

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended March 31, 2020  
or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-31458

**Drive Shack Inc.**

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

81-0559116

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

218 W. 18th Street, 3rd Floor, New York, NY

(Address of principal executive offices)

10011

(Zip Code)

(646) 585-5591

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbols(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value per share	DS	New York Stock Exchange (NYSE)
9.75% Series B Cumulative Redeemable Preferred Stock, \$0.01 par value per share	DS-PB	New York Stock Exchange (NYSE)
8.05% Series C Cumulative Redeemable Preferred Stock, \$0.01 par value per share	DS-PC	New York Stock Exchange (NYSE)
8.375% Series D Cumulative Redeemable Preferred Stock, \$0.01 par value per share	DS-PD	New York Stock Exchange (NYSE)

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulations S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). S Yes £ No

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

Large accelerated filer £ Accelerated filer S Non-accelerated filer £ Smaller reporting company £ Emerging growth company £

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the last practicable date.

**Common stock, \$0.01 par value per share: 67,070,513 shares outstanding as of May 1, 2020.**

## CAUTIONARY NOTE REGARDING FORWARD LOOKING STATEMENTS

This report contains certain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements relate to, among other things, (i) the timing and conditions under which we may reopen some or all of our golf entertainment and traditional golf venues, (ii) the operation of our golf entertainment and traditional golf venues in light of the COVID-19 pandemic following their anticipated reopening, (iii) the adequacy of our cash flows from operations and available cash to meet our liquidity needs, including in the event of a prolonged closure of our venues, (iv) our ability to modify the timing of certain contractual payments owed, (v) our ability to obtain additional financing and (vi) our results of operations. Forward-looking statements are generally identifiable by use of forward-looking terminology such as “may,” “will,” “should,” “potential,” “intend,” “expect,” “endeavor,” “seek,” “anticipate,” “estimate,” “overestimate,” “underestimate,” “believe,” “could,” “project,” “forecast,” “predict,” “continue” or other similar words or expressions. Forward-looking statements are based on certain assumptions, discuss future expectations, describe future plans and strategies, contain projections of results of operations or of financial condition or state other forward-looking information. Our ability to predict results or the actual outcome of future plans or strategies is inherently uncertain. Although we believe that the expectations reflected in such forward-looking statements are based on reasonable assumptions, our actual results and performance could differ materially from those set forth in the forward-looking statements. These forward-looking statements involve risks, uncertainties and other factors that may cause our actual results in future periods to differ materially from forecasted results. Factors which could have a material adverse effect on our operations and future prospects include, but are not limited to:

- factors impacting attendance, such as local conditions, contagious diseases, including COVID-19, or the perceived threat of contagious diseases, disturbances, natural disasters, and terrorist activities;
- regulations and guidance of federal, state and local governments and health officials regarding the response to COVID-19, including with respect to business operations, safety protocols and public gatherings;
- our financial liquidity and ability to access capital;
- the ability to retain and attract members and guests to our properties;
- changes in global, national and local economic conditions, including, but not limited to, increases in unemployment levels, changes in consumer spending patterns, a prolonged economic slowdown and a downturn in the real estate market, particularly due to the COVID-19 pandemic;
- effects of unusual weather patterns and extreme weather events, geographical concentrations with respect to our operations and seasonality of our business;
- competition within the industries in which we operate or may pursue additional investments, including competition for sites for our Entertainment Golf venues;
- material increases in our expenses, including, but not limited to, unanticipated labor issues, rent or costs with respect to our workforce, and costs of goods, utilities and supplies;
- our inability to sell or exit certain properties, and unforeseen changes to our ability to develop, redevelop or renovate certain properties;
- our ability to further invest in our business and implement our strategies;
- difficulty monetizing our real estate debt investments;
- liabilities with respect to inadequate insurance coverage, accidents or injuries on our properties, adverse litigation judgments or settlements, or membership deposits;
- changes to and failure to comply with relevant regulations and legislation, including in order to maintain certain licenses and permits, and environmental regulations in connection with our operations;
- inability to execute on our growth and development strategy by successfully developing, opening and operating new venues;
- impacts of any failures of our information technology and cybersecurity systems;
- the impact of any current or further legal proceedings and regulatory investigations and inquiries;
- and
- other risks detailed from time to time, particularly under the heading “Risk Factors” in this report and in our subsequent filings with the Securities and Exchange Commission, (the “SEC”).

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. The factors noted above could cause our actual results to differ significantly from those contained in any forward-looking statement.

Readers are cautioned not to place undue reliance on any of these forward-looking statements, which reflect our management’s views only as of the date of this report. We are under no duty to update any of the forward-looking statements after the date of this report to conform these statements to actual results.

---

## SPECIAL NOTE REGARDING EXHIBITS

In reviewing the agreements included as exhibits to this Quarterly Report on Form 10-Q, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about Drive Shack Inc. (the "Company" or the "Registrant") or the other parties to the agreements. The agreements contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors;  
and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time. Additional information about the Company may be found elsewhere in this Quarterly Report on Form 10-Q and the Company's other public filings, which are available without charge through the SEC's website at <http://www.sec.gov>.

The Company acknowledges that, notwithstanding the inclusion of the foregoing cautionary statements, it is responsible for considering whether additional specific disclosures of material information regarding material contractual provisions are required to make the statements in this report not misleading.

---

**DRIVE SHACK INC.**  
**FORM 10-Q**  
**INDEX**

	<u>PAGE</u>
<b><u>PART I. FINANCIAL INFORMATION</u></b>	
<b><u>Item 1. Financial Statements</u></b>	
<u>Consolidated Balance Sheets as of March 31, 2020 (unaudited) and December 31, 2019</u>	<u>1</u>
<u>Consolidated Statements of Operations (unaudited) for the three months ended March 31, 2020 and 2019</u>	<u>2</u>
<u>Consolidated Statements of Comprehensive Loss (unaudited) for the three months ended March 31, 2020 and 2019</u>	<u>3</u>
<u>Consolidated Statements of Changes in Equity (unaudited) for the three months ended March 31, 2020 and 2019</u>	<u>4</u>
<u>Consolidated Statements of Cash Flows (unaudited) for the three months ended March 31, 2020 and 2019</u>	<u>5</u>
<u>Notes to Consolidated Financial Statements (unaudited)</u>	<u>6</u>
<u>Note 1 Organization</u>	<u>6</u>
<u>Note 2 Summary of Significant Accounting Policies</u>	<u>6</u>
<u>Note 3 Revenues</u>	<u>9</u>
<u>Note 4 Segment Reporting</u>	<u>10</u>
<u>Note 5 Property and Equipment, Net of Accumulated Depreciation</u>	<u>13</u>
<u>Note 6 Leases</u>	<u>13</u>
<u>Note 7 Intangibles, Net of Accumulated Amortization</u>	<u>14</u>
<u>Note 8 Debt Obligations</u>	<u>15</u>
<u>Note 9 Real Estate Securities</u>	<u>15</u>
<u>Note 10 Fair Value of Financial Instruments</u>	<u>16</u>
<u>Note 11 Equity and Earnings per Share</u>	<u>18</u>
<u>Note 12 Transactions with Affiliates and Affiliated Entities</u>	<u>20</u>
<u>Note 13 Commitments and Contingencies</u>	<u>20</u>
<u>Note 14 Income Taxes</u>	<u>20</u>
<u>Note 15 Impairment and Other Losses</u>	<u>21</u>
<u>Note 16 Subsequent Events</u>	<u>21</u>
<b><u>Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations</u></b>	<b><u>22</u></b>
<u>General</u>	<u>22</u>
<u>Market Considerations</u>	<u>23</u>
<u>Application of Critical Accounting Policies</u>	<u>24</u>
<u>Results of Operations</u>	<u>24</u>
<u>Liquidity and Capital Resources</u>	<u>26</u>
<u>Contractual Obligations</u>	<u>29</u>
<b><u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u></b>	<b><u>29</u></b>
<b><u>Item 4. Controls and Procedures</u></b>	<b><u>29</u></b>
<b><u>PART II. OTHER INFORMATION</u></b>	
<b><u>Item 1. Legal Proceedings</u></b>	<b><u>31</u></b>
<b><u>Item 1A. Risk Factors</u></b>	<b><u>31</u></b>
<b><u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u></b>	<b><u>32</u></b>
<b><u>Item 3. Defaults upon Senior Securities</u></b>	<b><u>32</u></b>
<b><u>Item 4. Mine Safety Disclosures</u></b>	<b><u>32</u></b>
<b><u>Item 5. Other Information</u></b>	<b><u>32</u></b>
<b><u>Item 6. Exhibits</u></b>	<b><u>34</u></b>

---



PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

DRIVE SHACK INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(dollars in thousands, except share data)

	(unaudited)	
	March 31, 2020	December 31, 2019
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 16,785	\$ 28,423
Restricted cash	3,041	3,103
Accounts receivable, net of allowance of \$904 and \$1,082, respectively	4,190	5,249
Real estate assets, held-for-sale, net	16,970	16,948
Real estate securities, available-for-sale	3,103	3,052
Other current assets	13,966	17,521
Total current assets	<u>58,055</u>	<u>74,296</u>
Restricted cash, noncurrent	513	438
Property and equipment, net of accumulated depreciation	184,219	179,641
Operating lease right-of-use assets	212,246	215,308
Intangibles, net of accumulated amortization	16,780	17,565
Other investments	24,365	24,020
Other assets	5,245	4,723
Total assets	<u>\$ 501,423</u>	<u>\$ 515,991</u>
<b>Liabilities and Equity</b>		
Current liabilities		
Obligations under finance leases	\$ 6,004	\$ 6,154
Membership deposit liabilities	10,784	10,791
Accounts payable and accrued expenses	31,242	25,877
Deferred revenue	25,118	26,268
Real estate liabilities, held-for-sale	4	4
Other current liabilities	23,367	23,964
Total current liabilities	<u>96,519</u>	<u>93,058</u>
Credit facilities and obligations under finance leases - noncurrent	12,468	13,125
Operating lease liabilities - noncurrent	185,802	187,675
Junior subordinated notes payable	51,190	51,192
Membership deposit liabilities, noncurrent	97,648	95,805
Deferred revenue, noncurrent	6,389	6,283
Other liabilities	3,496	3,278
Total liabilities	<u>\$ 453,512</u>	<u>\$ 450,416</u>
Commitments and contingencies		
Equity		
Preferred stock, \$0.01 par value, 100,000,000 shares authorized, 1,347,321 shares of 9.75% Series B Cumulative Redeemable Preferred Stock, 496,000 shares of 8.05% Series C Cumulative Redeemable Preferred Stock, and 620,000 shares of 8.375% Series D Cumulative Redeemable Preferred Stock, liquidation preference \$25.00 per share, issued and outstanding as of March 31, 2020 and December 31, 2019	\$ 61,583	\$ 61,583
Common stock, \$0.01 par value, 1,000,000,000 shares authorized, 67,070,513 and 67,068,751 shares issued and outstanding at March 31, 2020 and December 31, 2019, respectively	671	671
Additional paid-in capital	3,177,384	3,177,183
Accumulated deficit	(3,193,399)	(3,175,572)
Accumulated other comprehensive income	1,672	1,710
Total equity	<u>\$ 47,911</u>	<u>\$ 65,575</u>
Total liabilities and equity	<u>\$ 501,423</u>	<u>\$ 515,991</u>

See notes to Consolidated Financial Statements.

**DRIVE SHACK INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF OPERATIONS (unaudited)**

(dollars in thousands, except share data)

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Revenues</b>		
Golf operations	\$ 48,625	\$ 44,706
Sales of food and beverages	12,510	9,246
Total revenues	<u>61,135</u>	<u>53,952</u>
<b>Operating costs</b>		
Operating expenses	54,367	47,723
Cost of sales - food and beverages	3,655	2,698
General and administrative expense	9,818	11,619
Depreciation and amortization	6,794	4,924
Pre-opening costs	552	1,179
Impairment and other losses	792	4,088
Total operating costs	<u>75,978</u>	<u>72,231</u>
Operating loss	(14,843)	(18,279)
<b>Other income (expenses)</b>		
Interest and investment income	130	344
Interest expense, net	(2,745)	(2,153)
Other income, net	367	5,488
Total other income (expenses)	<u>(2,248)</u>	<u>3,679</u>
Loss before income tax	(17,091)	(14,600)
Income tax expense	271	—
Net Loss	(17,362)	(14,600)
Preferred dividends	(1,395)	(1,395)
Loss Applicable to Common Stockholders	<u>\$ (18,757)</u>	<u>\$ (15,995)</u>
<b>Loss Applicable to Common Stock, per share</b>		
Basic	<u>\$ (0.28)</u>	<u>\$ (0.24)</u>
Diluted	<u>\$ (0.28)</u>	<u>\$ (0.24)</u>
<b>Weighted Average Number of Shares of Common Stock Outstanding</b>		
Basic	<u>67,069,534</u>	<u>67,027,104</u>
Diluted	<u>67,069,534</u>	<u>67,027,104</u>

See notes to Consolidated Financial Statements.

**DRIVE SHACK INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS (unaudited)**

(dollars in thousands, except share data)

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
Net loss	\$ (17,362)	\$ (14,600)
Other comprehensive loss:		
Net unrealized loss on available-for-sale securities	(38)	—
Other comprehensive loss	(38)	—
<b>Total comprehensive loss</b>	<b>\$ (17,400)</b>	<b>\$ (14,600)</b>
Comprehensive loss attributable to Drive Shack Inc. stockholders' equity	\$ (17,400)	\$ (14,600)

See notes to Consolidated Financial Statements.

DRIVE SHACK INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY (unaudited)

FOR THE THREE MONTHS ENDED MARCH 31, 2020 AND 2019

(dollars in thousands, except share data)

	Drive Shack Inc. Stockholders							
	Preferred Stock		Common Stock		Additional Paid- in Capital	Accumulated Deficit	Accumulated Other Comp. Income	Total Equity (Deficit)
	Shares	Amount	Shares	Amount				
<b>Equity (deficit) - December 31, 2019</b>	2,463,321	\$ 61,583	67,068,751	\$ 671	\$ 3,177,183	\$ (3,175,572)	\$ 1,710	\$ 65,575
Dividends declared	—	—	—	—	—	(465)	—	(465)
Stock-based compensation	—	—	—	—	201	—	—	201
Shares issued from restricted stock units	—	—	1,762	—	—	—	—	—
Comprehensive income (loss)								
Net loss	—	—	—	—	—	(17,362)	—	(17,362)
Other comprehensive loss	—	—	—	—	—	—	(38)	(38)
Total comprehensive loss								(17,400)
<b>Equity (deficit) - March 31, 2020</b>	<u>2,463,321</u>	<u>\$ 61,583</u>	<u>67,070,513</u>	<u>\$ 671</u>	<u>\$ 3,177,384</u>	<u>\$ (3,193,399)</u>	<u>\$ 1,672</u>	<u>\$ 47,911</u>
<b>Equity (deficit) - December 31, 2018</b>	2,463,321	\$ 61,583	67,027,104	\$ 670	\$ 3,175,843	\$ (3,105,307)	\$ 1,878	\$ 134,667
Dividends declared	—	—	—	—	—	(1,395)	—	(1,395)
Stock-based compensation	—	—	—	—	1,222	—	—	1,222
Adoption of ASC 842	—	—	—	—	—	(9,831)	—	(9,831)
Comprehensive income (loss)								
Net loss	—	—	—	—	—	(14,600)	—	(14,600)
Other comprehensive income	—	—	—	—	—	—	—	—
Total comprehensive loss								(14,600)
<b>Equity (deficit) - March 31, 2019</b>	<u>2,463,321</u>	<u>\$ 61,583</u>	<u>67,027,104</u>	<u>\$ 670</u>	<u>\$ 3,177,065</u>	<u>\$ (3,131,133)</u>	<u>\$ 1,878</u>	<u>\$ 110,063</u>

See notes to Consolidated Financial Statements.

DRIVE SHACK INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS (unaudited)

(dollars in thousands, except share data)

	Three Months Ended March 31,	
	2020	2019
<b>Cash Flows From Operating Activities</b>		
Net loss	\$ (17,362)	\$ (14,600)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	6,794	4,924
Amortization of discount and premium	(91)	(56)
Other amortization	1,904	1,938
Amortization of revenue on golf membership deposit liabilities	(364)	(379)
Amortization of prepaid golf membership dues	(4,076)	(3,323)
Non-cash operating lease expense	958	1,628
Stock-based compensation	201	1,222
Impairment and other losses	792	4,088
Equity in earnings from equity method investments, net of distributions	(344)	(341)
Other (gains) losses, net	46	(5,006)
Change in:		
Accounts receivable, net, other current assets and other assets - noncurrent	3,913	(1,052)
Accounts payable and accrued expenses, deferred revenue, other current liabilities and other liabilities - noncurrent	5,052	(11,234)
Net cash used in operating activities	<u>(2,577)</u>	<u>(22,191)</u>
<b>Cash Flows From Investing Activities</b>		
Proceeds from sale of property and equipment	91	17,749
Acquisition and additions of property and equipment and intangibles	(6,573)	(22,717)
Net cash used in investing activities	<u>(6,482)</u>	<u>(4,968)</u>
<b>Cash Flows From Financing Activities</b>		
Repayments of debt obligations	(1,484)	(1,397)
Golf membership deposits received	489	357
Preferred stock dividends paid	(1,395)	(1,395)
Other financing activities	(176)	(3)
Net cash used in financing activities	<u>(2,566)</u>	<u>(2,438)</u>
<b>Net Decrease in Cash and Cash Equivalents, Restricted Cash and Restricted Cash, noncurrent</b>	<b>(11,625)</b>	<b>(29,597)</b>
Cash and Cash Equivalents, Restricted Cash and Restricted Cash, noncurrent, Beginning of Period	31,964	82,819
<b>Cash and Cash Equivalents, Restricted Cash and Restricted Cash, noncurrent, End of Period</b>	<b>\$ 20,339</b>	<b>\$ 53,222</b>
<b>Supplemental Schedule of Non-Cash Investing and Financing Activities</b>		
Preferred stock dividends declared but not paid	\$ —	\$ 930
Additions to finance lease assets and liabilities	\$ 1,028	\$ 6,352
Increases in accounts payable and accrued expenses related to the purchase of property and equipment	\$ 3,771	\$ 2,258

See notes to Consolidated Financial Statements.

## DRIVE SHACK INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (unaudited)

March 31, 2020

(dollars in tables in thousands, except share data)

---

#### 1. ORGANIZATION

Drive Shack Inc., which is referred to, together with its subsidiaries, as Drive Shack Inc. or the Company, is an owner and operator of golf-related leisure and "eatertainment" venues focused on bringing people together through competitive socializing. The Company, a Maryland corporation, was formed in 2002, and its common stock is traded on the NYSE under the symbol "DS."

The Company conducts its business through the following segments: (i) Entertainment Golf venues, (ii) Traditional Golf properties and (iii) corporate. For a further discussion of the reportable segments, see Note 4.

As of March 31, 2020, the Company owned or leased 4 Entertainment Golf venues across 3 states. We opened our first Entertainment Golf venue in Orlando, Florida, in April 2018, which has largely served as our research and development and testing venue. During the second half of 2019, we opened three Generation 2.0 core Drive Shack venues in Raleigh, North Carolina; Richmond, Virginia; and West Palm Beach, Florida.

The Company's Traditional Golf business is one of the largest operators of golf properties in the United States. As of March 31, 2020, the Company owned, leased or managed 61 traditional golf properties across 9 states.

#### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**COVID-19** — In March 2020, a global pandemic was declared by the World Health Organization related to the rapidly growing outbreak of a novel strain of coronavirus ("COVID-19"). In response to the rapid spread of COVID-19, authorities around the world have implemented numerous measures to contain the virus, such as travel bans and restrictions, quarantines, shelter-in-place orders and business shutdowns. Many jurisdictions in which we operate required mandatory store closures or imposed capacity limitations and other restrictions affecting our operations. As a result, between March 19 and March 20, 2020, we temporarily closed all of our entertainment golf and substantially all of our traditional golf venues, and furloughed a substantial majority of our employees. We continue to monitor government guidelines and requirements in each geographic region in which we operate and we will resume operations on a case-by-case basis as soon as possible based on local conditions. In response to the uncertainty caused by the pandemic, we took several actions after we suspended operations to preserve our liquidity position and to prepare for multiple contingencies. We are generating minimal revenue from our venues as of the date of this report.

The COVID-19 pandemic remains a rapidly evolving situation and the extended length of the outbreak and related government response may cause prolonged periods of venue closures and modified operating schedules and may result in changes in customer behaviors, including a potential reduction in consumer discretionary spending. These may lead to increased asset recovery and valuation risks, such as impairment of long-lived and other assets. The extent to which COVID-19 impacts our business will depend on future developments, which are highly uncertain and cannot be predicted, including additional actions taken to contain COVID-19 or treat its impact, among others. The Company currently expects these developments to result in a material adverse impact on its revenues, results of operations and cash flows.

**Going Concern** — The financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. These financial statements do not include any adjustments relating to the recovery of the recorded assets or the classification of the liabilities that might be necessary should the Company be unable to continue as a going concern.

However, as noted above, we temporarily closed all of our entertainment golf and substantially all of our traditional golf venues, eliminating substantially all of the Company's revenue sources. The loss of revenues and uncertainty related to the COVID-19 pandemic discussed above raises substantial doubt about the Company's ability to continue as a going concern.

The ability of the Company to continue operations is dependent on the degree of success of management's plans to manage existing cash balances during the closure and to obtain additional financing to fund its short-term liquidity requirements. In order to manage existing cash balances, management reduced spending broadly, including furloughing a substantial majority of our employees, pausing construction on future planned venues to reduce capital spending, and suspending declaration of dividends on our preferred stock, and also deferred payment of certain operating and corporate expenditures. The Company is actively seeking to sell its remaining Traditional Golf property that is held-for-sale and believes that a sale is probable and would mitigate the substantial doubt raised by the COVID-19 pandemic and satisfy the Company's estimated liquidity needs through 12 months from the issuance of the financial statements. The Company is also exploring additional debt financing, including potential financing options made

**DRIVE SHACK INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

available under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, public or private equity issuances, and additional ways to strategically monetize our remaining real estate securities and other investments. However, there is no assurance that the Company will be successful in raising additional capital or that such additional funds will be available on acceptable terms, if at all.

**Basis of Presentation** — The accompanying Consolidated Financial Statements and related notes of the Company have been prepared in accordance with accounting principles generally accepted in the United States for interim financial reporting and the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, certain information and footnote disclosures normally included in financial statements prepared under U.S. generally accepted accounting principles, or GAAP, have been condensed or omitted. In the opinion of management, all adjustments considered necessary for a fair presentation of the Company's financial position, results of operations and cash flows have been included and are of a normal and recurring nature. The operating results presented for interim periods are not necessarily indicative of the results that may be expected for any other interim period or for the entire year. These financial statements should be read in conjunction with the Company's Consolidated Financial Statements for the year ended December 31, 2019 and notes thereto included in the Company's Annual Report on Form 10-K filed with the SEC on March 6, 2020. Capitalized terms used herein, and not otherwise defined, are defined in the Company's Consolidated Financial Statements for the year ended December 31, 2019.

The Company's significant accounting policies for these financial statements as of March 31, 2020 are summarized below and should be read in conjunction with the Summary of Significant Accounting Policies detailed in the Company's Annual Report on Form 10-K for the year ended December 31, 2019.

**Other Income (Loss), Net**— These items are comprised of the following:

	Three Months Ended March 31,	
	2020	2019
Collateral management fee income, net	72	128
Equity in earnings of equity method investments	344	341
Gain (loss) on sale of long-lived assets and intangibles	48	5,029
Other (loss) income	(97)	(10)
Other income, net	<u>\$ 367</u>	<u>\$ 5,488</u>

**Real Estate, Held-for-Sale** — Long-lived assets to be disposed of by sale, which meet certain criteria, are reclassified to real estate held-for-sale and measured at the lower of their carrying amount or fair value less costs to sell. The Company suspends depreciation and amortization for assets held-for-sale. Subsequent changes to the estimated fair value less costs to sell could impact the measurement of assets held-for-sale. Decreases below carrying value are recognized as an impairment loss and recorded in "Impairment and other losses" on the Consolidated Statements of Operations. To the extent the fair value increases, any previously reported impairment is reversed to the extent of the impairment taken. Real estate held-for-sale is recorded in "Real estate assets, held-for-sale, net" and "Real estate liabilities, held-for-sale" on the Consolidated Balance Sheets.

**Leasing Arrangements** — The Company evaluates at lease inception whether an arrangement is or contains a lease by providing the Company with the right to control an asset. Operating leases are accounted for on balance sheet with the Right of Use ("ROU") assets and lease liabilities recognized in "Operating lease right-of-use assets," "Other current liabilities" and "Operating lease liabilities - noncurrent" in the Consolidated Balance Sheets. Finance lease ROU assets, current lease liabilities and noncurrent lease liabilities are recognized in "Property and equipment, net of accumulated depreciation," and "Obligations under finance leases" and "Credit facilities and obligations under finance leases - noncurrent" in the Consolidated Balance Sheets, respectively.

All lease liabilities are measured at the present value of the associated payments, discounted using the Company's incremental borrowing rate determined using a portfolio approach based on the rate of interest that the Company would pay to borrow an amount equal to the lease payments for a similar term and in a similar economic environment on a collateralized basis. ROU assets, for both operating and finance leases, are initially measured based on the lease liability, adjusted for initial direct costs, prepaid rent, and lease incentives received. Operating leases are subsequently amortized into lease cost on a straight-line basis. Depreciation of the finance lease ROU assets is subsequently calculated using the straight-line method over the shorter of the estimated useful lives or the expected lease terms and recorded in "Depreciation and amortization" on the Consolidated Statements of Operations.

**DRIVE SHACK INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

In addition to the fixed minimum payments required under the lease arrangements, certain leases require variable lease payments, which are payment of the excess of various percentages of gross revenue or net operating income over the minimum rental payments as well as payment of taxes assessed against the leased property. The leases generally also require the payment for the cost of insurance and maintenance. Variable lease payments are recognized when the associated activity occurs and contingency is resolved.

The Company has elected to combine lease and non-lease components for all lease contracts.

**Other Investments** — The Company owns an approximately 22% economic interest in a limited liability company which owns preferred equity in a commercial real estate project. The Company accounts for this investment as an equity method investment. As of March 31, 2020, and December 31, 2019, the carrying value of this investment was \$24.4 million and \$24.0 million, respectively. The Company evaluates its equity method investment for other-than-temporary impairment whenever events or changes in circumstances indicate that the carrying amount of the investment might not be recoverable. The evaluation of recoverability is based on management's assessment of the financial condition and near-term prospects of the commercial real estate project, the length of time and the extent to which the market value of the investment has been less than cost, availability and cost of financing, demand for space, competition for tenants, changes in market rental rates, and operating results. As these factors are difficult to predict and are subject to future events that may alter management's assumptions, the values estimated by management in its recoverability analyses may not be realized, and actual losses or impairment may be realized in the future. As the fair value inputs utilized are unobservable, the Company determined that the significant inputs used to value this real estate investment fall within Level 3 for fair value reporting.

**Impairment of Long-lived Assets** — The Company periodically reviews the carrying amounts of its long-lived assets, including real estate held-for-use and held-for-sale, as well as finite-lived intangible assets and right-of-use assets, to determine whether current events or circumstances indicate that such carrying amounts may not be recoverable. The assessment of recoverability is based on management's estimates by comparing the sum of the estimated undiscounted cash flows generated by the underlying asset, or other appropriate grouping of assets, to its carrying value to determine whether an impairment existed at its lowest level of identifiable cash flows. If the carrying amount is greater than the expected undiscounted cash flows, the asset is considered impaired and an impairment is recognized to the extent the carrying value of such asset exceeds its fair value. The Company generally measures fair value by considering sale prices for similar assets or by discounting estimated future cash flows using an appropriate discount rate.

**Other Current Assets**

The following table summarizes the Company's other current assets:

	March 31, 2020	December 31, 2019
Managed course receivables	\$ 3,434	\$ 5,426
Prepaid expenses	3,097	3,608
Deposits	962	1,374
Inventory	3,014	2,762
Miscellaneous current assets, net	3,459	4,351
Other current assets	\$ 13,966	\$ 17,521

**Other Assets**

The following table summarizes the Company's other assets:

	March 31, 2020	December 31, 2019
Prepaid expenses	\$ 604	\$ 317
Deposits	2,455	2,123
Miscellaneous assets, net	2,186	2,283
Other assets	\$ 5,245	\$ 4,723

**DRIVE SHACK INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

**Other Current Liabilities**

The following table summarizes the Company's other current liabilities:

	March 31, 2020	December 31, 2019
Operating lease liabilities	17,186	16,922
Accrued rent	2,586	2,769
Dividends payable	—	930
Miscellaneous current liabilities	3,595	3,343
Other current liabilities	<u>\$ 23,367</u>	<u>\$ 23,964</u>

**Other Liabilities**

The following table summarized the Company's other liabilities:

	March 31, 2020	December 31, 2019
Service obligation intangible	1,687	1,776
Miscellaneous liabilities	1,809	1,502
Other liabilities	<u>\$ 3,496</u>	<u>\$ 3,278</u>

**Membership Deposit Liabilities** - Private country club members in our Traditional Golf business generally pay an advance initiation fee deposit upon their acceptance as a member to the respective country club. Initiation fee deposits are refundable 30 years after the date of acceptance as a member. The difference between the initiation fee deposit paid by the member and the present value of the refund obligation is deferred and recognized into Golf operations revenue in the Consolidated Statements of Operations on a straight-line basis over the expected life of an active membership, which is estimated to be seven years. The present value of the refund obligation is recorded as a membership deposit liability in the Consolidated Balance Sheets and accretes over a 30-year nonrefundable term using the effective interest method. This accretion is recorded as interest expense in the Consolidated Statements of Operations.

**Recent Accounting Pronouncements**

In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-13 *Financial Instruments - Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments*. The standard changes how entities will measure credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. For available-for-sale debt securities, entities will be required to record allowances rather than reduce the carrying amount under the other-than-temporary impairment model. In November 2018, the FASB issued ASU 2018-19 *Codification Improvements to Topic 326, Financial Instruments - Credit Losses*, which clarifies that operating lease receivables accounted for under ASC 842 are not in the scope of this guidance. In April 2019, the FASB issued ASU 2019-04 *Codification Improvements to Topic 326, Financial Instruments - Credit Losses*, which addresses certain fair value disclosure requirements, the measurement basis under the measurement alternative and which equity securities have to be remeasured at historical exchange rates. In May 2019, the FASB issued *Financial Instruments - Credit Losses (Topic 326), Targeted Transition Relief*, which allows entities to elect to measure assets in the scope of ASC 326-20, using the fair value option when ASU 2016-13 is adopted. The effective date of the standards will be for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The Company adopted the standard on January 1, 2020. The adoption did not impact the Consolidated Financial Statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The standard removes certain exceptions for investments, intraperiod allocations and interim tax calculations and adds guidance to reduce complexity in accounting for income taxes. The effective date of the standard will be for annual periods beginning after December 15, 2020, with early adoption permitted. The various amendments in the standard are applied on a retrospective basis, modified retrospective basis and prospective basis, depending on the amendment. The Company is currently evaluating the new guidance to determine the impact it may have on its Consolidated Financial Statements.

**DRIVE SHACK INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

**3. REVENUES**

The majority of the Company's revenue is recognized at a point in time which is at the time of sale to customers at the Company's Entertainment Golf venues and Traditional Golf properties, including green fees, cart rentals, bay play, events and sales of food, beverages and merchandise. Revenue from membership dues is recognized in the month earned. Membership dues received in advance are included in deferred revenue and recognized as revenue ratably over the appropriate period, which is generally twelve months or less for private club members and the following month for The Players Club members.

The Company's revenue is all generated within the Entertainment and Traditional Golf segments. The following tables disaggregate revenue by category: Entertainment golf venues, public and private golf properties (owned and leased) and managed golf properties.

	Three Months Ended March 31, 2020				Total
	Ent. golf venues	Public golf properties	Private golf properties	Managed golf properties (A)	
Golf operations	\$ 3,910	\$ 16,023	\$ 13,655	\$ 15,037	\$ 48,625
Sales of food and beverages	6,207	4,285	2,018	—	12,510
Total revenues	\$ 10,117	\$ 20,308	\$ 15,673	\$ 15,037	\$ 61,135

	Three Months Ended March 31, 2019				Total
	Ent. golf venues	Public golf properties	Private golf properties	Managed golf properties (A)	
Golf operations	\$ 681	\$ 17,464	\$ 15,454	\$ 11,107	\$ 44,706
Sales of food and beverages	1,040	5,476	2,730	—	9,246
Total revenues	\$ 1,721	\$ 22,940	\$ 18,184	\$ 11,107	\$ 53,952

(A) Includes \$13.3 million for the three months ended March 31, 2020, and \$9.8 million for the three months ended March 31, 2019, due to management contract reimbursements reported under ASC 606.

**4. SEGMENT REPORTING**

The Company currently has three reportable segments: (i) Entertainment Golf venues, (ii) Traditional Golf properties and (iii) corporate. The chief operating decision maker ("CODM") for each segment is our Chief Executive Officer and President, who reviews discrete financial information for each reportable segment to manage the Company, including resource allocation and performance assessment.

The Company opened its first Entertainment Golf venue in Orlando, Florida, in April 2018. During the second half of 2019, the Company opened three Generation 2.0 core Entertainment Golf venues in Raleigh, North Carolina; Richmond, Virginia; and West Palm Beach, Florida.

Additionally, the Company's Traditional Golf business is one of the largest operators of golf properties in the United States. As of March 31, 2020, the Company owned, leased or managed 61 Traditional Golf properties across 9 states.

The corporate segment consists primarily of investments in loans and securities, interest income on short-term investments, general and administrative expenses as a public company, interest expense on the junior subordinated notes payable (Note 8) and income tax expense (Note 14).

**DRIVE SHACK INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

Summary financial data on the Company's segments is given below, together with a reconciliation to the same data for the Company as a whole:

	Entertainment Golf	Traditional Golf	Corporate	Total
<b>Three Months Ended March 31, 2020</b>				
<b>Revenues</b>				
Golf operations	\$ 3,910	\$ 44,715	\$ —	\$ 48,625
Sales of food and beverages	6,207	6,303	—	12,510
Total revenues	10,117	51,018	—	61,135
<b>Operating costs</b>				
Operating expenses	8,172	46,195	—	54,367
Cost of sales - food and beverages	1,610	2,045	—	3,655
General and administrative expense (A)	3,169	3,093	2,378	8,640
General and administrative expense - acquisition and transaction expenses (B)	34	122	1,022	1,178
Depreciation and amortization	3,020	3,703	71	6,794
Pre-opening costs (C)	552	—	—	552
Impairment and other losses	—	792	—	792
Total operating costs	16,557	55,950	3,471	75,978
Operating loss	(6,440)	(4,932)	(3,471)	(14,843)
<b>Other income (expenses)</b>				
Interest and investment income	1	15	114	130
Interest expense (D)	(105)	(2,147)	(526)	(2,778)
Capitalized interest (D)	—	9	24	33
Other (loss) income, net	—	(46)	413	367
Total other income (expenses)	(104)	(2,169)	25	(2,248)
Income tax expense	—	—	271	271
Net (loss) income	(6,544)	(7,101)	(3,717)	(17,362)
Preferred dividends	—	—	(1,395)	(1,395)
(Loss) income applicable to common stockholders	\$ (6,544)	\$ (7,101)	\$ (5,112)	\$ (18,757)
	Entertainment Golf	Traditional Golf	Corporate (E)	Total
<b>March 31, 2020</b>				
Total assets	164,212	299,573	37,638	501,423
Total liabilities	41,182	349,105	63,225	453,512
Preferred stock	—	—	61,583	61,583
Equity attributable to common stockholders	\$ 123,030	\$ (49,532)	\$ (87,170)	\$ (13,672)
Additions to property and equipment (including finance leases) during the three months ended March 31, 2020	\$ 4,240	\$ 1,894	\$ 403	\$ 6,537

**DRIVE SHACK INC. AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

Summary segment financial data (continued).

	Entertainment Golf	Traditional Golf	Corporate	Total
<b>Three Months Ended March 31, 2019</b>				
<b>Revenues</b>				
Golf operations	\$ 681	\$ 44,025	\$ —	\$ 44,706
Sales of food and beverages	1,040	8,206	—	9,246
Total revenues	1,721	52,231	—	53,952
<b>Operating costs</b>				
Operating expenses	1,747	45,976	—	47,723
Cost of sales - food and beverages	251	2,447	—	2,698
General and administrative expense (A)	3,379	3,897	3,944	11,220
General and administrative expense - acquisition and transaction expenses (B)	157	153	89	399
Depreciation and amortization	709	4,217	(2)	4,924
Pre-opening costs (C)	1,179	—	—	1,179
Impairment and other losses	—	4,088	—	4,088
Total operating costs	7,422	60,778	4,031	72,231
Operating loss	(5,701)	(8,547)	(4,031)	(18,279)
<b>Other income (expenses)</b>				
Interest and investment income	132	38	174	344
Interest expense (D)	(3)	(2,190)	(626)	(2,819)
Capitalized interest (D)	—	188	478	666
Other (loss) income, net	(7)	5,030	465	5,488
Total other income (expenses)	122	3,066	491	3,679
Income tax expense	—	—	—	—
Net loss	(5,579)	(5,481)	(3,540)	(14,600)
Preferred dividends	—	—	(1,395)	(1,395)
Loss applicable to common stockholders	\$ (5,579)	\$ (5,481)	\$ (4,935)	\$ (15,995)

(A) General and administrative expenses include severance expense in the amount of \$0.7 million for the three months ended March 31, 2020, and \$0.4 million for the three months ended March 31, 2019.

(B) Acquisition and transaction expenses include costs related to completed and potential acquisitions and transactions and strategic initiatives which may include advisory, legal, accounting and other professional or consulting fees.

(C) Pre-opening costs are expensed as incurred and consist primarily of site-related marketing expenses, lease expense, employee payroll, travel and related expenses, training costs, food, beverage and other operating expenses incurred prior to opening an Entertainment Golf venue.

(D) Interest expense includes the accretion of membership deposit liabilities in the amount of \$1.9 million for the three months ended March 31, 2020, and \$1.9 million for the three months ended March 31, 2019. Interest expense and capitalized interest are combined in interest expense, net on the Consolidated Statements of Operations.

(E) Total assets in the corporate segment include an equity method investment in the amount of \$24.4 million as of March 31, 2020 recorded in other investments on the Consolidated Balance Sheets.

**DRIVE SHACK INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

**5. PROPERTY AND EQUIPMENT, NET OF ACCUMULATED DEPRECIATION**

The following table summarizes the Company's property and equipment:

	March 31, 2020			December 31, 2019		
	Gross Carrying Amount	Accumulated Depreciation	Net Carrying Value	Gross Carrying Amount	Accumulated Depreciation	Net Carrying Value
Land	\$ 6,770	\$ —	\$ 6,770	\$ 6,770	\$ —	\$ 6,770
Buildings and improvements	146,474	(38,359)	108,115	147,146	(36,349)	110,797
Furniture, fixtures and equipment	53,459	(21,317)	32,142	52,327	(19,484)	32,843
Finance leases - equipment	34,107	(14,893)	19,214	36,166	(16,047)	20,119
Construction in progress	17,978	—	17,978	9,112	—	9,112
Total Property and Equipment	\$ 258,788	\$ (74,569)	\$ 184,219	\$ 251,521	\$ (71,880)	\$ 179,641

On March 7, 2018, the Company announced it was actively pursuing the sale of 26 owned Traditional Golf properties in order to generate capital for reinvestment in the Entertainment Golf business. As of March 31, 2020, the Company continues to present one golf property as held-for-sale. The assets and associated liabilities are reported on the Consolidated Balance Sheets as "Real estate assets, held-for-sale, net" and "Real estate liabilities, held-for-sale," respectively.

The real estate assets, held-for-sale, net are reported at a carrying value of \$7.0 million and include \$12.6 million of land, \$4.0 million of buildings and improvements, \$0.2 million of furniture, fixtures and equipment, and \$0.2 million of other related assets, partially offset by accumulated impairment.

During the three months ended March 31, 2019, the Company sold two public golf properties in Georgia and a private golf property in California for an aggregate sale price of \$28.7 million, resulting in net proceeds of \$25.5 million, inclusive of transaction costs of \$0.5 million. The Company received sale proceeds of \$17.7 million during the three months ended March 31, 2019, consisting of \$18.2 million for the golf properties sold during the three months ended March 31, 2019, and \$2.2 million for golf properties that were sold during December 2018, less \$2.7 million that was remitted to buyers for golf properties that were sold during December 2018. The Company previously received a \$9.4 million cash deposit in 2018 related to a golf property that was sold in 2019. The difference between the sales price and the net proceeds was primarily due to prepaid membership dues that we are obligated to remit to the buyer, including \$2.1 million payable to the buyer of a golf property sold during the three months ended March 31, 2019. The golf properties had a carrying value of \$20.3 million and resulted in a gain on sale of \$5.2 million. The gain on sale is recorded in other income (loss), net on the Consolidated Statement of Operations. Subsequent to the completion of the sale, the Company entered into a management agreement on the California golf property.

No golf properties were sold during the three months ended March 31, 2020.

**6. LEASES**

The Company's commitments under lease arrangements are primarily ground leases for Entertainment Golf venues and Traditional Golf properties and related facilities, office leases and leases for golf carts and equipment. The majority of lease terms for our Entertainment Golf venues and Traditional Golf properties and related facilities initially range from 10 to 20 years, and include up to eight 5-year renewal options (see Note 13 for additional detail). Equipment and golf cart leases initially range between 24 to 66 months and typically contain renewal options which may be on a month-to-month basis. An option to renew a lease is included in the determination of the ROU asset and lease liability when it is reasonably certain that the renewal option will be exercised.

Lease related costs recognized in the Consolidated Statements of Operations for the three months ended March 31, 2020 are as follows:

**DRIVE SHACK INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

	Three Months Ended March 31, 2020
<b>Finance lease cost</b>	
Amortization of right-of-use assets	\$ 1,532
Interest on lease liabilities	341
<b>Total finance lease cost</b>	<b>1,873</b>
<b>Operating lease cost</b>	
Operating lease cost	9,267
Short-term lease cost	428
Variable lease cost	2,788
<b>Total operating lease cost</b>	<b>12,483</b>
<b>Total lease cost</b>	<b>\$ 14,356</b>

Other information related to leases included on the Consolidated Balance Sheet as of and for the three months ended March 31, 2020 are as follows:

	Operating Leases	Financing Leases
Right-of-use assets	212,246	19,214
Lease liabilities	202,988	18,272
<b>Cash paid for amounts included in the measurement of lease liabilities</b>		
Operating cash flows	8,303	340
Financing cash flows	N/A	1,484
Right-of-use assets obtained in exchange for lease liabilities	2,459	1,028
Weighted average remaining lease term	12.6 years	3.4 years
Weighted average discount rate	8.3 %	7.3 %

Future minimum lease payments under non-cancellable leases as of March 31, 2020 are as follows:

	Operating Leases	Financing Leases
April 1, 2020 - December 31, 2020	24,277	5,508
2021	31,944	6,018
2022	30,673	4,454
2023	30,511	3,434
2024	24,659	1,284
Thereafter	202,618	90
Total minimum lease payments	344,682	20,788
Less: imputed interest	141,694	2,516
Total lease liabilities	<b>\$ 202,988</b>	<b>\$ 18,272</b>

**7. INTANGIBLES, NET OF ACCUMULATED AMORTIZATION**

The following table summarizes the Company's intangible assets:

**DRIVE SHACK INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

	March 31, 2020			December 31, 2019		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Value	Gross Carrying Amount	Accumulated Amortization	Net Carrying Value
Trade name	\$ 700	\$ (146)	\$ 554	\$ 700	\$ (140)	\$ 560
Management contracts	31,830	(17,435)	14,395	32,331	(17,342)	14,989
Internally-developed software	258	(40)	218	252	(27)	225
Membership base	5,236	(4,675)	561	5,236	(4,488)	748
Nonamortizable liquor licenses	1,052	—	1,052	1,043	—	1,043
Total Intangibles	\$ 39,076	\$ (22,296)	\$ 16,780	\$ 39,562	\$ (21,997)	\$ 17,565

**8. DEBT OBLIGATIONS**

The following table presents certain information regarding the Company's debt obligations at March 31, 2020 and December 31, 2019:

Debt Obligation/Collateral	Month Issued	March 31, 2020						December 31, 2019		
		Outstanding Face Amount	Carrying Value	Final Stated Maturity	Weighted Average Coupon	Weighted Average Funding Cost (A)	Weighted Average Life (Years)	Face Amount of Floating Rate Debt	Outstanding Face Amount	Carrying Value
<u>Credit Facilities and Finance Leases</u>										
Vineyard II	Dec 1993	\$ 200	\$ 200	Dec 2043	3.09%	3.09%	23.7	\$ 200	\$ 200	\$ 200
Finance leases (Equipment)	Jul 2014 - Mar 2020	18,272	18,272	Apr 2020 - Sep 2025	3.00% to 15.00%	7.33%	3.4	—	19,079	19,079
		18,472	18,472			7.28%	3.6	200	19,279	19,279
Less current portion of obligations under finance leases		6,004	6,004						6,154	6,154
Credit facilities and obligations under finance leases - noncurrent		12,468	12,468						13,125	13,125
<u>Corporate</u>										
Junior subordinated notes payable (B)	Mar 2006	51,004	51,190	Apr 2035	LIBOR+2.25%	3.99%	15.1	51,004	51,004	51,192
Total debt obligations		\$ 69,476	\$ 69,662			4.86%	12.0	\$ 51,204	\$ 70,283	\$ 70,471

(A) Including the effect of deferred financing costs.

(B) Interest rate based on 3 month LIBOR plus 2.25%. Collateral for this obligation is the Company's general credit.

**9. REAL ESTATE SECURITIES**

The following is a summary of the Company's real estate securities at March 31, 2020, which are classified as available-for-sale and are, therefore, reported at fair value with changes in fair value recorded in other comprehensive income, except for securities that are other-than-temporarily impaired.

Asset Type	Outstanding Face Amount	Amortized Cost Basis			Gross Unrealized		Carrying Value (A)	Number of Securities	Weighted Average				
		Before Impairment	Other-Than-Temporary Impairment	After Impairment	Gains	Losses			Rating (B)	Coupon	Yield	Life (Years) (C)	Principal Subordination (D)
ABS - Non-Agency RMBS	\$ 4,000	\$ 2,952	\$ (1,521)	\$ 1,431	\$ 1,672	\$ —	\$ 3,103	1	CCC	1.53%	30.37%	3.9	45.6%
Total Securities, Available for Sale (E)	\$ 4,000	\$ 2,952	\$ (1,521)	\$ 1,431	\$ 1,672	\$ —	\$ 3,103	1					

(A) See Note 10 regarding the estimation of fair value, which is equal to carrying value for all securities.

**DRIVE SHACK INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

- (B) Represents the weighted average of the ratings of all securities in each asset type, expressed as an S&P equivalent rating. For each security rated by multiple rating agencies, the lowest rating is used. Ratings provided were determined by third-party rating agencies, represent the most recent credit ratings available as of the reporting date and may not be current.
- (C) The weighted average life is based on the timing of expected cash flows on the assets.
- (D) Percentage of the outstanding face amount of securities and residual interests that is subordinate to the Company's investments.
- (E) The total outstanding face amount was \$4.0 million for floating rate securities. The collateral securing the ABS - Non-Agency RMBS is located in various geographical regions in the U.S. The Company does not have significant investments in any geographic region.

The Company had no securities in an unrealized loss position as of March 31, 2020.

**10. FAIR VALUE OF FINANCIAL INSTRUMENTS*****Fair Value Summary Table***

The following table summarizes the carrying values and estimated fair values of the Company's financial instruments at March 31, 2020:

	Carrying Value	Estimated Fair Value	Fair Value Method (A)
<b>Assets</b>			
Real estate securities, available-for-sale	\$ 3,103	\$ 3,103	Pricing models - Level 3
Cash and cash equivalents	16,785	16,785	
Restricted cash, current and noncurrent	3,554	3,554	
<b>Liabilities</b>			
Junior subordinated notes payable	51,190	5,459	Pricing models - Level 3

- (A) Pricing models are used for (i) real estate securities that are not traded in an active market, and, therefore, have little or no price transparency, and for which significant unobservable inputs must be used in estimating fair value, or (ii) debt obligations which are private and untraded.

**Fair Value Measurements*****Valuation Hierarchy***

The fair value of financial instruments is categorized based on the priority of the inputs to the valuation technique and categorized into a three-level fair value hierarchy. The fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). The Company follows this hierarchy for its financial instruments measured at fair value.

Level 1 - Quoted prices in active markets for identical instruments.

Level 2 - Valuations based principally on observable market parameters, including

- quoted prices for similar assets or liabilities in active markets,
- inputs other than quoted prices that are observable for the asset or liability (such as interest rates and yield curves observable at commonly quoted intervals, implied volatilities and credit spreads), and
- market corroborated inputs (derived principally from or corroborated by observable market data).

Level 3 - Valuations determined using unobservable inputs that are supported by little or no market activity, and that are significant to the overall fair value measurement.

The Company's real estate securities and debt obligations are currently not traded in active markets and therefore have little or no price transparency. As a result, the Company has estimated the fair value of these illiquid instruments based on internal pricing models subject to the Company's controls described below.

The Company has various processes and controls in place to ensure that fair value measurements are reasonably estimated. With respect to broker and pricing service quotations, and in order to ensure these quotes represent a reasonable estimate of fair value, the Company's quarterly procedures include a comparison of such quotations to quotations from different sources, outputs generated from its internal pricing models and transactions completed, as well as on its knowledge and experience of these markets. With respect to fair value estimates generated based on the Company's internal pricing models, the Company's management validates the inputs and outputs of the internal pricing models by comparing them to available independent third-party market parameters and

**DRIVE SHACK INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

models, where available, for reasonableness. The Company believes its valuation methods and the assumptions used are appropriate and consistent with other market participants.

Fair value measurements categorized within Level 3 are sensitive to changes in the assumptions or methodologies used to determine fair value and such changes could result in a significant increase or decrease in the fair value. For the Company's investments in real estate securities categorized within Level 3 of the fair value hierarchy, the significant unobservable inputs include the discount rates, assumptions relating to prepayments, default rates and loss severities.

**Significant Unobservable Inputs**

The following table provides quantitative information regarding the significant unobservable inputs used by the Company for assets and liabilities measured at fair value on a recurring basis as of March 31, 2020:

Asset Type	Amortized Cost Basis	Fair Value	Weighted Average Significant Input			
			Discount Rate	Prepayment Speed	Cumulative Default Rate	Loss Severity
ABS - Non-Agency RMBS	\$ 1,431	\$ 3,103	10.0%	8.0%	2.6%	70.0%

All of the inputs used have some degree of market observability, based on the Company's knowledge of the market, relationships with market participants, and use of common market data sources. Collateral prepayment, default and loss severity projections are in the form of "curves" or "vectors" that vary for each monthly collateral cash flow projection. Methods used to develop these projections vary by asset class but conform to industry conventions. The Company uses assumptions that generate its best estimate of future cash flows of each respective security.

Real estate securities measured at fair value on a recurring basis using Level 3 inputs changed during the three months ended March 31, 2020 as follows:

	ABS - Non-Agency RMBS	
Balance at December 31, 2019	\$	3,052
Total gains (losses) (A)		
Included in other comprehensive income (loss)		(38)
Amortization included in interest income		109
Purchases, sales and repayments (A)		
Proceeds		(20)
Balance at March 31, 2020	\$	3,103

(A) None of the gains (losses) recorded in earnings during the period are attributable to the change in unrealized gains (losses) relating to Level 3 assets still held at the reporting dates. There were no purchases or sales during the three months ended March 31, 2020. There were no transfers into or out of Level 3 during the three months ended March 31, 2020.

**Liabilities for Which Fair Value is Only Disclosed**

The following table summarizes the level of the fair value hierarchy, valuation techniques and inputs used for estimating each class of liabilities not measured at fair value in the statement of financial position but for which fair value is disclosed:

Type of Liabilities Not Measured At Fair Value for Which Fair Value Is Disclosed	Fair Value Hierarchy	Valuation Techniques and Significant Inputs
Junior subordinated notes payable	Level 3	Valuation technique is based on discounted cash flows. Significant inputs include: <ul style="list-style-type: none"> <li>• Amount and timing of expected future cash flows</li> <li>• Interest rates</li> <li>• Market yields and the credit spread of the Company</li> </ul>

**DRIVE SHACK INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

**11. EQUITY AND EARNINGS PER SHARE**

**A. Stock Options**

The following is a summary of the changes in the Company's outstanding options for the three months ended March 31, 2020:

	Number of Options	Weighted Average Strike Price	Weighted Average Life Remaining (in years)
Balance at December 31, 2019	6,898,346	\$ 3.26	
Expired	(1,117,118)	5.44	
Forfeited	(770,652)	4.74	
Balance at March 31, 2020	5,010,576	\$ 2.55	2.92
Exercisable at March 31, 2020	3,702,422	\$ 2.56	2.94

As of March 31, 2020, the Company's outstanding options were summarized as follows:

	Number of Options
Held by the former Manager	3,627,245
Issued to the former Manager and subsequently transferred to certain of the Manager's employees (A)	1,382,998
Issued to the independent directors	333
Issued to Drive Shack employees	—
Total	5,010,576
Weighted average strike price	\$ 2.55

(A) The Company and the former Manager agreed that options held by certain employees formerly employed by the Manager would not terminate or be forfeited as a result of the Termination and Cooperation Agreement, and the vesting of such options relate to the relevant holder's employment with the Company and its affiliates following January 1, 2018. In both February 2017 and April 2018, the former Manager issued 1,152,495 options to certain employees formerly employed by the Manager as part of their compensation. The options fully vest and are exercisable one year prior to the option expiration date, beginning March 2020 through January 2024. In July 2019, a certain employee was terminated by the Company and 921,992 options reverted back to the former Manager.

Stock-based compensation expense is recognized on a straight-line basis through the vesting date of the options. Stock-based compensation expense related to the employee options was \$(0.1) million during the three months ended March 31, 2020, and \$1.2 million during the three months ended March 31, 2019, and was recorded in general and administrative expense on the Consolidated Statements of Operations. The unrecognized stock-based compensation expense related to the unvested options was \$2.0 million as of March 31, 2020 and will be expensed over a weighted average of 2.2 years.

**B. Restricted Stock Units ("RSUs")**

The following is a summary of the changes in the Company's RSUs for the three months ended March 31, 2020.

**DRIVE SHACK INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

	Number of RSUs	Weighted Average Grant Date Fair Value (per unit)
Balance at December 31, 2019	520,618	\$ 4.66
Released	(1,762)	\$ 4.73
Forfeited	(67,248)	\$ 4.58
Balance at March 31, 2020	<u>451,608</u>	<u>\$ 4.67</u>

The Company grants RSUs to the non-employee directors as part of their annual compensation. The RSUs are subject to a one year vesting period. During the three months ended March 31, 2020, the Company granted no RSUs to non-employee directors and no RSUs granted to non-employee directors vested. The Company also grants RSUs to employees as part of their annual compensation. The RSUs vest in equal annual installments on each of the first three anniversaries of the grant date. During the three months ended March 31, 2020, the Company granted no RSUs to employees. Stock-based compensation expense is recognized on a straight-line basis through the vesting date of the RSUs. Stock-based compensation expense related to RSUs was \$0.3 million during the three months ended March 31, 2020, respectively, and less than \$0.1 million for the three months ended March 31, 2019. Stock-based compensation expense was recorded in general and administrative expense on the Consolidated Statements of Operations. The unrecognized stock-based compensation expense related to the unvested RSUs was \$1.3 million as of March 31, 2020 and will be expensed over a weighted average of 2.0 years.

**C. Dividends**

On November 11, 2019, the Company declared dividends of \$0.609375, \$0.503125 and \$0.523438 per share on the 9.750% Series B, 8.050% Series C and 8.375% Series D preferred stock, respectively, for the period beginning November 1, 2019 and ending January 31, 2020. Dividends totaling \$1.4 million were paid on January 31, 2020. No dividends were declared during the three months ended March 31, 2020.

**D. Earnings Per Share**

The following table shows the Company's basic and diluted earnings per share ("EPS"):

	Three Months Ended March 31,	
	2020	2019
Numerator for basic and diluted earnings per share:		
Loss from continuing operations after preferred dividends and noncontrolling interests	\$ (18,757)	\$ (15,995)
Loss Applicable to Common Stockholders	<u>\$ (18,757)</u>	<u>\$ (15,995)</u>
Denominator:		
Denominator for basic earnings per share - weighted average shares	67,069,534	67,027,104
Effect of dilutive securities		
Options	—	—
RSUs	—	—
Denominator for diluted earnings per share - adjusted weighted average shares	<u>67,069,534</u>	<u>67,027,104</u>
Basic earnings per share:		
Loss from continuing operations per share of common stock, after preferred dividends and noncontrolling interests	\$ (0.28)	\$ (0.24)
Loss Applicable to Common Stock, per share	<u>\$ (0.28)</u>	<u>\$ (0.24)</u>
Diluted earnings per share:		
Loss from continuing operations per share of common stock, after preferred dividends and noncontrolling interests	\$ (0.28)	\$ (0.24)
Loss Applicable to Common Stock, per share	<u>\$ (0.28)</u>	<u>\$ (0.24)</u>

## DRIVE SHACK INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

MARCH 31, 2020

(dollars in tables in thousands, except share data)

---

The Company's dilutive securities are outstanding stock options and RSUs. During the three months ended March 31, 2020, based on the treasury stock method, the Company had 964,335 potentially dilutive securities, which were excluded due to the Company's loss position. During the three months ended March 31, 2019, based on the treasury stock method, the Company had 2,233,692 potentially dilutive securities.

## 12. TRANSACTIONS WITH AFFILIATES AND AFFILIATED ENTITIES

### Agreements with the Former Manager

At March 31, 2020, Fortress, through its affiliates, and principals of Fortress, owned 9.0 million shares of the Company's common stock and Fortress, through its affiliates, had options relating to an additional 3.6 million shares of the Company's common stock (Note 11).

### Other Affiliated Entities

The Company incurred expenses for services of Ms. Khouri prior to execution of an employment agreement, which will be reimbursed to an affiliate of a member of the Board of Directors, subject to Board approval. The Company accrued \$0.2 million in compensation expense for the year ended December 31, 2019, and an additional \$0.1 million for the three months ended March 31, 2020.

## 13. COMMITMENTS AND CONTINGENCIES

**Legal Contingencies** - The Company is and may become, from time to time, involved in legal actions in the ordinary course of business, including governmental and administrative investigations, inquiries and proceedings concerning employment, labor, environmental, personal injury and other claims. Although management is unable to predict with certainty the eventual outcome of any legal action, management believes the ultimate liability arising from such actions, individually and in the aggregate, which existed at March 31, 2020, will not materially affect the Company's consolidated results of operations, financial position or cash flow. Given the inherent unpredictability of these types of proceedings, however, it is possible that future adverse outcomes could have a material effect on our financial results.

**Commitments** - As of March 31, 2020, the Company has additional operating leases that have not yet commenced of \$98.0 million. The leases are expected to commence over the next 12 - 24 months with lease terms of approximately 10 - 20 years. These leases are primarily real estate leases for future Entertainment Golf venues and the commencement of these leases is contingent on completion of due diligence and satisfaction of certain contingencies which generally occurs prior to construction.

## 14. INCOME TAXES

The Company's income tax provision (benefit) for interim periods is determined using an estimate of the Company's annual effective tax rate, adjusted for discrete items, if any, that are taken into account in the relevant period.

The Company's income tax provision was \$0.3 million for the three months ended March 31, 2020. There was no income tax provision for the three months ended March 31, 2019. The increase in the income tax provision is due to tax on excess inclusion income and an increase in unrecognized tax benefits related to the current period.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences become deductible.

The Company recorded a valuation allowance against its deferred tax assets as of March 31, 2020 as management does not believe that it is more likely than not that the deferred tax assets will be realized.

The Company and its subsidiaries file U.S. federal and state income tax returns in various jurisdictions. Generally, the Company is no longer subject to tax examinations by tax authorities for years prior to 2016.

At December 31, 2019, the Company reported a total liability for unrecognized tax benefits of \$1.2 million. During the three months ended March 31, 2020, the Company increased the liability by \$0.1 million. The Company does not anticipate any significant increases or decreases to the balance of unrecognized tax benefits during the next 12 months.

**DRIVE SHACK INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

MARCH 31, 2020

(dollars in tables in thousands, except share data)

On March 27, 2020, as part of the business stimulus package in response to the COVID-19 pandemic, the U.S. government enacted the CARES Act. The CARES Act established new tax provisions including, but not limited to: (1) five-year carryback of NOLs generated in 2018, 2019 and 2020, and a temporary suspension of certain other limitations on the use of NOLs; (2) accelerated refund of AMT credit carryforwards; and (3) retroactive changes to allow accelerated depreciation for certain depreciable property. The legislation does not have a material impact on the Company's tax positions due to the lack of taxable income in the carryback periods and the fact the Company was already expecting to receive a cash benefit for the remaining AMT credits in 2020.

**15. IMPAIRMENT AND OTHER LOSSES**

The following table summarizes the amounts the Company recorded in the Consolidated Statements of Operations:

	Three Months Ended March 31,	
	2020	2019
Traditional golf properties (held-for-sale)	\$ —	\$ 952
Traditional golf properties (held-for-use)	792	3,136
Total impairment and other losses	\$ 792	\$ 4,088

*Held-for-Sale Impairment:* For the three months ended March 31, 2019, the Company recognized impairment losses and recorded accumulated impairment totaling approximately \$1.0 million on two golf properties. The fair value measurements were based on expected selling prices, less costs to sell. The significant inputs used to value these real estate investments fall within Level 3 for fair value reporting.

*Held-for-Use Impairment:* For the three months ended March 31, 2020, the Company recorded impairment charges totaling \$0.8 million for one property. For the three months ended March 31, 2019, the Company recorded impairment charges totaling \$3.1 million for one golf property. The Company evaluated the recoverability of the carrying value of these assets using the income approach based on future assumptions of cash flows. As the fair value inputs utilized are unobservable, the Company determined that the significant inputs used to value these properties fall within Level 3 for fair value reporting.

**16. SUBSEQUENT EVENTS**

*Preferred Dividends in Arrears* - No dividends on Drive Shack Inc.'s cumulative preferred stock have been declared during 2020, and as of the date of this Quarterly Report on Form 10-Q, \$1.4 million of dividends on Drive Shack Inc.'s cumulative preferred stock were unpaid and in arrears.

*Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")* - On March 27, 2020, Congress enacted the CARES Act to provide certain relief in response to the COVID-19 pandemic. The CARES Act includes numerous tax provisions and other stimulus measures. See Note 14 in Part I, Item 1 "Financial Statements" for additional information.

This legislation was enacted during the period covered by this Form 10-Q, but the effective date is subsequent to March 31, 2020. We continue to evaluate applicability and benefits of the provisions and stimulus measures being provided under the CARES Act to determine its impacts to the Company.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management's discussion and analysis of financial condition and results of operations is intended to help the reader understand the results of operations and financial condition of Drive Shack Inc., which is referred to, together with its subsidiaries as Drive Shack Inc. or the Company. The following should be read in conjunction with the unaudited Consolidated Financial Statements and notes thereto and with Part II, Item 1A. "Risk Factors" included herein.

### GENERAL

The Company is an owner and operator of golf-related leisure and "eatertainment" venues focused on bringing people together through competitive socializing. The Company, a Maryland corporation, was formed in 2002 and its common stock is traded on the NYSE under the symbol "DS."

#### *Covid-19 Pandemic*

In March 2020, a global pandemic was declared by the World Health Organization related to the rapidly growing outbreak of a novel strain of coronavirus ("COVID-19"). In response to the pandemic, many states and localities in which we operate have issued stay-at-home orders and other social distancing measures, in addition to mandatory store closures, capacity limitations and other restrictions affecting our operations. Between March 19 and March 20, 2020, we temporarily closed all of our entertainment golf and substantially all of our traditional golf venues. As of May 7, 2020, all of our golf entertainment venues were temporarily closed and 30 of our traditional golf courses were temporarily closed.

In response to the uncertainty of the circumstances described above, we continue to implement plans to adapt to changing circumstances arising from this pandemic. We have constructed a plan to enhance cleaning, sanitizing and handwashing protocols, as well as to provide masks, gloves, hand sanitizers and other protective equipment necessary to ensure the safety of our employees and guests. In addition, we expect to re-open our golf entertainment venues located in Florida in May, subject, in the case of West Palm Beach, to the expansion of the state's re-opening order to include Palm Beach county.

To further preserve our liquidity, we have also taken the following measures to reduce costs: (i) suspended all non-essential capital expenditures, including the suspension of all capital expenditures for design and construction of future venues; (ii) furloughed or laid off a substantial majority of our personnel; (iii) deferred cash compensation for our Board of Directors; (iv) undertook significant reductions in staffing and operating expenses across all venues; and (v) suspended payment of all 2019 bonuses. Additionally, we are undertaking conversations with landlords to discuss potential deferral or abatement of rent payments.

As we plan for re-opening in our entertainment golf segment, albeit in a restricted and modified capacity, we will work closely with local authorities, Centers for Disease Control ("CDC") guidelines and our landlords during the process, and will follow any and all social distancing and other safety restrictions and recommendations.

As we move through this transition, we expect to incur some labor inefficiencies as we adjust to new protocols and operating models with a goal to remain as efficient as possible, while still offering safe and high quality service to our communities. We will also incur additional costs and investments in supplies necessary to keep our teams and guests safe, such as face coverings, gloves and additional secure packaging for all orders, directional signage and cleaning supplies, which are all expected to be ongoing for a period of time. Given the dynamic and unpredictable nature of this situation, we cannot reasonably estimate the impacts of COVID-19 on our financial condition, results of operations or cash flows in the future. However, we expect the impact to continue to have a material adverse impact on our revenues, results of operations and cash flows. We will continue to monitor the rapidly evolving situation and guidance from international and domestic authorities.

#### *CARES Act*

On March 27, 2020, Congress enacted the CARES Act to provide certain relief in response to the COVID-19 pandemic. The CARES Act includes numerous tax provisions and other stimulus measures. See Note 14 in Part I, Item 1 "Financial Statements" for additional information.

This legislation was enacted during the period covered by this Form 10-Q, but the effective date is subsequent to March 31, 2020. We continue to evaluate applicability and benefits of the provisions and stimulus measures being provided under the CARES Act to determine its impacts to the Company.

In April 2020, four of our subsidiaries entered into notes payable with J.P. Morgan pursuant to the Paycheck Protection Program Loan under the CARES Act, in an aggregate principal amount equal to \$5,276,742. On May 1, 2020, we returned the entire outstanding balance, inclusive of interest.

We conduct our business through two primary operating segments:

- **Entertainment Golf | Drive Shack**

Drive Shack is a golf-related leisure and “eatertainment” company that offers sports and social entertainment with gaming and premier golf technology, a chef-inspired menu, craft cocktails, and engaging social events throughout the year. Each core Drive Shack venue features expansive, climate-controlled, suite style bays with lounge seating; augmented-reality golf games and virtual course play; a restaurant and multiple bars; an outdoor patio with lawn games; and arcade games.

During the second half of 2019, we opened three Generation 2.0 core Drive Shack venues in Raleigh, North Carolina; Richmond, Virginia and West Palm Beach, Florida.

We opened our first Drive Shack venue in Orlando, Florida, in April 2018, which has largely served as our research and development and testing venue. During the fourth quarter of 2019, we briefly closed this venue to retrofit with Generation 2.0 enhancements, including new ball tracking technology (Trackman™), enhanced gaming and a redesigned outfield to provide a more engaging guest experience.

- **Traditional Golf | American Golf**

American Golf, acquired by the Company in December 2013, is one of the largest operators of golf properties in the United States. As an owner, lessee, and manager of golf courses and country clubs for over 45 years, we believe American Golf is one of the most experienced operators in the traditional golf industry. As of March 31, 2020, we owned, leased or managed 61 properties across 9 states and have approximately 37,000 members. American Golf is focused on delivering lasting experiences for our guests, who played over 475,000 rounds at our properties during the three months ended March 31, 2020.

Our operations are organized into three principal revenue-generating categories: (1) public properties (leased and owned), (2) private properties (leased and owned) and (3) managed properties (public and private). We organize our operations in this manner due to the nature of the revenue streams generated by these properties.

*Public Properties.* Our 33 leased or owned public properties generate revenues principally through daily green fees, golf cart rentals and food, beverage and merchandise sales. Amenities at these properties generally include practice facilities, pro shops and food and beverage facilities. In some cases, our public properties have larger clubhouses with extensive banquet facilities. In addition, The Players Club is a monthly membership program offered at most of our public properties, with membership benefits ranging from daily range access and off-peak access to the ability to participate in golf clinics, in return for a monthly membership fee.

*Private Properties.* Our five leased or owned private properties are open to members and their guests and generate revenues principally through initiation fees, membership dues, food, beverage and merchandise sales, and guest fees. Amenities at these courses typically include practice facilities, full-service clubhouses with a pro shop, locker room facilities and multiple food and beverage outlets, including grills, restaurants and banquet facilities.

*Managed Properties.* Our 23 managed properties are managed by American Golf pursuant to management agreements with the owners of each property. We recognize revenue from each of these properties in an amount equal to a management fee and the reimbursements of certain operating costs.

## MARKET CONSIDERATIONS

Our ability to execute our business strategy, particularly the development of our Entertainment Golf business, depends to a degree on our ability to monetize our remaining investments in loans and securities, optimize our Traditional Golf business, including sales of certain owned properties, and obtain additional capital. We have substantially monetized our historical investments in loans and securities and have a small number of positions remaining that we could sell or use as collateral or support in a lending transaction. We last raised capital through the equity markets in 2014, and rising interest rates or stock market volatility could impair our ability to raise equity capital on attractive terms.

Our ability to generate income is dependent on, among other factors, our ability to raise capital and finance properties on favorable terms, deploy capital on a timely basis at attractive returns, and exit properties at favorable yields. Market conditions

outside of our control, such as interest rates, inflation, consumer discretionary spending and stock market volatility affect these objectives in a variety of ways.

#### Entertainment Golf Business

Our ability to open our targeted number of Entertainment Golf related venue formats in 2020 and beyond will depend on many factors, including our ability to identify sites that meet our requirements and negotiate acceptable purchase or lease terms. There is competition within the bid process, and land development and construction are subject to obtaining the necessary regulatory approvals. Delays in these processes, as well as completing construction and recruiting and training the necessary talent, could impact our business.

Trends in consumer spending, as well as climate and weather patterns, could have an impact on the markets in which we currently or will in the future operate. In addition, our Entertainment Golf business could be impacted on a season-to-season basis, based upon corporate event and social gatherings during peak and off-peak times.

#### Traditional Golf Business

Our Traditional Golf business is subject to trends in consumer discretionary spending, as well as climate and weather patterns, which has a significant impact on the markets in which we operate. Traditional Golf is generally subject to seasonal fluctuations caused by significant reductions in golf activities due to shorter days and colder temperatures in the first and fourth quarters of each year. Consequently, a significantly larger portion of our revenue from our Traditional Golf operations is earned in the second and third quarters of our fiscal year. In addition, severe weather patterns can also negatively impact our results of operations.

While consumer spending in the Traditional Golf industry has not grown in recent years, we believe improving economic conditions and improvements in local housing markets have helped and will continue to help drive membership growth and increase the number of golf rounds played. In addition, we believe growth in related industries, including leisure, fitness and entertainment, may positively impact our Traditional Golf business.

### **APPLICATION OF CRITICAL ACCOUNTING POLICIES**

Management's discussion and analysis of financial condition and results of operations is based upon our Consolidated Financial Statements, which have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The preparation of financial statements in conformity with GAAP requires the use of estimates and assumptions that could affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities and the reported amounts of revenue and expenses.

Our estimates are based on information available to management at the time of preparation of the Consolidated Financial Statements, including the result of historical analysis, our understanding and experience of the Company's operations, our knowledge of the industry and market-participant data available to us.

Actual results have historically been in line with management's estimates and judgments used in applying each of the accounting policies and management periodically re-evaluates accounting estimates and assumptions. Actual results could differ from these estimates and materially impact our Consolidated Financial Statements. However, the Company does not expect our assessments and assumptions to materially change in the future. There have been no significant changes to our critical accounting policies as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019. See Note 2 in Part I, Item 1 "Financial Statements" for additional information.

#### *Recent Accounting Pronouncements*

See Note 2 in Part I, Item 1. "Financial Statements" for information about recent accounting pronouncements.

## RESULTS OF OPERATIONS

The following tables summarize the changes in our results of operations for the three months ended March 31, 2020 and 2019 (dollars in thousands):

	Three Months Ended March 31,		Increase (Decrease)	
	2020	2019	Amount	%
<b>Revenues</b>				
Golf operations (A)	\$ 48,625	\$ 44,706	\$ 3,919	8.8 %
Sales of food and beverages	12,510	9,246	3,264	35.3 %
Total revenues	61,135	53,952	7,183	13.3 %
<b>Operating costs</b>				
Operating expenses (A)	54,367	47,723	6,644	13.9 %
Cost of sales - food and beverages	3,655	2,698	957	35.5 %
General and administrative expense	9,818	11,619	(1,801)	(15.5)%
Depreciation and amortization	6,794	4,924	1,870	38.0 %
Pre-opening costs	552	1,179	(627)	(53.2)%
Impairment and other losses	792	4,088	(3,296)	(80.6)%
Total operating costs	75,978	72,231	3,747	5.2 %
<b>Operating loss</b>	<b>(14,843)</b>	<b>(18,279)</b>	<b>(3,436)</b>	<b>(18.8)%</b>
<b>Other income (expenses)</b>				
Interest and investment income	130	344	(214)	(62.2)%
Interest expense, net	(2,745)	(2,153)	592	27.5 %
Other income (loss), net	367	5,488	(5,121)	93.3 %
Total other income (expenses)	(2,248)	3,679	(5,927)	161.1 %
<b>Loss before income tax</b>	<b>\$ (17,091)</b>	<b>\$ (14,600)</b>	<b>\$ 2,491</b>	<b>17.1 %</b>

(A) Includes \$13.3 million for the three months ended March 31, 2020, and \$9.8 million for the three months ended March 31, 2019, due to management contract reimbursements reported under ASC 606.

### Revenues from Golf Operations

Revenues from golf operations increased by \$3.9 million primarily due to increases of: (i) \$4.0 million in our Traditional Golf business at courses operating in both periods, primarily due to an increase in rounds played, (ii) \$4.0 million in revenues from management contracts including \$3.6 million of reimbursed expenses, and (iii) \$3.2 million in our Entertainment Golf business due to having four venues in operation in 2020 compared with one in 2019, partially offset by decreases of (iv) \$3.7 million due to fewer Traditional Golf properties owned or operated in 2020, and (v) \$3.6 million in our Traditional Golf business primarily due to course closures in March 2020 in response to the COVID-19 pandemic.

### Sales of Food and Beverages

Sales of food and beverages increased by \$3.3 million primarily due to increases of: (i) \$5.2 million in our Entertainment Golf business due to having four venues in operation in 2020 compared with one in 2019, partially offset by decreases of (ii) \$0.7 million due to fewer Traditional Golf properties owned or operated in 2020 and (ii) \$1.2 million primarily due to closure of courses related to the COVID-19 pandemic.

### Operating Expenses

Operating expenses increased by \$6.6 million primarily due to increases of (i) \$6.4 million in our Entertainment Golf business due to having four venues in operation in 2020 compared with one in 2019, (ii) \$3.6 million of reimbursed expenses from management contracts, and (iii) \$2.1 million in our Traditional Golf business at courses operating in both periods, primarily due to hourly labor and variable rent expenses consistent with the revenue increases, partially offset by decreases of (iv) \$4.4 million

due to fewer Traditional Golf properties owned or operated in 2019, and (v) \$1.2 million decrease in variable expenses in our Traditional Golf business primarily due to course closures in March 2020 in response to the COVID-19 pandemic.

#### **Cost of Sales - Food and Beverages**

Cost of sales - food and beverages increased by \$1.0 million primarily due to an increase of \$1.4 million in our Entertainment Golf business due to having four venues in operation in 2020 compared with one in 2019, partially offset by a decrease of \$0.4 million in our Traditional Golf business due to fewer Traditional Golf properties owned or operated in 2020.

#### **General and Administrative Expense (including Acquisition and Transaction Expense)**

General and administrative expense decreased by \$1.8 million primarily due to decreases of: (i) \$1.0 million stock-based compensation due to departures of executive officers between the two periods and (ii) \$0.9 million of bonus expenses while the Company re-evaluates incentive compensation structures in light of the COVID-19 pandemic.

#### **Depreciation and Amortization**

Depreciation and amortization increased by \$1.9 million due to an increase of \$2.3 million in depreciation on assets placed into service in our Entertainment Golf business for three venues in Raleigh, North Carolina; Richmond, Virginia; and West Palm Beach, Florida in August, September and October 2019, respectively, and on assets placed in service for the renovation of our Orlando, Florida venue in November 2019, partially offset by a reduction in depreciation due to Traditional Golf properties that were sold and exited in 2019.

#### **Pre-Opening Costs**

Pre-opening expenses decreased by \$0.6 million primarily due to costs associated with the opening of three new 2.0 Entertainment Golf venues in 2019.

#### **Impairment and Other Losses**

During the three months ended March 31, 2020, we recorded \$0.8 million impairment on one Traditional Golf property. During the three months ended March 31, 2019, we recorded \$4.1 million impairment on three Traditional Golf properties.

#### **Interest and Investment Income**

Interest and investment income decreased by \$0.2 million primarily due to lower balances in interest bearing cash accounts.

#### **Interest Expense, Net**

Interest expense, net increased by \$0.6 million primarily due to a decrease of interest expense capitalized into construction in progress balances associated with the opening of three 2.0 Entertainment Golf venues in 2019 compared to one Entertainment Golf venue with significant construction activities in 2020.

#### **Other Income (Loss), Net**

Other income (loss), net decreased by \$5.1 million primarily due to a decrease of \$5.2 million in gains on the sale of Traditional Golf properties, as three courses were sold in 2019 compared to no courses sold in 2020.

### **LIQUIDITY AND CAPITAL RESOURCES**

#### *Sources and Uses of Capital*

Our primary sources of liquidity are our current balances of cash and cash equivalents. As of March 31, 2020, we had \$16.8 million of available cash. We also generated capital through completing the sales of 24 of our 26 owned Traditional Golf properties, which were completed by December 31, 2019. The proceeds generated by these transactions were reinvested in our Entertainment Golf business and used to pay overhead expenses.

Our primary cash needs are capital expenditures for developing and opening new core Drive Shack and new small-store urban box venues, remodeling and maintaining existing facilities, funding working capital, operating and finance lease obligations, servicing our debt obligations, paying dividends on our preferred stock, and for general corporate purposes.

The Company's growth strategy is capital intensive and our ability to execute is dependent upon many factors, including the current and future operating performance of our Entertainment Golf venues and Traditional Golf properties, the pace of expansion, real estate markets, site locations, our ability to raise financing and the nature of the arrangements negotiated with landlords.

In March 2020, we temporarily closed all of our entertainment golf and substantially all of our traditional golf venues, eliminating substantially all of the Company's revenue sources. The Company currently expects these developments to result in a material adverse impact on its revenues, results of operations and cash flows and to raise substantial doubt about its ability to continue as a going concern. As we plan for golf entertainment and traditional golf courses to re-open, we will work closely with local authorities, CDC guidelines and our landlords during the process, and will follow any and all social distancing and other safety restrictions and recommendations.

The ability of the Company to continue operations is dependent on the degree of success of management's plans to manage existing cash balances during the closure and to obtain additional financing to fund its short-term liquidity requirements. In order to manage existing cash balances, management reduced spending broadly, including furloughing a substantial majority of our employees, paused construction on future planned venues to reduce capital spending, and suspended declaration of dividends on our preferred stock, and also deferred payment of certain operating and corporate expenditures. The Company is actively seeking to sell its remaining Traditional Golf property that is held-for-sale and believes a sale is probable of occurring and would mitigate the substantial doubt raised by the COVID-19 pandemic and satisfy the Company's estimated liquidity needs through 12 months from the issuance of the financial statements. The Company is also exploring additional debt financing, including potential financing options made available under the CARES Act, public or private equity issuances, and additional ways to strategically monetize our remaining real estate securities and other investments. However, there is no assurance that the Company will be successful in raising additional capital or that such additional funds will be available on acceptable terms, if at all.

We continually monitor market conditions for these financing and capital opportunities, and, at any given time, may enter into or pursue one or more of the transactions described above. However, we cannot ensure that capital will be available on reasonable terms, if at all.

For a further discussion of risks that could affect our liquidity, access to capital resources and our capital obligations, see Part II, Item 1A. "Risk Factors" of this Quarterly Report on Form 10-Q. If our assumptions about our liquidity prove to be incorrect, we could be subject to a shortfall in liquidity in the future, and this shortfall may occur rapidly and with little or no notice, which would limit our ability to address the shortfall on a timely basis.

The Company has paid preferred dividends of \$1.4 million thus far in fiscal year 2020, and our board of directors has not declared preferred or common stock dividends to date in 2020 to preserve liquidity. For the three months ended March 31, 2020, the Company reported net cash used in operating activities of \$2.6 million, net cash used in investing activities of \$6.5 million, net cash used in financing activities of \$2.6 million, and cash and cash equivalents of \$16.8 million as of March 31, 2020. As a result of our revocation of REIT election, effective January 1, 2017, we are no longer subject to the distribution requirements applicable to REITs. The timing and amount of distributions are in the sole discretion of our board of directors, which considers our earnings, financial performance and condition, debt service obligations and applicable debt covenants, tax considerations, as well as capital expenditure requirements, business prospects and other factors that our board of directors may deem relevant from time to time.

#### *Summary of Cash Flows*

The following table and discussion summarize our key cash flows from operating, investing and financing activities:

	Three Months Ended March 31,	
	2020	2019
Net cash (used in) provided by:		
Operating activities	(2,577)	(22,191)
Investing activities	(6,482)	(4,968)
Financing activities	(2,566)	(2,438)
Net Decrease in Cash and Cash Equivalents, Restricted Cash and Restricted Cash, noncurrent	(11,625)	(29,597)

#### Operating Activities

Cash flows used in operating activities consist primarily of net losses adjusted for certain items including depreciation and amortization of assets, amortization of prepaid golf member dues, impairment losses, other gains and losses from the sale of assets, stock-based compensation expense, and the effect of changes in operating assets and liabilities.

Net cash used in operating activities was \$2.6 million for the three months ended March 31, 2020 and \$22.2 million for the three months ended March 31, 2019. Changes in operating cash flow activities are described below:

- Operating cash flows increased by:
  - \$14.1 million due to increased receipts from Traditional Golf properties primarily due to more playable days in the three months ended March 31, 2020 as compared to the three months ended March 31, 2019
  - \$3.5 million primarily due to the delayed payment of annual bonuses in 2020 that were earned in 2019 as a result of the temporary closure of its venues in response to the COVID-19 pandemic;
  - \$1.6 million decreased in general and administrative expenses primarily due to lower professional fee expenses; and
  - \$0.7 million in operating cash flows primarily due to the opening of Entertainment Golf venues in Raleigh, North Carolina; Richmond, Virginia; and West Palm Beach, Florida.
- Operating cash flows decreased by:
  - \$0.3 million due to lower interest income as a result of lower average balances held in interest bearing accounts.

#### Investing Activities

Cash flows generated from investing activities primarily relate to proceeds from the dispositions of Traditional Golf properties, and were primarily used for capital expenditures related to the development of the Entertainment Golf venues and renovations of existing facilities.

Investing activities used \$6.5 million and \$5.0 million during the three months ended March 31, 2020 and 2019, respectively.

*Capital Expenditures.* Our total capital expenditures for the three months ended March 31, 2020 and 2019 were \$6.6 million and \$22.7 million, respectively.

We expect our capital expenditures over the next 12 months to range between \$40 and \$50 million, dependent on the Company's ability to obtain additional financing, which includes developing new core Drive Shack and small-store format urban box venues and remodeling and maintaining existing facilities.

#### Financing Activities

Cash flows used in or provided by financing activities consist primarily of cash from the borrowing or repayment of debt obligations, deposits received on golf memberships, and the payment of preferred dividends.

Financing activities used \$2.6 million and \$2.4 million during the three months ended March 31, 2020 and 2019, respectively. Proceeds received from cash flow from financing activities consisted primarily of deposits received on golf memberships. Uses of cash flow from financing activities included the repayment of debt obligations and the payment of preferred dividends. On November 11, 2019, we declared a quarterly preferred dividend of \$1.4 million which was paid on January 31, 2020.

### Debt Obligations

Our debt obligations including finance lease obligations, as summarized in Note 8 to our Consolidated Financial Statements included herein, had contractual maturities at March 31, 2020 as follows (in thousands):

	Nonrecourse	Recourse	Total
2020	\$ 241	\$ —	\$ 241
2021	1,746	—	1,746
2022	3,230	—	3,230
2023	3,596	—	3,596
2024	7,157	—	7,157
2025	2,302	—	2,302
Thereafter	200	51,004	51,204
Total	\$ 18,472	\$ 51,004	\$ 69,476

### Equity

#### Preferred Stock Dividends Paid

Declared for the three months ended	Paid	Amount Per Share		
		Series B	Series C	Series D
January 31, 2020	January 2020	\$ 0.609	\$ 0.503	\$ 0.523

#### Off-Balance Sheet Arrangements

There have been no significant changes to our off-balance sheet arrangements as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

### CONTRACTUAL OBLIGATIONS

During the three months ended March 31, 2020, we had all of the material contractual obligations referred to in our annual report on Form 10-K for the year ended December 31, 2019.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk is the exposure to loss resulting from changes in interest rates, credit spreads, foreign currency exchange rates, commodity prices and equity prices. We substantially exited our real estate related debt positions, which significantly reduced our market risk exposure related to interest rate risk, credit spread risk and credit risk. We are also exposed to inflationary factors in our business.

There have been no material changes to our exposure to market risks as described in Part II, Item 7A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

### ITEM 4. CONTROLS AND PROCEDURES

- (a) Disclosure Controls and Procedures. The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. The Company's disclosure controls and procedures are designed to provide reasonable assurance that information is recorded, processed, summarized and reported accurately and completely. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective.
- (b) Changes in Internal Control Over Financial Reporting. There have not been any changes in the Company's internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during

the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting even though most of our employees were working remotely during the period in which we prepared these financial statements due to the impact of COVID-19.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

The information required by this Item is incorporated by reference to Part I, Item 1, Note 15: Commitments and Contingencies-Legal Contingencies.

### Item 1A. Risk Factors

The following additional risk factors should be read in conjunction with the risk factors in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, which are modified and updated by the risk factors set forth below.

*Pandemics or disease outbreaks, such as the recent outbreak of the novel coronavirus (COVID-19 virus), have disrupted, and may continue to disrupt, our business, and may continue to have a material adverse effect on our business, operations and results of operations.*

Pandemics or disease outbreaks such as the novel coronavirus (COVID-19 virus) have, and may continue to have, a negative impact on customer traffic at our entertainment golf and traditional golf venues, may make it more difficult to staff our venues and, in more severe cases, may cause closures, a temporary inability to obtain supplies and/or increase to commodity costs, sometimes for prolonged periods of time. Currently, many states and municipalities in the U.S. have temporarily suspended the operation of our golf entertainment venues and a number of our traditional golf course in light of COVID-19. The ability of local and international authorities to contain COVID-19 and limit the spread of infections will impact our business operations, including in connection with when we are permitted to re-open closed venues and the extension of social distancing and similar restrictions promulgated by these authorities. While some state and local governments in the U.S. have started to remove or ease restrictions on certain businesses, there is no guarantee when other jurisdictions will change their current policies, and jurisdictions that have reduced restrictions may reintroduce restrictions in the future if circumstances change.

In addition, our operations could be further disrupted if any of our employees or employees of our business partners were suspected of having contracted COVID-19 or other illnesses since this could require us or our business partners to quarantine some or all such employees or close and disinfect our impacted facilities. If a significant percentage of our workforce or the workforce of our business partners are unable to work, including because of illness or travel or government restrictions in connection with pandemics or disease outbreaks, our operations may be negatively impacted, potentially materially adversely affecting our business, liquidity, financial condition or results of operations.

Furthermore, such viruses may be transmitted through human contact, and the risk of contracting viruses could continue to cause employees or guests to avoid gathering in public places, which has had, and could further have, adverse effects on our guest traffic or our ability to adequately staff venues. We could also be adversely affected if government authorities continue to impose restrictions on public gatherings, human interactions, operations of restaurants or mandatory closures, seek voluntary closures, restrict hours of operations or impose curfews, restrict the import or export of products or if suppliers issue mass recalls of products. Additional regulation or requirements with respect to the compensation of our employees could also have an adverse effect on our business. Even if such measures are not implemented and a virus or other disease does not spread significantly within a specific area, the perceived risk of infection or health risk in such area may adversely affect our business, liquidity, financial condition and results of operations.

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

*Our financial statements contain a statement regarding a substantial doubt about the Company's ability to continue as a going concern*

Our audited financial statements as of and for the year ended December 31, 2019, were prepared on the assumption that we would continue as a going concern. The COVID-19 pandemic has materially affected our operations and results of operations, and our management has determined that there is a substantial doubt about our ability to continue as a going concern over the next twelve months. Our ability to continue as a going concern over the next twelve months will depend upon a series of factors, including

the duration of our venue shutdowns; the speed with which, and the extent to which, customers return to our venues once they open; our success in obtaining rent and other concessions from our landlords; and our ability to raise additional capital.

***Global economic conditions may make it more difficult to access new and additional capital sources.***

Global economic conditions may render it more difficult for us to access debt financing under credit facilities and alternative financing. As a result of the COVID-19 outbreak, our total revenues decreased significantly in March, April and May 2020, and we have implemented certain operational changes in order to address the evolving challenges presented by the global pandemic on our operations. Due to the ongoing impacts of COVID-19, our financial performance in future fiscal quarters may be negatively impacted, which may limit our ability to access financing and cause our financing sources to impose stricter terms on the operations of our business in connection with financing. In addition, other companies in our industry have experienced ratings downgrades and made public statements relating to their potential inability to comply with the terms of their credit facilities, each of which may render financing sources less likely to extend credit or other forms of financing to us on favorable terms or at all. Moreover, governmental business stimulus packages in response to the virus, in particular the CARES Act, have been implemented in a manner in which the guidelines are not published until after the government has provided funding, rendering the rules relative to loan eligibility requirements uncertain and subject to change, which may adversely affect our ability to take advantage of the benefits of such programs. If we are unable to access additional capital, we may default on our payment obligations and our existing creditors (including our landlords and development partners) may be unwilling to further defer rental or other payments on terms extended in the early months of the COVID-19 pandemic.

***We may be unable to, or elect not to, pay dividends on our common or preferred stock in the future, which would negatively impact our business and decrease the price of our common and preferred stock.***

Our board of directors elected not to pay common stock dividends for 2017 through 2019 to retain capital for growth. All future dividend distributions will be made at the discretion of our board of directors and will depend upon, among other things, our earnings, investment strategy, financial condition and liquidity, and such other factors as the board of directors deems relevant. No assurance can be given that we will pay any dividends on our common stock in the future. We currently have \$1.4 million unpaid accrued dividends on our preferred stock. We cannot pay any dividends on our common stock, pay any consideration to repurchase or otherwise acquire shares of our common stock or redeem any shares of any series of our preferred stock without redeeming all of our outstanding preferred shares in accordance with the governing documentation. Consequently, the failure to pay dividends on our preferred stock restricts the actions that we may take with respect to our common stock and preferred stock. Moreover, if we do not pay dividends on any series of preferred stock for six or more periods, then holders of each affected series obtain the right to call a special meeting and elect two members to our board of directors. We cannot predict whether the holders of our preferred stock would take such action or, if taken, how long the process would take or what impact the two new directors on our board of directors would have on our company (other than increasing our director compensation costs). However, the election of additional directors would affect the composition of our board of directors and, thus, could affect the management of our business.

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

None.

**Item 3. Defaults upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

None.

**Item 5. Other Information**

On May 11, 2020, the Board adopted an amendment (the “Bylaw Amendment”) to the Company’s Amended and Restated Bylaws (the “Bylaws”), to provide that (i) all meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place or by means of remote communication as shall be set by the Board of Directors and stated in the notice of the meeting and (ii) an annual meeting of the stockholders for the election of directors and the transaction of any business within the powers of the Corporation shall be held on the date and at the time and place set by the Board. The Bylaw Amendment became effective on May 11, 2020. The purpose of the Bylaw amendment was to enable the Company to host a virtual annual meeting

in connection with additional precautionary measures relating to the COVID-19 pandemic, once the Company's entertainment golf facilities have reopened.

The foregoing description of the Bylaw Amendment is only a summary and is qualified in its entirety by reference to the full text of the Bylaws, as amended by the Bylaw Amendment, which are filed as Exhibit 3.6 to this Quarterly Report on Form 10-Q and incorporated by reference in this Item 5.

## Item 6. Exhibits

<u>Exhibit Number</u>	<u>Exhibit Description</u>
<a href="#">2.1</a>	Separation and Distribution Agreement dated April 26, 2013, between New Residential Investment Corp. and the Registrant (incorporated by reference to the Registrant's Quarterly Report on Form 10-Q, Exhibit 2.1, filed on May 3, 2013).
<a href="#">2.2</a>	Separation and Distribution Agreement dated October 16, 2014, between New Senior Investment Group Inc. and the Registrant (incorporated by reference to the Registrant's Quarterly Report on Form 10-Q, Exhibit 2.2, filed on November 5, 2014).
<a href="#">3.1</a>	Articles of Restatement (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 3.2, filed on December 8, 2016).
<a href="#">3.2</a>	Articles Supplementary relating to the Series B Preferred Stock (incorporated by reference to the Registrant's Quarterly Report on Form 10-Q, Exhibit 3.3, filed on May 13, 2003).
<a href="#">3.3</a>	Articles Supplementary relating to the Series C Preferred Stock (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 3.3, filed on October 25, 2005).
<a href="#">3.4</a>	Articles Supplementary relating to the Series D Preferred Stock (incorporated by reference to the Registrant's Report on Form 8-A, Exhibit 3.1, filed on March 14, 2007).
<a href="#">3.5</a>	Articles Supplementary of Series E Junior Participating Preferred Stock (incorporated by reference to the Registrant's Annual Report on Form 10-K, Exhibit 3.5, filed on March 2, 2017).
<a href="#">3.6</a>	Amended and Restated By-laws (effective May 11, 2020).
<a href="#">4.1</a>	Junior Subordinated Indenture between Newcastle Investment Corp. and The Bank of New York Mellon Trust Company, National Association, dated April 30, 2009 (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 4.1, filed on May 4, 2009).
<a href="#">4.2</a>	Pledge and Security Agreement between Newcastle Investment Corp. and The Bank of New York Mellon Trust Company, National Association, as trustee, dated April 30, 2009 (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 4.2, filed on May 4, 2009).
<a href="#">4.3</a>	Pledge, Security Agreement and Account Control Agreement among Newcastle Investment Corp., NIC TP LLC, as pledgor, and The Bank of New York Mellon Trust Company, National Association, as bank and trustee, dated April 30, 2009 (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 4.3, filed on May 4, 2009).
<a href="#">4.4</a>	Tax Benefits Preservation Plan, dated as of March 6, 2020, between Drive Shack Inc. and American Stock Transfer & Trust Company, LLC (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 4.1, filed on March 6, 2020).
<a href="#">10.1</a>	Termination and Cooperation Agreement, dated December 21, 2017, by and between Drive Shack Inc. and FIG LLC (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 10.1, filed on December 21, 2017).
<a href="#">10.2</a>	Transition Services Agreement, dated December 21, 2017, by and between Drive Shack Inc. and FIG LLC (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 10.2, filed on December 21, 2017).
<a href="#">10.3*</a>	Letter Agreement, dated December 21, 2017, by and between Drive Shack Inc. and Lawrence A. Goodfield, Jr. (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 10.4, filed on December 21, 2017).
<a href="#">10.4*</a>	Letter Agreement, dated December 21, 2017, by and between Drive Shack Inc. and Sara A. Yakin (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 10.5, filed on December 21, 2017).
<a href="#">10.5*</a>	Letter Agreement, dated November 7, 2018, by and between Drive Shack Inc. and Kenneth A. May (incorporated by reference to the Registrant's Annual Report on Form 10-K, Exhibit 10.6, filed on March 15, 2019).

<u>Exhibit Number</u>	<u>Exhibit Description</u>
<a href="#"><u>10.6*</u></a>	Letter Agreement, dated November 7, 2018, by and between Drive Shack Inc. and David M. Hammarley (incorporated by reference to the Registrant's Annual Report on Form 10-K, Exhibit 10.7, filed on March 15, 2019).
<a href="#"><u>10.7*</u></a>	2012 Newcastle Investment Corp. Nonqualified Stock Option and Incentive Award Plan, adopted as of May 7, 2012 (incorporated by reference to the Registrant's Annual Report on Form 10-K, Exhibit 10.3, filed on February 28, 2013).
<a href="#"><u>10.8*</u></a>	Amended and Restated 2014 Newcastle Investment Corp. Nonqualified Stock Option and Incentive Award Plan, adopted as of November 3, 2014 (incorporated by reference to the Registrant's Annual Report on Form 10-K, Exhibit 10.5, filed on March 2, 2015).
<a href="#"><u>10.9*</u></a>	2015 Newcastle Investment Corp. Nonqualified Option and Incentive Award Plan, adopted as of April 16, 2015 (incorporated by reference to Annex A of the Registrant's definitive proxy statement for the 2015 annual meeting of stockholders filed on April 17, 2015).
<a href="#"><u>10.10*</u></a>	2016 Newcastle Investment Corp. Nonqualified Option and Incentive Award Plan (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 10.1, filed on May 19, 2016).
<a href="#"><u>10.11*</u></a>	2017 Drive Shack Inc. Nonqualified Option and Incentive Award Plan (incorporated by reference to the Registrant's definitive proxy statement for the 2017 annual meeting of stockholders, filed on April 13, 2017).
<a href="#"><u>10.12*</u></a>	Drive Shack Inc. 2018 Omnibus Incentive Plan (incorporated by reference to Annex A of the Registrant's definitive proxy statement for the 2018 annual meeting of stockholders filed on April 13, 2018).
<a href="#"><u>10.13</u></a>	Exchange Agreement between Newcastle Investment Corp. and Taberna Preferred Funding IV, Ltd., Taberna Preferred Funding V, Ltd., Taberna Preferred Funding VI, Ltd. And Taberna Preferred Funding VII, Ltd., dated April 30, 2009 (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 10.1, filed on May 4, 2009).
<a href="#"><u>10.14</u></a>	Exchange Agreement, dated as of January 29, 2010, by and among Newcastle Investment Corp., Taberna Capital Management, LLC, Taberna Preferred Funding IV, Ltd., Taberna Preferred Funding V, Ltd., Taberna Preferred Funding VI, Ltd. And Taberna Preferred Funding VII, Ltd. (incorporated by reference to the Registrant's Current Report on Form 8-K, Exhibit 10.1, filed on February 1, 2010).
<a href="#"><u>10.15</u></a>	Form of Indemnification Agreement (incorporated by reference to the Registrant's Quarterly Report on Form 10-Q, Exhibit 10.19, filed on August 8, 2014).
<a href="#"><u>10.16*</u></a>	Form of Drive Shack Inc. 2018 Omnibus Incentive Plan Director Restricted Stock Unit Award Agreement (incorporated by reference to the Registrant's Quarterly Report on Form 10-Q, Exhibit 10.15, filed on November 9, 2018).
<a href="#"><u>10.17*</u></a>	Non-Qualified Stock Option Award Agreement dated November 12, 2018, by and between Drive Shack Inc. and Kenneth A. May (incorporated by reference to the Registrant's Annual Report on Form 10-K, Exhibit 10.18, filed on March 15, 2019).
<a href="#"><u>10.18*</u></a>	Incentive Stock Option Award Agreement dated November 12, 2018, by and between Drive Shack Inc. and Kenneth A. May (incorporated by reference to the Registrant's Annual Report on Form 10-K, Exhibit 10.19, filed on March 15, 2019).
<a href="#"><u>10.19*</u></a>	Non-Qualified Stock Option Award Agreement dated November 12, 2018, by and between Drive Shack Inc. and David M. Hammarley (incorporated by reference to the Registrant's Annual Report on Form 10-K, Exhibit 10.20, filed on March 15, 2019).
<a href="#"><u>10.20*</u></a>	Form of Drive Shack Inc. 2018 Omnibus Incentive Plan Executive Non-Qualified Stock Option Award Agreement (incorporated by reference to the Registrant's Quarterly Report on Form 10-Q, Exhibit 10.22, filed on May 10, 2019).
<a href="#"><u>10.21*</u></a>	Form of Drive Shack Inc. 2018 Omnibus Incentive Plan Restricted Stock Unit Award Agreement (incorporated by reference to the Registrant's Quarterly Report on Form 10-Q, Exhibit 10.23, filed on August 6, 2019).
<a href="#"><u>31.1</u></a>	Certification of Chief Executive Officer as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<a href="#"><u>31.2</u></a>	Certification of Chief Financial Officer as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

<u>Exhibit Number</u>	<u>Exhibit Description</u>
<a href="#">32.1</a>	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
<a href="#">32.2</a>	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document.
101.SCH	XBRL Taxonomy Extension Schema Document.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.

\* Management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized:

DRIVE SHACK INC.

By: /s/ Hana Khouri  
Hana Khouri  
Chief Executive Officer and President

May 11, 2020

By: /s/ Lawrence A. Goodfield, Jr.  
Lawrence A Goodfield, Jr.  
Interim Chief Financial Officer, Chief Accounting Officer & Treasurer

May 11, 2020

DRIVE SHACK INC.

## AMENDED AND RESTATED BYLAWS

(Effective as of May 11, 2020)

**ARTICLE I****OFFICES**

Section 1. PRINCIPAL OFFICE. The principal office of the Corporation in the State of Maryland shall be located at such place as the Board of Directors may designate.

Section 2. ADDITIONAL OFFICES. The Corporation may have additional offices, including a principal executive office, at such places as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II****MEETINGS OF STOCKHOLDERS**

Section 1. PLACE. All meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place or by means of remote communication as shall be set by the Board of Directors and stated in the notice of the meeting.

Section 2. ANNUAL MEETING. An annual meeting of stockholders for the election of directors and the transaction of any business within the powers of the Corporation shall be held on the date and at the time and place set by the Board of Directors.

Section 3. SPECIAL MEETINGS.

(a) General. The chairman of the board, president, chief executive officer or Board of Directors may call a special meeting of the stockholders. Subject to subsection (b) of this Section 3, a special meeting of stockholders shall also be called by the secretary of the Corporation upon the written request of the stockholders entitled to cast not less than a majority of all the votes entitled to be cast at such meeting.

(b) Stockholder Requested Special Meetings. (1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their duly authorized agents), shall bear the date of signature of each such stockholder (or other agent) and shall set forth all information relating to each such stockholder that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 14a-11 thereunder. Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date and make a public announcement of such Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which the Record Date Request Notice is received by the secretary.

---

(2) In order for any stockholder to request a special meeting, one or more written requests for a special meeting signed by stockholders of record (or their duly authorized agents) as of the Request Record Date entitled to cast not less than a majority (the "Special Meeting Percentage") of all of the votes entitled to be cast at such meeting (the "Special Meeting Request") shall be delivered to the secretary. In addition, the Special Meeting Request shall set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to the matters set forth in the Record Date Request Notice received by the secretary), shall bear the date of signature of each such stockholder (or other agent) signing the Special Meeting Request, shall set forth the name and address, as they appear in the Corporation's books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed) and the class and number of shares of stock of the Corporation which are owned of record and beneficially by each such stockholder, shall be sent to the secretary by registered mail, return receipt requested, and shall be received by the secretary within 60 days after the Request Record Date. Any requesting stockholder may revoke his, her or its request for a special meeting at any time by written revocation delivered to the secretary.

(3) The secretary shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing the notice of meeting (including the Corporation's proxy materials). The secretary shall not be required to call a special meeting upon stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 3(b), the secretary receives payment of such reasonably estimated cost prior to the mailing of any notice of the meeting.

(4) Except as provided in the next sentence, any special meeting shall be held at such place, date and time as may be designated by the chairman of the Board of Directors, the president, the chief executive officer or the Board of Directors, whoever has called the meeting. In the case of any special meeting called by the secretary upon the request of stockholders (a "Stockholder Requested Meeting"), such meeting shall be held at such place, date and time as may be designated by the Board of Directors; provided, however, that the date of any Stockholder Requested Meeting shall be not more than 90 days after the record date for such meeting (the "Meeting Record Date"); and provided further that if the Board of Directors fails to designate, within ten days after the date that a valid Special Meeting Request is actually received by the secretary (the "Delivery Date"), a date and time for a Stockholder Requested Meeting, then such meeting shall be held at 2:00 p.m. local time on the 90th day after the Meeting Record Date or, if such 90th day is not a Business Day (as defined below), on the first preceding Business Day; and provided further that in the event that the Board of Directors fails to designate a place for a Stockholder Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive offices of the Corporation. In fixing a date for any special meeting, the president, chief executive officer or Board of Directors may consider such factors as he, she or it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. In the case of any Stockholder Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date.

(5) If at any time as a result of written revocations of requests for the special meeting, stockholders of record (or their duly authorized agents) as of the Request Record Date entitled to cast less than the Special Meeting Percentage shall have delivered and not revoked requests for a special meeting, the secretary may refrain from mailing the notice of the meeting or, if the notice of the meeting has been mailed, the secretary may revoke the notice of the meeting at any time before ten days before the meeting if the secretary has first sent to all other requesting stockholders written notice of such revocation and of intention to revoke the notice of the meeting. Any request for a special meeting received after a revocation by the secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The chairman of the Board of Directors, the president, the chief executive officer or the Board of Directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported

---

Special Meeting Request received by the secretary. For the purpose of permitting the inspectors to perform such review, no such purported request shall be deemed to have been delivered to the secretary until the earlier of (i) ten Business Days after receipt by the secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the secretary represent at least a majority of the issued and outstanding shares of stock that would be entitled to vote at such meeting. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any request, whether during or after such ten-Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) For purposes of these Bylaws, "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of Maryland are authorized or obligated by law or executive order to close.

Section 4. NOTICE. Not less than ten nor more than 90 days before each meeting of stockholders, the secretary shall give to each stockholder entitled to vote at such meeting and to each stockholder not entitled to vote who is entitled to notice of the meeting written or printed notice stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called, either by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid.

Any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except such business as is required by any statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice.

Section 5. ORGANIZATION AND CONDUCT. Every meeting of stockholders shall be conducted by an individual appointed by the Board of Directors to be chairman of the meeting or, in the absence of such appointment, by the chairman of the board or, in the case of a vacancy in the office or absence of the chairman of the board, by one of the following officers present at the meeting: the vice chairman of the board, if there be one, the president, the vice presidents in their order of rank and seniority, or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy. The secretary, or, in the secretary's absence, an assistant secretary, or in the absence of both the secretary and assistant secretaries, a person appointed by the Board of Directors or, in the absence of such appointment, a person appointed by the chairman of the meeting shall act as secretary. In the event that the secretary presides at a meeting of the stockholders, an assistant secretary shall record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of such chairman, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to stockholders of record of the Corporation, their duly authorized proxies or other such persons as the chairman of the meeting may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies or other such persons as the chairman of the meeting may determine; (d) limiting the time allotted to questions or comments by participants; (e) maintaining order and security at the meeting; (f) removing any stockholder or any other person who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; and (g) recessing or adjourning the meeting to a later date and time and place announced at the meeting. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

---

Section 6. QUORUM. At any meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of all the votes entitled to be cast at such meeting shall constitute a quorum; but this section shall not affect any requirement under any statute or the charter of the Corporation for the vote necessary for the adoption of any measure. If, however, such quorum shall not be present at any meeting of the stockholders, the chairman of the meeting or the stockholders entitled to vote at such meeting, present in person or by proxy, shall have the power to adjourn the meeting from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

The stockholders present either in person or by proxy, at a meeting which has been duly called and convened, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 7. VOTING. A plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a director. Each share may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute or by the charter of the Corporation. Unless otherwise provided in the charter, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders.

Section 8. PROXIES. A stockholder may cast the votes entitled to be cast by the shares of stock owned of record by the stockholder in person or by proxy executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the secretary of the Corporation before or at the meeting. No proxy shall be valid more than eleven months after its date unless otherwise provided in the proxy.

Section 9. VOTING OF STOCK BY CERTAIN HOLDERS. Stock of the Corporation registered in the name of a corporation, partnership, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, a general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any director or other fiduciary may vote stock registered in his or her name as such fiduciary, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt of such certification, the person specified in the certification shall be

---

regarded as, for the purposes set forth in the certification, the stockholder of record of the specified stock in place of the stockholder who makes the certification.

Section 10. INSPECTORS. The Board of Directors, in advance of any meeting, may, but need not, appoint one or more individual inspectors or one or more entities that designate individuals as inspectors to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Board of Directors in advance of the meeting or at the meeting by the chairman of the meeting. The inspectors, if any, shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, and determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. Each such report shall be in writing and signed by him or her or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 11. ADVANCE NOTICE OF STOCKHOLDER NOMINEES FOR DIRECTOR AND OTHER STOCKHOLDER PROPOSALS

(a) Annual Meetings of Stockholders. (1) Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record both at the time of giving of notice provided for in this Section 11(a) and at the time of the annual meeting, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 11(a).

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 11, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for action by the stockholders. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the first anniversary of the date of mailing of the notice for the preceding year's annual meeting; provided, however, that in the event that the date of the mailing of the notice for the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of mailing of the notice for the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the 120th day prior to the date of mailing of the notice for such annual meeting and not later than the close of business on the later of the 90th day prior to the date of mailing of the notice for such annual meeting or the tenth day following the day on which disclosure of the date of mailing of the notice for such meeting is first made. In no event shall the public announcement of a postponement or adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (A) the name, age, business address and residence address of such person, (B) the class and number of shares of stock of the Corporation that are beneficially owned by such person and (C) all other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act and the rules thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder (including any anticipated benefit to the stockholder therefrom) and of each beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and each beneficial owner, if any, on whose behalf the nomination or proposal is made, (x) the name and address of

---

such stockholder, as they appear on the Corporation's stock ledger and current name and address, if different, and of such beneficial owner, and (y) the class and number of shares of each class of stock of the Corporation which are owned beneficially and of record by such stockholder and owned beneficially by such beneficial owner.

(3) Notwithstanding anything in this subsection (a) of this Section 11 to the contrary, in the event the Board of Directors increases or decreases the maximum or minimum number of directors in accordance with Article III, Section 2 of these Bylaws, and there is no announcement of such action at least 100 days prior to the first anniversary of the date of mailing of the preceding year's annual meeting, a stockholder's notice required by this Section 11(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, 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 day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) provided that the Board of Directors has determined that directors shall be elected at such special meeting, by any stockholder of the Corporation who is a stockholder of record both at the time of giving of notice provided for in this Section 11 and at the time of the special meeting, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 11. 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 may nominate a person or persons (as the case may be) for election as a director as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (a)(2) of this Section 11 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the tenth 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 a postponement or adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(c) General. (1) Upon written request by the secretary or the Board of Directors or any committee thereof, any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders shall provide, within three business days of delivery of such request (or such other period as may be specified in such request), written verification, satisfactory to the secretary or the Board or any committee thereof, in his, her or its sole discretion, of the accuracy of any information submitted by the stockholder pursuant to this Section 11. If a stockholder fails to provide such written verification within such period, the secretary or the Board of Directors or any committee thereof may treat the information as to which written verification was requested as not having been provided in accordance with the procedures set forth in this Section 11.

(2) Only such persons who are nominated in accordance with the procedures set forth in this Section 11 of these Bylaws shall be eligible 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 11. The chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 11 and, if any proposed nomination or business is not in compliance with this Section 11, to declare that such defective nomination or proposal be disregarded.

(3) For purposes of this Section 11, (a) the "date of mailing of the notice" shall mean the date of the proxy statement for the solicitation of proxies for election of directors and (b) "public announcement" shall mean disclosure (i) in a press release reported by the Dow Jones News Service, Associated Press or comparable news

---

service or (ii) in a document publicly filed by the Corporation with the United States Securities and Exchange Commission pursuant to the Exchange Act or the Investment Company Act.

(4) Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 11. Nothing in this Section 11 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, nor the right of the Corporation to omit a proposal from, the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act.

Section 12. VOTING BY BALLOT. Voting on any question or in any election may be viva voce unless the presiding officer shall order or any stockholder shall demand that voting be by ballot.

Section 13. CONTROL SHARE ACQUISITION ACT. Notwithstanding any other provision of the charter of the Corporation or these Bylaws, Title 3, Subtitle 7 of the Maryland General Corporation Law (the "MGCL"), or any successor statute, shall not apply to any acquisition by any person of shares of stock of the Corporation. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

### ARTICLE III

#### DIRECTORS

Section 1. GENERAL POWERS. The business and affairs of the Corporation shall be managed under the direction of its Board of Directors.

Section 2. NUMBER AND TENURE. At any regular meeting or at any special meeting called for that purpose, a majority of the entire Board of Directors may establish, increase or decrease the number of directors, provided that the number thereof shall never be less than the minimum number required by the MGCL, nor more than 15, and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors.

Section 3. ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board of Directors shall be held at such time and at any place or by means of remote communication as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors. The Board of Directors may provide, by resolution, the time and place for the holding of regular meetings of the Board of Directors without other notice than such resolution.

Section 4. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the chairman of the board, the chief executive officer, the president or by a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix any place as the place for holding any special meeting of the Board of Directors called by them. The Board of Directors may provide, by resolution, the time and place for the holding of special meetings of the Board of Directors without notice other than such resolution.

Section 5. NOTICE. Notice of any special meeting of the Board of Directors shall be delivered personally or by telephone, electronic mail, facsimile transmission, United States mail or courier to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by United States mail shall be given at least three days prior to the meeting. Notice by courier shall be given at least two days prior to the meeting. Telephone

---

notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 6. QUORUM. A majority of the directors shall constitute a quorum for transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of such directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to the charter of the Corporation or these Bylaws, the vote of a majority of a particular group of directors is required for action, a quorum must also include a majority of such group.

The directors present at a meeting which has been duly called and convened may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

Section 7. VOTING. The action of the majority of the directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable statute or the charter. If enough directors have withdrawn from a meeting to leave less than a quorum but the meeting is not adjourned, the action of the majority of the directors still present at such meeting shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable statute or the charter.

Section 8. ORGANIZATION. At each meeting of the Board of Directors, the chairman of the board or, in the absence of the chairman, the vice chairman of the board, if any, shall act as Chairman. In the absence of both the chairman and vice chairman of the board, the chief executive officer or in the absence of the chief executive officer, the president or in the absence of the president, a director chosen by a majority of the directors present, shall act as Chairman. The secretary or, in his or her absence, an assistant secretary of the Corporation, or in the absence of the secretary and all assistant secretaries, a person appointed by the Chairman, shall act as Secretary of the meeting.

Section 9. TELEPHONE MEETINGS. Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 10. WRITTEN CONSENT BY DIRECTORS. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a consent in writing to such action is signed by each director and such written consent is filed with the minutes of proceedings of the Board of Directors.

Section 11. VACANCIES. If for any reason any or all the directors cease to be directors, such event shall not terminate the Corporation or affect these Bylaws or the powers of the remaining directors hereunder (even if fewer than three directors remain). Any vacancy on the Board of Directors for any cause other than an increase in the number of directors shall be filled by a majority of the remaining directors, even if such majority is less than a quorum. Any vacancy in the number of directors created by an increase in the number of directors may be filled by a majority vote of the entire Board of Directors. Any individual so elected as director shall hold office until the next annual meeting of stockholders and until his or her successor is elected and qualifies.

---

Section 12. COMPENSATION. Directors shall not receive any stated salary for their services as directors but, by resolution of the Board of Directors, may receive compensation per year and/or per meeting and/or per visit to real property or other facilities owned or leased by the Corporation and for any service or activity they performed or engaged in as directors. Directors may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Board of Directors or of any committee thereof and for their expenses, if any, in connection with each property visit and any other service or activity they performed or engaged in as directors; but nothing herein contained shall be construed to preclude any directors from serving the Corporation in any other capacity and receiving compensation therefor.

Section 13. LOSS OF DEPOSITS. No director shall be liable for any loss which may occur by reason of the failure of the bank, trust company, savings and loan association, or other institution with whom moneys or stock have been deposited.

Section 14. SURETY BONDS. Unless required by law, no director shall be obligated to give any bond or surety or other security for the performance of any of his or her duties.

Section 15. RELIANCE. Each director, officer, employee and agent of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be fully justified and protected with regard to any act or failure to act in reliance in good faith upon the books of account or other records of the Corporation, upon an opinion of counsel or upon reports made to the Corporation by any of its officers or employees or by the adviser, accountants, appraisers or other experts or consultants selected by the Board of Directors or officers of the Corporation, regardless of whether such counsel or expert may also be a director.

Section 16. CERTAIN RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS. The directors shall have no responsibility to devote their full time to the affairs of the Corporation. Any director or officer, employee or agent of the Corporation, in his or her personal capacity or in a capacity as an affiliate, employee, or agent of any other person, or otherwise, may have business interests and engage in business activities similar to or in addition to or in competition with those of or relating to the Corporation.

#### ARTICLE IV

#### COMMITTEES

Section 1. NUMBER, TENURE AND QUALIFICATIONS. The Board of Directors may appoint from among its members an Executive Committee, an Audit Committee and other committees, composed of one or more directors, to serve at the pleasure of the Board of Directors.

Section 2. POWERS. The Board of Directors may delegate to committees appointed under Section 1 of this Article any of the powers of the Board of Directors, except as prohibited by law.

Section 3. MEETINGS. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Directors. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee. The Board of Directors may designate a chairman of any committee, and such chairman or, in the absence of a chairman, any two members of any committee (if there are at least two members of the Committee) may fix the time and place of its meeting unless the Board shall otherwise provide. In the absence of any member of any such committee, the members thereof present at any

---

meeting, whether or not they constitute a quorum, may appoint another director to act in the place of such absent member. Each committee shall keep minutes of its proceedings.

Section 4. TELEPHONE MEETINGS. Members of a committee of the Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 5. WRITTEN CONSENT BY COMMITTEES. Any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a consent in writing to such action is signed by each member of the committee and such written consent is filed with the minutes of proceedings of such committee.

Section 6. VACANCIES. Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to fill all vacancies, to designate alternate members to replace any absent or disqualified member or to dissolve any such committee.

## ARTICLE V

### OFFICERS

Section 1. GENERAL PROVISIONS. The officers of the Corporation shall include a president, a secretary and a treasurer and may include a chairman of the board, a vice chairman of the board, a chief executive officer, one or more vice presidents, a chief operating officer, a chief financial officer, one or more assistant secretaries and one or more assistant treasurers. In addition, the Board of Directors may from time to time elect such other officers with such powers and duties as they shall deem necessary or desirable. The officers of the Corporation shall be elected annually by the Board of Directors, except that the chief executive officer or president may from time to time appoint one or more vice presidents, assistant secretaries, assistant treasurers or other officers. Each officer shall hold office until his or her successor is elected and qualifies or until death, resignation or removal in the manner hereinafter provided. Any two or more offices except president and vice president may be held by the same person. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent.

Section 2. REMOVAL AND RESIGNATION. Any officer or agent of the Corporation may be removed, with or without cause, by the Board of Directors if in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by giving written notice of his or her resignation to the Board of Directors, the chairman of the board, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the notice of resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 3. VACANCIES. A vacancy in any office may be filled by the Board of Directors for the balance of the term.

Section 4. CHIEF EXECUTIVE OFFICER. The Board of Directors may designate a chief executive officer. In the absence of such designation, the chairman of the board shall be the chief executive officer of the Corporation. The chief executive officer shall have general responsibility for implementation of the policies of the Corporation, as determined by the Board of Directors, and for the management of the business and affairs of the Corporation.

---

Section 5. CHIEF OPERATING OFFICER. The Board of Directors may designate a chief operating officer. The chief operating officer shall have the responsibilities and duties as set forth by the Board of Directors or the chief executive officer.

Section 6. CHIEF FINANCIAL OFFICER. The Board of Directors may designate a chief financial officer. The chief financial officer shall have the responsibilities and duties as set forth by the Board of Directors or the chief executive officer.

Section 7. CHAIRMAN OF THE BOARD. The Board of Directors shall designate a chairman of the board. The chairman of the board shall preside over the meetings of the Board of Directors and of the stockholders at which he or she shall be present. The chairman of the board shall perform such other duties as may be assigned to him or her by the Board of Directors.

Section 8. PRESIDENT. In the absence of a designation of a chief operating officer by the Board of Directors, the president shall be the chief operating officer. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

Section 9. VICE PRESIDENTS. In the absence of the president or in the event of a vacancy in such office, the vice president (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other duties as from time to time may be assigned to such vice president by the president or by the Board of Directors. The Board of Directors may designate one or more vice presidents as executive vice president or as vice president for particular areas of responsibility.

Section 10. SECRETARY. The secretary shall (a) keep the minutes of the proceedings of the stockholders, the Board of Directors and committees of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation; (d) keep a register of the post office address of each stockholder which shall be furnished to the secretary by such stockholder; (e) have general charge of the stock transfer books of the Corporation; and (f) in general perform such other duties as from time to time may be assigned to him by the chief executive officer, the president or by the Board of Directors.

Section 11. TREASURER. The treasurer shall have the custody of the funds and securities of the Corporation and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. In the absence of a designation of a chief financial officer by the Board of Directors, the treasurer shall be the chief financial officer of the Corporation.

The treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the president and Board of Directors, at the regular meetings of the Board of Directors or whenever it may so require, an account of all his or her transactions as treasurer and of the financial condition of the Corporation.

If required by the Board of Directors, the treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the

---

duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, moneys and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

Section 12. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the president or the Board of Directors. The assistant treasurers shall, if required by the Board of Directors, give bonds for the faithful performance of their duties in such sums and with such surety or sureties as shall be satisfactory to the Board of Directors.

Section 13. SALARIES. The salaries and other compensation of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary or other compensation by reason of the fact that he or she is also a director.

## ARTICLE VI

### CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. CONTRACTS. The Board of Directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when authorized or ratified by action of the Board of Directors and executed by an authorized person.

Section 2. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or agent of the Corporation in such manner as shall from time to time be determined by the Board of Directors.

Section 3. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may designate.

## ARTICLE VII

### STOCK

Section 1. CERTIFICATES; REQUIRED INFORMATION. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be signed by the officers of the Corporation in the manner permitted by the MGCL and contain the statements and information required by the MGCL. In the event that the Corporation issues shares of stock without certificates, the Corporation shall provide to holders of such shares a written statement of the information required by the MGCL to be included on stock certificates.

Section 2. TRANSFERS WHEN CERTIFICATES ISSUED. Upon surrender to the Corporation or the transfer agent of the Corporation of a stock certificate duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the Corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share

---

or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class of stock will be subject in all respects to the charter of the Corporation and all of the terms and conditions contained therein.

Section 3. REPLACEMENT CERTIFICATE. The president, the secretary, the treasurer or any officer designated by the Board of Directors may direct a new certificate to be issued in place of any certificate previously issued by the Corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing the issuance of a new certificate, an officer designated by the Board of Directors may, in his or her discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or the owner's legal representative to advertise the same in such manner as he or she shall require and/or to give bond, with sufficient surety, to the Corporation to indemnify it against any loss or claim which may arise as a result of the issuance of a new certificate.

Section 4. CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE. The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of stockholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

In lieu of fixing a record date, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not longer than 20 days. If the stock transfer books are closed for the purpose of determining stockholders entitled to notice of or to vote at a meeting of stockholders, such books shall be closed for at least ten days before the date of such meeting.

If no record date is fixed and the stock transfer books are not closed for the determination of stockholders, (a) the record date for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day on which the notice of meeting is mailed or the 30th day before the meeting, whichever is the closer date to the meeting; and (b) the record date for the determination of stockholders entitled to receive payment of a dividend or an allotment of any other rights shall be the close of business on the day on which the resolution of the directors, declaring the dividend or allotment of rights, is adopted.

When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof, except when (i) the determination has been made through the closing of the transfer books and the stated period of closing has expired or (ii) the meeting is adjourned to a date more than 120 days after the record date fixed for the original meeting, in either of which case a new record date shall be determined as set forth herein.

Section 5. STOCK LEDGER. The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate share ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6. FRACTIONAL STOCK: ISSUANCE OF UNITS. The Board of Directors may issue fractional stock or provide for the issuance of scrip, all on such terms and under such conditions as they may determine. Notwithstanding any other provision of the charter or these Bylaws, the Board of Directors may issue units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the Board of Directors may provide

---

that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

**ARTICLE VIII**

**ACCOUNTING YEAR**

The Board of Directors shall have the power, from time to time, to fix the fiscal year of the Corporation by a duly adopted resolution.

**ARTICLE IX**

**DISTRIBUTIONS**

Section 1. **AUTHORIZATION**. Dividends and other distributions upon the stock of the Corporation may be authorized by the Board of Directors, subject to the provisions of law and the charter of the Corporation. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the charter.

Section 2. **CONTINGENCIES**. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends or other distributions, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine to be in the best interest of the Corporation, and the Board of Directors may modify or abolish any such reserve.

**ARTICLE X**

**INVESTMENT POLICY**

Subject to the provisions of the charter of the Corporation, the Board of Directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Corporation as it shall deem appropriate in its sole discretion.

**ARTICLE XI**

**SEAL**

Section 1. **SEAL**. The Board of Directors may authorize the adoption of a seal by the Corporation. The seal shall contain the name of the Corporation and the year of its incorporation and the words "Incorporated Maryland." The Board of Directors may authorize one or more duplicate seals and provide for the custody thereof.

Section 2. **AFFIXING SEAL**. Whenever the Corporation is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Corporation.

**ARTICLE XII**

---

**INDEMNIFICATION AND ADVANCE OF EXPENSES**

To the maximum extent permitted by Maryland law in effect from time to time, the Corporation shall indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer of the Corporation and who is made a party to the proceeding by reason of his or her service in that capacity or (b) any individual who, while a director of the Corporation and at the request of the Corporation, serves or has served as a director, officer, partner or trustee of another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise and who is made a party to the proceeding by reason of his or her service in that capacity. The Corporation may, with the approval of its Board of Directors, provide such indemnification and advance for expenses to a person who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation.

Neither the amendment nor repeal of this Article, nor the adoption or amendment of any other provision of the Bylaws or charter of the Corporation inconsistent with this Article, shall apply to or affect in any respect the applicability of the preceding paragraph with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

**ARTICLE XIII****WAIVER OF NOTICE**

Whenever any notice is required to be given pursuant to the charter of the Corporation or these Bylaws or pursuant to applicable law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**ARTICLE XIV****AMENDMENT OF BYLAWS**

The Board of Directors shall have the exclusive power to adopt, alter or repeal any provision of these Bylaws and to make new Bylaws.

**EXHIBIT 31.1**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Hana Khouri, certify that:

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

May 11, 2020

/s/ Hana Khouri

---

Hana Khouri

Chief Executive Officer and President

**EXHIBIT 31.2**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, Lawrence A. Goodfield, Jr., certify that:

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

May 11, 2020

/s/ Lawrence A. Goodfield, Jr.

Lawrence A Goodfield, Jr.

Interim Chief Financial Officer, Chief Accounting Officer & Treasurer

**EXHIBIT 32.1**

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

In connection with the Quarterly Report on Form 10-Q of Drive Shack Inc. (the "Company") for the quarterly period ended March 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Hana Khouri as Chief Executive Officer and President of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of her knowledge:

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

/s/ Hana Khouri

Hana Khouri  
Chief Executive Officer and President

May 11, 2020

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**EXHIBIT 32.2**

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

In connection with the Quarterly Report on Form 10-Q of Drive Shack Inc. (the "Company") for the quarterly period ended March 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Lawrence A. Goodfield, Jr., as Interim Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

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

/s/ Lawrence A. Goodfield, Jr.

Lawrence A Goodfield, Jr.

Interim Chief Financial Officer, Chief Accounting Officer & Treasurer

May 11, 2020

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.