State of Delaware, and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Board of Directors of the Company has taken all necessary

corporate action to authorize and approve the Amended and Restated Certificate of Incorporation of the Company in the form most recently filed as an exhibit to the Registration Statement (the “ ***Amended and Restated Certificate of Incorporation*** ”), when the Amended and Restated Certificate of Incorporation of the Company has been duly filed with the Secretary of State of the State of Delaware and when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company against payment therefor (not less than par value) in the circumstances contemplated by the form of underwriting agreement most recently filed as an exhibit to the Registration Statement, the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the General Corporation Law of the State of Delaware.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement and to the reference to our firm in the Prospectus under the heading “Legal matters.” We further consent to the incorporation by reference of this letter and consent into any registration statement filed pursuant to Rule 462(b) with respect to the Shares. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Latham & Watkins LLP

TAX RECEIVABLE AGREEMENT

by and among

SHAKE SHACK INC.

SSE HOLDINGS, LLC

**THE MEMBERS OF SSE HOLDINGS, LLC
FROM TIME TO TIME PARTY HERETO**

Dated as of [•], 2015

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Exhibits

<u>Exhibit A</u>	-	Form of Joinder Agreement

TAX RECEIVABLE AGREEMENT

This TAX RECEIVABLE AGREEMENT (this “Agreement”), dated as of [•], 2015, is hereby entered into by and among Shake Shack Inc., a Delaware corporation (the “Corporation”), SSE Holdings, LLC, a Delaware limited liability company (“SSE Holdings”) and each of the Members from time to time party hereto. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in Section 1.1.

RECITALS

WHEREAS, SSE Holdings is treated as a partnership for U.S. federal income tax purposes;

WHEREAS, each of the members of SSE Holdings as of the date hereof other than the Corporation (such members, together with each other Person who becomes party hereto by satisfying the Joinder Requirement, the “Members”) owns common limited liability company interests in SSE Holdings (the “Units”);

WHEREAS, the Corporation is the managing member of SSE Holdings, and will be the registered owner of Units;

WHEREAS, on the date hereof, the Corporation issued shares of its Class A common stock, par value \$0.01 per share (the “Class A Common Stock”) to certain purchasers in an initial public offering of its Class A Common Stock (the “IPO”);

WHEREAS, on the date hereof, the Corporation acquired newly-issued Units directly from SSE Holdings using proceeds from the IPO;

WHEREAS, on and after the date hereof, pursuant to Article XI of the LLC Agreement, each Member has the right, in its sole discretion, from time to time to have all or a portion its Units redeemed by SSE Holdings for, at the Corporation’s election, cash or Class A Common Stock (a “Redemption”); *provided* that, at the election of the Corporation in its sole discretion, the Corporation may effect a direct exchange of such cash or shares of Class A Common Stock for such Units (a “Direct Exchange”);

WHEREAS, SSE Holdings and any direct or indirect subsidiary (owned through a chain of pass-through entities) of SSE Holdings that is treated as a partnership for U.S. federal income tax purposes (together with SSE Holdings and any direct or indirect subsidiary (owned through a chain of pass-through entities) of SSE Holdings that is treated as a disregarded entity for U.S. federal income tax purposes, the “SSE Holdings Group”) will have in effect an election under Section 754 of the Code (as defined herein) as provided under Section 2.1(b) for the Taxable Year (as defined herein) in which any Exchange (as defined below) occurs, which election will result in an adjustment to the Corporation’s share of the tax basis of the assets owned by the SSE Holdings Group as of the date of the Exchange, with a consequent result on the taxable income subsequently derived therefrom; and

WHEREAS, the parties to this Agreement desire to provide for certain payments and make certain arrangements with respect to any tax benefits to be derived by the Corporation as

the result of Exchanges and making payments under this Agreement, and to ease administrative burdens, an assumed tax rate shall be used to approximate the Corporation's state, local and foreign liabilities for Covered Taxes (as defined herein) without regard to such tax benefits for each Taxable Year.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both (i) the singular and plural and (ii) the active and passive forms of the terms defined).

“ Actual Interest Amount ” is defined in Section 3.1(b)(vii) of this Agreement.

“ Actual Tax Liability ” means, with respect to any Taxable Year, the liability for Covered Taxes of the Corporation (a) appearing on Tax Returns of the Corporation for such Taxable Year and (b) if applicable, determined in accordance with a Determination (including interest imposed in respect thereof under applicable law).

“ Advisory Firm ” means an accounting firm that is nationally recognized as being expert in Covered Tax matters, selected by the Corporation.

“ Affiliate ” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“ Agreed Rate ” means LIBOR plus 100 basis points.

“ Agreement ” is defined in the preamble.

“ Amended Schedule ” is defined in Section 2.4(b) of this Agreement.

“ Attributable ” is defined in Section 3.1(b)(i) of this Agreement.

“ Audit Committee ” means the audit committee of the Board.

“ Basis Adjustment ” means the increase or decrease to, or the Corporation's share of, the tax basis of the Reference Assets (i) under Section 734(b), 743(b), 754 and 755 of the Code and, in each case, the comparable sections of U.S. state and local tax law (in situations where, following an Exchange, SSE Holdings remains in existence as an entity for tax purposes) and (ii) under Sections 732 and 1012 of the Code and, in each case, the comparable sections of U.S. state and local tax law (in situations where, as a result of one or more Exchanges, SSE Holdings becomes an entity that is disregarded as separate from its owner for tax purposes), in each case, as a result of any Exchange and any payments made under this Agreement. Notwithstanding any

other provision of this Agreement, the amount of any Basis Adjustment resulting from an Exchange of one or more Units shall be determined without regard to any Pre-Exchange Transfer of such Units and as if any such Pre-Exchange Transfer had not occurred to the extent that such Pre-Exchange Transfer resulted in the partial or complete elimination of a future Basis Adjustment that the Corporation would have otherwise obtained pursuant to the terms of this Agreement.

“ Basis Schedule ” is defined in Section 2.2 of this Agreement.

“ Beneficial Owner ” means, with respect to any security, a Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares: (i) voting power, which includes the power to vote, or to direct the voting of, with respect to such security and/or (ii) investment power, which includes the power to dispose of, or to direct the disposition of, such security.

“ Board ” means the Board of Directors of the Corporation.

“ Business Day ” means any day excluding Saturday, Sunday and any day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in New York are closed.

“ Change of Control ” means the occurrence of any of the following events:

(1) any “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Exchange Act (excluding any “person” or “group” who, on the date of the consummation of the IPO, is the Beneficial Owner of securities of the Corporation representing more than fifty percent (50%) of the combined voting power of the Corporation’s then outstanding voting securities)) becomes the Beneficial Owner of securities of the Corporation representing more than fifty percent (50%) of the combined voting power of the Corporation’s then outstanding voting securities;

(2) the shareholders of the Corporation approve a plan of complete liquidation or dissolution of the Corporation or there is consummated an agreement or series of related agreements for the sale or other disposition, directly, or indirectly, by the Corporation of all or substantially all of the Corporation’s assets (including a sale of assets of SSE Holdings), other than such sale or other disposition by the Corporation of all or substantially all of the Corporation’s assets to an entity at least fifty percent (50%) of the combined voting power of the voting securities of which are owned by shareholders of the Corporation in substantially the same proportions as their ownership of the Corporation immediately prior to such sale;

(3) there is consummated a merger or consolidation of the Corporation or any direct or indirect subsidiary of the Corporation (including SSE Holdings) with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (x) the board of directors of the Corporation immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or, if the surviving company is a subsidiary, the ultimate parent thereof, or (y) all of the Persons who were the respective

Beneficial Owners of the voting securities of the Corporation immediately prior to such merger or consolidation do not Beneficially Own, directly or indirectly, more than 50% of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation;

(4) the following individuals cease for any reason to constitute a majority of the number of directors of the Corporation then serving: individuals who were directors of the Corporation on the date of the consummation of the IPO and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Corporation) whose appointment or election by the board of directors of the Corporation or nomination for election by the Corporation's shareholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors of the Corporation on the date of the consummation of the IPO or whose appointment, election or nomination for election was previously so approved or recommended by the directors referred to in this clause 4; or

(5) a "change of control" or similar defined term in any agreement governing indebtedness of SSE Holdings or any of its Subsidiaries with aggregate principal amount or aggregate commitments outstanding in excess of \$25,000,000.

Notwithstanding the foregoing, a "Change of Control" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the Class A Common Stock and Class B common stock of the Corporation immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporation immediately following such transaction or series of transactions.

" Code " means the U.S. Internal Revenue Code of 1986, as amended.

" Corporation Letter " means a letter prepared by the Corporation in connection with the performance of its obligations under this Agreement, which states that the relevant Schedules, notices or other information to be provided by the Corporation to the Members, along with all supporting schedules and work papers, were prepared in a manner that is consistent with the terms of this Agreement and, to the extent not expressly provided in this Agreement, on a reasonable basis in light of the facts and law in existence on the date such Schedules, notices or other information were delivered by the Corporation to the Members.

" Control " means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

" Corporation " is defined in the preamble to this Agreement.

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" Covered Taxes " means any and all U.S. federal, state, local and foreign taxes, assessments or similar charges that are based on or measured with respect to net income or profits, whether as an exclusive or an alternative basis (including for the avoidance of doubt, franchise taxes), and any interest imposed in respect thereof under applicable law.

" Cumulative Net Realized Tax Benefit " is defined in Section 3.1(b)(iii) of this Agreement.

" Default Rate " means LIBOR plus 500 basis points.

" Default Rate Interest " is defined in Section 3.1(b)(ix) of this Agreement.

" Determination " shall have the meaning ascribed to such term in Section 1313(a) of the Code or similar provision of U.S. state, local or foreign tax law, as applicable, or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for tax.

" Direct Exchange " is defined in the recitals to this Agreement.

" Dispute " is defined in Section 7.8(a) of this Agreement.

" Early Termination Effective Date " means the date of an Early Termination Notice for purposes of determining the Early Termination Payment.

" Early Termination Notice " is defined in Section 4.2 of this Agreement.

" Early Termination Payment " is defined in Section 4.3(b) of this Agreement.

" Early Termination Rate " means the Agreed Rate.

" Early Termination Reference Date " is defined in Section 4.2 of this Agreement.

“ Early Termination Schedule ” is defined in Section 4.2 of this Agreement.

“ Exchange ” means any (i) Direct Exchange, (ii) Redemption or (iii) any transaction using proceeds of the IPO or any distribution by SSE Holdings that in either case results in an adjustment under Section 743(b) of the Code with respect to the SSE Holdings Group.

“ Exchange Act ” means the Securities and Exchange Act of 1934, as amended, or any successor provisions thereto.

“ Exchange Date ” means the date of any Exchange.

“ Expert ” is defined in Section 7.9 of this Agreement.

“ Extension Rate Interest ” is defined in Section 3.1(b)(viii) of this Agreement.

“ Final Payment Date ” means any date on which a payment is required to be made pursuant to this Agreement. For the avoidance of doubt, the Final Payment Date in respect of a Tax Benefit Payment is determined pursuant to Section 3.1(a) of this Agreement.

“ Hypothetical Federal Tax Liability ” means, with respect to any Taxable Year, the hypothetical liability of the Corporation that would arise in respect of U.S. federal Covered Taxes, using the same methods, elections, conventions and similar practices used on the actual relevant U.S. federal Tax Returns of the Corporation but (i) calculating depreciation, amortization, or other similar deductions, or otherwise calculating any items of income, gain, or loss, using the Non-Adjusted Tax Basis as reflected on the Basis Schedule, including amendments thereto for such Taxable Year, (ii) excluding any deduction attributable to Imputed Interest for such Taxable Year and (iii) deducting actual state, local and foreign tax liabilities for such Taxable Year for purposes of determining U.S. federal taxable income. For the avoidance of doubt, the Hypothetical Federal Tax Liability shall be determined without taking into account the carryover or carryback of any tax item (or portions thereof) that is attributable to any of the items described in clauses (i), (ii) and (iii) of the previous sentence.

“ Hypothetical Other Tax Liability ” means, with respect to any Taxable Year, U.S. federal taxable income determined in connection with calculating the Hypothetical Federal Tax Liability for such Taxable Year, *plus* the amount used for purposes of clause (iii) of the definition of Hypothetical Federal Tax Liability” with respect to such Taxable Year, the sum of which is *multiplied by* six percent (6%).

“ Hypothetical Tax Liability ” means, with respect to any Taxable Year, the Hypothetical Federal Tax Liability for such Taxable Year, *plus* the Hypothetical Other Tax Liability for such Taxable Year.

“ Imputed Interest ” is defined in Section 3.1(b)(vi) of this Agreement.

“ Independent Directors ” means the members of the Board who are “independent” under the standards set forth in Rule 10A-3 promulgated under the U.S. Securities Exchange Act of 1933, as amended, and the corresponding rules of the applicable exchange on which the Class A Common Stock is traded or quoted.

“ IPO ” is defined in the recitals to this Agreement.

“ IRS ” means the U.S. Internal Revenue Service.

“ Joinder ” means a joinder to this Agreement, in form and substance substantially similar to Exhibit A to this Agreement.

“ Joinder Requirement ” is defined in Section 7.6(a) of this Agreement.

“ LIBOR ” means during any period, a rate per annum equal to the ICE LIBOR rate for a period of one month (“ ICE LIBOR ”), as published on the applicable Bloomberg screen page (or such other commercially available source providing quotations of ICE LIBOR as may be designated by the Corporation from time to time) at approximately 11:00 a.m., London time, two

(2) Business Days prior to the commencement of such period, for dollar deposits (for delivery on the first day of such period) with a term equivalent to such period.

“ LLC Agreement ” means that certain Third Amended and Restated Limited Liability Company Agreement of SSE Holdings, LLC, dated as of the date hereof, as such agreement may be further amended, restated, supplemented and/or otherwise modified from time to time.

“ Market Value ” shall mean the Common Unit Redemption Price, as defined in the LLC Agreement.

“ Member Advisory Firm ” means an accounting firm that is nationally recognized as being expert in Covered Tax matters, selected by the applicable Member; provided that such accounting firm shall be different from the accounting firm serving as the Advisory Firm.

“ Members ” is defined in the recitals to this Agreement.

“ Net Tax Benefit ” is defined in Section 3.1(b)(ii) of this Agreement.

“ Non-Adjusted Tax Basis ” means, with respect to any Reference Asset at any time, the tax basis that such asset would have had at such time if no Basis Adjustments had been made.

“ Objection Notice ” is defined in Section 2.4(a)(i) of this Agreement.

“ Parties ” means the parties named on the signature pages to this agreement and each additional party that satisfies the Joinder Requirement, in each case with their respective successors and assigns.

“ Person ” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

“ Pre-Exchange Transfer ” means any transfer of one or more Units (including upon the death of a Member or upon the issuance of Units resulting from the exercise of an option to acquire such Units) (i) that occurs prior to an Exchange of such Units and (ii) to which Section 743(b) of the Code applies.

“ Realized Tax Benefit ” is defined in Section 3.1(b)(iv) of this Agreement.

“ Realized Tax Detriment ” is defined in Section 3.1(b)(v) of this Agreement.

“ Reconciliation Dispute ” is defined in Section 7.9 of this Agreement.

“ Reconciliation Procedures ” is defined in Section 2.4(a) of this Agreement.

“ Redemption ” has the meaning in the recitals to this Agreement.

“ Reference Asset ” means any asset of SSE Holdings or any of its successors or assigns, and whether held directly by SSE Holdings or indirectly by SSE Holdings through a member of the SSE Holdings Group, at the time of an Exchange. A Reference Asset also includes any asset

the tax basis of which is determined, in whole or in part, by reference to the tax basis of an asset that is described in the preceding sentence, including “substituted basis property” within the meaning of Section 7701(a)(42) of the Code.

“ Schedule ” means any of the following: (i) a Basis Schedule, (ii) a Tax Benefit Schedule, or (iii) the Early Termination Schedule, and, in each case, any amendments thereto.

“ Senior Obligations ” is defined in Section 5.1 of this Agreement.

“ SSE Holdings ” is defined in the recitals to this Agreement.

“ SSE Holdings Group ” is defined in the recitals to this Agreement.

“ Subsidiary ” means, with respect to any Person and as of any determination date, any other Person as to which such first Person (i) owns, directly or indirectly, or otherwise controls, more than 50% of the voting power or other similar interests of such other Person or (ii) is the sole general partner interest, or managing member or similar interest, of such Person.

“ Subsidiary Stock ” means any stock or other equity interest in any subsidiary entity of the Corporation that is treated as a corporation for U.S. federal income tax purposes.

“ Tax Benefit Payment ” is defined in Section 3.1(b) of this Agreement.

“ Tax Benefit Schedule ” is defined in Section 2.3(a) of this Agreement.

“ Tax Return ” means any return, declaration, report or similar statement required to be filed with respect to taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated tax.

“ Taxable Year ” means a taxable year of the Corporation as defined in Section 441(b) of the Code or comparable section of U.S. state or local tax law, as applicable (and, therefore, for the avoidance of doubt, may include a period of less than 12 months for which a Tax Return is made), ending on or after the closing date of the IPO.

“ Taxing Authority ” shall mean any national, federal, state, county, municipal, or local government, or any subdivision, agency, commission or authority thereof, or any quasi-governmental body, or any other authority of any kind, exercising regulatory or other authority in relation to tax matters.

“ Termination Objection Notice ” is defined in Section 4.2 of this Agreement.

“ Treasury Regulations ” means the final, temporary, and (to the extent they can be relied upon) proposed regulations under the Code, as promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period.

“ Two-Thirds Member Approval ” means written approval by Members whose rights under this Agreement are attributable to at least two-thirds (2/3) of the Units outstanding (and not held by the Corporation) immediately after the IPO (as appropriately adjusted for any

subsequent changes to the number of outstanding Units). For purposes of this definition, a Member's rights under this Agreement shall be attributed to Units as of the time of a determination of Two-Thirds Member Approval. For the avoidance of doubt, (i) an Exchanged Unit shall be attributed only to the Member entitled to receive Tax Benefit Payments with respect to such Exchanged Unit (i.e., the Exchangor or the assignee of its rights hereunder) and (ii) an outstanding Unit that has not yet been Exchanged shall be attributed only to the Member entitled to receive Tax Benefit Payments upon the Exchange of such Unit (i.e., the member of SSE Holdings or the assignee of its rights hereunder).

“ U.S. ” means the United States of America.

“ Units ” is defined in the recitals to this Agreement.

“ Valuation Assumptions ” shall mean, as of an Early Termination Effective Date, the assumptions that:

(1) in each Taxable Year ending on or after such Early Termination Effective Date, the Corporation will have taxable income sufficient to fully use the deductions arising from the Basis Adjustments and the Imputed Interest during such Taxable Year or future Taxable Years (including, for the avoidance of doubt, Basis Adjustments and Imputed Interest that would result from future Tax Benefit Payments that would be paid in accordance with the Valuation Assumptions) in which such deductions would become available;

(2) the U.S. federal income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Effective Date, except to the extent any change to such tax rates for such Taxable Year have already been enacted into law;

(3) all taxable income of the Corporation will be subject to the maximum applicable tax rates for each Covered Tax throughout the relevant period;

(4) any loss carryovers or carrybacks generated by any Basis Adjustment or Imputed Interest (including such Basis Adjustment and Imputed Interest generated as a result of payments under this Agreement) and available as of the date of the Early Termination Schedule will be used by the Corporation ratably in each Taxable Year from the date of the Early Termination Schedule through the scheduled expiration date of such loss carryovers or carrybacks; by way of example, if on the date of the Early Termination Schedule the Corporation had \$100 of net operating losses with a carryforward period of ten (10) years, \$10 of such net operating losses would be used in each of the ten (10) consecutive Taxable Years beginning in the Taxable Year of such Early Termination Schedule;

(5) any non-amortizable assets (other than Subsidiary Stock) will be disposed of on the earlier of (i) the fifteenth anniversary of the applicable Basis Adjustment and (ii) the Early Termination Effective Date;

(6) any Subsidiary Stock will be deemed never to be disposed of;

(7) if, on the Early Termination Effective Date, any Member has Units that have not been Exchanged, then such Units shall be deemed to be Exchanged for the Market Value of the shares of Class A Common Stock that would be received by such Member if such Units had been Exchanged on the Early Termination Effective Date, and such Member shall be deemed to receive the amount of cash such Member would have been entitled to pursuant to Section 4.3(a) had such Units actually been Exchanged on the Early Termination Effective Date and

(8) any payment obligations pursuant to this Agreement will be satisfied on the date that any Tax Return to which such payment obligation relates is required to be filed excluding any extensions.

Section 1.2 Rules of Construction. Unless otherwise specified herein:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) For purposes of interpretation of this Agreement:

(i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision thereof.

(ii) References in this Agreement to a Schedule, Article, Section, clause or sub-clause refer to the appropriate Schedule to, or Article, Section, clause or subclause in, this Agreement.

(iii) References in this Agreement to dollars or “\$” refer to the lawful currency of the United States of America.

(iv) The term “including” is by way of example and not limitation.

(v) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(d) Section headings herein are included for convenience of reference only and shall not affect the interpretation of this Agreement.

(e) Unless otherwise expressly provided herein, (a) references to organization documents (including the LLC Agreement), agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted

hereby; and (b) references to any law (including the Code and the Treasury Regulations) shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

ARTICLE II. DETERMINATION OF REALIZED TAX BENEFIT

Section 2.1 Basis Adjustments; SSE Holdings 754 Election.

(a) Basis Adjustments. The Parties acknowledge and agree that (A) each Redemption shall be treated as a direct purchase of Units by the Corporation from the applicable Member pursuant to Section 707(a)(2)(B) of the Code and (B) each Exchange will give rise to Basis Adjustments. In connection with any Exchange, the Parties acknowledge and agree that pursuant to applicable law the Corporation's share of the basis in the Reference Assets shall be increased (or decreased) by the excess (or deficiency), if any, of (A) the sum of (x) the Market Value of Class A Common Stock or the cash transferred to a Member pursuant to an Exchange as payment for the Units, (y) the amount of payments made pursuant to this Agreement with respect to such Exchange and (z) the amount of liabilities allocated to the Units acquired pursuant to the Exchange, over (B) the Corporation's proportionate share of the basis of the Reference Assets immediately after the Exchange attributable to the Units exchanged, determined as if each member of the SSE Holdings Group (including, for the avoidance of doubt, SSE Holdings) remains in existence as an entity for tax purposes and no member of the SSE Holdings Group (including, for the avoidance of doubt, SSE Holdings) made the election provided by Section 754 of the Code. For the avoidance of doubt, payments made under this Agreement shall not be treated as resulting in a Basis Adjustment to the extent such payments are treated as Imputed Interest or are Actual Interest Amounts. Further, the Parties intend that Basis Adjustments be calculated in accordance with Treasury Regulations Section 1.743-1.

(b) SSE Holdings Section 754 Election. In its capacity as the sole managing member of SSE Holdings, the Corporation will ensure that, on and after the date hereof and continuing throughout the term of this Agreement, SSE Holdings and each of its direct and indirect Subsidiaries (including any successors to SSE Holdings and its direct and indirect Subsidiaries arising as a result of terminations occurring pursuant to Section 708(b)(1)(B) of the Code) that is treated as a partnership for U.S. federal income tax purposes will have in effect an election under Section 754 of the Code (and under any similar provisions of applicable U.S. state or local law) for each Taxable Year.

Section 2.2 Basis Schedules. Within one hundred fifty (150) calendar days after the filing of the U.S. federal income Tax Return of the Corporation for each relevant Taxable Year, the Corporation shall deliver to the Members a schedule (the "Basis Schedule") that shows, in reasonable detail as necessary in order to understand the calculations performed under this Agreement: (a) the Non-Adjusted Tax Basis of the Reference Assets as of each applicable Exchange Date; (b) the Basis Adjustments with respect to the Reference Assets as a result of the relevant Exchanges effected in such Taxable Year, calculated (I) in the aggregate (including, for the avoidance of doubt, Exchanges by all Members) and (II) solely with respect to Exchanges by the applicable Member; (c) the period (or periods) over which the Reference Assets are amortizable and/or depreciable; and (d) the period (or periods) over which each Basis

Adjustment is amortizable and/or depreciable. The Basis Schedule will become final and binding on the Parties pursuant to the procedures set forth in Section 2.4(a), and may be amended by the Parties pursuant to the procedures set forth in Section 2.4(b).

Section 2.3 Tax Benefit Schedules.

(a) Tax Benefit Schedule. Within one hundred fifty (150) calendar days after the filing of the U.S. federal income Tax Return of the Corporation for any Taxable Year in which there is a Realized Tax Benefit or Realized Tax Detriment, the Corporation shall provide to the Members a schedule showing, in reasonable detail, the calculation of the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year (a “Tax Benefit Schedule”). The Tax Benefit Schedule will become final and binding on the Parties pursuant to the procedures set forth in Section 2.4(a), and may be amended by the Parties pursuant to the procedures set forth in Section 2.4(b).

(b) Applicable Principles. Subject to the provisions of this Agreement, the Realized Tax Benefit or Realized Tax Detriment for each Taxable Year is intended to measure the decrease or increase in the Actual Tax Liability of the Corporation for such Taxable Year attributable to the Basis Adjustments and Imputed Interest, as determined using a “with and without” methodology described in Section 2.4(a). Carryovers or carrybacks of any tax item attributable to any Basis Adjustment or Imputed Interest shall be considered to be subject to the rules of the Code and the Treasury Regulations or the appropriate provisions of U.S. state and local tax law, as applicable, governing the use, limitation and expiration of carryovers or carrybacks of the relevant type. If a carryover or carryback of any tax item includes a portion that is attributable to a Basis Adjustment or Imputed Interest (a “TRA Portion”) and another portion that is not (a “Non-TRA Portion”), such portions shall be considered to be used in accordance with the “with and without” methodology so that: (i) the amount of any Non-TRA Portion is deemed utilized first, followed by the amount of any TRA Portion (with the TRA Portion being applied on a proportionate basis consistent with the provisions of Section 3.3(a)); and (ii) in the case of a carryback of a Non-TRA Portion, such carryback shall not affect the original “with and without” calculation made in the prior Taxable Year. The Parties agree that, subject to the second to last sentence of Section 2.1(a), all Tax Benefit Payments attributable to an Exchange will be treated as subsequent upward purchase price adjustments that give rise to further Basis Adjustments for the Corporation beginning in the Taxable Year of payment, and as a result, such additional Basis Adjustments will be incorporated into such Taxable Year continuing for future Taxable Years until any incremental Basis Adjustment benefits with respect to a Tax Benefit Payment equals an immaterial amount.

Section 2.4 Procedures; Amendments.

(a) Procedures. Each time the Corporation delivers an applicable Schedule to the Members under this Agreement, including any Amended Schedule delivered pursuant to Section 2.4(b), but excluding any Early Termination Schedule or amended Early Termination Schedule delivered pursuant to the procedures set forth in Section 4.2, the Corporation shall also: (x) deliver supporting schedules and work papers, as determined by the Corporation or as reasonably requested by any Member, that provide a reasonable level of detail regarding the data and calculations that were relevant for purposes of preparing the Schedule; (y) deliver a Corporation

Letter supporting such Schedule; and (z) allow the Members and their advisors to have reasonable access to the appropriate representatives, as determined by the Corporation or as reasonably requested by the Members, at the Corporation and the Advisory Firm in connection with a review of such Schedule. Without limiting the generality of the preceding sentence, the Corporation shall ensure that any Tax Benefit Schedule that is delivered to the Members, along with any supporting schedules and work papers, provides a reasonably detailed presentation of the calculation of the Actual Tax Liability of the Corporation for the relevant Taxable Year (the “with” calculation) and the Hypothetical Tax Liability of the Corporation for such Taxable Year (the “without” calculation), and identifies any material assumptions or operating procedures or principles that were used for purposes of such calculations. An applicable Schedule or amendment thereto shall become final and binding on the Parties thirty (30) calendar days from the date on which the Members first received the applicable Schedule or amendment thereto unless:

- (i) a Member within thirty (30) calendar days after receiving the applicable Schedule or amendment thereto, provides the Corporation with (A) written notice of a material objection to such Schedule that is made in good faith and that sets forth in reasonable detail such Member’s material objection (an “Objection Notice”) and (B) a letter from a Member Advisory Firm in support of such Objection Notice; or
- (ii) each Member provides a written waiver of its right to deliver an Objection Notice within the time period described in clause (i) above, in which case such Schedule or amendment thereto becomes binding on the date the waiver from all Members is received by the Corporation.

In the event that a Member timely delivers an Objection Notice pursuant to clause (i) above, and if the Parties, for any reason, are unable to successfully resolve the issues raised in the Objection Notice within thirty (30) calendar days after receipt by the Corporation of the Objection Notice, the Corporation and the Member shall employ the reconciliation procedures as described in Section 7.9 of this Agreement (the “Reconciliation Procedures”). For the avoidance of doubt, and notwithstanding anything to the contrary herein, the expense of preparing and obtaining the letter from a Member Advisory Firm referenced in clause (i) above shall be borne solely by the relevant Member and the Corporation shall have no liability with respect to such letter or any of the expenses associated with its preparation and delivery.

- (b) Amended Schedule. The applicable Schedule for any Taxable Year may be amended from time to time by the Corporation: (i) in connection with a Determination affecting such Schedule; (ii) to correct inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was originally provided to the Member; (iii) to comply with an Expert’s determination under the Reconciliation Procedures applicable to this Agreement; (iv) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other Tax item to such Taxable Year; (v) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to an amended Tax Return filed for such Taxable Year; or (vi) to adjust a Basis Schedule to take into account any Tax Benefit Payments made pursuant to this Agreement (any such Schedule, an “Amended Schedule”).

ARTICLE III.
TAX BENEFIT PAYMENTS

Section 3.1 Timing and Amount of Tax Benefit Payments.

(a) Timing of Payments. Subject to Sections 3.2 and 3.3, within three (3) Business Days following the date on which each Tax Benefit Schedule that is required to be delivered by the Corporation to the Members pursuant to Section 2.3(a) of this Agreement becomes final in accordance with Section 2.4(a) of this Agreement (such date, the “Final Payment Date” in respect of any Tax Benefit Payment), the Corporation shall pay to each relevant Member the Tax Benefit Payment as determined pursuant to Section 3.1(b). Each such Tax Benefit Payment shall be made by wire transfer of immediately available funds to the bank account previously designated by such Members or as otherwise agreed by the Corporation and such Members. For the avoidance of doubt, the Members shall not be required under any circumstances to return any portion of any Tax Benefit Payment previously paid by the Corporation to the Members (including any portion of any Early Termination Payment).

(b) Amount of Payments. For purposes of this Agreement, a “Tax Benefit Payment” with respect to any Member means an amount, not less than zero, equal to the sum of: (i) the Net Tax Benefit that is Attributable to such Member and (ii) the Actual Interest Amount.

(i) Attributable. A Net Tax Benefit is “Attributable” to a Member to the extent that it is derived from any Basis Adjustment or Imputed Interest that is attributable to an Exchange undertaken by or with respect to such Member.

(ii) Net Tax Benefit. The “Net Tax Benefit” for a Taxable Year equals the amount of the excess, if any, of (x) 85% of the Cumulative Net Realized Tax Benefit Attributable to such Member as of the end of such Taxable Year over (y) the aggregate amount of all Tax Benefit Payments previously made to such Member under this Section 3.1. For the avoidance of doubt, if the Cumulative Net Realized Tax Benefit as of the end of any Taxable Year is less than the aggregate amount of all Tax Benefit Payments previously made to a Member, such Member shall not be required to return any portion of any Tax Benefit Payment previously made by the Corporation to such Member.

(iii) Cumulative Net Realized Tax Benefit. The “Cumulative Net Realized Tax Benefit” for a Taxable Year equals the cumulative amount of Realized Tax Benefits for all Taxable Years of the Corporation, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriments for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Schedule or Amended Schedule, if any, in existence at the time of such determination.

(iv) Realized Tax Benefit. The “Realized Tax Benefit” for a Taxable Year equals the excess, if any, of the Hypothetical Tax Liability over the Actual Tax Liability for such Taxable Year. If all or a portion of the Actual Tax Liability for such Taxable Year arises as a result of an audit or similar proceeding by a Taxing Authority of any

Taxable Year, such liability shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination.

(v) Realized Tax Detriment. The “Realized Tax Detriment” for a Taxable Year equals the excess, if any, of the Actual Tax Liability over the Hypothetical Tax Liability for such Taxable Year. If all or a portion of the Actual Tax Liability for such Taxable Year arises as a result of an audit or similar proceeding by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination.

(vi) Imputed Interest. The principles of Sections 1272, 1274, or 483 of the Code, as applicable, and the principles of any similar provision of U.S. state and local law, will apply to cause a portion of any Net Tax Benefit payable by the Corporation to a Member under this Agreement to be treated as imputed interest (“Imputed Interest”). For the avoidance of doubt, the deduction for the amount of Imputed Interest as determined with respect to any Net Tax Benefit payable by the Corporation to a Member shall be excluded in determining the Hypothetical Tax Liability of the Corporation for purposes of calculating Realized Tax Benefits and Realized Tax Detriments pursuant to this Agreement.

(vii) Actual Interest Amount. The “Actual Interest Amount” calculated in respect of the Net Tax Benefit for a Taxable Year will equal the amount of any Extension Rate Interest.

(viii) Extension Rate Interest. The amount of “Extension Rate Interest” calculated in respect of the Net Tax Benefit (including previously accrued Imputed Interest) for a Taxable Year will equal interest calculated at the Agreed Rate from the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for such Taxable Year until the date on which the Corporation makes a timely Tax Benefit Payment to the Member on or before the Final Payment Date as determined pursuant to Section 3.1(a).

(ix) Default Rate Interest. In the event that the Corporation does not make timely payment of all or any portion of a Tax Benefit Payment to a Member on or before the Final Payment Date as determined pursuant to Section 3.1(a), the amount of “Default Rate Interest” calculated in respect of the Net Tax Benefit (including previously accrued Imputed Interest and Extension Rate Interest)

for a Taxable Year will equal interest calculated at the Default Rate from the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.1(a) until the date on which the Corporation makes such Tax Benefit Payment to such Member. For the avoidance of doubt, the amount of any Default Rate Interest as determined with respect to any Net Tax Benefit payable by the Corporation to a Member shall be included in the Hypothetical Tax Liability of the Corporation for purposes of calculating Realized Tax Benefits and Realized Tax Detriments pursuant to this Agreement.

(x) The Corporation and the Members hereby acknowledge and agree that, as of the date of this Agreement and as of the date of any future Exchange that may be

subject to this Agreement, the aggregate value of the Tax Benefit Payments cannot be reasonably ascertained for U.S. federal income or other applicable tax purposes.

(c) Interest. The provisions of Section 3.1(b) are intended to operate so that interest will effectively accrue in respect of the Net Tax Benefit for any Taxable Year as follows:

(i) first, at the applicable rate used to determine the amount of Imputed Interest under the Code (from the relevant Exchange Date until the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for such Taxable Year);

(ii) second, at the Agreed Rate in respect of any Extension Rate Interest (from the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for such Taxable Year until the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.1(a)); and

(iii) third, at the Default Rate in respect of any Default Rate Interest (from the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.1(a) until the date on which the Corporation makes the relevant Tax Benefit Payment to a Member).

Section 3.2 No Duplicative Payments. It is intended that the provisions of this Agreement will not result in the duplicative payment of any amount (including interest) that may be required under this Agreement, and the provisions of this Agreement shall be consistently interpreted and applied in accordance with that intent. For purposes of this Agreement, and also for the avoidance of doubt, no Tax Benefit Payment shall be calculated or made in respect of any estimated tax payments, including, without limitation, any estimated U.S. federal income tax payments.

Section 3.3 Pro-Ration of Payments as Between the Members.

(a) Insufficient Taxable Income. Notwithstanding anything in Section 3.1(b) to the contrary, if the aggregate potential Covered Tax benefit of the Corporation as calculated with respect to the Basis Adjustments and Imputed Interest (in each case, without regard to the Taxable Year of origination) is limited in a particular Taxable Year because the Corporation does not have sufficient actual taxable income, then the available Covered Tax benefit for the Corporation shall be allocated among the Members in proportion to the respective Tax Benefit Payment that would have been payable if the Corporation had in fact had sufficient taxable income so that there had been no such limitation. As an illustration of the intended operation of this Section 3.3(a), if the Corporation had \$200 of aggregate potential Covered Tax benefits with respect to the Basis Adjustments and Imputed Interest in a particular Taxable Year (with \$50 of such Covered Tax benefits being attributable to Member 1 and \$150 of such Covered Tax benefits being attributable to Member 2), such that Member 1 would have potentially been entitled to a Tax Benefit Payment of \$42.50 and Member 2 would have been entitled to a Tax Benefit Payment of \$127.50 if the Corporation had \$200 of taxable income, and if at the same time the Corporation only had \$100 of actual taxable income in such Taxable Year, then \$25 of the aggregate \$100 actual Covered Tax benefit for the Corporation for such Taxable Year would

be allocated to Member 1 and \$75 of the aggregate \$100 actual Covered Tax benefit for the Corporation would be allocated to Member 2, such that Member 1 would receive a Tax Benefit Payment of \$21.25 and Member 2 would receive a Tax Benefit Payment of \$63.75.

(b) Late Payments. If for any reason the Corporation is not able to timely and fully satisfy its payment obligations under this Agreement in respect of a particular Taxable Year, then Default Rate Interest will begin to accrue pursuant to Section 5.2 and the Corporation and other Parties agree that (i) the Corporation shall pay the Tax Benefit Payments due in respect of such Taxable Year to each Member pro rata in accordance with the principles of Section 3.3(a) and (ii) no Tax Benefit Payment shall be made in respect of any Taxable Year until all Tax Benefit Payments to all Members in respect of all prior Taxable Years have been made in full.

ARTICLE IV. TERMINATION

Section 4.1 Early Termination of Agreement; Breach of Agreement.

(a) Corporation's Early Termination Right. With the written approval of a majority of the Independent Directors, the Corporation may completely terminate this Agreement, as and to the extent provided herein, with respect to all amounts payable to the Members pursuant to this Agreement by paying to the Members the Early Termination Payment; *provided* that Early Termination Payments may be made pursuant to this Section 4.1(a) only if made to all Members that are entitled to such a payment simultaneously, and *provided further*, that the Corporation may withdraw any notice to execute its termination rights under this Section 4.1(a) prior to the time at which any Early Termination Payment has been paid. Upon the Corporation's payment of the Early Termination Payment, the Corporation shall not have any further payment obligations under this Agreement, other than with respect to any: (i) prior Tax Benefit Payments that are due and payable under this Agreement but that still remain unpaid as of the date of the Early Termination Notice; and (ii) current Tax Benefit Payment due for the Taxable Year ending on or including the date of the Early Termination Notice (except to the extent that the amount described in clause (ii) is included in the calculation of the Early Termination Payment). If an Exchange subsequently occurs with respect to Units for which the Corporation has exercised its termination rights under this Section 4.1(a), the Corporation shall have no obligations under this Agreement with respect to such Exchange.

(b) Acceleration Upon Change of Control. In the event of a Change of Control, all obligations hereunder shall be accelerated and such obligations shall be calculated pursuant to this Article IV as if an Early Termination Notice had been delivered on the closing date of the Change of Control and utilizing the Valuation Assumptions by substituting the phrase "the closing date of a Change of Control" in each place where the phrase "Early Termination Effective Date" appears. Such obligations shall include, but not be limited to, (1) the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the closing date of the Change of Control, (2) any Tax Benefit Payments agreed to by the Corporation and the Members as due and payable but unpaid as of the Early Termination Notice and (3) any Tax Benefit Payments due for any Taxable Year ending prior to, with or including the closing date of a Change of Control (except to the extent that any amounts described in

clauses (2) or (3) are included in the Early Termination Payment). For the avoidance of doubt, Sections 4.2 and 4.3 shall apply to a Change of Control, *mutadis mutandi*.

(c) Acceleration Upon Breach of Agreement. In the event that the Corporation materially breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment when due, failure to honor any other material obligation required hereunder, or by operation of law as a result of the rejection of this Agreement in a case commenced under the Bankruptcy Code or otherwise, then all obligations hereunder shall be accelerated and become immediately due and payable upon notice of acceleration from such Member (provided that in the case of any proceeding under the Bankruptcy Code or other insolvency statute, such acceleration shall be automatic without any such notice), and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such notice of acceleration (or, in the case of any proceeding under the Bankruptcy Code or other insolvency statute, on the date of such breach) and shall include, but not be limited to: (i) the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the date of such acceleration; (ii) any prior Tax Benefit Payments that are due and payable under this Agreement but that still remain unpaid as of the date of such acceleration; and (iii) any current Tax Benefit Payment due for the Taxable Year ending with or including the date of such acceleration. Notwithstanding the foregoing, in the event that the Corporation breaches this Agreement and such breach is not a material breach of a material obligation, a Member shall still be entitled to enforce all of its rights otherwise available under this Agreement, including potentially seeking an acceleration of amounts payable under this Agreement. For purposes of this Section 4.1(c), and subject to the following sentence, the Parties agree that the failure to make any payment due pursuant to this Agreement within thirty (30) days of the relevant Final Payment Date shall be deemed to be a material breach of a material obligation under this Agreement for all purposes of this Agreement, and that it will not be considered to be a material breach of a material obligation under this Agreement to make a payment due pursuant to this Agreement within thirty (30) days of the relevant Final Payment Date. Notwithstanding anything in this Agreement to the contrary, it shall not be a material breach of a material obligation of this Agreement if the Corporation fails to make any Tax Benefit Payment within thirty (30) days of the relevant Final Payment Date to the extent that the Corporation has insufficient funds, or cannot take commercially reasonable actions to obtain sufficient funds, to make such payment; *provided* that the interest provisions of Section 5.2 shall apply to such late payment (unless the Corporation does not have sufficient funds to make such payment as a result of limitations imposed by any Senior Obligations, in which case Section 5.2 shall apply, but the Default Rate shall be replaced by the Agreed Rate).

Section 4.2 Early Termination Notice. If the Corporation chooses to exercise its right of early termination under Section 4.1 above, the Corporation shall deliver to the Members a notice of the Corporation's decision to exercise such right (an "Early Termination Notice") and a schedule (the "Early Termination Schedule") showing in reasonable detail the calculation of the Early Termination Payment. The Corporation shall also (x) deliver supporting schedules and work papers, as determined by the Corporation or as reasonably requested by a Member, that provide a reasonable level of detail regarding the data and calculations that were relevant for purposes of preparing the Early Termination Schedule; (y) deliver a Corporation Letter supporting such Early Termination Schedule; and (z) allow the Members and their advisors to have reasonable access to the appropriate representatives, as determined by the Corporation or as

reasonably requested by the Members, at the Corporation and the Advisory Firm in connection with a review of such Early Termination Schedule. The Early Termination Schedule shall become final and binding on each Party thirty (30) calendar days from the first date on which the Members received such Early Termination Schedule unless:

- (i) a Member within thirty (30) calendar days after receiving the Early Termination Schedule, provides the Corporation with (A) notice of a material objection to such Early Termination Schedule made in good faith and setting forth in reasonable detail such Member's material objection (a "Termination Objection Notice") and (B) a letter from a Member Advisory Firm in support of such Termination Objection Notice; or
- (ii) each Member provides a written waiver of such right of a Termination Objection Notice within the period described in clause (i) above, in which case such Early Termination Schedule becomes binding on the date the waiver from all Members is received by the Corporation.

In the event that a Member timely delivers a Termination Objection Notice pursuant to clause (i) above, and if the Parties, for any reason, are unable to successfully resolve the issues raised in the Termination Objection Notice within thirty (30) calendar days after receipt by the Corporation of the Termination Objection Notice, the Corporation and such Member shall employ the Reconciliation Procedures. For the avoidance of doubt, and notwithstanding anything to the contrary herein, the expense of preparing and obtaining the letter from a Member Advisory Firm referenced in clause (i) above shall be borne solely by such Member and the Corporation shall have no liability with respect to such letter or any of the expenses associated with its preparation and delivery. The date on which the Early Termination Schedule becomes final in accordance with this Section 4.2 shall be the "Early Termination Reference Date."

Section 4.3 Payment Upon Early Termination .

(a) Timing of Payment . Within three (3) Business Days after the Early Termination Reference Date, the Corporation shall pay to each Member an amount equal to the Early Termination Payment for such Member. Such Early Termination Payment shall be made by the Corporation by wire transfer of immediately available funds to a bank account or accounts designated by the Members or as otherwise agreed by the Corporation and the Members.

(b) Amount of Payment . The "Early Termination Payment" payable to a Member pursuant to Section 4.3(a) shall equal the present value, discounted at the Early Termination Rate as determined as of the Early Termination Reference Date, of all Tax Benefit Payments that would be required to be paid by the Corporation to such Member, whether payable with respect to Units that were Exchanged prior to the Early Termination Effective Date or on or after the Early Termination Effective Date, beginning from the Early Termination Effective Date and using the Valuation Assumptions. For the avoidance of doubt, an Early Termination Payment shall be made to each Member, regardless of whether such Member has Exchanged all of its Units as of the Early Termination Effective Date.

**ARTICLE V.
SUBORDINATION AND LATE PAYMENTS**

Section 5.1 Subordination. Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payment or Early Termination Payment required to be made by the Corporation to the Members under this Agreement shall rank subordinate and junior in right of payment to any principal, interest, or other amounts due and payable in respect of any obligations owed in respect of secured indebtedness for borrowed money of the Corporation and its Subsidiaries (“Senior Obligations”) and shall rank *pari passu* in right of payment with all current or future unsecured obligations of the Corporation that are not Senior Obligations. To the extent that any payment under this Agreement is not permitted to be made at the time payment is due as a result of this Section 5.1 and the terms of the agreements governing Senior Obligations, such payment obligation nevertheless shall accrue for the benefit of the Members and the Corporation shall make such payments at the first opportunity that such payments are permitted to be made in accordance with the terms of the Senior Obligations.

Section 5.2 Late Payments by the Corporation. The amount of all or any portion of any Tax Benefit Payment or Early Termination Payment not made to the Members when due under the terms of this Agreement, whether as a result of Section 5.1 and the terms of the Senior Obligations or otherwise, shall be payable together with Default Rate Interest, which shall accrue beginning on the Final Payment Date and be computed as provided in Section 3.1(b)(ix).

**ARTICLE VI.
TAX MATTERS; CONSISTENCY; COOPERATION**

Section 6.1 Participation in the Corporation’s and SSE Holdings’ Tax Matters. Except as otherwise provided herein, and except as provided in Article IX of the LLC Agreement, the Corporation shall have full responsibility for, and sole discretion over, all tax matters concerning the Corporation and SSE Holdings, including without limitation the preparation, filing or amending of any Tax Return and defending, contesting or settling any issue pertaining to taxes. Notwithstanding the foregoing, the Corporation shall notify the Members of, and keep them reasonably informed with respect to, the portion of any tax audit of the Corporation or SSE Holdings, or any of SSE Holdings’ Subsidiaries, the outcome of which is reasonably expected to materially affect the Tax Benefit Payments payable to such Members under this Agreement, and any Member holding directly and/or indirectly at least ten percent (10%) of the outstanding Units, provided that SSE Holdings has knowledge that such Member holds directly and/or indirectly at least ten percent (10%) of the outstanding Units (a “10% Member”), shall have the right to participate in and to monitor at their own expense (but, for the avoidance of doubt, not to control) any such portion of any such Tax audit; provided that the Corporation shall not settle or fail to contest any issue pertaining to Covered Taxes that is reasonably expected to materially adversely affect the Members’ rights and obligations under this Agreement without the consent of each 10% Member, such consent not to be unreasonably withheld or delayed.

Section 6.2 Consistency. All calculations and determinations made hereunder, including, without limitation, any Basis Adjustments, the Schedules, and the determination of any Realized Tax Benefits or Realized Tax Detriments, shall be made in accordance with the elections, methodologies or positions taken by the Corporation and SSE Holdings on their

respective Tax Returns. Each Member shall prepare its Tax Returns in a manner that is consistent with the terms of this Agreement, and any related calculations or determinations that are made hereunder, including, without limitation, the terms of Section 2.1 of this Agreement and the Schedules provided to the Members under this Agreement. In the event that an Advisory Firm is replaced with another Advisory Firm acceptable to the Audit Committee, such replacement Advisory Firm shall perform its services under this Agreement using procedures and methodologies consistent with the previous Advisory Firm, unless otherwise required by law or unless the Corporation and all of the Members agree to the use of other procedures and methodologies.

Section 6.3 Cooperation .

(a) Each Member shall (i) furnish to the Corporation in a timely manner such information, documents and other materials as the Corporation may reasonably request for purposes of making any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any audit, examination or controversy with any Taxing Authority, (ii) make itself available to the Corporation and its representatives to provide explanations of documents and materials and such other information as the Corporation or its representatives may reasonably request in connection with any of the matters described in clause (i) above, and (iii) reasonably cooperate in connection with any such matter.

(b) The Corporation shall reimburse the Members for any reasonable and documented out-of-pocket costs and expenses incurred pursuant to Section 6.3(a).

**ARTICLE VII.
MISCELLANEOUS**

Section 7.1 Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by courier service, by fax, by electronic mail (delivery receipt requested) or by certified or registered mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be as specified in a notice given in accordance with this Section 7.1). All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to the Corporation, to:

Shake Shack Inc.
24 Union Square East
5th Floor
New York, New York 10003

Attn: Jeff, Uttz, Chief Financial Officer
Facsimile: (212) 533-2442
E-mail: juttz@shakeshack.com

with a copy (which shall not constitute notice to the Corporation) to:

Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
Attn: Howard Sobel, Esq.
Facsimile: (212) 751-4684
E-mail: howard.sobel@lw.com

Latham & Watkins LLP
330 N. Wabash Avenue, Suite 2800
Chicago, Illinois 60611
Attn: Joseph Kronsoble, Esq.
Facsimile: (312) 993-9767
E-mail: joseph.kronsoble@lw.com

If to a Member, the address, facsimile number and e-mail address specified on such Member's signature page to this Agreement

Any Party may change its address, fax number or e-mail address by giving each of the other Parties written notice thereof in the manner set forth above.

Section 7.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 7.3 Entire Agreement; No Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Delaware, without regard to the conflicts of laws principles thereof that would mandate the application of the laws of another jurisdiction.

Section 7.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this

Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.6 Assignments; Amendments; Successors; No Waiver.

(a) Assignment. No Member may assign, sell, pledge, or otherwise alienate or transfer any interest in this Agreement, including the right to receive any Tax Benefit Payments under this Agreement, to any Person without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned, or delayed, and without such Person executing and delivering a Joinder agreeing to succeed to the applicable portion of such Member's interest in this Agreement and to become a Party for all purposes of this Agreement (the "Joinder Requirement"); *provided, however*, that to the extent any Member sells, exchanges, distributes, or otherwise transfers Units to any Person (other than the Corporation or SSE Holdings) in accordance with the terms of the LLC Agreement, the Members shall have the option to assign to the transferee of such Units its rights under this Agreement with respect to such transferred Units, *provided* that such transferee has satisfied the Joinder Requirement. For the avoidance of doubt, if a Member transfers Units in accordance with the terms of the LLC Agreement but does not assign to the transferee of such Units its rights under this Agreement with respect to such transferred Units, such Member shall continue to be entitled to receive the Tax Benefit Payments arising in respect of a subsequent Exchange of such Units. Notwithstanding anything to the contrary in this Agreement, Union Square Café Corp. and Gramercy Tavern Corp. may assign any portion of their respective interests in this Agreement, including the right to receive any Tax Benefit Payments, to any of their respective shareholders, *provided* that each such transferee has satisfied the Joinder Requirement. The Corporation may not assign any of its rights or obligations under this Agreement to any Person without Two-Thirds Member Approval (and any purported assignment without such consent shall be null and void).

(b) Amendments. No provision of this Agreement may be amended unless such amendment is approved in writing by the Corporation and made with Two-Thirds Member Approval; *provided* that amendment of the definition of Change of Control will also require the written approval of a majority of the Independent Directors. No provision of this Agreement may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective.

(c) Successors. All of the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. The Corporation shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place.

(d) Waiver. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy

consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, duty, agreement, or condition.

Section 7.7 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 7.8 Resolution of Disputes.

(a) Except for Reconciliation Disputes subject to Section 7.9, any and all disputes which cannot be settled after substantial good-faith negotiation, including any ancillary claims of any Party, arising out of, relating to or in connection with the validity, negotiation, execution, interpretation, performance or non-performance of this Agreement (including the validity, scope and enforceability of this arbitration provision) (each a "Dispute") shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration by a panel of three arbitrators, of which the Corporation shall designate one arbitrator and the Members party to such Dispute shall designate one arbitrator in accordance with the "screened" appointment procedure provided in Resolution Rule 5.4. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of the arbitration shall be Miami, Florida.

(b) Notwithstanding the provisions of paragraph (a), any Party may bring an action or special proceeding in any court of competent jurisdiction for the purpose of compelling another Party to arbitrate, seeking temporary or preliminary relief in aid of an arbitration hereunder, and/or enforcing an arbitration award and, for the purposes of this paragraph (b), each Party (i) expressly consents to the application of paragraph (c) of this Section 7.8 to any such action or proceeding, and (ii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate. For the avoidance of doubt, this Section 7.8 shall not apply to Reconciliation Disputes to be settled in accordance with the procedures set forth in Section 7.9.

(c) Each Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Chancery Court of the State of Delaware or, if such Court declines jurisdiction, the courts of the State of Delaware sitting in Wilmington, Delaware, and of the U.S. District Court for the District of Delaware sitting in Wilmington, Delaware, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or for recognition or enforcement of any judgment, and each of the Parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Delaware State court or, to the fullest extent permitted by applicable law, in such U.S. District Court. Each Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other

manner provided by law.

(d) Each Party irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section

7.8(c). Each Party irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such suit, action or proceeding in any such court.

(e) Each Party irrevocably consents to service of process by means of notice in the manner provided for in Section 7.1. Nothing in this Agreement shall affect the right of any Party to serve process in any other manner permitted by law.

(f) **WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

(g) Any dispute as to whether a dispute is a Reconciliation Dispute within the meaning of Section 7.9, or a Dispute within the meaning of this Section 7.8, shall be decided and resolved as a Dispute subject to the procedures set forth in this Section 7.8.

Section 7.9 Reconciliation. In the event that the Corporation and any Member are unable to resolve a disagreement with respect to a Schedule (other than an Early Termination Schedule) prepared in accordance with the procedures set forth in Section 2.4, or with respect to an Early Termination Schedule prepared in accordance with the procedures set forth in Section 4.2, within the relevant time period designated in this Agreement (a “Reconciliation Dispute”), the Reconciliation Dispute shall be submitted for determination to a nationally recognized expert (the “Expert”) in the particular area of disagreement mutually acceptable to both Parties. The Expert shall be a partner or principal in a nationally recognized accounting firm, and unless the Corporation and such Member agree otherwise, the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporation or such Member or other actual or potential conflict of interest. If the Parties are unable to agree on an Expert within fifteen (15) calendar days of receipt by the respondent(s) of written notice of a Reconciliation Dispute, the selection of an Expert shall be treated as a Dispute subject to Section 7.8 and an arbitration panel shall pick an Expert from a nationally recognized accounting firm that does not have any material relationship with the Corporation or such Member or other actual or potential conflict of interest. The Expert shall resolve any matter relating to the Basis Schedule or an amendment thereto, or the Early Termination Schedule or an amendment thereto within thirty (30) calendar days and shall resolve any matter relating to a Tax Benefit Schedule or an amendment thereto within fifteen (15) calendar days or as soon thereafter as is reasonably practicable, in each case after the matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement would be due (in the absence of such disagreement) or any Tax Return reflecting the subject of a disagreement is due, the undisputed amount shall be paid on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporation, subject to adjustment or amendment upon resolution. The costs and expenses relating to the engagement of such Expert or amending any Tax Return shall be borne by the Corporation except as provided in the next sentence. The Corporation and the Members shall bear their own costs and expenses of such proceeding, unless (i) the Expert adopts the Member’s position, in which case the Corporation shall reimburse the Member for any reasonable and

documented out-of-pocket costs and expenses in such proceeding, or (ii) the Expert adopts the Corporation's position, in which case the Member shall reimburse the Corporation for any reasonable and documented out-of-pocket costs and expenses in such proceeding. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.9 shall be binding on the Corporation and the Members and may be entered and enforced in any court having competent jurisdiction.

Section 7.10 Withholding. The Corporation shall be entitled to deduct and withhold from any payment that is payable to any Member pursuant to this Agreement such amounts as the Corporation is required to deduct and withhold with respect to the making of such payment under the Code or any provision of U.S. state, local or foreign tax law. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by the Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid by the Corporation to the relevant Member. Each Member shall promptly provide the Corporation with any applicable tax forms and certifications reasonably requested by the Corporation in connection with determining whether any such deductions and withholdings are required under the Code or any provision of U.S. state, local or foreign tax law.

Section 7.11 Admission of the Corporation into a Consolidated Group; Transfers of Corporate Assets.

(a) If the Corporation is or becomes a member of an affiliated or consolidated group of corporations that files a consolidated income Tax Return pursuant to Section 1501 or other applicable Sections of the Code governing affiliated or consolidated groups, or any corresponding provisions of U.S. state or local law, then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Tax Benefit Payments, Early Termination Payments, and other applicable items hereunder shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If any entity that is obligated to make a Tax Benefit Payment or Early Termination Payment hereunder transfers one or more assets to a corporation (or a Person classified as a corporation for U.S. income tax purposes) with which such entity does not file a consolidated Tax Return pursuant to Section 1501 of the Code, such entity, for purposes of calculating the amount of any Tax Benefit Payment or Early Termination Payment due hereunder, shall be treated as having disposed of such asset in a fully taxable transaction on the date of such contribution. The consideration deemed to be received by such entity shall be equal to the fair market value of the contributed asset. For purposes of this Section 7.11, a transfer of a partnership interest shall be treated as a transfer of the transferring partner's share of each of the assets and liabilities of that partnership.

Section 7.12 Confidentiality. Each Member and its assignees acknowledges and agrees that the information of the Corporation is confidential and, except in the course of performing any duties as necessary for the Corporation and its Affiliates, as required by law or legal process or to enforce the terms of this Agreement, such Person shall keep and retain in the strictest confidence and not disclose to any Person any confidential matters, acquired pursuant to this Agreement, of the Corporation and its Affiliates and successors, learned by any Member heretofore or hereafter. This Section 7.12 shall not apply to (i) any information that has been

made publicly available by the Corporation or any of its Affiliates, becomes public knowledge (except as a result of an act of any Member in violation of this Agreement) or is generally known to the business community, (ii) the disclosure of information to the extent necessary for a Member to prosecute or defend claims arising under or relating to this Agreement, and (iii) the disclosure of information to the extent necessary for a Member to prepare and file its Tax Returns, to respond to any inquiries regarding the same from any Taxing Authority or to prosecute or defend any action, proceeding or audit by any Taxing Authority with respect to such Tax Returns. Notwithstanding anything to the contrary herein, the Members and each of their assignees (and each employee, representative or other agent of the Members or their assignees, as applicable) may disclose at their discretion to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Corporation, the Members and any of their transactions, and all materials of any kind (including tax opinions or other tax analyses) that are provided to the Members relating to such tax treatment and tax structure. If a Member or an assignee commits a breach, or threatens to commit a breach, of any of the provisions of this Section 7.12, the Corporation shall have the right and remedy to have the provisions of this Section 7.12 specifically enforced by injunctive relief or otherwise by any court of competent jurisdiction without the need to post any bond or other security, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the Corporation or any of its Subsidiaries and that money damages alone shall not provide an adequate remedy to such Persons. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

Section 7.13 Change in Law. Notwithstanding anything herein to the contrary, if, in connection with an actual or proposed change in law, a Member reasonably believes that the existence of this Agreement could cause income (other than income arising from receipt of a payment under this Agreement) recognized by such Member (or direct or indirect equity holders in such Member) in connection with any Exchange to be treated as ordinary income rather than capital gain (or otherwise taxed at ordinary income rates) for U.S. federal income tax purposes or would have other material adverse tax consequences to such Member or any direct or indirect owner of such Member, then at the written election of such Member in its sole discretion (in an instrument signed by such Member and delivered to the Corporation) and to the extent specified therein by such Member, this Agreement shall cease to have further effect and shall not apply to an Exchange occurring after a date specified by such Member, or may be amended by in a manner reasonably determined by such Member, *provided* that such amendment shall not result in an increase in any payments owed by the Corporation under this Agreement at any time as compared to the amounts and times of payments that would have been due in the absence of such amendment.

Section 7.14 Interest Rate Limitation. Notwithstanding anything to the contrary contained herein, the interest paid or agreed to be paid hereunder with respect to amounts due to any Member hereunder shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If any Member shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the Tax Benefit Payment or Early Termination Payment, as applicable (but in each case exclusive of any component thereof comprising interest) or, if it exceeds such unpaid non-interest amount, refunded to the Corporation. In determining whether the interest contracted for, charged, or received by any Member exceeds the Maximum Rate, such Member may, to the extent permitted by applicable

Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the payment obligations owed by the Corporation to such Member hereunder. Notwithstanding the foregoing, it is the intention of the Parties to conform strictly to any applicable usury laws.

Section 7.15 Independent Nature of Rights and Obligations. The rights and obligations of each Member hereunder are several and not joint with the rights and obligations of any other Person. A Member shall not be responsible in any way for the performance of the obligations of any other Person hereunder, nor shall a Member have the right to enforce the rights or obligations of any other Person hereunder (other than the Corporation). The obligations of a Member hereunder are solely for the benefit of, and shall be enforceable solely by, the Corporation. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Member pursuant hereto or thereto, shall be deemed to constitute the Members acting as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Members are in any way acting in concert or as a group with respect to such rights or obligations or the transactions contemplated hereby, and the Corporation acknowledges that the Members are not acting in concert or as a group and will not assert any such claim with respect to such rights or obligations or the transactions contemplated hereby.

[Signature Page Follows This Page]

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Agreement as of the date first written above.

CORPORATION:

SHAKE SHACK INC.

By: _____
Name: Randy Garutti
Title: Chief Executive Officer

SSE HOLDINGS:

SSE HOLDINGS, LLC

By: _____
Name: Randy Garutti
Title: Chief Executive Officer

MEMBERS:

UNION SQUARE HOSPITALITY GROUP, LLC

By: _____
Name: Jeff Flug
Title: President

Address: 24 Union Square East, 6th Floor, NY, NY 10003
Email address: jflug@ushgnyc.com

UNION SQUARE CAFE CORP.

By: _____

Name: Daniel H. Meyer

Title: Authorized Signatory

Address: c/o Union Square Hospitality Group 24 Union Square
East, 6th Floor, NY, NY 10003

Email address: dmeyer@ushgnyc.com

GRAMERCY TAVERN CORP.

By: _____

Name: Daniel H. Meyer

Title: Authorized Signatory

Address: c/o Union Square Hospitality Group 24 Union Square
East, 6th Floor, NY, NY 10003

Email address: dmeyer@ushgnyc.com

Daniel H. Meyer

Address: 1 Lexington Avenue, NY, NY 10010

Email address: dmeyer@ushgnyc.com

[Signature Page to Tax Receivables Agreement]

DANIEL H. MEYER 2012 GIFT TRUST U/A/D 10/31/12

By: _____
Name: Audrey H. Meyer, not individually but solely as Co-Trustee

By: _____
Name: Jack R. Polsky, not individually but solely as Co-Trustee

Address: 1 Lexington Avenue, NY, NY 10010
Email address: audhefmey@gmail.com

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Jeffrey Flug

Address: 1192 Park Avenue, 3B, NY, NY 10128
Email address: jflug@ushgnyc.com

FLUG 2012 GS TRUST U/A/D 9/14/12

By: _____
Name: Sheryl Flug, not individually but solely as Co-Trustee

By: _____
Name: Kenneth Flug, not individually but solely as Co-Trustee

Address: 1192 Park Avenue, 3B, NY, NY 10128
Email address: sherylflug@aol.com

GULF FIVE LLC

By: _____
Name: Jeff Flug
Title: Manager

Address: 1192 Park Avenue, 3B, NY, NY 10128
Email address: jflug@ushgnyc.com

[Signature Page to Tax Receivables Agreement]

Richard Coraine

Address: 435 East 57th Street, 6D, NY, NY 10022
Email address: rcoraine@ushgnyc.com

THE RICHARD D. CORAINE 2012 FAMILY TRUST

By: _____
Name: Toni Haida
Title: Trustee

Address: 435 East 57th Street, 6D, NY, NY 10022
Email address: tonihaida@gmail.com

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David Swinghamer

Address: 2 Devereux Court, Rye, NY 10580
Email address: dswinghamer@gmail.com

THE DAVID A. SWINGHAMER GRAT

By: _____
Name: David Swinghamer
Title: Trustee

Address: 2 Devereux Court, Rye, NY 10580
Email address: dswinghamer@gmail.com

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Karen Kochevar

Address: 45 West 67th Street, 9J, NY, NY 10023
Email address: kkochevar@sprintmail.com

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Walter Robb

Address: 331 Ellen Drive, San Rafael, CA 94903
Email address: Walter.Robb@wholefoods.com

[*Signature Page to Tax Receivables Agreement*]

Erin Moran

Address: 6 Sommer Avenue, Maplewood, NJ 07040
Email address: emoran@ushgnyc.com

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Ashley Campbell

Address: 360 1st Street, Apt. 3, Hoboken, NJ 07030
Email address: acampbell@ushgnyc.com

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Randy Garutti

Address: 101 West 81st Street, NY, NY 10024
Email address: rgarutti@shakeshack.com

THE RANDALL J. GARUTTI 2014 GST TRUST

By: _____
Name: Ronald Garutti
Title: Co-Trustee

Address: 16 Harrison Street, Clifton, NJ 08809
Email address: rgarutti@newroadsfinancial.com

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Jeff Uttz

Address: 301 White Oak Ridge Road, Short Hills, NJ 07078
Email address: juttz@shakeshack.com

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ROXANNE H. FRANK REVOCABLE TRUST DATED 9/30/75

By: _____
Name: Jack Polsky
Title: Trustee

Address: 8025 Maryland Avenue, #16B, St. Louis, MO 63105
Email address:

RHF-NM 1999 DESCENDANTS TRUST DATED 1/1/2006

By: _____
Name: Michael McQuinn
Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606
Email address: mcm@whi.com

MARC WEISS REVOCABLE TRUST U/A/D 8/11/2003

By: _____
Name: Marc Weiss
Title: Trustee

Address: 234 East 19th Street, NY, NY 10003
Email address:

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RHF-TM 1999 DESCENDANTS TRUST DATED 1/1/2006

By: _____

Name: Michael McQuinn

Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606

Email address: mcm@whi.com

VHP SPECIAL TRUST FOR JACK DATED 12/31/12

By: _____

Name: Jack Polsky

Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606

Email address: mcm@whi.com

JEAN POLSKY INVESTMENT TRUST DATED 3/21/97

By: _____

Name: Jack Polsky

Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606

Email address: mcm@whi.com

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JOAN W. HARRIS REVOCABLE TRUST DATED 4/1/93

By: _____
Name: Joan Harris
Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606
Email address: mcm@whi.com

BENJAMIN HARRIS FAMILY TRUST DATED 12/23/92

By: _____
Name: Boardman Lloyd
Title: Trustee

Address: 160 Riverside Drive, Apt #14A, NY, NY 10024
Email address: boardyl@gmail.com

DAVID HARRIS FAMILY TRUST DATED 12/23/92

By: _____
Name: Boardman Lloyd
Title: Trustee

Address: 1040 Anna Knapp Blvd, Mount Pleasant, SC 29464
Email address: boardyl@gmail.com

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AMY WEISS-MEYER QUALIFIED MINOR'S TRUST DATED 12/22/05

By: _____
Name: Jack Polsky
Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606
Email address: mcm@whi.com

ISAAC WEISS-MEYER QUALIFIED MINOR'S TRUST DATED 12/22/05

By: _____
Name: Jack Polsky
Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606
Email address: mcm@whi.com

HALLIE MEYER QUALIFIED MINOR'S TRUST DATED 11/23/05

By: _____
Name: Jack Polsky
Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606
Email address: mcm@whi.com

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**GRETCHEN MEYER QUALIFIED MINOR'S TRUST DATED
11/23/05**

By: _____
Name: Jack Polsky
Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606
Email address: mcm@whi.com

**CHARLES MEYER QUALIFIED MINOR'S TRUST DATED
11/23/05**

By: _____
Name: Jack Polsky
Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606
Email address: mcm@whi.com

**PEYTON MEYER QUALIFIED MINOR'S TRUST DATED
11/23/05**

By: _____
Name: Jack Polsky
Title: Trustee

Address: c/o William Harris Investors, 191 N. Wacker Drive,
Suite 1500, Chicago, IL 60606
Email address: mcm@whi.com

By: _____
Name: Beth Stephens

Address: 170 Harbor Street, Glencoe, IL 60022
Email address:

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Name: Orrin Devinsky

Address: 97 Westview Road, Short Hills, NJ 07078

Email address: od4@nyu.edu

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Name: Laura Sloate

Address: 35 East 75th Street, 16C, NY, NY 10021

Email address: dleone@nb.com

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Name: Bert Vivian

Address: 4949 E Lincoln Drive, Paradise Valley, AZ 85253
Email address: bertvivian@me.com

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Name: Jamie Welch and Fiona Angelini

Address: 129 Lafayette Street, PH South, NY, NY 10013

Email address:

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GRANITE POINT CAPITAL

By: _____

Name: C. David Bushley

Title: Chief Operating Officer,
Granite Point Capital Management,
The Investment Manager

Address: 109 State Street, 5th Floor, Boston MA 02109

Email address: david@granitepoint.com

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THOMAS O'NEAL RYDER FAMILY TRUST

By: _____

Name: Darlene Ryder

Title: Trustee

Address: 658 Ocean Road, Vero Beach, FL 32963

Email address: darryder@gmail.com

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ACG SHACK LLC

By: _____

Name: Joshua N. Goldin

Title: Managing Member

Address: 655 Madison Avenue, NY, NY 10065

Email address: jgoldin@acginvestors.com

[*Signature Page to Tax Receivables Agreement*]

[MALTED HOLDINGS II ENTITIES]

By: _____
Name:
Title:

Address: 11111 Santa Monica Blvd, Suite 200, Los Angeles, CA 90025
Email address: sokoloff@leonardgreen.com

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SEG PARTNERS, L.P.

By: _____
Name: _____
Title: _____

Address: 380 Lafayette Street, NY, NY 10003
Email address: eg@selectequity.com

SEG PARTNERS II, L.P.

By: _____
Name: _____
Title: _____

Address: 380 Lafayette Street, NY, NY 10003
Email address: eg@selectequity.com

SEG PARTNERS OFFSHORE MASTER FUND LTD.

By: _____
Name: _____
Title: _____

Address: 380 Lafayette Street, NY, NY 10003
Email address: eg@selectequity.com

[Signature Page to Tax Receivables Agreement]

Exhibit A

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of _____, 20____ (this “Joinder”), is delivered pursuant to that certain Tax Receivable Agreement, dated as of [•], 2015 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Tax Receivable Agreement”) by and among Shake Shack Inc., a Delaware corporation (the “Corporation”), SSE Holdings, LLC, a Delaware limited liability company (“SSE Holdings”), and each of the Members from time to time party thereto. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in the Tax Receivable Agreement.

1. Joinder to the Tax Receivable Agreement. The undersigned hereby represents and warrants to the Corporation that, as of the date hereof, the undersigned has been assigned an interest in the Tax Receivable Agreement from a Member and [•](1).
2. Joinder to the Tax Receivable Agreement. Upon the execution of this Joinder by the undersigned and delivery hereof to the Corporation, the undersigned hereby is and hereafter will be a Member under the Tax Receivable Agreement and a Party thereto, with all the rights, privileges and responsibilities of a Member thereunder. The undersigned hereby agrees that it shall comply with and be fully bound by the terms of the Tax Receivable Agreement as if it had been a signatory thereto as of the date thereof.
3. Incorporation by Reference. All terms and conditions of the Tax Receivable Agreement are hereby incorporated by reference in this Joinder as if set forth herein in full.
4. Address. All notices under the Tax Receivable Agreement to the undersigned shall be direct to:

[Name]
[Address]
[City, State, Zip Code]
Attn:
Facsimile:
E-mail:

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Joinder as of the day and year first above written.

(1) Note to Draft: Language to be added as applicable.

[NAME OF NEW PARTY]

By: _____
Name: _____
Title: _____

Acknowledged and agreed
as of the date first set forth above:

SHAKE SHACK INC.

By: _____
Name: _____
Title: _____

[Exhibit A]

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”) is made as of [•], 2015 by and among Shake Shack Inc., a Delaware corporation (the “**Corporation**”), and each Person identified on the Schedule of Investors attached hereto as of the date hereof (such Persons, collectively, the “**Original SSE Equity Owners**”).

RECITALS

WHEREAS, the Corporation is contemplating an offer and sale of its shares of Class A common stock, par value \$0.01 per share (the “**Class A Common Stock**” and such shares, the “**Shares**”), to the public in an underwritten initial public offering (the “**IPO**”);

WHEREAS, the Corporation desires to use a portion of the net proceeds from the IPO to purchase Common Units (as defined below) of SSE Holdings, LLC, a Delaware limited liability company (the “**Company**”), and the Company desires to issue its Common Units to the Corporation in exchange for such portion of the net proceeds from the IPO;

WHEREAS, immediately prior to the consummation of the issuance of Common Units by the Company to the Corporation, the Original SSE Equity Owners are the sole members of the Company;

WHEREAS, immediately prior to or simultaneous with the purchase by the Corporation of the Common Units, the Corporation, the Company and the Original SSE Equity Owners will enter into that certain Third Amended and Restated Limited Liability Company Agreement of the Company (such agreement, as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**LLC Agreement**”);

WHEREAS, in connection with the closing of the IPO, the Corporation will become the sole managing member of the Company, (i) under the LLC Agreement the units of the Original SSE Equity Owners will be cancelled and Common Units will be issued), (ii) each Person identified on the Schedule of Investors attached hereto as a “Former SSE Equity Owner” (such Persons, collectively, the “**Former SSE Equity Owners**”) will exchange their indirect interest in the Common Units for shares of Class A Common Stock, (iii) each Person identified on the Schedule of Investors attached hereto as a “Continuing SSE Equity Owner” (such Persons, collectively, the “**Continuing SSE Equity Owners**”) will become a non-managing member of the Company but otherwise retain their Common Units in the Company, and (iv) in consideration of the Corporation acquiring the Common Units and becoming the managing member of the Company, among other things, the Company has provided the Continuing SSE Equity Owners with a redemption right pursuant to which the Continuing SSE Equity Owners may be able, at the Corporation’s option, to redeem or exchange their Common Units for shares of Class A Common Stock on the terms set forth in the LLC Agreement; and

WHEREAS, in connection with the IPO and the transactions described above, the Corporation has agreed to grant to the Holders (as defined below) certain rights with respect to the registration of the Registrable Securities (as defined below) on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

Section 1. Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1:

“ **Acquired Common** ” has the meaning set forth in Section 9.

“ **Additional Investor** ” has the meaning set forth in Section 9, and shall be deemed to include each such Person’s Affiliates, immediate family members, heirs, successors and assigns who may succeed to such Person as a Holder hereunder.

“ **Affiliate** ” of any Person means any other Person controlled by, controlling or under common control with such Person; *provided* that the Corporation and its Subsidiaries shall not be deemed to be Affiliates of any Holder. As used in this definition, “control” (including, with its correlative meanings, “controlling,” “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, by contract or otherwise).

“ **Agreement** ” has the meaning set forth in the preamble.

“ **Automatic Shelf Registration Statement** ” has the meaning set forth in Section 2(a).

“ **Business Day** ” means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

“ **Capital Stock** ” means (i) with respect to any Person that is a corporation, any and all shares, interests or equivalents in capital stock of such corporation (whether voting or nonvoting and whether common or preferred), (ii) with respect to any Person that is not a corporation, individual or governmental entity, any and all partnership, membership, limited liability company or other equity interests of such Person that confer on the holder thereof the right to receive a share of the profits and losses of, or the distribution of assets of the issuing Person, and (iii) any and all warrants, rights (including conversion and exchange rights) and options to purchase any security described in the clause (i) or (ii) above.

“ **Class A Common Stock** ” has the meaning set forth in the recitals.

“ **Class B Common Stock** ” means the Corporation’s Class B common stock, par value \$0.01 per share.

“ **Common Units** ” means the “Common Units” of the Company as defined in the LLC Agreement.

“ **Company** ” has the meaning set forth in the recitals.

“ **Continuing SSE Equity Owners** ” has the meaning set forth in the recitals, and shall be deemed to include their respective Affiliates, immediate family members, heirs, successors and assigns who may succeed to such Person as a Holder hereunder.

“ **Controlling Holder** ” means each of (i) the Meyer Stockholders, (ii) the LGP Stockholders, (iii) the SEG Stockholders and (iv) the ACG Stockholder (in each case, as identified on the Schedule of Investors), so long as such Holders continue to hold Registrable Securities.

“ **Corporation** ” has the meaning set forth in the preamble.

“ **Demand Registrations** ” has the meaning set forth in Section 2(a).

“ **End of Suspension Notice** ” has the meaning set forth in Section 2(f)(ii).

“ **Exchange Act** ” means the U.S. Securities Exchange Act of 1934, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

“ **FINRA** ” means the Financial Industry Regulatory Authority.

“ **Follow-On Holdback Period** ” has the meaning set forth in Section 4(a)(ii).

“ **Former SSE Equity Owners** ” has the meaning set forth in the recitals, and shall be deemed to include their respective Affiliates, immediate family members, heirs, successors and assigns who may succeed to such Person as a Holder hereunder.

“ **Free Writing Prospectus** ” means a free-writing prospectus, as defined in Rule 405.

“ **Holdback Extension** ” has the meaning set forth in Section 4(a)(iii).

“ **Holdback Period** ” has the meaning set forth in Section 4(a)(i).

“ **Holder** ” means any Person who is the registered holder of Registrable Securities.

“ **Holder Indemnified Parties** ” has the meaning set forth in Section 7(a).

“ **IPO** ” has the meaning set forth in the recitals.

“ **Joinder** ” has the meaning set forth in Section 9.

“ **LLC Agreement** ” has the meaning set forth in the recitals.

“ **Long-Form Registrations** ” has the meaning set forth in Section 2(a).

“ **MNPI** ” means material non-public information within the meaning of Regulation FD promulgated under the Exchange Act.

“ **Original SSE Equity Owners** ” has the meaning set forth in the preamble, and shall be deemed to include their respective Affiliates, immediate family members, heirs, successors and assigns who may succeed to such Person as a Holder hereunder.

“ **Person** ” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

“ **Piggyback Registrations** ” has the meaning set forth in Section 3(a).

“ **Public Offering** ” means any sale or distribution to the public of Capital Stock of the Corporation pursuant to an offering registered under the Securities Act, whether by the Corporation, by Holders and/or by any other holders of the Corporation’s Capital Stock.

“ **Registrable Securities** ” means (i) any Class A Common Stock (A) issued by the Corporation in connection with the IPO in exchange for the Common Units of the Former SSE Equity Owners or (B) issued by the Corporation in a Share Settlement in connection with (x) the redemption by the Company of Common Units owned by any Continuing SSE Equity Owner or (y) at the election of the Corporation, in a direct exchange for Common Units owned by any Continuing SSE Equity Owner, in each case in accordance with the terms of the LLC Agreement, (ii) any common Capital Stock of the Corporation or of any Subsidiary of the Corporation issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization, and (iii) any other Shares owned by Persons that are the registered holders of securities described in clauses (i) or (ii) above. As to any particular Registrable Securities owned by any Person, such securities shall cease to be Registrable Securities on the date such securities have been (a) sold or distributed pursuant to a Public Offering, (b) sold in compliance with Rule 144 following the consummation of the IPO or (c) repurchased by the Corporation or a Subsidiary of the Corporation. For purposes of this Agreement, a Person shall be deemed to be a Holder, and the Registrable Securities shall be deemed to be in existence, whenever such Person has the right to acquire, directly or indirectly, such Registrable Securities (upon conversion or exercise in connection with a transfer of securities or otherwise, but disregarding any restrictions or limitations upon the exercise of such right), whether or not such acquisition has actually been effected, and such Person shall be entitled to exercise the rights of a holder of Registrable Securities hereunder; *provided* a holder of Registrable Securities may only request that Registrable Securities in the form of Capital Stock of the Corporation that is registered or to be registered as a class under Section 12 of the Exchange Act be registered pursuant to this Agreement. For the avoidance of doubt, while Common Units and/or shares of Class B Common Stock may constitute Registrable Securities, under no circumstances shall the Corporation be obligated to register Common Units or shares of Class B Common Stock, and only Shares issuable upon redemption or exchange of such Common Units and/or Class B Common Stock will be registered. Notwithstanding the foregoing, with the consent of the Corporation and the Controlling Holders, any Registrable Securities held by any Person that may be sold under Rule 144(b)(1)(i) without limitation under any other of the requirements of Rule 144 shall not be deemed to be Registrable Securities upon notice from the Corporation to such Person and the Corporation shall, at such Person’s request, remove the legend provided for in Section 12.

“ **Registration Expenses** ” has the meaning set forth in Section 6(a).

“ **Rule 144** ,” “ **Rule 158** ,” “ **Rule 405** ” and “ **Rule 415** ” mean, in each case, such rule promulgated under the Securities Act (or any successor provision) by the Securities and Exchange Commission, as the same shall be amended from time to time, or any successor rule then in force.

“ **Sale Transaction** ” has the meaning set forth in Section 4(a)(i).

“ **Schedule of Investors** ” means the schedule attached to this Agreement entitled “Schedule of Investors”, which shall reflect each Holder from time to time party to this Agreement.

“ **Securities** ” has the meaning set forth in Section 4(a)(i).

“ **Securities Act** ” means the U.S. Securities Act of 1933, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

“ **Share Settlement** ” means “Share Settlement” as defined in the LLC Agreement.

“ **Shares** ” has the meaning set forth in the recitals.

“ **Shelf Offering** ” has the meaning set forth in Section 2(d)(ii).

“ **Shelf Offering Notice** ” has the meaning set forth in Section 2(d)(ii).

“ **Shelf Offering Request** ” has the meaning set forth in Section 2(d)(ii).

“ **Shelf Registrable Securities** ” has the meaning set forth in Section 2(d)(ii).

“ **Shelf Registration** ” has the meaning set forth in Section 2(a).

“ **Shelf Registration Statement** ” has the meaning set forth in Section 2(d)(i).

“ **Short-Form Registrations** ” has the meaning set forth in Section 2(a).

“ **Subsidiary** ” means, with respect to the Corporation, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of Capital Stock of such Person entitled (without regard to the occurrence of any contingency) to vote in the election of directors is at the time owned or controlled, directly or indirectly, by the Corporation, or (ii) if a limited liability company, partnership, association or other business entity, either (x) a majority of the Capital Stock of such Person entitled (without regard to the occurrence of any contingency) to vote in the election of managers, general partners or other oversight board vested with the authority to direct management of such Person is at the time owned or controlled, directly or indirectly, by the Corporation or (y) the Corporation or one of its Subsidiaries is the sole manager or general partner of such Person.

“ **Suspension Event** ” has the meaning set forth in Section 2(f)(ii).

“ **Suspension Notice** ” has the meaning set forth in Section 2(f)(ii).

“ **Suspension Period** ” has the meaning set forth in Section 2(f)(i).

“ **Underwritten Takedown** ” has the meaning set forth in Section 2(d)(ii).

“ **Violation** ” has the meaning set forth in Section 7(a).

“ **WKSJ** ” means a “well-known seasoned issuer” as defined under Rule 405.

Section 2. Demand Registrations.

(a) Requests for Registration. Subject to the terms and conditions of this Agreement, each Controlling Holder may request registration under the Securities Act of all or any portion of their Registrable Securities on Form S-1 or any similar long-form registration (“ **Long-Form Registrations** ”), and each Controlling Holder may request registration under the Securities Act of all or any portion of their Registrable Securities on Form S-3 or any similar short-form registration (“ **Short-Form Registrations** ”) if available. All registrations requested pursuant to this Section 2(a) are referred to herein as “ **Demand Registrations** .” The Controlling Holder making a Demand Registration may request that the registration be made pursuant to Rule 415 under the Securities Act (a “ **Shelf Registration** ”) and, if the Corporation is a WKSJ at the time any request for a Demand Registration is submitted to the Corporation, that such Shelf Registration be an automatic shelf registration statement (as defined in Rule 405 under the Securities Act) (an “ **Automatic Shelf Registration Statement** ”). Except to the extent that Section 2(d) applies, within ten days after the filing of the registration statement relating to the Demand Registration, the Corporation shall give written notice of the Demand Registration to all other Holders and, subject to the terms of Section 2(e), shall include in such Demand Registration (and in all related registrations and qualifications under state blue sky laws and in any related underwriting) all Registrable Securities with respect to which the Corporation has received written requests for inclusion therein within 15 days after the receipt of the Corporation’s notice; *provided* that the Corporation shall provide notice of the Demand Registration to all other Holders prior to the non-confidential filing of the registration statement with respect to the Demand Registration. Each Holder agrees that (1) such notice constitutes MNPI and that it will not engage in any transaction in any securities of the Corporation until such notice and the information contained therein ceases to constitute MNPI and (2) such Holder shall treat as confidential the receipt of the notice of Demand Registration and shall not disclose or use the information contained in such notice of Demand Registration without the prior written consent of the Corporation until such time as the information contained therein is or becomes available to the public generally, other than as a result of disclosure by the Holder in breach of the terms of this Agreement. Notwithstanding the foregoing, the Corporation shall not be required to take any action that would otherwise be required under this Section 2 if such action would violate Section 4(a) hereof or any similar provision contained in the underwriting agreement entered into in connection with any underwritten Public Offering.

(b) Long-Form Registrations. Each Controlling Holder shall be entitled to request an unlimited number of Long-Form Registrations in which the Corporation shall pay all

Registration Expenses, regardless of whether any registration statement is filed or any such Demand Registration is consummated. All Long-Form Registrations shall be underwritten registrations unless otherwise approved by the applicable Controlling Holder.

(c) Short-Form Registrations. In addition to the Long-Form Registrations described in Section 2(b), each Controlling Holder shall be entitled to request an unlimited number of Short-Form Registrations in which the Corporation shall pay all Registration Expenses, regardless of whether any registration statement is filed or any such Demand Registration is consummated. Demand Registrations shall be Short-Form Registrations whenever the Corporation is permitted to use any applicable short form and if the managing underwriters (if any) agree to the use of a Short-Form Registration. After the Corporation has become subject to the reporting requirements of the Exchange Act, the Corporation shall use its reasonable efforts to make Short-Form Registrations available for the sale of Registrable Securities.

(d) Shelf Registrations.

(i) Subject to the availability of required financial information, as promptly as practicable after the Corporation receives written notice of a request for a Shelf Registration, the Corporation shall file with the Securities and Exchange Commission a registration statement under the Securities Act for the Shelf Registration (a “**Shelf Registration Statement**”). The Corporation shall use its reasonable efforts to cause any Shelf Registration Statement to be declared effective under the Securities Act as soon as practicable after the initial filing of such Shelf Registration Statement, and once effective, the Corporation shall cause such Shelf Registration Statement to remain continuously effective for such time period as is specified in the request by the Holders, but for no time period longer than the period ending on the earliest of (A) the third anniversary of the initial effective date of such Shelf Registration Statement, (B) the date on which all Registrable Securities covered by such Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement, and (C) the date as of which there are no longer any Registrable Securities covered by such Shelf Registration Statement in existence. Without limiting the generality of the foregoing, the Corporation shall use its reasonable efforts to prepare a Shelf Registration Statement with respect to all of the Registrable Securities owned by or issuable to the Original SSE Equity Owners in accordance with the terms of the LLC Agreement (or such other number of Registrable Securities specified in writing by the Holder with respect to the Registrable Securities owned by or issuable to such Holder) to enable and cause such Shelf Registration Statement to be filed and maintained with the Securities and Exchange Commission as soon as practicable after the later to occur of (i) the expiration of the Holdback Period and (ii) the Corporation becoming eligible to file a Shelf Registration Statement for a Short-Form Registration; provided that any of the Original SSE Equity Owners may, with respect to itself, instruct the Corporation in writing not to include in such Shelf Registration Statement the Registrable Securities owned by or issuable to such Holder. In order for any of the Original SSE Equity Owners to be named as a selling securityholder in such Shelf Registration Statement, the Corporation may require such Holder to deliver all information about such Holder that is required to be included in such Shelf Registration Statement in accordance with applicable law, including Item 507 of Regulation S-K promulgated under the Securities Act, as amended from time to time, or

any similar successor rule thereto. Notwithstanding anything to the contrary in Section 2(d)(ii), any Holder that is named as a selling securityholder in such Shelf Registration Statement may make a secondary resale under such Shelf Registration Statement without the consent of the Holders representing a majority of the Registrable Securities or any other Holder if such resale does not require a supplement to the Shelf Registration Statement.

(ii) In the event that a Shelf Registration Statement is effective, Holders representing the Registrable Securities with a market value of at least \$50 million shall have the right at any time or from time to time to elect to sell pursuant to an offering (including an underwritten offering (an “**Underwritten Takedown**”)) Registrable Securities available for sale pursuant to such registration statement (“**Shelf Registrable Securities**”), so long as the Shelf Registration Statement remains in effect, and the Corporation shall pay all Registration Expenses in connection therewith; *provided* that each Controlling Holder shall have the right at any time and from time to time to elect to sell pursuant to an offering (including an Underwritten Takedown) pursuant to a Shelf Offering Request (as defined below) made by such Controlling Holder so long as the amount of Registrable Securities requested to be included in such Shelf Offering Request (including any Registrable Securities included pursuant to the third succeeding sentence) is reasonably expected to result in aggregate gross proceeds in excess of \$5.0 million. The applicable Holders shall make such election by delivering to the Corporation a written request (a “**Shelf Offering Request**”) for such offering specifying the number of Shelf Registrable Securities that such Holders desire to sell pursuant to such offering (the “**Shelf Offering**”). As promptly as practicable, but no later than two Business Days after receipt of a Shelf Offering Request, the Corporation shall give written notice (the “**Shelf Offering Notice**”) of such Shelf Offering Request to all other holders of Shelf Registrable Securities. The Corporation, subject to Sections 2(e) and 8 hereof, shall include in such Shelf Offering the Shelf Registrable Securities of any other Holder that shall have made a written request to the Corporation for inclusion in such Shelf Offering (which request shall specify the maximum number of Shelf Registrable Securities intended to be sold by such Holder) within seven days after the receipt of the Shelf Offering Notice. The Corporation shall, as expeditiously as possible (and in any event within 20 days after the receipt of a Shelf Offering Request, unless a longer period is agreed to by the Holders representing a majority of the Registrable Securities that made the Shelf Offering Request), use its reasonable efforts to facilitate such Shelf Offering. Each Holder agrees that (1) such notice constitutes MNPI and that it will not engage in any transaction in any securities of the Corporation until such notice and the information contained therein ceases to constitute MNPI and (2) such Holder shall treat as confidential the receipt of the Shelf Offering Notice and shall not disclose or use the information contained in such Shelf Offering Notice without the prior written consent of the Corporation until such time as the information contained therein is or becomes available to the public generally, other than as a result of disclosure by the Holder in breach of the terms of this Agreement.

(iii) Notwithstanding the foregoing, if a Controlling Holder wishes to engage in an underwritten block trade off of a Shelf Registration Statement (either through filing an Automatic Shelf Registration Statement or through a take-down from an existing Shelf Registration Statement), then notwithstanding the foregoing time periods, such Holders

only need to notify the Corporation of the block trade Shelf Offering two Business Days prior to the day such offering is to commence (unless a longer period is agreed to by Holders representing a majority of the Registrable Securities wishing to engage in the underwritten block trade) and the Corporation shall promptly notify other Holders and such other Holders must elect whether or not to participate by the next Business Day (*i.e.* , one Business Day prior to the day such offering is to commence) (unless a longer period is agreed to by Holders representing a majority of the Registrable Securities wishing to engage in the underwritten block trade) and the Corporation shall as expeditiously as possible use its reasonable efforts to facilitate such offering (which may close as early as three Business Days after the date it commences); *provided* that Holders representing a majority of the Registrable Securities wishing to engage in the underwritten block trade shall use commercially reasonable efforts to work with the Corporation and the underwriters prior to making such request in order to facilitate preparation of the registration statement, prospectus and other offering documentation related to the underwritten block trade.

(iv) The Corporation shall, at the request of Holders representing a majority of the Registrable Securities covered by a Shelf Registration Statement, file any prospectus supplement or, if the applicable Shelf Registration Statement is an Automatic Shelf Registration Statement, any post-effective amendments and otherwise take any action necessary to include therein all disclosure and language deemed necessary or advisable by such Holders to effect such Shelf Offering.

(e) Priority on Demand Registrations and Shelf Offerings. The Corporation shall not include in any Demand Registration or Shelf Offering any securities that are not Registrable Securities without the prior written consent of Holders representing a majority of the Registrable Securities included in such registration or offering. If a Demand Registration or a Shelf Offering is an underwritten offering and the managing underwriters advise the Corporation in writing that in their opinion the number of Registrable Securities and, if permitted hereunder, other securities requested to be included in such offering exceeds the number of Registrable Securities and other securities, if any, that can be sold therein without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Corporation shall include in such registration or offering, as applicable, prior to the inclusion of any securities which are not Registrable Securities the number of Registrable Securities requested by Holders to be included that, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among the respective Holders thereof on the basis of the amount of Registrable Securities owned by each such Holder that such Holder of Registrable Securities shall have requested to be included therein. Alternatively, if the number of Registrable Securities which can be included on a Shelf Registration Statement is otherwise limited by Instruction I.B.6 to Form S-3 (or any successor provision thereto), the Corporation shall include in such registration or offering prior to the inclusion of any securities which are not Registrable Securities the number of Registrable Securities requested to be included which can be included on such Shelf Registration Statement in accordance with the requirements of Form S-3, pro rata among the respective Holders thereof on the basis of the amount of Registrable Securities owned by each such Holder that such Holder of Registrable Securities shall have requested to be included therein.

(f) Restrictions on Demand Registration and Shelf Offerings.

(i) The Corporation shall not be obligated to effect any Demand Registration within 90 days after the effective date of a previous Demand Registration or a previous registration in which Registrable Securities were included pursuant to Section 3 and in which there was no reduction in the number of Registrable Securities requested to be included. The Corporation may postpone, for up to 60 days from the date of the request, the filing or the effectiveness of a registration statement for a Demand Registration or suspend the use of a prospectus that is part of a Shelf Registration Statement for up to 60 days from the date of the Suspension Notice (as defined below) and therefore suspend sales of the Shelf Registrable Securities (such period, the “**Suspension Period**”) by providing written notice to the Holders if (A) the Corporation’s board of directors determines in its reasonable good faith judgment that the offer or sale of Registrable Securities would reasonably be expected to have a material adverse effect on any proposal or plan by the Corporation or any Subsidiary to engage in any material acquisition of assets or stock (other than in the ordinary course of business) or any material merger, consolidation, tender offer, recapitalization, reorganization or other transaction involving the Corporation or any Subsidiary, (B) upon advice of counsel, the sale of Registrable Securities pursuant to the registration statement would require disclosure of MNPI not otherwise required to be disclosed under applicable law, and (C) either (x) the Corporation has a bona fide business purpose for preserving the confidentiality of such transaction or (y) disclosure of such MNPI would have a material adverse effect on the Corporation or the Corporation’s ability to consummate such transaction; *provided* that in such event, the Holders shall be entitled to withdraw such request for a Demand Registration or underwritten Shelf Offering and the Corporation shall pay all Registration Expenses in connection with such Demand Registration or Shelf Offering. The Corporation may delay a Demand Registration hereunder only once in any twelve-month period, except with the consent of the applicable Controlling Holder. The Corporation also may extend the Suspension Period with the consent of the applicable Controlling Holder, which consent shall not be unreasonably withheld.

(ii) In the case of an event that causes the Corporation to suspend the use of a Shelf Registration Statement as set forth in paragraph (f)(i) above or pursuant to applicable subsections of Section 5(a)(vi), (a “**Suspension Event**”), the Corporation shall give a notice to the Holders of Registrable Securities registered pursuant to such Shelf Registration Statement (a “**Suspension Notice**”) to suspend sales of the Registrable Securities and such notice shall state generally the basis for the notice and that such suspension shall continue only for so long as the Suspension Event or its effect is continuing. If the basis of such suspension is nondisclosure of MNPI, the Corporation shall not be required to disclose the subject matter of such MNPI to Holders. A Holder shall not effect any sales of the Registrable Securities pursuant to such Shelf Registration Statement (or such filings) at any time after it has received a Suspension Notice from the Corporation and prior to receipt of an End of Suspension Notice (as defined below). Each Holder agrees that (1) such notice constitutes MNPI and that it will not engage in any transaction in any securities of the Corporation until such notice and the information contained therein ceases to constitute MNPI and (2) such Holder shall treat as confidential the receipt of the Suspension Notice and shall not disclose or use the information contained in such Suspension Notice without the prior written consent of the Corporation until such time as the information contained therein is or becomes available

to the public generally, other than as a result of disclosure by the Holder in breach of the terms of this Agreement. Holders may recommence effecting sales of the Registrable Securities pursuant to the Shelf Registration Statement (or such filings) following further written notice to such effect (an “**End of Suspension Notice**”) from the Corporation, which End of Suspension Notice shall be given by the Corporation to the Holders and their counsel, if any, promptly following the conclusion of any Suspension Event.

(iii) Notwithstanding any provision herein to the contrary, if the Corporation gives a Suspension Notice with respect to any Shelf Registration Statement pursuant to this Section 2(f), the Corporation agrees that it shall (A) extend the period of time during which such Shelf Registration Statement shall be maintained effective pursuant to this Agreement by the number of days during the period from the date of receipt by the Holders of the Suspension Notice to and including the date of receipt by the Holders of the End of Suspension Notice, and (B) provide copies of any supplemented or amended prospectus necessary to resume sales, with respect to each Suspension Event; *provided* that such period of time shall not be extended beyond the date that there are no longer Registrable Securities covered by such Shelf Registration Statement.

(g) Selection of Underwriters. Holders representing a majority of the Registrable Securities included in any Demand Registration shall have the right to select the investment banker(s) and manager(s) to administer the offering (including assignment of titles), subject to the Corporation’s approval not be unreasonably withheld, conditioned or delayed. If any Shelf Offering is an Underwritten Takedown, the Holders representing a majority of the Registrable Securities participating in such Underwritten Takedown shall have the right to select the investment banker(s) and manager(s) to administer the offering relating to such Shelf Offering (including assignment of titles), subject to the Corporation’s approval not be unreasonably withheld, conditioned or delayed.

(h) Other Registration Rights. The Corporation represents and warrants that it is not a party to, or otherwise subject to, any other agreement granting registration rights to any other Person with respect to any securities of the Corporation. Except as provided in this Agreement, the Corporation shall not grant to any Persons the right to request the Corporation or any Subsidiary to register any Capital Stock of the Corporation or of any Subsidiary, or any securities convertible or exchangeable into or exercisable for such securities, without the prior written consent of the applicable Controlling Holder.

Section 3. Piggyback Registrations.

(a) Right to Piggyback. Following the IPO, whenever the Corporation proposes to register any of its securities under the

Securities Act (other than (i) pursuant to a Demand Registration, (ii) in connection with registrations on Form S-4 or S-8 promulgated by the Securities and Exchange Commission or any successor or similar forms or (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of Registrable Securities) and the registration form to be used may be used for the registration of Registrable Securities (a “**Piggyback Registration**”), the Corporation shall give prompt written notice (in any event within three Business Days after its receipt of notice of any request for registration on behalf of holders

of the Company's securities (other than under the Holders) to all Holders of its intention to effect such Piggyback Registration and, subject to the terms of Section 3(c) and Section 3(d), shall include in such Piggyback Registration (and in all related registrations or qualifications under blue sky laws and in any related underwriting) all Registrable Securities with respect to which the Corporation has received written requests for inclusion therein within 20 days after delivery of the Corporation's notice.

(b) Piggyback Expenses. The Registration Expenses of the Holders shall be paid by the Corporation in all Piggyback Registrations, whether or not any such registration became effective.

(c) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Corporation, and the managing underwriters advise the Corporation in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Corporation shall include in such registration (i) first, the securities the Corporation proposes to sell, (ii) second, the Registrable Securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect, pro rata among the Holders on the basis of the number of Registrable Securities owned by each such Holder that such Holder of Registrable Securities shall have requested to be included therein, and (iii) third, other securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect.

(d) Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of holders of the Corporation's securities (other than the Holders), and the managing underwriters advise the Corporation in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Corporation shall include in such registration (i) first, the securities requested to be included therein by the initial holders requesting such registration which, in the opinion of the underwriters, can be sold without any such adverse effect, (ii) second, the Registrable Securities of Holders requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect, pro rata among the such Holders on the basis of the number of Registrable Securities owned by each such Holder that such Holder of Registrable Securities shall have requested to be included therein and (iii) third, other securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect.

(e) Selection of Underwriters. If any Piggyback Registration is an underwritten offering, the selection of investment banker (s) and manager(s) for the offering shall be at the election of the Corporation (in the case of a primary registration) or at the election of the holders of other Corporation securities requesting such registration (in the case of a secondary registration); *provided* that Holders representing a majority of the Registrable Securities included in such Piggyback Registration may request that one or more investment banker(s) or manager(s)

be included in such offering (such request not to be binding on the Corporation or such other initiating holders of Corporation securities).

(f) Right to Terminate Registration. The Corporation shall have the right to terminate or withdraw any registration initiated by it under this Section 3 whether or not any Holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Corporation in accordance with Section 6.

Section 4. Holdback Agreements.

(a) Holders of Registrable Securities. If requested by the Corporation or the managing underwriter(s), each Holder participating in an underwritten Public Offering shall enter into customary lock-up agreements with the managing underwriter(s) of such Public Offering. In the absence of any such lock-up agreement, each Holder agrees as follows:

(i) in connection with the IPO, such Holder shall not (A) offer, sell, pledge, contract to sell or grant any option to purchase, or otherwise transfer or dispose of (including sales pursuant to Rule 144), directly or indirectly, any shares of Capital Stock of the Corporation (including Capital Stock of the Corporation that may be deemed to be owned beneficially by such Holder in accordance with the rules and regulations of the Securities and Exchange Commission) (collectively, “**Securities**”), (B) enter into a transaction which would have the same effect as described in clause (A) above, (C) enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of any Securities, whether such transaction is to be settled by delivery of such Securities, in cash or otherwise (each of (A), (B) and (C) above, a “**Sale Transaction**”), or (D) publicly disclose the intention to enter into any Sale Transaction, commencing on the earlier of the date on which the Corporation gives notice to the Holders that a preliminary prospectus has been circulated for the IPO or the “pricing” of such offering and continuing to the date that is 180 days following the date of the final prospectus for the IPO (the “**Holdback Period**”), unless the underwriters managing the IPO otherwise agree in writing; *provided, however*, that if the Holdback Period is shortened or terminated early for any Holder that together with its Affiliates holds two percent (2%) or more of the outstanding Registrable Securities, the Holdback period for each other Holder also shall be shortened or terminated to the same extent;

(ii) in connection with all underwritten Public Offerings (including the IPO), such Holder shall not effect any Sale Transaction commencing on the earlier of the date on which the Corporation gives notice to the Holders of the circulation of a preliminary or final prospectus for such Public Offering or the “pricing” of such offering and continuing to the date that is 90 days following the date of the final prospectus for such Public Offering (a “**Follow-On Holdback Period**”), unless, if an underwritten Public Offering, the underwriters managing the Public Offering otherwise agree in writing;

(iii) in the event that (A) the Corporation issues an earnings release or discloses other material information or a material event relating to the Corporation and its Subsidiaries occurs during the last 17 days of the Holdback Period or any Follow-On Holdback Period (as applicable) or (B) prior to the expiration of the Holdback Period or

any Follow-On Holdback Period (as applicable), the Corporation announces that it will release earnings results during the 16-day period beginning upon the expiration of such period, then to the extent necessary for a managing or co-managing underwriter of a registered offering hereunder to comply with FINRA Rule 2711(f)(4), if agreed to by the Holders representing a majority of the Registrable Securities included in such Underwritten Takedown, the Holdback Period or the Follow-On Holdback Period (as applicable) shall be extended until 18 days after the earnings release or disclosure of other material information or the occurrence of the material event, as the case may be (a “ **Holdback Extension** ”); and

(iv) The foregoing clauses (i) through (iii) shall not apply to (A) the sale of Capital Stock pursuant to the terms of the underwriting agreement entered into in connection with such underwritten Public Offering, or (B) transactions relating to shares of Capital Stock or other securities acquired in open market transactions after the completion of the Public Offering, *provided* that no filing under Section 16(a) of the Exchange Act shall be required or shall be voluntarily made in connection with transfers or dispositions of such shares of Capital Stock or other securities acquired in such open market transactions (other than a filing on Form 5 made after the expiration of the Holdback Period), or (C) transfers of Capital Stock or any security convertible into Capital Stock to the spouse, domestic partner, parent, sibling, child or grandchild (each an “ **immediate family member** ”) of such holder or to a trust formed for the benefit of such holder or of an immediate family member of the undersigned, or (D) transfers of Capital Stock or any security convertible into Capital Stock as a bona fide gift, or (E) distributions of shares of Capital Stock or any security convertible into Capital Stock to limited partners, members, stockholders or affiliates of the undersigned or to any investment fund or other entity controlled or managed by, or under common control or management with, such holder, or (F) as a distribution by a trust to its beneficiaries, provided that in the case of any transfer or distribution pursuant to clause (C), (D), (E) or (F), (1) each donee or distributee shall sign and deliver a lock-up agreement substantially in the form of the lock-up agreement entered into by such holder and (2) no such transfer or distribution in (C), (D), (E) or (F) shall be permitted if it shall require a filing under Section 16(a) or Section 13(d) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Capital Stock, and no such filing under Section 16(a) or Section 13(d) of the Exchange Act shall be voluntarily made during the Holdback Period, or (G) the receipt by the undersigned from the Corporation of Capital Stock upon a vesting event of Capital Stock or rights to acquire Capital stock pursuant to the Corporation’s equity incentive plans or the exercise by such holder of options to purchase Capital Stock issued pursuant to the Corporation’s equity incentive plans (including, in each case, by way of net exercise, but for the avoidance of doubt, excluding all manners of exercise that would involve a sale of any securities relating to such options, whether to cover the applicable aggregate exercise price, withholding tax obligations or otherwise), provided that (1) any securities received upon such vesting event or exercise will also be subject to the terms of such holder’s lock-up agreement and (2) no such vesting event or exercise shall be permitted if it shall require a filing under Section 16(a) or Section 13(d) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Capital Stock, and no such filing under Section 16(a) or Section 13(d) of the Exchange Act shall be voluntarily made during the Holdback Period in connection with such vesting event or

exercise, or (H) transfers of Capital Stock or any securities convertible into or exercisable or exchangeable for Capital Stock to the Corporation, pursuant to agreements under which the Corporation has the option to repurchase such shares or securities or a right of first refusal with respect to transfers of such shares or securities, provided that unless such transfers are pursuant to the Corporation's option to repurchase in the event such holder is terminated or resigns as an employee of the Corporation, no transfer shall be permitted if it shall require a filing under Section 16(a) or Section 13(d) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Capital Stock, and no such filing under Section 16(a) or Section 13(d) of the Exchange Act shall be voluntarily made during the Holdback Period in connection with such transfer (other than a filing on Form 5 pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Capital Stock, provided that (1) such plan does not provide for the transfer of Capital Stock during the Holdback Period and (2) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of such holder or the Corporation regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Capital Stock may be made under such plan during the Holdback Period).

The Corporation may impose stop-transfer instructions with respect to the shares of Capital Stock (or other securities) subject to the restrictions set forth in this Section 4(a) until the end of such period, including any Holdback Extension.

(b) Exceptions. The foregoing holdback agreements in Section 4(a) shall not apply to a registration in connection with an employee benefit plan or in connection with any registration on form S-4 or similar form in connection with any type of acquisition transaction or exchange offer.

Section 5. Registration Procedures.

(a) Whenever the Holders have requested that any Registrable Securities be registered pursuant to this Agreement or have initiated a Shelf Offering, (i) such Holders shall, if applicable, cause such Registrable Securities to be exchanged into shares of Class A Common Stock in accordance with the terms of the LLC Agreement prior to sale of such Registrable Securities and (ii), the Corporation shall use its reasonable efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Corporation shall as expeditiously as possible:

(i) in accordance with the Securities Act and all applicable rules and regulations promulgated thereunder, prepare and file with the Securities and Exchange Commission a registration statement, and all amendments and supplements thereto and related prospectuses, with respect to such Registrable Securities and use its reasonable efforts to cause such registration statement to become effective (provided that before filing a registration statement or prospectus or any amendments or supplements thereto, the Corporation shall furnish to the counsel selected by the Holders representing a majority of the Registrable Securities covered by such registration statement copies of all such documents proposed to be filed, which documents shall be subject to the review and comment of such counsel);

(ii) notify each holder of Registrable Securities of (A) the issuance by the Securities and Exchange Commission of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose, (B) the receipt by the Corporation or its counsel of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose and (C) the effectiveness of each registration statement filed hereunder;

(iii) prepare and file with the Securities and Exchange Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period ending when all of the securities covered by such registration statement have been disposed of in accordance with the intended methods of distribution by the sellers thereof set forth in such registration statement (but in any event not before the expiration of any longer period required under the Securities Act or, if such registration statement relates to an underwritten Public Offering, such longer period as in the opinion of counsel for the underwriters a prospectus is required by law to be delivered in connection with sale of Registrable Securities by an underwriter or dealer) and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such registration statement;

(iv) furnish to each seller of Registrable Securities thereunder such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus), each Free Writing Prospectus and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller;

(v) use its reasonable efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (provided that the Corporation shall not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (B) consent to general service of process in any such jurisdiction or (C) subject itself to taxation in any such jurisdiction);

(vi) notify each seller of such Registrable Securities (A) promptly after it receives notice thereof, of the date and time when such registration statement and each post-effective amendment thereto has become effective or a prospectus or supplement to any prospectus relating to a registration statement has been filed and when any registration or qualification has become effective under a state securities or blue sky law or any exemption thereunder has been obtained, (B) promptly after receipt thereof, of any request by the Securities and Exchange Commission for the amendment or supplementing of such registration statement or prospectus or for additional information

and (C) at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, subject to Section 2(f), at the request of any such seller, the Corporation shall prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading;

(vii) use reasonable efforts to cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Corporation are then listed and, if not so listed, to be listed on a securities exchange and, without limiting the generality of the foregoing, to arrange for at least two market makers to register as such with respect to such Registrable Securities with FINRA;

(viii) use reasonable efforts to provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(ix) enter into and perform such customary agreements (including underwriting agreements in customary form) and take all such other actions as the Holders representing a majority of the Registrable Securities being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including, without limitation, effecting a stock split, combination of shares, recapitalization or reorganization);

(x) make available for inspection by any seller of Registrable Securities, any underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate and business documents and properties of the Corporation as shall be necessary to enable them to exercise their due diligence responsibility, and cause the Corporation's officers, directors, employees, agents, representatives and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(xi) take all reasonable actions to ensure that any Free-Writing Prospectus utilized in connection with any Demand Registration or Piggyback Registration hereunder complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related prospectus, shall not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(xii) otherwise use its reasonable efforts to comply with all applicable rules and regulations of the Securities and Exchange Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the

period of at least twelve months beginning with the first day of the Corporation's first full calendar quarter after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158;

(xiii) to the extent that a Holder, in its sole and exclusive judgment, might be deemed to be an underwriter of any Registrable Securities or a controlling person of the Corporation, permit such Holder to participate in the preparation of such registration or comparable statement and allow such Holder to provide language for insertion therein, in form and substance satisfactory to the Corporation, which in the reasonable judgment of such Holder and its counsel should be included;

(xiv) in the event of the issuance of any stop order suspending the effectiveness of a registration statement, or the issuance of any order suspending or preventing the use of any related prospectus or suspending the qualification of any Class A Common Stock included in such registration statement for sale in any jurisdiction use reasonable efforts promptly to obtain the withdrawal of such order;

(xv) use its reasonable efforts to cause such Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the sellers thereof to consummate the disposition of such Registrable Securities;

(xvi) cooperate with the Holders of Registrable Securities covered by the registration statement and the managing underwriter or agent, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing securities to be sold under the registration statement and enable such securities to be in such denominations and registered in such names as the managing underwriter, or agent, if any, or such Holders may request;

(xvii) cooperate with each Holder of Registrable Securities covered by the registration statement and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(xviii) use its reasonable efforts to make available the executive officers of the Corporation to participate with the Holders of Registrable Securities covered by the registration statement and any underwriters in any "road shows" or other selling efforts that may be reasonably requested by the Holders in connection with the methods of distribution for the Registrable Securities;

(xix) in the case of any underwritten Public Offering, use its reasonable efforts to obtain one or more cold comfort letters from the Corporation's independent public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters as the Holders representing a majority of the Registrable Securities being sold reasonably request;

(xx) in the case of any underwritten Public Offering, use its reasonable efforts to provide a legal opinion of the Corporation's outside counsel, dated the effective date of

such registration statement and the date of the closing under the underwriting agreement, the registration statement, each amendment and supplement thereto, the prospectus included therein (including the preliminary prospectus) and such other documents relating thereto in customary form and covering such matters of the type customarily covered by legal opinions of such nature, which opinion shall be addressed to the underwriters and the Holders of such Registrable Securities being sold;

(xxi) if the Corporation files an Automatic Shelf Registration Statement covering any Registrable Securities, use its reasonable efforts to remain a WKSI (and not become an ineligible issuer (as defined in Rule 405 under the Securities Act)) during the period during which such Automatic Shelf Registration Statement is required to remain effective;

(xxii) if the Corporation does not pay the filing fee covering the Registrable Securities at the time an Automatic Shelf Registration Statement is filed, pay such fee at such time or times as the Registrable Securities are to be sold; and

(xxiii) if the Automatic Shelf Registration Statement has been outstanding for at least three (3) years, at the end of the third year, file a new Automatic Shelf Registration Statement covering the Registrable Securities, and, if at any time when the Corporation is required to re-evaluate its WKSI status the Corporation determines that it is not a WKSI, use its reasonable efforts to refile the Shelf Registration Statement on Form S-3 and, if such form is not available, Form S-1 and keep such registration statement effective during the period during which such registration statement is required to be kept effective.

(b) Any officer of the Corporation who is a Holder agrees that if and for so long as he or she is employed by the Corporation or any Subsidiary thereof, he or she shall participate fully in the sale process in a manner customary and reasonable for persons in like positions and consistent with his or her other duties with the Corporation and in accordance with applicable law, including the preparation of the registration statement and the preparation and presentation of any road shows.

(c) The Corporation may require each Holder requesting, or electing to participate in, any registration to furnish the Corporation such information regarding such Holder and the distribution of such Registrable Securities as the Corporation may from time to time reasonably request in writing.

(d) If the Original SSE Equity Owners or any of their respective Affiliates seek to effectuate an in-kind distribution of all or part of their respective Registrable Securities to their respective direct or indirect equityholders, the Corporation shall, subject to any applicable lock-ups, work with the foregoing persons to facilitate such in-kind distribution in the manner reasonably requested.

Section 6. Registration Expenses.

(a) The Corporation's Obligation. All expenses incident to the Corporation's performance of or compliance with this Agreement (including, without limitation, all

registration, qualification and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, fees and disbursements of custodians, and fees and disbursements of counsel for the Corporation and all independent certified public accountants, underwriters (excluding underwriting discounts and commissions) and other Persons retained by the Corporation) (all such expenses being herein called “ **Registration Expenses** ”), shall be borne as provided in this Agreement, except that the Corporation shall, in any event, pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit or quarterly review, the expense of any liability insurance and the expenses and fees for listing the securities to be registered on each securities exchange on which similar securities issued by the Corporation are then listed. Each Person that sells securities pursuant to a Demand Registration or Piggyback Registration hereunder shall bear and pay all underwriting discounts and commissions applicable to the securities sold for such Person’s account.

(b) Counsel Fees and Disbursements. In connection with each Demand Registration, each Piggyback Registration and each Shelf Offering that is an underwritten Public Offering, the Corporation shall reimburse the Holders of Registrable Securities included in such registration for the reasonable fees and disbursements of one counsel chosen by the Holders representing a majority of the Registrable Securities included in such registration or participating in such Shelf Offering.

Section 7. Indemnification and Contribution.

(a) By the Corporation. The Corporation shall indemnify and hold harmless, to the extent permitted by law, each Holder, such Holder’s officers, directors, managers, employees, agents and representatives, and each Person who controls such Holder (within the meaning of the Securities Act) (the “ **Holder Indemnified Parties** ”) against all losses, claims, actions, damages, liabilities and expenses (including with respect to actions or proceedings, whether commenced or threatened, and including reasonable attorney fees and expenses) caused by, resulting from, arising out of, based upon or related to any of the following statements, omissions or violations (each a “ **Violation** ”) by the Corporation:

(i) any untrue or alleged untrue statement of material fact contained in (A) any registration statement, prospectus, preliminary prospectus or Free-Writing Prospectus, or any amendment thereof or supplement thereto or (B) any application or other document or communication (in this Section 7, collectively called an “ **application** ”) executed by or on behalf of the Corporation or based upon written information furnished by or on behalf of the Corporation filed in any jurisdiction in order to qualify any securities covered by such registration under the securities laws thereof, (ii) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) any violation or alleged violation by the Corporation of the Securities Act or any other similar federal or state securities laws or any rule or regulation promulgated thereunder applicable to the Corporation and relating to action or inaction required of the Corporation in connection with any such registration, qualification or compliance. In addition, the Corporation will reimburse such Holder Indemnified Party for any legal or any other expenses reasonably incurred by them in connection with investigating or defending any such losses. Notwithstanding the foregoing, the Corporation shall not be liable in any such case to the extent that any such losses result from, arise out of, are based upon, or relate to an untrue statement or

alleged untrue statement, or omission or alleged omission, made in such registration statement, any such prospectus, preliminary prospectus or Free-Writing Prospectus or any amendment or supplement thereto, or in any application, in reliance upon, and in conformity with, written information prepared and furnished in writing to the Corporation by such Holder Indemnified Party expressly for use therein or by such Holder Indemnified Party's failure to deliver a copy of the registration statement or prospectus or any amendments or supplements thereto after the Corporation has furnished such Holder Indemnified Party with a sufficient number of copies of the same. In connection with an underwritten offering, the Corporation shall indemnify such underwriters, their officers and directors, and each Person who controls such underwriters (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the Holder Indemnified Parties.

(b) By Each Holder. In connection with any registration statement in which a Holder is participating, each such Holder shall furnish to the Corporation in writing such information and affidavits as the Corporation reasonably requests for use in connection with any such registration statement or prospectus and, to the extent permitted by law, shall indemnify the Corporation, its officers, directors, managers, employees, agents and representatives, and each Person who controls the Corporation (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and expenses resulting from any untrue or alleged untrue statement of material fact contained in the registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by such Holder; *provided* that the obligation to indemnify shall be individual, not joint and several, for each Holder and shall be limited to the net amount of proceeds received by such Holder from the sale of Registrable Securities pursuant to such registration statement.

(c) Claim Procedure. Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall impair any Person's right to indemnification hereunder only to the extent such failure has prejudiced the indemnifying party) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. In such instance, the conflicted indemnified parties shall have a right to retain one separate counsel, chosen by the Holders representing a majority of the Registrable Securities included in the registration if such Holders are indemnified parties, at the expense of the indemnifying party.

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(d) Contribution. If the indemnification provided for in this Section 7 is held by a court of competent jurisdiction to be unavailable to, or is insufficient to hold harmless, an indemnified party or is otherwise unenforceable with respect to any loss, claim, damage, liability or action referred to herein, then the indemnifying party shall contribute to the amounts paid or payable by such indemnified party as a result of such loss, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other hand in connection with the statements or omissions which resulted in such loss, claim, damage, liability or action as well as any other relevant equitable considerations; provided that the maximum amount of liability in respect of such contribution shall be limited, in the case of each seller of Registrable Securities, to an amount equal to the net proceeds actually received by such seller from the sale of Registrable Securities effected pursuant to such registration. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if the contribution pursuant to this Section 7(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account such equitable considerations. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or expenses referred to herein shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject hereof. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(t) of the Securities Act) shall be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation.

(e) Release. No indemnifying party shall, except with the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation. Notwithstanding anything to the contrary in this Section 7, an indemnifying party shall not be liable for any amounts paid in settlement of any loss, claim, damage, liability, or action if such settlement is effected without the consent of the indemnifying party, such consent not to be unreasonably withheld, conditioned or delayed.

(f) Non-exclusive Remedy; Survival. The indemnification and contribution provided for under this Agreement shall be in addition to any other rights to indemnification or contribution that any indemnified party may have pursuant to law or contract and shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and shall survive the transfer of Registrable Securities and the termination or expiration of this Agreement. Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

Section 8. Underwritten Registrations.

(a) Participation. No Person may participate in any Public Offering hereunder which is underwritten unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements (including, without limitation, pursuant to any over-allotment or "green shoe" option requested by the underwriters; provided that no Holder shall be required to sell more than the number of Registrable Securities such Holder has requested to include) and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements. Each Holder shall execute and deliver such other agreements as may be reasonably requested by the Corporation and the lead managing underwriter(s) that are consistent with such Holder's obligations under Section 4, Section 5 and this Section 8(a) or that are necessary to give further effect thereto. To the extent that any such agreement is entered into pursuant to, and consistent with, Section 4 and this Section 8(a), the respective rights and obligations created under such agreement shall supersede the respective rights and obligations of the Holders, the Corporation and the underwriters created pursuant to this Section 8(a).

(b) Price and Underwriting Discounts. In the case of an underwritten Demand Registration or Underwritten Takedown requested by Holders pursuant to this Agreement, the price, underwriting discount and other financial terms of the related underwriting agreement for the Registrable Securities shall be determined by the Holders representing a majority of the Registrable Securities included in such underwritten offering.

(c) Suspended Distributions. Each Person that is participating in any registration under this Agreement, upon receipt of any notice from the Corporation of the happening of any event of the kind described in Section 5(a)(vi)(B) or (C), shall immediately discontinue the disposition of its Registrable Securities pursuant to the registration statement until such Person's receipt of the copies of a supplemented or amended prospectus as contemplated by Section 5(a)(vi). In the event the Corporation has given any such notice, the applicable time period set forth in Section 5(a)(iii) during which a Registration Statement is to remain effective shall be extended by the number of days during the period from and including the date of the giving of such notice pursuant to this Section 8(c) to and including the date when each seller of Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus contemplated by Section 5(a)(vi).

Section 9. Additional Parties; Joinder. Subject to the prior written consent of each Controlling Holder, the Corporation may make any Person who acquires Class A Common Stock or rights to acquire Class A Common Stock from the Corporation after the date hereof (including without limitation any Person who acquires Common Units) a party to this Agreement (each such Person, an "**Additional Investor**") and to succeed to all of the rights and obligations of a Holder under this Agreement by obtaining an executed joinder to this Agreement from such Additional Investor in the form of Exhibit A attached hereto (a "**Joinder**"). Upon the execution and delivery of a Joinder by such Additional Investor, the Class A Common Stock of the Corporation acquired by such Additional Investor or issuable upon redemption or exchange of Common Units acquired by such Additional Investor (the "**Acquired Common**") shall be Registrable Securities to the extent provided herein, such Additional Investor shall be a Holder under this Agreement with respect to the Acquired Common, and the Corporation shall add such

Additional Investor's name and address to the Schedule of Investors and circulate such information to the parties to this Agreement.

Section 10. Current Public Information. At all times after the Corporation has filed a registration statement with the Securities and Exchange Commission pursuant to the requirements of either the Securities Act or the Exchange Act, the Corporation shall file all reports required to be filed by it under the Securities Act and the Exchange Act and shall take such further action as any Holder may reasonably request, all to the extent required to enable such Holders to sell Registrable Securities pursuant to Rule 144. Upon request, the Corporation shall deliver to any Holder a written statement as to whether it has complied with such requirements.

Section 11. Subsidiary Public Offering. If, after an initial Public Offering of the Capital Stock of one of its Subsidiaries (including the Company), the Corporation distributes securities of such Subsidiary to its equityholders, then the rights and obligations of the Corporation pursuant to this Agreement shall apply, *mutatis mutandis*, to such Subsidiary, and the Corporation shall cause such Subsidiary to comply with such Subsidiary's obligations under this Agreement.

Section 12. Transfer of Registrable Securities.

(a) Restrictions on Transfers. Notwithstanding anything to the contrary contained herein, except in the case of (i) a transfer to the Corporation, (ii) a transfer by any Original SSE Equity Owners or any of its Affiliates to its respective equityholders, (iii) a Public Offering, (iv) a sale pursuant to Rule 144 after the completion of the IPO or (v) a transfer in connection with a sale of the Corporation, prior to transferring any Registrable Securities to any Person (including, without limitation, by operation of law), the transferring Holder shall cause the prospective transferee to execute and deliver to the Corporation a Joinder agreeing to be bound by the terms of this Agreement. Any transfer or attempted transfer of any Registrable Securities in violation of any provision of this Agreement shall be void, and the Corporation shall not record such transfer on its books or treat any purported transferee of such Registrable Securities as the owner thereof for any purpose.

(b) Legend. Each certificate evidencing any Registrable Securities and each certificate issued in exchange for or upon the transfer of any Registrable Securities (unless such Registrable Securities would no longer be Registrable Securities after such transfer) shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS SET FORTH IN A REGISTRATION RIGHTS AGREEMENT DATED AS OF [•], 2015, BY AND AMONG THE ISSUER OF SUCH SECURITIES (THE "CORPORATION") AND CERTAIN OF THE CORPORATION'S STOCKHOLDERS, AS AMENDED FROM TIME TO TIME. A COPY OF SUCH REGISTRATION RIGHTS AGREEMENT WILL BE FURNISHED WITHOUT CHARGE BY THE CORPORATION TO THE HOLDER HEREOF UPON WRITTEN REQUEST."

The Corporation shall imprint such legend on certificates evidencing Registrable Securities outstanding prior to the date hereof, and shall cause the Company to imprint such legend on certificates, if any, evidencing Common Units exchangeable for Registrable Securities outstanding prior to the date hereof. The legend set forth above shall be removed from the certificates evidencing any securities that have ceased to be Registrable Securities.

Section 13. MNPI Provisions.

(a) Each Holder acknowledges that (i) the provisions of this Agreement that require communications by the Corporation or other Holders to such Holder may result in such Holder and its Representatives (as defined below) acquiring MNPI (which may include, solely by way of illustration, the fact that an offering of the Corporation's securities is pending or the number of Corporation securities or the identity of the selling Holders), and (ii) there is no limitation on the duration of time that such Holder and its Representatives may be in possession of MNPI and no requirement that the Company or other Holders make any public disclosure to cause such information to cease to be MNPI; *provided* that the Corporation will use commercially reasonable efforts to promptly notify each Holder if any proposed registration or offering for which a notice has been delivered pursuant to this Agreement has been terminated or aborted.

(b) Each Holder agrees that it will maintain the confidentiality of such MNPI and, to the extent such Holder is not a natural person, such confidential treatment shall be in accordance with procedures adopted by it in good faith to protect confidential information of third parties delivered to such Holder (“**Policies**”); *provided* that a holder may deliver or disclose MNPI to (i) its directors, officers, employees, agents, attorneys, affiliates and financial and other advisors (collectively, the “**Representatives**”), but solely to the extent such disclosure reasonably relates to its evaluation of exercise of its rights under this Agreement and the sale of any Registrable Securities in connection with the subject of the notice, (ii) any federal or state regulatory authority having jurisdiction over such Holder, (iii) any Person if necessary to effect compliance with any law, rule, regulation or order applicable to such Holder, (iv) in response to any subpoena or other legal process, or (v) in connection with any litigation to which such Holder is a party; *provided further*, that in the case of clause (i), the recipients of such MNPI are subject to the Policies or agree to hold confidential the MNPI in a manner substantially consistent with the terms of Section 13 and that in the case of clauses (ii) through (v), such disclosure is required by law and you promptly notify the Corporation of such disclosure to the extent such Holder is legally permitted to give such notice.

(c) Each Holder, by its execution of a counterpart to this agreement or of a Joinder, hereby (i) acknowledges that it is aware that the U.S. securities laws prohibit any person who has MNPI about a company from purchasing or selling, directly or indirectly, securities of such company (including entering into hedge transactions involving such securities), or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities, and (ii) agrees that it will not use or permit any third party to use, and that it will use its reasonable efforts to assure that none of its representatives will use or permit any third party to use, any MNPI the Corporation provides in contravention of the U.S. securities laws and you will cease trading in the Corporation's and the Company's securities while in possession of material non-public information.

(d) Each Holder shall have the right, at any time and from time to time (including after receiving information regarding any potential Public Offering), to elect to not receive any notice that the Corporation or any other Holders otherwise are required to deliver pursuant to this Agreement by delivering to the Corporation a written statement signed by such Holder that it does not want to receive any notices hereunder (an “**Opt-Out Request**”); in which case and notwithstanding anything to the contrary in this Agreement the Corporation and other Holders shall not be required to, and shall not, deliver any notice or other information required to be provided to Holders hereunder to the extent that the Corporation or such other Holders reasonably expect would result in a Holder acquiring MNPI. An Opt-Out Request may state a date on which it expires or, if no such date is specified, shall remain in effect indefinitely. A Holder who previously has given the Corporation an Opt-Out Request may revoke such request at any time, and there shall be no limit on the ability of a Holder to issue and revoke subsequent Opt-Out Requests; *provided* that each Holder shall use commercially reasonable efforts to minimize the administrative burden on the Corporation arising in connection with any such Opt-Out Requests.

Section 14. General Provisions.

(a) Amendments and Waivers. Except as otherwise provided herein, the provisions of this Agreement may be amended, modified or waived only with the prior written consent of the Corporation and each Controlling Holder; *provided* that no such amendment, modification or waiver that would materially and adversely affect a Holder in a manner materially different than any other Holder (*provided* that the accession by Additional Investors to this Agreement pursuant to Section 9 shall not be deemed to adversely affect any Holder), shall be effective against such Holder without the consent of such Holder that is materially and adversely affected thereby. The failure or delay of any Person to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such Person thereafter to enforce each and every provision of this Agreement in accordance with its terms. A waiver or consent to or of any breach or default by any Person in the performance by that Person of his, her or its obligations under this Agreement shall not be deemed to be a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person under this Agreement.

(b) Remedies. The parties to this Agreement shall be entitled to enforce their rights under this Agreement specifically (without posting a bond or other security), to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor. The parties hereto agree and acknowledge that a breach of this Agreement would cause irreparable harm and money damages would not be an adequate remedy for any such breach and that, in addition to any other rights and remedies existing hereunder, any party shall be entitled to specific performance and/or other injunctive relief from any court of law or equity of competent jurisdiction (without posting any bond or other security) in order to enforce or prevent violation of the provisions of this Agreement.

(c) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited, invalid, illegal or unenforceable in any respect under any applicable law or regulation in any jurisdiction, such prohibition, invalidity, illegality or

unenforceability shall not affect the validity, legality or enforceability of any other provision of this Agreement in such jurisdiction or in any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such prohibited, invalid, illegal or unenforceable provision had never been contained herein.

(d) Entire Agreement. Except as otherwise provided herein, this Agreement contains the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties hereto, written or oral, which may have related to the subject matter hereof in any way.

(e) Successors and Assigns. This Agreement shall bind and inure to the benefit and be enforceable by the Corporation and its successors and assigns and the Holders and their respective successors and assigns (whether so expressed or not). In addition, whether or not any express assignment has been made, the provisions of this Agreement which are for the benefit Holders are also for the benefit of, and enforceable by, any subsequent or successor Holder.

(f) Notices. Any notice, demand or other communication to be given under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when delivered personally to the recipient, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient but; if not, then on the next Business Day, (iii) one Business Day after it is sent to the recipient by reputable overnight courier service (charges prepaid) or (iv) three Business Days after it is mailed to the recipient by first class mail, return receipt requested. Such notices, demands and other communications shall be sent to the Corporation at the address specified below and to any Original SSE Equity Owner or to any other party subject to this Agreement at such address as indicated on the Schedule of Investors, or at such address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party. Any party may change such party's address for receipt of notice by providing prior written notice of the change to the sending party as provided herein. The Corporation's address is:

Shake Shack Inc.
24 Union Square East, 5th Floor
New York, New York 10003
Attn: General Counsel

With a copy to:

Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
Attn: Gregory P. Rodgers, Esq.
Facsimile: (212) 751-4864

or to such other address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party.

(g) Business Days. If any time period for giving notice or taking action hereunder expires on a day that is not a Business Day, the time period shall automatically be extended to the immediately following Business Day.

(h) Governing Law. The corporate law of the State of Delaware shall govern all issues and questions concerning the relative rights of the Corporation and its stockholders. All other issues and questions concerning the construction, validity, interpretation and enforcement of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

(i) MUTUAL WAIVER OF JURY TRIAL. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

(j) CONSENT TO JURISDICTION AND SERVICE OF PROCESS. EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE CITY AND COUNTY OF NEW YORK BOROUGH OF MANHATTAN, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH PARTY'S RESPECTIVE ADDRESS SET FORTH ABOVE SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(k) No Recourse. Notwithstanding anything to the contrary in this Agreement, the Corporation and each Holder agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement, shall be had against any current or future director, officer, employee, general or limited partner or member of any Holder or of any Affiliate or assignee thereof, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable

law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any current or future officer, agent or employee of any Holder or any current or future member of any Holder or any current or future director, officer, employee, partner or member of any Holder or of any Affiliate or assignee thereof, as such for any obligation of any Holder under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

(l) Descriptive Headings; Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. The use of the word “including” in this Agreement shall be by way of example rather than by limitation.

(m) No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

(n) Counterparts. This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same agreement.

(o) Electronic Delivery. This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent executed and delivered by means of a photographic, photostatic, facsimile or similar reproduction of such signed writing using a facsimile machine or electronic mail shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or electronic mail to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or electronic mail as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

(p) Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Holder shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and the transactions contemplated hereby.

(q) No Inconsistent Agreements. The Corporation shall not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to the Holders in this Agreement.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

SHAKE SHACK INC.

By: _____
Name: Randy Garutti
Title: Chief Executive Officer

[*Signature Page to Registration Rights Agreement*]

UNION SQUARE HOSPITALITY GROUP, LLC

By: _____
Name: Jeff Flug
Title: President

[*Signature Page to Registration Rights Agreement*]

UNION SQUARE CAFE CORP.

By: _____
Name: Daniel H. Meyer
Title: Authorized Signatory

GRAMERCY TAVERN CORP.

By: _____
Name: Daniel H. Meyer
Title: Authorized Signatory

Daniel H. Meyer

DANIEL H. MEYER 2012 GIFT TRUST U/A/D 10/31/12

By: _____
Name: Jack R. Polsky, not individually but solely as Co-Trustee

[*Signature Page to Registration Rights Agreement*]

Jeffrey Flug

FLUG 2012 GS TRUST U/A/D 9/14/12

By: _____

Name: Sheryl Flug, not individually but solely as Co-Trustee

By: _____

Name: Kenneth Flug, not individually but solely as Co-Trustee

GULF FIVE LLC

By: _____

Name: Jeff Flug

Title: Manager

[*Signature Page to Registration Rights Agreement*]

Richard Coraine

THE RICHARD D. CORAINE 2012 FAMILY TRUST

By: _____

Name: Toni Haida

Title: Trustee

[*Signature Page to Registration Rights Agreement*]

David Swinghamer

THE DAVID A. SWINGHAMER GRAT

By: _____

Name: David Swinghamer

Title: Trustee

[*Signature Page to Registration Rights Agreement*]

Karen Kochevar

[*Signature Page to Registration Rights Agreement*]

Walter Robb

[*Signature Page to Registration Rights Agreement*]

Erin Moran

[*Signature Page to Registration Rights Agreement*]

Ashley Campbell

[*Signature Page to Registration Rights Agreement*]

NEW MALTED HOLDINGS II-A LLC

By: _____

Name: Jonathan Sokoloff

Title: Executive VP and Managing Partner of Leonard Green and Partners, L.P., the General Partner

GREEN EQUITY INVESTORS VI, LP

By: _____

Name: Jonathan Sokoloff

Title: Executive VP and Managing Partner of Leonard Green and Partners, L.P., the General Partner

GREEN EQUITY INVESTORS SIDE VI, LP

By: _____

Name: Jonathan Sokoloff

Title: Executive VP and Managing Partner of Leonard Green and Partners, L.P., the General Partner

[*Signature Page to Registration Rights Agreement*]

Randy Garutti

THE RANDALL J. GARUTTI 2014 GST TRUST

By: J.P. Morgan Trust Company of Delaware,
Administrative Trustee

By: _____

Name:

Title:

[*Signature Page to Registration Rights Agreement*]

Jeff Uttz

[*Signature Page to Registration Rights Agreement*]

SEG PARTNERS, L.P.

By: _____
Name:
Title:

SEG PARTNERS II, L.P.

By: _____
Name:
Title:

SEGPO INVESTMENT CORP. LLC

By: _____
Name:
Title:

SEG PARTNERS OFFSHORE MASTER FUND LTD.

By: _____
Name:
Title:

[*Signature Page to Registration Rights Agreement*]

ROXANNE H. FRANK REVOCABLE TRUST DATED 9/30/75

By: _____
Name: Jack Polsky
Title: Trustee

RHF-NM 1999 DESCENDANTS TRUST DATED 1/1/2006

By: _____
Name: Michael McQuinn
Title: Trustee

MARC WEISS REVOCABLE TRUST U/A/D 8/11/2003

By: _____
Name: Marc Weiss
Title: Trustee

RHF-TM 1999 DESCENDANTS TRUST DATED 1/1/2006

By: _____
Name: Michael McQuinn
Title: Trustee

VHP SPECIAL TRUST FOR JACK DATED 12/31/12

By: _____
Name: Jack Polsky
Title: Trustee

JEAN POLSKY INVESTMENT TRUST DATED 3/21/97

By: _____
Name: Jack Polsky
Title: Trustee

[*Signature Page to Registration Rights Agreement*]

JOAN W. HARRIS REVOCABLE TRUST DATED 4/1/93

By: _____
Name: Joan Harris
Title: Trustee

BENJAMIN HARRIS FAMILY TRUST DATED 12/23/92

By: _____
Name: Boardman Lloyd
Title: Trustee

DAVID HARRIS FAMILY TRUST DATED 12/23/92

By: _____
Name: Boardman Lloyd
Title: Trustee

AMY WEISS-MEYER QUALIFIED MINOR'S TRUST DATED
12/22/05

By: _____
Name: Jack Polsky
Title: Trustee

ISAAC WEISS-MEYER QUALIFIED MINOR'S TRUST DATED
12/22/05

By: _____
Name: Jack Polsky
Title: Trustee

HALLIE MEYER QUALIFIED MINOR'S TRUST DATED 11/23/05

By: _____
Name: Jack Polsky
Title: Trustee

[*Signature Page to Registration Rights Agreement*]

GRETCHEN MEYER QUALIFIED MINOR’S TRUST DATED
11/23/05

By: _____
Name: Jack Polsky
Title: Trustee

CHARLES MEYER QUALIFIED MINOR’S TRUST DATED
11/23/05

By: _____
Name: Jack Polsky
Title: Trustee

PEYTON MEYER QUALIFIED MINOR’S TRUST DATED
11/23/05

By: _____
Name: Jack Polsky
Title: Trustee

Beth Stephens

[Signature Page to Registration Rights Agreement]

Orrin Devinsky

[Signature Page to Registration Rights Agreement]

Laura Sloate

[*Signature Page to Registration Rights Agreement*]

Bert Vivian

[*Signature Page to Registration Rights Agreement*]

Jamie Welch and Fiona Angelini

[*Signature Page to Registration Rights Agreement*]

GRANITE POINT CAPITAL

By:

Name: C. David Bushley

Title: Chief Operating Officer,
Granite Point Capital Management,
The Investment Manager

[*Signature Page to Registration Rights Agreement*]

THOMAS O'NEAL RYDER FAMILY TRUST

By: _____
Name: Darlene Ryder
Title: Trustee

[*Signature Page to Registration Rights Agreement*]

ACG SHACK LLC

By: Alliance Consumer Growth LLC, Its Manager

By: _____

Name: Joshua N. Goldin

Title: Managing Member

[Signature Page to Registration Rights Agreement]

SCHEDULE OF INVESTORS

Holder	Controlling Holder?	Continuing SSE Equity Owner/ Former SSE Equity Owner
Union Square Hospitality Group, LLC	Meyer Stockholder	Continuing SSE Equity Owner
Union Square Cafe Corp.	Meyer Stockholder	Continuing SSE Equity Owner
Gramercy Tavern Corp.	Meyer Stockholder	Continuing SSE Equity Owner
Daniel H. Meyer	Meyer Stockholder	Continuing SSE Equity Owner
Daniel H. Meyer 2012 Gift Trust U/A/D 10/31/12	Meyer Stockholder	Continuing SSE Equity Owner
Jeffrey Flug	No.	Continuing SSE Equity Owner
Flug 2012 GS Trust U/A/D 9/14/12	No.	Continuing SSE Equity Owner
Gulf Five LLC	No.	Continuing SSE Equity Owner
Richard Coraine	No.	Continuing SSE Equity Owner
The Richard D. Coraine 2012 Family Trust	No.	Continuing SSE Equity Owner
David Swinghamer	No.	Continuing SSE Equity Owner
The David A. Swinghamer GRAT	No.	Continuing SSE Equity Owner
Karen Kochevar	No.	Continuing SSE Equity Owner
Erin Moran	No.	Continuing SSE Equity Owner
Ashley Campbell	No.	Continuing SSE Equity Owner
New Malted Holdings II-A LLC	LGP Stockholder	Continuing SSE Equity Owner
[Green Equity Investors VI, LP	LGP Stockholder	Former SSE Equity Owner
Green Equity Investors Side VI, LP]	LGP Stockholder	Former SSE Equity Owner
Randy Garutti	No.	Continuing SSE Equity Owner
The Randall J. Garutti 2014 GST Trust	No.	Continuing SSE Equity Owner
Jeff Uttz	No.	Continuing SSE Equity Owner
SEG Partners, L.P.	SEG Stockholder	Continuing SSE Equity Owner
SEG Partners II, L.P.	SEG Stockholder	Continuing SSE Equity Owner
[SEG Partners Offshore Master Fund Ltd.	SEG Stockholder	Continuing SSE Equity Owner
[SEGPO Investment Corp. LLC]	SEG Stockholder	Former SSE Equity Owner
Roxanne H. Frank Revocable Trust Dated 9/30/75	No.	Continuing SSE Equity Owner
RHF-NM 1999 Descendants Trust Dated 1/1/2006	No.	Continuing SSE Equity Owner
Marc Weiss Revocable Trust U/A/D 8/11/2003	No.	Continuing SSE Equity Owner
RHF-TM 1999 Descendants Trust Dated 1/1/2006	No.	Continuing SSE Equity Owner
VHP Special Trust For Jack Dated 12/31/12	No.	Continuing SSE Equity Owner
Jean Polsky Investment Trust Dated 3/21/97	No.	Continuing SSE Equity Owner
Joan W. Harris Revocable Trust Dated 4/1/93	No.	Continuing SSE Equity Owner
Benjamin Harris Family Trust Dated 12/23/92	No.	Continuing SSE Equity Owner
David Harris Family Trust Dated 12/23/92	No.	Continuing SSE Equity Owner
Amy Weiss-Meyer Qualified Minor's Trust Dated 12/22/05	Meyer Stockholder	Continuing SSE Equity Owner
Isaac Weiss-Meyer Qualified Minor's Trust Dated 12/22/05	Meyer Stockholder	Continuing SSE Equity Owner
Hallie Meyer Qualified Minor's Trust Dated 11/23/05	Meyer Stockholder	Continuing SSE Equity Owner
Gretchen Meyer Qualified Minor's Trust Dated 11/23/05	Meyer Stockholder	Continuing SSE Equity Owner
Charles Meyer Qualified Minor's Trust Dated 11/23/05	Meyer Stockholder	Continuing SSE Equity Owner
Peyton Meyer Qualified Minor's Trust Dated 11/23/05	Meyer Stockholder	Continuing SSE Equity Owner
Beth Stephens	No.	Continuing SSE Equity Owner
Orrin Devinsky	No.	Continuing SSE Equity Owner
Laura Sloate	No.	Continuing SSE Equity Owner
Bert Vivian	No.	Continuing SSE Equity Owner
Jamie Welch and Fiona Angelini	No.	Continuing SSE Equity Owner
Granite Point Capital	No.	Continuing SSE Equity Owner
Thomas O'Neal Ryder Family Trust	No.	Continuing SSE Equity Owner
ACG Shack LLC	ACG Stockholder	Continuing SSE Equity Owner

REGISTRATION RIGHTS AGREEMENT JOINDER

The undersigned is executing and delivering this Joinder pursuant to the Registration Rights Agreement dated as of [•], 2015 (as the same may hereafter be amended, the “**Registration Rights Agreement**”), among Shake Shack Inc., a Delaware corporation (the “**Corporation**”), and the other person named as parties therein.

By executing and delivering this Joinder to the Corporation, and upon acceptance hereof by the Corporation upon the execution of a counterpart hereof, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Registration Rights Agreement as a Holder of Registrable Securities in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement, and the undersigned's shares of Class A Common Stock shall be included as Registrable Securities under the Registration Rights Agreement to the extent provided therein. The Corporation is directed to add the address below the undersigned's signature on this Joinder to the Schedule of Investors attached to the Registration Rights Agreement.

Accordingly, the undersigned has executed and delivered this Joinder as of the _____ day of _____, 20__.

Signature of Stockholder

Print Name of Stockholder
Its:

Address:

Agreed and Accepted as of
, 20

Shake Shack Inc.

By: _____

SSE HOLDINGS, LLC

**THIRD AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

Dated as of [•], 2015

THE COMPANY INTERESTS REPRESENTED BY THIS THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH COMPANY INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

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SSE HOLDINGS, LLC

THIRD AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

This THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “**Agreement**”), dated as of [•], 2015, is entered into by and among SSE Holdings, LLC, a Delaware limited liability company (the “**Company**”), and its Members (as defined herein).

WHEREAS, the Company initially was formed as a limited liability company with the name “SSE Holdings, LLC”, pursuant to and in accordance with the Delaware Act (as defined herein) by the filing of the Certificate (as defined herein) with the Secretary of State of the State of Delaware pursuant to Section 18-201 of the Delaware Act on October 16, 2009;

WHEREAS, the Company entered into a Limited Liability Company Agreement of the Company, dated as of October 16, 2009 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time to but excluding November 25, 2009, together with all schedules, exhibits and annexes thereto, the “**Initial LLC Agreement**”), with the members of the Company party thereto;

WHEREAS, the Company entered into an Amended and Restated Limited Liability Company Agreement, dated as of November 25, 2009 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time to but excluding February 4, 2011, together with all schedules, exhibits and annexes thereto, the “**First A&R LLC Agreement**”);

WHEREAS, the Company entered into a Second Amended and Restated Limited Liability Company Agreement, dated as of February 4, 2011 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time to but excluding the date hereof, together with all schedules, exhibits and annexes thereto, the “**Second A&R LLC Agreement**”), which the parties listed on Schedule 1 hereto have executed in their capacity as members (including pursuant to consent and joinders thereto) (collectively, the “**Original Members**”);

WHEREAS, the Original Members hold Common Units and Class B Units (as defined in Section 1.2 of the Second A&R LLC Agreement, respectively, the “**Original Common Units**” and the “**Original Class B Units**”, and collectively, the “**Original Units**”) of the Company;

WHEREAS, the Company desires to have Shake Shack Inc., a Delaware corporation (the “**Corporation**”), effect an initial public offering (the “**IPO**”) of shares of its Class A common stock, par value \$0.01 (the “**Class A Common Stock**”), and in connection therewith, to amend and restate the Second A&R LLC Agreement as of the Effective Time (as defined herein) to reflect (a) a recapitalization of the Company and the associated split in the number of Units (as defined herein) then outstanding (the “**Recapitalization**”), (b) the addition of the Corporation as a Member (as defined herein) in the Company and its designation as sole Manager (as defined

herein) of the Company, and (c) the rights and obligations of the Members of the Company that are enumerated and agreed upon in the terms of this Agreement effective as of the Effective Time, at which time the Second A&R LLC Agreement shall be superseded entirely by this Agreement;

WHEREAS, in connection with the Recapitalization and as of the Effective Time, the Original Units of each Original Member will be canceled and Common Units (as defined herein) will be issued as contemplated by this Agreement;

WHEREAS, on December 31, 2014, certain of the Original Common Units held by Union Square Hospitality Group, LLC (“**USHG**”) were distributed to the members of USHG pro rata in accordance with the percentage ownership of each such member in USHG (the “**USHG Distribution**”);

WHEREAS, the Original Members are the members of the Company as of the Effective Time and after giving effect to the Recapitalization and the USHG Distribution;

WHEREAS, exclusive of the Over-Allotment Option (as defined below), the Corporation will sell shares of its Class A Common Stock to public investors in the IPO and will use the net proceeds received from the IPO (the “**IPO Net Proceeds**”) to purchase newly issued Common Units from the Company pursuant to that certain IPO Common Unit Purchase Agreement (as defined herein);

WHEREAS, as soon as practicable following the Effective Time, subsidiaries of the Corporation shall merge with and into LGP blocker corporation and SEG blocker corporation, each of which is an Original Member (collectively, the “**Blocker Corps**”), pursuant to which the Blocker Corps will survive and become subsidiaries of the Corporation, and the shareholders of the Blocker Corps will receive Class A Common Stock in exchange for all of their shares in the Blocker Corps;

WHEREAS, the Corporation may issue additional shares of Class A Common Stock in connection with the IPO as a result of the exercise by the underwriters of their over-allotment option (the “**Over-Allotment Option**”) and, if the Over-Allotment Option is in fact exercised in whole or in part, any additional net proceeds (the “**Over-Allotment Option Net Proceeds**”) shall be used by the Corporation to purchase newly issued Common Units from the Company pursuant to the IPO Common Unit Purchase Agreement; and

WHEREAS, immediately following the receipt of the Over-Allotment Option Net Proceeds, the Company will make a payment to certain of the Original Members (who were Members of the Company as of immediately prior to the USHG Distribution) equal to the product of (x) .273 multiplied by (y) (i) any gross proceeds received from the IPO on the IPO Closing Date in excess of \$ million plus (ii) any gross proceeds as a result of the exercise by the underwriters of the Over-Allotment Option (the “**Special Payment**”);

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Members, intending to be legally bound, hereby agree as follows:

ARTICLE I.
DEFINITIONS

The following definitions shall be applied to the terms used in this Agreement for all purposes, unless otherwise clearly indicated to the contrary.

“ **10% Member** ” means (i) a Member that holds a direct Percentage Interest of at least 10% or (ii) a Person that holds, directly and/or indirectly and together with such Person’s Affiliates, a Percentage Interest of at least 10% provided that the Company has knowledge that such Person (together with such Person’s Affiliates) holds, directly and/or indirectly, a Percentage Interest of at least 10%.

“ **Additional Member** ” has the meaning set forth in Section 12.02.

“ **Adjusted Capital Account Deficit** ” means with respect to the Capital Account of any Member as of the end of any Taxable Year, the amount by which the balance in such Capital Account is less than zero. For this purpose, such Member’s Capital Account balance shall be:

- (a) reduced for any items described in Treasury Regulation Section 1.704- 1(b)(2)(ii)(d)(4), (5), and (6); and
- (b) increased for any amount such Member is obligated to contribute or is treated as being obligated to contribute to the Company pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (relating to partner liabilities to a partnership) or 1.704-2(g)(1) and 1.704-2(i) (relating to minimum gain).

“ **Admission Date** ” has the meaning set forth in Section 10.06.

“ **Affiliate** ” (and, with a correlative meaning, “ **Affiliated** ”) means, with respect to a specified Person, each other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified. As used in this definition and the definition of Majority Member, “control” (including with correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of voting securities or by contract or other agreement).

“ **Agreement** ” has the meaning set forth in the preamble to this Agreement.

“ **Appraisers** ” has the meaning set forth in Section 15.02.

“ **Assignee** ” means a Person to whom a Company Interest has been transferred but who has not become a Member pursuant to Article XII.

“ **Assumed Tax Liability** ” means, with respect to a Member, an amount equal to the Distribution Tax Rate multiplied by the estimated or actual taxable income of the Company, as determined for federal income tax purposes, allocated to such Member pursuant to Section 5.05 for the period to which the Assumed Tax Liability relates as determined for federal income tax purposes to the extent not previously taken into account in determining the Assumed Tax

Liability of such Member, as reasonably determined by the Manager; *provided* that, in the case of the Corporation, such Assumed Tax Liability (i) shall be computed without regard to any increases to the tax basis of the Company's property pursuant to Section 743(b) of the Code and (ii) shall in no event be less than an amount that will enable the Corporation to meet its tax obligations, including its obligations pursuant to the Tax Receivable Agreement, for the relevant taxable year.

“ **Base Rate** ” means, on any date, a variable rate per annum equal to the rate of interest most recently published by The Wall Street Journal as the “prime rate” at large U.S. money center banks.

“ **Black-Out Period** ” means any “black-out” or similar period under the Corporation's policies covering trading in the Corporation's securities to which the applicable Redeeming Member is subject, which period restricts the ability of such Redeeming Member to immediately resell shares of Class A Common Stock to be delivered to such Redeeming Member in connection with a Share Settlement.

“ **Blocker Corps** ” has the meaning set forth in the recitals to this Agreement.

“ **Book Value** ” means, with respect to any Company property, the Company's adjusted basis for U.S. federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulation Section 1.704-1(b)(2)(iv)(d)-(g).

“ **Business Day** ” means any day other than a Saturday or a Sunday or a day on which banks located in New York City, New York generally are authorized or required by Law to close.

“ **Capital Account** ” means the capital account maintained for a Member in accordance with Section 5.01.

“ **Capital Contribution** ” means, with respect to any Member, the amount of any cash, cash equivalents, promissory obligations or the Fair Market Value of other property that such Member contributes (or is deemed to contribute) to the Company pursuant to Article III hereof.

“ **Cash Settlement** ” means immediately available funds in U.S. dollars in an amount equal to the Redeemed Units Equivalent.

“ **Certificate** ” means the Company's Certificate of Formation as filed with the Secretary of State of Delaware.

“ **Change of Control Transaction** ” means (a) a sale of all or substantially all of the Company's assets determined on a consolidated basis, (b) a sale of a majority of the Company's outstanding Units (other than (i) to the Corporation or (ii) in connection with a Redemption or Exchange in accordance with Article XI) or (c) a sale of a majority of the outstanding voting securities of any Material Subsidiary of the Company; in any such case, whether by merger, recapitalization, consolidation, reorganization, combination or otherwise; *provided, however* , that neither (w) a transaction solely between the Company or any of its Subsidiaries, on the one hand, and the Company or any of its Subsidiaries, on the other hand, (x) nor a transaction solely

for the purpose of changing the jurisdiction of domicile of the Company, nor (y) a transaction solely for the purpose of changing the form of entity of the Company, nor (z) a sale of a majority of the outstanding shares of Class A Common Stock, whether by merger, recapitalization, consolidation, reorganization, combination or otherwise, shall in each case of clauses (w), (x), (y) and (z) constitute a Change of Control Transaction.

“ **Class A Common Stock** ” has the meaning set forth in the recitals to this Agreement.

“ **Class B Common Stock** ” means the Class B Common Stock, par value \$0.01 per share, of the Corporation.

“ **Code** ” means the United States Internal Revenue Code of 1986, as amended.

“ **Common Unit** ” means a Unit representing a fractional part of the Company Interests of the Members and having the rights and obligations specified with respect to the Common Units in this Agreement.

“ **Common Unit Redemption Price** ” means the arithmetic average of the volume weighted average prices for a share of Class A Common Stock on the principal U.S. securities exchange or automated or electronic quotation system on which the Class A Common Stock trades, as reported by Bloomberg, L.P., or its successor, for each of the five (5) consecutive full Trading Days ending on and including the last full Trading Day immediately prior to the Redemption Date, subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock. If the Class A Common Stock no longer trades on a securities exchange or automated or electronic quotation system, then a majority of the Independent Directors shall determine the Common Unit Redemption Price in good faith.

“ **Common Unitholder** ” means a Member who is the registered holder of Common Units.

“ **Company** ” has the meaning set forth in the preamble to this Agreement.

“ **Company Interest** ” means the interest of a Member in Profits, Losses and Distributions.

“ **Contribution Notice** ” has the meaning set forth in Section 11.01(b).

“ **Corporate Board** ” means the Board of Directors of the Corporation.

“ **Corporate Incentive Award Plan** ” means the Shake Shack Inc. 2014 Incentive Award Plan, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“ **Corporation** ” has the meaning set forth in the recitals to this Agreement, together with its successors and assigns.

“ **Credit Agreement** ” means that certain Third Amended and Restated Credit Agreement, dated as of [], 2015, by and among the Company, as borrower, the several lenders from time to time party thereto, and JPMorgan Chase Bank, N.A., as administrative agent for the

lenders, including all exhibits, schedules and attachments thereto as the same may be amended, restated, supplemented or otherwise modified from time to time and including any one or more refinancings or replacements thereof, in whole or in part, with any other debt facility or debt obligation.

“ **Delaware Act** ” means the Delaware Limited Liability Company Act, 6 Del.L. § 18-101, *et seq.* , as it may be amended from time to time, and any successor thereto.

“ **Direct Exchange** ” has the meaning set forth in Section 11.03(a).

“ **Distributable Cash** ” shall mean, as of any relevant date on which a determination is being made by the Manager regarding a potential distribution pursuant to Section 4.01(a), the amount of cash that could be distributed by the Company for such purposes in accordance with the Credit Agreement (and without otherwise violating any applicable provisions of the Credit Agreement).

“ **Distribution** ” (and, with a correlative meaning, “ **Distribute** ”) means each distribution made by the Company to a Member with respect to such Member’s Units, whether in cash, property or securities of the Company and whether by liquidating distribution or otherwise; *provided, however* , that none of the following shall be a Distribution: (a) any recapitalization that does not result in the distribution of cash or property to Members or any exchange of securities of the Company, and any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding Units or (b) any other payment made by the Company to a Member that is not properly treated as a “distribution” for purposes of Sections 731, 732, or 733 or other applicable provisions of the Code.

“ **Distribution Tax Rate** ” shall mean (i) with respect to Tax Distributions made in the 2015 Fiscal Year, the Corporation’s combined federal, state and local statutory tax rate (taking into account the deductibility of state and local taxes for federal tax purposes) as reasonably determined by the Manager and (ii) with respect to Tax Distributions made in any other Fiscal Year, the tax rate determined in the sole discretion of the Manager.

“ **Effective Time** ” has the meaning set forth in Section 16.15.

“ **Equity Plan** ” means any stock or equity purchase plan, restricted stock or equity plan or other similar equity compensation plan now or hereafter adopted by the Company or the Corporation.

“ **Equity Securities** ” means (a) Units or other equity interests in the Company or any Subsidiary of the Company (including other classes or groups thereof having such relative rights, powers and duties as may from time to time be established by the Manager pursuant to the provisions of this Agreement, including rights, powers and/or duties senior to existing classes and groups of Units and other equity interests in the Company or any Subsidiary of the Company), (b) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into Units or other equity interests in the Company or any Subsidiary of the Company, and (c) warrants, options or other rights to purchase or otherwise acquire Units or other equity interests in the Company or any Subsidiary of the Company.

“ **Event of Withdrawal** ” means the expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company. “Event of Withdrawal” shall not include an event that (a) terminates the existence of a Member for income tax purposes (including, without limitation, (i) a change in entity classification of a Member under Treasury Regulations Section 301.7701-3, (ii) termination of a partnership pursuant to Code Section 708(b)(1)(B), (iii) a sale of assets by, or liquidation of, a Member pursuant to an election under Code Sections 336 or 338, or (iv) merger, severance, or allocation within a trust or among sub-trusts of a trust that is a Member) but that (b) does not terminate the existence of such Member under applicable state law (or, in the case of a trust that is a Member, does not terminate the trusteeship of the fiduciaries under such trust with respect to all the Company Interests of such trust that is a Member).

“ **Exchange Election Notice** ” has the meaning set forth in Section 11.03(b).

“ **Fair Market Value** ” means, with respect to any asset, its fair market value determined according to Article XV.

“ **First A&R LLC Agreement** ” has the meaning set forth in the recitals to this Agreement.

“ **Fiscal Period** ” means any interim accounting period within a Taxable Year established by the Company and which is permitted or required by Section 706 of the Code.

“ **Fiscal Year** ” means the Company’s annual accounting period established pursuant to Section 8.02.

“ **Governmental Entity** ” means (a) the United States of America, (b) any other sovereign nation, (c) any state, province, district, territory or other political subdivision of (a) or (b) of this definition, including any county, municipal or other local subdivision of the foregoing, or (d) any entity exercising executive, legislative, judicial, regulatory or administrative functions of government on behalf of (a), (b) or (c) of this definition.

“ **Indemnified Person** ” has the meaning set forth in Section 7.04(a).

“ **Independent Directors** ” means the members of the Corporate Board who are “independent” under the standards set forth in Rule 10A-3 promulgated under the U.S. Securities Exchange Act of 1933, as amended, and the corresponding rules of the applicable exchange on which the Class A Common Stock is traded or quoted.

“ **Initial LLC Agreement** ” has the meaning set forth in the recitals to this Agreement.

“ **Investment Company Act** ” means the U.S. Investment Company Act of 1940, as amended from time to time.

“ **IPO** ” has the meaning set forth in the recitals to this Agreement.

“ **IPO Closing Date** ” means the closing date of the IPO, which for the avoidance of doubt means the date on which all IPO Net Proceeds required to be delivered pursuant to the Underwriting Agreement have been delivered to the Corporation in respect of its sale of Class A

Common Stock excluding any proceeds from the Over-Allotment Option which may be delivered at a subsequent date following exercise of such option.

“ **IPO Common Unit Purchase** ” has the meaning set forth in Section 3.03(b).

“ **IPO Common Unit Purchase Agreement** ” means that certain Common Unit Purchase Agreement, dated as of the date hereof, by and among the Corporation and the Company.

“ **IPO Net Proceeds** ” has the meaning set forth in the recitals to this Agreement.

“ **Joinder** ” means a joinder to this Agreement, in form and substance substantially similar to Exhibit A to this Agreement.

“ **Law** ” means all laws, statutes, ordinances, rules and regulations of the United States, any foreign country and each state, commonwealth, city, county, municipality, regulatory body, agency or other political subdivision thereof.

“ **LLC Employee** ” means an employee of, or other service provider to, the Company or any Subsidiary, in each case acting in such capacity.

“ **Losses** ” means items of Company loss or deduction determined according to Section 5.01(b).

“ **Majority Members** ” means the Members (which may include the Manager) holding a majority of the Voting Units then outstanding; *provided* that, if as of any date of determination, a majority of the Voting Units are then held by the Manager or any Affiliates controlled by the Manager, then “Majority Members” shall mean the Manager together with Members (other than the Manager and its controlled Affiliates) holding a majority of the Voting Units (excluding Voting Units held by the Manager) then outstanding.

“ **Manager** ” has the meaning set forth in Section 6.01.

“ **Market Price** ” means, with respect to a share of Class A Common Stock as of a specified date, the last sale price per share of Class A Common Stock, regular way, or if no such sale took place on such day, the average of the closing bid and asked prices per share of Class A Common Stock, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the Stock Exchange or, if the Class A Common Stock is not listed or admitted to trading on the Stock Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Class A Common Stock is listed or admitted to trading or, if the Class A Common Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if the Class A Common Stock is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Class A Common Stock selected by the Corporate Board or, in the event that no trading price is available for the

shares of Class A Common Stock, the fair market value of a share of Class A Common Stock, as determined in good faith by the Corporate Board.

“ **Material Subsidiary** ” means any direct or indirect Subsidiary of the Company that, as of any date of determination, represents more than (a) 50% of the consolidated net tangible assets of the Company or (b) 50% of the consolidated net income of the Company before interest, taxes, depreciation and amortization (calculated in a manner substantially consistent with the definition of “Consolidated Net Income” and/or “EBITDA” or similar definition(s) appearing therein in the Credit Agreement, including such additional adjustments that are permitted to be made to such measure as described in “Adjusted EBITDA” or a similar definition appearing in the Credit Agreement).

“ **Member** ” means, as of any date of determination, (a) each of the members named on the Schedule of Members and (b) any Person admitted to the Company as a Substituted Member or Additional Member in accordance with Article XII, but in each case only so long as such Person is shown on the Company’s books and records as the owner of one or more Units.

“ **Minimum Gain** ” means “partnership minimum gain” determined pursuant to Treasury Regulation Section 1.704-2(d).

“ **Net Loss** ” means, with respect to a Fiscal Year, the excess if any, of Losses for such Fiscal Year over Profits for such Fiscal Year (excluding Profits and Losses specially allocated pursuant to Section 5.03 and Section 5.04).

“ **Net Profit** ” means, with respect to a Fiscal Year, the excess if any, of Profits for such Fiscal Year over Losses for such Fiscal Year (excluding Profits and Losses specially allocated pursuant to Section 5.03 and Section 5.04).

“ **Officer** ” has the meaning set forth in Section 6.01(b) .

“ **Optionee** ” means a Person to whom a stock option is granted under any Stock Option Plan.

“ **Original Common Units** ” has the meaning set forth in the recitals to this Agreement.

“ **Original Class B Units** ” has the meaning set forth in the recitals to this Agreement.

“ **Original Members** ” has the meaning set forth in the recitals to this Agreement.

“ **Original Units** ” has the meaning set forth in the recitals to this Agreement.

“ **Other Agreements** ” has the meaning set forth in Section 10.04 .

“ **Over-Allotment Option** ” has the meaning set forth in the recitals to this Agreement.

“ **Over-Allotment Option Net Proceeds** ” has the meaning set forth in the recitals to this Agreement.

“ **Percentage Interest** ” means, as among an individual class of Units and with respect to a Member at a particular time, such Member’s percentage interest in the Company determined by dividing such Member’s Units of such class by the total Units of all Members of such class at such time. The Percentage Interest of each member shall be calculated to the 4th decimal place.

“ **Permitted Transfer** ” has the meaning set forth in Section 10.02.

“ **Person** ” means an individual or any corporation, partnership, limited liability company, trust, unincorporated organization, association, joint venture or any other organization or entity, whether or not a legal entity.

“ **Pro rata** ,” “ **pro rata portion** ,” “ **according to their interests** ,” “ **ratably** ,” “ **proportionately** ,” “ **proportional** ,” “ **in proportion to** ,” “ **based on the number of Units held** ,” “ **based upon the percentage of Units held** ,” “ **based upon the number of Units outstanding** ,” and other terms with similar meanings, when used in the context of a number of Units of the Company relative to other Units, means as amongst an individual class of Units, pro rata based upon the number of such Units within such class of Units.

“ **Profits** ” means items of Company income and gain determined according to Section 5.01(b).

“ **Recapitalization** ” has the meaning set forth in the recitals to this Agreement.

“ **Redeemed Units** ” has the meaning set forth in Section 11.01(a).

“ **Redeemed Units Equivalent** ” means the product of (a) the Share Settlement, times (b) the Common Unit Redemption Price.

“ **Redeeming Member** ” has the meaning set forth in Section 11.01(a).

“ **Redemption** ” has the meaning set forth in Section 11.01(a).

“ **Redemption Date** ” has the meaning set forth in Section 11.01(a).

“ **Redemption Notice** ” has the meaning set forth in Section 11.01(a).

“ **Redemption Right** ” has the meaning set forth in Section 11.01(a).

“ **Registration Rights Agreement** ” means that certain Registration Rights Agreement, dated as of the date hereof, by and among the Corporation and the Original Members (together with any joinder thereto from time to time by any successor or assign to any party to such Agreement).

“ **Retraction Notice** ” has the meaning set forth in Section 11.01(b).

“ **Schedule of Members** ” has the meaning set forth in Section 3.01(b).

“ **SEC** ” means the U.S. Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

“ **Second A&R LLC Agreement** ” has the meaning set forth in the recitals to this Agreement.

“ **Securities Act** ” means the U.S. Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future Law.

“ **Share Settlement** ” means a number of shares of Class A Common Stock equal to the number of Redeemed Units.

“ **Special Payment** ” has the meaning set forth in the recitals to this Agreement.

“ **Sponsor Person** ” has the meaning set forth in Section 7.04(d).

“ **Stock Exchange** ” means the New York Stock Exchange.

“ **Stock Option Plan** ” means any stock option plan now or hereafter adopted by the Company or by the Corporation, including the Corporate Incentive Award Plan.

“ **Subsidiary** ” means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the voting interests thereof are at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, references to a “Subsidiary” of the Company shall be given effect only at such times that the Company has one or more Subsidiaries, and, unless otherwise indicated, the term “Subsidiary” refers to a Subsidiary of the Company.

“ **Substituted Member** ” means a Person that is admitted as a Member to the Company pursuant to Section 12.01.

“ **Tax Distribution Date** ” has the meaning set forth in Section 4.01(b)(i).

“ **Tax Distributions** ” has the meaning set forth in Section 4.01(b)(i).

“ **Tax Matters Partner** ” has the meaning set forth in Section 9.03.

“ **Tax Receivable Agreement** ” means that certain Tax Receivable Agreement, dated as the date hereof, by and among the Corporation, on the one hand, and the Original Members (other than the Blocker Corps), on the other hand (together with any joinder thereto from time to time by any successor or assign to any party to such Agreement).

“ **Taxable Year** ” means the Company’s accounting period for U.S. federal income tax purposes determined pursuant to Section 9.02.

“ **Trading Day** ” means a day on which the Stock Exchange or such other principal United States securities exchange on which the Class A Common Stock is listed or admitted to trading is open for the transaction of business (unless such trading shall have been suspended for the entire day).

“ **Transfer** ” (and, with a correlative meaning, “ **Transferring** ”) means any sale, transfer, assignment, pledge, encumbrance or other disposition of (whether directly or indirectly, whether with or without consideration and whether voluntarily or involuntarily or by operation of Law) (a) any interest (legal or beneficial) in any Equity Securities or (b) any equity or other interest (legal or beneficial) in any Member if substantially all of the assets of such Member consist solely of Units.

“ **Treasury Regulations** ” means the income tax regulations promulgated under the Code and any corresponding provisions of succeeding regulations.

“ **Underwriting Agreement** ” means the Underwriting Agreement, dated as of [•], 2015, by and among the Corporation, the Company, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Barclays Capital Inc., Goldman, Sachs & Co., Jefferies LLC and Stifel, Nicolaus & Company, Incorporated.

“ **Unit** ” means a Company Interest of a Member or a permitted Assignee in the Company representing a fractional part of the Company Interests of all Members and Assignees as may be established by the Manager from time to time in accordance with Section 3.02; *provided, however* , that any class or group of Units issued shall have the relative rights, powers and duties set forth in this Agreement, and the Company Interest represented by such class or group of Units shall be determined in accordance with such relative rights, powers and duties.

“ **Unitholder** ” means a Common Unitholder and any Member who is the registered holder of any other class of Units, if any.

“ **Unvested Corporate Shares** ” means shares of Class A Common Stock issued pursuant to the Corporate Incentive Award Plan that are not Vested Corporate Shares.

“ **USHG** ” has the meaning set forth in the recitals to this Agreement.

“ **USHG Distribution** ” has the meaning set forth in the recitals to this Agreement.

“ **Value** ” means (a) for any Stock Option Plan, the Market Price for the trading day immediately preceding the date of exercise of a stock option under such Stock Option Plan and (b) for any Equity Plan other than a Stock Option Plan, the Market Price for the trading day immediately preceding the Vesting Date.

“ **Vested Corporate Shares** ” means the shares of Class A Common Stock issued pursuant to the Corporate Incentive Award Plan that are vested pursuant to the terms thereof or any award or similar agreement relating thereto.

“ **Vesting Date** ” has the meaning set forth in Section 3.10(c)(ii).

“ **Voting Units** ” means (a) the Common Units and (b) any other Units other than Units that by their express terms do not entitle the record holder thereof to vote on any matter presented to the Members generally under this Agreement for approval; provided that (i) no vote by Voting Units shall have the power to override any action taken by the Manager or to remove or replace the Manager, (ii) the Voting Units have no ability to take part in the conduct or control of the Company’s business and (iii) notwithstanding any vote by Voting Units hereunder, the Manager shall retain exclusive management power over the business and affairs of the Company in accordance with Section 6.01(a).

ARTICLE II. ORGANIZATIONAL MATTERS

Section 2.01 Formation of Company. The Company was formed on October 16, 2009 pursuant to the provisions of the Delaware Act.

Section 2.02 Third Amended and Restated Limited Liability Company Agreement. The Members hereby execute this Agreement for the purpose of establishing the affairs of the Company and the conduct of its business in accordance with the provisions of the Delaware Act. The Members hereby agree that during the term of the Company set forth in Section 2.06 the rights and obligations of the Members with respect to the Company will be determined in accordance with the terms and conditions of this Agreement and the Delaware Act. On any matter upon which this Agreement is silent, the Delaware Act shall control. No provision of this Agreement shall be in violation of the Delaware Act and to the extent any provision of this Agreement is in violation of the Delaware Act, such provision shall be void and of no effect to the extent of such violation without affecting the validity of the other provisions of this Agreement; *provided, however*, that where the Delaware Act provides that a provision of the Delaware Act shall apply “unless otherwise provided in a limited liability company agreement” or words of similar effect, the provisions of this Agreement shall in each instance control; *provided further*, that notwithstanding the foregoing, Section 18-210 of the Delaware Act shall not apply or be incorporated into this Agreement.

Section 2.03 Name. The name of the Company shall be “SSE Holdings, LLC.” The Manager in its sole discretion may change the name of the Company at any time and from time to time. Notification of any such change shall be given to all of the Members and, to the extent practicable, to all of the holders of any Equity Securities then outstanding. The Company’s business may be conducted under its name and/or any other name or names deemed advisable by the Manager.

Section 2.04 Purpose. The primary business and purpose of the Company shall be to engage in such activities as are permitted under the Delaware Act and determined from time to time by the Manager in accordance with the terms and conditions of this Agreement.

Section 2.05 Principal Office; Registered Office. The principal office of the Company shall be at 24 Union Square East, 5th Floor, New York, NY 10003, or such other place as the Manager may from time to time designate. The address of the registered office of the Company

in the State of Delaware shall be c/o The Corporation Trust Company, 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801, and the registered agent for service of process on the Company in the State of Delaware at such registered office shall be The Corporation Trust Company. The Manager may from time to time change the Company's registered agent and registered office in the State of Delaware.

Section 2.06 Term. The term of the Company commenced upon the filing of the Certificate in accordance with the Delaware Act and shall continue in existence until termination and dissolution of the Company in accordance with the provisions of Article XIV.

Section 2.07 No State-Law Partnership. The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the last sentence of this Section 2.07, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for U.S. federal and, if applicable, state or local income tax purposes, and that each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

ARTICLE III. MEMBERS; UNITS; CAPITALIZATION

Section 3.01 Members.

(a) Each Original Member previously was admitted as a Member and shall remain a Member of the Company upon the Effective Time.

(b) The Company shall maintain a schedule setting forth: (i) the name and address of each Member; (ii) the aggregate number of outstanding Units and the number and class of Units held by each Member; (iii) the aggregate amount of cash Capital Contributions that has been made by the Members with respect to their Units; and (iv) the Fair Market Value of any property other than cash contributed by the Members with respect to their Units (including, if applicable, a description and the amount of any liability assumed by the Company or to which contributed property is subject) (such schedule, the “***Schedule of Members***”). The applicable Schedule of Members in effect as of the Effective Time is set forth as Schedule 1 to this Agreement. The Schedule of Members shall be the definitive record of ownership of each Unit of the Company and all relevant information with respect to each Member. The Company shall be entitled to recognize the exclusive right of a Person registered on its records as the owner of Units for all purposes and shall not be bound to recognize any equitable or other claim to or interest in Units on the part of any other Person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware Act.

(c) No Member shall be required or, except as approved by the Manager pursuant to Section 6.01 and in accordance with the other provisions of this Agreement, permitted to loan any money or property to the Company or borrow any money or property from the Company.

Section 3.02 Units. Interests in the Company shall be represented by Units, or such other securities of the Company, in each case as the Manager may establish in its discretion in accordance with the terms and subject to the restrictions hereof. Immediately after the Effective Time, the Units will be comprised of a single class of Common Units (with an aggregate of [•] Common Units being authorized for issuance by the Company). To the extent required pursuant to Section 3.04(a), the Manager may create one or more classes or series of Common Units or preferred Units solely to the extent they are in the aggregate substantially equivalent to a class of common stock of the Corporation or class or series of preferred stock of the Corporation; *provided* that as long as there are any Members of the Company (other than the Corporation), then no such new class or series of Units may deprive such Members of, or dilute or reduce, the pro rata share of all Company Interests they would have received or to which they would have been entitled if such new class or series of Units had not been created except to the extent (and solely to the extent) the Company actually receives cash in an aggregate amount, or other property with a Fair Market Value in an aggregate amount, equal to the pro rata share allocated to such new class or series of Units and the number thereof issued by the Company.

Section 3.03 Recapitalization; the Corporation's Capital Contribution; the Corporation's Purchase of Common Units; Member Distribution.

(a) *Recapitalization*. In connection with the Recapitalization, immediately prior to the Effective Time, the aggregate number of 863,077.3171 Original Common Units and the aggregate number of 40,337.4679 Original Class B Units that in each case were issued and outstanding and held by the Original Members prior to the execution and effectiveness of this Agreement are hereby canceled and the Common Units set forth next to each Original Member on Schedule 1 are hereby issued and outstanding as of the Effective Time.

(b) *The Corporation's Common Unit Purchase*. Following the Recapitalization, immediately upon the Effective Time, the Corporation will contribute the IPO Net Proceeds to the Company in exchange for [•] Common Units pursuant to the IPO Common Unit Purchase Agreement (the “***IPO Common Unit Purchase***”). The parties hereto acknowledge and agree that the IPO Common Unit Purchase will result in a “reevaluation of partnership property” and corresponding adjustments to Capital Account balances as described in Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations.

(c) *Special Payment*. Within thirty (30) days following the receipt of any Over-Allotment Net Proceeds, the Company will make the Special Payment.

Section 3.04 Authorization and Issuance of Additional Units.

(a) The Company shall undertake all actions, including, without limitation, a reclassification, distribution, division or recapitalization, with respect to the Common Units, to maintain at all times a one-to-one ratio between the number of Common Units owned by the Corporation and the number of outstanding shares of Class A Common Stock, disregarding, for purposes of maintaining the one-to-one ratio, (i) Unvested Corporate Shares, (ii) treasury stock or (iii) preferred stock or other debt or equity securities (including without limitation warrants, options or rights) issued by the Corporation that are convertible into or exercisable or exchangeable for Class A Common Stock (except to the extent the net proceeds from such other

securities, including any exercise or purchase price payable upon conversion, exercise or exchange thereof, has been contributed by the Corporation to the equity capital of the Company). In the event the Corporation issues, transfers or delivers from treasury stock or repurchases Class A Common Stock in a transaction not contemplated in this Agreement, the Manager shall take all actions such that, after giving effect to all such issuances, transfers, deliveries or repurchases, the number of outstanding Common Units owned by the Corporation will equal on a one-for-one basis the number of outstanding shares of Class A Common Stock. In the event the Corporation issues, transfers or delivers from treasury stock or repurchases or redeems the Corporation's preferred stock in a transaction not contemplated in this Agreement, the Manager shall have the authority to take all actions such that, after giving effect to all such issuances, transfers, deliveries, repurchases or redemptions, the Corporation holds (in the case of any issuance, transfer or delivery) or ceases to hold (in the case of any repurchase or redemption) equity interests in the Company which (in the good faith determination by the Manager) are in the aggregate substantially equivalent to the outstanding preferred stock of the Corporation so issued, transferred, delivered, repurchased or redeemed. The Company shall not undertake any subdivision (by any Common Unit split, Common Unit distribution, reclassification, recapitalization or similar event) or combination (by reverse Common Unit split, reclassification, recapitalization or similar event) of the Common Units that is not accompanied by an identical subdivision or combination of Class A Common Stock to maintain at all times a one-to-one ratio between the number of Common Units owned by the Corporation and the number of outstanding shares of Class A Common Stock, unless such action is necessary to maintain at all times a one-to-one ratio between the number of Common Units owned by the Corporation and the number of outstanding shares of Class A Common Stock as contemplated by the first sentence of this Section 3.04(a).

(b) The Company shall only be permitted to issue additional Units or other Equity Securities in the Company to the Persons and on the terms and conditions provided for in Section 3.02, this Section 3.04, Section 3.10 and Section 3.11. Subject to the foregoing, the Manager may cause the Company to issue additional Common Units authorized under this Agreement at such times and upon such terms as the Manager shall determine and the Manager shall amend this Agreement as necessary in connection with the issuance of additional Common Units and admission of additional Members under this Section 3.04 without the requirement of any consent or acknowledgement of any other Member.

Section 3.05 Repurchase or Redemption of shares of Class A Common Stock. If, at any time, any shares of Class A Common Stock are repurchased or redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by the Corporation for cash, then the Manager shall cause the Company, immediately prior to such repurchase or redemption of Class A Common Stock, to redeem a corresponding number of Common Units held by the Corporation, at an aggregate redemption price equal to the aggregate purchase or redemption price of the shares of Class A Common Stock being repurchased or redeemed by the Corporation (plus any expenses related thereto) and upon such other terms as are the same for the shares of Class A Common Stock being repurchased or redeemed by the Corporation.

Section 3.06 Certificates Representing Units; Lost, Stolen or Destroyed Certificates; Registration and Transfer of Units.

(a) Units shall not be certificated unless otherwise determined by the Manager. If the Manager determines that one or more Units shall be certificated, each such certificate shall be signed by or in the name of the Company, by the Chief Executive Officer and any other officer designated by the Manager, representing the number of Units held by such holder. Such certificate shall be in such form (and shall contain such legends) as the Manager may determine. Any or all of such signatures on any certificate representing one or more Units may be a facsimile, engraved or printed, to the extent permitted by applicable Law. The Manager agrees that it shall not elect to treat any Unit as a “security” within the meaning of Article 8 of the Uniform Commercial Code unless thereafter all Units then outstanding are represented by one or more certificates.

(b) If Units are certificated, the Manager may direct that a new certificate representing one or more Units be issued in place of any certificate theretofore issued by the Company alleged to have been lost, stolen or destroyed, upon delivery to the Manager of an affidavit of the owner or owners of such certificate, setting forth such allegation. The Manager may require the owner of such lost, stolen or destroyed certificate, or such owner’s legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

(c) Upon surrender to the Company or the transfer agent of the Company, if any, of a certificate for one or more Units, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, in compliance with the provisions hereof, the Company shall issue a new certificate representing one or more Units to the Person entitled thereto, cancel the old certificate and record the transaction upon its books. Subject to the provisions of this Agreement, the Manager may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, Transfer and registration of Units.

Section 3.07 Negative Capital Accounts. No Member shall be required to pay to any other Member or the Company any deficit or negative balance which may exist from time to time in such Member’s Capital Account (including upon and after dissolution of the Company).

Section 3.08 No Withdrawal. No Person shall be entitled to withdraw any part of such Person’s Capital Contribution or Capital Account or to receive any Distribution from the Company, except as expressly provided in this Agreement.

Section 3.09 Loans From Members. Loans by Members to the Company shall not be considered Capital Contributions. Subject to the provisions of Section 3.01(c), the amount of any such advances shall be a debt of the Company to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such advances are made.

Section 3.10 Corporate Stock Option Plans and Equity Plans.

(a) *Options Granted to Persons other than LLC Employees* . If at any time or from time to time, in connection with any Stock Option Plan, a stock option granted over shares of Class A Common Stock to a Person other than an LLC Employee is duly exercised:

(i) The Corporation shall, as soon as practicable after such exercise, make a Capital Contribution to the Company in an amount equal to the exercise price paid to the Corporation by such exercising Person in connection with the exercise of such stock option.

(ii) Notwithstanding the amount of the Capital Contribution actually made pursuant to Section 3.10(a)(i), the Corporation shall be deemed to have contributed to the Company as a Capital Contribution, in lieu of the Capital Contribution actually made and in consideration of additional Common Units, an amount equal to the Value of a share of Class A Common Stock as of the date of such exercise multiplied by the number of shares of Class A Common Stock then being issued by the Corporation in connection with the exercise of such stock option.

(iii) The Corporation shall receive in exchange for such Capital Contributions (as deemed made under Section 3.10(a)(ii)), a corresponding number of Units of a class correlative to the class of Equity Securities for which such stock options were granted.

(b) *Options Granted to LLC Employees* . If at any time or from time to time, in connection with any Stock Option Plan, a stock option granted over shares of Class A Common Stock to an LLC Employee is duly exercised:

(i) The Corporation shall sell to the Optionee, and the Optionee shall purchase from the Corporation, for a cash price per share equal to the Value of a share of Class A Common Stock at the time of the exercise, the number of shares of Class A Common Stock equal to the quotient of (x) the exercise price payable by the Optionee in connection with the exercise of such stock option divided by (y) the Value of a share of Class A Common Stock at the time of such exercise.

(ii) The Corporation shall sell to the Company (or if the Optionee is an employee of, or other service provider to, a Subsidiary, the Corporation shall sell to such Subsidiary), and the Company (or such Subsidiary, as applicable) shall purchase from the Corporation, a number of shares of Class A Common Stock equal to the excess of (x) the number of shares of Class A Common Stock as to which such stock option is being exercised over (y) the number of shares of Class A Common Stock sold pursuant to Section 3.10(b)(i) hereof. The purchase price per share of Class A Common Stock for such sale of shares of Class A Common Stock to the Company (or such Subsidiary) shall be the Value of a share of Class A Common Stock as of the date of exercise of such stock option.

(iii) The Company shall transfer to the Optionee (or if the Optionee is an employee of, or other service provider to, a Subsidiary, the Subsidiary shall transfer to the Optionee) at no additional cost to such LLC Employee and as additional

compensation to such LLC Employee, the number of shares of Class A Common Stock described in Section 3.10(b)(ii).

(iv) The Corporation shall, as soon as practicable after such exercise, make a Capital Contribution to the Company in an amount equal to all proceeds received (from whatever source, but excluding any payment in respect of payroll taxes or other withholdings) by the Corporation in connection with the exercise of such stock option. The Corporation shall receive for such Capital Contribution, a number of Units equal to the number of shares of Class A Common Stock for which such option was exercised.

(c) *Restricted Stock Granted to LLC Employees* . If at any time or from time to time, in connection with any Equity Plan (other than a Stock Option Plan), any shares of Class A Common Stock are issued to an LLC Employee (including any shares of Class A Common Stock that are subject to forfeiture in the event such LLC Employee terminates his or her employment with the Company or any Subsidiary) in consideration for services performed for the Company or any Subsidiary:

(i) The Corporation shall issue such number of shares of Class A Common Stock as are to be issued to such LLC Employee in accordance with the Equity Plan;

(ii) On the date (such date, the “ **Vesting Date** ”) that the Value of such shares is includible in taxable income of such LLC Employee, the following events will be deemed to have occurred: (a) the Corporation shall be deemed to have sold such shares of Class A Common Stock to the Company (or if such LLC Employee is an employee of, or other service provider to, a Subsidiary, to such Subsidiary) for a purchase price equal to the Value of such shares of Class A Common Stock, (b) the Company (or such Subsidiary) shall be deemed to have delivered such shares of Class A Common Stock to such LLC Employee, (c) the Corporation shall be deemed to have contributed the purchase price for such shares of Class A Common Stock to the Company as a Capital Contribution, and (d) in the case where such LLC Employee is an employee of a Subsidiary, the Company shall be deemed to have contributed such amount to the capital of the Subsidiary; and

(iii) The Company shall issue to the Corporation on the Vesting Date a number of Units equal to the number of shares of Class A Common Stock issued under Section 3.10(c)(i) in consideration for a Capital Contribution in cash in an amount equal to the product of (x) the number of such newly issued Units multiplied by (y) the Value of a share of Class A Common Stock.

(d) *Future Stock Incentive Plans* . Nothing in this Agreement shall be construed or applied to preclude or restrain the Corporation from adopting, modifying or terminating stock incentive plans for the benefit of employees, directors or other business associates of the Corporation, the Company or any of their respective Affiliates. The Members acknowledge and agree that, in the event that any such plan is adopted, modified or terminated by the Corporation, amendments to this Section 3.10 may become necessary or advisable and that any approval or consent to any such amendments requested by the Corporation shall be deemed granted by the

Manager without the requirement of any further consent or acknowledgement of any other Member.

(e) *Anti-dilution adjustments.* For all purposes of this Section 3.10, the number of shares of Class A Common Stock and the corresponding number of Common Units shall be determined after giving effect to all anti-dilution or similar adjustments that are applicable, as of the date of exercise or vesting, to the option, warrant, restricted stock or other equity interest that is being exercised or becomes vested under the applicable Stock Option Plan or other Equity Plan and applicable award or grant documentation.

Section 3.11 Dividend Reinvestment Plan, Cash Option Purchase Plan, Stock Incentive Plan or Other Plan. Except as may otherwise be provided in this Article III, all amounts received or deemed received by the Corporation in respect of any dividend reinvestment plan, cash option purchase plan, stock incentive or other stock or subscription plan or agreement, either (a) shall be utilized by the Corporation to effect open market purchases of shares of Class A Common Stock, or (b) if the Corporation elects instead to issue new shares of Class A Common Stock with respect to such amounts, shall be contributed by the Corporation to the Company in exchange for additional Units. Upon such contribution, the Company will issue to the Corporation a number of Units equal to the number of new shares of Class A Common Stock so issued.

ARTICLE IV. DISTRIBUTIONS

Section 4.01 Distributions.

(a) *Distributable Cash; Other Distributions*. To the extent permitted by applicable Law and hereunder, Distributions to Members may be declared by the Manager out of Distributable Cash or other funds or property legally available therefor in such amounts and on such terms (including the payment dates of such Distributions) as the Manager shall determine using such record date as the Manager may designate; such Distributions shall be made to the Members as of the close of business on such record date on a pro rata basis in accordance with each Member's Percentage Interest as of the close of business on such record date; *provided, however*, that the Manager shall have the obligation to make Distributions as set forth in Sections 4.01(b) and 14.02; and *provided further* that, notwithstanding any other provision herein to the contrary, no Distributions shall be made to any Member to the extent such Distribution would render the Company insolvent. For purposes of the foregoing sentence, insolvency means the inability of the Company to meet its payment obligations when due. Promptly following the designation of a record date and the declaration of a Distribution pursuant to this Section 4.01(a), the Manager shall give notice to each Member of the record date, the amount and the terms of the Distribution and the payment date thereof. In furtherance of the foregoing, it is intended that the Manager shall, to the extent permitted by applicable Law and hereunder, have the right in its sole discretion to make Distributions to the Members pursuant to this Section 4.01(a) in such amounts as shall enable the Corporation to pay dividends or to meet its obligations, including its obligations pursuant to the Tax Receivable Agreement (to the extent such obligations are not otherwise able to be satisfied as a result of Tax Distributions required to be made pursuant to Section 4.01(b)).

(b) *Tax Distributions* .

(i) On or about each date (a “ ***Tax Distribution Date*** ”) that is five (5) Business Days prior each due date for the U.S. federal income tax return of an individual calendar year taxpayer (without regard to extensions) (or, if earlier, the due date for the U.S. federal income tax return of the Corporation, as determined without regard to extensions), the Company shall be required to make a Distribution to each Member of cash in an amount equal to the excess of such Member’s Assumed Tax Liability, if any, for such taxable period over the Distributions previously made to such Member pursuant to this Section 4.01(b) with respect to such taxable period (the “ ***Tax Distributions*** ”).

(ii) To the extent a Member otherwise would be entitled to receive less than its Percentage Interest of the aggregate Tax Distributions to be paid pursuant to this Section 4.01(b) on any given date, the Tax Distributions to such Member shall be increased to ensure that all Distributions made pursuant to this Section 4.01(b) are made pro rata in accordance with such Member’s Percentage Interest. If, on a Tax Distribution Date, there are insufficient funds on hand to distribute to the Members the full amount of the Tax Distributions to which such Members are otherwise entitled, Distributions pursuant to this Section 4.01(b) shall be made to the Members to the extent of available funds in accordance with their Percentage Interests and the Company shall make future Tax Distributions as soon as funds become available sufficient to pay the remaining portion of the Tax Distributions to which such Members are otherwise entitled.

(iii) In the event of any audit by, or similar event with, a taxing authority that affects the calculation of any Member’s Assumed Tax Liability for any taxable year, or in the event the Company files an amended tax return, each Member’s Assumed Tax Liability with respect to such year shall be recalculated by giving effect to such event (for the avoidance of doubt, taking into account interest or penalties). Any shortfall in the amount of Tax Distributions the Members and former Members received for the relevant taxable years based on such recalculated Assumed Tax Liability promptly shall be distributed to such Members and the successors of such former Members, except, for the avoidance of doubt, to the extent Distributions were made to such Members and former Members pursuant to Section 4.01(a) and this Section 4.01(b) in the relevant taxable years sufficient to cover such shortfall.

(iv) Notwithstanding the foregoing, Distributions pursuant to this Section 4.01(b), if any, shall be made to a Member only to the extent all previous Distributions to such Member pursuant to Section 4.01(a) with respect to the Fiscal Year are less than the Distributions such Member otherwise would have been entitled to receive with respect to such Fiscal Year pursuant to this Section 4.01(b).

Section 4.02 Restricted Distributions. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any Distribution to any Member on account of any Company Interest if such Distribution would violate any applicable Law or the terms of the Credit Agreement.

ARTICLE V.
CAPITAL ACCOUNTS; ALLOCATIONS; TAX MATTERS

Section 5.01 Capital Accounts.

(a) The Company shall maintain a separate Capital Account for each Member according to the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). For this purpose, the Company may (in the discretion of the Manager), upon the occurrence of the events specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of such Treasury Regulation and Treasury Regulation Section 1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company property.

(b) For purposes of computing the amount of any item of Company income, gain, loss or deduction to be allocated pursuant to this Article V and to be reflected in the Capital Accounts of the Members, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for U.S. federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose); *provided, however*, that:

(i) The computation of all items of income, gain, loss and deduction shall include those items described in Code Section 705(a)(1)(B) or Code Section 705(a)(2)(B) and Treasury Regulation Section 1.704-1(b)(2)(iv)(i), without regard to the fact that such items are not includable in gross income or are not deductible for U.S. federal income tax purposes.

(ii) If the Book Value of any Company property is adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property.

(iii) Items of income, gain, loss or deduction attributable to the disposition of Company property having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the Book Value of such property.

(iv) Items of depreciation, amortization and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the property's Book Value in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g).

(v) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis).

Section 5.02 Allocations. Except as otherwise provided in Section 5.03 and Section 5.04, Net Profits and Net Losses for any Fiscal Year or Fiscal Period shall be allocated among

the Capital Accounts of the Members pro rata in accordance with their respective Percentage Interests.

Section 5.03 Regulatory Allocations.

(a) Losses attributable to partner nonrecourse debt (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated in the manner required by Treasury Regulation Section 1.704-2(i). If there is a net decrease during a Taxable Year in partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(3)), Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) shall be allocated to the Members in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(i)(4).

(b) Nonrecourse deductions (as determined according to Treasury Regulation Section 1.704-2(b)(1)) for any Taxable Year shall be allocated pro rata among the Members in accordance with their Percentage Interests. Except as otherwise provided in Section 4.03(a), if there is a net decrease in the Minimum Gain during any Taxable Year, each Member shall be allocated Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(f). This Section 5.03(b) is intended to be a minimum gain chargeback provision that complies with the requirements of Treasury Regulation Section 1.704-2(f), and shall be interpreted in a manner consistent therewith.

(c) If any Member that unexpectedly receives an adjustment, allocation or Distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, computed after the application of Sections 5.03(a) and 5.03(b) but before the application of any other provision of this Article V, then Profits for such Taxable Year shall be allocated to such Member in proportion to, and to the extent of, such Adjusted Capital Account Deficit. This Section 5.03(c) is intended to be a qualified income offset provision as described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(d) If the allocation of Net Losses to a Member as provided in Section 5.02 would create or increase an Adjusted Capital Account Deficit, there shall be allocated to such Member only that amount of Losses as will not create or increase an Adjusted Capital Account Deficit. The Net Losses that would, absent the application of the preceding sentence, otherwise be allocated to such Member shall be allocated to the other Members in accordance with their relative Percentage Interests, subject to this Section 5.03(d).

(e) Profits and Losses described in Section 5.01(b)(v) shall be allocated in a manner consistent with the manner that the adjustments to the Capital Accounts are required to be made pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(j), (k) and (m).

(f) The allocations set forth in Section 5.03(a) through and including Section 5.03(e) (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations. The Regulatory Allocations may not be consistent with the manner in which the Members intend to allocate Profit and Loss of the

Company or make Distributions. Accordingly, notwithstanding the other provisions of this Article V, but subject to the Regulatory Allocations, income, gain, deduction and loss shall be reallocated among the Members so as to eliminate the effect of the Regulatory Allocations and thereby cause the respective Capital Accounts of the Members to be in the amounts (or as close thereto as possible) they would have been if Profit and Loss (and such other items of income, gain, deduction and loss) had been allocated without reference to the Regulatory Allocations. In general, the Members anticipate that this will be accomplished by specially allocating other Profit and Loss (and such other items of income, gain, deduction and loss) among the Members so that the net amount of the Regulatory Allocations and such special allocations to each such Member is zero. In addition, if in any Fiscal Year or Fiscal Period there is a decrease in partnership minimum gain, or in partner nonrecourse debt minimum gain, and application of the minimum gain chargeback requirements set forth in Section 5.03(a) or Section 5.03(b) would cause a distortion in the economic arrangement among the Members, the Members may, if they do not expect that the Company will have sufficient other income to correct such distortion, request the Internal Revenue Service to waive either or both of such minimum gain chargeback requirements. If such request is granted, this Agreement shall be applied in such instance as if it did not contain such minimum gain chargeback requirement.

Section 5.04 Final Allocations. Notwithstanding any contrary provision in this Agreement except Section 5.03, the Manager shall make appropriate adjustments to allocations of Profits and Losses to (or, if necessary, allocate items of gross income, gain, loss or deduction of the Company among) the Members upon the liquidation of the Company (within the meaning of Section 1.704 1(b)(2)(ii)(g) of the Treasury Regulations), the transfer of substantially all the Units (whether by sale or exchange or merger) or sale of all or substantially all the assets of the Company, such that, to the maximum extent possible, the Capital Accounts of the Members are proportionate to their Percentage Interests. In each case, such adjustments or allocations shall occur, to the maximum extent possible, in the Fiscal Year of the event requiring such adjustments or allocations.

Section 5.05 Tax Allocations.

(a) The income, gains, losses, deductions and credits of the Company will be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, deductions and credits among the Members for computing their Capital Accounts; *provided* that if any such allocation is not permitted by the Code or other applicable Law, the Company's subsequent income, gains, losses, deductions and credits will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Items of Company taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value using the traditional method, as described in Treasury Regulations Section 1.704-3(b).

(c) If the Book Value of any Company asset is adjusted pursuant to Section 5.01(b), subsequent allocations of items of taxable income, gain, loss and deduction with respect to such

asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) using the traditional method, as described in Treasury Regulations Section 1.704-3(b).

(d) Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated to the Members pro rata as determined by the Manager taking into account the principles of Treasury Regulation Section 1.704-1(b)(4)(ii).

(e) For purposes of determining a Member's pro rata share of the Company's "excess nonrecourse liabilities" within the meaning of Treasury Regulation Section 1.752-3(a)(3), each Member's interest in income and gain shall be in proportion to the Units held by such Member.

(f) Allocations pursuant to this Section 5.05 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, Distributions or other Company items pursuant to any provision of this Agreement.

Section 5.06 Indemnification and Reimbursement for Payments on Behalf of a Member. If the Company is obligated to pay any amount to a Governmental Entity (or otherwise makes a payment to a Governmental Entity) that is specifically attributable to a Member or a Member's status as such (including federal withholding taxes, state personal property taxes and state unincorporated business taxes, but excluding payments such as professional association fees and the like made voluntarily by the Company on behalf of any Member based upon such Member's status as an employee of the Company), then such Person shall indemnify the Company in full for the entire amount paid (including interest, penalties and related expenses). The Manager may offset Distributions to which a Person is otherwise entitled under this Agreement against such Person's obligation to indemnify the Company under this Section 5.06. A Member's obligation to make contributions to the Company under this Section 5.06 shall survive the termination, dissolution, liquidation and winding up of the Company, and for purposes of this Section 5.06, the Company shall be treated as continuing in existence. The Company may pursue and enforce all rights and remedies it may have against each Member under this Section 5.06, including instituting a lawsuit to collect such contribution with interest calculated at a rate per annum equal to the sum of the Base Rate plus 300 basis points (but not in excess of the highest rate per annum permitted by Law). Each Member hereby agrees to furnish to the Company such information and forms as required or reasonably requested in order to comply with any laws and regulations governing withholding of tax or in order to claim any reduced rate of, or exemption from, withholding to which the Member is legally entitled.

ARTICLE VI.
MANAGEMENT

Section 6.01 Authority of Manager.

(a) Except for situations in which the approval of any Member(s) is specifically required by this Agreement, (i) all management powers over the business and affairs of the Company shall be exclusively vested in the Corporation, as the sole managing member of the Company (the Corporation, in such capacity, the “**Manager**”) and (ii) the Manager shall conduct,

direct and exercise full control over all activities of the Company. The Manager shall be the “manager” of the Company for the purposes of the Delaware Act. Except as otherwise expressly provided for herein and subject to the other provisions of this Agreement, the Members hereby consent to the exercise by the Manager of all such powers and rights conferred on the Members by the Delaware Act with respect to the management and control of the Company. Any vacancies in the position of Manager shall be filled in accordance with Section 6.04.

(b) The day-to-day business and operations of the Company shall be overseen and implemented by officers of the Company (each, an “**Officer**” and collectively, the “**Officers**”), subject to the limitations imposed by the Manager. An Officer may, but need not, be a Member. Each Officer shall be appointed by the Manager and shall hold office until his or her successor shall be duly designated and shall qualify or until his or her death or until he shall resign or shall have been removed in the manner hereinafter provided. Any one Person may hold more than one office. Subject to the other provisions in this Agreement (including in Section 6.07 below), the salaries or other compensation, if any, of the Officers of the Company shall be fixed from time to time by the Manager. The authority and responsibility of the Officers shall include, but not be limited to, such duties as the Manager may, from time to time, delegate to them and the carrying out of the Company’s business and affairs on a day-to-day basis. The existing Officers of the Company as of the Effective Time shall remain in their respective positions and shall be deemed to have been appointed by the Manager. All Officers shall be, and shall be deemed to be, officers and employees of the Company. An Officer may also perform one or more roles as an officer of the Manager.

(c) The Manager shall have the power and authority to effectuate the sale, lease, transfer, exchange or other disposition of any, all or substantially all of the assets of the Company (including the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Company) or the merger, consolidation, reorganization or other combination of the Company with or into another entity.

Section 6.02 Actions of the Manager. The Manager may act through any Officer or through any other Person or Persons to whom authority and duties have been delegated pursuant to Section 6.07.

Section 6.03 Resignation; No Removal. The Manager may resign at any time by giving written notice to the Members. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Members, and the acceptance of the resignation shall not be necessary to make it effective. For the avoidance of doubt, the Members have no right under this Agreement to remove or replace the Manager.

Section 6.04 Vacancies. Vacancies in the position of Manager occurring for any reason shall be filled by the Corporation (or, if the Corporation has ceased to exist without any successor or assign, then by the holders of a majority in interest of the voting capital stock of the Corporation immediately prior to such cessation). For the avoidance of doubt, the Members have no right under this Agreement to fill any vacancy in the position of Manager.

Section 6.05 Transactions Between Company and Manager. The Manager may cause the Company to contract and deal with the Manager, or any Affiliate of the Manager, *provided* such contracts and dealings are on terms comparable to and competitive with those available to the Company from others dealing at arm's length or are approved by the Members and otherwise are permitted by the Credit Agreement. The Members hereby approve the IPO Common Unit Purchase Agreement.

Section 6.06 Reimbursement for Expenses. The Manager shall not be compensated for its services as Manager of the Company except as expressly provided in this Agreement. The Members acknowledge and agree that, upon consummation of the IPO, the Manager's Class A Common Stock will be publicly traded and therefore the Manager will have access to the public capital markets and that such status and the services performed by the Manager will inure to the benefit of the Company and all Members; therefore, the Manager shall be reimbursed by the Company for any reasonable out-of-pocket expenses incurred on behalf of the Company, including without limitation all fees, expenses and costs associated with the IPO and all fees, expenses and costs of being a public company (including without limitation public reporting obligations, proxy statements, stockholder meetings, stock exchange fees, transfer agent fees, SEC and FINRA filing fees and offering expenses) and maintaining its corporate existence. In the event that shares of Class A Common Stock are sold to underwriters in the IPO (or in any subsequent public offering) at a price per share that is lower than the price per share for which such shares of Class A Common Stock are sold to the public in the IPO (or in such subsequent public offering, as applicable) after taking into account underwriters' discounts or commissions and brokers' fees or commissions (such difference, the "**Discount**"), the Company shall reimburse the Manager for such Discount by treating such Discount as an additional Capital Contribution made by the Manager to the Company and increasing the Manager's Capital Account by the amount of such Discount. To the extent practicable, expenses incurred by the Manager on behalf of or for the benefit of the Company shall be billed directly to and paid by the Company and, if and to the extent any reimbursements to the Manager or any of its Affiliates by the Company pursuant to this Section 6.06 constitute gross income to such Person (as opposed to the repayment of advances made by such Person on behalf of the Company), such amounts shall be treated as "guaranteed payments" within the meaning of Code Section 707(c) and shall not be treated as distributions for purposes of computing the Members' Capital Accounts.

Section 6.07 Delegation of Authority. The Manager (a) may, from time to time, delegate to one or more Persons such authority and duties as the Manager may deem advisable, and (b) may assign titles (including, without limitation, chief executive officer, president, chief executive officer, chief financial officers, chief operating officer, vice president, secretary, assistant secretary, treasurer or assistant treasurer) and delegate certain authority and duties to such Persons as the same may be amended, restated or otherwise modified from time to time. Any number of titles may be held by the same individual. The salaries or other compensation, if any, of such agents of the Company shall be fixed from time to time by the Manager, subject to the other provisions in this Agreement.

Section 6.08 Limitation of Liability of Manager.

(a) Except as otherwise provided herein or in an agreement entered into by such Person and the Company, neither the Manager nor any of the Manager's Affiliates shall be liable

to the Company or to any Member that is not the Manager for any act or omission performed or omitted by the Manager in its capacity as the sole managing member of the Company pursuant to authority granted to the Manager by this Agreement; *provided, however*, that, except as otherwise provided herein, such limitation of liability shall not apply to the extent the act or omission was attributable to the Manager's gross negligence, willful misconduct or knowing violation of Law or for any present or future breaches of any representations, warranties or covenants by the Manager or its Affiliates contained herein or in the other agreements with the Company. The Manager may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and shall not be responsible for any misconduct or negligence on the part of any such agent (so long as such agent was selected in good faith and with reasonable care). The Manager shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by the Manager in good faith reliance on such advice shall in no event subject the Manager to liability to the Company or any Member that is not the Manager.

(b) Whenever this Agreement or any other agreement contemplated herein provides that the Manager shall act in a manner which is, or provide terms which are, "fair and reasonable" to the Company or any Member that is not the Manager, the Manager shall determine such appropriate action or provide such terms considering, in each case, the relative interests of each party to such agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable United States generally accepted accounting practices or principles.

(c) Whenever in this Agreement or any other agreement contemplated herein, the Manager is permitted or required to take any action or to make a decision in its "sole discretion" or "discretion," with "complete discretion" or under a grant of similar authority or latitude, the Manager shall be entitled to consider such interests and factors as it desires, including its own interests, and shall, to the fullest extent permitted by applicable Law, have no duty or obligation to give any consideration to any interest of or factors affecting the Company or other Members.

(d) Whenever in this Agreement the Manager is permitted or required to take any action or to make a decision in its "good faith" or under another express standard, the Manager shall act under such express standard and, to the extent permitted by applicable Law, shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein, and, notwithstanding anything contained herein to the contrary, so long as the Manager acts in good faith, the resolution, action or terms so made, taken or provided by the Manager shall not constitute a breach of this Agreement or any other agreement contemplated herein or impose liability upon the Manager or any of the Manager's Affiliates.

Section 6.09 Investment Company Act. The Manager shall use its best efforts to ensure that the Company shall not be subject to registration as an investment company pursuant to the Investment Company Act.

Section 6.10 Outside Activities of the Manager. The Manager shall not, directly or indirectly, enter into or conduct any business or operations, other than in connection with (a) the ownership, acquisition and disposition of Common Units, (b) the management of the business

and affairs of the Company and its Subsidiaries, (c) the operation of the Manager as a reporting company with a class (or classes) of securities registered under Section 12 of the Exchange Act and listed on a securities exchange, (d) the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, (e) financing or refinancing of any type related to the Company, its Subsidiaries or their assets or activities, and (f) such activities as are incidental to the foregoing; *provided, however*, that, except as otherwise provided herein, the net proceeds of any financing raised by the Manager pursuant to the preceding clauses (d) and (e) shall be made available to the Company, whether as Capital Contributions, loans or otherwise, as appropriate, and, *provided further*, that the Manager may, in its sole and absolute discretion, from time to time hold or acquire assets in its own name or otherwise other than through the Company and its Subsidiaries so long as the Manager takes commercially reasonable measures to ensure that the economic benefits and burdens of such assets are otherwise vested in the Company or its Subsidiaries, through assignment, mortgage loan or otherwise or, if it is not commercially reasonable to vest such economic interests in the Company or any of its Subsidiaries, the Members shall negotiate in good faith to amend this Agreement to reflect such activities and the direct ownership of assets by the Manager. Nothing contained herein shall be deemed to prohibit the Manager from executing any guarantee of indebtedness of the Company or its Subsidiaries.

ARTICLE VII. RIGHTS AND OBLIGATIONS OF MEMBERS

Section 7.01 Limitation of Liability and Duties of Members.

(a) Except as provided in this Agreement or in the Delaware Act, no Member (including without limitation, the Manager) shall be obligated personally for any debts, obligation or liability solely by reason of being a Member or acting as the Manager of the Company. Notwithstanding anything contained herein to the contrary, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the Delaware Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

(b) In accordance with the Delaware Act and the laws of the State of Delaware, a Member may, under certain circumstances, be required to return amounts previously distributed to such Member. It is the intent of the Members that no Distribution to any Member pursuant to Article IV shall be deemed a return of money or other property paid or distributed in violation of the Delaware Act. The payment of any such money or Distribution of any such property to a Member shall be deemed to be a compromise within the meaning of Section 18-502(b) of the Delaware Act, and, to the fullest extent permitted by Law, any Member receiving any such money or property shall not be required to return any such money or property to the Company or any other Person. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of any other Member.

(c) Notwithstanding any other provision of this Agreement (subject to Section 6.08 with respect to the Manager), to the extent that, at law or in equity, any Member (or any Member's Affiliate or any manager, managing member, general partner, director, officer,

employee, agent, fiduciary or trustee of any Member or of any Affiliate of a Member) has duties (including fiduciary duties) to the Company, to the Manager, to another Member, to any Person who acquires an interest in a Company Interest or to any other Person bound by this Agreement, all such duties (including fiduciary duties) are hereby eliminated, to the fullest extent permitted by law, and replaced with the duties or standards expressly set forth herein, if any. The elimination of duties (including fiduciary duties) to the Company, the Manager, each of the Members, each other Person who acquires an interest in a Company Interest and each other Person bound by this Agreement and replacement thereof with the duties or standards expressly set forth herein, if any, are approved by the Company, the Manager, each of the Members, each other Person who acquires an interest in a Company Interest and each other Person bound by this Agreement.

Section 7.02 Lack of Authority. No Member, other than the Manager or a duly appointed Officer, in each case in its capacity as such, has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company or to make any expenditure on behalf of the Company. The Members hereby consent to the exercise by the Manager of the powers conferred on them by Law and this Agreement.

Section 7.03 No Right of Partition. No Member, other than the Manager, shall have the right to seek or obtain partition by court decree or operation of Law of any Company property, or the right to own or use particular or individual assets of the Company.

Section 7.04 Indemnification.

(a) Subject to Section 5.06, the Company hereby agrees to indemnify and hold harmless any Person (each an “**Indemnified Person**”) to the fullest extent permitted under the Delaware Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Company is providing immediately prior to such amendment), against all expenses, liabilities and losses (including attorneys’ fees, judgments, fines, excise taxes or penalties) reasonably incurred or suffered by such Person (or one or more of such Person’s Affiliates) by reason of the fact that such Person is or was a Member or is or was serving as the Manager, Officer, employee or other agent of the Company or is or was serving at the request of the Company as a manager, officer, director, principal, member, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise; *provided, however*, that no Indemnified Person shall be indemnified for any expenses, liabilities and losses suffered that are attributable to such Indemnified Person’s or its Affiliates’ gross negligence, willful misconduct or knowing violation of Law or for any present or future breaches of any representations, warranties or covenants by such Indemnified Person or its Affiliates contained herein or in the other agreements with the Company. Expenses, including attorneys’ fees, incurred by any such Indemnified Person in defending a proceeding shall be paid by the Company in advance of the final disposition of such proceeding, including any appeal therefrom, upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the Company.

(b) The right to indemnification and the advancement of expenses conferred in this Section 7.04 shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, agreement, bylaw, action by the Manager or otherwise.

(c) The Company shall maintain directors' and officers' liability insurance, or substantially equivalent insurance, at its expense, to protect any Indemnified Person (and the investment funds, if any, they represent) against any expense, liability or loss described in Section 7.04(a) whether or not the Company would have the power to indemnify such Indemnified Person against such expense, liability or loss under the provisions of this Section 7.04. The Company shall use its commercially reasonable efforts to purchase and maintain property, casualty and liability insurance in types and at levels customary for companies of similar size engaged in similar lines of business, as determined in good faith by the Manager, and the Company shall use its commercially reasonable efforts to purchase directors' and officers' liability insurance (including employment practices coverage) with a carrier and in an amount determined necessary or desirable as determined in good faith by the Manager.

(d) Notwithstanding anything contained herein to the contrary (including in this Section 7.04), the Company agrees that any indemnification and advancement of expenses available to any current or former Indemnified Person from any investment fund that is an Affiliate of the Company who served as a director of the Company or as a Member of the Company by virtue of such Person's service as a member, director, partner or employee of any such fund prior to or following the Effective Time (any such Person, a "Sponsor Person") shall be secondary to the indemnification and advancement of expenses to be provided by the Company pursuant to this Section 7.04 which shall be provided out of and to the extent of Company assets only and no Member (unless such Member otherwise agrees in writing or is found in a final decision by a court of competent jurisdiction to have personal liability on account thereof) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity of the Company and the Company (i) shall be the primary indemnitor of first resort for such Sponsor Person pursuant to this Section 7.04 and (ii) shall be fully responsible for the advancement of all expenses and the payment of all damages or liabilities with respect to such Sponsor Person which are addressed by this Section 7.04.

(e) If this Section 7.04 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnified Person pursuant to this Section 7.04 to the fullest extent permitted by any applicable portion of this Section 7.04 that shall not have been invalidated and to the fullest extent permitted by applicable Law.

Section 7.05 Members Right to Act. For matters that require the approval of the Members, the Members shall act through meetings and written consents as described in paragraphs (a) and (b) below:

(a) Except as otherwise expressly provided by this Agreement, acts by the Members holding a majority of the Units, voting together as a single class, shall be the acts of the Members. Any Member entitled to vote at a meeting of Members or to express consent or dissent to Company action in writing without a meeting may authorize another person or persons

to act for it by proxy. An electronic mail, telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member shall (if stated thereon) be treated as a proxy executed in writing for purposes of this Section 7.05(a). No proxy shall be voted or acted upon after eleven months from the date thereof, unless the proxy provides for a longer period. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and that the proxy is coupled with an interest. Should a proxy designate two or more Persons to act as proxies, unless that instrument shall provide to the contrary, a majority of such Persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or, if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, the Company shall not be required to recognize such proxy with respect to such issue if such proxy does not specify how the votes that are the subject of such proxy are to be voted with respect to such issue.

(b) The actions by the Members permitted hereunder may be taken at a meeting called by the Manager or by the Members holding a majority of the Units entitled to vote on such matter on at least 120 hours' prior written notice to the other Members entitled to vote, which notice shall state the purpose or purposes for which such meeting is being called. The actions taken by the Members entitled to vote or consent at any meeting (as opposed to by written consent), however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, the Members entitled to vote or consent as to whom it was improperly held signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the Members entitled to vote or consent may be taken by vote of the Members entitled to vote or consent at a meeting or by written consent, so long as such consent is signed by Members having not less than the minimum number of Units that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Prompt notice of the action so taken, which shall state the purpose or purposes for which such consent is required and may be delivered via email, without a meeting shall be given to those Members entitled to vote or consent who have not consented in writing; *provided, however*, that the failure to give any such notice shall not affect the validity of the action taken by such written consent. Any action taken pursuant to such written consent of the Members shall have the same force and effect as if taken by the Members at a meeting thereof.

Section 7.06 Inspection Rights. The Company shall permit each Member and each of its designated representatives to (i) visit and inspect any of the properties of the Company and its Subsidiaries, all at reasonable times and upon reasonable notice, (ii) examine the corporate and financial records of the Company or any of its Subsidiaries and make copies thereof or extracts therefrom, (iii) consult with the managers, officers, employees and independent accountants of the Company or any of its Subsidiaries concerning the affairs, finances and accounts of the Company or any of its Subsidiaries. The presentation of an executed copy of this Agreement by any Member to the Company's independent accountants shall constitute the Company's permission to its independent accountants to participate in discussions with such Persons and their respective designated representatives.

ARTICLE VIII.
BOOKS, RECORDS, ACCOUNTING AND REPORTS, AFFIRMATIVE COVENANTS

Section 8.01 Records and Accounting. The Company shall keep, or cause to be kept, appropriate books and records with respect to the Company's business, including all books and records necessary to provide any information, lists and copies of documents required to be provided pursuant to Section 8.03 or pursuant to applicable Laws. All matters concerning (a) the determination of the relative amount of allocations and Distributions among the Members pursuant to Articles III and IV and (b) accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Manager, whose determination shall be final and conclusive as to all of the Members absent manifest clerical error.

Section 8.02 Fiscal Year. The Fiscal Year of the Company shall end on the last Wednesday in the month of December of each year or such other date as may be established by the Manager.

Section 8.03 Reports. The Company shall deliver or cause to be delivered, within ninety (90) days after the end of each Fiscal Year, to each Person who was a Member at any time during such Fiscal Year, all information reasonably necessary for the preparation of such Person's United States federal and applicable state income tax returns.

ARTICLE IX.
TAX MATTERS

Section 9.01 Preparation of Tax Returns. The Manager shall arrange for the preparation and timely filing of all tax returns required to be filed by the Company. On or before March 15, June 15, September 15, and December 15 of each Fiscal Year, the Company shall send to each Person who was a Member at any time during the prior quarter, an estimate of such Member's state tax apportionment information and allocations to the Members of taxable income, gains, losses, deductions and credits for the prior quarter, which estimate shall have been reviewed by the Company's outside tax accountants. In addition, no later than the later of (i) March 15 following the end of the prior Fiscal Year, and (ii) five (5) Business Days after the issuance of the final financial statement report for a Fiscal Year by the Company's auditors, the Company shall send to each Person who was a Member at any time during such Fiscal Year, a statement showing such Member's final state tax apportionment information and allocations to the Members of taxable income, gains, losses, deductions and credits for such Fiscal Year and a completed IRS Schedule K-1. Each Member shall notify the other Members upon receipt of any notice of tax examination of the Company by federal, state or local authorities. Subject to the terms and conditions of this Agreement, in its capacity as Tax Matters Partner, the Corporation shall have the authority to prepare the tax returns of the Company using such permissible methods and elections as it determines in its reasonable discretion, including without limitation the use of any permissible method under Section 706 of the Code for purposes of determining the varying Company Interests of its Members.

Section 9.02 Tax Elections. The Taxable Year shall be the Fiscal Year set forth in Section 8.02. The Company and any eligible Subsidiary shall make an election pursuant to

Section 754 of the Code, shall not thereafter revoke such election and shall make a new election pursuant to Section 754 to the extent necessary following any “termination” of the Company or the Subsidiary under Section 708 of the Code. Each Member will upon request supply any information reasonably necessary to give proper effect to any such elections.

Section 9.03 Tax Controversies. The Corporation is hereby designated the Tax Matters Partner within the meaning given to such term in Section 6231 of the Code (the Corporation, in such capacity, the “**Tax Matters Partner**”) and is authorized and required to represent the Company (at the Company’s expense) in connection with all examinations of the Company’s affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services reasonably incurred in connection therewith. Each Member agrees to cooperate with the Company and to do or refrain from doing any or all things reasonably requested by the Company with respect to the conduct of such proceedings. The Tax Matters Partners shall keep any 10% Member fully advised on a current basis of any contacts by or discussions with the tax authorities, and the 10% Members shall have the right to observe and participate through representatives of their own choosing (at their sole expense) in any tax proceedings. Notwithstanding the foregoing, the Tax Matters Partners shall not settle or otherwise compromise any issue in any such examination, audit or other proceeding without first obtaining approval of the Manager. Nothing herein shall diminish, limit or restrict the rights of any Member under Subchapter C, Chapter 63, Subtitle F of the Code (Code Sections 6221 et seq.).

ARTICLE X. RESTRICTIONS ON TRANSFER OF UNITS; PREEMPTIVE RIGHTS

Section 10.01 Transfers by Members. No holder of Units may Transfer any interest in any Units, except Transfers (a) pursuant to and in accordance with Section 10.02 or (b) approved in writing by the Manager. Notwithstanding the foregoing, “Transfer” shall not include an event that terminates the existence of a Member for income tax purposes (including, without limitation, a change in entity classification of a Member under Treasury Regulations Section 301.7701-3, termination of a partnership pursuant to Code Section 708(b)(1)(B), a sale of assets by, or liquidation of, a Member pursuant to an election under Code Sections 336 or 338, or merger, severance, or allocation within a trust or among sub-trusts of a trust that is a Member), but that does not terminate the existence of such Member under applicable state law (or, in the case of a trust that is a Member, does not terminate the trusteeship of the fiduciaries under such trust with respect to all the Company Interests of such trust that is a Member).

Section 10.02 Permitted Transfers. The restrictions contained in Section 10.01 shall not apply to any Transfer (each, a “**Permitted Transfer**”) pursuant to (i)(A) a Change of Control Transaction, (B) a Redemption or Exchange in accordance with Article XI hereof or (C) a Transfer by a Member to the Corporation or any of its Subsidiaries (ii) a Transfer by any Member to such Member’s spouse, any lineal ascendants or descendants or trusts or other entities in which such Member or Member’s spouse, lineal ascendants or descendants hold (and continue to hold while such trusts or other entities hold Units) 50% or more of such entity’s beneficial interests, (iii) pursuant to the laws of descent and distribution and (iv) a Transfer to a partner, shareholder, member or Affiliated investment fund of such Member; *provided, however*, that (A) the restrictions contained in this Agreement will continue to apply to Units after any

Permitted Transfer of such Units, and (B) in the case of the foregoing clauses (ii), (iii) and (iv), the transferees of the Units so Transferred shall agree in writing to be bound by the provisions of this Agreement and, the transferor will deliver a written notice to the Company and the Members, which notice will disclose in reasonable detail the identity of the proposed transferee. In the case of a Permitted Transfer by any Original Member of Common Units to a transferee in accordance with this Section 10.02, such Member (or any subsequent transferee of such Member) shall be required to also transfer the fraction of its remaining Class B Common Stock ownership corresponding to the proportion of such Member’s (or subsequent transferee’s) Common Units that were transferred in the transaction to such transferee. All Permitted Transfers are subject to the additional limitations set forth in Section 10.07(b).

Section 10.03 Restricted Units Legend. The Units have not been registered under the Securities Act and, therefore, in addition to the other restrictions on Transfer contained in this Agreement, cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is then available. To the extent such Units have been certificated, each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units (if such securities remain Units as defined herein after such Transfer) shall be stamped or otherwise imprinted with a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON [•], 2014, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THE THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF SSE HOLDINGS, LLC, AS MAY BE AMENDED AND MODIFIED FROM TIME TO TIME, AND SSE HOLDINGS, LLC RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH SECURITIES UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED WITH RESPECT TO ANY TRANSFER. A COPY OF SUCH CONDITIONS SHALL BE FURNISHED BY SSE HOLDINGS, LLC TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE.”

The Company shall imprint such legend on certificates (if any) evidencing Units. The legend set forth above shall be removed from the certificates (if any) evidencing any units which cease to be Units in accordance with the definition thereof.

Section 10.04 Transfer. Prior to Transferring any Units (other than pursuant to a Change of Control Transaction), the Transferring

Holder of Units shall cause the prospective Transferee to be bound by this Agreement as provided in Section 10.02 and any other agreements executed by the holders of Units and relating to such Units in the aggregate (collectively, the “ ***Other Agreements*** ”), and shall cause the prospective Transferee to execute and deliver to the Company and the other holders of Units counterparts of this Agreement and any applicable Other Agreements. Any Transfer or attempted Transfer of any Units in violation of any provision of this Agreement (including any prohibited indirect Transfers) (a) shall be void, and (b) the

Company shall not record such Transfer on its books or treat any purported Transferee of such Units as the owner of such securities for any purpose.

Section 10.05 Assignee's Rights.

(a) The Transfer of a Company Interest in accordance with this Agreement shall be effective as of the date of its assignment (assuming compliance with all of the conditions to such Transfer set forth herein), and such Transfer shall be shown on the books and records of the Company. Profits, Losses and other Company items shall be allocated between the transferor and the Assignee according to Code Section 706, using any permissible method as determined in the reasonable discretion of the Manager. Distributions made before the effective date of such Transfer shall be paid to the transferor, and Distributions made after such date shall be paid to the Assignee.

(b) Unless and until an Assignee becomes a Member pursuant to Article XII, the Assignee shall not be entitled to any of the rights granted to a Member hereunder or under applicable Law, other than the rights granted specifically to Assignees pursuant to this Agreement; *provided, however*, that, without relieving the transferring Member from any such limitations or obligations as more fully described in Section 10.06, such Assignee shall be bound by any limitations and obligations of a Member contained herein that a Member would be bound on account of the Assignee's Company Interest (including the obligation to make Capital Contributions on account of such Company Interest).

Section 10.06 Assignor's Rights and Obligations. Any Member who shall Transfer any Company Interest in a manner in accordance with this Agreement shall cease to be a Member with respect to such Units or other interest and shall no longer have any rights or privileges, or, except as set forth in this Section 10.06, duties, liabilities or obligations, of a Member with respect to such Units or other interest (it being understood, however, that the applicable provisions of Sections 6.08 and 7.04 shall continue to inure to such Person's benefit), except that unless and until the Assignee (if not already a Member) is admitted as a Substituted Member in accordance with the provisions of Article XII (the "**Admission Date**"), (i) such assigning Member shall retain all of the duties, liabilities and obligations of a Member with respect to such Units or other interest, and (ii) the Manager may, in its sole discretion, reinstate all or any portion of the rights and privileges of such Member with respect to such Units or other interest for any period of time prior to the Admission Date. Nothing contained herein shall relieve any Member who Transfers any Units or other interest in the Company from any liability of such Member to the Company with respect to such Company Interest that may exist on the Admission Date or that is otherwise specified in the Delaware Act and incorporated into this Agreement or for any liability to the Company or any other Person for any materially false statement made by such Member (in its capacity as such) or for any present or future breaches of any representations, warranties or covenants by such Member (in its capacity as such) contained herein or in the other agreements with the Company.

Section 10.07 Overriding Provisions.

(a) Any Transfer in violation of this Article X shall be null and void ab initio, and the provisions of Sections 10.05 and 10.06 shall not apply to any such Transfers. For the avoidance

of doubt, any Person to whom a Transfer is made or attempted in violation of this Article X shall not become a Member, shall not be entitled to vote on any matters coming before the Members and shall not have any other rights in or with respect to any rights of a Member of the Company. The approval of any Transfer in any one or more instances shall not limit or waive the requirement for such approval in any other or future instance. The Manager shall promptly amend the Schedule of Members to reflect any Permitted Transfer pursuant to this Article X.

(b) Notwithstanding anything contained herein to the contrary (including, for the avoidance of doubt, the provisions of Section 10.01 and Article XI and Article XII), in no event shall any Member Transfer any Units to the extent such Transfer would:

(i) result in the violation of the Securities Act, or any other applicable federal, state or foreign Laws;

(ii) cause an assignment under the Investment Company Act;

(iii) in the reasonable determination of the Manager, be a violation of or a default (or an event that, with notice or the lapse of time or both, would constitute a default) under, or result in an acceleration of any indebtedness under, any promissory note, mortgage, loan agreement, indenture or similar instrument or agreement to which the Company or the Manager is a party; *provided* that (x) the payee or creditor to whom the Company or the Manager owes such obligation is not an affiliate of the Company or the Manager and (y) such indebtedness, individually or in the aggregate, has an aggregate principal amount then outstanding that is greater than \$25,000,000;

(iv) cause the Company to lose its status as a partnership for federal income tax purposes or, without limiting the generality of the foregoing, such Transfer was effected on or through an “established securities market” or a “secondary market or the substantial equivalent thereof,” as such terms are used in Section 1.7704-1 of the Treasury Regulations;

(v) be a Transfer to a Person who is not legally competent or who has not achieved his or her majority under applicable Law (excluding trusts for the benefit of minors);

(vi) cause the Company to be treated as a “publicly traded partnership” or to be taxed as a corporation pursuant to Section 7704 of the Code or successor provision of the Code; or

(vii) result in the Company having more than one hundred (100) partners, within the meaning of Treasury Regulations Section 1.7704-1(h)(1) (determined pursuant to the rules of Treasury Regulations Section 1.7704-1(h)(3)).

ARTICLE XI.
REDEMPTION AND EXCHANGE RIGHTS

Section 11.01 Redemption Right of a Member.

(a) Each Member (other than the Corporation) shall be entitled to cause the Company to redeem (a “ **Redemption** ”) its Common Units (the “ **Redemption Right** ”) at any time following the expiration of any contractual lock-up period relating to the shares of the Corporation that may be applicable to such Member. A Member desiring to exercise its Redemption Right (the “ **Redeeming Member** ”) shall exercise such right by giving written notice (the “ **Redemption Notice** ”) to the Company with a copy to the Corporation. The Redemption Notice shall specify the number of Common Units (the “ **Redeemed Units** ”) that the Redeeming Member intends to have the Company redeem and a date, not less than seven (7) Business Days nor more than ten (10) Business Days after delivery of such Redemption Notice (unless and to the extent that the Manager in its sole discretion agrees in writing to waive such time periods), on which exercise of the Redemption Right shall be completed (the “ **Redemption Date** ”); *provided* that the Company, the Corporation and the Redeeming Member may change the number of Redeemed Units and/or the Redemption Date specified in such Redemption Notice to another number and/or date by mutual agreement signed in writing by each of them; *provided further* that a Redemption Notice may be conditioned on the closing of an underwritten distribution of the shares of Class A Common Stock that may be issued in connection with such proposed Redemption. Unless the Redeeming Member timely has delivered a Retraction Notice as provided in Section 11.01(b) or has revoked or delayed a Redemption as provided in Section 11.01(c), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) the Redeeming Member shall transfer and surrender the Redeemed Units to the Company, free and clear of all liens and encumbrances, and (ii) the Company shall (x) cancel the Redeemed Units, (y) transfer to the Redeeming Member the consideration to which the Redeeming Member is entitled under Section 11.01(b), and (z), if the Units are certificated, issue to the Redeeming Member a certificate for a number of Common Units equal to the difference (if any) between the number of Common Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (i) of this Section 11.01(a) and the Redeemed Units.

(b) In exercising its Redemption Right, a Redeeming Member shall be entitled to receive the Share Settlement or the Cash Settlement; *provided* that the Corporation shall have the option as provided in Section 11.02 and subject to Section 11.01(d) to select whether the redemption payment is made by means of a Share Settlement or a Cash Settlement. Within three (3) Business Days of delivery of the Redemption Notice, the Corporation shall give written notice (the “ **Contribution Notice** ”) to the Company (with a copy to the Redeeming Member) of its intended settlement method; *provided* that if the Corporation does not timely deliver a Contribution Notice, the Corporation shall be deemed to have elected the Share Settlement method. If the Corporation elects the Cash Settlement method, the Redeeming Member may retract its Redemption Notice by giving written notice (the “ **Retraction Notice** ”) to the Company (with a copy to the Corporation) within two (2) Business Days of delivery of the Contribution Notice. The timely delivery of a Retraction Notice shall terminate all of the Redeeming Member’s, Company’s and the Corporation’s rights and obligations under this Section 11.01 arising from the Redemption Notice.

(c) In the event the Corporation elects a Share Settlement in connection with a Redemption, a Redeeming Member shall be entitled to revoke its Redemption Notice or delay the consummation of a Redemption if any of the following conditions exists: (i) any registration statement pursuant to which the resale of the Class A Common Stock to be registered for such Redeeming Member at or immediately following the consummation of the Redemption shall have ceased to be effective pursuant to any action or inaction by the SEC or no such resale registration statement has yet become effective; (ii) the Corporation shall have failed to cause any related prospectus to be supplemented by any required prospectus supplement necessary to effect such Redemption; (iii) the Corporation shall have exercised its right to defer, delay or suspend the filing or effectiveness of a registration statement and such deferral, delay or suspension shall affect the ability of such Redeeming Member to have its Class A Common Stock registered at or immediately following the consummation of the Redemption; (iv) the Corporation shall have disclosed to such Redeeming Member any material non-public information concerning the Corporation, the receipt of which results in such Redeeming Member being prohibited or restricted from selling Class A Common Stock at or immediately following the Redemption without disclosure of such information (and the Corporation does not permit disclosure); (v) any stop order relating to the registration statement pursuant to which the Class A Common Stock was to be registered by such Redeeming Member at or immediately following the Redemption shall have been issued by the SEC; (vi) there shall have occurred a material disruption in the securities markets generally or in the market or markets in which the Class A Common Stock is then traded; (vii) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Entity that restrains or prohibits the Redemption; (viii) the Corporation shall have failed to comply in all material respects with its obligations under the Registration Rights Agreement, and such failure shall have affected the ability of such Redeeming Member to consummate the resale of Class A Common Stock to be received upon such redemption pursuant to an effective registration statement; (ix) the Redemption Date would occur three (3) Business Days or less prior to, or during, a Black-Out Period; *provided further*, that in no event shall the Redeeming Member seeking to revoke its Redemption Notice or delay the consummation of such Redemption and relying on any of the matters contemplated in clauses (i) through (ix) above have controlled or intentionally materially influenced any facts, circumstances, or Persons in connection therewith (except in the good faith performance of his or her duties as an officer or director of the Corporation) in order to provide such Redeeming Member with a basis for such delay or revocation. If a Redeeming Member delays the consummation of a Redemption pursuant to this Section 11.01(c), the Redemption Date shall occur on the fifth Business Day following the date on which the conditions giving rise to such delay cease to exist (or such earlier day as the Corporation, the Company and such Redeeming Member may agree in writing).

(d) The number of shares of Class A Common Stock or the Redeemed Units Equivalent that a Redeeming Member is entitled to receive under Section 11.01(b) (whether through a Share Settlement or Cash Settlement) shall not be adjusted on account of any Distributions previously made with respect to the Redeemed Units or dividends previously paid with respect to Class A Common Stock; *provided, however*, that if a Redeeming Member causes the Company to redeem Redeemed Units and the Redemption Date occurs subsequent to the record date for any Distribution with respect to the Redeemed Units but prior to payment of such Distribution, the Redeeming Member shall be entitled to receive such Distribution with respect

to the Redeemed Units on the date that it is made notwithstanding that the Redeeming Member transferred and surrendered the Redeemed Units to the Company prior to such date.

(e) In the event of a reclassification or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, then in exercising its Redemption Right a Redeeming Member shall be entitled to receive the amount of such security that the Redeeming Member would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification or other similar transaction.

Section 11.02 Election and Contribution of the Corporation. In connection with the exercise of a Redeeming Member's Redemption Rights under Section 11.01(a), the Corporation shall contribute to the Company the consideration the Redeeming Member is entitled to receive under Section 11.01(b). The Corporation, at its option, shall determine whether to contribute, pursuant to Section 11.01(b), the Share Settlement or the Cash Settlement. Unless the Redeeming Member has timely delivered a Retraction Notice as provided in Section 11.01(b), or has revoked or delayed a Redemption as provided in Section 11.01(c), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) the Corporation shall make its Capital Contribution to the Company (in the form of the Share Settlement or the Cash Settlement) required under this Section 11.02, and (ii) the Company shall issue to the Corporation a number of Common Units equal to the number of Redeemed Units surrendered by the Redeeming Member. Notwithstanding any other provisions of this Agreement to the contrary, in the event that the Corporation elects a Cash Settlement, the Corporation shall only be obligated to contribute to the Company an amount in respect of such Cash Settlement equal to the net proceeds (after deduction of any underwriters' discounts or commissions and brokers' fees or commissions) from the sale by the Corporation of a number of shares of Class A Common Stock equal to the number of Redeemed Units to be redeemed with such Cash Settlement *provided* that the Corporation's Capital Account shall be increased by an amount equal to any Discount relating to such sale of shares of Class A Common Stock in accordance with Section 6.06. The timely delivery of a Retraction Notice shall terminate all of the Company's and the Corporation's rights and obligations under this Section 11.02 arising from the Redemption Notice.

Section 11.03 Exchange Right of the Corporation.

(a) Notwithstanding anything to the contrary in this Article XI, the Corporation may, in its sole and absolute discretion, elect to effect on the Redemption Date the exchange of Redeemed Units for the Share Settlement or Cash Settlement, as the case may be, through a direct exchange of such Redeemed Units and such consideration between the Redeeming Member and the Corporation (a "**Direct Exchange**"). Upon such Direct Exchange pursuant to this Section 11.03, the Corporation shall acquire the Redeemed Units and shall be treated for all purposes of this Agreement as the owner of such Units.

(b) The Corporation may, at any time prior to a Redemption Date, deliver written notice (an "**Exchange Election Notice**") to the Company and the Redeeming Member setting forth its election to exercise its right to consummate a Direct Exchange; *provided* that such election does not prejudice the ability of the parties to consummate a Redemption or Direct

Exchange on the Redemption Date. An Exchange Election Notice may be revoked by the Corporation at any time; *provided* that any such revocation does not prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. The right to consummate a Direct Exchange in all events shall be exercisable for all the Redeemed Units that would have otherwise been subject to a Redemption. Except as otherwise provided by this Section 11.03, a Direct Exchange shall be consummated pursuant to the same timeframe and in the same manner as the relevant Redemption would have been consummated if the Corporation had not delivered an Exchange Election Notice.

Section 11.04 Reservation of shares of Class A Common Stock; Listing; Certificate of the Corporation. At all times the Corporation shall reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Redemption or Direct Exchange, such number of shares of Class A Common Stock as shall be issuable upon any such Redemption or Direct Exchange pursuant to Share Settlements; *provided* that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such Redemption or Direct Exchange by delivery of purchased Class A Common Stock (which may or may not be held in the treasury of the Corporation) or the delivery of cash pursuant to a Cash Settlement. The Corporation shall deliver Class A Common Stock that has been registered under the Securities Act with respect to any Redemption or Direct Exchange to the extent a registration statement is effective and available for such shares. The Corporation shall use its commercially reasonable efforts to list the Class A Common Stock required to be delivered upon any such Redemption or Direct Exchange prior to such delivery upon each national securities exchange upon which the outstanding shares of Class A Common Stock are listed at the time of such Redemption or Direct Exchange (it being understood that any such shares may be subject to transfer restrictions under applicable securities Laws). The Corporation covenants that all Class A Common Stock issued upon a Redemption or Direct Exchange will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this Article XI shall be interpreted and applied in a manner consistent with the corresponding provisions of the Corporation's certificate of incorporation.

Section 11.05 Effect of Exercise of Redemption or Exchange Right. This Agreement shall continue notwithstanding the consummation of a Redemption or Direct Exchange and all governance or other rights set forth herein shall be exercised by the remaining Members and the Redeeming Member (to the extent of such Redeeming Member's remaining interest in the Company). No Redemption or Direct Exchange shall relieve such Redeeming Member of any prior breach of this Agreement.

Section 11.06 Tax Treatment. Unless otherwise required by applicable Law, the parties hereto acknowledge and agree a Redemption or a Direct Exchange, as the case may be, shall be treated as a direct exchange between the Corporation and the Redeeming Member for U.S. federal and applicable state and local income tax purposes.

ARTICLE XII. ADMISSION OF MEMBERS

Section 12.01 Substituted Members. Subject to the provisions of Article X hereof, in connection with the Permitted Transfer of a Company Interest hereunder, the transferee shall

become a substituted Member (“ ***Substituted Member*** ”) on the effective date of such Transfer, which effective date shall not be earlier than the date of compliance with the conditions to such Transfer, and such admission shall be shown on the books and records of the Company.

Section 12.02 Additional Members . Subject to the provisions of Article X hereof, any Person that is not an Original Member may be admitted to the Company as an additional Member (any such Person, an “ ***Additional Member*** ”) only upon furnishing to the Manager (a) counterparts of this Agreement and any applicable Other Agreements and (b) such other documents or instruments as may be reasonably necessary or appropriate to effect such Person’s admission as a Member (including entering into such documents as the Manager may deem appropriate in its reasonable discretion). Such admission shall become effective on the date on which the Manager determines in its reasonable discretion that such conditions have been satisfied and when any such admission is shown on the books and records of the Company.

ARTICLE XIII.
WITHDRAWAL AND RESIGNATION; TERMINATION OF RIGHTS

Section 13.01 Withdrawal and Resignation of Members . No Member shall have the power or right to withdraw or otherwise resign as a Member from the Company prior to the dissolution and winding up of the Company pursuant to Article XIV . Any Member, however, that attempts to withdraw or otherwise resign as a Member from the Company without the prior written consent of the Manager upon or following the dissolution and winding up of the Company pursuant to Article XIV , but prior to such Member receiving the full amount of Distributions from the Company to which such Member is entitled pursuant to Article XIV , shall be liable to the Company for all damages (including all lost profits and special, indirect and consequential damages) directly or indirectly caused by the withdrawal or resignation of such Member. Upon a Transfer of all of a Member’s Units in a Transfer permitted by this Agreement, subject to the provisions of Section 10.06 , such Member shall cease to be a Member.

ARTICLE XIV.
DISSOLUTION AND LIQUIDATION

Section 14.01 Dissolution . The Company shall not be dissolved by the admission of Additional Members or Substituted Members or the attempted withdrawal or resignation of a Member. The Company shall dissolve, and its affairs shall be wound up, upon:

- (a) the unanimous decision of the Manager together with the Members that then hold Voting Units to dissolve the Company;
 - (b) a Change of Control Transaction that is not approved by the Majority Members;
 - (c) a dissolution of the Company under Section 18-801(4) of the Delaware Act; or
 - (d) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Delaware Act.
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Except as otherwise set forth in this Article XIV, the Company is intended to have perpetual existence. An Event of Withdrawal shall not cause a dissolution of the Company and the Company shall continue in existence subject to the terms and conditions of this Agreement.

Section 14.02 Liquidation and Termination. On dissolution of the Company, the Manager shall act as liquidator or may appoint one or more Persons as liquidator. The liquidators shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Delaware Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidators shall continue to operate the Company properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidators are as follows:

(a) as promptly as possible after dissolution and again after final liquidation, the liquidators shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(b) the liquidators shall cause the notice described in the Delaware Act to be mailed to each known creditor of and claimant against the Company in the manner described thereunder;

(c) the liquidators shall pay, satisfy or discharge from Company funds, or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidators may reasonably determine): first, all expenses incurred in liquidation; and second, all of the debts, liabilities and obligations of the Company; and

(d) all remaining assets of the Company shall be distributed to the Members in accordance with Article IV by the end of the Taxable Year during which the liquidation of the Company occurs (or, if later, by ninety (90) days after the date of the liquidation). The distribution of cash and/or property to the Members in accordance with the provisions of this Section 14.02 and Section 14.03 below constitutes a complete return to the Members of their Capital Contributions, a complete distribution to the Members of their interest in the Company and all the Company's property and constitutes a compromise to which all Members have consented within the meaning of the Delaware Act. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

Section 14.03 Deferment; Distribution in Kind. Notwithstanding the provisions of Section 14.02, but subject to the order of priorities set forth therein, if upon dissolution of the Company the liquidators determine that an immediate sale of part or all of the Company's assets would be impractical or would cause undue loss (or would otherwise not be beneficial) to the Members, the liquidators may, in their sole discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy Company liabilities (other than loans to the Company by Members) and reserves. Subject to the order of priorities set forth in Section 14.02, the liquidators may, in their sole discretion, distribute to the Members, in lieu of cash, either (a) all or any portion of such remaining Company assets in-kind in accordance with the provisions of Section 14.02(d), (b) as tenants in common and in accordance with the provisions of Section

14.02(d), undivided interests in all or any portion of such Company assets or (c) a combination of the foregoing. Any such Distributions in kind shall be subject to (y) such conditions relating to the disposition and management of such assets as the liquidators deem reasonable and equitable and (z) the terms and conditions of any agreements governing such assets (or the operation thereof or the holders thereof) at such time. Any Company assets distributed in kind will first be written up or down to their Fair Market Value, thus creating Profit or Loss (if any), which shall be allocated in accordance with Article V. The liquidators shall determine the Fair Market Value of any property distributed in accordance with the valuation procedures set forth in Article XV.

Section 14.04 Cancellation of Certificate. On completion of the distribution of Company assets as provided herein, the Company is terminated (and the Company shall not be terminated prior to such time), and the Manager (or such other Person or Persons as the Delaware Act may require or permit) shall file a certificate of cancellation with the Secretary of State of Delaware, cancel any other filings made pursuant to this Agreement that are or should be canceled and take such other actions as may be necessary to terminate the Company. The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 14.04.

Section 14.05 Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Sections 14.02 and 14.03 in order to minimize any losses otherwise attendant upon such winding up.

Section 14.06 Return of Capital. The liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from Company assets).

ARTICLE XV. VALUATION

Section 15.01 Determination. “**Fair Market Value**” of a specific Company asset will mean the amount which the Company would receive in an all-cash sale of such asset in an arms-length transaction with a willing unaffiliated third party, with neither party having any compulsion to buy or sell, consummated on the day immediately preceding the date on which the event occurred which necessitated the determination of the Fair Market Value (and after giving effect to any transfer taxes payable in connection with such sale), as such amount is determined by the Manager (or, if pursuant to Section 14.02, the liquidators) in its good faith judgment using all factors, information and data it deems to be pertinent.

Section 15.02 Dispute Resolution. If any Member or Members dispute the accuracy of any determination of Fair Market Value in accordance with Section 15.01, and the Manager and such Member(s) are unable to agree on the determination of the Fair Market Value of any asset of the Company, the Manager and such Member(s) shall each select a nationally recognized investment banking firm experienced in valuing securities of closely-held companies such as the Company in the Company’s industry (the “**Appraisers**”), who shall each determine the Fair Market Value of the asset or the Company (as applicable) in accordance with the provisions of

Section 15.01. The Appraisers shall be instructed to give written notice of their determination of the Fair Market Value of the asset or the Company (as applicable) within thirty (30) days of their appointment as Appraisers. If Fair Market Value as determined by an Appraiser is higher than Fair Market Value as determined by the other Appraiser by 10% or more, and the Manager and such Member(s) do not otherwise agree on a Fair Market Value, the original Appraisers shall designate a third Appraiser meeting the same criteria used to select the original two. If Fair Market Value as determined by an Appraiser is within 10% of the Fair Market Value as determined by the other Appraiser (but not identical), and the Manager and such Member(s) do not otherwise agree on a Fair Market Value, the Manager shall select the Fair Market Value of one of the Appraisers. The fees and expenses of the Appraisers shall be borne by the Company.

ARTICLE XVI. GENERAL PROVISIONS

Section 16.01 Power of Attorney.

(a) Each Member who is an individual hereby constitutes and appoints the Manager (or the liquidator, if applicable) with full power of substitution, as his or her true and lawful agent and attorney-in-fact, with full power and authority in his, her or its name, place and stead, to:

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) this Agreement, all certificates and other instruments and all amendments thereof which the Manager deems appropriate or necessary to form, qualify, or continue the qualification of, the Company as a limited liability company in the State of Delaware and in all other jurisdictions in which the Company may conduct business or own property; (B) all instruments which the Manager deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (C) all conveyances and other instruments or documents which the Manager deems appropriate or necessary to reflect the dissolution and liquidation of the Company pursuant to the terms of this Agreement, including a certificate of cancellation; and (D) all instruments relating to the admission, withdrawal or substitution of any Member pursuant to Article XII or XIII; and

(ii) sign, execute, swear to and acknowledge all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the reasonable judgment of the Manager, to evidence, confirm or ratify any vote, consent, approval, agreement or other action which is made or given by the Members hereunder or is consistent with the terms of this Agreement, in the

reasonable judgment of the Manager, to effectuate the terms of this Agreement.

(b) The foregoing power of attorney is irrevocable and coupled with an interest, and shall survive the death, disability, incapacity, dissolution, bankruptcy, insolvency or termination of any Member who is an individual and the transfer of all or any portion of his, her or its Company Interest and shall extend to such Member's heirs, successors, assigns and personal representatives.

Section 16.02 Confidentiality. The Manager and each of the Members agree to hold the Company's Confidential Information in confidence and may not use such information except in furtherance of the business of the Company or as otherwise authorized separately in writing by the Manager. “ **Confidential Information** ” as used herein includes, but is not limited to, ideas, financial product structuring, business strategies, innovations and materials, all aspects of the Company's business plan, proposed operation and products, corporate structure, financial and organizational information, analyses, proposed partners, software code and system and product designs, employees and their identities, equity ownership, the methods and means by which the Company plans to conduct its business, all trade secrets, trademarks, tradenames and all intellectual property associated with the Company's business. With respect to the Manager and each Member, Confidential Information does not include information or material that: (a) is rightfully in the possession of the Manager or each Member at the time of disclosure by the Company; (b) before or after it has been disclosed to the Manager or each Member by the Company, becomes part of public knowledge, not as a result of any action or inaction of the Manager or such Member, respectively, in violation of this Agreement; (c) is approved for release by written authorization of the CEO of the Company or of the Corporation; (d) is disclosed to the Manager or such Member or their representatives by a third party not, to the knowledge of the Manager or such Member, respectively, in violation of any obligation of confidentiality owed to the Company with respect to such information; or (e) is or becomes independently developed by the Manager or such Member or their respective representatives without use or reference to the Confidential Information.

Section 16.03 Amendments. This Agreement may be amended or modified upon the consent of the Majority Members; provided, that, solely for purposes of this Section 16.03, the second reference to “a majority” in the definition of Majority Members shall be deemed to be “thirty-three percent (33%) or more”. Notwithstanding the foregoing, no amendment or modification (a) to this Section 16.03 may be made without the prior written consent of the Manager and each of the Members, (b) to any of the terms and conditions of this Agreement which terms and conditions expressly require the approval or action of certain Persons may be made without obtaining the consent of the requisite number or specified percentage of such Persons who are entitled to approve or take action on such matter, and (c) to any of the terms and conditions of Article VI or Section 14.01 (and related definitions as used directly or indirectly therein) may be made without the prior written consent of the Manager, which consent may be given or withheld in the Manager's sole discretion.

Section 16.04 Title to Company Assets. Company assets shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such Company assets or any portion thereof. The Company shall hold title to all of its property in the name of the Company and not in the name of any Member. All Company assets shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such Company assets is held. The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for, or in payment of, any individual obligation of any Member.

Section 16.05 Addresses and Notices. Any notice provided for in this Agreement will be in writing and will be either personally delivered, or received by certified mail, return receipt

requested, or sent by reputable overnight courier service (charges prepaid) to the Company at the address set forth below and to any other recipient and to any Member at such address as indicated by the Company's records, or at such address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed to have been given hereunder when delivered personally or sent by telecopier (*provided* confirmation of transmission is received), three (3) days after deposit in the U.S. mail and one (1) day after deposit with a reputable overnight courier service. The Company's address is:

to the Company:

SSE Holdings, LLC
24 Union Square East, 5th Floor,
New York, New York 10003
Attn: Randy Garutti, Chief Executive Officer
E-mail: rgarutti@shakeshack.com

with a copy (which copy shall not constitute notice) to:

SSE Holdings, LLC
24 Union Square East, 5th Floor,
New York, New York 10003
Attn: Ron Palmese, General Counsel
E-mail: rpalmese@shakeshack.com

and

Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
Attn: Howard Sobel
Paul Kukish
Facsimile: (212) 751-4864
E-mail: howard.sobel@lw.com
paul.kukish@lw.com

Section 16.06 Binding Effect; Intended Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 16.07 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or any of its Affiliates, and no creditor who makes a loan to the Company or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Company Profits, Losses, Distributions, capital or property other than as a secured creditor.

Section 16.08 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy

consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 16.09 Counterparts. This Agreement may be executed in separate counterparts, each of which will be an original and all of which together shall constitute one and the same agreement binding on all the parties hereto.

Section 16.10 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Any dispute relating hereto shall be heard in the state or federal courts of the State of Delaware, and the parties agree to jurisdiction and venue therein.

Section 16.11 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 16.12 Further Action. The parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be reasonably necessary or appropriate to achieve the purposes of this Agreement.

Section 16.13 Delivery by Electronic Transmission. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of an electronic transmission, including by a facsimile machine or via email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of electronic transmission by a facsimile machine or via email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

Section 16.14 Right of Offset. Whenever the Company is to pay any sum (other than pursuant to Article IV) to any Member, any amounts that such Member owes to the Company which are not the subject of a good faith dispute may be deducted from that sum before payment. For the avoidance of doubt, the distribution of Units to the Corporation shall not be subject to this Section 16.14.

Section 16.15 Effectiveness. This Agreement shall be effective immediately prior to the time at which the IPO closes on the IPO Closing Date (the “**Effective Time**”). The Second A&R

LLC Agreement shall govern the rights and obligations of the Company and the other parties to this Agreement in their capacity as Unitholders prior to the Effective Time.

Section 16.16 Entire Agreement. This Agreement, those documents expressly referred to herein (including the Registration Rights Agreement and the Tax Receivable Agreement), any indemnity agreements entered into in connection with the Second A&R LLC Agreement with any member of the board of managers at that time and other documents of even date herewith embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way. For the avoidance of doubt, the Second A&R LLC Agreement is superseded by this Agreement as of the Effective Time and shall be of no further force and effect thereafter.

Section 16.17 Remedies. Each Member shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Person has been granted at any time under any other agreement or contract and all of the rights which such Person has under any Law. Any Person having any rights under any provision of this Agreement or any other agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by Law.

Section 16.18 Descriptive Headings; Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the word “including” in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Without limiting the generality of the immediately preceding sentence, no amendment or other modification to any agreement, document or instrument that requires the consent of any Person pursuant to the terms of this Agreement or any other agreement will be given effect hereunder unless such Person has consented in writing to such amendment or modification. Wherever required by the context, references to a Fiscal Year shall refer to a portion thereof. The use of the words “or,” “either” and “any” shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Wherever a conflict exists between this Agreement and any other agreement, this Agreement shall control but solely to the extent of such conflict.

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Third Amended and Restated Operating Agreement as of the date first written above.

COMPANY:

SSE HOLDINGS, LLC

By: Shake Shack Inc., its Managing Member

By: _____
Name: Randy Garutti
Title: Chief Executive Officer

MEMBERS:

SHAKE SHACK INC.

By: _____
Name: Randy Garutti
Title: Chief Executive Officer

UNION SQUARE HOSPITALITY GROUP, LLC

By: _____
Name: Jeff Flug
Title: President

UNION SQUARE CAFE CORP.

By: _____
Name: Daniel H. Meyer
Title: Authorized Signatory

GRAMERCY TAVERN CORP.

By: _____
Name: Daniel H. Meyer
Title: Authorized Signatory

[Signature Page to Third Amended and Restated Operating Agreement]

Daniel H. Meyer

DANIEL H. MEYER 2012 GIFT TRUST U/A/D 10/31/12

By: _____

Name: Jack R. Polsky, not individually but solely as Co-Trustee

[*Signature Page to Third Amended and Restated Operating Agreement*]

Jeffrey Flug

FLUG 2012 GS TRUST U/A/D 9/14/12

By: _____
Name: Sheryl Flug, not individually but solely as Co-Trustee

By: _____
Name: Kenneth Flug, not individually but solely as Co-Trustee

GULF FIVE LLC

By: _____
Name: Jeff Flug
Title: Manager

[*Signature Page to Third Amended and Restated Operating Agreement*]

Richard Coraine

THE RICHARD D. CORAINE 2012 FAMILY TRUST

By: _____

Name: Toni Haida

Title: Trustee

[Signature Page to Third Amended and Restated Operating Agreement]

David Swinghamer

THE DAVID A. SWINGHAMER GRAT

By: _____
Name: David Swinghamer
Title: Trustee

[*Signature Page to Third Amended and Restated Operating Agreement*]

Karen Kochevar

[*Signature Page to Third Amended and Restated Operating Agreement*]

Walter Robb

[*Signature Page to Third Amended and Restated Operating Agreement*]

Erin Moran

[*Signature Page to Third Amended and Restated Operating Agreement*]

Ashley Campbell

[*Signature Page to Third Amended and Restated Operating Agreement*]

Randy Garutti

THE RANDALL J. GARUTTI 2014 GST TRUST

By: _____
Maria L. Garutti, Trustee

By: _____
Ronald Garutti, Jr., Trustee

By: J.P. Morgan Trust Company of Delaware, Administrative Trustee

By: _____
Name:
Title:

[*Signature Page to Third Amended and Restated Operating Agreement*]

Jeff Uttz

[*Signature Page to Third Amended and Restated Operating Agreement*]

ROXANNE H. FRANK REVOCABLE TRUST DATED 9/30/75

By: _____
Name: Jack Polsky
Title: Trustee

RHF-NM 1999 DESCENDANTS TRUST DATED 1/1/2006

By: _____
Name: Michael McQuinn
Title: Trustee

MARC WEISS REVOCABLE TRUST U/A/D 8/11/2003

By: _____
Name: Marc Weiss
Title: Trustee

RHF-TM 1999 DESCENDANTS TRUST DATED 1/1/2006

By: _____
Name: Michael McQuinn
Title: Trustee

VHP SPECIAL TRUST FOR JACK DATED 12/31/12

By: _____
Name: Jack Polsky
Title: Trustee

[Signature Page to Third Amended and Restated Operating Agreement]

JEAN POLSKY INVESTMENT TRUST DATED 3/21/97

By: _____
Name: Jack Polsky
Title: Trustee

JOAN W. HARRIS REVOCABLE TRUST DATED 4/1/93

By: _____
Name: Joan Harris
Title: Trustee

BENJAMIN HARRIS FAMILY TRUST DATED 12/23/92

By: _____
Name: Boardman Lloyd
Title: Trustee

DAVID HARRIS FAMILY TRUST DATED 12/23/92

By: _____
Name: Boardman Lloyd
Title: Trustee

**AMY WEISS-MEYER QUALIFIED MINOR'S TRUST DATED
12/22/05**

By: _____
Name: Jack Polsky
Title: Trustee

[Signature Page to Third Amended and Restated Operating Agreement]

**ISAAC WEISS-MEYER QUALIFIED MINOR'S TRUST
DATED 12/22/05**

By: _____
Name: Jack Polsky
Title: Trustee

**HALLIE MEYER QUALIFIED MINOR'S TRUST DATED
11/23/05**

By: _____
Name: Jack Polsky
Title: Trustee

**GRETCHEN MEYER QUALIFIED MINOR'S TRUST DATED
11/23/05**

By: _____
Name: Jack Polsky
Title: Trustee

**CHARLES MEYER QUALIFIED MINOR'S TRUST DATED
11/23/05**

By: _____
Name: Jack Polsky
Title: Trustee

**PEYTON MEYER QUALIFIED MINOR'S TRUST DATED
11/23/05**

By: _____
Name: Jack Polsky
Title: Trustee

By: _____
Name: Beth Stephens

[Signature Page to Third Amended and Restated Operating Agreement]

Name: Orrin Devinsky

[*Signature Page to Third Amended and Restated Operating Agreement*]

Name: Laura Sloate

[*Signature Page to Third Amended and Restated Operating Agreement*]

Name: Bert Vivian

[*Signature Page to Third Amended and Restated Operating Agreement*]

Name: Jamie Welch and Fiona Angelini

[*Signature Page to Third Amended and Restated Operating Agreement*]

GRANITE POINT CAPITAL

By: _____

Name: C. David Bushley

Title: Chief Operating Officer,
Granite Point Capital Management,
The Investment Manager

[*Signature Page to Third Amended and Restated Operating Agreement*]

THOMAS O'NEAL RYDER FAMILY TRUST

By: _____

Name: Darlene Ryder

Title: Trustee

[Signature Page to Third Amended and Restated Operating Agreement]

ACG SHACK LLC

By: Alliance Consumer Growth LLC, Its Manager

By: _____

Name: Joshua N. Goldin

Title: Managing Member

[*Signature Page to Third Amended and Restated Operating Agreement*]

[MALTED HOLDINGS II ENTITIES]

By: _____

Name:

Title:

[Signature Page to Third Amended and Restated Operating Agreement]

SEG PARTNERS, L.P.

By: _____
 Name: _____
 Title: _____

SEG PARTNERS II, L.P.

By: _____
 Name: _____
 Title: _____

SEGPO INVESTMENT CORP. LLC

By: _____
 Name: _____
 Title: _____

SEG PARTNERS OFFSHORE MASTER FUND LTD.

By: _____
 Name: _____
 Title: _____

[Signature Page to Third Amended and Restated Operating Agreement]

SCHEDULE 1 ***SCHEDULE OF ORIGINAL MEMBERS(1)**

Member	Common Units	Percentage Interest
SSE Holdings, LLC	[•]	[•]%
Shake Shack Inc.	[•]	[•]%
Union Square Hospitality Group, LLC	[•]	[•]%
Union Square Cafe Corp.	[•]	[•]%
Gramercy Tavern Corp.	[•]	[•]%
Daniel H. Meyer	[•]	[•]%
Daniel H. Meyer 2012 Gift Trust U/A/D 10/31/12	[•]	[•]%
Jeff Flug	[•]	[•]%
Flug 2012 GS Trust U/A/D 9/14/12	[•]	[•]%
Gulf Five LLC	[•]	[•]%
Richard Coraine	[•]	[•]%
The Richard D. Coraine 2012 Family Trust	[•]	[•]%
David A. Swinghamer	[•]	[•]%
The David A. Swinghamer Grat	[•]	[•]%
Karen Kochevar	[•]	[•]%

Walter Robb	[•]	[•]%
Erin Moran	[•]	[•]%

[Signature Page to Third Amended and Restated Operating Agreement]

Ashley Campbell	[•]	[•]%
Randall Garutti	[•]	[•]%
The Randall J. Garutti 2014 GST Trust	[•]	[•]%
Jeff Uttz	[•]	[•]%
Roxanne H. Frank Revocable Trust Dated 9/30/75	[•]	[•]%
RHF-NM 1999 Descendants Trust Dated 1/1/2006	[•]	[•]%
Marc Weiss Revocable Trust U/A/D 8/11/2003	[•]	[•]%
RHF-TM 1999 Descendants Trust Dated 1/1/2006	[•]	[•]%
VHP Special Trust For Jack Dated 12/31/12	[•]	[•]%
Jean Polsky Investment Trust Dated 3/21/97	[•]	[•]%
Joan W. Harris Revocable Trust Dated 4/1/93	[•]	[•]%
Benjamin Harris Family Trust Dated 12/23/92	[•]	[•]%
David Harris Family Trust Dated 12/23/92	[•]	[•]%
Amy Weiss-Meyer Qualified Minor's Trust Dated 12/22/05	[•]	[•]%
Isaac Weiss-Meyer Qualified Minor's Trust Dated 12/22/05	[•]	[•]%
Hallie Meyer Qualified Minor's Trust Dated 11/23/05	[•]	[•]%
Gretchen Meyer Qualified Minor's Trust Dated 11/23/05	[•]	[•]%
Charles Meyer Qualified Minor's Trust Dated 11/23/05	[•]	[•]%
Peyton Meyer Qualified Minor's Trust Dated 11/23/05	[•]	[•]%
Beth Stephens	[•]	[•]%
Orrin Devinsky	[•]	[•]%
Laura Sloate	[•]	[•]%
Bert Vivian	[•]	[•]%
Jamie Welch and Fiona Angelini	[•]	[•]%

Granite Point Capital	[•]	[•]%
Thomas O’Neal Ryder Family Trust	[•]	[•]%
ACG Shack LLC	[•]	[•]%
[Malted Holdings II Entities]	[•]	[•]%
SEG Partners, L.P.	[•]	[•]%
SEG Partners II, L.P.	[•]	[•]%
SEG Partners Offshore Master Fund Ltd.	[•]	[•]%
SEGPO Investment Corp. LLC	[•]	[•]%

* This Schedule of Members shall be updated from time to time to reflect any adjustment with respect to any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding Common Units, or to reflect any additional issuances of Common Units pursuant to this Agreement.

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of _____, 20____ (this “Joinder”), is delivered pursuant to that certain Third Amended and Restated Limited Liability Company Agreement, dated as of [•], 2014 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “LLC Agreement”) by and among SSE Holdings, LLC, a Delaware limited liability company (the “Company”), Shake Shack Inc., a Delaware corporation and the managing member of the Company (“Holdings”), and each of the Members from time to time party thereto. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in the LLC Agreement.

1. Joinder to the LLC Agreement. Upon the execution of this Joinder by the undersigned and delivery hereof to Holdings, the undersigned hereby is and hereafter will be a Member under the LLC Agreement and a party thereto, with all the rights, privileges and responsibilities of a Member thereunder. The undersigned hereby agrees that it shall comply with and be fully bound by the terms of the LLC Agreement as if it had been a signatory thereto as of the date thereof.
2. Incorporation by Reference. All terms and conditions of the LLC Agreement are hereby incorporated by reference in this Joinder as if set forth herein in full.
3. Address. All notices under the LLC Agreement to the undersigned shall be direct to:

[Name]
[Address]
[City, State, Zip Code]
Attn:
Facsimile:
E-mail:

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Joinder as of the day and year first above written.

[NAME OF NEW MEMBER]

By: _____
Name: _____
Title: _____

Acknowledged and agreed
as of the date first set forth above:

SSE HOLDINGS, LLC

By: SHAKE SHACK INC., its Managing Member

By: _____
Name: Randy Garutti
Title: Chief Executive Officer

STOCKHOLDERS AGREEMENT

THIS STOCKHOLDERS AGREEMENT, dated and effective as of the Effective Date, is entered into by and among (i) Shake Shack Inc., a Delaware corporation (the “Company”), (ii) SSE Holdings, LLC, a Delaware limited liability company (“Holdings”), (iii) the persons listed on Schedule 1 attached hereto (together with their Affiliates, collectively, the “Meyer Stockholders”), (iv) the persons listed on Schedule 2 attached hereto (together with their Affiliates and the Meyer Stockholders, collectively, the “Management Stockholders”), (v) the entities listed on Schedule 3 attached hereto (together with their Affiliates, collectively, the “LGP Stockholders”) and (vi) the entities listed on Schedule 4 attached hereto (together with their Affiliates, collectively, the “SEG Stockholders” and, together with the LGP Stockholders and the Management Stockholders, the “Principal Stockholders” and each a “Principal Stockholder”). Capitalized terms used herein without definition shall have the meanings set forth in Section 1.1.

WITNESSETH:

WHEREAS, the Company, Holdings, the Principal Stockholders and certain other Persons have effected, or will effect in connection with the Closing, a series of reorganization transactions (collectively, the “Reorganization Transactions”);

WHEREAS, after giving effect to the Reorganization Transactions, the Principal Stockholders own or will own either (x) shares of the Company’s Class A common stock, par value \$0.01 per share (the “Class A Common Stock”) or (y) limited liability company interests in Holdings (“Holdings Units”) and shares of the Company’s Class B common stock, par value \$0.01 per share (the “Class B Common Stock”) and, together with the Class A Common Stock, the “Common Stock”), which such Holdings Units, subject to certain restrictions, are redeemable from time to time at the option of the holder thereof for shares of the Class A Common Stock pursuant to the terms of the Third Amended and Restated Limited Liability Company Agreement of Holdings (the “Holdings LLC Agreement”);

WHEREAS, on the Effective Date, the Company will have priced an initial public offering of shares of its Class A Common Stock (the “IPO”) pursuant to an Underwriting Agreement dated the Effective Date hereof (the “Underwriting Agreement”);

WHEREAS, the parties hereto desire to provide for certain governance rights and other matters, and to set forth the respective rights and obligations of the Principal Stockholders on and after the Effective Date.

NOW, THEREFORE, in consideration of the mutual agreements and understandings set forth herein, the parties hereto hereby agree as follows:

ARTICLE I CERTAIN DEFINITIONS

SECTION 1.1 Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

“ Affiliate ” means, with respect to any specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person or (b) in the event that the specified Person is a natural Person, a Member of the Immediate Family of such Person; provided that the Company, Holdings and each of their respective subsidiaries shall not be deemed to be Affiliates of the Principal Stockholders. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“ Agreement ” shall mean this Stockholders Agreement as in effect on the date hereof and as hereafter from time to time amended, modified or supplemented in accordance with the terms hereof.

“ Board of Directors ” shall mean the Board of Directors of the Company.

“ Board Designees ” shall mean the Directors designated by the Principal Stockholders pursuant to Section 2.1.

“ Class A Common Stock ” shall have the meaning set forth in the recitals.

“ Class B Common Stock ” shall have the meaning set forth in the recitals.

“ Closing ” means the closing of the IPO.

“ Code ” shall have the meaning set forth in Section 2.5(b).

“ Common Stock ” shall have the meaning set forth in the recitals.

“ Company ” shall have the meaning set forth in the preamble.

“ Company Shares ” means (i) all shares of Common Stock that are not then subject to vesting (including shares that were at one time subject to vesting to the extent they have vested), (ii) all shares of Common Stock issuable upon exercise, conversion or exchange of any option, warrant or convertible security that are not then subject to vesting (including shares that were at one time subject to vesting to the extent they have vested) (without double counting shares of Class A Common Stock issuable upon redemption of Holdings Units) and (iii) all shares of Common Stock directly or indirectly issued or issuable with respect to the securities referred to in clauses (i) or (ii) above by way of unit or stock dividend or unit or stock split, or in connection with a combination of units or shares, recapitalization, merger, consolidation or other reorganization.

“ Director ” shall mean a member of the Board of Directors.

“ Effective Date ” shall have the meaning set forth in Section 4.12.

“ Holdings ” shall have the meaning set forth in the preamble.

“ Holdings Units ” shall have the meaning set forth in the recitals.

“ IPO ” shall have the meaning set forth in the recitals.

“ LGP Designee ” shall have the meaning set forth in Section 2.1(c).

“ LGP Director ” shall have the meaning set forth in Section 2.1(a).

“ LGP Stockholders ” shall have the meaning set forth in the preamble.

“ Loss ” or “ Losses ” shall mean any claims, losses, liabilities, damages, interest, penalties and costs and expenses, including reasonable attorneys’, accountants’ and expert witnesses’ fees, and costs and expenses of investigation and amounts paid in settlement, court costs, and other expenses of litigation, including in respect of enforcement of indemnity rights hereunder (it being understood that Losses shall not include any consequential, special, incidental, indirect or punitive damages).

“ Management Stockholders ” shall have the meaning set forth in the preamble.

“ Meyer Directors ” shall have the meaning set forth in Section 2.1(a).

“ Meyer Stockholder Designee ” shall have the meaning set forth in Section 2.1(b).

“ Meyer Stockholders ” shall have the meaning set forth in the preamble.

“ Necessary Action ” means, with respect to a specified result, all commercially reasonable actions required to cause such result that are within the power of a specified Person, including (i) voting or providing a written consent or proxy with respect to the Company Shares, (ii) causing the adoption of stockholders’ resolutions and amendments to the organizational documents of the Company, (iii) executing agreements and instruments, (iv) making, or causing to be made, with governmental, administrative or regulatory authorities, all filings, registrations or similar actions that are required to achieve such result and (v) causing members of the Board of Directors, subject to any fiduciary duties that such members may have as directors of the Company (including pursuant to Section 2.1(e)), to act in a certain manner, including causing members of the Board of Directors or any nominating or similar committee of the Board of Directors to recommend the appointment of any Board Designees as provided by this Agreement.

“ Person ” shall mean an individual, corporation, company, limited liability company, association, partnership, joint venture, organization, business, trust or any other entity or organization, including a government or any subdivision or agency thereof.

“ Principal Stockholders ” shall have the meaning set forth in the preamble.

“ Reorganization Transactions ” shall have the meaning set forth in the recitals.

“ S Corporations ” shall have the meaning set forth in Section 2.5.

“ S Corporation Reorganization ” shall have the meaning set forth in Section 2.5.

“ S Corporation Reorganization Notice ” shall have the meaning set forth in Section 2.5.

“ SEG Designee ” shall have the meaning set forth in Section 2.1(d).

“ SEG Director ” shall have the meaning set forth in Section 2.1(a).

“ SEG Stockholders ” shall have the meaning set forth in the preamble.

“ Stockholder Minimum Threshold ” means, with respect to the Meyer Stockholders, a number of shares of Common Stock equal to at least 10% of the outstanding shares of Common Stock owned by the Meyer Stockholders as of the Closing.

“ Underwriting Agreement ” shall have the meaning set forth in the recitals.

ARTICLE II CORPORATE GOVERNANCE

SECTION 2.1 Board of Directors.

(a) Composition of Initial Board. As of the Effective Date, the Board of Directors shall be comprised of seven (7) directors, (i) five (5) of whom shall be deemed to have been designated by the Meyer Stockholders (each, a “ Meyer Director ”), (ii) one (1) of whom shall be deemed to have been designated by the LGP Stockholders (the “ LGP Director ”) and (iii) one (1) of whom shall be deemed to have been designated by the SEG Stockholders (the “ SEG Director ”). The foregoing directors shall be divided into three classes of directors, each of whose members shall serve for staggered three-year terms as follows:

- (i) the class I directors shall initially include two (2) Meyer Directors and one (1) SEG Director;
- (ii) the class II directors shall initially include one (1) Meyer Director and one (1) LGP Director; and
- (iii) the class III directors shall initially include two (2) Meyer Directors.

The initial term of the class I directors shall expire immediately following the Company’s 2016 annual meeting of stockholders at which directors are elected. The initial term of the class II directors shall expire immediately following the Company’s 2017 annual meeting of stockholders at which directors are elected. The initial term of the class III directors shall expire immediately following the Company’s 2018 annual meeting at which directors are elected.

(b) Meyer Stockholder Representation. For so long as the Meyer Stockholders hold a number of shares of Common Stock representing at least the percentage of shares of Common Stock held by such Meyer Stockholders as of the Closing shown below, the Company and the Principal Stockholders shall use their reasonable best efforts to include in the slate of nominees recommended by the Board for

election as directors at each applicable annual or special meeting of stockholders at which directors are to be elected that number of individuals designated by the Meyer Stockholders (each, a “Meyer Stockholder Designee”) that, if elected, will result in the number of Meyer Directors serving on the Board of Directors that is shown below.

Percentage	Number of Directors
50% or greater	5
Less than 50% but greater than or equal to 25%	4
Less than 25% but greater than or equal to 10%	2
Less than 10% but greater than or equal to 5%	1
Less than 5%	0

Upon any decrease in the number of directors that the Meyer Stockholders are entitled to designate for election to the Board of Directors, the Meyer Stockholders shall use their reasonable best efforts to cause the appropriate number of Meyer Stockholder Designees to offer to tender his or her resignation. Such designees will be to the extent possible evenly distributed among all classes of directors with such designees first being assigned to classes with the longest remaining terms. If such resignation is then accepted by the Board of Directors, the Company and the Principal Stockholders shall cause the authorized size of the Board of Directors to be reduced accordingly unless the Company with the approval of a majority of the remaining Directors determines not to reduce the authorized size of the Board of Directors.

(c) LGP Stockholder Representation. For so long as the LGP Stockholders own at least fifty percent (50%) of the number of shares of Common Stock held by the LGP Stockholders as of the Closing, the Company and the Principal Stockholders shall use their reasonable best efforts to include in the slate of nominees recommended by the Board of Directors for election as directors at each applicable annual or special meeting of stockholders at which directors are to be elected one (1) individual designated by the LGP Stockholders (each, an “LGP Designee”). Upon any decrease in the number of directors that the LGP Stockholders are entitled to designate for election to the Board of Directors, the LGP Stockholders shall use their reasonable best efforts to cause the LGP Designee to offer to tender his or her resignation. If such resignation is accepted by the Board of Directors, then the Company and the Principal Stockholders shall cause the authorized size of the Board of Directors to be reduced accordingly unless the Company with the approval of a majority of the remaining Directors determines not to reduce the authorized size of the Board of Directors.

(d) SEG Stockholder Representation. For so long as the SEG Stockholders own at least fifty percent (50%) of the number of shares of Common Stock held by the SEG Stockholders as of the Closing, the Company and the Principal Stockholders shall use their reasonable best efforts to include in the slate of nominees recommended by the

Board of Directors for election as directors at each applicable annual or special meeting of stockholders at which directors are to be elected one (1) individual designated by the SEG Stockholders (each, an “SEG Designee”). Upon any decrease in the number of directors that the SEG Stockholders are entitled to designate for election to the Board of Directors, the SEG Stockholders shall use their reasonable best efforts to cause the SEG Designee to offer to tender his or her resignation. If such resignation is accepted by the Board of Directors, then the Company and the Principal Stockholders shall cause the authorized size of the Board of Directors to be reduced accordingly unless the Company with the approval of a majority of the remaining Directors determines not to reduce the authorized size of the Board of Directors.

(e) Additional Obligations. An individual designated by a Principal Stockholder for election (including pursuant to Sections 2.1(b), 2.1(c) and 2.1(d)) as a Director shall comply with the requirements of the charter for, and related guidelines of, the Nominating and Corporate Governance Committee. Notwithstanding anything to the contrary in this Article II, in the event that the Board of Directors determines in good faith, after consultation with outside legal counsel, that its nomination, appointment or election of a particular Board Designee pursuant to this Section 2.1 or Section 2.2 would constitute a breach of its fiduciary duties to the Company’s stockholders or does not otherwise comply with any requirements of the charter for, or related guidelines of, the Nominating and Corporate Governance Committee (provided that any such determination with respect to any Board Designee pursuant to this Section 2.1 shall be made no later than sixty (60) days after the individual’s compliance with the first sentence of this Section 2.1 (e)), then the Board of Directors shall inform such Principal Stockholder of such determination in writing and explain in reasonable detail the basis for such determination and shall designate another individual designated for nomination, election or appointment to the Board of Directors by such Principal Stockholder (subject in each case to this Section 2.1(e)), and the Board of Directors and the Company shall take all of the actions required by this Article II with respect to the election of such substitute Board Designee. It is hereby acknowledged and agreed that the fact that a particular Board Designee is an Affiliate, director, professional, partner, member, manager, employee or agent of a Principal Stockholder or is not an independent director shall not in and of itself constitute an acceptable basis for such determination by the Board of Directors.

(f) The independent directors required by the New York Stock Exchange rules shall be the Meyer Directors; provided that, notwithstanding anything to the contrary in this Agreement, if the number of Meyer Directors (less any designees of the Meyer Stockholders who are Meyer or an officer of the Company) are insufficient to satisfy the independence requirements of the New York Stock Exchange rules, the Board of Directors shall take the Necessary Action to expand the number of Directors to the minimum number of Directors needed to comply with such requirements.

(g) Vacancies. Except as provided in Sections 2.1(b), 2.1(c) and 2.1(d), as applicable, with respect to decreases in ownership of the Principal Stockholders, (i) each Principal Stockholder shall have the exclusive right to request the removal of its Board Designees from the Board of Directors (whether for or without cause), and the Company and the Principal Stockholders shall take all Necessary Action to cause the removal

(whether for or without cause) of any such Board Designee at the request of the designating Principal Stockholder and (ii) each Principal Stockholder shall have the exclusive right to designate directors for election to the Board of Directors to fill vacancies (for the remainder of the then current term) created by reason of death, disability, removal or resignation of its Board Designees to the Board of Directors, and the Company and the Principal Stockholders shall take all Necessary Action to cause any such vacancies to be filled by replacement directors designated by such designating Principal Stockholder as promptly as reasonably practicable.

SECTION 2.2 Committees. The Meyer Stockholders shall have, to the fullest extent permitted by applicable law, and subject to the requirements of the Charter for the Nominating and Corporate Governance Committee, the right, but not the obligation, to designate a number of members of each committee of the Board of Directors equal to at least: (i) a majority of the members of each committee of the Board of Directors, for so long as the Meyer Stockholders have the ability pursuant to Section 2.1 to designate for nomination at least four (4) Board Designees and (ii) at all other times for so long as the Meyer Stockholders have the ability pursuant to Section 2.1 to designate for nomination at least one (1) Board Designee, one-third (1/3), but in no event fewer than one (1), of the members of each committee of the Board of Directors. For purposes of calculating the number of committee members that the Meyer Stockholders are entitled to designate pursuant to the immediately preceding sentence, any fractional amounts shall automatically be rounded up to the nearest whole number (e.g., one and one quarter (1 1/4) committee members shall equate to two (2) committee members). For so long as the LGP Stockholders have the ability pursuant to Section 2.1 to designate for nomination one (1) Board Designee, the LGP Stockholders shall have, to the fullest extent permitted by applicable law, and subject to the requirements of the Charter for the Nominating and Corporate Governance Committee, the right, but not the obligation, to designate one (1) member of the compensation committee of the Board of Directors, who initially shall be Jonathan D. Sokoloff.

SECTION 2.3 Voting Agreement. Each Principal Stockholder agrees, in person or by proxy, to cast all votes to which such Principal Stockholder is entitled in respect of its Company Shares, whether at any annual or special meeting, by written consent or otherwise, so as to cause to be elected to the Board of Directors those individuals designated in accordance with Section 2.1 and to otherwise effect the intent of this Article II.

SECTION 2.4 Company and Holdings Activities; Approvals. The Company shall not take, and shall cause Holdings not to take, any of the following actions without the approval of the Meyer Stockholders, so long as the Meyer Stockholders maintain the Stockholder Minimum Threshold:

(a) any transactions or series of related transactions, in each case to the extent within the reasonable control of the Company, (i) in which any Person or Persons acquires, directly or indirectly, in excess of 50% of the then outstanding shares of any class of capital stock (or equivalent) of the Company or Holdings (whether by merger, consolidation, sale or transfer of partnership interests, tender offer, exchange offer, reorganization, recapitalization or otherwise) or (ii) following which any Person or

Persons have the direct or indirect power to elect a majority of the members of the Board of Directors of the Company;

- (b) the sale, lease or exchange of all or a substantial amount of the property and assets of the Company, Holdings or any of their subsidiaries, taken as a whole;
- (c) the reorganization, recapitalization, liquidation, dissolution or winding-up of the Company, Holdings or any of their subsidiaries;
- (d) the hiring or termination of the Chief Executive Officer;
- (e) any authorization or issuance of equity securities of the Company or its direct or indirect subsidiaries other than (x) pursuant to any equity incentive plans or arrangements that have been approved by the Board of Directors or (y) upon a redemption of shares of Class B Common Stock together with Holdings Units for shares of Class A Common Stock;
- (f) any increase or decrease in the size of the Board of Directors other than in accordance with Article II; or
- (g) the approval of any amendment or amendments to the organizational documents of the Company or Holdings.

SECTION 2.5 S Corporation Reorganization.

(a) Each of the Company, Holdings and the Principal Stockholders hereby acknowledges and agrees that the Meyer Stockholders shall have the right, exercisable at any time in the Meyer Stockholders' sole discretion, to cause all of the stock of each of Union Square Cafe Corp. and Gramercy Tavern Cafe Corp. (collectively, the "S Corporations") to be exchanged for Class A Common Stock of the Company, whether by merger or otherwise, pursuant to a reorganization described in Section 368(a) of the Code (the "S Corporation Reorganization"). At the election of the Meyer Stockholders, the S Corporation Reorganization shall be structured as a two-step merger (consistent with IRS Revenue Ruling 2001-46, 2001-2 C.B. 321) pursuant to which (i) the Company shall form a wholly-owned merger subsidiary to merge into each S Corporation (the "First Step Mergers"), (ii) in the First Step Mergers, the stock of each S Corporation shall be exchanged for Class A Common Stock of the Company, and (iii) immediately following the First Step Mergers, each surviving S Corporation shall merge into the Company or an entity wholly-owned by the Company that is classified as a disregarded entity of the Company for U.S. federal income tax purposes.

(b) The Meyer Stockholders shall use reasonable best efforts to obtain a private letter ruling from the Internal Revenue Service or a "should" level opinion from a nationally-recognized law or accounting firm, in either case providing that the S Corporation Reorganization qualifies as a "reorganization" as such term is defined in Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"). In the event that the Meyer Stockholders cannot obtain the private letter ruling or opinion described in the immediately preceding sentence, the Meyer Stockholders may elect to

cause the Company to complete an integrated transaction qualifying under Section 351(a) of the Code pursuant to which (i) the Company forms a new wholly-owned corporation (“New Parent”), (ii) New Parent forms a transitory merger subsidiary (“Merger Sub”), (iii) Merger Sub merges into the Company and, in such merger, all of the issued and outstanding shares of corporate stock of the Company are converted into identical shares of New Parent, and (iv) the shareholders of the S Corporations contribute all of the issued and outstanding shares of corporate stock of the S Corporations to New Parent in exchange for Class A Common Stock of New Parent (the “Section 351 Transaction”). In any S Corporation Reorganization or Section 351 Transaction, the shareholders of each S Corporation shall receive the number of shares of Class A Common Stock of the Company that the applicable S Corporation would be entitled to receive if it redeemed all of its Holdings units held immediately prior to transaction for Class A Common Stock pursuant to the Holdings LLC Agreement.

(c) Upon written notice from the Meyer Stockholders to the Company requesting the consummation of the S Corporation Reorganization or Section 351 Transaction and describing the steps relating thereto (the “Restructuring Notice”), the Company, Holdings and each of the Principal Stockholders agree that each will take all Necessary Actions within its control to cause the S Corporation Reorganization or Section 351 Transaction, as applicable, to be consummated in the manner set forth in the Restructuring Notice and in accordance with this Section 2.5.

(d) If any S Corporation Reorganization or Section 351 Transaction is completed, each of Daniel H. Meyer and the Daniel H. Meyer 2012 Gift Trust U/A/D 10/31/12 shall, severally and not jointly based on its pro rata ownership of the S Corporations as of the Effective Date, indemnify the Company and Holdings, and hold each of them harmless from and against, any and all Losses (including, for the avoidance of doubt, taxes) of the acquired S Corporation or S Corporations with respect to any period (or portion thereof) ending on or prior to the closing date of any S Corporation Reorganization or Section 351 Transaction.

SECTION 2.6 Agreement of Company and Holdings. Each of the Company and Holdings hereby agrees that it will take all Necessary Actions within its control to cause the matters addressed by this Article II to be carried out in accordance with the provisions thereof. Without limiting the foregoing, the Secretary of each of the Company and of Holdings or, if there be no Secretary, such other officer or employee of the Company or of Holdings as may be fulfilling the duties of the Secretary, shall not record any vote or consent or other action contrary to the terms of this Article II.

SECTION 2.7 Restrictions on Other Agreements. No Principal Stockholder shall grant any proxy or enter into or agree to be bound by any voting trust, agreement or arrangement of any kind with any Person with respect to its Company Shares if and to the extent the terms thereof conflict with the provisions of this Agreement (whether or not such proxy, voting trust, agreements or arrangements are with other Principal Stockholders, holders of Company Shares that are not parties to this Agreement or otherwise).

ARTICLE III REPRESENTATIONS AND WARRANTIES

Each of the parties to this Agreement hereby represents and warrants to each other party to this Agreement that as of the date such party executes this Agreement:

SECTION 3.1 Existence; Authority; Enforceability. Such party has the power and authority to enter into this Agreement and to carry out its obligations hereunder. If such party is an entity, it is duly organized and validly existing under the laws of its jurisdiction of organization, and the execution of this Agreement, and the consummation of the transactions contemplated herein, have been authorized by all necessary action, and no other act or proceeding on its part is necessary to authorize the execution of this Agreement or the consummation of any of the transactions contemplated hereby. If such party is a natural person, such person has full capacity to contract. This Agreement has been duly executed by each of the parties hereto and constitutes his or its legal, valid and binding obligation, enforceable against him or it in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws relating to or affecting creditors' rights generally, or by the general principles of equity. No representation is made by any party with respect to the regulatory effect of this Agreement, and each of the parties has had an opportunity to consult with counsel as to his or its rights and responsibilities under this Agreement. No party makes any representation to any other party as to future law or regulation or the future interpretation of existing laws or regulations by any governmental authority or self-regulatory organization.

SECTION 3.2 Absence of Conflicts. The execution and delivery by such party of this Agreement and the performance of its obligations hereunder does not and will not (i) conflict with, or result in the breach of, any provision of the constitutive documents of such party, if any; (ii) result in any violation, breach, conflict, default or event of default (or an event which with notice, lapse of time, or both, would constitute a default or event of default), or give rise to any right of acceleration or termination or any additional payment obligation, under the terms of any contract, agreement or permit to which such party is a party or by which such party's assets or operations are bound or affected; or (iii) violate any law applicable to such party.

SECTION 3.3 Consents. Other than any consents which have already been obtained, no consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by such party in connection with the execution, delivery or performance of this Agreement.

ARTICLE IV MISCELLANEOUS

SECTION 4.1 Termination. This Agreement shall terminate and be of no further force and effect upon (a) the Principal Stockholders ceasing to own any shares of Common Stock or Holdings Units, (b) the written agreement of the Management Stockholders and either of the LGP Stockholders or the SEG Stockholders to terminate this Agreement or (c) its provisions become illegal or are interpreted by any governmental authority to be illegal, or any exchange on

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which the Company's Common Shares are traded asserts that its existence will threaten the continued listing of the Company's Common Shares on such exchange.

SECTION 4.2 Successors and Assigns; Beneficiaries. Except as otherwise provided herein, all of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and permitted assigns of the parties hereto. This Agreement may not be assigned without the express prior written consent of the other parties hereto, and any attempted assignment, without such consents, will be null and void; provided that each Principal Stockholder (from time to time party hereto) shall be entitled to assign (solely in connection with a transfer of Common Stock or Holdings Units) to any of its Affiliates, without such prior written consent, any of its rights and obligations hereunder; provided, further, that any Person (other than an Affiliate) to which a Principal Stockholder (from time to time party hereto) transfers such Common Stock or Holdings Units shall be not be bound by the obligations hereunder, including pursuant to Sections 2.1(b), 2.1(c), 2.1(d) and 2.1(f) or otherwise.

SECTION 4.3 Amendment and Modification; Waiver of Compliance. (a) This Agreement may be amended only by a written instrument duly executed by the Company, Holdings, the Management Stockholders, the LGP Stockholders and the SEG Stockholders.

(b) Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

SECTION 4.4 Notices. Any notice, request, claim, demand, document and other communication hereunder to any party shall be effective upon receipt (or refusal of receipt) and shall be in writing and delivered personally or sent by facsimile, or first class mail, or by Federal Express, United Parcel Service or other similar courier or other similar means of communication, as follows:

(i) If to the Management Stockholders, addressed to Union Square Hospitality Group, 24 Union Square East, 6th Floor, New York, New York 10003, Attention: Daniel H. Meyer (dmeyer@ushgny.com);

(ii) If to the LGP Stockholder, addressed to Green Equity Investors VI, L.P., 11111 Santa Monica Boulevard, Suite 2000, Los Angeles, CA 90025, Attention: Jonathan D. Sokoloff (Sokoloff@leonardgreen.com) and J. Kristofer Galashan (galashan@leonardgreen.com); and

(iii) If to the SEG Stockholder, addressed to Select Equity Group, L.P., 380 Lafayette Street, New York, NY 10003, Attention: Evan Guillemin (eg@selectequity.com)

or, in each case, to such other address or email address as such party may designate in writing to each Principal Stockholder by written notice given in the manner specified herein.

All such communications shall be deemed to have been given, delivered or made when so delivered by hand or sent by facsimile (with confirmed transmission), on the next business day if sent by overnight courier service (with confirmed delivery) or when received if sent by first class mail.

SECTION 4.5 Specific Performance. Each party hereto acknowledges and agrees that in the event of any breach of this Agreement by any of them, the other parties hereto would be irreparably harmed and could not be made whole by monetary damages. Each party accordingly agrees to waive the defense in any action for specific performance that a remedy at law would be adequate and agrees that the parties, in addition to any other remedy to which they may be entitled at law or in equity, shall be entitled to specific performance of this Agreement without the posting of bond.

SECTION 4.6 Entire Agreement. The provisions of this Agreement and the other writings referred to herein or delivered pursuant hereto which form a part hereof contain the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior oral and written agreements and memoranda and undertakings among the parties hereto with regard to such subject matter.

SECTION 4.7 Severability. If any provision of this Agreement, or the application of such provision to any Person or circumstance or in any jurisdiction, shall be held to be invalid or unenforceable to any extent, (i) the remainder of this Agreement shall not be affected thereby, and each other provision hereof shall be valid and enforceable to the fullest extent permitted by law, (ii) as to such Person or circumstance or in such jurisdiction such provision shall be reformed to be valid and enforceable to the fullest extent permitted by law and (iii) the application of such provision to other Persons or circumstances or in other jurisdictions shall not be affected thereby.

SECTION 4.8 CHOICE OF LAW AND VENUE; WAIVER OF RIGHT TO JURY TRIAL. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE. EACH OF THE PARTIES HERETO ACKNOWLEDGES AND AGREES THAT IN THE EVENT OF ANY BREACH OF THIS AGREEMENT, THE NON-BREACHING PARTY WOULD BE IRREPARABLY HARMED AND COULD NOT BE MADE WHOLE BY MONETARY DAMAGES, AND THAT, IN ADDITION TO ANY OTHER REMEDY TO WHICH THEY MAY BE ENTITLED AT LAW OR IN EQUITY, THE PARTIES SHALL BE ENTITLED TO SUCH EQUITABLE OR INJUNCTIVE RELIEF AS MAY BE APPROPRIATE. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT OF ANY JUDGMENT OF A DELAWARE FEDERAL OR STATE COURT, OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE SUCH A JUDGMENT, IN ANY OTHER APPROPRIATE JURISDICTION.

IN THE EVENT ANY PARTY TO THIS AGREEMENT COMMENCES ANY LITIGATION, PROCEEDING OR OTHER LEGAL ACTION IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, ANY RELATED AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN OR THEREIN, THE PARTIES TO THIS

AGREEMENT HEREBY (1) AGREE UNDER ALL CIRCUMSTANCES ABSOLUTELY AND IRREVOCABLY TO INSTITUTE ANY LITIGATION, PROCEEDING OR OTHER LEGAL ACTION IN A COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE OF DELAWARE, WHETHER A STATE OR FEDERAL COURT; (2) AGREE THAT IN THE EVENT OF ANY SUCH LITIGATION, PROCEEDING OR ACTION, SUCH PARTIES WILL CONSENT AND SUBMIT TO THE PERSONAL JURISDICTION OF ANY SUCH COURT DESCRIBED IN CLAUSE (1) OF THIS SECTION AND TO SERVICE OF PROCESS UPON THEM IN ACCORDANCE WITH THE RULES AND STATUTES GOVERNING SERVICE OF PROCESS (IT BEING UNDERSTOOD THAT NOTHING IN THIS SECTION SHALL BE DEEMED TO PREVENT ANY PARTY FROM SEEKING TO REMOVE ANY ACTION TO A FEDERAL COURT IN THE STATE OF DELAWARE); (3) AGREE TO WAIVE TO THE FULL EXTENT PERMITTED BY LAW ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH LITIGATION, PROCEEDING OR ACTION IN ANY SUCH COURT OR THAT ANY SUCH LITIGATION, PROCEEDING OR ACTION WAS BROUGHT IN ANY INCONVENIENT FORUM; (4) AGREE, AFTER CONSULTATION WITH COUNSEL, TO WAIVE ANY RIGHTS TO A JURY TRIAL TO RESOLVE ANY DISPUTES OR CLAIMS RELATING TO THIS AGREEMENT; (5) AGREE TO SERVICE OF PROCESS IN ANY LEGAL PROCEEDING BY MAILING OF COPIES THEREOF TO SUCH PARTY AT ITS ADDRESS SET FORTH HEREIN FOR COMMUNICATIONS TO SUCH PARTY; (6) AGREE THAT ANY SERVICE MADE AS PROVIDED HEREIN SHALL BE EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (7) AGREE THAT NOTHING HEREIN SHALL AFFECT THE RIGHTS OF ANY PARTY TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

SECTION 4.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 4.10 Further Assurances. At any time or from time to time after the date hereof, the parties hereto agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as any other party may reasonably request in order to evidence or effectuate the provisions of this Agreement and to otherwise carry out the intent of the parties hereunder.

SECTION 4.11 Schedule 13D. In accordance with the requirements of Rule 13d-1(k) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and subject to the limitations set forth therein, each Principal Stockholder hereto agrees to file an appropriate Schedule 13D no later than 10 calendar days following the Effective Date.

SECTION 4.12 Effectiveness of Agreement. Upon the Closing, the Agreement shall thereupon be deemed to be effective (such date, the “Effective Date”). However, to the extent the Closing does not occur, the provisions of this Agreement shall be without any force or effect.

* * *

IN WITNESS WHEREOF, each of the undersigned has signed this Stockholders Agreement as of the date first above written.

COMPANY:

SHAKE SHACK INC.

By: _____
Name: Randy Garutti
Title: Chief Executive Officer

HOLDINGS :

SSE HOLDINGS, LLC

By: _____
Name: Randy Garutti
Title: Chief Executive Officer

[Signature Page to Stockholders Agreement]

MANAGEMENT STOCKHOLDERS :

UNION SQUIRE HOSPITALITY GROUP, LLC

By: _____
Name: Daniel H. Meyer
Title: Chief Executive Officer

UNION SQUARE CAFE CORP.

By: _____
Name: Daniel H. Meyer
Title: Authorized Signatory

GRAMERCY TAVERN CORP.

By: _____
Name: Daniel H. Meyer
Title: Authorized Signatory

Daniel H. Meyer

DANIEL H. MEYER 2012 GIFT TRUST U/A/D 10/31/12

By: _____
Name: Jack R. Polsky, not individually but solely as Co-Trustee

[Signature Page to Stockholders Agreement]

Jeffrey Flug

FLUG 2012 GS TRUST U/A/D 9/14/12

By: _____

Name: Sheryl Flug, not individually but solely as Co-Trustee

GULF FIVE LLC

By: _____

Name: Jeff Flug

Title: Manager

[Signature Page to Stockholders Agreement]

Richard Coraine

THE RICHARD D. CORAINE 2012 FAMILY TRUST

By: _____

Name: Toni Haida

Title: Trustee

[Signature Page to Stockholders Agreement]

David Swinghamer

THE DAVID A. SWINGHAMER GRAT

By: _____
Name: David Swinghamer
Title: Trustee

[Signature Page to Stockholders Agreement]

Karen Kochevar

[Signature Page to Stockholders Agreement]

Walter Robb

[Signature Page to Stockholders Agreement]

Erin Moran

[Signature Page to Stockholders Agreement]

Ashley Campbell

[Signature Page to Stockholders Agreement]

Randy Garutti

THE RANDALL J. GARUTTI 2014 GST TRUST

By: J.P. Morgan Trust Company of Delaware,
Administrative Trustee

By: _____

Name: _____

Title: _____

[Signature Page to Stockholders Agreement]

Jeff Uttz

[Signature Page to Stockholders Agreement]

ROXANNE H. FRANK REVOCABLE TRUST DATED 9/30/75

By: _____
Name: Jack Polsky
Title: Trustee

RHF-NM 1999 DESCENDANTS TRUST DATED 1/1/2006

By: _____
Name: Michael McQuinn
Title: Trustee

MARC WEISS REVOCABLE TRUST U/A/D 8/11/2003

By: _____
Name: Marc Weiss
Title: Trustee

RHF-TM 1999 DESCENDANTS TRUST DATED 1/1/2006

By: _____
Name: Michael McQuinn
Title: Trustee

VHP SPECIAL TRUST FOR JACK DATED 12/31/12

By: _____
Name: Jack Polsky
Title: Trustee

JEAN POLSKY INVESTMENT TRUST DATED 3/21/97

By: _____
Name: Jack Polsky
Title: Trustee

JOAN W. HARRIS REVOCABLE TRUST DATED 4/1/93

[Signature Page to Stockholders Agreement]

By: _____
Name: Joan Harris
Title: Trustee

BENJAMIN HARRIS FAMILY TRUST DATED 12/23/92

By: _____
Name: Boardman Lloyd
Title: Trustee

DAVID HARRIS FAMILY TRUST DATED 12/23/92

By: _____
Name: Boardman Lloyd
Title: Trustee

AMY WEISS-MEYER QUALIFIED MINOR'S TRUST DATED
12/22/05

By: _____
Name: Jack Polsky
Title: Trustee

ISAAC WEISS-MEYER QUALIFIED MINOR'S TRUST DATED

12/22/05

By: _____
Name: Jack Polsky
Title: Trustee

HALLIE MEYER QUALIFIED MINOR'S TRUST DATED 11/23/05

By: _____
Name: Jack Polsky
Title: Trustee

[Signature Page to Stockholders Agreement]

GRETCHEN MEYER QUALIFIED MINOR’S TRUST DATED
11/23/05

By: _____
Name: Jack Polsky
Title: Trustee

CHARLES MEYER QUALIFIED MINOR’S TRUST DATED
11/23/05

By: _____
Name: Jack Polsky
Title: Trustee

PEYTON MEYER QUALIFIED MINOR’S TRUST DATED
11/23/05

By: _____
Name: Jack Polsky
Title: Trustee

Beth Stephens

[Signature Page to Stockholders Agreement]

Orrin Devinsky

[Signature Page to Stockholders Agreement]

Laura Sloate

[Signature Page to Stockholders Agreement]

Bert Vivian

[Signature Page to Stockholders Agreement]

Jamie Welch and Fiona Angelini

[Signature Page to Stockholders Agreement]

GRANITE POINT CAPITAL

By: _____

Name: C. David Bushley

Title: Chief Operating Officer,
Granite Point Capital Management,
The Investment Manager

[Signature Page to Stockholders Agreement]

THOMAS O'NEAL RYDER FAMILY TRUST

By: _____

Name: Darlene Ryder

Title: Trustee

[Signature Page to Stockholders Agreement]

ACG SHACK LLC

By: Alliance Consumer Growth LLC, Its Manager

By: _____

Name: Joshua N. Goldin

Title: Managing Member

[Signature Page to Stockholders Agreement]

LGP STOCKHOLDERS :

[TO COME]

[Signature Page to Stockholders Agreement]

SEG STOCKHOLDERS :

SEG PARTNERS, L.P.

By: _____
Name: _____
Title: _____

SEG PARTNERS II, L.P.

By: _____
Name: _____
Title: _____

SEG PARTNERS OFFSHORE MASTER FUND LTD.

By: _____
Name: _____
Title: _____

SEGPO INVESTMENT CORP. LLC

By: _____
Name: _____
Title: _____

[Signature Page to Stockholders Agreement]

SCHEDULE 1

MEYER STOCKHOLDERS

Daniel H. Meyer

Daniel H. Meyer 2012 Gift Trust U/A/D 10/31/12

Union Square Hospitality Group, LLC

Union Square Cafe Corp.

Gramercy Tavern Corp.

SCHEDULE 2

MANAGEMENT STOCKHOLDERS

Jeff Flug

Flug 2012 GS Trust U/A/D 9/4/12

Gulf Five LLC

Randall Garutti

The Randall J. Garutti 2014 GST Trust

Jeff Uttz

David Swinghamer

David Swinghamer Grat

Richard Coraine

Richard D. Coraine 2012 Family Trust

Karen Kochevar

Erin Moran

Ashley Campbell

ACG Shack LLC

Roxanne H. Frank Revocable Trust

RHF-NM Descendants Trust

Marc Weiss Revocable Trust U/A/D 8/11/2003

RHF-TM Descendants Trust

VHP Special Trust for Jack Date 12/31/12

Jean Polsky Investment Trust Date 3/21/97

Joan Harris Revocable Trust

Ben Harris Family Trust Date 12/23/92

David Harris Family Trust Dated 12/23/92

Amy Weiss-Meyer Qualified Minor's Trust

Isaac Weiss-Meyer Qualified Minor's Trust

Hallie Meyer Qualified Minor's Trust

Gretchen Meyer Qualified Minor's Trust

Peyton Meyer Qualified Minor's Trust

Charles Meyer Qualified Minor's Trust

Beth Stephens

Orrin Devinsky

Laura Sloate

Bert Vivian

Granite Point Capital

SCHEDULE 3

LGP STOCKHOLDERS(1)

Green Equity Investors VI, L.P.

Green Equity Investors Side VI, L.P.

Co-Invest LLC

SCHEDULE 4

SEG STOCKHOLDERS

SEG Partners, L.P.

SEG Partners II, L.P.

SEG Partners Offshore Master Fund Ltd.

SEGPO Investment Corp. LLC



THIRD AMENDED AND RESTATED
CREDIT AGREEMENT

dated as of

January [], 2015

among

SSE HOLDINGS, LLC

The Other Loan Parties Party Hereto

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

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EXHIBITS:

Exhibit A	Form of Assignment and Assumption
Exhibit B	Form of Compliance Certificate
Exhibit C	Form of Joinder Agreement
Exhibit D	Form of Opinion

THIRD AMENDED AND RESTATED CREDIT AGREEMENT dated as of January [], 2015 (this “Agreement”), among SSE HOLDINGS, LLC, the other Loan Parties party hereto, the Lenders party hereto, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

PRELIMINARY STATEMENTS:

The Borrower, certain Subsidiaries of the Borrower party thereto, the lenders party thereto (the “Existing Lenders”) and the Administrative Agent are parties to that certain Second Amended and Restated Credit Agreement dated as of April 30, 2014 (as in effect immediately before giving effect to the amendment and restatement contemplated hereby, the “Existing Credit Agreement”).

Pursuant to the Existing Credit Agreement, the Existing Lenders agreed to make extensions of credit to the Borrower on the terms and conditions set forth therein, including making loans (the “Existing Loans”) to the Borrower.

Whereas, the Borrower has requested that on the Effective Date the Existing Credit Agreement be amended and restated in its entirety to read as provided herein, and the Lenders (including certain of the Existing Lenders) have agreed (subject to the terms of this Agreement) to amend and restate the Existing Credit Agreement on the Effective Date in its entirety to read as set forth in this Agreement, and it has been agreed by the parties to the Existing Credit Agreement that (a) the commitments which the Existing Lenders have agreed to extend to the Borrower under the Existing Credit Agreement shall be extended or advanced upon the amended and restated terms and conditions contained in this Agreement and (b) the Existing Loans and other Secured Obligations (as defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement shall be governed by and deemed to be outstanding under the amended and restated terms and conditions contained in this Agreement, with the intent that the terms of this Agreement shall supersede the terms of the Existing Credit Agreement (each of which shall hereafter have no further effect upon the parties thereto, other than for accrued fees and expenses, and indemnification provisions accrued and owing, under the terms of the Existing Credit Agreement on or prior to the Effective Date or arising (in the case of indemnification) under the terms of the Existing Credit Agreement).

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Act” has the meaning assigned to such term in Section 9.14.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period or for any CBFR Borrowing, an interest rate per annum (rounded upwards, if necessary,

to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“ Adjusted One Month LIBOR Rate ” means, an interest rate per annum equal to the sum of (a) 2.50% per annum plus (b) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate appearing on the Reuters Screen LIBOR01 Page (or on any successor or substitute page) at approximately 11:00 a.m. London time on such day (without any rounding).

“ Administrative Agent ” means JPMorgan Chase Bank, N.A., in its capacity as administrative agent for the Lenders hereunder.

“ Administrative Questionnaire ” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“ Affiliate ” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“ Aggregate Credit Exposure ” means, at any time, the aggregate Revolving Credit Exposure of all the Lenders.

“ Agreement ” has the meaning assigned to such term in the Preamble.

“ Anti-Terrorism Laws ” shall mean any Laws relating to terrorism or money laundering, including Executive Order No. 13224, the Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by the United States Treasury Department’s Office of Foreign Asset Control (as any of the foregoing Laws may from time to time be amended, renewed, extended, or replaced).

“ Applicable Percentage ” means, with respect to any Lender, (a) with respect to Revolving Loans and LC Exposure, (i) prior to the Delayed Commitment Effective Date, if any, a percentage equal to a fraction the numerator of which is such Lender’s Initial Revolving Commitment and the denominator of which is the aggregate Initial Revolving Commitments of all Revolving Lenders (if the Initial Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender’s share of the aggregate Revolving Credit Exposures at that time and (ii) on and after the Delayed Commitment Effective Date, if any, a percentage equal to a fraction the numerator of which is such Lender’s Total Revolving Commitment and the denominator of which is the aggregate Total Revolving Commitment of all Revolving Lenders (if the Total Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender’s share of the aggregate Revolving Credit Exposures at that time) and (b) with respect to the Aggregate Credit Exposure, a percentage based upon its share of the Aggregate Credit Exposure and the unused Revolving Commitments; provided that in the case of Section 2.18 when a Defaulting Lender shall exist, any such Defaulting Lender’s Revolving Commitment shall be disregarded in the calculation of the percentages set forth in clauses (a) and (b) above.

“ Applicable Rate ” means, for any day, with respect to any Revolving Loan or any LC Exposure, as the case may be, the applicable margin as of each immediately prior quarter-end based on the Funded Net Debt to EBITDA Ratio as set forth in the table below:

Funded Net Debt to EBITDA Ratio	≤ 1.50:1.00		≤ 2.00:1.00		≤ 2.50:1.00	
	≤ 1.00:1.00	> 1.00:1.00 but ≤ 1.50:1.00	> 1.50:1.00 but ≤ 2.00:1.00	> 2.00:1.00 but ≤ 2.50:1.00	> 2.50:1.00	> 2.50:1.00
CB Floating Rate	0.00%	0.25%	0.50%	0.75%	1.00%	1.00%
Adjusted LIBO Rate	2.50%	2.75%	3.00%	3.25%	3.50%	3.50%

“ Approved Fund ” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“ Assignment and Assumption ” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“ Availability Period ” means the period from and including the Effective Date to but excluding the applicable Maturity Date.

“ Available Revolving Commitment ” means, at any time, (a)(i) prior to the Delayed Commitment Effective Date, if any, the Initial Revolving Commitment then in effect and (ii) on and after the Delayed Commitment Effective Date, if any, the Total Revolving Commitment then in effect; minus (b) the Revolving Credit Exposure of all Revolving Lenders at such time.

“ Banking Services ” means each and any of the following bank services provided to any Loan Party by Chase or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

“ Banking Services Obligations ” of the Loan Parties means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

“ Bankruptcy Event ” means, with respect to any Person, such Person or such Person’s direct or indirect parent company becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person or such Person’s direct or indirect parent company by a Governmental Authority or instrumentality thereof if, and only if, such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm this Agreement or any other contract or agreement made by such Person.

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

“ Board of Directors ” means, relative to any Person, (a) in the case of any corporation, its board of directors, (b) in the case of any limited liability company, its board of managers or managing member, (c) in the case of any partnership, the Board of Directors of the general partner of such partnership and (d) in any other case, the functional equivalent of the foregoing.

“ Borrower ” means SSE Holdings, LLC, a Delaware limited liability company.

“ Borrowing ” means Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“ Borrowing Request ” means a request by the Borrower for a Revolving Borrowing in accordance with Section 2.03.

“ Business Day ” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “ Business Day ” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“ Capital Expenditures ” of any Consolidated Party means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on the balance sheet of such Consolidated Party prepared in accordance with GAAP. For purposes of this definition the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount of such purchase price less the credit granted by the seller of such equipment for the equipment being traded in at such time or the amount of such proceeds, as the case may be.

“ Capital Lease Obligations ” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

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

“ CBFR ”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the CB Floating Rate.

“ Change in Control ” means the occurrence of any of the following at any time:

any:

- (1) Person or Persons (other than a Permitted Holder), or
- (2) Persons (other than one or more Permitted Holders) constituting a “group” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, but excluding any employee benefit plan of such person and its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan),

shall become the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Shake Shack and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of Shake Shack beneficially owned, directly or indirectly, in the aggregate by one or more of the Permitted Holders.

“ Change in Law ” means, (a) the adoption of any law, rule, regulation or treaty (including any rules or regulations issued under or implementing any existing law) after the date of this Agreement, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or the Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in

connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case solely with respect to Basel III, shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

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

“ Code ” means the Internal Revenue Code of 1986, as amended from time to time.

“ Collateral ” has the meaning assigned to such term in the Security Agreement.

“ Collateral Documents ” means, collectively, the Security Agreement and any other documents granting a Lien upon the Collateral as security for payment of the Secured Obligations.

“ Competitor ” means any Person (and any Controlling Affiliate of such Person) that is an owner, operator or manager of a restaurant, catering service or food service.

“ Consolidated Parties ” means collectively, the Loan Parties and their respective subsidiaries.

“ Control ” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “ Controlling ” and “ Controlled ” have meanings correlative thereto.

“ Cure Payments ” means amounts received by and contributed to the Borrower and used to prepay the Loans and to increase EBITDA in connection with Sections 2.09(e), 2.09(f) and 7.02.

“ Default ” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“ Defaulting Lender ” means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within two (2) Business Days after request by a

Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit under this Agreement; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of a Bankruptcy Event.

“ Delayed Commitment Amount ” means an amount of up to \$30,000,000.

“ Delayed Commitment Effective Date ” means the date after the Effective Date on which (a) the Administrative Agent receives (i) a request to increase the Initial Revolving Commitments by the amount of the Delayed Commitment Amount and (ii) a certificate delivered pursuant to Section 4.02 certifying that the conditions specified in Section 4.02 have been satisfied (or waived in accordance with Section 9.02), (b) each Lender (in its sole discretion) and the Administrative Agent (in its sole discretion) shall have agreed to such increase, (c) any conditions to such agreements by the Lenders and the Administrative Agent (including the payment of any agreed fees) shall have been satisfied, and (d) the conditions set forth in Sections 4.02 and 4.03 shall have been satisfied as of such date.

“ Disclosed Matters ” means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

“ Dollars ” or “ \$ ” refers to lawful money of the United States of America.

“ Domestic Subsidiary ” means any Subsidiary that is incorporated under the laws of the United States or its territories or possessions.

“ EBITDA ” means, for any period, the sum of

- (a) Net Income for such period, plus
- (b) without duplication and (except with respect to clause (ix) below) to the extent deducted in determining Net Income for such period, the sum of:
 - (i) interest expense for such period and, to the extent not reflected in such interest expense, (A) fees, expenses and charges incurred in respect of financing activities (including commissions, discounts and closing fees) during such period and (B) payments made in respect of hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk during such period;
 - (ii) provision for taxes based on income or profits or capital for such period;
 - (iii) all amounts attributable to depreciation and amortization expense for such period;

- (iv) extraordinary, unusual or non-recurring expenses or charges for such period;
 - (v) non-cash expenses or charges for such period including non-cash rent expense and non-cash compensation expense;
 - (vi) fees, costs and expenses incurred in connection with (A) the Transactions consummated on the Effective Date to the extent incurred on or prior to the Effective Date or (B) issuances of equity interests, making Investments, or the incurrence, repayment, amendment or restructuring of Indebtedness, in each case, to the extent permitted to be incurred or made under the Loan Documents;
 - (vii) restructuring charges or reserves, whether or not classified as such under GAAP, including severance, relocation costs, and integration and other similar expenses;
 - (viii) the amount of any minority interest expense consisting of subsidiary income attributable to minority equity interests of third parties in any non-wholly owned Subsidiary deducted (and not added back) in such period to consolidated net income;
 - (ix) the proceeds of any business interruption insurance;
 - (x) the amount of costs relating to pre-opening and opening costs for stores;
 - (xi) any Cure Payments and capital contributions and dividends that the Borrower and Loan Parties receive directly or indirectly from (A) a Person that is not a Loan Party or (B) third party holders of Equity Interests of the Loan Parties during such period; and
 - (xii) the aggregate amount of costs and expenses actually incurred during such period by the Loan Parties in connection with the Shake Shack IPO, minus
- (c) without duplication and to the extent included in Net Income, any extraordinary gains and any non-cash items of income for such period, all calculated for the Consolidated Parties after eliminations for intercompany transactions.

For the avoidance of doubt, EBITDA for any period, (x) shall include, without duplication, the EBITDA of any Person, property, business or asset acquired or formed by the Borrower or any Loan Party during such period, to the extent (A) such Person becomes a Loan Party, (B) such property, business or asset is owned by a Loan Party and (C) such Person, property or asset is not subsequently sold, transferred, abandoned or otherwise disposed by the Borrower or such Loan Party, and (y) shall exclude the EBITDA of any Person, property, business or asset sold, transferred, abandoned or otherwise disposed by the Borrower or such Loan Party during such period to the extent (A) that such Person sold, transferred, abandoned or

otherwise disposed was a Loan Party and (B) such property, business or asset that was sold, transferred, abandoned or otherwise disposed was owned by a Loan Party.

“ EBITDAR ” means, for any period, (a) EBITDA plus (b) Rentals actually made in cash.

“ Effective Date ” means the date specified by the Borrower in a notice to the Administrative Agent, provided that such specified date shall be the Effective Date only if:

- (a) such notice is received by the Administrative Agent at least two Business Days prior to such date,
- (b) such date is on or prior to March 16, 2015,
- (c) on such date, the aggregate outstanding principal amount of the Existing Loans shall be equal to or less than the aggregate amount of the Initial Revolving Commitments, and,
- (d) as of such date, each of the conditions precedent set forth in Sections 4.01 and 4.03 shall have been satisfied.

“ Environmental Laws ” means all applicable laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices of violation or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

“ Environmental Liability ” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“ Equity Interests ” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ ERISA ” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ ERISA Affiliate ” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ ERISA Event ” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) the failure with respect to any Plan or Multiemployer Plan to satisfy the minimum funding requirements of Section 412 of the Code or Section 302 of ERISA or, in the case of a Multiemployer Plan, Section 432 of the Code, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or Multiemployer Plan; (d) the incurrence by any Loan Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Multiemployer Plan or to appoint a trustee to administer any Plan or Multiemployer Plan; (f) the incurrence by any Loan Party or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“ Eurodollar ”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“ Event of Default ” has the meaning assigned to such term in Article VII.

“ Excluded Subsidiary ” means (a) any Subsidiary that is not directly or indirectly, a wholly owned Domestic Subsidiary of the Borrower, (b) any Foreign Subsidiary and (c) any Immaterial Subsidiary.

“ Excluded Swap Obligation ” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (a) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such

Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation or (b) in the case of a Swap Obligation that is required to be cleared pursuant to Section 2(h) of the Commodity Exchange Act (or any successor provision thereto), because such Guarantor is a “financial entity,” as defined in Section 2(h)(7)(C)(i) the Commodity Exchange Act (or any successor provision thereto), at the time the Guarantee of such Guarantor becomes or would become effective with respect to such related Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the applicable Issuing Bank or any other recipient of any payment to be made by or on account of

any obligation of the Borrower or any other Loan Party hereunder or any other Loan Document, (a) taxes imposed on or measured by its net income (however denominated), or franchise taxes imposed in lieu of net income taxes, imposed on it, by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or with which it has any other connection for tax purposes (other than a present or former connection that would not have arisen but for entering into the Loan Documents, receiving any payments under or with respect to the Loan Documents, or enforcing any rights and remedies under the Loan Documents) or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located, (c) in the case of a Lender, any U.S. federal withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new lending office) or is attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 2.15(f), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.15(a) (other than pursuant to an assignment request by the Borrower under Section 2.17 hereof), (d) any backup withholding taxes imposed on the Administrative Agent, any Lender, the applicable Issuing Bank or any other recipient of any payment hereunder and (e) any Taxes which are imposed under FATCA.

“ Existing Credit Agreement ” has the meaning assigned to such term in the Preliminary Statements.

“ Existing Lenders ” has the meaning assigned to such term in the Preliminary Statements.

“ Existing Loans ” has the meaning assigned to such term in the Preliminary Statements.

“ FATCA ” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements (together with any Law implementing such agreements).

“ Federal Funds Effective Rate ” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“ Financial Officer ” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower, in each case, in his or her capacity as such.

“ Fixed Charge Coverage Ratio ” means, for any period, the ratio of (a) EBITDAR minus the unfinanced (other than with proceeds of the Loans) portion of Maintenance Capital Expenditures to (b) (i) the sum, without duplication, of cash Interest Expense, plus Rentals, plus all principal (excluding (x) any payments on account of any Revolving Loan and (y) prepayments, mandatory or otherwise, under this Agreement or the Existing Credit Agreement) and amortization payments on Funded Debt made during such period, plus Restricted Payments (other than (1) Restricted Payments made for the purpose of paying taxes attributable to the Consolidated Parties, and (2) Restricted Payments made on or about December 31, 2014, in an aggregate amount not in excess of \$22,000,000) paid in cash to any Person that is not a Loan Party, plus Capital Lease Obligation payments, all calculated for the Consolidated Parties after eliminations for intercompany transactions.

“ Foreign Lender ” means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“ Foreign Subsidiary ” means (a) any direct or indirect subsidiary of the Borrower or any other Loan Party, as applicable, that is organized under the laws of any jurisdiction other than the United States or its territories or possessions and that is treated as a corporation for United States federal income tax purposes and (b) any subsidiary of the Borrower or any other Loan Party, as applicable, that (i) is disregarded as an entity that is separate from its owner for United States federal income tax purposes and (ii) wholly-owns the stock of one or more Foreign Subsidiaries, but only so long as such subsidiary has no assets other than the stock of one or more Foreign Subsidiaries and de minimis other assets.

“ Funded Debt ” means, as of any date of determination, the aggregate principal amount of Indebtedness of the Consolidated Parties outstanding on such date, consisting of (a) Indebtedness for borrowed money (after eliminating intercompany Indebtedness among Loan Parties permitted by this Agreement), (b) Capital Lease Obligations of the Consolidated Parties and (c) debt obligations evidenced by bonds, debentures, promissory notes or similar instruments.

“ Funded Net Debt to EBITDA Ratio ” means, for any date of determination, the ratio of (a) Funded Debt less up to \$5,000,000 of the Loan Parties’ cash and Permitted Investments on such date to (b) EBITDA for the period of four consecutive fiscal quarters of the Borrower most recently ended, all calculated for the Consolidated Parties.

“ Funding Account ” means the deposit account of the Borrower that the Borrower shall have notified the Administrative Agent is the account to which the Administrative Agent is authorized by the Borrower to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

“ GAAP ” means generally accepted accounting principles in the United States of America as are in effect from time to time, subject to the provisions of Section 1.04.

“ Governmental Authority ” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency,

authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“ Guarantee ” of or by any Person (the “ guarantor ”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “ primary obligor ”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the date hereof or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“ Guaranteed Obligations ” has the meaning assigned to such term in Section 10.01.

“ Guarantor ” means each direct and indirect Domestic Subsidiary (excluding any Excluded Subsidiary) of the Borrower and any other Person who becomes a party to a Loan Guaranty pursuant to a Joinder Agreement or otherwise and its successors and assigns.

“ Hazardous Materials ” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other chemicals, materials or substances or wastes of any nature regulated pursuant to any Environmental Law.

“ Immaterial Subsidiary ” means any Subsidiary that (a) did not, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are required to be delivered (whether or not such financial statements are actually delivered), have assets with a value in excess of \$50,000, and (b) taken together with all Immaterial Subsidiaries as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are required to be delivered (whether or not such financial statements are actually delivered), did not have assets with a value in excess of \$100,000.

“ Indebtedness ” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all

obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable, trade payables and accrued expenses in respect of each such payable, in each case incurred in the ordinary course of business and paid within 120 days of such incurrence), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed (and that the amount of such Indebtedness shall be deemed equal to the lesser of (x) the fair market value of such property or (y) the outstanding principal amount of such Indebtedness), (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty (other than to the extent cash collateralized), (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (j) obligations under any liquidated earn-out and (k) any other Off-Balance Sheet Liability. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“ Indemnified Taxes ” means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

“ Ineligible Assignee ” has the meaning assigned to it in Section 9.04(b).

“ Initial Revolving Commitment ” means, with respect to each Lender and prior to the Delayed Commitment Effective Date, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.07. The initial amount of each Lender's Initial Revolving Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Initial Revolving Commitment, as applicable. The initial aggregate amount of the Lenders' Initial Revolving Commitments is twenty million dollars (\$20,000,000).

“ Interest Election Request ” means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.06.

“ Interest Expense ” means, with reference to any period, total interest expense (including that attributable to Capital Lease Obligations) of the Consolidated Parties for such period with respect to all outstanding Indebtedness of the Consolidated Parties (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated after eliminations for intercompany transactions.

“ Interest Payment Date ” means (a) with respect to any CBFR Loan, the first Business Day of each calendar month and the Maturity Date and (b) with respect to any Eurodollar Loan, the last day of the Interest Period and the Maturity Date.

“ Interest Period ” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one month thereafter; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“ IRS ” means the United States Internal Revenue Service.

“ Issuing Bank ” means Chase, in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.04. The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“ Joinder Agreement ” has the meaning assigned to such term in Section 5.12.

“ Law ” means any law, rule, regulations, code, ordinance, order or decree issued or promulgated by any Governmental Authority

“ LC Collateral Account ” has the meaning assigned to such term in Section 2.04(j).

“ LC Disbursement ” means a payment made by the Issuing Bank pursuant to a Letter of Credit.

“ LC Exposure ” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

“ LC Sublimit ” means \$10,000,000.

“ Lender Party ” means the Administrative Agent, each Issuing Bank or any other Lender.

“ Lenders ” means the Persons listed on the Schedule 2.01, and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“ Letter of Credit ” means any standby letter of credit issued pursuant to this Agreement.

“ LIBO Rate ” means, with respect to any Eurodollar Borrowing for any Interest Period, a rate per annum equal to (a) the BBA Interest Settlement Rate per annum at which deposits in Dollars are offered in London, England to prime banks in the London Interbank Market for such Interest Period as displayed on the Reuters LIBOR01 Page as of 11:00 a.m. (London time) two (2) Business Days before the first day of such Interest Period or (b) if the rate described in clause (a) does not appear on Reuters LIBOR01 Page on any relevant date of determination, the average of the rates at which Dollar deposits with a maturity equal to the applicable Interest Period are offered to the lending office of the Administrative Agent in immediately available funds in the London Interbank Market for Eurodollars at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period.

“ Lien ” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“ LLC Agreement ” means the Third Amended and Restated Limited Liability Company Agreement of the Borrower, dated as of the Effective Date.

“ Loan Documents ” means this Agreement, any promissory notes issued pursuant to the Agreement, any Letter of Credit applications, the Collateral Documents, the Loan Guaranty and all other agreements, instruments, documents and certificates identified in Sections 4.01, 4.02 and 4.03 executed and delivered to, or in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with the Agreement or the transactions contemplated thereby. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“ Loan Guaranty ” means Article X of this Agreement and any other guaranty of the Secured Obligations now or hereafter delivered to the Administrative Agent.

“ Loan Parties ” means the Borrower, each Guarantor and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and their successors and assigns.

“ Loans ” means the loans and advances made by the Lenders pursuant to this Agreement.

“ Maintenance Capital Expenditures ” means, with respect to any Consolidated Party, Capital Expenditures made in the ordinary course of business to repair, replace or otherwise maintain fixed or capital assets of such Person (and, for the avoidance of doubt, shall not include any Capital Expenditure in connection with the initial build-out of any restaurant or unit).

“ Material Adverse Effect ” means a material adverse effect on (a) the business, assets, operations or condition, financial or otherwise, of the Borrower and the other Loan Parties taken as a whole, (b) the ability of the Loan Parties to perform any of their respective obligations under the Loan Documents to which it is a party, (c) the Collateral, or the Administrative Agent’s Liens (on behalf of itself and the Lenders) on the Collateral or the priority of such Liens, or (d) the rights of or benefits available to the Lender Parties under the Loan Documents.

“ Material Indebtedness ” means any item of Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Loan Parties in an aggregate principal amount exceeding \$3,500,000. For purposes of determining Material Indebtedness, the “obligations” of any Loan Party in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party would be required to pay if such Swap Agreement were terminated at such time.

“ Maturity Date ” means, with respect to (a) Revolving Loans, (i) five (5) years after the Effective Date or (ii) any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof and (b) Letters of Credit (i) five (5) years after the Effective Date or (ii) any earlier date on which the LC Sublimit is to zero or otherwise terminated pursuant to the terms hereof.

“ Maximum Liability ” has the meaning assigned to such term in Section 10.10.

“ Moody’s ” means Moody’s Investors Service, Inc.

“ Multiemployer Plan ” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“ Net Income ” means, for any period, the net income (or loss) of the Consolidated Parties calculated after eliminations for intercompany transactions; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Loan Party or a Subsidiary of a Loan Party or is merged into or consolidated with a Loan Party or a Subsidiary of a Loan Party, (b) the income (or deficit) of any Person (other than a Subsidiary of a Loan Party) in which a Loan Party has an ownership interest, except to the extent that any such income is actually received by such Loan Party in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary of a Loan Party to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

“ Net Proceeds ” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a

note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, and the costs, commissions, premiums, and to the extent applicable, underwriting discounts, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year (or years, as the case may be) and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer).

“ Non-Consenting Lender ” has the meaning assigned to such term in Section 9.02(d).

“ Non-Paying Guarantor ” has the meaning assigned to such term in Section 10.11.

“ Obligated Party ” has the meaning assigned to such term in Section 10.02.

“ Obligations ” means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Loan Parties to the Lenders or to any Lender, the Administrative Agent, the Issuing Bank or any indemnified party arising under the Loan Documents; provided that the definition of “Obligations” shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

“ Off-Balance Sheet Liability ” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheets of such Person (other than operating leases).

“ Organizational Documents ” means in respect of any Person (a) that is a corporation, its articles of incorporation, by-laws and any shareholder’s agreement (or similar constituent document) governing the Equity Interests (voting or otherwise) of such Person, (b) that is a limited liability company, its certificate of formation and operating agreement (or similar constituent document) and (c) that is a partnership, its certificate of formation and partnership agreement (or similar constituent document).

“ Other Taxes ” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made

hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement, excluding any such taxes resulting from an assignment by any Lender pursuant to Section 9.04 hereof.

“ Participant ” has the meaning set forth in Section 9.04(c)(i).

“ Participant Register ” has the meaning set forth in Section 9.04(c)(i).

“ PBGC ” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“ Permitted Encumbrances ” means:

- (a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.04;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 7.01(k);
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;
- (g) pledges and deposits in the ordinary course of business securing the financing of the insurance premiums under insurance policies, payable to insurance carriers that provide insurance to the Loan Parties;
- (h) Liens encumbering customary initial deposits in respect of brokerage accounts incurred in the ordinary course of business;
- (i) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

- (j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (k) rights of set-off of a customary nature or bankers’ Liens on amounts on deposit, whether arising by contract or law, incurred in the ordinary course of business; and
- (l) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings made in respect of operating leases.

“ Permitted Equity Issuance ” means (a) with respect to any Loan Party or any Subsidiary, any issuance of Equity Interests by such Loan Party or Subsidiary, the proceeds of which are used by such Loan Party to (i) open and operate additional restaurants that are substantially similar to existing restaurants owned by such Loan Party or Subsidiary, (ii) invest in (A) joint ventures or other Persons, or (B) acquire assets that are used or are useful in the business of the Borrower, any Loan Party or any Subsidiary, (b) any issuance of Equity Interests pursuant to any management, director and/or employee stock ownership or benefit plan, key employee stock ownership plan or stock subscription agreement, (c) any issuance of Equity Interests of any Loan Party to new members or shareholders of such Loan Party in connection with the replacement of members or shareholders in compliance with the Organizational Documents of such Loan Party and (d) any issuance of Equity Interests by any Loan Party to any other Loan Party.

“ Permitted Investments ” means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such

date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii)

are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

“ Permitted Holder ” means [USHG, Green Equity Investors VI, L.P., Green Equity Investors Side VI, L.P., LGP Malted Coinvest LLC, Daniel Meyer, SEG Partners, L.P., SEG Partners Offshore Master Fund, Ltd., ACG Shack LLC and Jeff Flug].(1)

“ Person ” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“ Plan ” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“ Prepayment Event ” means:

(a) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party with a fair value immediately prior to such event equal to or greater than \$2,000,000; or

(b) the incurrence by any Loan Party of any Indebtedness, other than Indebtedness permitted under Section 6.01 or permitted by the Required Lenders pursuant to Section 9.02.

“ Prime Rate ” means the rate of interest per annum publicly announced from time to time by Chase as its prime rate in effect at its offices located at 270 Park Avenue, New York, New York; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“ Qualified ECP Guarantor ” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“ Register ” has the meaning assigned to such term in Section 9.04.

“ Related Parties ” means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

(1) To be confirmed.

“Rentals” means, with reference to any period, the aggregate fixed amounts payable by the Consolidated Parties under any operating lease, calculated after eliminations for intercompany transactions.

“Required Lenders” means, at any time, Lenders having Revolving Credit Exposure and unused Commitments representing more than 50.0% of the sum of the Aggregate Credit Exposure and unused Revolving Commitments at such time.

“Requirement of Law” means, as to any Person, the Certificate of Incorporation and By-Laws or other equivalent organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower.

“Revolving Commitment” means, with respect to each Lender, (a) prior to the Delayed Commitment Effective Date, if any, such Lender’s Initial Revolving Commitment then in effect and (b) on and after the Delayed Commitment Effective Date, if any, such Lender’s Total Revolving Commitment then in effect. The initial amount of each Lender’s applicable Revolving Commitment is set forth on the Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans and its LC Exposure at such time.

“Revolving Lender” means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Credit Exposure.

“Revolving Loan” means, collectively, (a) the loans deemed to be extended by the Revolving Lenders to the Borrower on the Effective Date pursuant to Section 2.01(a)(i) and (b) any loan made pursuant to Section 2.01(a)(ii).

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, Inc.

“Secured Obligations” means all Obligations, together with all (a) Banking Services Obligations and (b) Swap Obligations owing to one or more Lenders or their respective Affiliates; provided that at or prior to the time that any transaction relating to such Swap Obligation is executed, the Lender party thereto (other than Chase) shall have delivered written

notice to the Administrative Agent that such a transaction has been entered into and that it constitutes a Secured Obligation entitled to the benefits of the Collateral Documents.

“ Security Agreement ” means (a) that certain Second Amended and Restated Security Agreement, dated as of February 18, 2014, between the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, and (b) any other pledge or security agreement entered into, after the date of this Agreement, by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person, as the same may be amended, restated or otherwise modified from time to time.

“ Shake Shack ” means Shake Shack Inc., a Delaware corporation.

“ Shake Shack IPO ” means an initial public offering of the class A common stock of Shake Shack.

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

“ Subordinated Indebtedness ” of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent.

“ subsidiary ” means, with respect to any Person (the “ parent ”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“ Subsidiary ” means any direct or indirect subsidiary of the Borrower or any other Loan Party, as applicable.

“ Swap Agreement ” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or

more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

“ Swap Obligations ” of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

“ Tax Receivable Agreement ” means the Tax Receivable Agreement, dated the Effective Date, among Shake Shack and other members of the Borrower.

“ Taxes ” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“ Total Revolving Commitment ” means, with respect to each Lender and on and after the Delayed Commitment Effective Date, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to (a) Section 2.07 and (b) assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Total Revolving Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Total Revolving Commitment, as applicable. The initial aggregate amount of the Lenders’ Total Revolving Commitments is the Initial Revolving Commitment plus the Delayed Commitment Amount; provided that such amount shall be reduced Dollar for Dollar to the extent of any reduction of the Initial Revolving Commitment pursuant to Section 2.07.

“ Transactions ” means the execution, delivery and performance by the Borrower of this Agreement, the borrowing and conversion of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“ Type ”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the CB Floating Rate.

“ UCC ” means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

“ Unliquidated Obligations ” means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is an obligation in connection with the Secured Obligations: (a) to reimburse a

bank for drawings not yet made under a letter of credit issued by it; (b) (including any guarantee) that is contingent in nature at such time; or (c) to provide collateral to secure any of the foregoing types of obligations.

“ U.S. Tax Compliance Certificate ” has the meaning assigned to such term in Section 2.15(f)(ii)(A)(iii).

“ USHG ” means Union Square Hospitality Group, LLC, a New York limited liability company.

“ Withdrawal Liability ” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“ Withholding Agent ” means the Borrower and the Administrative Agent.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Eurodollar Loan”). Borrowings also may be classified and referred to by Type (e.g., a “Eurodollar Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein and in each other Loan Document shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein or therein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (b) any reference herein or therein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement or such other Loan Document in its entirety and not to any particular provision hereof or thereof, (d) all references herein or therein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement or such other Loan Document and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the

application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Solely for the purposes of the calculation of, and compliance with, the financial covenants contained herein, "GAAP" shall exclude the effects of Accounting Standards Codification 825-10-25. Notwithstanding anything in this Agreement to the contrary, any change in GAAP occurring after the date hereof that would require operating leases to be treated similarly to capital leases shall not be given effect in the definition of EBITDA or Indebtedness or any related definitions or in the computation of, and compliance with the financial covenants contained herein or in any other Loan Document.

ARTICLE II

THE CREDITS

SECTION 2.01. Commitments and Loans.

(a) As of the Effective Date, each of the parties hereto acknowledges and agrees that the Revolving Loans (as defined in the Existing Credit Agreement) outstanding as of the Effective Date shall be deemed to be Revolving Loans for all purposes under this Agreement and the other Loan Documents.

(b) Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower from time to time during the Availability Period with respect to Revolving Loans in an aggregate principal amount that will not result in (i) prior to the Delayed Commitment Effective Date, if any, (A) such Lender's Revolving Credit Exposure exceeding such Lender's Initial Revolving Commitment or (B) the total Revolving Credit Exposures exceeding the sum of the aggregate Initial Revolving Commitments of all Revolving Lenders or (ii) on and after the Delayed Commitment Effective Date, if any, (A) such Lender's Revolving Credit Exposure exceeding such Lender's Total Revolving Commitment or (B) the total Revolving Credit Exposures exceeding the sum of the Total Revolving Commitments of all Revolving Lenders. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02. Loans and Borrowings. (a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Revolving Commitments.

(b) Subject to Section 2.12, each Borrowing shall be comprised entirely of CBFR Loans or Eurodollar Loans as the Borrower may request in accordance herewith; provided that all Borrowings made on the Effective Date must be made as CBFR Borrowings, but, in each case, may be converted into Eurodollar Borrowings in accordance with Section 2.06. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the time that each CBFR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000; provided that a CBFR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the aggregate Initial Revolving Commitments or, if applicable, the aggregate Total Revolving Commitments then in effect or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.04(e). Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of 3 Eurodollar Borrowings outstanding with respect to Revolving Loans.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request either in writing (delivered by hand or facsimile or by electronic mail in .pdf format) in a form approved by the Administrative Agent and signed by the Borrower or by telephone (a) in the case of a Eurodollar Borrowing, not later than 10:00 a.m., New York time, three Business Days before the date of the proposed Borrowing or (b) in the case of a CBFR Borrowing, not later than noon, New York time, on the date of the proposed Borrowing; provided that any such notice of a CBFR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.04(e) may be given not later than 9:00 a.m., New York time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.01:

- (i) the aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be a CBFR Borrowing or a Eurodollar Borrowing; and
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period."

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be a CBFR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request

in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period with respect to Letters of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or facsimile (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (prior to 9:00 am, New York time, at least three Business Days prior to the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the LC Exposure shall not exceed the LC Sublimit and the total Revolving Credit Exposures shall not exceed the aggregate Initial Revolving Commitments or, if applicable, the aggregate Total Revolving Commitments then in effect.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date with respect to Letters of Credit.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Revolving Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC

Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m., New York time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 11:00 a.m., New York time, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 9:00 a.m., New York time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with a CBFR Revolving Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting CBFR Revolving Borrowing. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.05 with respect to Loans made by such Lender (and Section 2.05 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of CBFR Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the

Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Revolving Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by facsimile) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to CBFR Revolving Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.11(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

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(i) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.10(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account and the Borrower hereby grants the Administrative Agent a security interest in the LC Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Secured Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of a Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all such Defaults have been cured or waived.

SECTION 2.05. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., New York time, to the account of the Administrative Agent most recently

designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to the Funding Account; provided that CBFR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.04(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to CBFR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.06. Interest Elections. (a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Revolving Borrowing, shall have an initial Interest Period as specified in such Borrowing Request (it being understood that the only Interest Period available to the Borrower is a period of one month's duration). Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Revolving Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a CBFR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period" (it being understood that the only Interest Period available to the Borrower a period of one month's duration).

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Revolving Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a CBFR Borrowing. Notwithstanding any contrary provision hereof, if a Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as a Default is continuing (i) no outstanding Revolving Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Revolving Borrowing shall be converted to a CBFR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.07. Termination and Reduction of Revolving Commitments and LC Sublimit.

(a) Unless previously terminated, the LC Sublimit and all other Revolving Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate the Revolving Commitments upon (i) the payment in full of all outstanding Loans, together with accrued and unpaid interest thereon and on any Letters of Credit, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit (or at the discretion of the Administrative Agent a back up standby letter of credit satisfactory to the Administrative Agent) equal to 105% of the LC Exposure as of such

date), (iii) the payment in full of the accrued and unpaid fees, and (iv) the payment in full of all reimbursable expenses and other Obligations together with accrued and unpaid interest thereon.

(c) The Borrower may from time to time reduce the Initial Revolving Commitments or, if applicable, the Total Revolving Commitments, in each case, without premium or penalty; provided that (i) each reduction of any Revolving Commitment shall be in an amount that is an integral multiple of \$1,000,000 and (ii) the Borrower shall not reduce any such Revolving Commitment if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.09, the sum of the Revolving Credit Exposures would exceed aggregate Initial Revolving Commitments or, if applicable, the Total Revolving Commitments.

(d) The Borrower shall notify the Administrative Agent of any election to terminate or reduce any Revolving Commitment under clause (b) or (c) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of any Revolving Commitment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of any Revolving Commitment shall be permanent. Each reduction of any Revolving Commitment shall be made ratably among the Lenders in accordance with their respective Revolving Commitments. Any reduction of the Initial Revolving Commitments shall automatically reduce the Total Revolving Commitments in the amount of such reduction notwithstanding that such reduction to the Initial Revolving Commitments may occur prior to the Delayed Commitment Effective Date.

SECTION 2.08. Repayment and Amortization of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date with respect to Revolving Loans.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) Pursuant to Section 9.04(b)(iii), the Administrative Agent shall maintain the Register in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts and the Register maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative

Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.09. Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (g) of this Section.

(b) In the event and on such occasion that the total Revolving Credit Exposure exceeds the aggregate Revolving Commitments then in effect, the Borrower shall prepay the Revolving Loans and/or LC Exposure in an aggregate amount equal to such excess.

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party in respect of any Prepayment Event, such Loan Party shall, within one (1) Business Day after such Net Proceeds are received by such Loan Party, prepay the Obligations as set forth in Section 2.09(d) below in an aggregate amount equal to in the case of all Prepayment Events, 100% of such Net Proceeds; provided that, in the case of any event described in clause (a) of the definition of the term "Prepayment Event", if the Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer stating that the Loan Parties intend to commit the Net Proceeds from such event (or the portion thereof specified in such certificate), within 180 days after receipt of such Net Proceeds, towards the acquisition (or replacement or reconstruction) of real property, equipment or other tangible assets (excluding inventory) to be used (or be useful) in the business of the Loan Parties, then no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate; provided further that to the extent any such Net Proceeds (or portion thereof) therefrom have not been so committed by the end of such 180-day period, a prepayment shall be required at such time in an amount equal to such Net Proceeds that have not been so committed.

(d) All amounts paid or to be paid pursuant to Section 2.09(c) shall be applied, *first* to prepay the Revolving Loans and *second* to cash collateralize each Letter of Credit then outstanding; provided that the portion of the Net Proceeds described in Section 2.09(c) shall be limited to the percentage of the ownership interest in such Loan Party held by the Borrower and any other Loan Party in the aggregate immediately prior to such Prepayment Event without giving any effect to any changes of such ownership interest in connection with such Prepayment Event.

(e) In the event, and on each occasion, that the Borrower is not in compliance with the Fixed Charge Coverage Ratio covenant set forth in Section 6.12 as of the last day of any fiscal quarter, the Borrower may, at its option, prepay the Loans in accordance with this Section

2.09(e) and Section 7.02 with the proceeds of a Cure Payment in an amount sufficient to cause the Borrower to be in compliance with the Fixed Charge Coverage Ratio when the amount of such Cure Payment is added to the EBITDA of the Borrower; provided that the Borrower shall be permitted to delay such prepayment until the Borrower receives (or has been deemed to receive) proceeds of any Cure Payment. Any proceeds received or deemed to be received pursuant to this Section 2.09(e) and Section 7.02 shall be used to repay the Revolving Loans and shall be added to the Borrower's EBITDA in accordance with Section 7.02.

(f) In the event, and on each occasion, that the Borrower is not in compliance with the Funded Net Debt to EBITDA Ratio covenant set forth in Section 6.13 as of the last day of any fiscal quarter, the Borrower may, at its option, prepay the Loans in accordance with this Section 2.09(f) and Section 7.02 with the proceeds of a Cure Payment in an amount sufficient to cause the Borrower to be in compliance with the Funded Net Debt to EBITDA Ratio, when the amount of such Cure Payment is added to the EBITDA of the Borrower and applied to reduce Indebtedness; provided that the Borrower shall be permitted to delay such prepayment until the Borrower receives (or has been deemed to receive) proceeds of any Cure Payment. Any proceeds received or deemed to be received pursuant to this Section 2.09(f) and Section 7.02 shall be used to repay the Revolving Loans and shall be added to the Borrower's EBITDA in accordance with Section 7.02.

(g) The Borrower shall notify the Administrative Agent by telephone (confirmed by facsimile) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Revolving Borrowing, not later than 10:00 a.m., New York time, three Business Days before the date of prepayment or (ii) in the case of prepayment of an Revolving Borrowing, not later than 10:00 a.m., New York time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.07, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.07. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Revolving Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11.

SECTION 2.10. Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which, during all times that

(i) the Revolving Commitment is \$10,000,000 or less, shall accrue at an annual rate of ten (10) basis points,

(ii) the Revolving Commitment is greater than \$10,000,000 but less than \$30,000,000, shall accrue at a rate of twenty (20) basis points, and

(iii) the Revolving Commitment is \$30,000,000 or greater, shall accrue at a rate of thirty (30) basis points,

in each case, on the average daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the Maturity Date. Accrued commitment fees shall be payable in arrears on (a) the first Business Day of each calendar month commencing on the first such date to occur after the Effective Date and (b) the Maturity Date. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the Applicable Rate on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the Maturity Date and the date on which such Revolving Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate of 0.25% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the Maturity Date and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of each calendar month shall be payable on the first Business Day of each calendar month following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the Maturity Date and any such fees accruing after the Maturity Date shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.11. Interest. (a) The Loans comprising each CBFR Borrowing shall bear interest at the CB Floating Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, during the occurrence and continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of “each Lender affected thereby” for reductions in interest rates), declare that (i) all Loans shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder.

(d) Accrued interest on each Loan (for CBFR Loans, accrued through the last day of the prior calendar month) shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Revolving Commitments; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a CBFR Revolving Loan prior to the end of the Availability Period with respect to Revolving Loans), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the CB Floating Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed. The applicable CB Floating Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.12. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a Eurodollar Revolving Borrowing, such Borrowing shall be made as a CBFR Borrowing.

SECTION 2.13. Increased Costs. (a) If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank; or
- (ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense (other than Indemnified Taxes or Excluded Taxes) affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and consistent with similarly situated customers of the applicable Lender or the Issuing Bank under agreements having provisions similar to this Section 2.13 after consideration of such factors as such Lender or the Issuing Bank then reasonably determines to be relevant) that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.14. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.07 and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.17, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.15. Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; provided that if a Withholding Agent shall be required by applicable Law to withhold or deduct any Indemnified Taxes and any Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable

to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Withholding Agent shall make such deductions and

(iii) such Withholding Agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of Section 2.15(a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, each Lender and the applicable Issuing Bank, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) paid by the Administrative Agent, such Lender or the applicable Issuing Bank, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, except to the extent any such Taxes arise as a result of the gross negligence or willful misconduct of the Administrative Agent or any Lender. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the applicable Issuing Bank (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the applicable Issuing Bank, shall be conclusive as to amount absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent for any Taxes (but, in the case of any Indemnified Taxes, only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so) attributable to such Lender that are paid or payable by the Administrative Agent in connection with any Loan Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.15(d) shall be paid within ten (10) days after the Administrative Agent delivers to the applicable Lender a certificate stating the amount of Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

(e) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding tax under the Law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. Notwithstanding the submission of such

documentation claiming a reduced rate of or exemption from U.S. withholding tax, the Administrative Agent shall be entitled to withhold United States federal income taxes at the full statutory withholding rate if in its reasonable judgment it is required to do so under the due diligence requirements imposed upon a withholding agent under § 1.1441-7T(b) of the United States Income Tax Regulations. Further, the Administrative Agent is indemnified under § 1.1461-1(e) of the United States Income Tax Regulations against any claims and demands of any Lender or assignee or participant of a Lender for the amount of any tax it deducts and withholds in accordance with regulations under § 1441 of the Code. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is resident for tax purposes in the United States of America:

(A) any Foreign Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) two (2) duly completed and executed valid originals of IRS Form W-8BEN or W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(ii) two (2) duly completed and executed valid originals of IRS Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) an original certificate substantially in the form of Exhibit []-1 to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) two (2) duly completed and executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable,

(iv) in the case of a Foreign Lender that is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8 BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit []-2 or Exhibit []-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is classified as a partnership for U.S. federal income tax purposes and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit []-4 on behalf of each such direct and indirect partner.

(v) any other form prescribed by applicable Law and reasonably requested by the Borrower as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed and executed together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower to determine the withholding or deduction required to be made; or

(B) To the extent that any Lender is not a Foreign Lender, such Lender shall submit to the Administrative Agent two (2) duly completed and executed originals of an IRS Form W-9 or any other form prescribed by applicable Law demonstrating that such Lender is not a Foreign Lender.

(iii) Without limiting the generality of the first paragraph of this Section 2.15(f) and in addition to any requirements described in the second paragraph of this Section 2.15(f), if a payment made to a Foreign Lender hereunder or under any other Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Foreign Lender, as the case may be, were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable, or in any agreement or request entered into or issued pursuant to such sections), such Foreign Lender shall deliver to the Borrower and to the Administrative Agent, at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation, certifications or other information prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation, certifications or other information reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower or the Administrative Agent to comply with its obligations under FATCA, to determine that such Foreign Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent if such Lender is legally unable to update such form or certification.

(g) Treatment of Certain Refunds. If the Administrative Agent, a Lender or the applicable Issuing Bank determines, in its sole discretion, that it has received a refund (or credit in lieu of a refund) of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund or credit (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund or credit); net of all out-of-pocket expenses of the Administrative Agent, such Lender or the applicable Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or credit), provided that the Borrower, upon the request of the Administrative Agent, such Lender or the applicable Issuing Bank, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or

the applicable Issuing Bank in the event the Administrative Agent, such Lender or the applicable Issuing Bank is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent, any Lender or the applicable Issuing Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

SECTION 2.16. Payments Generally; Allocation of Proceeds; Sharing of Set-offs. (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.13, 2.14 or 2.15, or otherwise) prior to 2:00 p.m., New York time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except payments to be made directly to the Issuing Bank as expressly provided herein and except that payments pursuant to Sections 2.13, 2.14, 2.15 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) Any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower) or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.09) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, such funds shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent and the Issuing Bank from the Borrower (other than in connection with Banking Services or Swap Obligations), second, to pay any fees or expense reimbursements then due to the Lenders from the Borrower (other than in connection with Banking Services or Swap Obligations), third, to pay interest then due and payable on the Loans ratably, fourth, ratably to prepay principal on the Loans and unreimbursed LC Disbursements ratably (and to payment of any amounts owing with respect to Banking Services and Swap Obligations), fifth, to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate undrawn face amount of all outstanding Letters of Credit and the aggregate amount of any unpaid LC Disbursements, to be held as cash collateral for such Obligations, and sixth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrower. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower, or unless a Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any Eurodollar Loan, except (a) on the expiration date of the Interest Period applicable to any such Eurodollar Loan or (b) in the event, and only to the extent, that there are no outstanding CBR Loans and, in any such event, the Borrower shall pay the break funding payment required in accordance with Section 2.14. The Administrative Agent and

the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of the Borrower maintained with the Administrative Agent. The Borrower hereby irrevocably authorizes (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03 and (ii) the Administrative Agent to charge any deposit account of the Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(d) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) *first*, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) *second*, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(e) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim

with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(f) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(g) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and apply any such amounts to, any future funding obligations of such Lender hereunder; application of amounts pursuant to (i) and (ii) above shall be made in such order as may be determined by the Administrative Agent in its discretion."

SECTION 2.17. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or 2.15, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, or if any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent and the

Issuing Bank, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.13 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.18. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of any Revolving Commitment of such Defaulting Lender pursuant to Section 2.10(a);

(b) the Revolving Commitment and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02); provided that any amendment, waiver or other modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender disproportionately when compared to the other affected Lenders, or increases or extends the Revolving Commitment of such Defaulting Lender, shall require the consent of such Defaulting Lender;

(c) if any LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that (A) the sum of all non-Defaulting Lenders' Revolving Credit Exposures plus such Defaulting Lender's LC Exposure does not exceed the total of all non-Defaulting Lenders' then applicable Revolving Commitments and (B) the conditions set forth in Section 4.03 are satisfied at such time; and

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent cash collateralize for the benefit of the Issuing Bank only the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.04(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.10(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.10(a) and Section 2.10(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any Lender hereunder, commitment fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Revolving Commitment that was utilized by such LC Exposure) and all letter of credit fees payable under Section 2.10(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(d) so long as such Lender is a Defaulting Lender, the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.18 (c), and participating interests in any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.18(c)(i) (and such Defaulting Lender shall not participate therein). No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender.

If (a) a Bankruptcy Event with respect to a parent of any Lender shall occur following the date hereof and for so long as such event shall continue or (b) the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Issuing Bank shall have entered into arrangements with the Borrower or such Lender, satisfactory to the Issuing Bank to defease any risk to it in respect of such Lender hereunder.

In the event that the Administrative Agent, the Borrower and the Issuing Bank each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the LC Exposure of the other Lenders shall be readjusted to reflect the inclusion of such Lender's then applicable Revolving Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each of the Loan Parties and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure to qualify or be in good standing in such jurisdiction could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.02. Authorization; Enforceability. (a) The Transactions are within each Loan Party's organizational powers and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders.

(b) The Loan Documents to which each Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any of its Subsidiaries, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any of its Subsidiaries or any of their respective assets, or give rise to a right thereunder to require any payment to be made by any Loan Party or any of its Subsidiaries, except for such violations or defaults that could not reasonably be expected to have a Material Adverse Effect and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its Subsidiaries, except Liens permitted under Section 6.02.

SECTION 3.04. No Material Adverse Change. No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December 31, 2012.

SECTION 3.05. Properties. (a) As of the date of this Agreement, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by each Loan Party. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists, other than such defaults that would not result in a termination of such lease or sublease or could not reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties and its

Subsidiaries has good and indefeasible title to, or valid leasehold interests in, all its real and material personal property, free of all Liens other than those permitted by Section 6.02.

(b) Each Loan Party and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary and material to the conduct of the business of the relevant Loan Parties as currently conducted, a correct and complete list of which, as of the date of this Agreement, is set forth on Schedule 3.05, and to the knowledge of each Loan Party and its Subsidiaries, the use thereof by the Loan Parties and its Subsidiaries does not infringe in any material respect upon the rights of any other Person, and except as set forth in Schedule 3.05, the Loan Parties' rights thereto are not subject to any licensing agreement or similar arrangement.

SECTION 3.06. Litigation and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting the Loan Parties or any of their Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters (i) no Loan Party nor any of its Subsidiaries has received written notice of any material claim with respect to any Environmental Liability which is pending and unresolved or that has been resolved within the past six months or has actual knowledge of any basis for any material Environmental Liability and (ii) except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, no Loan Party nor any of its Subsidiaries (1) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law or (2) has become subject to any Environmental Liability which is pending and unresolved or that has been resolved within the past six months.

SECTION 3.07. Compliance with Laws and Agreements. Each Loan Party and its Subsidiaries, is in compliance with all Requirements of Law applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.08. Taxes. Each Loan Party and its Subsidiaries, has timely filed or caused to be filed all federal and state income tax returns and all other material tax returns and reports required to have been filed and has paid or caused to be paid all federal and state income Taxes and, in the case of each Loan Party and its Subsidiaries, all other material Taxes required to have been paid by it, except, in each case, Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves. No tax Liens have been filed and no claims are being asserted with respect to any such taxes.

SECTION 3.09. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Except to the extent that the following could not reasonably be expected to materially and adversely affect the Loan Parties, taken as a whole, the present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan.

SECTION 3.10. Disclosure. The Loan Parties have disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any Subsidiary is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. All information (other than financial information and projections (the “Projections”) and information of a general economic nature and general information about the Borrower’s or its subsidiaries’ industry) that has been or will be made available to the Administrative Agent or the Lenders by any Loan Party or any representative thereof is or will be, when furnished, when taken as a whole, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made after giving effect to all updates from time to time. The Projections that have been or will be made available to the Administrative Agent or the Lenders by any Loan Party or any representative thereof have been or will be prepared in good faith and based upon assumptions that are believed by the Loan Parties to be reasonable at the time such Projections were prepared (it being the understanding that the projections, by their nature, are inherently uncertain and no assurances are being given that the results reflected in the Projections will be achieved).

SECTION 3.11. Material Agreements. No Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any material agreement to which it is a party or (ii) any agreement or instrument evidencing or governing Indebtedness that could reasonably be expected to have a Material Adverse Effect.

SECTION 3.12. Solvency. (a) Immediately after the consummation of the Transactions to occur on the Effective Date and the Delayed Commitment Effective Date, as applicable, (i) the fair value of the assets of each Loan Party will exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) each Loan Party will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted after the Effective Date and the Delayed Commitment Effective Date, as applicable. The amount of contingent liabilities at any time shall be computed as the amount

that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

(b) No Loan Party intends to, or will permit any of its Subsidiaries to, and no Loan Party believes that it or any of its Subsidiaries will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

SECTION 3.13. Insurance. Schedule 3.13 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and the Subsidiaries as of the Effective Date. As of the Effective Date and the Delayed Commitment Effective Date, as applicable, all premiums due and owing in respect of such insurance have been paid. The Borrower believes that the insurance maintained by or on behalf of the Borrower and each Loan Party is adequate. Each other Loan Party believes that the insurance maintained by or on behalf of such Loan Party is adequate.

SECTION 3.14. Capitalization and Subsidiaries. Schedule 3.14 sets forth as of the Effective Date (a) a correct and complete list of the name and relationship to the Borrower of each and all of the Loan Parties and their respective Subsidiaries, (b) a true and complete listing of each class of each of each Loan Party's authorized Equity Interests, of which all of such issued Equity Interests are validly issued, outstanding, fully paid and non-assessable (to the extent such concepts are applicable to such Equity Interests), and owned beneficially and of record by the Persons identified on Schedule 3.14, and (c) the type of entity of each Loan Party and each of its Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party has been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and is fully paid and non-assessable.

SECTION 3.15. Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favor of the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law and (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral.

SECTION 3.16. Employment Matters. As of the Effective Date and the Delayed Commitment Effective Date, as applicable, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened that could reasonably be expected to result in a Material Adverse Effect. The hours worked by and payments made to employees of the Loan Parties and the Subsidiaries thereof have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters that could reasonably be expected to have a Material Adverse Effect. All material payments due from any Loan Party or any Subsidiary, or

for which any claim may be made against any Loan Party or any Subsidiary thereof, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Loan Party or such Subsidiary thereof (in accordance with GAAP).

SECTION 3.17. Affiliate Transactions. Except as set forth on Schedule 3.17, as of the date of this Agreement, there are no existing agreements, arrangements, understandings, or transactions between any Loan Party, and any of the officers, members, managers, directors, stockholders, other interest holders or Affiliates (other than Subsidiaries and other Loan Parties) of any Loan Party or any members of their respective immediate families, other than (i) agreements, arrangements, understandings or transactions with such parties that are entered into on fair and reasonable terms substantially as favorable to such Loan Party as would be obtainable by such Loan Party in an arm's length transaction with a Person (other than any of the foregoing) and (ii) the payment of any management, monitoring, consulting and advisory fees and related expenses to the Borrower by any Loan Party permitted under this Agreement.

SECTION 3.18. Common Enterprise. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (i) successful operations of each of the Loan Parties and (ii) the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and, as applicable, as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, will be of direct and indirect benefit to such Loan Party, and is in its best interest.

ARTICLE IV

CONDITIONS

SECTION 4.01. Effective Date. This Agreement shall become effective on the Effective Date, subject to the satisfaction (or waiver in accordance with Section 9.02) of the following conditions:

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) duly executed copies of the Loan Documents and such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.08(e) payable to the order of each such requesting Lender.

(b) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) each Loan Party, dated the Effective Date and executed by its Secretary, Assistant Secretary or other officer of such Loan Party sufficiently familiar with the books and records of such Loan Party, which shall (A) certify

the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the Financial Officers and any other officers of such Loan Party, as applicable, authorized to sign the Loan Documents to which it is a party, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party, as applicable, a true and correct copy of its by-laws or operating, management or partnership agreement (including the LLC Agreement), and a true and correct copy of the Tax Receivable Agreement, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization.

(c) [Opinion]. The Administrative Agent shall have received an opinion of Latham & Watkins LLP, special counsel to the Loan Parties, substantially in the form of Exhibit D).(2)

(d) No Default Certificate. The Administrative Agent shall have received a certificate, signed by the chief financial officer of the Borrower and each other Loan Party, on the initial Borrowing date (i) stating that no Default has occurred and is continuing and (ii) stating that the representations and warranties contained in Article III are true and correct in all material respects as of such date (or if any representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

(e) Expenses. The Lenders and the Administrative Agent shall have received all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower to the Administrative Agent on or before the Effective Date.

(f) Solvency. The Administrative Agent shall have received a solvency certificate from a Financial Officer.

(g) Shake Shack IPO. The Shake Shack IPO shall have been consummated.

(h) Other Documents. The Administrative Agent shall have received such other documents as the Administrative Agent, the Issuing Bank, any Lender or their respective counsel may have reasonably requested.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Delayed Commitment Effective Date. The obligations of the Lenders to increase the Initial Revolving Commitment by the Delayed Commitment Amount shall be subject to the conditions that (a) the Delayed Commitment Effective Date shall have occurred, and (a) no Default shall have occurred and be continuing.

SECTION 4.03. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing or increase the Initial Revolving Commitment by the Delayed

(2) To be determined.

Commitment Amount on the Delayed Commitment Effective Date, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of each Loan Party set forth in Article III of this Agreement shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable (except, in each case, for a representation or warranty expressly stated to have been made as of a specific date, which representation or warranty shall be true and correct in all material respects as of such specific date).

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

(c) After giving effect to any Borrowing or the issuance of any Letter of Credit, the Revolving Credit Exposure of all Revolving Lenders does not exceed the lesser of (i) the Revolving Available Amount and (ii) the Revolving Commitment then in effect.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a), (b) and (c) of this Section.

ARTICLE V

AFFIRMATIVE COVENANTS

Until the Revolving Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full (other than Unliquidated Obligations) and all Letters of Credit shall have expired or terminated (or have been cash collateralized in accordance with the provisions hereof) and all LC Disbursements shall have been reimbursed, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the Loan Parties, with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within 120 days after the end of each fiscal year of the Borrower, the audited consolidated and unaudited consolidating balance sheet and related statements of operations, stockholders' equity and cash flows of the Borrower and its Subsidiaries as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of national standing or otherwise reasonably acceptable to the Administrative Agent and certified by a Financial Officer of the Borrower to the effect that such consolidated and consolidating financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated and consolidating basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, the consolidated (and, if such fiscal quarter is the second fiscal quarter of such fiscal year, the consolidating) balance sheet and related statements of operations, stockholders' equity and cash flows of the Borrower and its Subsidiaries as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Loan Parties on a consolidated (and consolidating, if applicable) basis in accordance with GAAP consistently applied;

(c) concurrently with any delivery of financial statements under clause (a) above, a certificate of a Financial Officer of the Borrower in substantially the form of Exhibit B (i) certifying that such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated and consolidating basis in accordance with GAAP consistently applied, (ii) certifying as to whether a Default has occurred and is continuing and, if a Default has occurred and is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.12 and (iv) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) within 90 days after the end of each fiscal year of the Borrower, a detailed annual budget for each of the twelve fiscal months of the fiscal year following such fiscal year then ended of the Borrower and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Borrower, in form and substance consistent with past and practice, of consolidated financial statements of the Borrower and its Subsidiaries on a monthly basis for such fiscal year (including the fiscal year in which the Maturity Date occurs); and

(e) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request (and the disclosure of which would not violate applicable Law or breach any obligation binding on the Borrower or such Subsidiary to keep such information confidential, would not require the disclosure of information subject to a legal privilege or would disclose a trade secret (not related to financial matters)).

Notwithstanding the foregoing, the obligations in Section 5.1(a) and Section 5.1(b) may be satisfied by furnishing, at the option of the Borrower, the applicable financial statements of Shake Shack, provided that (i) such information is accompanied by consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to Shake Shack, on the one hand, and the information relating to Holdings and the Restricted Holdings Subsidiaries on a standalone basis, on the other hand and (ii) Shake Shack does not have any material assets or liabilities other than the Equity Interests in the Borrower.

SECTION 5.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent reasonably prompt, and in any event within five (5) Business Days of a Responsible Officer having knowledge thereof, written notice of the following:

(a) the occurrence of any Default that is continuing;

(b) receipt of any notice of any governmental investigation or any litigation or proceeding commenced or threatened against any Loan Party that (i) seeks damages in excess of \$3,000,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party, (v) alleges the violation of any law regarding, or seeks remedies in connection with, any Environmental Laws, (vi) contests any tax, fee, assessment, or other governmental charge in excess of \$3,000,000, or (vii) involves any product recall;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties in an aggregate amount exceeding \$3,000,000; and

(d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto (provided that the disclosure of which would not violate applicable Law or breach any obligation binding on the Borrower or such Subsidiary to keep such information confidential, would not require the disclosure of information subject to a legal privilege or would disclose a trade secret (not related to financial matters)).

SECTION 5.03. Existence; Conduct of Business. Each Loan Party will, and will cause each of its Subsidiaries to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03 and (b) carry on and conduct its business in substantially the same fields of enterprise as it is presently conducted.

SECTION 5.04. Payment of Taxes. Each Loan Party will, and will cause each of its Subsidiaries to, pay or discharge all Taxes before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) such liabilities would not result in aggregate liabilities in excess of \$3,000,000.

SECTION 5.05. Maintenance of Properties. Each Loan Party will, and will cause each of its Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.06. Books and Records; Inspection Rights. Each Loan Party will, and will cause each of its Subsidiaries to, (i) keep proper books of record and account in which full, true and correct entries in all material respects are made of all material dealings and transactions in relation to its business and activities and (ii) permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent, any Lender or any consultants, accountants, lawyers and appraisers retained by the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided that if no Event of Default has occurred and is continuing, the Borrower and the Loan Parties shall only be required to reimburse the Administrative Agent for the costs of one such inspection per calendar year. The Loan Parties acknowledge that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain Reports pertaining to the Loan Parties' assets for internal use by the Administrative Agent and the Lenders. Notwithstanding the foregoing, nothing in this Section 5.06 shall require any disclosure (i) which would violate applicable Law or breach any obligation binding on the Borrower or such Subsidiary to keep such information confidential, (ii) would require the disclosure of information subject to a legal privilege or (ii) would disclose a trade secret (not related to financial matters)).

SECTION 5.07. Compliance with Laws. Each Loan Party will, and will cause each of its Subsidiaries to, comply with all Requirements of Law applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08. Use of Proceeds. The proceeds of the Loans will be used only to pay fees and expenses related to the Transactions consummated on the Effective Date and the Delayed Commitment Effective Date, as applicable, and to be consummated under this Agreement and for working capital and general corporate purposes of the Loan Parties, including to finance new store openings and other transactions permitted by the Loan Documents. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

SECTION 5.09. Insurance. Each Loan Party will, and will cause each of its Subsidiaries to, maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations, and (b) all insurance required pursuant to the Collateral Documents.

SECTION 5.10. Casualty and Condemnation. The Borrower (a) will furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured

damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) will ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents

SECTION 5.11. Depository Banks. Each Loan Party will maintain its material deposit accounts for the conduct of its business with the Administrative Agent or another commercial bank which has entered into a deposit account control agreement or securities account control agreement (other than with respect to payroll accounts, benefit accounts, withholding tax accounts or fiduciary accounts), in each case, in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 5.12. Additional Collateral; Further Assurances. (a) Subject to applicable law, each Loan Party shall, within 30 days of such formation or acquisition or the date such Immaterial Subsidiary becomes a Material Subsidiary, cause each of its Subsidiaries (other than an Excluded Subsidiary) formed or acquired after the date of this Agreement and each Immaterial Subsidiary that subsequently becomes a Material Subsidiary and is not otherwise an Excluded Subsidiary, in each case, in accordance with the terms of this Agreement to become a Loan Party by executing the Joinder Agreement set forth as Exhibit C hereto (the "Joinder Agreement"). Upon execution and delivery thereof, each such Subsidiary (i) shall automatically become a Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, in any property of such Loan Party which constitutes Collateral, including any parcel of real property located in the U.S. owned by any Loan Party.

(b) Each Loan Party will cause to be subject at all times to a perfected Lien in favor of the Administrative Agent in accordance with the terms and conditions of the Collateral Documents: (i) 100% of the issued and outstanding Equity Interests of each of its Domestic Subsidiaries that is not a Foreign Subsidiary and (ii) 65% of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) in each Foreign Subsidiary.

(c) The Borrower agrees that if (i) the Administrative Agent notifies the Borrower that as a result of a Change in Law there is a reason to believe that more than 65% of the Equity Interests of any Foreign Subsidiary directly owned by the Borrower or any Domestic Subsidiary would be permitted to be pledged and subject to a perfected Lien in favor of the Administrative Agent in accordance with the terms

and conditions of the Collateral Documents with no resulting “deemed dividend” under Section 956 of the Code and (ii) subsequent to the receipt of such notice, the Borrower reasonably determines (in consultation with its counsel and other tax advisors) that more than 65% of the Equity Interests of such a Foreign Subsidiary would be permitted to be pledged and subject to a perfected Lien in favor of the Administrative Agent in accordance with the terms and conditions of the Collateral Documents without such a “deemed dividend” under Section 956 of the Code or other possible tax consequences that are adverse to

it, then the Borrower shall and shall cause each such Subsidiary to pledge such greater percentage of Equity Interests entitled to vote to be subject to a perfected Lien in favor of the Administrative Agent in accordance with the terms and conditions of the Collateral Documents.

(d) Without limiting the foregoing, each Loan Party will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which may be required by law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the expense of the Loan Parties.

ARTICLE VI

NEGATIVE COVENANTS

Until the Revolving Commitments have expired or terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document have been paid in full (other than Unliquidated Obligations) and all Letters of Credit have expired or terminated (or have been cash collateralized in accordance with the provisions hereof) and all LC Disbursements shall have been reimbursed, the Loan Parties covenant and agree, jointly and severally, with the Lenders that:

SECTION 6.01. Indebtedness. No Loan Party will, nor will it permit any of its Subsidiaries to, create, incur or suffer to exist any Indebtedness, except:

- (a) the Secured Obligations;
- (b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and extensions, renewals, refinancings and replacements of any such Indebtedness in accordance with clause (f) hereof;
- (c) Indebtedness of any Loan Party to any other Loan Party, provided that Indebtedness of the Borrower to any Loan Party shall be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;
- (d) Guarantees by any Loan Party of Indebtedness of any other Loan Party, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01 and (ii) Guarantees permitted under this clause (d) shall be subordinated to the Secured Obligations of the applicable Subsidiary on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;
- (e) Indebtedness of any Loan Party incurred to finance the acquisition, construction or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations and any Indebtedness assumed in connection

with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) hereof; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed \$6,000,000 at any time outstanding;

(f) Indebtedness which represents an extension, refinancing, or renewal of any of the Indebtedness described in clauses (b) and (e) hereof; provided that, with respect to clause (b) hereof (i) the principal amount or interest rate of such Indebtedness is not increased, and (ii) the terms of any such extension, refinancing, or renewal are not less favorable to the obligor thereunder than the original terms of such Indebtedness; and provided further that with respect to clauses (b) and (e) hereof (iii) any Liens securing such Indebtedness are not extended to any additional property of any Loan Party, (iv) no Loan Party that is not originally obligated with respect to repayment of such Indebtedness is required to become obligated with respect thereto, (iv) such extension, refinancing or renewal does not result in a shortening of the average weighted maturity of the Indebtedness so extended, refinanced or renewed, and (v) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Secured Obligations, then the terms and conditions of the refinancing, renewal, or extension Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to the refinanced, renewed, or extended Indebtedness;

(g) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(h) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business;

(i) Indebtedness of any Loan Party in respect of netting services, overdraft protections and otherwise in connection with deposit accounts in the ordinary course of business;

(j) unsecured Indebtedness of any Loan Party in respect of obligations of any Loan Party to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in the ordinary course of business;

(k) Indebtedness of any Loan Party consisting of (i) obligations to pay insurance premiums or (ii) take or pay obligations contained in supply agreements, in each case arising in the ordinary course of business;

(l) Indebtedness arising from agreements of any Loan Party or any Subsidiary providing for indemnification, adjustment of purchase price or similar obligations in each case

entered into in connection with any Acquisition, other investment or Asset Sale permitted under Sections 6.03, 6.04 and 6.05, as applicable;

(m) Swap Agreements and commodity hedging agreements, in each case, entered into to protect against fluctuations in interest rates, foreign currency exchange rates or commodity prices and not for speculative purposes;

(n) Indebtedness representing deferred compensation to officers, directors or employees of any Loan Party (or any of its Subsidiaries) incurred in the ordinary course of business;

(o) Indebtedness in respect of import indemnities or similar instruments in each case provided in the ordinary course of business;

(p) Indebtedness permitted as investments under Section 6.04; and

(q) other unsecured Indebtedness in an aggregate principal amount not exceeding \$6,250,000 at any time outstanding.

SECTION 6.02. Liens. No Loan Party will, nor will it permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of any Loan Party existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof (or any extension, refinancing or renewal of such obligations permitted in accordance with Section 6.01(f));

(d) Liens on fixed or capital assets acquired, constructed or improved by the any Loan Party; provided that (i) such security interests secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of any Loan Party;

(e) any Lien existing on any property or asset prior to the acquisition thereof by any Loan Party or existing on any property or asset of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Loan Party and (iii) such Lien shall secure only those obligations (as such obligations may be

extended, refinanced or renewed in accordance with Section 6.01(f)) which it secures on the date of such acquisition or the date such Person becomes a Loan Party, as the case may be;

- (f) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon;
- (g) Liens arising out of sale and leaseback transactions permitted by Section 6.06; and
- (h) other Liens securing obligations of the Borrower and its Subsidiaries not exceeding \$5,000,000 in the aggregate outstanding at any time.

SECTION 6.03. Fundamental Changes. (a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing (i) any Loan Party (or any of its Subsidiaries) may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Loan Party (other than the Borrower) or any of its Subsidiaries may merge into any Loan Party in a transaction in which the surviving entity is a Loan Party, (iii) any Subsidiary of a Loan Party may merge into any other Subsidiary of a Loan Party, so long as if any such Subsidiary is a Loan Party such Loan Party shall be the surviving entity and (iv) any Loan Party may liquidate or dissolve any unprofitable and immaterial Subsidiary in the ordinary course of business.

- (b) No Loan Party will, nor will it permit any of its Subsidiaries to, engage in any business other than businesses of the type conducted by the Loan Parties and such Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

- (a) Permitted Investments;
- (b) investments in existence on the date of this Agreement and described in Schedule 6.04 (or any extension, refinancing or renewal of such investments, so long as the aggregate amount of all investments pursuant to this clause (b) is not increased at any time above the amount of such investments existing on the date hereof;

- (c) investments by each Loan Party or any Subsidiary in Equity Interests in other Loan Parties, provided that any such Equity Interests held by a Loan Party, shall be pledged pursuant to, and only to the extent required under, the Security Agreement;
- (d) loans or advances made by any Loan Party (or any of its Subsidiaries) to any other Loan Party permitted by Section 6.01(c);
- (e) Indebtedness permitted by Section 6.01;
- (f) loans or advances made by a Loan Party to its officers and employees on an arms-length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes up to a maximum of \$312,500 to any officer or employee and up to a maximum of \$1,250,000 in the aggregate at any one time outstanding;
- (g) investments in the form of Swap Agreements permitted by Section 6.07;
- (h) investments in connection with any Permitted Equity Issuance;
- (i) investments received in connection with the dispositions of assets permitted by Section 6.05;
- (j) investments in joint ventures and unconsolidated subsidiaries useful in the business of the Loan Parties; provided that such investments are made (i) with the proceeds of equity investments in the Loan Parties by Persons who are not Loan Parties or (ii) in cash in amounts not to exceed \$9,375,000 in the aggregate (calculated based on the date such investment was made);
- (k) investments constituting deposits described in clauses (c) and (d) of the definition of the term “Permitted Encumbrances”;
- (l) loans to employees or officers of any Loan Party (or any of its Subsidiaries) in connection with such Person’s purchase of Equity Interests or options to purchase Equity Interests in any Loan Party up to a maximum of \$187,500 to any employee or officer and up to a maximum of \$937,500 in the aggregate at any one time outstanding;
- (m) investments made to repurchase or retire Equity Interests of any Loan Party permitted under Section 6.08;
- (n) advances of payroll to employees of any Loan Party in the ordinary course of business;
- (o) investments to the extent that payment for such investments is made with Equity Interests;
- (p) investments received in connection with the bankruptcy or reorganization of suppliers or customers and in settlement of delinquent obligations of, and other disputes with,

customers arising in the ordinary course of business or upon foreclosure with respect to any secured investment or other transfer of title with respect to any secured investment;

(q) loans and advances to any direct or indirect parent of the Borrower in lieu of, and not in excess of the amount of, dividends to the extent permitted to be made to such parent in accordance with Section 6.08;

(r) Guarantees by a Loan Party entered into in connection with real property leases or subleases entered into by any other Loan Party; and

(s) investments by any Loan Party in Persons not to exceed \$4,687,500 at any time outstanding *plus* capital contributions and dividends that the Borrower and Loan Parties receive directly or indirectly from (i) a Person that is not a Loan Party or (ii) third party holders of Equity Interests of the Loan Parties.

SECTION 6.05. Asset Sales. No Loan Party will, nor will it permit any Subsidiary to (x) sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it, except:

(a) sales, transfers and dispositions of (i) inventory in the ordinary course of business and (ii) used, obsolete, worn out or surplus equipment or property in the ordinary course of business;

(b) sales, transfers and dispositions among the Loan Parties (including dispositions permitted by Section 6.03);

(c) sales, transfers and dispositions of Permitted Investments and other investments permitted by clause (h) of Section 6.04;

(d) sale and leaseback transactions permitted by Section 6.06;

(e) sales by domestic subsidiaries of intellectual property rights and licenses to foreign subsidiaries;

(f) leases, subleases, licenses or sublicenses of real or personal property (including intellectual property) in the ordinary course of business and consistent with past practice;

(g) dispositions or use of cash and Permitted Investments in the ordinary course of business and consistent with past practice;

(h) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Borrower (or any of its Subsidiaries);

(i) sales, transfers and other dispositions of assets (other than Equity Interests in a Subsidiary unless all Equity Interests in such Subsidiary are sold) that are not permitted by any other paragraph of this Section, provided that the aggregate fair market value of all assets sold,

transferred or otherwise disposed of in reliance upon this paragraph (i) shall not exceed \$5,000,000 during any fiscal year of the Borrower;

(j) sales, transfers and other dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property, or (ii) the proceeds of such disposition are promptly applied to the purchase price of such replacement property; and

(k) sales, transfers and other dispositions of investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture arrangements and similar binding arrangements.

SECTION 6.06. Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for any such sale of any fixed or capital assets by the Borrower (or any of its Subsidiaries) that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and is consummated within 90 days after the Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset.

SECTION 6.07. Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower (or any of its Subsidiaries) has actual exposure (other than those in respect of Equity Interests of the Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower (or any of its Subsidiaries).

SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness. (a) No Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except

(i) each Loan Party and each of their respective Subsidiaries may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock,

(ii) each Loan Party may pay dividends or make distributions to its direct or indirect shareholders/members to pay their assumed state, local and United States federal income tax liabilities attributable to such Loan Party's (or, without duplication, such Loan Party's Subsidiaries) income and gain, with such taxes being calculated for all such shareholders/members at a rate not to exceed the highest combined federal, state, and local tax rate applicable to any such shareholder/member, whether to a corporation or

individual, whichever is higher and, in the case of distributions to Shake Shack, without regard to any adjustments under Section 743 (b) of the Code,

(iii) each Loan Party (other than the Borrower) may (x) pay management, consulting and advisory fees to the Borrower and (y) pay dividends or make distributions to its shareholders or members,

(iv) any Loan Party (or any of its Subsidiaries) may redeem in whole or in part any of its Equity Interests for another class of its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests,

(v) any Loan Party (or any of its Subsidiaries) may (or may make dividends to permit any direct or indirect parent thereof to) repurchase or retire shares of its (or such parent's) Equity Interests held by officers, directors, employees and members of any Loan Party (or any of its Subsidiaries) (or any spouse, former spouse, successor, executor, administrator, heir, legatee or distributee of any of the foregoing), so long as such repurchase or retirement is pursuant to, and in accordance with the terms of, any management, director and/or employee equity or stock option or benefit plans, stock subscription agreements, the Organizational Document of any Loan Party, or any agreement between any employee, officer or director of any Loan Party and any Loan Party,

(vi) each Loan Party may redeem in whole or in part any of its Equity Interests,

(vii) the Borrower may (x) reimburse Shake Shack for its expenses incurred on behalf of the Borrower to the extent provided in Section 6.06 of the LLC Agreement, and (y) make indemnification payments pursuant to Section 7.04 of the LLC Agreement, and

(viii) the Borrower may make distributions to Shake Shack to the extent necessary to enable Shake Shack to (x) pay "Cash Settlements" pursuant to Article XI of the LLC Agreement, and (y), without duplication as to clause (ii) of this Section 6.08(a), make "Tax Benefit Payments" pursuant to Article III of the Tax Receivable Agreement;

provided that (1) any dividend or distribution permitted by clause (v) to a Person that is not a Loan Party and (2) any transaction contemplated by clause (v) or (vi) above are subject to the following conditions (subject to Section 7.02) (x) no Event of Default then exists or would result therefrom and (y) the Borrower has delivered to the Administrative Agent, at least 10 Business Days prior to such Restricted Payment, a certificate of a Responsible Financial Officer of the Borrower demonstrating pro forma compliance with Section 6.12, both before and after giving effect to such Restricted Payment.

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any funded Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any

sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any funded Indebtedness, except:

- (i) payment of Indebtedness created under the Loan Documents;
- (ii) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness, other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof;
- (iii) refinancings of Indebtedness to the extent permitted by Section 6.01;
- (iv) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; and
- (v) payments of Indebtedness not to exceed \$2,000,000 in the aggregate per fiscal year.

SECTION 6.09. Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that (i) are in the ordinary course of business and (ii) are at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and any Subsidiary that is a Loan Party not involving any other Affiliate, (c) any investment permitted by Sections 6.04(c) or 6.04(d), (d) any Indebtedness permitted under Section 6.01(c), (e) any Restricted Payment permitted by Section 6.08, (f) loans or advances to employees permitted under Section 6.04, (g) any transaction permitted under Section 6.05(e), (h) the payment of reasonable fees to directors of the Borrower, the Loan Parties or any of their respective Subsidiaries who are not employees of the Borrower, the Loan Parties, or any of their respective Subsidiaries, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Borrower or its Subsidiaries in the ordinary course of business, (i) any issuances of securities or other payments, compensation awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by the Borrower's Board of Directors, and (j) the payment of management, consulting and advisory fees to the Borrower.

SECTION 6.10. Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Loan Party to make or repay loans or advances to the Borrower or any other Loan Party or to Guarantee Indebtedness of the Borrower or any other Loan Party or to pay management, consulting or advisory fees to the Borrower; provided that (i) the foregoing shall not apply to restrictions and conditions:

- (i) imposed by law, any Loan Document or any Organizational Document of any Loan Party;

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- (ii) existing on the date hereof and identified on Schedule 6.10 (but shall not apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition);

- (iii) arise in connection with any disposition permitted under Section 6.05;

- (iv) clause (a) of the foregoing shall not apply to customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Loan Party or Subsidiary;

- (v) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by Sections 6.01(d), (e) or (f) or 6.02(d) or (e) if such restrictions or conditions apply only to the property or assets securing such Indebtedness; and

- (vi) clause (a) of the foregoing shall not apply to customary provisions in leases, joint venture agreements or other agreement entered into in the ordinary course of business and consistent with past practice restricting the assignment thereof.

SECTION 6.11. Amendment of Material Documents. No Loan Party will, nor will it permit any of its Subsidiaries to, amend, modify or waive any of its rights under (a) agreement relating to any Subordinated Indebtedness, (b) its Organizational Documents (including the LLC Agreement), or (c) the Tax Receivable Agreement, in each case, to the extent any such amendment, modification or waiver would be materially adverse to the Lenders.

SECTION 6.12. Fixed Charge Coverage Ratio. The Borrower will not permit the Fixed Charge Coverage Ratio determined for any period of four consecutive fiscal quarters ending on the last day of each fiscal quarter (after giving effect to any Cure Payments pursuant to Section 7.02) to be less than 1.20:1.

SECTION 6.13. Funded Net Debt to EBITDA Ratio. The Borrower will not permit the Funded Net Debt to EBITDA Ratio determined for any period of four consecutive fiscal quarters ending on the last day of each fiscal quarter (after giving effect to any Cure

Payments pursuant to Section 7.02) to exceed 3.00:1.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01. Events of Default. If any of the following events (“Events of Default”) shall occur:

(a) the Borrower shall fail to pay (i) any principal of any Loan, (ii) any reimbursement obligation in respect of any LC Disbursement or (iii) within 3 Business Days of the date that the same shall become due and payable, any interest on any Loan, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and within 5 Business Days of the date that the same shall become due and payable;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in or in connection with this Agreement or any Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished to the Administrative Agent pursuant to or in connection with this Agreement or any Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been materially incorrect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to a Loan Party's existence), 5.08 or 5.12 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those which constitute a default under another Section of this Article), and such failure shall continue unremedied for a period of (i) 5 days after the earlier of knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of Section 5.01, 5.02 (other than Section 5.02(a)), 5.03 through 5.07, 5.09, 5.10 or 5.11 of this Agreement or (ii) 15 days after the earlier of knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of any other Section of this Agreement;

(f) any Loan Party or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (subject to any grace or cure periods set forth in the terms of such Material Indebtedness);

(g) any event or condition occurs and continues that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or any Subsidiary of any Loan Party or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any Subsidiary of any Loan Party or for a substantial part of its assets, and,

in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Loan Party or any Subsidiary of any Loan Party shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Loan Party or Subsidiary of any Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) any Loan Party or any Subsidiary of any Loan Party shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$3,500,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) shall be rendered against any Loan Party, any Subsidiary of any Loan Party or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any Subsidiary of any Loan Party to enforce any such judgment or any Loan Party or any Subsidiary of any Loan Party shall fail within 30 days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(m) a Change in Control shall occur;

(n) the occurrence of any “default”, as defined in any Loan Document (other than this Agreement) or the breach of any of the terms or provisions of any Loan Document (other than this Agreement), which default or breach continues beyond any period of grace therein provided;

(o) other than pursuant to the terms of the Loan Documents, any Loan Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Loan Guaranty, or any Guarantor shall fail to comply with any of the terms or provisions of the Loan Guaranty, to which it is a party, or any Guarantor shall deny that it has any further liability under the Loan Guaranty, to which it is a party, or shall give notice to such effect;

(p) other than as a result of any action by the Administrative Agent, any Collateral Document shall for any reason fail to create a valid and perfected first priority security interest in any Collateral purported to be covered thereby, except as permitted by the terms of any Collateral Document, or any Collateral Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document; or

(q) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms);

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Revolving Commitments, and thereupon the Revolving Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Revolving Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

SECTION 7.02. Cure Right.

(a) Notwithstanding anything to the contrary contained in Sections 5.09, 5.12, 6.12 and 6.13 (and the definitions related thereto) or Section 7.01 (with respect to such Section and definitions), in the event of any Event of Default arising from the breach of the Fixed Charge Coverage Ratio covenant set forth in Section 6.12 and/or the Funded Net Debt to EBITDA Ratio covenant set forth in Section 6.13 as of the last day of any fiscal quarter (prior to giving effect to any Cure Payment), and until the expiration of the eighth (8th) day after the date of the delivery of (i) in the case of any fiscal quarter ending in June, the quarterly report in Section 5.01(b) and (ii) in the case of the fiscal quarter ending in December, the annual report in Section 5.01(a), cash contributions may be made to the Borrower, within one (1) Business Day after the expiration of such period, in an amount which, when added to the Borrower's EBITDA (and, in the case of the Funded Net Debt to EBITDA Ratio, applied to reduce Indebtedness) for the four

quarter period ending on the last day of the fiscal quarter in which such breach occurred, will result in the Borrower being in compliance with the Fixed Charge Coverage Ratio and/or the Funded Net Debt to EBITDA Ratio, as applicable, for such period.

(b) The Borrower shall not be permitted to exercise the right to cure set forth in clause (a) of this Section 7.02 more than six (6) times over the term of this Agreement.

(c) The Administrative Agent and the Lenders agree that until the expiration of the periods set forth in Section 7.02(a), neither the Administrative Agent nor the Lenders shall exercise any rights or remedies with respect to any Event of Default arising from the breach of the Fixed Charge Coverage Ratio covenant set forth in Section 6.12 and/or the Funded Net Debt to EBITDA Ratio covenant set forth in Section 6.13, as applicable, as of the last day of any fiscal quarter (prior to giving effect to any Cure Payment), but the Administrative Agent and the Lenders reserve the right to exercise any such rights or remedies if such Event of Default continues to exist following the expiration of such period.

(d) The parties hereby acknowledge that this Section 7.02 or any Cure Payment received (or deemed to be received) by the Borrower pursuant to this Section 7.02 shall not:

(i) be relied on for purposes of calculating any financial ratios other than as applicable to Sections 5.09, 5.12, 6.12 and 6.13, including any calculation for the purpose of determining any basket or threshold in this Agreement;

(ii) result in any adjustment to the Fixed Charge Coverage Ratio for the purpose of determining the Borrower's compliance with the Fixed Charge Coverage Ratio for the purposes set forth in Sections 6.08(a)(iv) and (vi), other than the adjustment to the Fixed Charge Coverage Ratio referred to in the immediately preceding clause (i); or

(iii) be used to determine the permissibility of a transaction or other action under the Loan Documents where such permissibility was (or may have been) contingent on pro forma compliance with the Fixed Charge Coverage Ratio.

(e) If, after giving effect to the foregoing recalculations, the Borrower shall then be in compliance with the requirements of the Fixed Charge Coverage Ratio and/or the Funded Net Debt to EBITDA Ratio, as applicable, the Borrower shall be deemed to have satisfied the requirements of such financial covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of such financial covenant that had occurred shall be deemed cured for the purposes of this Agreement (and, for the avoidance of doubt, no default interest shall be paid in connection with any such cure).

(f) To the extent that a Cure Payment is received and included in the calculation of EBITDA for any applicable fiscal quarter pursuant to this Section, such Cure Payment shall be deemed to be EBITDA for purposes of determining compliance with any covenant contained herein for subsequent periods that include such fiscal quarter.

ARTICLE VIII

THE ADMINISTRATIVE AGENT

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Loan Parties or any Subsidiary of a Loan Party or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent which shall be a commercial bank or an Affiliate of any such commercial bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article, Section 2.16(d) and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

Each Lender hereby agrees that (a) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (b) the Administrative Agent (i) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (ii) shall not be liable for any information contained in any Report; (c) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (d) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (e) without limiting the generality of any other indemnification provision contained in this Agreement, it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorney fees) incurred by as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

- (i) if to any Loan Party, to the Borrower at:

SSE Holdings, LLC
24 Union Square East, 6th Floor
New York, New York 10003
Attention: Ron Palmese (rpalmese@shakeshack.com);
Jeff Uttz (juttz@shakeshack.com)
Facsimile No: (212) 228-3622

- (ii) if to the Administrative Agent or the Issuing Bank, to JPMorgan Chase Bank, N.A. at:

JPMorgan Chase Bank, N.A.
270 Park Avenue
41st Floor
New York, New York 10017
Attention: James McDonnell
Facsimile No: (646) 534-2239

(iii) if to any other Lender, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received or (ii) sent by facsimile shall be deemed to have been given when sent, provided that if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II or to compliance and no Event of Default certificates delivered pursuant to Section 5.01(c) unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Revolving Commitment of any Lender without the written consent of such Lender, (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Revolving Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.16(b) or (d) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, (vi) change Section 2.18, without the consent of each Lender (other than any Defaulting Lender), (vii) release any Guarantor from its obligation under its Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender, or (viii) except as provided in clauses (d) and (e) of this Section or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Issuing Bank hereunder without the prior written consent of the Administrative Agent or the Issuing Bank, as the case may be (it being understood that any change to Section 2.17 shall require the consent of the Administrative Agent and the Issuing Bank). The Administrative Agent may also amend Schedule 2.01 to reflect assignments entered into pursuant to Section 9.04

(c) The Lenders hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the termination of all Revolving Commitments, payment and satisfaction in full in cash of all Secured Obligations (other than Unliquidated Obligations), and the cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interest of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without

the prior written authorization of the Required Lenders. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender” or “each Lender affected thereby,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a “Non-Consenting Lender”), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower and the Administrative Agent shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.13 and 2.15, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.14 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of one counsel (other than the allocated costs of internal counsel) for the Administrative Agent, in connection with the syndication and distribution (including, without limitation, via the internet or through a service such as Intralinks) of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable, documented out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Borrower under this Section include, without limiting the generality of the foregoing, costs and expenses incurred in connection with:

(i) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Administrative Agent;

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(ii) taxes, fees and other charges for (A) Lien and title searches and title insurance and (B) recording any mortgages, filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent’s Liens;

(iii) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

(iv) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing costs and expenses may be charged to the Borrower as Revolving Loans or to another deposit account at any time prior to the Maturity Date, all as described in Section 2.17(c).

(b) The Borrower shall indemnify the Administrative Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, penalties, liabilities and related expenses, including the fees, charges and disbursements of any counsel (other than the allocated costs of internal counsel) for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, (iv) the failure of the Borrower to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by the Borrower for Taxes pursuant to Section 2.15, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee; provided further that this Section 9.03(b) shall not apply with respect to Taxes other than Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or the Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent or the Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the

unreimbursed expense or indemnified loss, claim, damage, penalty, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Issuing Bank in its capacity as such.

(d) To the extent permitted by applicable law, no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Assignee) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld; provided that failure to consent to the assignment to a Competitor shall not be deemed to be unreasonably withheld) of:

(A) the Borrower, provided that, the Borrower shall be deemed to have consented to an assignment unless it shall have objected thereto by written notice to the Administrative Agent within seven (7) Business Days after having received notice thereof; provided further that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

(B) the Administrative Agent; and

(C) the Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment or Loans of any Class, the amount of the Revolving Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$500,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Revolving Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the term “Ineligible Assignee” has the following meaning:

“Ineligible Assignee” means (a) a natural person, (b) company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, such company, investment vehicle or trust shall not constitute an Ineligible Assignee if it (x) has not been established for the primary purpose of acquiring any Loans or Revolving Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than \$25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business; provided that upon the occurrence of an Event of Default, any Person (other than a Lender) shall be an Ineligible Assignees if after giving effect any proposed assignment to such Person, such Person would hold more than 25% of the then outstanding Revolving Credit Exposure or Revolving Commitments, as the case may be, (c) any Defaulting Lender or (d) a Competitor; provided that (i) a Competitor shall only be an Ineligible Assignee so long as no Event of Default pursuant to Section 7.01(h), (i) or (j) has occurred and (ii) in the case of any other Event of Default not specified in clause (i) that has occurred and is

continuing, a Competitor shall not be deemed an Ineligible Assignee if (x) a Lender desiring to sell, assign or participate all or any portion of its Revolving Commitments and then outstanding Loans to a Competitor, notifies the Borrower (after the occurrence and during the continuance of such Event of Default) in writing of its intent to sell, assign or participate such Revolving Commitments and Loans to a Competitor and the terms pursuant to which such Competitor is willing to participate in such sale, assignment or participation and (y) within 60 days of receiving such notice, the Borrower has not identified a Person willing to acquire all such Revolving Commitments and Loans specified in the notice on the terms specified in the notice.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.13, 2.14, 2.15 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitment of, and principal amount and stated interest of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.04, 2.05, 2.16 or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all

accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent or the Issuing Bank, sell participations to one or more banks or other entities (other than a Competitor that is an Ineligible Assignee) (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15 (subject to the requirements and limitations therein, including the requirements under Section 2.15(f) (it being understood that the documentation required under Section 2.15(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.15(f), 2.16 and 2.17 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.13 or 2.15, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.16(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under this Agreement (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any Revolving Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Revolving Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this

Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Revolving Commitments have not expired or terminated. The provisions of Sections 2.13, 2.14, 2.15 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Revolving Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower or any

Guarantor against any of and all the Secured Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmaturing. The applicable Lender shall notify the Borrower and the Administrative Agent of such set-off or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with laws of the State of New York, but giving effect to federal laws applicable to national banks.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any U.S. Federal or New York State court sitting in New York, New York in any action or proceeding arising out of or relating to any Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE

THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of any Loan Party, (h) to holders of Equity Interests in any Loan Party, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis from a source other than any Loan Party. For the purposes of this Section, "Information" means all information received from the any Loan Party relating to any Loan party or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by such Loan Party; provided that, in the case of information received from any Loan Party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.13. Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrower in violation of any Requirement of Law.

SECTION 9.14. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”) hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

SECTION 9.15. Disclosure. Each Loan Party and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

SECTION 9.16. Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession. Should any Lender (other than the Administrative Agent) obtain possession of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent’s request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent’s instructions.

SECTION 9.17. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

ARTICLE X

LOAN GUARANTY

SECTION 10.01. Guaranty. Each Guarantor hereby agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Lenders, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations plus all costs and expenses including, without limitation, all court costs and attorneys’ and paralegals’ fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Administrative Agent, the Issuing Bank and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, the Borrower, any Guarantor or any other guarantor of all or any

part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the “Guaranteed Obligations”). To the extent permitted by applicable law, each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

SECTION 10.02. Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Guarantor waives any right to require the Administrative Agent, the Issuing Bank or any Lender to sue the Borrower, any Guarantor, any other guarantor, or any other Person obligated for all or any part of the Guaranteed Obligations (each, an “Obligated Party”), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 10.03. No Discharge or Diminishment of Loan Guaranty. (a) Except as otherwise provided for herein or in any other Loan Document, the obligations of each Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of the Borrower or any other guarantor or other Person liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party, or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any other Guarantor may have at any time against any Obligated Party, the Administrative Agent, the Issuing Bank, any Lender, or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Issuing Bank or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of the Borrower for all or any part of the Guaranteed Obligations or any obligations of any other guarantor or other Person liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Issuing Bank or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance,

act, omission or delay that might in any manner or to any extent vary the risk of such Guarantor or that would otherwise operate as a discharge of any other Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

SECTION 10.04. Defenses Waived. To the fullest extent permitted by applicable law, each Guarantor hereby waives any defense based on or arising out of any defense of the Borrower or any other Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of the Borrower or any other Guarantor, other than the indefeasible payment in full in cash of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person. Each Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any other Guarantor against any Obligated Party or any security.

SECTION 10.05. Rights of Subrogation. No Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against any Obligated Party, or any collateral, until the Loan Parties and the other Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing Bank and the Lenders.

SECTION 10.06. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of the Borrower or otherwise, each Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Bank and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Guarantors forthwith on demand by the Lender.

SECTION 10.07. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the

nature, scope and extent of the risks that each Guarantor assumes and incurs under this Loan Guaranty, and agrees that neither the Administrative Agent, the Issuing Bank nor any Lender shall have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

SECTION 10.08. Termination. The Lenders may continue to make loans or extend credit to the Borrower based on this Loan Guaranty until five days after it receives written notice of termination from any Guarantor. Notwithstanding receipt of any such notice, each Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of that Guaranteed Obligations.

SECTION 10.09. Taxes. All payments of the Guaranteed Obligations will be made by each Guarantor free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if any Guarantor shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Guarantor shall make such deductions and (iii) such Guarantor shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

SECTION 10.10. Maximum Liability. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by any Guarantor or the Lenders, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "Maximum Liability"). This Section with respect to the Maximum Liability of each Guarantor is intended solely to preserve the rights of the Lenders to the maximum extent not subject to avoidance under applicable law, and no Guarantor nor any other Person or entity shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the Maximum Liability of each Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of the Lenders hereunder, provided that, nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond its Maximum Liability.

SECTION 10.11. Contribution. In the event any Guarantor (a “ Paying Guarantor ”) shall make any payment or payments under this Loan Guaranty or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Loan Guaranty, each other Guarantor (each a “ Non-Paying Guarantor ”) shall contribute to such Paying

Guarantor an amount equal to such Non-Paying Guarantor's "Applicable Percentage" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Article X, each Non-Paying Guarantor's "Applicable Percentage" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (i) such Non-Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from the Borrower after the date hereof (whether by loan, capital infusion or by other means) to (ii) the aggregate Maximum Liability of all Guarantors hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Guarantor, the aggregate amount of all monies received by such Guarantors from the Borrower after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Guarantor's several liability for the entire amount of the Guaranteed Obligations (up to such Guarantor's Maximum Liability). Each of the Guarantors covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the payment in full in cash of the Guaranteed Obligations. This provision is for the benefit of both the Administrative Agent, the Issuing Bank, the Lenders and the Guarantors and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

SECTION 10.12. Liability Cumulative. The liability of each Guarantor as a Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Issuing Bank and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

SECTION 10.13. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of Swap Obligations; provided that each Qualified ECP Guarantor shall only be liable under this Section 10.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 8.5 or otherwise under this Guarantee voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 10.13 shall remain in full force and effect until a discharge of its Guarantee hereunder. Each Qualified ECP Guarantor intends that this Section 10.13 constitute, and this Section 10.13 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.

SSE HOLDINGS, LLC

By: _____
Name:
Title:

CUSTARD'S FIRST STAND, LLC

By: _____
Name:
Title:

SHAKE SHACK 18TH STREET NW WASHINGTON D.C. LLC

By: _____
Name:
Title:

SHAKE SHACK 102 NORTH END AVE LLC

By: _____
Name:
Title:

SHAKE SHACK 152 E 86 LLC

By: _____
Name:
Title:

SHAKE SHACK 300 WEST 44TH STREET LLC

By: _____
Name:
Title:

Third Amended and Restated Credit Agreement

SHAKE SHACK 366 COLUMBUS LLC

By: _____
Name:
Title:

SHAKE SHACK 1111 LINCOLN ROAD LLC

By: _____
Name:
Title:

SHAKE SHACK CORAL GABLES, LLC

By: _____
Name:
Title:

SHAKE SHACK ENTERPRISES, LLC

By: _____
Name:
Title:

SHAKE SHACK ENTERPRISES INTERNATIONAL, LLC

By: _____
Name:
Title:

SHAKE SHACK FULTON STREET BROOKLYN LLC

By: _____
Name:
Title:

Third Amended and Restated Credit Agreement

SHAKE SHACK GRAND CENTRAL LLC

By: _____
Name:
Title:

SHAKE SHACK NEW HAVEN LLC

By: _____
Name:
Title:

SHAKE SHACK SANSOM STREET PHILADELPHIA LLC

By: _____
Name:
Title:

SHAKE SHACK WESTBURY LLC

By: _____
Name:
Title:

SSE IP, LLC

By: _____
Name:
Title:

SHAKE SHACK DOMESTIC LICENSING LLC

By: _____
Name:
Title:

Third Amended and Restated Credit Agreement

SHAKE SHACK WESTPORT LLC

By: _____
Name: _____
Title: _____

SHAKE SHACK BOSTON CHESTNUT HILL LLC

By: _____
Name: _____
Title: _____

SHAKE SHACK BOCA RATON LLC

By: _____
Name: _____
Title: _____

SHAKE SHACK 800 F STREET LLC

By: _____
Name: _____
Title: _____

SHAKE SHACK KING OF PRUSSIA LLC

By: _____
Name: _____
Title: _____

SHAKE SHACK PARAMUS LLC

By: _____
Name: _____
Title: _____

Third Amended and Restated Credit Agreement

SHAKE SHACK UNIVERSITY CITY PHILADELPHIA LLC

By: _____
Name: _____
Title: _____

SHAKE SHACK HARVARD SQUARE BOSTON LLC

By: _____
Name: _____
Title: _____

SHAKE SHACK MIDDLE EAST LLC

By: _____
Name: _____
Title: _____

SHAKE SHACK RUSSIA LLC

By: _____
Name:
Title:

SHAKE SHACK TURKEY LLC

By: _____
Name:
Title:

SHAKE SHACK UNITED KINGDOM LLC

By: _____
Name:
Title:

Third Amended and Restated Credit Agreement

UNION SQUARE HOSPITALITY GROUP, LLC

By: _____
Name:
Title:

Third Amended and Restated Credit Agreement

SCHEDULE 2.01

Revolving Commitment Schedule

Lender	Initial Revolving Commitment	Total Revolving Commitment
JPMorgan Chase Bank, N.A.	\$ 20,000,000	\$ 50,000,000
Total	\$ 20,000,000	\$ 50,000,000

Third Amended and Restated Credit Agreement

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the “Assignor”) and [*Insert name of Assignee*] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor:

2. Assignee:

[and is an Affiliate/Approved Fund of [*identify Lender*] [a Competitor or Controlling Affiliate of a Competitor of a Loan Party](3)]

3. Borrower(s):

4. Administrative Agent:

JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement

(3) Select as applicable.

5.

Credit Agreement:

The Third Amended and Restated Credit Agreement dated as of the Effective Date (as defined therein) among SSE HOLDINGS, LLC, the other Loan Parties party thereto, the Lenders parties thereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent
6.

Assigned Interest:

Facility Assigned(4)	Aggregate Amount of Revolving Commitment/Loans for all Lenders	Amount of Revolving Commitment/Loans Assigned	Percentage Assigned of Revolving Commitment/Loans(5)
	\$	\$	%
	\$	\$	%
	\$	\$	%

Effective Date: , 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee’s compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

(4) Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. “Revolving Commitment,” “Term Loan Commitment,” etc.)

(5) Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

By: _____
Title: _____

[Consented to and](6) Accepted:

JPMORGAN CHASE BANK, N.A., as
Administrative Agent

By _____
Title:

[Consented to:](7)

SSE HOLDINGS, LLC

By _____
Title:

(6) To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

(7) To be added only if the consent of the Borrower and/or other parties (e.g. Issuing Bank) is required by the terms of the Credit Agreement.

ANNEX 1

[(8)

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any Lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, (v) it [is][is not] a Competitor or a Controlling Affiliate of a Competitor of a Loan Party and (vi) if it is a Foreign Lender(9), attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

(8) Describe Credit Agreement at option of Administrative Agent.

(9) The concept of "Foreign Lender" should be conformed to the section in the Credit Agreement governing withholding taxes and gross-up.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument.

Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

COMPLIANCE CERTIFICATE

To: The Lenders parties to the
Credit Agreement Described Below

This Compliance Certificate is furnished pursuant to that certain Third Amended and Restated Credit Agreement dated as of the Effective Date (as amended, modified, renewed or extended from time to time, the “Agreement”) among SSE Holdings, LLC (the “Borrower”), the other Loan Parties, the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent for the Lenders and as the Issuing Bank. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected [•] of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Loan Parties during the accounting period covered by the attached financial statements and such financial statements present fairly in all material respects the financial condition and results of operations of the Loan Parties on a consolidated basis in accordance with GAAP consistently applied;
3. The examinations described in paragraph 2 did not disclose, except as set forth below, and I have no knowledge of (i) the existence of any condition or event which constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate or (ii) any change in GAAP or in the application thereof that has occurred since the date of the audited financial statements referred to in Section 5.01 of the Agreement;
4. I hereby certify that no Loan Party has changed (i) its name, (ii) its chief executive office, (iii) principal place of business, (iv) the type of entity it is or (v) its state of incorporation or organization without having given the Agent the notice required by Section 4.15 of the Security Agreement; and
5. Schedule I attached hereto sets forth financial data and computations evidencing the Borrower’s compliance with certain covenants of the Agreement, all of which data and computations are true, complete and correct.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the (i) nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event or (i) the change in GAAP or the application thereof and the effect of such change on the attached financial statements:

The foregoing certifications, together with the computations set forth in Schedule I and Schedule II hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this day of _____.

By _____

Name: _____

Title: _____

Compliance as of _____, with
Provisions of and of
the Agreement

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this “Agreement”), dated as of _____, 20____, is entered into between _____, a _____ (the “New Subsidiary”) and JPMORGAN CHASE BANK, N.A., in its capacity as administrative agent (the “Administrative Agent”) under that certain Third Amended and Restated Credit Agreement, dated as of the Effective Date among SSE HOLDINGS, LLC (the “Borrower”), the Loan Parties party thereto, the Lenders party thereto and the Administrative Agent (as the same may be amended, modified, extended or restated from time to time, the “Credit Agreement”). All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement.

The New Subsidiary and the Administrative Agent, for the benefit of the Lenders, hereby agree as follows:

1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a Loan Party under the Credit Agreement and a “Guarantor” for all purposes of the Credit Agreement and shall have all of the obligations of a Loan Party and a Guarantor thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Credit Agreement, including without limitation (a) all of the representations and warranties of the Loan Parties set forth in Article III of the Credit Agreement, *[] and []* (b) all of the covenants set forth in Articles V and VI of the Credit Agreement *[] and (c) all of the guaranty obligations set forth in Article X of the Credit Agreement. Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary, subject to the limitations set forth in Section 10.10 of the Credit Agreement, hereby guarantees, jointly and severally with the other Guarantors, to the Administrative Agent and the Lenders, as provided in Article X of the Credit Agreement, the prompt payment and performance of the Guaranteed Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof and agrees that if any of the Guaranteed Obligations are not paid or performed in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the New Subsidiary will, jointly and severally together with the other Guarantors, promptly pay and perform the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal. []* *[] The New Subsidiary has delivered to the Administrative Agent an executed Loan Guaranty. []*

2. If required, the New Subsidiary is, simultaneously with the execution of this Agreement, executing and delivering such Collateral Documents (and such other documents and instruments) as requested by the Administrative Agent in accordance with the Credit Agreement.

3. The address of the New Subsidiary for purposes of Section 9.01 of the Credit Agreement is as follows:

4. The New Subsidiary hereby waives acceptance by the Administrative Agent and the Lenders of the guaranty by the New Subsidiary upon the execution of this Agreement by the New Subsidiary.

5. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

6. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the New Subsidiary has caused this Agreement to be duly executed by its authorized officer, and the Administrative Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

[NEW SUBSIDIARY]

By: _____
Name: _____
Title: _____

Acknowledged and accepted:

JPMORGAN CHASE BANK, N.A., as Administrative Agent

By: _____
Name: _____
Title: _____

EXECUTION VERSION

SECOND AMENDED AND RESTATED SECURITY AGREEMENT

THIS SECOND AMENDED AND RESTATED SECURITY AGREEMENT (as it may be amended or modified from time to time, this “Security Agreement”) is entered into as of February 18, 2014 by and among SSE HOLDINGS, LLC, a New York limited liability company (the “Borrower”), each other Loan Party signatory to this Security Agreement, and each other Loan Party from time to time party to this Security Agreement (collectively with the Borrower, each a “Grantor” and collectively, the “Grantors”), and JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the “Administrative Agent”) for the lenders from time to time party to the Shake Shack Credit Agreement referred to below.

PRELIMINARY STATEMENT

- A. The Borrower, each of the entities set forth on Schedule I attached hereto (such entities, collectively with the Borrower, each an “Existing Grantor” and collectively, the “Existing Grantors”) and the Administrative Agent are party to that certain Amended and Restated Security Agreement dated as of December 28, 2011 (as amended or modified prior to the date hereof, the “Existing Security Agreement”).
- B. The Borrower, the guarantors from time to time party thereto, the Administrative Agent and the Lenders are entering into an amendment (the “Amendment”) to that certain Amended and Restated Shake Shack Credit Agreement dated as of March 28, 2013 (as it may be amended or modified from time to time, the “Shake Shack Credit Agreement”). Each Grantor is entering into this Security Agreement in order to induce the Lenders to enter into the Amendment and extend credit to the Borrower under the Shake Shack Credit Agreement and, if applicable, to secure the Secured Obligations that it has agreed to guarantee pursuant to any Loan Guaranty.
- C. The Grantors desire to amend and restate the Existing Security Agreement in its entirety as provided herein and release Union Square Hospitality Group LLC (“USHG”) as a grantor under the Existing Security Agreement and the Administrative Agent has agreed (subject to the terms of this Security Agreement) to amend and restate the Existing Security Agreement and release USHG as a grantor thereunder.

ACCORDINGLY, the Grantors, the Administrative Agent, on behalf of the Lenders, and, solely for the purpose of its release from the Existing Security Agreement, USHG hereby agree as follows:

**ARTICLE I.
DEFINITIONS**

1.1. Terms Defined in Credit Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Shake Shack Credit Agreement.

1.2. Terms Defined in UCC. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC.

1.3. Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the Preamble and the Preliminary Statement, the following terms shall have the following meanings:

“Accounts” shall have the meaning set forth in Article 9 of the UCC.

“ Article ” means a numbered Article of this Security Agreement, unless another document is specifically referenced.

“ Chattel Paper ” shall have the meaning set forth in Article 9 of the UCC.

“ Collateral ” shall have the meaning set forth in Article II.

“ Commercial Tort Claims ” shall have the meaning set forth in Article 9 of the UCC along with the existing Commercial Tort Claims of each Grantor as listed on Exhibit C.

“ Control ” shall have the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“ Copyrights ” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing throughout the world.

“ Default ” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“ Deposit Accounts ” shall have the meaning set forth in Article 9 of the UCC.

“ Documents ” shall have the meaning set forth in Article 9 of the UCC.

“ Equipment ” shall have the meaning set forth in Article 9 of the UCC.

“ Event of Default ” means an event described in Section 5.1.

“ Exhibit ” refers to a specific Exhibit to this Security Agreement, unless another document is specifically referenced.

“ Fixtures ” shall have the meaning set forth in Article 9 of the UCC.

“ General Intangibles ” shall have the meaning set forth in Article 9 of the UCC.

“ Goods ” shall have the meaning set forth in Article 9 of the UCC.

“ Instruments ” shall have the meaning set forth in Article 9 of the UCC.

“ Intellectual Property ” means all Copyrights, Patents and Trademarks and all other similar types of intellectual property that constitute Collateral.

“ Inventory ” shall have the meaning set forth in Article 9 of the UCC.

“ Investment Property ” shall have the meaning set forth in Article 9 of the UCC.

“ Leasehold interest ” shall have the meaning set forth in Article 2A of the UCC.

“ Lenders ” means the lenders party to the Shake Shack Credit Agreement and their successors and assigns.

“ Letter-of-Credit Rights ” shall have the meaning set forth in Article 9 of the UCC.

“ Licenses ” means, with respect to any Person, all of such Person’s right, title, and interest in and to (a) any and all licensing agreements or similar arrangements in and to its Patents, Copyrights, or Trademarks, (b) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

“ Patents ” means, with respect to any Person, all of such Person’s right, title, and interest in and to: (a) any and all patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing throughout the world.

“ Receivables ” means the Accounts, Chattel Paper, Documents, Investment Property, Instruments and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

“ Required Secured Parties ” means (a) prior to an acceleration of the Obligations under the Shake Shack Credit Agreement, the Required Lenders, (b) after an acceleration of the Obligations under the Shake Shack Credit Agreement but prior to the date upon which the Shake Shack Credit Agreement has terminated by its terms and all of the Obligations (other than contingent indemnification obligations and Banking Services Obligations) have been paid in full (or with respect to any outstanding Letters of Credit, a cash deposit or Supporting Letter of Credit has been delivered to the Administrative Agent as required by the Shake Shack Credit Agreement), Lenders holding in the aggregate at least a majority of the total of the Aggregate Credit Exposure, and (c) after the Shake Shack Credit Agreement has terminated by its terms and all of the Obligations (other than contingent indemnification obligations and Banking Services Obligations) thereunder have been paid in full (whether or not the Obligations under the Shake Shack Credit Agreement were ever accelerated), Lenders holding in the aggregate at least a majority of the aggregate net early termination payments and all other amounts then due and unpaid from any Grantor to the Lenders under Swap Agreement, as determined by the Administrative Agent in its reasonable discretion.

“ Section ” means a numbered Section of this Security Agreement, unless another document is specifically referenced.

“ Security ” has the meaning set forth in Article 8 of the UCC.

“ Stock Rights ” means all dividends, instruments or other distributions and any other right or property which the Grantors shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for, or in exchange for, any Equity Interest constituting Collateral, any right to receive an Equity Interest and any right to receive earnings, in which the Grantors now have or hereafter acquire any right, issued by an issuer of such Equity Interest.

“ Supporting Obligations ” shall have the meaning set forth in Article 9 of the UCC.

“ Trademarks ” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following: (a) all trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing, but excluding intent to use applications; (b) all licenses of the foregoing, whether as licensee or licensor; (c) all renewals of the foregoing; (d) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing throughout the world.

“ UCC ” means the Uniform Commercial Code, as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, Administrative Agent’s or any Lender’s Lien on any Collateral.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

ARTICLE II. GRANT OF SECURITY INTEREST

Each Grantor hereby confirms that pursuant to the Existing Security Agreement, it has pledged and granted the security interests set forth in the Existing Security Agreement and each Grantor hereby pledges and grants to the Administrative Agent, on behalf of and for the ratable benefit of the Lenders, a security interest in all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor (including under any trade name or derivations thereof), and whether owned or consigned by or to, or leased from or to, such Grantor, and regardless of where located (all of which will be collectively referred to as the “ Collateral ”), including:

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Deposit Accounts with any bank or other financial institution;
- (iv) all Documents;
- (v) all Equipment;
- (vi) all Fixtures;
- (vii) all General Intangibles;
- (viii) all Goods;
- (ix) all Instruments;
- (x) all Intellectual Property;
- (xi) all Inventory;

- (xii) all Investment Property;
- (xiii) all cash or cash equivalents;
- (xiv) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;
- (xv) all Commercial Tort Claims; and
- (xvi) all accessions to, substitutions for and replacements, proceeds (including Stock Rights), insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing;

to secure the prompt and complete payment and performance of the Secured Obligations.

Notwithstanding the foregoing, the term “Collateral” shall not include:

(i) any General Intangibles or other rights arising under any contracts, instruments, licenses or other documents as to which the grant of a security interest would (A) constitute a violation of a valid and enforceable restriction in favor of a third party on such grant, unless and until any required consents have been obtained, or (B) give any other party to such contract, instrument, license or other document a valid and enforceable right to terminate its obligations thereunder;

(ii) any asset to the extent that such grant of a security interest is prohibited by a requirement of any applicable law, rule or regulation, requires a consent as a condition to the grant of a security interest in such asset that has not been obtained of any governmental authority pursuant to such requirement of law, or is prohibited by, or constitutes a breach or default under, or results in the termination of, or requires any consent as a condition to the grant of a security interest in such asset that is has not been obtained under, any contract, instrument, license or other document evidencing, governing or giving rise to such asset;

(iii) any and all Trademarks and other Intellectual Property bearing the name “Meyer” or a variant thereof; and

(iv) more than 65% of the outstanding voting Equity Interests of any non-U.S. Person owned directly or indirectly by any Grantor unless granting such a security interest would be permitted without causing a “deemed dividend” under Section 956 of the Code or other possible tax consequences that are adverse to such Grantor.

Provided that the limitation set forth in clauses (i) and (ii) above shall (x) exist only for so long as such governmental law, rule, regulation, consent requirement, General Intangible or other right arising under any contracts, instruments, licenses or other documents continue to be effective (and, upon the cessation, termination, expiration of such governmental law, rule, regulation, consent requirement, General Intangibles or other rights arising under any contracts, instruments, licenses or other documents, or if any such governmental law, rule, regulation, consent requirement, General Intangible or other right arising under any contracts, instruments, licenses or other documents is no longer applicable, the security interest granted herein shall be deemed to have automatically attached to such asset) and (y) not apply with respect to any asset if and to the extent that the security interest in and to such asset granted in this Security Agreement is permitted under Sections 9-406, 9-407, 9-408, or 9-409 of the UCC.

**ARTICLE III.
REPRESENTATIONS AND WARRANTIES**

Each Grantor represents and warrants to the Administrative Agent and the Lenders that:

3.1. Title, Perfection and Priority. Such Grantor has good and valid rights in or the power to transfer the Collateral and title to the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of all Liens except for Liens permitted under Section 6.02 of the Shake Shack Credit Agreement, and has full power and authority to grant to the Administrative Agent the security interest in such Collateral pursuant hereto. When financing statements have been properly filed in the appropriate offices against such Grantor in the locations listed on Exhibit E, the Administrative Agent will have a fully perfected first priority security interest in all Collateral of each Grantor in which a security interest may be perfected by filing a financing statement under the UCC of the jurisdiction of organization of such Grantor, subject only to Liens permitted under Section 6.02 of the Shake Shack Credit Agreement.

3.2. Type and Jurisdiction of Organization, Organizational and Identification Numbers. The type of entity of such Grantor, its state of organization, the organizational number issued to it by its state of organization and its federal employer identification number are set forth on Exhibit A.

3.3. Principal Location. Such Grantor's mailing address and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), are disclosed in Exhibit A; such Grantor has no other places of business except those set forth in Exhibit A.

3.4. Collateral Locations. All of such Grantor's locations where Collateral is located are listed on Exhibit A. All of said locations are owned by such Grantor except for locations (i) which are leased by the Grantor as lessee and designated in Part III(b) of Exhibit A and (ii) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment as designated in Part III(c) of Exhibit A.

3.5. Deposit Accounts. All of such Grantor's Deposit Accounts are listed on Exhibit B.

3.6. Exact Names. Such Grantor's name in which it has executed this Security Agreement is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization. Such Grantor has not, during the past five years, been known by or used any other corporate or fictitious name, or been a party to any merger or consolidation, or been a party to any acquisition.

3.7. Letter-of-Credit Rights and Chattel Paper. Exhibit C lists all Letter-of-Credit Rights and Chattel Paper of such Grantor. All action by such Grantor necessary or desirable to protect and perfect the Administrative Agent's Lien on each item listed on Exhibit C (including the delivery of all originals and the placement of a legend on all Chattel Paper as required hereunder) has been duly taken. The Administrative Agent will have a fully perfected first priority security interest in the Collateral listed on Exhibit C, subject only to Liens permitted under Section 6.02 of the Shake Shack Credit Agreement.

3.8. Intellectual Property. Such Grantor does not have any interest in, or title to, any Patent, Trademark or Copyright, that is, or is intended to be, Collateral, except as set forth in Exhibit D. This Security Agreement is effective to create a valid and continuing Lien, and upon filing of appropriate financing statements in the offices listed on Exhibit E under the UCC, and this Security Agreement with the United States Copyright Office and the United States Patent and Trademark Office, fully perfected first priority security interests in favor of the Administrative Agent on such Grantor's U.S. Patents,

Trademarks and Copyrights, such perfected security interests are enforceable as such as against any and all creditors of and purchasers from such Grantor; and all action necessary to protect and perfect the Administrative Agent's Lien on such Grantor's Patents, Trademarks or Copyrights shall have been duly taken.

3.9. Filing Requirements. None of the Collateral owned by a Grantor is of a type for which security interests or liens may be perfected by filing under any federal statute except for Patents, Trademarks and Copyrights held by such Grantor and described in Exhibit D.

3.10. No Financing Statements, Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral which has not lapsed or been terminated naming such Grantor as debtor has been filed or is of record in any jurisdiction except (a) for financing statements or security agreements naming the Administrative Agent on behalf of the Lenders as the secured party and (b) with respect to any lien permitted by Section 6.02 of the Shake Shack Credit Agreement.

3.11. Investment Property. No Grantor owns any material Instrument, Security or other Investment Property other than Equity Interests owned by the Borrower in each of its Subsidiaries and Affiliates existing on the date hereof.

ARTICLE IV. COVENANTS

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, each Grantor agrees that:

4.1. General.

(a) Authorization to File Financing Statements; Ratification. Such Grantor hereby authorizes the Administrative Agent to file, and if requested will deliver to the Administrative Agent, all financing statements and other documents and take such other actions as may from time to time be reasonably requested by the Administrative Agent in order to maintain a first perfected security interest in (subject to liens permitted by Section 6.02 of the Shake Shack Credit Agreement) and, if applicable, Control of, the Collateral owned by such Grantor. Any financing statement filed by the Administrative Agent may be filed in any filing office in any UCC jurisdiction and may (i) indicate such Grantor's Collateral (1) as all assets of each Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or such jurisdiction, or (2) by any other description which reasonably approximates the description contained in this Security Agreement, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor. Such Grantor also agrees to furnish any such information to the Administrative Agent reasonably promptly upon request. Such Grantor also ratifies its authorization for the Administrative Agent to have filed in any UCC jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(b) Further Assurances. Such Grantor agrees to take any and all reasonable actions necessary to defend title to the Collateral against all persons and to defend the security interest of the Administrative Agent in its Collateral and the priority thereof against any Lien not expressly permitted hereunder.

(c) Other Financing Statements. Such Grantor will not authorize the filing of any financing statement naming it as debtor covering all or any portion of the Collateral owned by it, except to secure Liens permitted by Section 6.02 of the Shake Shack Credit Agreement. Such Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of the Administrative Agent, subject to such Grantor's rights under Section 9 509(d)(2) of the UCC.

(d) Locations. Such Grantor will not maintain any Collateral owned by it with a fair market value in excess of \$25,000 at any location other than those locations listed on Exhibit A (as such Exhibit may be updated from time to time in accordance with Section 8.3 hereof).

(e) Compliance with Terms. Such Grantor will perform and comply with all material obligations in respect of the Collateral owned by it and all agreements to which it is a party or by which it or its Collateral is bound, except to the extent that the failure to comply could not reasonably be expected to have a Material Adverse Effect.

4.2. Collection of Receivables. Except as otherwise provided in this Security Agreement, such Grantor will use its best efforts to collect and will enforce, at such Grantor's sole expense, all amounts due or hereafter due to such Grantor under the material Receivables owned by it.

4.3. Equipment. Subject to the rights of any landlord under any lease applicable to any of the locations set forth on Exhibit A, such Grantor shall not permit any Equipment with a fair market value in excess of \$25,000 to become a fixture with respect to real property leased by such Grantor or to become an accession with respect to other personal property with respect to which real or personal property the Administrative Agent does not have a Lien. Such Grantor will not, without the Administrative Agent's prior written consent, alter or remove any identifying symbol or number on any of such Grantor's material Equipment constituting Collateral.

4.4. Delivery of Instruments, Securities, Chattel Paper and Documents. Such Grantor will (a) deliver to the Administrative Agent immediately upon execution of this Security Agreement the originals of all Chattel Paper and certificated Instruments constituting Collateral owned by it (if any then exist) in excess of \$250,000 (individually or in the aggregate), (b) hold in trust for the Administrative Agent upon receipt and immediately thereafter deliver to the Administrative Agent any such Chattel Paper and certificated Instruments constituting Collateral in excess of \$250,000 (individually or in the aggregate), (c) upon the Administrative Agent's request, deliver to the Administrative Agent (and thereafter hold in trust for the Administrative Agent upon receipt and immediately deliver to the Administrative Agent) any Document evidencing or constituting Collateral in excess of \$250,000 (individually or in the aggregate) and (d) upon the Administrative Agent's request, deliver to the Administrative Agent a duly executed amendment to this Security Agreement, in the form of Exhibit F hereto (the "Supplement"), pursuant to which such Grantor will supplement the schedules hereto to describe such additional Collateral. Such Grantor hereby authorizes the Administrative Agent to attach each Supplement to this Security Agreement and acknowledges and agrees that all additional Collateral owned by it set forth in such Supplement shall be considered to be a part of the Collateral.

4.5. Investment Property. Other than (i) as permitted under the Shake Shack Credit Agreement and (ii) the Equity Interest owned by such Grantor in such Grantor's Subsidiaries and Affiliates as set forth on Schedule 3.14 of the Shake Shack Credit Agreement, such Grantor will not own, purchase or otherwise acquire any Instrument, Security or other Investment Property.

4.6. Intellectual Property.

(a) Such Grantor will use its commercially reasonable efforts to secure all consents and approvals necessary for the Administrative Agent to enforce the security interests granted hereunder, in any License held by such Grantor, including an acknowledgement and consent of any licensor under any License.

(b) Such Grantor shall promptly notify the Administrative Agent if it knows that any application or registration relating to any Patent, Trademark or Copyright (now or hereafter existing) that are material to the conduct of its business or operations may become abandoned or dedicated to the public, or of any similar materially adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court, other than any non-final office actions) regarding such Grantor's ownership of any Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same.

(c) If such Grantor, either directly or through any agent, employee, licensee or designee, files an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency such Grantor promptly shall provide the Administrative Agent with notice thereof, and, upon request of the Administrative Agent, such Grantor shall execute and deliver any and all security agreements as the Administrative Agent may request to evidence the Administrative Agent's first priority security interest on such Patent, Trademark or Copyright.

(d) Such Grantor shall take all reasonable actions necessary or reasonably requested by the Administrative Agent to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of its Patents, Trademarks and Copyrights (now or hereafter existing) that are material to the conduct of its business or operations, including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings.

(e) Such Grantor shall, unless it shall reasonably determine that such Patent, Trademark or Copyright is in no way material to the conduct of its business or operations, promptly sue for infringement, misappropriation or dilution of such Patents, Trademarks or Copyrights and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as the Administrative Agent shall deem necessary and reasonably appropriate under the circumstances to protect such Patent, Trademark or Copyright. In the event that such Grantor institutes suit because any of its Patents, Trademarks or Copyrights constituting Collateral is infringed upon, or misappropriated or diluted by a third party, such Grantor shall comply with Section 4.6.

4.7. Commercial Tort Claims. Such Grantor shall promptly, and in any event within five Business Days after the same is acquired by it, notify the Administrative Agent of any Commercial Tort Claim and in excess of \$500,000 (individually or in the aggregate) acquired by it and, unless the Administrative Agent otherwise consents, such Grantor shall enter into an amendment to this Security Agreement, in the form of Exhibit F hereto, granting to Administrative Agent a first priority security interest in such Commercial Tort Claim (subject to Liens permitted by Section 6.02 of the Shake Shack Credit Agreement).

4.8. Letter-of-Credit Rights. If such Grantor is or becomes the beneficiary of a letter of credit, it shall promptly, and in any event within five Business Days after becoming a beneficiary, notify

the Administrative Agent thereof and cause the issuer and/or confirmation bank to consent to the assignment of any Letter-of-Credit Rights to the Administrative Agent.

4.9. Federal, State or Municipal Claims. Such Grantor will promptly, and in any event within five Business Days after the same is acquired by it, notify the Administrative Agent of any Collateral which constitutes a claim against the United States government or any state or local government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

4.10. No Interference. Unless required by law, such Grantor agrees that it will not interfere with any right, power and remedy of the Administrative Agent provided for in this Security Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Administrative Agent of any one or more of such rights, powers or remedies.

4.11. Change of Name or Location; Change of Fiscal Year. Such Grantor shall not (a) change its name as it appears in official filings in the state of its incorporation or organization, (b) change its chief executive office, principal place of business, mailing address, corporate offices or warehouses or locations at which Collateral is held or stored, or the location of its records concerning the Collateral as set forth on Exhibit A (as such Exhibit may be updated from time to time in accordance with Section 8.3 hereof), (c) change the type of entity that it is, (d) change its organization identification number, if any, issued by its state of incorporation or other organization, or (e) change its state of incorporation or organization, in each case, unless (i) such location is in the continental U.S., (ii) the Administrative Agent shall have received at least fifteen days prior written notice of such change, (iii) such change could not reasonably be expected to materially adversely affect the validity, perfection or priority of the Administrative Agent's security interest in the Collateral and (iv) any reasonable action requested by the Administrative Agent in connection therewith has been completed or taken (including any action to continue the perfection of any Liens in favor of the Administrative Agent).

ARTICLE V. EVENTS OF DEFAULT AND REMEDIES

5.1. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

(a) Any representation or warranty made by or on behalf of any Grantor under or in connection with this Security Agreement shall be materially false as of the date on which made.

(b) The breach by any Grantor of any of the terms or provisions of Article IV, which breach remains unremedied for a period of five Business Days.

(c) The breach by any Grantor (other than a breach which constitutes an Event of Default under any other Section of this Article V) of any of the terms or provisions of this Security Agreement which is not remedied within ten Business Days after such breach; and

(d) The occurrence of any "Event of Default" under, and as defined in, the Shake Shack Credit Agreement.

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5.2. Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent may, with the concurrence or at the direction of the Required Secured Parties, exercise any or all of the following rights and remedies:

(i) those rights and remedies provided in this Security Agreement, the Shake Shack Credit Agreement, or any other Loan Document; *provided that*, this Section 5.2(a) shall not be understood to limit any rights or remedies available to the Administrative Agent and the Lenders prior to an Event of Default;

(ii) those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement;

(iii) give notice of sole control or any other instruction under any control agreement with any securities intermediary and take any action therein with respect to such Collateral; and

(iv) without notice (except as specifically provided in Section 7.1 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice and may take place at any Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Administrative Agent may deem commercially reasonable.

(b) The Administrative Agent, on behalf of the Lenders, may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial

reasonableness of any sale of the Collateral.

(c) The Administrative Agent shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the Administrative Agent and the Lenders, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption each Grantor hereby expressly releases.

(d) Until the Administrative Agent is able to effect a sale, lease, or other disposition of Collateral, the Administrative Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Administrative Agent. The Administrative Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Administrative Agent's remedies (for the benefit of the Administrative Agent and Lenders), with respect to such appointment without prior notice or hearing as to such appointment.

(e) If, after the Shake Shack Credit Agreement has terminated by its terms and all of the Obligations have been paid in full, there remain Swap Obligations outstanding, the Required Secured

Parties may exercise the remedies provided in this Section 5.2 upon the occurrence of any event which would allow or require the termination or acceleration of any Swap Obligations pursuant to the terms of the Swap Agreement.

(f) Notwithstanding the foregoing, neither the Administrative Agent nor the Lenders shall be required to (i) make any demand upon, or pursue or exhaust any of their rights or remedies against, any Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(g) Each Grantor acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private.

5.3. Grantor's Obligations Upon Event of Default. Upon the request of the Administrative Agent after the occurrence and during the continuation of an Event of Default, each Grantor will:

(a) assemble and make available to the Administrative Agent the Collateral and all books and records relating thereto at any place or places specified by the Administrative Agent, whether at a Grantor's premises or elsewhere;

(b) permit the Administrative Agent, by the Administrative Agent's representatives and agents, to enter, occupy and use any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay the Grantors for such use and occupancy; and

(c) at its own expense, cause the independent certified public accountants then engaged by each Grantor to prepare and deliver to the Administrative Agent and each Lender, at any time, and from time to time, promptly upon the Administrative Agent's request, the following reports with respect to the applicable Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts.

5.4. Grant of Intellectual Property License. For the purpose of enabling the Administrative Agent to exercise the rights and remedies under this Article V at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby (a) grants to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders a nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor and only during the occurrence of and continuation of an Event of Default and after acceleration of the Obligations) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof and (b) irrevocably agrees that the Administrative Agent may sell any of such Grantor's Inventory directly to any person, including without limitation persons who have previously purchased the Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Administrative Agent's rights under this Security Agreement, may sell Inventory which bears any Trademark owned by or licensed to such Grantor and any Inventory that is covered by

any Copyright owned by or licensed to such Grantor and the Administrative Agent may finish any work in process and affix any Trademark owned by or licensed to such Grantor and sell such Inventory as provided herein. With respect to the Trademarks licensed to the Administrative Agent under the foregoing license, prior to any acceleration of the Obligations the license shall be subject to Administrative Agent's compliance with commercially reasonable quality control provisions provided by Grantor, as amended from time to time.

**ARTICLE VI.
ATTORNEY IN FACT; PROXY**

6.1. Authorization for Secured Party to Take Certain Action .

(a) Each Grantor irrevocably authorizes the Administrative Agent at any time and from time to time in the sole discretion of the Administrative Agent and appoints the Administrative Agent as its attorney in fact (i) to execute on behalf of such Grantor as debtor and to file financing statements necessary or desirable in the Administrative Agent's sole discretion to perfect and to maintain the perfection and priority of the Administrative Agent's security interest in the Collateral, (ii) to file a carbon, photographic or other reproduction of this Security Agreement or any financing statement with respect to the Collateral as a financing statement and to file any other financing statement or amendment of a financing statement (which does not add new collateral or add a debtor) in such offices as the Administrative Agent in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of the Administrative Agent's security interest in the Collateral, (iii) to endorse and collect any cash proceeds of the Collateral, (iv) to apply the proceeds of any Collateral received by the Administrative Agent to the Secured Obligations as provided in Section 2.16 of the Shake Shack Credit Agreement, (v) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens as are specifically permitted hereunder), (vi) to contact Account Debtors for any reason, (vii) to prepare, file and sign such Grantor's name on a proof of claim in bankruptcy or similar document against any Account Debtor of such Grantor, (viii) to change the address for delivery of mail addressed to such Grantor to such address as the Administrative Agent may designate and to receive, open and dispose of all mail addressed to such Grantor, and (ix) to do all other acts and things necessary to carry out this Security Agreement; and such Grantor agrees to reimburse the Administrative Agent on demand for any payment made or any expense incurred by the Administrative Agent in connection with any of the foregoing; *provided that* , this authorization shall not relieve such Grantor of any of its obligations under this Security Agreement or under the Shake Shack Credit Agreement; and *provided further* that notwithstanding anything to the contrary in this Section 6.1(a) the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for under subsections (iii)-(ix) hereof unless an Event of Default shall have occurred and is continuing.

(b) All acts of said attorney or designee are hereby ratified and approved. The powers conferred on the Administrative Agent, for the benefit of the Administrative Agent and Lenders, under this Section 6.1 are solely to protect the Administrative Agent's interests in the Collateral and shall not impose any duty upon the Administrative Agent or any Lender to exercise any such powers.

6.2. Nature of Appointment; Limitation of Duty . THE APPOINTMENT OF THE ADMINISTRATIVE AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE VI IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS SECURITY AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 7.14 . NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NEITHER THE ADMINISTRATIVE AGENT, NOR ANY LENDER, NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO

PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; PROVIDED THAT, IN NO EVENT SHALL THEY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

ARTICLE VII. GENERAL PROVISIONS

7.1. Waivers. Each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Grantors, addressed as set forth in Article VIII, at least ten days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Administrative Agent or any Lender arising out of the repossession, retention or sale of the Collateral, except such as arise solely out of the gross negligence or willful misconduct of the Administrative Agent or such Lender as finally determined by a court of competent jurisdiction. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Administrative Agent or any Lender, any valuation, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

7.2. Limitation on Administrative Agent's and Lenders' Duty with Respect to the Collateral. The Administrative Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Administrative Agent and each Lender shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Administrative Agent nor any Lender shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Administrative Agent or such Lender, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Administrative Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is commercially reasonable for the Administrative Agent (i) to fail to incur expenses deemed significant by the Administrative Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in

wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Administrative Agent against risks of loss, collection or disposition of Collateral or to provide to the Administrative Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Administrative Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Administrative Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 7.2 is to provide non-exhaustive indications of what actions or omissions by the Administrative Agent would be commercially reasonable in the Administrative Agent's exercise of remedies against the Collateral and that other actions or omissions by the Administrative Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7.2. Without limitation upon the foregoing, nothing contained in this Section 7.2 shall be construed to grant any rights to any Grantor or to impose any duties on the Administrative Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 7.2.

7.3. Compromises and Collection of Collateral. The Grantors and the Administrative Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, each Grantor agrees that the Administrative Agent may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Administrative Agent in its sole discretion shall determine or abandon any Receivable, and any such action by the Administrative Agent shall be commercially reasonable so long as the Administrative Agent acts in good faith based on information known to it at the time it takes any such action.

7.4. Secured Party Performance of Debtor Obligations. Without having any obligation to do so, the Administrative Agent may perform or pay any obligation which any Grantor has agreed to perform or pay in this Security Agreement and the Grantors shall reimburse the Administrative Agent for any amounts paid by the Administrative Agent pursuant to this Section 7.4 in the event that such Grantor failed to pay or perform such obligation. The Grantors' obligation to reimburse the Administrative Agent pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

7.5. Specific Performance of Certain Covenants. Each Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 5.3 or 7.7 will cause irreparable injury to the Administrative Agent and the Lenders, that the Administrative Agent and Lenders have no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Administrative Agent or the Lenders to seek and obtain specific performance of other obligations of the Grantors contained in this Security Agreement, that the covenants of the Grantors contained in the Sections referred to in this Section 7.5 shall be specifically enforceable against the Grantors.

7.6. Dispositions Not Authorized. No Grantor is authorized to sell or otherwise dispose of the Collateral except as permitted under Section 6.05 of the Shake Shack Credit Agreement and notwithstanding any course of dealing between any Grantor and the Administrative Agent or other conduct of the Administrative Agent, no authorization to sell or otherwise dispose of the Collateral (except as permitted under Section 6.05 of the Shake Shack Credit Agreement) shall be binding upon the Administrative Agent or the Lenders unless such authorization is in writing signed by the Administrative Agent with the consent or at the direction of the Required Secured Parties.

7.7. No Waiver; Amendments; Cumulative Remedies. No delay or omission of the Administrative Agent or any Lender to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Default or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by the Administrative Agent with the concurrence or at the direction of the Lenders required under Section 9.02 of the Shake Shack Credit Agreement and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to the Administrative Agent and the Lenders until the Secured Obligations (other than contingent indemnification obligations and Banking Services Obligations) have been paid in full (or with respect to any outstanding Letters of Credit, a cash deposit or Supporting Letter of Credit has been delivered to the Administrative Agent as required by the Shake Shack Credit Agreement).

7.8. Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. Any provision in this Security Agreement that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Security Agreement are declared to be severable.

7.9. Reinstatement. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

7.10. Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of the Grantors, the Administrative Agent and the Lenders and their respective successors and assigns (including all persons who become bound as a debtor to this Security Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of the Administrative Agent. No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, hereunder.

7.11. Survival of Representations. All representations and warranties of the Grantors contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

7.12. Taxes and Expenses. Any taxes (including income taxes) payable or ruled payable by Federal or State authority in respect of this Security Agreement shall be paid by the Grantors, together with interest and penalties, if any. The Grantors shall reimburse the Administrative Agent for any and all documented out-of-pocket expenses and internal charges (including reasonable attorneys', auditors' and accountants' fees) paid or incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, collection and enforcement of this Security Agreement and in the audit, analysis, administration, collection, preservation or sale of the Collateral (including the expenses and charges associated with any periodic or special audit of the Collateral). Any and all costs and expenses incurred by the Grantors in the performance of actions required pursuant to the terms hereof shall be borne solely by the Grantors.

7.13. Headings. The title of and Section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

7.14. Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (i) the Shake Shack Credit Agreement has terminated pursuant to its express terms and (ii) all of the Secured Obligations (other than contingent indemnification obligations and Banking Services Obligations) have been indefeasibly paid and performed in full (or with respect to any outstanding Letters of Credit, a cash deposit or Supporting Letter of Credit has been delivered to the Administrative Agent as required by the Shake Shack Credit Agreement) and no commitments of the Administrative Agent or the Lenders which would give rise to any Secured Obligations are outstanding.

7.15. Release of Security.

(a) At such time as this Security Agreement is terminated pursuant to Section 7.14 hereof, the Collateral shall be released from the first priority Liens created hereby, and this Security Agreement and obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. Further, Administrative Agent will (i) execute and deliver, solely at the Grantors' expense and without any representations, warranties or recourse whatsoever, any UCC termination statements, lien releases, mortgage releases, re-assignments of trademarks, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably requested by the Borrower and necessary to release, as of record, any and all Liens and all notices of security interests and Liens previously filed by Agent with respect to the Obligations and (ii) return any possessory Collateral previously delivered to the Administrative Agent by a Grantor, solely at the request and expense of the applicable Grantor. Further, solely to the extent this Security Agreement is terminated pursuant to Section 7.14 hereof, each Grantor is hereby authorized to file UCC amendments or termination statements evidencing the termination of the Liens so released.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by Section 6.05 of the Shake Shack Credit Agreement, Administrative Agent will execute and deliver, solely at the Grantors' expense and without any representations, warranties or recourse whatsoever, any UCC termination statements, lien releases, mortgage releases, re-assignments of trademarks, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably requested by the Borrower to release such Liens.

7.16. Entire Agreement. This Security Agreement embodies the entire agreement and understanding between the Grantors and the Administrative Agent relating to the Collateral and

supersedes all prior agreements and understandings between the Grantors and the Administrative Agent relating to the Collateral.

7.17. CHOICE OF LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

7.18. CONSENT TO JURISDICTION. EACH GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AND EACH GRANTOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY GRANTOR IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY ANY GRANTOR AGAINST THE ADMINISTRATIVE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE ADMINISTRATIVE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN NEW YORK, NEW YORK.

7.19. WAIVER OF JURY TRIAL. EACH GRANTOR, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

7.20. Indemnity. Each Grantor hereby agrees to indemnify the Administrative Agent and the Lenders, and their respective successors, assigns, agents and employees, from and against any and all liabilities, damages, penalties, suits, costs, and expenses of any kind and nature (including, without limitation, all expenses of litigation or preparation therefor whether or not the Administrative Agent or any Lender is a party thereto) imposed on, incurred by or asserted against the Administrative Agent or the Lenders, or their respective successors, assigns, agents and employees, in any way relating to or arising out of this Security Agreement, including any claim for Patent, Trademark or Copyright infringement, or arising from the acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Collateral (including, without limitation, latent and other defects, whether or not discoverable by the Administrative Agent, the Lenders, or any Grantor, in each case, other than in connection with the gross negligence or willful misconduct of the Administrative Agent or any Lender.

7.21. Counterparts. This Security Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Security Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this Security Agreement.

7.22. Renewal and Extension of Liens and Security Interests. Each Grantor acknowledges that the pledge and grant of liens and security interests made by the Grantors to the Administrative Agent, for the benefit of the Lender Parties, in the Existing Security Agreement, are valid and subsisting, are not impaired or diminished hereby, and are extended and carried forward hereby to secure the prompt payment and performance in full when due, whether by lapse of time, acceleration or otherwise, of the Secured Obligations.

ARTICLE VIII. NOTICES

8.1. Sending Notices. Any notice required or permitted to be given under this Security Agreement shall be sent by United States mail, telecopier, personal delivery or nationally established overnight courier service, and shall be deemed received (a) when received, if sent by hand or overnight courier service, or mailed by certified or registered mail notices or (b) when sent, if sent by telecopier (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), in each case addressed to the Grantors at the notice address set forth on Exhibit A, and to the Administrative Agent and the Lenders at the addresses set forth in, and accordance with Section 9.01 of the Shake Shack Credit Agreement.

8.2. Change in Address for Notices. Each of the Grantors, the Administrative Agent and the Lenders may change the address for service of notice upon it by a notice in writing to the other parties.

8.3. Exhibits. Subject to compliance with the requirements set forth in Section 5.12 of the Shake Shack Credit Agreement, each Grantor may, from time to time, update the Exhibits attached hereto by delivering such updated Exhibits to the Administrative Agent at the address set forth in, and in accordance with, Section 9.01 of the Shake Shack Credit Agreement.

ARTICLE IX. THE ADMINISTRATIVE AGENT

JPMorgan Chase Bank, N.A. has been appointed Administrative Agent for the Lenders hereunder pursuant to Article VIII of the Shake Shack Credit Agreement. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Administrative Agent hereunder is subject to the terms of the delegation of authority made by the Lenders to the Administrative Agent pursuant to the Shake Shack Credit Agreement, and that the Administrative Agent has agreed to act (and any successor Administrative Agent shall act) as such hereunder only on the express conditions contained in such Article VIII. Any successor Administrative Agent appointed pursuant to Article VIII of the Shake Shack Credit Agreement shall be entitled to all the rights, interests and benefits of the Administrative Agent hereunder.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Grantors and the Administrative Agent have executed this Security Agreement as of the date first above written.

SSE HOLDINGS, LLC

By: /s/ Jeff Uttz
Name: Jeff Uttz
Title: Chief Financial Officer

SHAKE SHACK ENTERPRISES, LLC

By: /s/ Jeff Uttz
Name: Jeff Uttz
Title: Chief Financial Officer

UNION SQUARE HOSPITALITY GROUP, LLC

By: /s/ Karen Kochevar
Name: Karen Kochevar
Title: Chief Financial Officer

SSE IP, LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK ENTERPRISES INTERNATIONAL, LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

Shake Shack Pledge and Security Agreement

CUSTARD'S FIRST STAND, LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK 300 WEST 44th STREET LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK 152 EAST 86 LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK 366 COLUMBUS LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK 18th STREET NW WASHINGTON D.C. LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

Shake Shack Pledge and Security Agreement

SHAKE SHACK 1111 LINCOLN ROAD LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK SANSOM STREET PHILADELPHIA LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK WESTPORT LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK FULTON STREET BROOKLYN LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK CORAL GABLES, LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

Shake Shack Pledge and Security Agreement

SHAKE SHACK GRAND CENTRAL LLC

By: /s/ Jeff Uttz
Name: Jeff Uttz
Title: Chief Financial Officer

SHAKE SHACK WESTBURY LLC

By: /s/ Jeff Uttz
Name: Jeff Uttz
Title: Chief Financial Officer

SHAKE SHACK HARVARD SQUARE BOSTON LLC

By: /s/ Jeff Uttz
Name: Jeff Uttz
Title: Chief Financial Officer

SHAKE SHACK NEW HAVEN LLC

By: /s/ Jeff Uttz
Name: Jeff Uttz
Title: Chief Financial Officer

SHAKE SHACK DOMESTIC LICENSING LLC

By: /s/ Jeff Uttz
Name: Jeff Uttz
Title: Chief Financial Officer

Shake Shack Pledge and Security Agreement

SHAKE SHACK BOSTON CHESTNUT HILL LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK BOCA RATON LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK 800 F STREET LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK KING OF PRUSSIA LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK PARAMUS LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

Shake Shack Pledge and Security Agreement

SHAKE SHACK UNIVERSITY CITY PHILADELPHIA LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK UNITED KINGDOM LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK TURKEY LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK RUSSIA LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

SHAKE SHACK MIDDLE EAST LLC

By: /s/ Jeff Uttz

Name: Jeff Uttz

Title: Chief Financial Officer

Shake Shack Pledge and Security Agreement

J.P.MORGAN CHASE BANK, N.A.

By: /s/ James McDonnell

Name: James McDonnell

Title: Officer

Shake Shack Pledge and Security Agreement

EXHIBIT A

(See Sections 3.2, 3.3, 3.4 and 8.1 of Security Agreement)

NOTICE ADDRESS FOR UNION SQUARE HOSPITALITY GROUP, LLC

Union Square Hospitality Group
24 Union Square East, 6th Floor
New York, New York 10003
Attention: Jeff Flug (jflug@ushgnyc.com), Karen Kochevar (kkochevar@ushgnyc.com) and Ron Palmese (rpalmese@ushgnyc.com)

NOTICE ADDRESS FOR ALL OTHER GRANTORS

SSE Holdings, LLC
24 Union Square East, 5th Floor
New York, New York 10003
Attention: Randy Garutti (rgarutti@shakeshack.com), Jeff Uttz (juttz@shakeshack.com) and Ron Palmese (rpalmese@ushgnyc.com)

I. Name of Grantor, State of Incorporation or Organization, Type of Entity, Organizational Number, Federal Identification Number (Section 3.2 of Security Agreement)

Name of Grantor	State of Incorporation or Organization	Type of Entity	Organizational Number	Federal Identification Number
Union Square Hospitality Group, LLC	NY	Limited liability company	N/A	01-0959808
Custard's First Stand, LLC	NY	Limited liability company	N/A	26-0083218
Shake Shack 366 Columbus LLC	NY	Limited liability company	N/A	26-2349016
Shake Shack Enterprises, LLC	NY	Limited liability company	N/A	26-4487502
Shake Shack 152 E 86 LLC	NY	Limited liability company	N/A	27-0329939
Shake Shack Enterprises International, LLC	NY	Limited liability company	N/A	27-1616608
SSE Holdings, LLC	DE	Limited liability company	N/A	30-0586389
SSE IP, LLC	DE	Limited liability	N/A	30-0586393

Name of Grantor	State of Incorporation or Organization	Type of Entity	Organizational Number	Federal Identification Number
		company		
Shake Shack 1111 Lincoln Road LLC	NY	Limited liability company	N/A	27-1182170
Shake Shack 300 West 44th Street LLC	NY	Limited liability company	N/A	27-1299334
Shake Shack 102 North End Ave LLC	NY	Limited liability company	N/A	27-2873457
Shake Shack 18 th Street N.W. Washington D.C. LLC	DE	Limited liability company	N/A	27-3110175
Shake Shack Fulton Street Brooklyn LLC	NY	Limited liability company	N/A	27-3110348
Shake Shack Westport LLC	DE	Limited liability company	N/A	27-3300650
Shake Shack Sansom Street Philadelphia LLC	DE	Limited liability company	N/A	45-2184628
Shake Shack Coral Gables, LLC	DE	Limited liability company	N/A	45-3002559
Shake Shack Grand Central LLC	NY	Limited liability company	N/A	45-3153278
Shake Shack Westbury LLC	DE	Limited liability company	N/A	45-3712285
Shake Shack Harvard Square Boston LLC	DE	Limited liability company	N/A	45-4119510
Shake Shack New Haven LLC	DE	Limited liability company	N/A	45-4118622
Shake Shack Domestic Licensing LLC	DE	Limited liability company	N/A	45-4045615
Shake Shack Boca Raton LLC	DE	Limited liability company	N/A	45-5090380
Shake Shack Boston Chestnut Hill LLC	DE	Limited liability company	N/A	45-5090439

Name of Grantor	State of Incorporation or Organization	Type of Entity	Organizational Number	Federal Identification Number
Shake Shack Chicago Ohio Street LLC	DE	Limited liability company	N/A	45-5090518
Shake Shack Middle East LLC	DE	Limited liability company	N/A	80-0911417
Shake Shack Russia LLC	DE	Limited liability company	N/A	80-0912604
Shake Shack Turkey LLC	DE	Limited liability company	N/A	90-0955817
Shake Shack United Kingdom LLC	DE	Limited liability company	N/A	90-0955951
Shake Shack 800 F Street LLC	DE	Limited liability company	N/A	90-0937283
Shake Shack King of Prussia LLC	DE	Limited liability company	N/A	90-0937525
Shake Shack Paramus LLC	DE	Limited liability company	N/A	35-2468381
Shake Shack University City Philadelphia LLC	DE	Limited liability company	N/A	90-0937553
Shake Shack Flatbush Brooklyn LLC	DE	Limited liability company	N/A	37-1709174
Shake Shack Georgetown LLC	DE	Limited liability company	N/A	90-0937541
Shake Shack Buckhead Atlanta LLC	DE	Limited liability company	N/A	90-0957364
Shake Shack Las Vegas Park LLC	DE	Limited liability company	N/A	35-2472750
Shake Shack Tysons Corner Fairfax County LLC	DE	Limited liability company	N/A	30-0800573
Shake Shack Union Station Washington D.C. LLC	DE	Limited liability company	N/A	30-0800573

Name of Grantor	State of Incorporation or Organization	Type of Entity	Organizational Number	Federal Identification Number
Shake Shack Winter Park Orlando LLC	DE	Limited liability company	N/A	35-2487248
Shake Shack DUMBO LLC	DE	Limited liability company	N/A	80-0958402
Shake Shack South Lamar Austin LLC	DE	Limited liability company	N/A	80-0958090
Shake Shack The Domain Austin LLC	DE	Limited liability company	N/A	90-1030705
Shake Shack Newbury Street Boston LLC	DE	Limited liability company	N/A	90-1030693

II. Place of Business (if it has only one) or Chief Executive Office (if more than one place of business) and Mailing Address (Section 3.3 of Security Agreement):

Name of Grantor	Place of Business	Mailing Address
Union Square Hospitality Group, LLC	24 Union Square East, 6 th Floor New York, NY 10003	24 Union Square East, 6 th Floor New York, NY 10003
Custard's First Stand, LLC	Madison Square Park New York, NY 10010	1133 Broadway Suite 640 New York, NY 10010
Shake Shack 366 Columbus LLC	366 Columbus Ave New York, NY 10024	Same
Shake Shack Enterprises, LLC	24 Union Square East, 5 th Floor New York, NY 10003	Same
Shake Shack 152 E 86 LLC	154 E 86 th Street New York, NY 10128	Same
Shake Shack Enterprises International, LLC	24 Union Square East, 5 th Floor New York, NY 10003	Same
SSE Holdings, LLC	24 Union Square East, 5 th Floor New York, NY 10003	Same

Name of Grantor	Place of Business	Mailing Address
SSE IP, LLC	24 Union Square East, 5 th Floor New York, NY 10003	Same
Shake Shack 1111 Lincoln Road LLC	1111 Lincoln Road Miami, FL 33139	Same
Shake Shack 300 West 44th Street LLC	681 8 th Avenue New York, NY 10036	Same
Shake Shack 102 North End Ave LLC	215 Murray Street New York, NY 10282	Same
Shake Shack 18th Street NW Washington D.C. LLC	1216 18 th Street NW Washington, D.C. 20036	Same
Shake Shack Fulton Street Brooklyn LLC	409 Fulton Street Brooklyn, NY 11201	Same
Shake Shack Westport LLC	1849 Post Road East Westport, CT 06880	Same
Shake Shack Sansom Street Philadelphia LLC	2000-02 Sansom Street Philadelphia, PA 19103	Same
Shake Shack Coral Gables, LLC	1450 South Dixie Highway (US1) Coral Gables, FL 33146	Same
Shake Shack Grand Central LLC	49 Grand Central Terminal Lower Level Dining Concourse New York, NY 10017	Same
Shake Shack Westbury LLC	The Gallery at Westbury Plaza 860 Old Country Road Garden City, NY 11530	Same
Shake Shack Harvard Square Boston LLC	92 Winthrop Street Cambridge, MA 02138	Same
Shake Shack New Haven LLC	986 Chapel Street New Haven, CT 06510	Same
Shake Shack Domestic Licensing LLC	24 Union Square East, 5 th Floor New York, NY 10003	Same
Shake Shack Boca Raton LLC	1400 Glades Road Boca Raton, FL 33431	Same

Name of Grantor	Place of Business	Mailing Address
Shake Shack Boston Chestnut Hill LLC	49 Boylston Street Chestnut Hill, MA 02467	Same
Shake Shack Chicago Ohio Street LLC(1)	520 North Michigan Avenue Chicago, IL 60611	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack Middle East LLC	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003	Same
Shake Shack Russia LLC	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003	Same
Shake Shack Turkey LLC	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003	Same
Shake Shack United Kingdom LLC	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003	Same
Shake Shack 800 F Street LLC	800 F Street N.W. Washington, DC 20004	Same
Shake Shack King of Prussia LLC	The Plaza at King of Prussia 160 North Gulph Road, Suite 233 King of Prussia, PA 19406	Same
Shake Shack Paramus LLC	479 Route 17 South Paramus, NJ 07652	Same
Shake Shack Flatbush Brooklyn LLC(1)	170 Flatbush Avenue Brooklyn, NY 11217	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack Georgetown LLC(2)	N/A	N/A

(1) Not open yet

(2) Lease terminated.

Name of Grantor	Place of Business	Mailing Address
Shake Shack University City Philadelphia LLC	3200 Chestnut Street Philadelphia, PA 19104	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack Buckhead Atlanta LLC(1)	3035 Peachtree Rd. Atlanta, GA 30305	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack Las Vegas Park LLC(3)	New York-New York Hotel & Casino 3790 Las Vegas Boulevard South Las Vegas, NV 89109	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack Tysons Corner Fairfax County LLC(1)	7903 Tysons One Place Tysons Corner, VA 22102	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack Union Station Washington D.C. LLC(1)	50 Massachusetts Ave NE Washington, DC 20002	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack Winter Park Orlando LLC(1)	119 N Orlando Avenue, Suite #109 Winter Park, FL 32789	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack DUMBO LLC(1)	1 Old Fulton Street Brooklyn, NY 11201	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack South Lamar Austin LLC(1)	1100 South Lamar, Building 2 Austin, Texas 78704	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003
Shake Shack The Domain Austin LLC(1)	1100 South Lamar Bld 2 Austin, TX 78704	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003

(3) Location of property subject to change.

Name of Grantor	Place of Business	Mailing Address
Shake Shack Newbury Street Boston LLC (1)	234-236 Newbury Street Boston, MA 02116	c/o Shake Shack Enterprises, LLC 24 Union Square East, 5 th Floor New York, NY 10003

III. Locations of Collateral (Section 3.4 of Security Agreement):

(a) Properties Owned by the Grantor:

None.

(b) Properties Leased by the Grantor (Include Landlord's Name):

Name of Grantor	Property Address	Lease Details
Shake Shack 366 Columbus LLC	366 Columbus Ave New York, NY 10128	Agreement of Lease, dated as of February 29, 2008, between 101 West 77th Street, LLC and Shake Shack 366 Columbus LLC
Shake Shack 1111 Lincoln Road LLC	1111 Lincoln Road Miami, FL 33139	Lease, dated as of October 7, 2009, by and between MBEACH1, LLP and Shake Shack 1111 Lincoln Road LLC, as amended by Amendment to Lease, dated as of October 30, 2009
Shake Shack 152 E 86 LLC	154 E 86 th Street New York, NY 10128	Lease Agreement, dated as of December 7, 2009, between 85th Estates Company and Shake Shack 152 E 86 LLC, as amended by Amendment of Lease, dated as of March 16, 2010, as further amended by the Letter, dated as of August 3, 2010
Shake Shack 300 West 44 th Street LLC	691 8 th Avenue New York, NY 10036	Lease, dated as of December 17, 2009, between West 44th Street Hotel LLC and Shake Shack 300 West 44th St LLC
Shake Shack Fulton Street Brooklyn LLC	409 Fulton Street Brooklyn, NY 11201	Agreement of Lease, dated as of July 20, 2010, between Allied Property Group, LLC and Shake Shack Fulton Street Brooklyn LLC
Shake Shack 18 th Street NW Washington D.C. LLC	1216 18 th Street NW Washington, D.C. 20036	Agreement of Lease, dated as of July 22, 2010, by and between Jemal Vent Limited Partnership and Shake Shack 18th Street NW Washington D.C. LLC
Shake Shack 102 North End Ave LLC	215 Murray Street New York, NY 10282	Lease, dated as of July 29, 2010, between GS Site 25 Retail, LLC and Shake Shack 102 North

Shake Shack Sansom Street Philadelphia LLC	2000-02 Sansom Street Philadelphia, PA 19103	End Ave LLC Net Lease, dated as of May 16, 2011, by and between Two Nuts L.P., Stefc Realty Corp., Serf Co., GEM Associates and ESR Associates acting through their agent, Midwood Management Corp., and Shake Shack Sansom Street Philadelphia, LLC
Shake Shack Coral Gables LLC	1450 South Dixie Highway Coral Gables, FL 33146	Commercial Lease, dated as of July 27, 2011, between 1450 Partnership Ltd. and Shake Shack Coral Gables, LLC
Shake Shack Westport LLC	1849 Post Road East Westport, CT 06880	Commercial Lease, dated as of August 31, 2010, by and among K414 East 120 th Street Associates, LP, Somerset Motel, LLC, Peter Wormser, Elizabeth Milwe and Shake Shack Westport LLC
Shake Shack Westbury LLC	The Gallery at Westbury Plaza 900 Old Country Road Westbury, NY 11590	Indenture of Lease, dated as of November 4, 2011, by and between Equity One (Northeast Portfolio) Inc. and Shake Shack Westbury LLC
Shake Shack Grand Central LLC	Space Number LC-19/23 Grand Central Terminal New York, NY 10017	Lease Agreement, dated as of November 16, 2011, by and between Metropolitan Transportation Authority, acting by and through Metro-North Commuter Railroad Company, and Shake Shack Grand Central LLC
Shake Shack New Haven LLC	986 Chapel Street New Haven, CT 05610	Lease Agreement, dated as of December 23, 2011, between Yale University and Shake Shack New Haven LLC, as amended by the Letter, dated as of June 13, 2012
Shake Shack Boston Chestnut Hill LLC	49 Boylston Street Chestnut Hill, MA 02467	Indenture of Lease, dated as of April 30, 2012, between Chestnut Hill Shopping Center LLC and Shake Shack Boston Chestnut Hill LLC, as amended by Amendment No. 1 of Lease, dated as of December 11, 2013
Shake Shack Boca Raton LLC	1400 Glades Road Boca Raton, FL 33431	Lease, dated as of May 21, 2012, between UnCommon Ltd. And Shake Shack Boca Raton LLC, as amended by the Amendment to Lease, dated as of August 14, 2012, as further amended by the Second Amendment to Lease, dated as of December 21, 2012
Shake Shack Chicago Ohio Street LLC	520 North Michigan Avenue Chicago, IL 60611	Lease Agreement, dated as of June 11, 2012, by and between RN 116 Company, L.L.C. and Shake Shack Chicago Ohio Street LLC, as

		amended by the First Amendment of Lease, dated as of March 15, 2013
Shake Shack 800 F Street LLC	800 F Street N.W. Washington, DC 20004	Agreement of Lease, dated as of August 2, 2012, by and between Jemal's Historic Row, LLC and Shake Shack 800 F Street LLC
Shake Shack King of Prussia	The Plaza at King of Prussia 160 North Gulph Road, Suite 233 King of Prussia, PA 19406	Lease, dated as of September 28, 2012, by and between King of Prussia Associates, GP and Shake Shack King of Prussia LLC
Shake Shack Paramus LLC	479 Route 17 South Paramus, NJ 07652	Sublease, dated as of November 8, 2012, between Stacks Pancake House and Café, Inc. and Shake Shack Paramus LLC
Shake Shack University City Philadelphia LLC	3200 Chestnut Street Philadelphia, PA 19104	Retail Area Lease, dated as of December 26, 2012, by ACC OP (Chestnut PA) LLC and Shake Shack University City Philadelphia LLC, as amended by First Amendment to Retail Area Lease, dated as of August 8, 2013, as further amended by Second Amendment to Retail Area Lease, dated as of November 5, 2013
Shake Shack Buckhead Atlanta LLC	3035 Peachtree Rd. Atlanta, GA 30305	Lease, dated as of January 7, 2013 by and between OMB Buckhead Lender, LLC and Shake Shack Buckhead Atlanta LLC, as amended by the Amendment to Lease, dated as of September 9, 2013
Shake Shack Flatbush Brooklyn LLC	170 Flatbush Avenue Brooklyn, NY 11217	Agreement of Lease, dated as of January 21, 2013, by and between 162-170 Flatbush Associates LLC and Shake Shack Flatbush Brooklyn LLC
Custard's First Stand, LLC	1133 Broadway Suite 640 New York, NY 10010	Office Lease, dated as of February 27, 2013, between Kew Management Corporation and Custard's First Stand, LLC
Shake Shack Harvard Square Boston LLC	92 Winthrop Street Cambridge, MA 02138	Agreement of Lease, dated as of February 28, 2013, by and between Crimson Galeria Limited Partnership and Shake Shack Harvard Square Boston LLC, as amended by the First Amendment to Commercial Lease, dated as of July 22, 2013
Shake Shack Las Vegas Park LLC	New York-New York Hotel & Casino 3790 Las Vegas Boulevard South Las Vegas, NV 89109	Lease Agreement, dated as of April 12, 2013, between New York-New York Tower, LLC and Shake Shack Las Vegas Park LLC

Shake Shack Winter Park Orlando LLC	119 N Orlando Avenue, Suite #109 Winter Park, FL 32789	Lease Agreement, dated as of June 27, 2013 between Lakeside Winter Park, LLC and Shake Shack Winter Park Orlando LLC
Shake Shack Tysons Corner Fairfax County LLC	7903 Tysons One Place Tysons Corner, VA 22102	Lease Agreement, dated as of July 1, 2013 by and between Tysons Corner Holdings LLC and Shake Shack Tysons Corner Fairfax County LLC
Shake Shack DUMBO LLC	1 Old Fulton Street Brooklyn, NY 11201	Agreement of Lease, dated as of July 15, 2013, by and between DUMBO LLC and Shake Shack DUMBO LLC, as amended by First Amendment to Lease, dated as of July 22, 2013
Shake Shack Union Station Washington D.C. LLC	50 Massachusetts Ave NE Washington, DC 20002	Lease Agreement, dated as of July 16, 2013, by and between Union Station Investco, LLC and Shake Shack Union Station DC LLC
Shake Shack Enterprises, LLC	24 Union Square East, 5 th Floor New York, NY 10003	Office Lease, dated as of October 1, 2013, between S. Klein Family LLC and Shake Shack Enterprises, LLC
Shake Shack South Lamar Austin LLC	1100 South Lamar, Building 2 Austin, Texas 78704	Lease Agreement, dated as of October 15, 2013, between GDG South Lamar Plaza LP and Shake Shack South Lamar Austin LLC
Custard's First Stand, LLC	Madison Square Park Madison Avenue New York, NY 10010	License Agreement, dated as of October 22, 2013, between City of New York Department of Parks & Recreation and Custard's First Stand LLC
Shake Shack Newbury Street Boston LLC	234-236 Newbury Street Boston, MA 02116	Lease, dated as of November 15, 2013, between Jamestown 234-236 Newbury Street, Limited Partnership and Shake Shack Newbury Street Boston LLC
Shake Shack The Domain Austin LLC	1100 South Lamar Bld 2 Austin, TX 78704	Lease, dated as of December 5, 2013, by and between The Domain Mall, LLC and Shake Shack The Domain Austin LLC

(c) Public Warehouses or other Locations pursuant to Bailment or Consignment Arrangements (include name of Warehouse Operator or other Bailee or Consignee):

None.

EXHIBIT B

(See Section 3.5 of Security Agreement)

DEPOSIT ACCOUNTS

Name of Grantor	Name of Institution	Account Number	Description of Deposit Account
SSE Holdings, LLC	JPMorgan Chase Bank		Operating Account
SSE Holdings, LLC	JPMorgan Chase Bank		Master Deposit Account
Shake Shack Enterprises, LLC	JPMorgan Chase Bank		Operating Account
Shake Shack Enterprises, LLC	JPMorgan Chase Bank		Money market
Shake Shack Enterprises, LLC	JPMorgan Chase Bank		LOC
Shake Shack Enterprises, LLC	JPMorgan Chase Bank		SSE Payroll Account
Shake Shack Enterprises, LLC	JPMorgan Chase Bank		SSE ACH Account
Custard's First Stand, LLC	JPMorgan Chase Bank		Operating Account
Custard's First Stand, LLC	JPMorgan Chase Bank		Payroll Account
Shake Shack 366 Columbus, LLC	JPMorgan Chase Bank		Operating Account
Shake Shack 366 Columbus, LLC	JPMorgan Chase Bank		Payroll Account
Shake Shack Fulton Street Brooklyn LLC	JPMorgan Chase Bank		Operating Account
Shake Shack Fulton Street Brooklyn LLC	JPMorgan Chase Bank		Payroll Account
Shake Shack 102 North End Ave LLC	JPMorgan Chase Bank		Operating Account
Shake Shack 102 North End Ave LLC	JPMorgan Chase Bank		Payroll Account
Shake Shack 18 th Street NW Washington D.C. LLC	JPMorgan Chase Bank		Operating Account
Shake Shack 18 th Street NW Washington D.C. LLC	JPMorgan Chase Bank		Payroll Account
Shake Shack 1111 Lincoln Road LLC	JPMorgan Chase Bank		Operating Account
Shake Shack 1111 Lincoln Road LLC	JPMorgan Chase Bank		Payroll Account
Shake Shack 300 West 44 th Street, LLC	JPMorgan Chase Bank		Operating Account

Shake Shack 300 West 44 th Street LLC	JPMorgan Chase Bank	Payroll Account
Shake Shack Westport LLC	JPMorgan Chase Bank	Operating Account
Shake Shack Westport LLC	JPMorgan Chase Bank	Payroll Account
Shake Shack 152 E 86 LLC	JPMorgan Chase Bank	Operating Account
Shake Shack 152 E 86 LLC	JPMorgan Chase Bank	Payroll Account
Shake Shack Coral Gables, LLC	JPMorgan Chase Bank	Operating Account
Shake Shack Coral Gables, LLC	JPMorgan Chase Bank	Payroll Account
Shake Shack Grand Central LLC	JPMorgan Chase Bank	Operating Account
Shake Shack Grand Central LLC	JPMorgan Chase Bank	Payroll Account
Shake Shack New Haven LLC	JPMorgan Chase Bank	Operating Account
Shake Shack New Haven LLC	JPMorgan Chase Bank	Payroll Account
Shake Shack Sansom Street Philadelphia LLC	JPMorgan Chase Bank	Operating Account
Shake Shack Sansom Street Philadelphia LLC	JPMorgan Chase Bank	Payroll Account
Shake Shack Westbury LLC	JPMorgan Chase Bank	Operating Account
Shake Shack Westbury LLC	JPMorgan Chase Bank	Payroll Account
Shake Shack Boston Chestnut Hill, LLC	JPMorgan Chase Bank	Operating Account
Shake Shack Boca Raton LLC	JPMorgan Chase Bank	Operating Account
Shake Shack 800 F Street LLC	JPMorgan Chase Bank	Operating Account
Shake Shack King of Prussia LLC	JPMorgan Chase Bank	Operating Account
Shake Shack University City Philadelphia LLC	JPMorgan Chase Bank	Operating Account
Shake Shack Paramus LLC	JPMorgan Chase Bank	Operating Account
Shake Shack Harvard Square Boston LLC	JPMorgan Chase Bank	Operating Account
Shake Shack Flatbush Brooklyn LLC	JPMorgan Chase Bank	Operating Account

EXHIBIT C

(See Section 3.7 of Security Agreement and Definition of “Commercial Tort Claim”)

LETTER OF CREDIT RIGHTS

None.

CHATTEL PAPER

None.

COMMERCIAL TORT CLAIMS

None.

EXHIBIT D

(See Section 3.8 and 3.9 of Security Agreement)

INTELLECTUAL PROPERTY RIGHTS

PATENTS AND PATENT APPLICATIONS

None.

TRADEMARKS

See attached.

TRADEMARK APPLICATIONS

See attached.

COPYRIGHTS AND COPYRIGHT APPLICATIONS

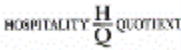
None.

INTELLECTUAL PROPERTY LICENSES

Name of Grantor	Name of Agreement	Date of Agreement	Parties to Agreement
Shake Shack Domestic Licensing LLC	Master License Agreement	January 1, 2012	Hudson Yards Sports & Entertainment LLC and Shake Shack Domestic Licensing LLC
Shake Shack Domestic Licensing LLC	License Agreement	November 8, 2012	SSP America JFK, LLC and Shake Shack Domestic Licensing LLC
Shake Shack Middle East LLC	Country Restaurant License Agreement (Middle East)	June 13, 2012	Alshaya Trading Co. W.L.L. and Shake Shack Middle East LLC
Shake Shack Russia LLC	Country Restaurant License Agreement (Russia)	June 1, 2013	Dine Group LLC and Shake Shack Russia LLC
Shake Shack Turkey LLC	Country Restaurant License Agreement (The Republic of Turkey)	June 13, 2012	Shaya Magazacilik A.S. and Shake Shack Turkey LLC
Shake Shack United Kingdom LLC	Country Restaurant License Agreement (United Kingdom)	May 15, 2013	Lounge Dining Ltd. And Shake Shack United Kingdom LLC

TRADEMARKS AND TRADEMARK APPLICATIONS

Trademark	Country	Status	App. No	Filing Date	Reg. No.	Reg. Date	Renewal Date	Goods/Services
+1 REWARDS	United States	Registered	77/576561	9/23/2008	3594857	3/24/2009	3/24/2019	35 Int. Providing incentive award programs through the issuance and processing of prepaid stored value cards for frequent use of participating restaurants
BLUE SMOKE	European Community	Registered	009063678	4/28/2010	009063678	10/12/2010	4/28/2020	43 Int. Restaurant services; providing food and drink; bar services and catering services
BLUE SMOKE	Japan	Registered	2008-029739	4/16/2008	5180642	11/14/2008	11/14/2018	30 Int. Barbecue sauce; spices
BLUE SMOKE	United States	Registered	75/796502	9/10/1999	2601747	7/30/2002	7/30/2022	43 Int. Providing foods and beverages
BLUE SMOKE	United States	Registered	77/197570	6/5/2007	3378050	2/5/2008	2/5/2018	30 Int. Barbecue sauce and spices
BLUE SMOKE	United States	Registered	77/805670	8/17/2009	3767215	3/30/2010	3/30/2020	42 Int. Restaurant services
BLUE SMOKE	United States	Registered	85/158165	10/21/2010	3974376	6/7/2011	6/7/2021	43 Int. Catering services; contract food services
BLUE SMOKE	United States	Registered	77/805670	8/17/2009	3767215	3/30/2010	3/30/2020	30 Int. Confections, namely, candy
BLUE SMOKE	United States	Registered	85/158165	10/21/2010	3974376	6/7/2011	6/7/2021	30 Int. Bakery products, namely, cookies, fruit bars, cupcakes, breads, cakes and pies

BLUE SMOKE	Canada	Registered	1188579	9/9/2003	641665	6/8/2005	6/8/2020	35 Int. Retail bakery services CA Int. Barbecue sauce and spices
BLUE SMOKE	United States	Registered	78/529325	12/8/2004	3349412	12/4/2007	12/4/2017	Restaurant services 29 Int. Roasted peanuts and potato chips 30 Int. Sandwiches 32 Int. Ale 33 Int. Bourbon
BOX FRITES	United States	Registered	77/608693	11/6/2008	3807858	6/22/2010	6/22/2020	43 Int. Providing food and drink
CAROLINA KICK	United States	Registered	77/349337	12/11/2007	3541516	12/2/2008	12/2/2018	30 Int. Barbecue sauce
EL VERANO TAQUERIA & DESIGN	United States	Registered	77/621105	11/24/2008	4049622	11/1/2011	11/1/2021	43 Int. Providing food and drink; restaurant services
ELEVEN MADISON PARK	United States	Registered	75/369415	10/7/1997	2406631	11/21/2000	11/21/2020	42 Int. Restaurant services
GRAMERCY TAVERN	European Community	Registered	008218844	4/15/2009	008218844	9/24/2009	4/15/2019	43 Int. Restaurant services
GRAMERCY TAVERN	United States	Registered	75/255450	3/11/1997	2271356	8/24/1999	8/24/2019	42 Int. Restaurant services
HQ	United States	Registered	85188919	12/2/10	4141037	5/15/12		35 Business and Consulting Services; 41 Educational Services
	United States	Registered	77929220	2/5/10	3960474	5/17/11		35 Business and Consulting Services; 41 Educational Services
	United States	Registered	77929181	2/5/10	3960473	5/17/11		35 Business and Consulting Services; 41 Educational

								meals consisting primarily of pasta or rice
TABLATINI	United States	Registered	77/976859	4/16/2007	3612426	4/28/2009	4/28/2019	33 Int. Alcoholic beverages, namely, vodka-based alcoholic drinks
UNION SQUARE CAFE	United States	Registered	74/011824	12/18/1989	1646379	5/28/1991	5/28/2021	42 Int. Restaurant services
UNION SQUARE CAFE	Japan	Registered	2006-052753	6/7/2006	5029868	3/2/2007	3/2/2017	30 Int. Binding agents for ice cream; meat tenderizers for household purposes; preparations for stiffening whipped cream; aromatic preparations for food (not from essential oils); tea; coffee and cocoa; ice; confectionery, bread and bus; seasonings; spices; ice cream mixes; sherbet mixes; unroasted coffee (unprocessed); cereal preparations; almond paste; Chinese stuffed dumplings (gyoza, cooked); sandwiches; Chinese steamed dumplings (shamai, cooked); sushi; fried balls of batter mix with small pieces of octopus (takoyaki); steamed buns stuffed with minced meat (niki-manjuh); hamburgers (prepared); pizzas (prepared); box lunches (prepared); hot

								meat pies (prepared); ravioli (prepared); yeast powder; fermenting malted rice (koji); yeast; baking powder; instant confectionery mixes; sake lees (for food); husked rice; husked oats; husked barley; flour for food; gluten for food
UNION SQUARE CAFE & Design	Japan	Registered	2006-019333	3/6/2006	4980116	8/18/2006	8/18/2016	43 Int. Providing foods and beverages
UNION SQUARE CAFE & Design	United States	Registered	75/255452	3/11/1997	2138978	2/24/1998	2/24/2018	42 Int. Restaurant services
UNION SQUARE EVENTS	United States	Registered	77/959540	3/15/2010	3952233	4/26/2011	4/26/2021	43 Int. Catering and food preparation service; providing food and drink; restaurant services
UNION SQUARE HOSPITALITY GROUP	United States	Registered	77/025043	10/19/2006	3709051	11/10/2009	11/10/2019	35 Int. Restaurant management services for others 43 Int. Restaurant services; consulting services in the field of hospitality
UNION SQUARE TOKYO	Japan	Registered	2006-084747	9/12/2006	5086507	10/26/2007	10/26/2017	43 Int. Providing food and beverages

EXHIBIT D
(Section 3.8 and 3.9 of the Security Agreement)

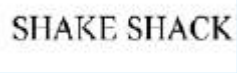
INTELLECTUAL PROPERTY RIGHTS

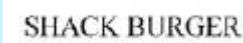
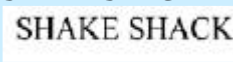
TRADEMARKS AND TRADEMARK APPLICATIONS (As of January 27, 2014)

Owner	Trademark	Country	Application No.	Registration No.	Registration Date	Classes	Status
Argentina							
SSE IP, LLC	SHACK BURGER 	Argentina	3176967			30	Pending

SHAKESHACK							
SSE IP, LLC	SHAKE SHACK & Design (b/w) SHAKESHACK	Australia	1392229	1392229	Sep 22 2010	43	Registered
SSE IP, LLC	Shake Shack (Burger Logo Only) 	Australia	1555849			43	Pending
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Australia	1555843			43	Pending
Bahrain							
Shake Shack Enterprises LLC	SHACK BURGER	Bahrain	77406			30	Pending
Shake Shack Enterprises LLC	SHAKE SHACK	Bahrain	77405			43	Pending
SSE IP, LLC	SHAKE SHACK & Design (b/w) SHAKESHACK	Bahrain	93788			43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only) 	Bahrain	93787			43	Pending

Brazil							
SSE IP, LLC	SHACK BURGER	Brazil	840158637			30	Pending
							
SSE IP, LLC	SHAKE SHACK	Brazil	830797793			43	Pending
SSE IP, LLC	SHAKE SHACK & Design (b/w)	Brazil	840158645			43	Pending
							
SSE IP, LLC	Shake Shack (Burger Logo Only)	Brazil	840158653			43	Pending
							
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Brazil	905261496			43	Pending
Canada							
	Shake Shack (Burger Logo Only)	Canada					Never Filed
							
SSE IP, LLC	SHACK BURGER	Canada	1342820	818823	Mar 1 2012	30	Registered
SSE IP, LLC	SHAKE SHACK	Canada	1290365	not registered			Abandoned

SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Canada	1566788	TMA847464	Apr 3 2013		Registered
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Canada	1583920			43	Pending
SSE IP, LLC	SHAKE SHACK Design 	Canada	1566789	TMA847468	Apr 3 2013		Registered
Union Square Hospitality Group, LLC	SHACK	Canada	1426151	not registered			Abandoned
Chile							
SSE IP, LLC	SHACK BURGER 	Chile	1016479	1020091	Jul 8 2013	30	Registered
SSE IP, LLC	SHAKE SHACK 	Chile	1016478	1001096	Mar 20 2013	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Chile	1016896	997594	Mar 7 2013	43	Registered
SSE IP, LLC	Shake Shack (Burger Logo Only) 	Chile				43	Never Filed

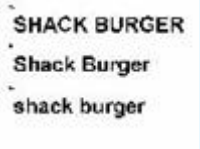
China								
SSE IP, LLC	SHACK	China	7187754	7187754	Jul 21 2010	30	Registered	
								
SSE IP, LLC	SHACK BURGER	China	6020511	6020511	Dec 28 2009	30	Registered	
								
SSE IP, LLC	SHAKE SHACK	China	5216884	5216884	Sep 14 2009	43	Registered	
								
SSE IP, LLC	SHAKE SHACK & Design (b/w)	China	11410358			43	Pending	
								
SSE IP, LLC	Shake Shack (Burger Logo Only)	China					Never Filed	
								
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	China					Not yet filed	
Colombia								
SSE IP, LLC	SHACK BURGER	Colombia	2012085059			30	Pending	
								
SSE IP, LLC	SHAKE SHACK	Colombia	2012085044	463574	Dec 26 2012	43	Registered	
								
SSE IP, LLC	SHAKE SHACK & Design (b/w)	Colombia	2012085113	463576	Dec 26 2012	43	Registered	
								
SSE IP, LLC	Shake Shack (Burger Logo Only)	Colombia	2012085118	463577	Dec 26 2012	43	Registered	
								
CTM								
SSE IP, LLC	Not a word mark	CTM	011474137			25,30,43	Pending	



SSE IP, LLC	SHACK BURGER 	CTM	1053888	1053888	Sep 13 2010	30	Registered
SSE IP, LLC	SHAKE SHACK	CTM	009371444	009371444	Feb 25 2011	25,30,43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	CTM	1054038	1054038	Sep 22 2010	43	Registered
SSE IP, LLC	Shake Shack (Burger Logo Only)	CTM	010911956	010911956	Apr 25 2013	25,30,43	Registered

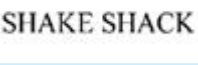


SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	CTM				43	Not yet filed
Egypt							
SSE IP, LLC	SHACK BURGER	Egypt	234111	234111	Jul 21 2009	30	Registered
SSE IP, LLC	SHAKE SHACK	Egypt	234112	234112	Aug 14 2011	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w)	Egypt	280606			43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only)	Egypt					Never Filed
France	SHACK BURGER	France	073493970	073493970	Feb 28 2007	30	Registered
	SHAKE SHACK	France	063411227	063411227	Feb 20 2006	43	Registered
Union Square Hospitality Group, LLC	SHACK	France	093626470	093626470	Feb 2 2009	30	Registered

Germany							
	SHACK	Germany	302009005992.6/30	302009005992	Apr 9 2009	30	Registered
Union Square Hospitality Group, LLC	SHACK BURGER	Germany	307237206	30723720	Jun 27 2007	30	Registered
Union Square Hospitality Group, LLC	SHAKE SHACK	Germany	306123754	30612375	Apr 24 2006	43	Registered
Hong Kong							
SSE IP, LLC	SHACK BURGER Shack Burger shack burger 	Hong Kong	301714112	301714112	Sep 13 2010	30	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Hong Kong	302276406			43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only) 	Hong Kong	302276415			43	Pending
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Hong Kong	302324222	302324222		43	Registered
SSE IP, LLC	SHAKE SHACK Shake Shack shake shack	Hong Kong	301714121	301714121	Sep 13 2010	30,43	Registered

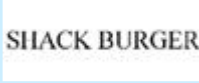
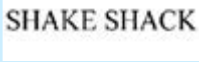
		

India

SSE IP, LLC	SHACK BURGER 	India				30	Pending
SSE IP, LLC	SHAKE SHACK 	India				43	Pending
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	India	2345439			43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only) 	India				43	Pending
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	India				43	Not yet filed

Israel

SSE IP, LLC	(Device Only) 	Israel	233367	233367	Mar 5 2012	43	Registered
SSE IP, LLC	SHACK BURGER	Israel	233368	233368	Mar 5 2012	30	Registered

							
SSE IP, LLC	SHAKE SHACK 	Israel	254908			43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only) 	Israel	254907			43	Pending
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Israel				43	Not yet filed

Japan							
SSE IP, LLC	SHACK	Japan	2009-006806	5260863	Aug 28 2009	30	Registered
SSE IP, LLC	SHACK BURGER	Japan	2007-036440	5120800	Mar 21 2008	30	Registered
SSE IP, LLC	SHAKE SHACK	Japan	2006-019331	4971767	Jul 21 2006	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Japan	2012044904	5537802	Nov 22 2012	43	Registered
SSE IP, LLC	Shake Shack (Burger Logo Only)	Japan					Never Filed





SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Japan				43	Not yet filed

Jordan

SSE IP, LLC	SHACK BURGER	Jordan	108198	108198	Jul 21 2009	30	Registered

SSE IP, LLC	SHAKE SHACK	Jordan	108252	108252	Jul 21 2009	43	Registered

SSE IP, LLC	SHAKE SHACK & Design (b/w)	Jordan	124541	124541	May 30 2012	43	Registered

The logo is a black and white version of the Shake Shack logo. It features the words "SHAKE" and "SHACK" in a bold, sans-serif font, separated by a stylized burger icon. The burger icon is a simple representation of a burger with a bun, cheese, and a patty.

SSE IP, LLC	Shake Shack (Burger Logo Only)	Jordan					Never Filed

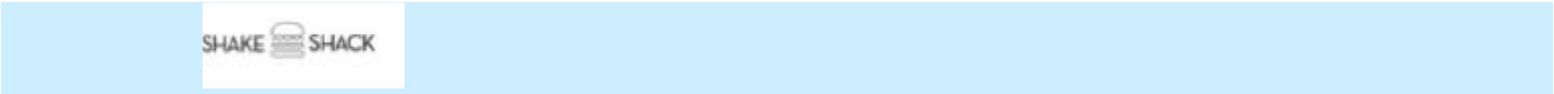


Kuwait

SSE IP, LLC	SHACK BURGER	Kuwait	104569	91010	Dec 20 2010	30	Registered

SSE IP, LLC	SHAKE SHACK	Kuwait	104568	87611	Jul 12 2009	43	Registered

SSE IP, LLC	SHAKE SHACK & Design (b/w)	Kuwait	134284			43	Pending



SSE IP, LLC	Shake Shack (Burger Logo Only)	Kuwait	134285			43	Pending
A stylized black and white burger logo with a rounded top bun, a wavy line for the cheese, and a rectangular bottom bun.							

SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Kuwait				43	Not yet filed

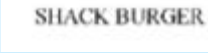
Lebanon

SSE IP, LLC	SHACK BURGER	Lebanon	4618	122942	Jul 10 2009	30	Registered
SSE IP, LLC	SHAKE SHACK	Lebanon	4619	122943	Jul 10 2009	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w)	Lebanon	5074	143686	Jun 15 2012	43	Registered
The Shake Shack logo, featuring the words "SHAKE" and "SHACK" in a bold, sans-serif font, separated by a stylized burger icon.							

SSE IP, LLC	Shake Shack (Burger Logo Only)	Lebanon	5075	143638	Jun 14 2012	43	Registered
A stylized black and white burger logo with a rounded top bun, a wavy line for the cheese, and a rectangular bottom bun.							

Mexico

SSE IP, LLC	SHACK	Mexico	987193	1155708	Apr 29 2010	30	Registered
SSE IP, LLC	SHACK BURGER	Mexico	847927	1061899	Sep 23 2008	30	Registered

SSE IP, LLC	SHAKE SHACK	Mexico	767004	938127	Jun 13 2006	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Mexico				43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only) 	Mexico				43	Pending
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Mexico				43	Not yet filed
Morocco							
SSE IP, LLC	SHACK BURGER 	Morocco	152489			30	Pending
SSE IP, LLC	SHAKE SHACK 	Morocco	152486			43	Pending
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Morocco	152485			43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only)	Morocco	152487			43	Pending
							
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Morocco	152488			43	Pending
New Zealand							
SSE IP, LLC	SHACK BURGER 	New Zealand	976965	976965	May 8 2013	30	Registered
SSE IP, LLC	SHAKE SHACK 	New Zealand	976966			43	Pending
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	New Zealand	976964			43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only)	New Zealand	976967			43	Pending



SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	New Zealand	976962		43	Pending

Norway

	SHACK BURGER	Norway	A0021233	1053888	Sep 13 2010	30	Registered

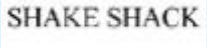


SSE IP, LLC	SHACK BURGER	Norway	1053888	1053888	Sep 13 2010	30	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w)	Norway	1054038	1054038	Sep 22 2010	43	Registered
							

Oman

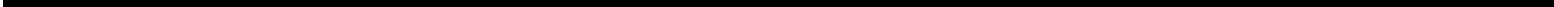
SSE IP, LLC	SHACK BURGER	Oman	57921	57921	Dec 14 2010	29	Registered
SSE IP, LLC	SHAKE SHACK	Oman	57922	57922	Dec 14 2010	43	Registered

Peru

SSE IP, LLC	SHAKE SHACK	Peru	494414	72987	Aug 15 2012	43	Registered
							

Qatar

Shake Shack Enterprises LLC	SHACK BURGER	Qatar	58367		Feb 20 2012	30	Registered
SSE IP, LLC	SHAKE SHACK	Qatar	58366		Aug 9 2009	42	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w)	Qatar	79019			42	Pending
							
		Qatar					
SSE IP, LLC	Shake Shack (Burger Logo Only)		79020			42	Pending





SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Qatar		42		Not yet filed

Republic of Korea (South)

SSE IP, LLC	SHACK BURGER	Republic of Korea (South)	1053888	1053888	Sep 13 2010	Registered

SSE IP, LLC	SHAKE SHACK	Republic of Korea (South)	41201217758		Apr 12 2013	Registered

SHAKE SHACK & Design (color)

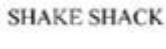
SSE IP, LLC		Republic of Korea (South)	4520101927	4537642	Dec 27 2011	29,30,32,43,2900020,2900371,3000385,3200032,4300011 Registered

SSE IP, LLC	Shake Shack (Burger Logo Only)	Republic of Korea (South)	41201217759		Sep 2 2013	Registered
						

SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Republic of Korea (South)			43	Not yet filed

Russian Federation

SSE IP, LLC	SHACK BURGER	Russian	1053888	1053888	Sep 13 2010	Registered

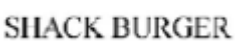
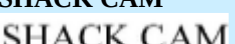
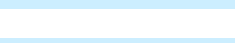
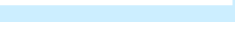
Federation							
SSE IP, LLC	SHACK BURGER	Russian Federation	A0021233	1053888	Sep 13 2010	30	Registered
SSE IP, LLC	SHAKE SHACK 	Russian Federation	2012716459	495995	Sep 12 2013	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Russian Federation	1054038	1054038	Sep 22 2010	43	Registered
SSE IP, LLC	Shake Shack (Burger Logo Only) 	Russian Federation				43	Never Filed
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Russian Federation				43	Not yet filed
Saudi Arabia							
SSE IP, LLC	SHACK BURGER	Saudi Arabia	145821	127639	Sep 11 2011	30	Registered
SSE IP, LLC	SHAKE SHACK	Saudi Arabia	145822	127640	Sep 11 2011	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Saudi Arabia	194282			43	Pending
SSE IP, LLC	Shake Shack	Saudi	194283			43	Pending

SSE IP, LLC	SHAKE SHACK & Design (b/w)	Singapore	1054038	1054038	Sep 22 2010	43	Registered
							
SSE IP, LLC	Shake Shack (Burger Logo Only)	Singapore	T1208139J			43	Registered
							
South Africa							
SSE IP, LLC	SHACK BURGER	South Africa	201309911			30	Pending

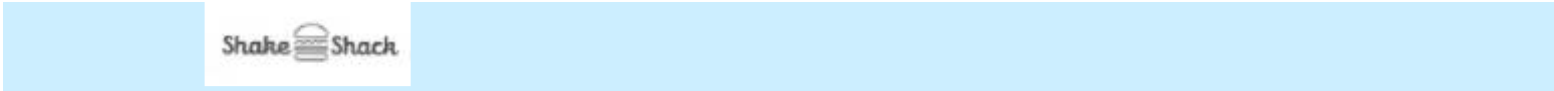
SHACK BURGER							
SSE IP, LLC	SHAKE SHACK SHAKE SHACK	South Africa	201309910			43	Pending
SSE IP, LLC	SHAKE SHACK & Design (b/w) SHAKE  SHACK	South Africa	201309908			43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only) 	South Africa	201309909			43	Pending
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	South Africa	201311346			43	Pending
Switzerland							
SSE IP, LLC	SHACK BURGER	Switzerland	1053888	1053888	Sep 13 2010	30	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Switzerland	1054038	1054038	Sep 22 2010	43	Registered
Taiwan							
SSE IP, LLC	SHACK BURGER SHACK BURGER	Taiwan	101037628			30	Pending

SSE IP, LLC	SHAKE SHACK 	Taiwan	101037631	1571391	Mar 16 2013	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Taiwan	101037629	1571389	Mar 16 2013	43	Registered
SSE IP, LLC	Shake Shack (Burger Logo Only) 	Taiwan	101037630	1571390	Mar 16 2013	43	Registered
Turkey							
SSE IP, LLC	SHACK BURGER	Turkey	1053888	1053888	Sep 13 2010	30	Registered
SSE IP, LLC	SHAKE SHACK	Turkey	201246438	201246438	May 27 2013	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Turkey	1054038	1054038	Sep 22 2010	43	Registered
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	Turkey	201260292				Pending
United Arab Emirates							
Shake Shack Enterprises LLC	SHACK BURGER	United Arab Emirates	131053			30	Pending

Shake Shack Enterprises LLC	SHAKE SHACK	United Arab Emirates	131054			43	Pending
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	United Arab Emirates	174022			43	Pending
SSE IP, LLC	Shake Shack (Burger Logo Only) 	United Arab Emirates					Never Filed
SSE IP, LLC	Shake Shack 3-D IBeam Design Mark	United Arab Emirates	177215				Pending
United Kingdom							
SSE IP, LLC	shake shack 	United Kingdom	2406202	2406202	Nov 10 2005	29,30,43	Registered
SSE IP, LLC	The Shake Shack	United Kingdom	2397532	2397532	Jul 22 2005	29,30,43	Registered
United States of America							
SSE IP, LLC	DOG MEISTER 	United States of America	85878867			30	Pending
SSE IP, LLC	SHACK 2 0 	United States of America	85878811			32	Pending

SSE IP, LLC	SHACK ATTACK 	United States of America	77671394	3658043	Jul 21 2009	30	Registered
SSE IP, LLC	SHACK BURGER 	United States of America	77118990	3724146	Dec 15 2009	30	Registered
SSE IP, LLC	SHACK CAM 	United States of America	77671427	3760070	Mar 16 2010	38	Registered
SSE IP, LLC	SHACK RED 	United States of America	85878841			33	Pending
SSE IP, LLC	SHACK STACK 	United States of America	77671403	3658044	Jul 21 2009	30	Registered
SSE IP, LLC	SHACK SUDS 	United States of America	85878818			32	Pending
SSE IP, LLC	SHACK WHITE 	United States of America	85878848			33	Pending
SSE IP, LLC	SHACK-CAGO DOG 	United States of America	77671408	3741879	Jan 26 2010	30	Registered
SSE IP, LLC	SHACKMEISTER	United States of America	77533716	3648680	Jun 30 2009	32	Registered

							
SSE IP, LLC	SHAKE SHACK 	United States of America	85153070	4051916	Nov 8 2011	25,30	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w) 	United States of America	77958087	3853578	Sep 28 2010	43	Registered
SSE IP, LLC	SHAKE SHACK & Design (color) 	United States of America	77952336	3853559	Sep 28 2010	43	Registered
SSE IP, LLC	SHAKE SHACK (aqua word logo) 	United States of America	78792207	3186610	Dec 19 2006	43	Allowed to Lapse
SSE IP, LLC	SHAKE SHACK (cursive & Design)	United States of America	77724588	3766428	Mar 30 2010	43	Registered



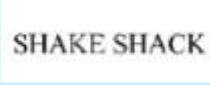
SSE IP, LLC	SHAKE SHACK (stylized) 	United States of America	77743440	3725489	Dec 15 2009	43	Registered
SSE IP, LLC	SHAKE SHARK 	United States of America	77391468			43	Abandoned
SSE IP, LLC	SMOKESHACK 	United States of America	85541039			30	Pending

SSE IP, LLC	STAND FOR SOMETHING GOOD 	United States of America	85128162	3947921	Apr 19 2011	43	Registered

SSE IP, LLC	THE POOCH-INI 	United States of America	77671410	3676096	Sep 1 2009	31	Registered

Union Square Hospitality Group, LLC	Shake Shack (Burger Logo Only) 	United States of America	77724280	3805568	Jun 22 2010	43	Registered

Uruguay

SSE IP, LLC	SHAKE SHACK 	Uruguay	436385	436385	Feb 15 2013	43	Registered

Venezuela

SSE IP, LLC	SHACK BURGER	Venezuela	533243			30	Pending

SSE IP, LLC	SHAKE SHACK 	Venezuela	533775			43	Pending

SSE IP, LLC	SHAKE SHACK & Design (b/w) 	Venezuela	533774			43	Pending

SSE IP, LLC	Shake Shack (Burger Logo Only)	Venezuela	541855			43	Pending



WIPO

SSE IP, LLC	SHACK BURGER	WIPO	1053888	1053888	Sep 13 2010	30	Registered
SSE IP, LLC	SHAKE SHACK & Design (b/w)	WIPO	1054038	1054038	Sep 22 2010	43	Registered



TM Administrator - END OF REPORT

IPPO WebTMS: printed Jan 31 2014 17:33

EXHIBIT E

(See Section 3.1 of Security Agreement)

OFFICES IN WHICH FINANCING STATEMENTS HAVE BEEN FILED

New York State Department of State
Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231

Delaware Secretary of State
Division of Corporation
401 Federal Street
Dover, DE 19901

EXHIBIT F
(See Section 4.4 of Security Agreement)

SUPPLEMENT

This Supplement, dated _____, is delivered pursuant to Section 4.4 of the Security Agreement referred to below. All defined terms herein shall have the meanings ascribed thereto or incorporated by reference in the Security Agreement. The undersigned hereby certifies that the representations and warranties in Article III of the Security Agreement are and continue to be true and correct. The undersigned further agrees that this Supplement may be attached to that certain Second Amended and Restated Security Agreement, dated as of January 7, 2014, among, *inter alios*, the undersigned, as a Grantor, and JPMorgan Chase Bank, N.A., as the Administrative Agent, (the “Security Agreement”) and that the Collateral listed on Schedule I to this Supplement is a part of the Collateral referred to in said Security Agreement and secures all Secured Obligations referred to in said Security Agreement.

By: _____
Name: _____
Title: _____

SCHEDULE I
TO AMENDMENT

STOCKS

Name of Grantor	Issuer	Certificate Number(s)	Number of Shares	Class of Stock	Percentage of Outstanding Shares

BONDS

Name of Grantor	Issuer	Number	Face Amount	Coupon Rate	Maturity

GOVERNMENT SECURITIES

Name of Grantor	Issuer	Number	Type	Face Amount	Coupon Rate	Maturity

OTHER SECURITIES OR OTHER INVESTMENT PROPERTY
(CERTIFICATED AND UNCERTIFICATED)

Name of Grantor	Issuer	Description of Collateral	Percentage Ownership Interest

COMMERCIAL TORT CLAIMS

Name of Grantor	Description of Claim	Parties	Case Number; Name of Court where Case was Filed

**SHAKE SHACK INC.
2015 INCENTIVE AWARD PLAN**

**STOCK OPTION GRANT NOTICE AND
STOCK OPTION AGREEMENT**

Shake Shack Inc., a Delaware corporation (the “Company”), pursuant to its 2015 Incentive Award Plan, as amended from time to time (the “Plan”), hereby grants to the holder listed below (“Participant”) an option to purchase the number of shares of the Common Stock set forth below (the “Option”). The Option is subject to the terms and conditions set forth in this Stock Option Grant Notice (this “Grant Notice”) and the Stock Option Agreement attached hereto as Exhibit A (the “Agreement”) and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Grant Notice and the Option Agreement.

Participant:

Grant Date:

Exercise Price Per Share: \$

Total Exercise Price: \$

Total Number of Shares Subject to

Option:

Expiration Date:

Type of Option:

Vesting Schedule:

☐ Incentive Stock Option ☐ Non-Qualified Stock Option

The Option shall vest in equal installments of 20% of the total number of shares subject to the Option on each of the first through fifth anniversary dates of the Grant Date.

By Participant’s signature below, Participant agrees to be bound by the terms and conditions of the Plan, the Agreement and the Grant Notice. Participant has reviewed the Agreement, the Plan and the Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing the Grant Notice and fully understands all provisions of the Grant Notice, the Agreement and the Plan. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan, the Grant Notice or the Agreement. If Participant is married, his or her spouse has signed the Consent of Spouse attached to this Grant Notice as Exhibit B.

SHAKE SHACK INC.

PARTICIPANT

By:

Print Name: Randy Garutti

Title: Chief Executive Officer

By:

Print Name: _____

EXHIBIT A
TO STOCK OPTION GRANT NOTICE

STOCK OPTION AGREEMENT

Pursuant to the Grant Notice to which this Agreement is attached, the Company has granted to Participant an Option under the Plan to purchase the number of shares of Common Stock set forth in the Grant Notice.

ARTICLE I.
GENERAL

1.1 Defined Terms. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan or the Grant Notice.

1.2 Incorporation of Terms of Plan. The Option is subject to the terms and conditions set forth in this Agreement and the Plan, which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

ARTICLE II.
GRANT OF OPTION

2.1 Grant of Option. In consideration of Participant's past and/or continued employment with or service to the Company or a Subsidiary and for other good and valuable consideration, effective as of the grant date set forth in the Grant Notice (the "Grant Date"), the Company has granted to Participant the Option to purchase any part or all of an aggregate number of shares of Common Stock set forth in the Grant Notice, upon the terms and conditions set forth in the Grant Notice, the Plan and this Agreement, subject to adjustment as provided in Section 14.2 of the Plan.

2.2 Exercise Price. The exercise price per share of the shares of Common Stock subject to the Option (the "Exercise Price") shall be as set forth in the Grant Notice.

2.3 Consideration to the Company. In consideration of the grant of the Option by the Company, Participant agrees to render faithful and efficient services to the Company or any Subsidiary. Nothing in the Plan, the Grant Notice or this Agreement shall confer upon Participant any right to continue in the employ or service of the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and its Subsidiaries, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company or a Subsidiary and Participant.

ARTICLE III.
PERIOD OF EXERCISABILITY

3.1 Commencement of Exercisability.

(a) Subject to Participant's continued employment with or service to the Company or a Subsidiary on each applicable vesting date and subject to Sections 3.2, 3.3, 5.9 and 5.14 hereof, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice.

(b) Unless otherwise determined by the Administrator or as set forth in a written agreement between Participant and the Company, any portion of the Option that has not become vested and exercisable on or prior to the date of Participant's Termination of Service shall be forfeited on the date of Participant's Termination of Service and shall not thereafter become vested or exercisable.

3.2 Duration of Exercisability. The installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment which becomes vested and exercisable pursuant to the vesting schedule set forth in the Grant Notice shall remain vested and exercisable until it becomes unexercisable under Section 3.3 hereof. Once the Option becomes unexercisable, it shall be forfeited immediately.

3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

(a) The expiration date set forth in the Grant Notice;

(b) Except as the Administrator may otherwise approve, in the event of Participant's Termination of Service other than for Cause or by reason of Participant's death or disability, the expiration of three (3) months from the date of Participant's Termination of Service;

(c) Except as the Administrator may otherwise approve, the expiration of one (1) year from the date of Participant's Termination of Service by reason of Participant's death or disability; or

(d) Except as the Administrator may otherwise approve, upon Participant's Termination of Service for Cause.

As used in this Agreement, (i) "Cause" shall mean (A) willful misconduct, gross negligence or an act of dishonesty of Participant with regard to the Company or any of its Affiliates, which in either case, results in or could reasonably be expected to result in material harm to the Company or such Affiliate; (B) the willful and continued failure of Participant to attempt to perform his or her duties with the Company or any of its Affiliates (other than any such failure resulting from Disability), which failure is not remedied within 30 days after receiving written notice thereof; (C) the conviction of Participant of (or the plea by Participant of guilty or *nolo contendere* to) any felony involving moral turpitude (other than traffic related offenses or as a result of vicarious liability); or (D) a material breach by Participant of any material provision of any written employment or consulting agreement, which breach is not remedied within 10 days after receiving written notice thereof and (ii) "Disability" shall mean Participant's inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that can be expected to last for a continuous period of not less than twelve (12) months. Notwithstanding the foregoing, if Participant is a party to a written employment or consulting agreement with the Company (or any of its Subsidiaries) in which the term "cause" is defined, then "Cause" shall be as such term is defined in the applicable written employment or consulting agreement.

3.4 Tax Withholding. Notwithstanding any other provision of this Agreement:

(a) The Company and its Subsidiaries have the authority to deduct or withhold, or require Participant to remit to the Company or the applicable Subsidiary, an amount sufficient to satisfy any applicable federal, state, local and foreign taxes (including the employee portion of any FICA obligation) required by law to be withheld with respect to any taxable event arising pursuant to this Agreement. The Company and its Subsidiaries may withhold or Participant may make such payment in one or more of the forms specified below:

- obligation arises;
- (i) by cash or check made payable to the Company or the Subsidiary with respect to which the withholding obligation arises;
 - (ii) by the deduction of such amount from other compensation payable to Participant;
 - (iii) with respect to any withholding taxes arising in connection with the exercise of the Option, with the consent of the Administrator, by requesting that the Company withhold a net number of shares of Common Stock issuable upon the exercise of the Option having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company and its Subsidiaries based on the minimum applicable statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes;
 - (iv) with respect to any withholding taxes arising in connection with the exercise of the Option, with the consent of the Administrator, by tendering to the Company shares of Common Stock having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company and its Subsidiaries based on the minimum applicable statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes;
 - (v) with respect to any withholding taxes arising in connection with the exercise of the Option, through the delivery of a notice that Participant has placed a market sell order with a broker acceptable to the Company with respect to shares of Common Stock then issuable to Participant pursuant to the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company or the Subsidiary with respect to which the withholding obligation arises in satisfaction of such withholding taxes; *provided* that payment of such proceeds is then made to the Company or the applicable Subsidiary at such time as may be required by the Administrator, but in any event not later than the settlement of such sale; or
 - (vi) in any combination of the foregoing.
- (b) With respect to any withholding taxes arising in connection with the Option, in the event Participant fails to provide timely payment of all sums required pursuant to Section 3.4(a), the Company shall have the right and option, but not the obligation, to treat such failure as an election by Participant to satisfy all or any portion of Participant's required payment obligation pursuant to Section 3.4(a)(ii) or Section 3.4(a)(iii) above, or any combination of the foregoing as the Company may determine to be appropriate. The Company shall not be obligated to deliver any certificate representing shares of Common Stock issuable with respect to the exercise of the Option to, or to cause any such shares of Common Stock to be held in book-entry form by, Participant or his or her legal representative unless and until Participant or his or her legal representative shall have paid or otherwise satisfied in full the amount of all federal, state, local and foreign taxes applicable with respect to the taxable income of Participant resulting from the exercise of the Option or any other taxable event related to the Option.
- (c) In the event any tax withholding obligation arising in connection with the Option will be satisfied under Section 3.4(a)(iii), then the Company may elect to instruct any brokerage firm determined acceptable to the Company for such purpose to sell on Participant's behalf a whole number of shares from those shares of Common Stock then issuable upon the exercise of the Option as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the tax withholding obligation and to remit the proceeds of such sale to the Company or the Subsidiary with respect to which the withholding obligation arises. Participant's acceptance of this Award constitutes Participant's instruction and authorization to the Company and such brokerage firm to complete the transactions described in this Section 3.4(c), including the transactions described in the previous sentence, as applicable. The Company

may refuse to issue any shares of Common Stock to Participant until the foregoing tax withholding obligations are satisfied, *provided* that no payment shall be delayed under this Section 3.4(c) if such delay will result in a violation of Section 409A of the Code.

(d) Participant is ultimately liable and responsible for all taxes owed in connection with the Option, regardless of any action the Company or any Subsidiary takes with respect to any tax withholding obligations that arise in connection with the Option. Neither the Company nor any Subsidiary makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or exercise of the Option or the subsequent sale of Common Stock. The Company and the Subsidiaries do not commit and are under no obligation to structure the Option to reduce or eliminate Participant's tax liability.

ARTICLE IV. EXERCISE OF OPTION

4.1 Person Eligible to Exercise. During the lifetime of Participant, only Participant may exercise the Option or any portion thereof. After the death of Participant, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3 hereof, be exercised by Participant's personal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.

4.2 Partial Exercise. Subject to Section 5.2, any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3 hereof.

4.3 Manner of Exercise. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the Secretary of the Company (or any third party administrator or other person or entity designated by the Company), during regular business hours, of all of the following prior to the time when the Option or such portion thereof becomes unexercisable under Section 3.3 hereof.

(a) An exercise notice in a form specified by the Administrator, stating that the Option or portion thereof is thereby exercised, such notice complying with all applicable rules established by the Administrator;

(b) The receipt by the Company of full payment for the shares of Common Stock with respect to which the Option or portion thereof is exercised, in such form of consideration permitted under Section 4.4 hereof that is acceptable to the Administrator;

(c) The payment of any applicable withholding tax in accordance with Section 3.4;

(d) Any other written representations or documents as may be required in the Administrator's sole discretion to effect compliance with Applicable Law; and

(e) In the event the Option or portion thereof shall be exercised pursuant to Section 4.1 hereof by any person or persons other than Participant, appropriate proof of the right of such person or persons to exercise the Option.

Notwithstanding any of the foregoing, the Administrator shall have the right to specify all conditions of the manner of exercise, which conditions may vary by country and which may be subject to change from time to time.

4.4 Method of Payment. Payment of the exercise price shall be by any of the following, or a combination thereof, at the election of Participant:

(a) Cash or check;

(b) With the consent of the Administrator, surrender of shares of Common Stock (including, without limitation, shares of Common Stock otherwise issuable upon exercise of the Option) held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences and having a Fair Market Value on the date of delivery equal to the aggregate exercise price of the Option or exercised portion thereof;

(c) Through the delivery of a notice that Participant has placed a market sell order with a broker acceptable to the Company with respect to shares of Common Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price; *provided* that payment of such proceeds is then made to the Company at such time as may be required by the Administrator, but in any event not later than the settlement of such sale; or

(d) Any other form of legal consideration acceptable to the Administrator.

4.5 Conditions to Issuance of Common Stock. The Company shall not be required to issue or deliver any shares of Common Stock purchased upon the exercise of the Option or portion thereof prior to fulfillment of all of the following conditions: (a) the admission of such shares of Common Stock to listing on all stock exchanges on which such Common Stock is then listed, (b) the completion of any registration or other qualification of such shares of Common Stock under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable, (c) the obtaining of any approval or other clearance from any state or federal governmental agency which the Administrator shall, in its absolute discretion, determine to be necessary or advisable, (d) the receipt by the Company of full payment for such shares of Common Stock, which may be in one or more of the forms of consideration permitted under Section 4.4 hereof, and (e) the receipt of full payment of any applicable withholding tax in accordance with Section 3.4 by the Company or its Subsidiary with respect to which the applicable withholding obligation arises.

4.6 Rights as Stockholder. Neither Participant nor any person or entity claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any shares of Common Stock purchasable upon the exercise of any part of the Option unless and until certificates representing such shares of Common Stock (which may be in book-entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars and delivered to Participant (including through electronic delivery to a brokerage account). No adjustment will be made for a dividend or other right for which the record date is prior to the date of such issuance, recordation and delivery, except as provided in Section 14.2 of the Plan. Except as otherwise provided herein, after such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to such shares of Common Stock, including, without limitation, the right to receipt of dividends and distributions on such shares.

ARTICLE V. OTHER PROVISIONS

5.1 Administration. The Administrator shall have the power to interpret the Plan, the Grant Notice and this Agreement and to adopt such rules for the administration, interpretation and application of

the Plan, the Grant Notice and this Agreement as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator will be final and binding upon Participant, the Company and all other interested persons. To the extent allowable pursuant to Applicable Law, no member of the Committee or the Board will be personally liable for any action, determination or interpretation made with respect to the Plan, the Grant Notice or this Agreement.

5.2 Whole Shares. The Option may only be exercised for whole shares of Common Stock.

5.3 Option Not Transferable. Subject to Section 4.1 hereof, the Option may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the shares of Common Stock underlying the Option have been issued, and all restrictions applicable to such Shares have lapsed. Neither the Option nor any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

5.4 Adjustments. The Administrator may accelerate the vesting of all or a portion of the Option in such circumstances as it, in its sole discretion, may determine. In addition, upon the occurrence of certain events relating to the Common Stock contemplated by Section 14.2 of the Plan (including, without limitation, an extraordinary cash dividend on such Common Stock), the Administrator may make such adjustments as the Administrator deems appropriate in the number of shares of Common Stock subject to the Option, the exercise price of the Option and the kind of securities that may be issued upon exercise of the Option. Participant acknowledges that the Option is subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 14.2 of the Plan.

5.5 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to Participant shall be addressed to Participant at Participant's last address reflected on the Company's records. By a notice given pursuant to this Section 5.5, either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

5.6 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

5.7 Governing Law. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

5.8 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Laws, including, without limitation, the provisions of the Securities Act and the Exchange Act, and any and all regulations and rules promulgated thereunder by the Securities and Exchange Commission and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the

Option is granted and may be exercised, only in such a manner as to conform to Applicable Law. To the extent permitted by Applicable Law, the Plan, the Grant Notice and this Agreement shall be deemed amended to the extent necessary to conform to Applicable Law.

5.9 Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Administrator or the Board, *provided that*, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the Option in any material way without the prior written consent of Participant.

5.10 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Section 5.3 and the Plan, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

5.11 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the Option, the Grant Notice and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

5.12 Not a Contract of Employment. Nothing in this Agreement or in the Plan shall confer upon Participant any right to continue to serve as an employee or other service provider of the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and its Subsidiaries, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company or a Subsidiary and Participant.

5.13 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

5.14 Section 409A. This Award is not intended to constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code (together with any Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date hereof, “Section 409A”). However, notwithstanding any other provision of the Plan, the Grant Notice or this Agreement, if at any time the Administrator determines that this Award (or any portion thereof) may be subject to Section 409A, the Administrator shall have the right in its sole discretion (without any obligation to do so or to indemnify Participant or any other person for failure to do so) to adopt such amendments to the Plan, the Grant Notice or this Agreement, or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Administrator determines are necessary or appropriate for this Award either to be exempt from the application of Section 409A or to comply with the requirements of Section 409A.

5.15 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or

unenforceability will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

5.16 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant shall have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the Option, and rights no greater than the right to receive the Common Stock as a general unsecured creditor with respect to options, as and when exercised pursuant to the terms hereof.

5.17 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which shall be deemed an original and all of which together shall constitute one instrument.

5.18 Broker-Assisted Sales. In the event of any broker-assisted sale of shares of Common Stock in connection with the payment of withholding taxes as provided in Section 3.4(a)(iii) or Section 3.4(c) or the payment of the exercise price as provided in Section 4.4(c): (a) any shares of Common Stock to be sold through a broker-assisted sale will be sold on the day the tax withholding obligation or exercise of the Option, as applicable, occurs or arises, or as soon thereafter as practicable; (b) such shares of Common Stock may be sold as part of a block trade with other participants in the Plan in which all participants receive an average price; (c) Participant will be responsible for all broker's fees and other costs of sale, and Participant agrees to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale; (d) to the extent the proceeds of such sale exceed the applicable tax withholding obligation or exercise price, the Company agrees to pay such excess in cash to Participant as soon as reasonably practicable; (e) Participant acknowledges that the Company or its designee is under no obligation to arrange for such sale at any particular price, and that the proceeds of any such sale may not be sufficient to satisfy the applicable tax withholding obligation or exercise price; and (f) in the event the proceeds of such sale are insufficient to satisfy the applicable tax withholding obligation, Participant agrees to pay immediately upon demand to the Company or its Subsidiary with respect to which the withholding obligation arises an amount in cash sufficient to satisfy any remaining portion of the Company's or the applicable Subsidiary's withholding obligation.

5.19 Incentive Stock Options. Participant acknowledges that to the extent the aggregate Fair Market Value of shares of Common Stock (determined as of the time the option with respect to the shares is granted) with respect to which Incentive Stock Options, including this Option (if applicable), are exercisable for the first time by Participant during any calendar year exceeds \$100,000 or if for any other reason such Incentive Stock Options do not qualify or cease to qualify for treatment as "incentive stock options" under Section 422 of the Code, such Incentive Stock Options shall be treated as Non-Qualified Stock Options. Participant further acknowledges that the rule set forth in the preceding sentence shall be applied by taking the Option and other stock options into account in the order in which they were granted, as determined under Section 422(d) of the Code and the Treasury Regulations thereunder. Participant also acknowledges that an Incentive Stock Option exercised more than three (3) months after Participant's Termination of Service, other than by reason of death or disability, will be taxed as a Non-Qualified Stock Option.

5.20 Notification of Disposition. If this Option is designated as an Incentive Stock Option, Participant shall give prompt written notice to the Company of any disposition or other transfer of any shares of Common Stock acquired under this Agreement if such disposition or transfer is made (a) within two (2) years from the Grant Date or (b) within one (1) year after the transfer of such shares of Common Stock to Participant. Such notice shall specify the date of such disposition or other transfer and the

amount realized, in cash, other property, assumption of indebtedness or other consideration, by Participant in such disposition or other transfer.

* * * *

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EXHIBIT B
TO OPTION AWARD GRANT NOTICE

CONSENT OF SPOUSE

I, _____, spouse of _____, have read and approve the Stock Option Grant Notice and the Stock Option Agreement (collectively, the “Stock Option Documentation”). In consideration of issuing to my spouse the option to purchase shares of common stock of Shake Shack Inc. set forth in the Stock Option Documentation, I hereby appoint my spouse as my attorney-in-fact in respect of the exercise of any rights under the Stock Option Documentation and agree to be bound by the provisions of the Stock Option Documentation insofar as I may have any rights in the Stock Option Documentation or any common stock of Shake Shack Inc. issued pursuant thereto under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the Stock Option Documentation.

Dated: _____
Signature of Spouse

**SHAKE SHACK INC.
2015 INCENTIVE AWARD PLAN**

**STOCK OPTION GRANT NOTICE AND
STOCK OPTION AGREEMENT**

Shake Shack Inc., a Delaware corporation (the “Company”), pursuant to its 2015 Incentive Award Plan, as amended from time to time (the “Plan”), hereby grants to the holder listed below (“Participant”) an option to purchase the number of shares of the Common Stock set forth below (the “Option”). The Option is subject to the terms and conditions set forth in this Stock Option Grant Notice (this “Grant Notice”) and the Stock Option Agreement attached hereto as Exhibit A (the “Agreement”) and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Grant Notice and the Option Agreement.

Participant:

Grant Date:

Exercise Price Per Share:

\$

Total Exercise Price:

\$

Total Number of Shares Subject to Option:

Expiration Date:

Type of Option:

☐ Incentive Stock Option ☐ Non-Qualified Stock Option

Vesting Schedule:

The Option shall fully vest on the first anniversary of the Grant Date.

By Participant’s signature below, Participant agrees to be bound by the terms and conditions of the Plan, the Agreement and the Grant Notice. Participant has reviewed the Agreement, the Plan and the Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing the Grant Notice and fully understands all provisions of the Grant Notice, the Agreement and the Plan. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan, the Grant Notice or the Agreement. If Participant is married, his or her spouse has signed the Consent of Spouse attached to this Grant Notice as Exhibit B.

SHAKE SHACK INC.

PARTICIPANT

By:

Print Name:

Randy Garutti

Title:

Chief Executive Officer

By:

Print Name:

EXHIBIT A
TO STOCK OPTION GRANT NOTICE

STOCK OPTION AGREEMENT

Pursuant to the Grant Notice to which this Agreement is attached, the Company has granted to Participant an Option under the Plan to purchase the number of shares of Common Stock set forth in the Grant Notice.

ARTICLE I.
GENERAL

1.1 Defined Terms. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan or the Grant Notice.

1.2 Incorporation of Terms of Plan. The Option is subject to the terms and conditions set forth in this Agreement and the Plan, which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

ARTICLE II.
GRANT OF OPTION

2.1 Grant of Option. In consideration of Participant's past and/or continued employment with or service to the Company or a Subsidiary and for other good and valuable consideration, effective as of the grant date set forth in the Grant Notice (the "Grant Date"), the Company has granted to Participant the Option to purchase any part or all of an aggregate number of shares of Common Stock set forth in the Grant Notice, upon the terms and conditions set forth in the Grant Notice, the Plan and this Agreement, subject to adjustment as provided in Section 14.2 of the Plan.

2.2 Exercise Price. The exercise price per share of the shares of Common Stock subject to the Option (the "Exercise Price") shall be as set forth in the Grant Notice.

2.3 Consideration to the Company. In consideration of the grant of the Option by the Company, Participant agrees to render faithful and efficient services to the Company or any Subsidiary. Nothing in the Plan, the Grant Notice or this Agreement shall confer upon Participant any right to continue in the employ or service of the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and its Subsidiaries, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company or a Subsidiary and Participant.

ARTICLE III.
PERIOD OF EXERCISABILITY

3.1 Commencement of Exercisability.

(a) Subject to Participant's continued employment with or service to the Company or a Subsidiary on each applicable vesting date and subject to Sections 3.2, 3.3, 5.9 and 5.14 hereof, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice.

(b) Unless otherwise determined by the Administrator or as set forth in a written agreement between Participant and the Company, any portion of the Option that has not become vested and exercisable on or prior to the date of Participant's Termination of Service shall be forfeited on the date of Participant's Termination of Service and shall not thereafter become vested or exercisable.

3.2 Duration of Exercisability. The installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment which becomes vested and exercisable pursuant to the vesting schedule set forth in the Grant Notice shall remain vested and exercisable until it becomes unexercisable under Section 3.3 hereof. Once the Option becomes unexercisable, it shall be forfeited immediately.

3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

(a) The expiration date set forth in the Grant Notice;

(b) Except as the Administrator may otherwise approve, in the event of Participant's Termination of Service other than for Cause or by reason of Participant's death or disability, the expiration of three (3) months from the date of Participant's Termination of Service;

(c) Except as the Administrator may otherwise approve, the expiration of one (1) year from the date of Participant's Termination of Service by reason of Participant's death or disability; or

(d) Except as the Administrator may otherwise approve, upon Participant's Termination of Service for Cause.

As used in this Agreement, (i) "Cause" shall mean (A) willful misconduct, gross negligence or an act of dishonesty of Participant with regard to the Company or any of its Affiliates, which in either case, results in or could reasonably be expected to result in material harm to the Company or such Affiliate; (B) the willful and continued failure of Participant to attempt to perform his or her duties with the Company or any of its Affiliates (other than any such failure resulting from Disability), which failure is not remedied within 30 days after receiving written notice thereof; (C) the conviction of Participant of (or the plea by Participant of guilty or *nolo contendere* to) any felony involving moral turpitude (other than traffic related offenses or as a result of vicarious liability); or (D) a material breach by Participant of any material provision of any written employment or consulting agreement, which breach is not remedied within 10 days after receiving written notice thereof and (ii) "Disability" shall mean Participant's inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that can be expected to last for a continuous period of not less than twelve (12) months. Notwithstanding the foregoing, if Participant is a party to a written employment or consulting agreement with the Company (or any of its Subsidiaries) in which the term "cause" is defined, then "Cause" shall be as such term is defined in the applicable written employment or consulting agreement.

3.4 Tax Withholding. Notwithstanding any other provision of this Agreement:

(a) The Company and its Subsidiaries have the authority to deduct or withhold, or require Participant to remit to the Company or the applicable Subsidiary, an amount sufficient to satisfy any applicable federal, state, local and foreign taxes (including the employee portion of any FICA obligation) required by law to be withheld with respect to any taxable event arising pursuant to this Agreement. The Company and its Subsidiaries may withhold or Participant may make such payment in one or more of the forms specified below:

- obligation arises;
- (i) by cash or check made payable to the Company or the Subsidiary with respect to which the withholding obligation arises;
 - (ii) by the deduction of such amount from other compensation payable to Participant;
 - (iii) with respect to any withholding taxes arising in connection with the exercise of the Option, with the consent of the Administrator, by requesting that the Company withhold a net number of shares of Common Stock issuable upon the exercise of the Option having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company and its Subsidiaries based on the minimum applicable statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes;
 - (iv) with respect to any withholding taxes arising in connection with the exercise of the Option, with the consent of the Administrator, by tendering to the Company shares of Common Stock having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company and its Subsidiaries based on the minimum applicable statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes;
 - (v) with respect to any withholding taxes arising in connection with the exercise of the Option, through the delivery of a notice that Participant has placed a market sell order with a broker acceptable to the Company with respect to shares of Common Stock then issuable to Participant pursuant to the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company or the Subsidiary with respect to which the withholding obligation arises in satisfaction of such withholding taxes; *provided* that payment of such proceeds is then made to the Company or the applicable Subsidiary at such time as may be required by the Administrator, but in any event not later than the settlement of such sale; or
 - (vi) in any combination of the foregoing.
- (b) With respect to any withholding taxes arising in connection with the Option, in the event Participant fails to provide timely payment of all sums required pursuant to Section 3.4(a), the Company shall have the right and option, but not the obligation, to treat such failure as an election by Participant to satisfy all or any portion of Participant's required payment obligation pursuant to Section 3.4(a)(ii) or Section 3.4(a)(iii) above, or any combination of the foregoing as the Company may determine to be appropriate. The Company shall not be obligated to deliver any certificate representing shares of Common Stock issuable with respect to the exercise of the Option to, or to cause any such shares of Common Stock to be held in book-entry form by, Participant or his or her legal representative unless and until Participant or his or her legal representative shall have paid or otherwise satisfied in full the amount of all federal, state, local and foreign taxes applicable with respect to the taxable income of Participant resulting from the exercise of the Option or any other taxable event related to the Option.
- (c) In the event any tax withholding obligation arising in connection with the Option will be satisfied under Section 3.4(a)(iii), then the Company may elect to instruct any brokerage firm determined acceptable to the Company for such purpose to sell on Participant's behalf a whole number of shares from those shares of Common Stock then issuable upon the exercise of the Option as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the tax withholding obligation and to remit the proceeds of such sale to the Company or the Subsidiary with respect to which the withholding obligation arises. Participant's acceptance of this Award constitutes Participant's instruction and authorization to the Company and such brokerage firm to complete the transactions described in this Section 3.4(c), including the transactions described in the previous sentence, as applicable. The Company

may refuse to issue any shares of Common Stock to Participant until the foregoing tax withholding obligations are satisfied, *provided* that no payment shall be delayed under this Section 3.4(c) if such delay will result in a violation of Section 409A of the Code.

(d) Participant is ultimately liable and responsible for all taxes owed in connection with the Option, regardless of any action the Company or any Subsidiary takes with respect to any tax withholding obligations that arise in connection with the Option. Neither the Company nor any Subsidiary makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or exercise of the Option or the subsequent sale of Common Stock. The Company and the Subsidiaries do not commit and are under no obligation to structure the Option to reduce or eliminate Participant's tax liability.

ARTICLE IV. EXERCISE OF OPTION

4.1 Person Eligible to Exercise. During the lifetime of Participant, only Participant may exercise the Option or any portion thereof. After the death of Participant, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3 hereof, be exercised by Participant's personal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.

4.2 Partial Exercise. Subject to Section 5.2, any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3 hereof.

4.3 Manner of Exercise. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the Secretary of the Company (or any third party administrator or other person or entity designated by the Company), during regular business hours, of all of the following prior to the time when the Option or such portion thereof becomes unexercisable under Section 3.3 hereof.

(a) An exercise notice in a form specified by the Administrator, stating that the Option or portion thereof is thereby exercised, such notice complying with all applicable rules established by the Administrator;

(b) The receipt by the Company of full payment for the shares of Common Stock with respect to which the Option or portion thereof is exercised, in such form of consideration permitted under Section 4.4 hereof that is acceptable to the Administrator;

(c) The payment of any applicable withholding tax in accordance with Section 3.4;

(d) Any other written representations or documents as may be required in the Administrator's sole discretion to effect compliance with Applicable Law; and

(e) In the event the Option or portion thereof shall be exercised pursuant to Section 4.1 hereof by any person or persons other than Participant, appropriate proof of the right of such person or persons to exercise the Option.

Notwithstanding any of the foregoing, the Administrator shall have the right to specify all conditions of the manner of exercise, which conditions may vary by country and which may be subject to change from time to time.

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4.4 Method of Payment. Payment of the exercise price shall be by any of the following, or a combination thereof, at the election of Participant:

(a) Cash or check;

(b) With the consent of the Administrator, surrender of shares of Common Stock (including, without limitation, shares of Common Stock otherwise issuable upon exercise of the Option) held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences and having a Fair Market Value on the date of delivery equal to the aggregate exercise price of the Option or exercised portion thereof;

(c) Through the delivery of a notice that Participant has placed a market sell order with a broker acceptable to the Company with respect to shares of Common Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price; *provided* that payment of such proceeds is then made to the Company at such time as may be required by the Administrator, but in any event not later than the settlement of such sale; or

(d) Any other form of legal consideration acceptable to the Administrator.

4.5 Conditions to Issuance of Common Stock. The Company shall not be required to issue or deliver any shares of Common Stock purchased upon the exercise of the Option or portion thereof prior to fulfillment of all of the following conditions: (a) the admission of such shares of Common Stock to listing on all stock exchanges on which such Common Stock is then listed, (b) the completion of any registration or other qualification of such shares of Common Stock under any state or federal law or under rulings or regulations of the Securities

and Exchange Commission or other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable, (c) the obtaining of any approval or other clearance from any state or federal governmental agency which the Administrator shall, in its absolute discretion, determine to be necessary or advisable, (d) the receipt by the Company of full payment for such shares of Common Stock, which may be in one or more of the forms of consideration permitted under Section 4.4 hereof, and (e) the receipt of full payment of any applicable withholding tax in accordance with Section 3.4 by the Company or its Subsidiary with respect to which the applicable withholding obligation arises.

4.6 Rights as Stockholder. Neither Participant nor any person or entity claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any shares of Common Stock purchasable upon the exercise of any part of the Option unless and until certificates representing such shares of Common Stock (which may be in book-entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars and delivered to Participant (including through electronic delivery to a brokerage account). No adjustment will be made for a dividend or other right for which the record date is prior to the date of such issuance, recordation and delivery, except as provided in Section 14.2 of the Plan. Except as otherwise provided herein, after such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to such shares of Common Stock, including, without limitation, the right to receipt of dividends and distributions on such shares.

ARTICLE V. OTHER PROVISIONS

5.1 Administration. The Administrator shall have the power to interpret the Plan, the Grant Notice and this Agreement and to adopt such rules for the administration, interpretation and application of

the Plan, the Grant Notice and this Agreement as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator will be final and binding upon Participant, the Company and all other interested persons. To the extent allowable pursuant to Applicable Law, no member of the Committee or the Board will be personally liable for any action, determination or interpretation made with respect to the Plan, the Grant Notice or this Agreement.

5.2 Whole Shares. The Option may only be exercised for whole shares of Common Stock.

5.3 Option Not Transferable. Subject to Section 4.1 hereof, the Option may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the shares of Common Stock underlying the Option have been issued, and all restrictions applicable to such Shares have lapsed. Neither the Option nor any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

5.4 Adjustments. The Administrator may accelerate the vesting of all or a portion of the Option in such circumstances as it, in its sole discretion, may determine. In addition, upon the occurrence of certain events relating to the Common Stock contemplated by Section 14.2 of the Plan (including, without limitation, an extraordinary cash dividend on such Common Stock), the Administrator may make such adjustments as the Administrator deems appropriate in the number of shares of Common Stock subject to the Option, the exercise price of the Option and the kind of securities that may be issued upon exercise of the Option. Participant acknowledges that the Option is subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 14.2 of the Plan.

5.5 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to Participant shall be addressed to Participant at Participant's last address reflected on the Company's records. By a notice given pursuant to this Section 5.5, either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

5.6 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

5.7 Governing Law. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

5.8 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Laws, including, without limitation, the provisions of the Securities Act and the Exchange Act, and any and all regulations and rules promulgated thereunder by the Securities and Exchange Commission and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the

Option is granted and may be exercised, only in such a manner as to conform to Applicable Law. To the extent permitted by Applicable Law, the Plan, the Grant Notice and this Agreement shall be deemed amended to the extent necessary to conform to Applicable Law.

5.9 Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Administrator or the Board, *provided that*, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the Option in any material way without the prior written consent of Participant.

5.10 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Section 5.3 and the Plan, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

5.11 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the Option, the Grant Notice and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

5.12 Not a Contract of Employment. Nothing in this Agreement or in the Plan shall confer upon Participant any right to continue to serve as an employee or other service provider of the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and its Subsidiaries, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company or a Subsidiary and Participant.

5.13 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

5.14 Section 409A. This Award is not intended to constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code (together with any Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date hereof, “Section 409A”). However, notwithstanding any other provision of the Plan, the Grant Notice or this Agreement, if at any time the Administrator determines that this Award (or any portion thereof) may be subject to Section 409A, the Administrator shall have the right in its sole discretion (without any obligation to do so or to indemnify Participant or any other person for failure to do so) to adopt such amendments to the Plan, the Grant Notice or this Agreement, or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Administrator determines are necessary or appropriate for this Award either to be exempt from the application of Section 409A or to comply with the requirements of Section 409A.

5.15 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or

unenforceability will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

5.16 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant shall have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the Option, and rights no greater than the right to receive the Common Stock as a general unsecured creditor with respect to options, as and when exercised pursuant to the terms hereof.

5.17 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which shall be deemed an original and all of which together shall constitute one instrument.

5.18 Broker-Assisted Sales. In the event of any broker-assisted sale of shares of Common Stock in connection with the payment of withholding taxes as provided in Section 3.4(a)(iii) or Section 3.4(c) or the payment of the exercise price as provided in Section 4.4(c): (a) any shares of Common Stock to be sold through a broker-assisted sale will be sold on the day the tax withholding obligation or exercise of the Option, as applicable, occurs or arises, or as soon thereafter as practicable; (b) such shares of Common Stock may be sold as part of a block trade with other participants in the Plan in which all participants receive an average price; (c) Participant will be responsible for all broker's fees and other costs of sale, and Participant agrees to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale; (d) to the extent the proceeds of such sale exceed the applicable tax withholding obligation or exercise price, the Company agrees to pay such excess in cash to Participant as soon as reasonably practicable; (e) Participant acknowledges that the Company or its designee is under no obligation to arrange for such sale at any particular price, and that the proceeds of any such sale may not be sufficient to satisfy the applicable tax withholding obligation or exercise price; and (f) in the event the proceeds of such sale are insufficient to satisfy the applicable tax withholding obligation, Participant agrees to pay immediately upon demand to the Company or its Subsidiary with respect to which the withholding obligation arises an amount in cash sufficient to satisfy any remaining portion of the Company's or the applicable Subsidiary's withholding obligation.

5.19 Incentive Stock Options. Participant acknowledges that to the extent the aggregate Fair Market Value of shares of Common Stock (determined as of the time the option with respect to the shares is granted) with respect to which Incentive Stock Options, including this Option (if applicable), are exercisable for the first time by Participant during any calendar year exceeds \$100,000 or if for any other reason such Incentive Stock Options do not qualify or cease to qualify for treatment as "incentive stock options" under Section 422 of the Code, such Incentive Stock Options shall be treated as Non-Qualified Stock Options. Participant further acknowledges that the rule set forth in the preceding sentence shall be applied by taking the Option and other stock options into account in the order in which they were granted, as determined under Section 422(d) of the Code and the Treasury Regulations thereunder. Participant also acknowledges that an Incentive Stock Option exercised more than three (3) months after Participant's Termination of Service, other than by reason of death or disability, will be taxed as a Non-Qualified Stock Option.

5.20 Notification of Disposition. If this Option is designated as an Incentive Stock Option, Participant shall give prompt written notice to the Company of any disposition or other transfer of any shares of Common Stock acquired under this Agreement if such disposition or transfer is made (a) within two (2) years from the Grant Date or (b) within one (1) year after the transfer of such shares of Common Stock to Participant. Such notice shall specify the date of such disposition or other transfer and the

amount realized, in cash, other property, assumption of indebtedness or other consideration, by Participant in such disposition or other transfer.

* * * *

EXHIBIT B
TO OPTION AWARD GRANT NOTICE

CONSENT OF SPOUSE

I, _____, spouse of _____, have read and approve the Stock Option Grant Notice and the Stock Option Agreement (collectively, the “Stock Option Documentation”). In consideration of issuing to my spouse the option to purchase shares of common stock of Shake Shack Inc. set forth in the Stock Option Documentation, I hereby appoint my spouse as my attorney-in-fact in respect of the exercise of any rights under the Stock Option Documentation and agree to be bound by the provisions of the Stock Option Documentation insofar as I may have any rights in the Stock Option Documentation or any common stock of Shake Shack Inc. issued pursuant thereto under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the Stock Option Documentation.

Dated: _____

Signature of Spouse

**FORM OF
INDEMNIFICATION AGREEMENT**

THIS INDEMNIFICATION AGREEMENT (this “**Agreement**”) is made and entered into as of [] [], 20[], by and between Shake Shack Inc. (the “**Company**”) and [] (“**Indemnitee**”).

RECITALS

WHEREAS, the Company values Indemnitee’s service to the Company as a director or officer and desires that Indemnitee continue to serve the Company in such capacity;

WHEREAS, (i) the Certificate of Incorporation of the Company (as may be amended from time to time, the “**Certificate of Incorporation**”) and the Bylaws of the Company (as may be amended from time to time, the “**Bylaws**”) require indemnification of the officers and directors of the Company, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“**DGCL**”) and (iii) the Certificate of Incorporation, the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, Indemnitee does not regard the protection available under the organizational documents of the Company and any insurance policies maintained by the Company as adequate in the present circumstances, and Indemnitee may not be willing to continue to serve in his or her capacity as a director or officer of the Company without the additional protections set forth in this Agreement;

WHEREAS, the Board of Directors of the Company (the “**Board**”) has determined that, on the basis of the foregoing, it is reasonable, prudent and necessary for the Company to obligate itself contractually to indemnify, and to advance expenses on behalf of, Indemnitee to the fullest extent permitted by applicable law so that Indemnitee will serve or continue to serve the Company free from undue concern that he or she will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the organizational documents of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee may have certain rights to indemnification and/or insurance provided by an investment or private equity firm with which Indemnitee is or may become affiliated (the “**Associated Firm**”) which Indemnitee and the Associated Firm intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein,

with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, and intending to be legally bound, the parties hereto agree as follows:

AGREEMENT

1. INDEMNIFICATION OF INDEMNITEE AND ASSOCIATED FIRM. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by applicable law, including the DGCL, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his or her Corporate Status (as defined in Section 13(c)), the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as defined in Section 13(j)) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as defined in Section 13(g)), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her, or on his or her behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful.

(b) Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his or her Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee's behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that a court of competent jurisdiction shall determine that such indemnification may be made.

(c) Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or her, or on his or her behalf, in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her, or on his or her behalf, in connection with each successfully resolved claim, issue or matter. For purposes of this Section 1(c) and without limitation, the termination of any claim, issue or matter in such a

Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(d) If the Associated Firm is, or is threatened to be made, a party to or a participant in any Proceeding relating to or arising by reason of the Associated Firm's position as a stockholder of, or lender to, the Company, or the Associated Firm's appointment of or affiliation with Indemnitee or any other director, including without limitation any alleged misappropriation of a Company asset or corporate opportunity, any claim of misappropriation or infringement of intellectual property relating to the Company, any alleged false or misleading statement or omission made by the Company (or on its behalf) or its employees or agents, or any allegation of inappropriate control or influence over the Company or its Board members, officers, equity holders or debt holders, then the Associated Firm will be entitled to indemnification hereunder for Expenses to the same extent as Indemnitee, and the terms of this Agreement as they relate to procedures for indemnification of Indemnitee and advancement of Expenses shall apply to any such indemnification of the Associated Firm. The rights provided to the Associated Firm under this Section 1(d) shall be suspended during any period during which the Associated Firm does not have a representative on the Board; provided, however, that in the event of any such suspension, the Associated Firm's rights to indemnification will not be suspended with respect to any Proceeding based in whole or in part on facts and circumstances occurring at any time prior to such suspension regardless of whether the Proceeding arises before or after such suspension. The Company and Indemnitee agree that the Associated Firm is an express third party beneficiary of the terms of this Section 1(d).

2. ADDITIONAL INDEMNITY . In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her, or on his or her behalf if, by reason of his or her Corporate Status, he or she is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

3. CONTRIBUTION .

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such Proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in Section 3(a), if, for any reason, Indemnatee shall elect or be required to pay all or any portion of any judgment or settlement in any Proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such Proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnatee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such Proceeding), on the one hand, and Indemnatee, on the other hand, from the transaction from which such Proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnatee who are jointly liable with Indemnatee (or would be if joined in such Proceeding), on the one hand, and Indemnatee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which the Law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such Proceeding), on the one hand, and Indemnatee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnatee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnatee, who may be jointly liable with Indemnatee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, shall contribute to the amount incurred by Indemnatee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnatee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transaction(s).

4. INDEMNIFICATION FOR EXPENSES OF A WITNESS . Notwithstanding any other provision of this Agreement, to the extent that Indemnatee is, by reason of his or her Corporate Status, a witness, or is made (or asked to) respond to discovery requests, in any Proceeding to which Indemnatee is not a party, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her, or on his or her behalf, in connection therewith.

5. ADVANCEMENT OF EXPENSES . In accordance with the pre-existing provision of Article Eighth of the Certificate of Incorporation, and notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnatee in

connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

6. PROCEDURES AND PRESUMPTIONS FOR DETERMINING ENTITLEMENT TO INDEMNIFICATION . It is the intent of this Agreement to secure for Indemnitee rights of indemnification that are as favorable as may be permitted under applicable law. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board: (i) by a majority vote of the Disinterested Directors (as defined in Section 13(d)), even though less than a quorum; (ii) by a committee of those Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum; (iii) if there are no Disinterested Directors or if the Disinterested Directors so direct, by Independent Counsel (as defined in Section 13(h)) in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee, or (iv) if so directed by the Board, by the stockholders of the Company; provided, however, that, notwithstanding the foregoing, any determination with respect to Indemnitee's entitlement to indemnification hereunder that is made at any time following the consummation of a Change in Control (as defined in Section 13(b)) that occurs at any time when the Company has a class of securities registered under the Exchange Act (as defined in Section 13(f)) or following the consummation of an initial public offering of the Company's Common Stock under the Securities Act of 1933, as amended, shall be made solely by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c) . The Independent Counsel shall be selected by the Board.

Indemnatee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of “Independent Counsel” as defined in Section 13(h) of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnatee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnatee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnatee to the Company’s selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnatee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnatee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnatee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnatee has not met the applicable standard of conduct.

(e) Indemnatee shall be deemed to have acted in good faith if Indemnatee’s action is based on the records or books of account of the Enterprise (as defined in Section 13(e)), including financial statements, or on information supplied to Indemnatee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnatee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnatee has at all times acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under this Section 6 to determine whether Indemnatee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnatee shall be entitled to such indemnification absent: (i) a misstatement by Indemnatee of a material fact, or an omission of a material fact necessary to make Indemnatee's statement not materially misleading, in connection with the request for indemnification; or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnatee shall cooperate with the person, persons or entity making such determination with respect to Indemnatee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnatee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnatee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnatee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnatee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnatee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Proceeding to which Indemnatee is a party is resolved in any manner other than by adverse judgment against Indemnatee (including, without limitation, settlement of such Proceeding with or without payment of money or other consideration) it shall be presumed that Indemnatee has been successful on the merits or otherwise in such Proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the

right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

7. REMEDIES OF INDEMNITEE .

(a) In the event that: (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement; (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement; (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification; (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor; or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in any court of competent jurisdiction of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within one hundred eighty (180) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent: (i) a misstatement by Indemnitee of a material fact or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification; or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his or her rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his or her behalf, in advance, any and all expenses (of the types described in the definition of "Expenses" in Section 13(g) of this Agreement) actually and reasonably incurred by him or her in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement

are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefor) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. NON-EXCLUSIVITY, SURVIVAL OF RIGHTS, ETC.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the organizational documents of the Company, any other agreement with the Company, a vote of the Company's stockholders, a resolution of the Board or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in any applicable law, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Company's organizational documents and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by the Associated Firm

and/or certain of its affiliates (collectively, the “ ***Additional Indemnitors*** ”). The Company hereby agrees that: (i) it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Additional Indemnitors (or any insurance carrier providing insurance coverage purchased by any Additional Indemnitor) to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary); (ii) it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the organizational documents of the Company, without regard to any rights Indemnitee may have against the Additional Indemnitors (or any insurance carrier providing insurance coverage purchased by any Additional Indemnitor); and (iii) it irrevocably waives, relinquishes and releases the Additional Indemnitors from any and all claims against the Additional Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Additional Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Additional Indemnitors shall have a right of indemnification and/or be subrogated to the full extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Additional Indemnitors are express third party beneficiaries of the terms of this Section 8(c).

(d) Except as provided in Section 8(c) above, in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Additional Indemnitors), who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) Except as provided in Section 8(c) above, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received payment of such amounts under any insurance policy, contract, other agreement or otherwise.

(f) Except as provided in Section 8(c) above, the Company’s obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any Enterprise other than the Company shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other Enterprise.

9. EXCEPTION TO RIGHT OF INDEMNIFICATION . Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to provide any indemnification in connection with any claim made against Indemnitee: (i) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision, provided that the foregoing shall not affect the rights of Indemnitee or the Additional Indemnitors set forth in Section 8(c); (ii) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of

state statutory law or common law; or (iii) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnatee, including any Proceeding (or any part of any Proceeding) initiated by Indemnatee against the Company or its directors, officers, employees or other indemnitees, unless (A) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (B) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

10. DURATION OF AGREEMENT . All agreements and obligations of the Company contained herein shall continue until the date that is ten (10) years after the date upon which Indemnatee's Corporate Status terminates and shall continue thereafter so long as Indemnatee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of his or her Corporate Status, whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

11. SECURITY . To the extent requested by Indemnatee and approved by the Board, the Company may at any time and from time to time provide security to Indemnatee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnatee, may not be revoked or released without the prior written consent of the Indemnatee.

12. ENFORCEMENT . The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnatee to serve as an officer or director of the Company, and the Company acknowledges that Indemnatee is relying upon this Agreement in serving as an officer or director of the Company. The Company shall not seek from a court, or agree to, a "bar order" that would have the effect of prohibiting or limiting Indemnatee's rights to receive advancement of Expenses under this Agreement.

13. DEFINITIONS . For purposes of this Agreement:

(a) "**Beneficial Owner**" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(b) A "**Change in Control**" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) any Person (other than any Beneficial Owner as of the date of this Agreement) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities;

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(ii) during any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 13(b)(i), (b)(iii) or (b)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a least a majority of the members of the Board;

(iii) the effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty-one percent (51%) of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the Board or other governing body of such surviving entity;

(iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; or

(v) there occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement.

(c) "**Corporate Status**" describes the status of a person who is or was at any time (including, without limitation, any time prior to the date of this Agreement) a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(d) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnatee.

(e) "**Enterprise**" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or

other enterprise that Indemnatee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

(f) “ **Exchange Act** ” shall mean the Securities Exchange Act of 1934, as amended.

(g) “ **Expenses** ” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a

Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnatee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnatee or the amount of judgments or fines against Indemnatee.

(h) “**Independent Counsel**” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnatee in any matter material to either such party (other than with respect to matters concerning Indemnatee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnatee in an action to determine Indemnatee’s rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(i) “**Person**” shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude: (i) the Company; (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company; and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(j) “**Proceeding**” includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding (including one pending on or before the date of this Agreement but excluding one initiated by an Indemnatee pursuant to Section 7 of this Agreement to enforce his or her rights under this Agreement), whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnatee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnatee is or was an officer or director of the Company, by reason of any action taken by him or her or of any inaction on his or her part while acting as an officer or director of the Company, or by reason of the fact that he or she is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other Enterprise, in each case whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement.

14. SEVERABILITY . The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnatee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with

any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. MODIFICATION AND WAIVER . No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. NOTICE BY INDEMNITEE . Indemnatee agrees to promptly notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnatee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. NOTICES . All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day; (iii) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one business (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices and other communications shall be sent:

(a) To Indemnatee at the address set forth below Indemnatee's signature hereto.

(b) To the Company at:

Shake Shack Inc.
24 Union Square East, 5th Floor
New York, New York 10003
Attention: Board of Directors

or to such other address as may have been furnished to Indemnatee by the Company or to the Company by Indemnatee, as the case may be.

18. HEADINGS . The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

19. APPLICABLE LAW AND CONSENT TO JURISDICTION . This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules that would require the application of any other laws. The Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of

Delaware and any state appellate court therefrom within the State of Delaware (unless the Chancery Court declines to accept jurisdiction over a particular matter, in which case, in any Delaware state or federal court within the State of Delaware) (the “ ***Chosen Courts*** ”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Chosen Courts for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Chosen Courts, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Chosen Courts has been brought in an improper or inconvenient forum.

20. ENTIRE AGREEMENT . This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof

21. COUNTERPARTS . This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature (or other similar electronic means) and in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SHAKE SHACK INC.

By: _____
Name: _____
Title: _____

INDEMNITEE

By: _____
Name: _____
Address: _____

[*Signature Page to Indemnification Agreement*]

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”), dated as of January 15, 2015, and effective as of the Effective Date (defined below), is hereby entered into by and among SSE Holdings, LLC, a Delaware limited liability company (“**Assignor**”), and Shake Shack Inc. (“**Assignee**”).

R E C I T A L S:

WHEREAS, Assignor currently sponsors the SSE Holdings, LLC Unit Appreciation Rights Plan, as amended (the “**Plan**”);

WHEREAS, Assignor desires to assign all of its rights, privileges, title, interests, liabilities and obligations under the Plan and all awards thereunder to Assignee; and

WHEREAS, Assignee wishes to accept the assignment of such rights, privileges, title and interests and to assume such liabilities and obligations.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. *Assignment.* Effective as of the date Assignee’s registration statement on Form S-1 is declared effective (the “**Effective Date**”), Assignor hereby assigns, conveys and transfers to Assignee all of its present and future rights, title and interests in, to and under the Plan and all awards thereunder. If Assignee’s registration statement on Form S-1 is not declared effective, this Agreement shall be void *ab initio*.

2. *Assumption.* Effective as of the Effective Date, (a) Assignee hereby accepts the assignment set forth in Section 1 hereto and assumes any and all liabilities and obligations of Assignor arising under the Plan and all awards thereunder and (b) the Plan shall be maintained by Assignee for the benefit of Employees (as defined in the Plan) and Employees shall remain the sole persons eligible to participate in the Plan.

3. *Further Actions.* Each party hereto covenants and agrees to make, execute, acknowledge and deliver such further documents and instruments and to use its reasonable efforts to take such other action as may be reasonably requested by any party hereto to more effectively consummate or perfect the assignments and assumptions contemplated by this Agreement.

4. *Miscellaneous.*

(a) This Assignment shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state or any other jurisdiction.

(b) If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other governmental authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in

full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

(c) This Assignment shall inure to the benefit of Assignee and its successors and assigns, and shall be binding upon Assignor and its successors and assigns.

(d) This Assignment is not intended to, nor shall it, create any rights in or confer any benefits upon any person other than the parties to this Assignment.

(e) This Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Any counterpart may be signed and transmitted by facsimile or Portable Document Format (PDF) with the same force and effect as if such counterpart was an ink-signed original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF , the parties hereto have caused this Assignment and Assumption Agreement to be duly executed as of the day and year first above written.

ASSIGNOR

SSE HOLDINGS, LLC

By: /s/ Randy Garutti
Name: Randy Garutti
Title: Chief Executive Officer

ASSIGNEE

SHAKE SHACK INC.

By: /s/ Randy Garutti
Name: Randy Garutti
Title: Chief Executive Officer

[Signature page to Assignment and Assumption Agreement re: UAR Plan]

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated September 30, 2014 with respect to the consolidated financial statements of SSE Holdings, LLC and Subsidiaries included in the Amendment No.1 to the Registration Statement (Form S-1) and the related Prospectus of Shake Shack Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP
New York, New York

January 19, 2015

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated September 30, 2014 in Amendment No. 1 to the Registration Statement (Form S-1) and the related Prospectus of Shake Shack Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP
New York, New York

January 19, 2015
