

# Drive Shack Inc.

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SIC Code:

## Annual Report

**For the period ending** December 31, 2022  
(the "Reporting Period")

### Securities:

<u>Title of each class:</u>	<u>Trading Symbol(s)</u>	<u>Name of exchange on which registered:</u>
Common Stock, \$0.01 par value per share	DSHK	Over the Counter Markets (OTCMKTS)
9.75% Series B Cumulative Redeemable Preferred Stock, \$0.01 par value per share	DSHKP	Over the Counter Markets (OTCMKTS)
8.05% Series C Cumulative Redeemable Preferred Stock, \$0.01 par value per share	DSHKN	Over the Counter Markets (OTCMKTS)
8.375% Series D Cumulative Redeemable Preferred Stock, \$0.01 par value per share	DSHKO	Over the Counter Markets (OTCMKTS)

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

The aggregate market value of the common stock held by non-affiliates as of December 31, 2022 (computed based on the closing price on the last business day of the registrant's most recently completed second quarter as reported) was: \$15,705,453.

The number of shares outstanding of the registrant's common stock was 92,385,019 as of April 26, 2023.

## CAUTIONARY NOTE REGARDING FORWARD LOOKING STATEMENTS

This report contains certain “forward-looking statements”. Such forward-looking statements relate to, among other things, our operating performance, the performance of our investments, the stability of our earnings, and our financing needs. 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;
- 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;
- 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 where we 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, monetary inflation, 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;
- 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;
- impacts of 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 below, particularly under the heading “Risk Factors,” and in our other reports made available on <http://ir.driveshack.com> and [otcmarts.com/DSHK/disclosure](http://otcmarts.com/DSHK/disclosure).

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.

# DRIVE SHACK INC.

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## PART I

### Item 1. Business.

#### Overview

Drive Shack Inc., a Maryland corporation, was formed in 2002, and its common stock is traded on the OTCMKTS under the symbol "DSHK." Drive Shack Inc., together with its subsidiaries, is referenced herein as "Drive Shack Inc.", "the Company", "we", or "our". The Company owns and operates golf-related leisure and entertainment venues and courses focused on bringing people together through competitive socializing, by combining sports and entertainment with elevated food and beverage offerings. The Company conducts its business through the following segments: (i) entertainment golf, (ii) traditional golf and (iii) corporate. For a further discussion of the reportable segments, see Note 4 in part II, Item 8 "Financial Statements and Supplementary Data".

- **Entertainment golf | *Drive Shack and Puttery***

Drive Shack offers competitive, social entertainment through its golf-related leisure and large-format entertainment venues with gaming and premier golf technology, a chef-inspired menu, craft cocktails, and engaging social events throughout the year. Each 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.

As of December 31, 2022, the Company operated four Drive Shack venues located in Orlando, Florida; West Palm Beach, Florida; Raleigh, North Carolina; and Richmond, Virginia. Drive Shack venues are freestanding, 50,000 - 60,000 square feet, open-air venues built on approximately 12 acres.

This segment also includes the Company's indoor entertainment golf brand, Puttery, an adult-focused, modern spin on putting, re-defining the game within an immersive experience as guests move from one course to the next. With a high-energy atmosphere that combines plentiful curated culinary offerings and inventive craft cocktails centered around a lively bar area with great music, guests can relax and enjoy their evening before, during and after their tee time. Puttery venues range in size from 15,000 to 20,000 square feet and feature indoor putting courses anchored by bars and other social spaces that serve to create engaging and fun experiences for guests.

The Company launched its first Puttery venue in September 2021 in The Colony, Texas. As of December 31, 2022, the Company operated five leased Puttery venues located in The Colony, Texas, Charlotte, North Carolina, Washington, D.C., Houston, Texas, and Chicago, Illinois. The Company opened the Puttery venue in Pittsburgh, PA in February 2023. The Company is committed to four additional Puttery leases for venues in Miami, New York City (Manhattan), Minneapolis, and Kansas City. Puttery venues are indoor venues typically located in urban and suburban dining and entertainment districts.

- **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 December 31, 2022, we owned, leased or managed 52 properties across seven states. American Golf is focused on delivering lasting experiences for our guests, with over 26,000 members and over 1.9 million rounds played at our properties during the twelve months ended December 31, 2022.

*Public Properties.* Our twenty-nine (29) leased 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. At certain locations, our public properties have larger clubhouses with extensive banquet facilities. In addition, The Players Club is a fee-based monthly membership program offered at most of our public properties, with membership benefits ranging from daily range access and off-peak course access to the ability to participate in golf clinics.

*Private Properties.* Our four (4) leased or owned private properties, which are open primarily to members and their guests, generate revenues principally through initiation fees, membership dues, food, beverage and merchandise sales, and guest fees. Amenities at these properties 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 nineteen (19) managed properties are operated 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.

During 2022, the Company exited a total of two management agreements, bringing our total number of managed properties to nineteen (19).

See Note 5 in Part II, Item 8 “Financial Statements and Supplementary Data” for additional information.

## Growth Strategy

We believe Drive Shack Inc. is the only company comprised of a truly integrated portfolio of both entertainment and traditional golf businesses, which provides us with a unique opportunity to unlock top site locations by leveraging the operational experiences and municipal relationships developed by our traditional golf business. The Company strives to forward innovate and revolutionize next generation experiences. In September 2021, the Company launched Puttery, its newest competitive indoor socializing and entertainment platform.

We expect Puttery to expand our business by diversifying our experiential offerings with an adult-focused modern spin on putting through innovative technology featuring a series of indoor putting courses anchored by bars and other social spaces that will serve to create engaging and fun experiences for our guests. Our Puttery venues require less space than a Drive Shack venue at approximately 15,000 - 20,000 square feet of indoor new or existing retail space. Puttery expands store potential by dozens if not hundreds of markets due to the availability of commercial real estate, shorter development timelines, less capital risk and higher development yields. We believe that advanced data and demographic analytics will allow us to strategically evaluate and develop a robust pipeline of target sites in prioritized markets across the United States. As we look to further grow our Puttery brand, the smaller format offers us the opportunity to improve investment returns and take advantage of the availability of retail space at favorable rates.

As we build our brand through the existing operation of Drive Shack locations and new Puttery locations, we continue to strengthen our position in this growing industry. We believe there is significant opportunity to capture market share given the structural decline of dated businesses, coupled with the rising demand for social and interactive entertainment options. We have strategically aligned our Drive Shack and Puttery businesses to provide competitive, social and interactive experiences to capitalize on this opportunity. There are a variety of consumers who seek out active socializing options. We will use data and testing to understand unique drivers, test consumer behaviors, and understand spending habits, seeking to optimize the most effective way to target, acquire, and retain consumers.

We currently have executed lease agreements with landlords to develop additional locations in Miami, New York City (Manhattan), Minneapolis, Pittsburgh, and Kansas City. We continuously analyze the performance of our first locations and, if necessary, adjustments will be made, to further refine our operational and financial models as we expand our Puttery national footprint. We plan to open four additional locations during 2023, in addition to Pittsburgh, and expect to end the year with a total of ten Puttery venues in operation.

- **A Modernized Socializing Experience**

*Current Consumer Preferences.* Our portfolio of current and future entertainment venues directly addresses consumers’ changing preferences and provides a new type of leisure with multiple experiences under one roof, including:

- **Social Entertainment** – A unique and curated experience where guests can interact, compete and socialize in a sophisticated, fun setting.
- **Sports** – Technology forward activities and robust gaming platforms that promote competition and create unique and lasting experiences.
- **Food & Beverage** – A complete social experience is rounded out by exceptional food and beverage options. Along with heightened visual cues, craft cocktails and curated food choices will enhance the overall experience for every consumer.
- **Inclusivity** – An activity and experience that allows everyone to participate and enjoy, regardless of skill level.

Our focus is on creating an environment that enables sociable competition and connecting with friends and family, providing our guests with memorable and meaningful experiences. These experiences are designed to cater to a range of audiences and competitive appetites, to attract new guests and to drive loyalty and advocacy among our existing guests.

*Innovation.* Golf as a sport and form of entertainment continues to transform. We believe innovation is at the essence of creating the modernized, broadly appealing golf and entertainment experience. We strive to innovate across all our offerings including technology powered golf games, food and beverage menu offerings, and venue formats.

*Technology.* Our Drive Shack venues are equipped with radar-based TrackMan™ technology, which provides precision ball tracking, in real time, affording us the ability to bring our augmented reality gaming to the next level.

Our proprietary gaming software provides us with the unique ability to develop and release cutting edge, fun and engaging games. Our current suite of proprietary games includes Darts, Monster Hunt, ShackJack, Pro Range and Snowman. In addition, our partnership with TrackMan™ provides our guests with access to an extensive portfolio of world-famous virtual golf courses. These games and virtual golf courses are suitable for all skill sets and competitive appetites.

*Elevated Food & Beverage.* Our venues feature chef-inspired food offerings alongside inventive craft cocktails. Our menus feature a curated selection of shareable food options, further enabling the socializing nature of our venues. They are designed and tailored to consumer preferences and lifestyle trends, offering unique flavors, and high-quality fresh ingredients to create a premium selection of options to appeal to our broad range of guests.

Alongside our food menu, we have a beverage offering that features a variety of beers, craft cocktails, non-alcoholic cocktails, canned wine and seltzers, and premium spirits. Our beer selection consists of local and regional craft beers and varies by venue locations. In certain locations, we have partnerships with local breweries which source and produce exclusive beverages in both our Drive Shack and Puttery venues.

We plan to rollout new seasonal or limited time offerings, to supplement our core menu and give our guests more reasons to keep coming back as well as attract new guests.

*Events.* Our venues provide an electric atmosphere for experiential event options spanning corporate events to social gatherings. Each Drive Shack venue features climate-controlled bays, 300-plus television screens, a rooftop terrace with fire pits, and private indoor and outdoor meeting spaces fully equipped with A/V technology and wi-fi, that can accommodate a variety of group sizes up to 1,200 guests. Our Puttery venues have dedicated VIP event spaces as well as other areas throughout each venue, such as lounge areas and outdoor patios.

- **Site selection, development, and the experience**

*Site Selection.* Our site selection process is integral to the successful execution of our growth strategy and integrates a variety of analytical measures with an evaluation of key factors of the overall quality and viability of potential sites. These factors include but are not limited to size and quality of land and existing real estate space; population demographics, such as target population density, age, and household income levels; competition levels in the market; site visibility, accessibility and traffic volume; proximity to other entertainment facilities, restaurants and bars; and market or landlord incentives.

*Venue Development.* Our Drive Shack venue formats are generally open-air 60,000 square foot venues on average built on approximately 12 to 15 acres of land. This format features 72 to 96 climate-controlled bays with lounge seating and an approximately 200 yard outfield. The total investment cost of a new Drive Shack venue ranges from \$25 to \$40 million. We may either enter into a long-term ground lease or purchase the land for our Drive Shack venue format. The average development time for our large format Drive Shack venue is 18 to 24 months.

We currently have a concession agreement in Manhattan (Randall's Island), New York for a future Drive Shack entertainment golf venue. The Company suspended development activities for the Drive Shack venue in New Orleans, LA during 2022 and terminated its lease commitment.

Our Puttery venues average between 15,000 to 20,000 square feet of existing indoor space. These venues each feature anywhere from two to four uniquely themed nine-hole courses, depending on venue size and layout. The total investment cost of a Puttery venue is expected to range from \$8 to \$12 million, exclusive of landlord incentives. We believe the development timeline for a Puttery venue averages six to nine months and will vary based on the unique layout of each venue.

On occasion, we expect that our various venue formats may be smaller or larger or cost more or less than our targeted range, depending on the specific circumstances of the selected site or market.

*Transcending the Experience.* We look to create meaningful and memorable experiences by combining world class golf technology, great drinks, delicious food and welcoming environments. Our Drive Shack venues are organized and designed to spread and amplify guest energy and revolutionize the golf and competitive socializing experience. We encourage guest interaction with other guests by way of carefully placed bars and lounges, social event areas, outdoor patios and climate-controlled bays. The lighting, finishes and furniture are contemporary yet comfortable and are purposely organized for group interaction and a social atmosphere. Whether a golfer or not we want everyone to feel comfortable experiencing our version of golf.

Our new Puttery venues consist of exciting, adult focused mini-golf and leisure spaces with social interaction in mind, character-filled with innovative interior designs (including course themes consisting of libraries, lodges, redwood forests and cityscape rooftops). Each location is customized to create unique ways to socialize with friends for a night out, have drinks with colleagues or meet new people. These bar forward mini-golf spaces blend vintage putting with upscale casual lifestyle through the strategic placement of the lounges, bars, courses, and VIP spaces within each venue. The courses are intimate, transformative and designed specifically to keep guests connected and socializing while playing enhanced mini golf. Beverage and food opportunities are plentiful with multiple bars and a full-service kitchen. Our lounge furniture and finishes are all created with a comfortable yet upscale experience.

## Marketing

- **Growing Brand Awareness**

Continuing to build and grow brand awareness is a top priority. Our strategy consists of multiple layers, which includes local and national data and demographic profiles to identify interests and behaviors, competitors and consumption habits of our target consumers.

- **Embracing Local Communities**

*Local Partnerships.* Each Drive Shack venue prides itself on forging bonds with local partners in the community. For example, our Drive Shack location in Richmond partnered with a local brewery to create an exclusive premium beer for our venue, while our Drive Shack location in Raleigh has partnered with a local female-owned brewery. We have also collaborated with a local specialty ice cream shop to create a new scratch rendition of the classic ice cream sandwich inspired by Arnold Palmer, called the Chilly Palmer. We plan to continue to explore local partnerships and collaborations that may vary by venue and geographic location.

- **Customized Programming and Promotions**

*Unique Programs.* Our guest experience is enhanced by ongoing events and programs designed to engage a range of guest desires, including quarterly Social Leagues and Summer Swing Academy, which introduces young kids to golf in a fun, relaxed environment. Intended to drive new and repeat guests to our venues, we feature Limited Time Offers ("LTOs") that are generally rolled out on a quarterly basis. The LTOs typically include three new food and three new beverage offerings that have been created and inspired by our talented chefs in each of our Drive Shack venues

We also have designed programming around seasonal events, including March Madness, National Beer Day, and Easter, with our family themed Easter Egg Hunt. We continually innovate new ways for guests to compete within the venue, such as our new, repeatable tournament model, Drive Shack Open, for use at our large format entertainment venues. The Drive Shack Open is geared towards more competitive, avid golfers and is structured as a single-day tournament, with four-person teams, a team entry fee and prizes awarded to teams based on scores. In December 2020, we debuted our first Drive Shack Open tournament, which sold out in advance of the tournament, and we have continued Drive Shack Open through 2022. We have also developed an in-venue tournament model, Monster Hunt



Challenge, that is geared towards less serious players and non-golfers. The Monster Hunt Challenge is structured as a 4-week tournament model built specifically for competition with "high score" tournament mentality for both groups and solo players, with unlimited entries at a low cost per entry fee and prizes awarded based on highest score.

*Promotional Campaigns.* We periodically develop promotional programs to attract new guests and increase the length of stay and spend per visitor. Our promotional programs include Happy Hour specials, offering discounted food and beverage selections during specified periods of time as well as various holiday promotions. These promotions are intended to appeal to our existing guests and to encourage new guests to experience our version of golf in climate-controlled bays. We also launched a 2-Bay promotional package in Fall 2020. This promotional package allows groups of 10 guests or less to reserve two bays and includes a food and beverage credit and two hours of play for a set price. We offer this package today during non-peak seasonal times throughout the year.

## **Intellectual Property**

We have registered the trademarks Drive Shack®, Puttery® and American Golf® and their primary logos have registered or applied to register certain additional trademarks with the United States Patent and Trademark Office and in various foreign countries. We consider our trade names and our logos to be important features of our operations and seek to actively monitor and protect our interest in this property in the various jurisdictions where we operate. We also have certain trade secrets, such as our recipes, processes, proprietary information and certain software programs that we protect by requiring all of our employees to accept an agreement to keep trade secrets confidential in connection with their onboarding process.

## **Policies with Respect to Certain Other Activities**

Subject to the approval of our board of directors, we have the authority to offer our common stock or other equity or debt securities to raise cash financing, in exchange for property and to repurchase or otherwise reacquire our shares or any other securities and may engage in such activities in the future. We also may make loans to, or provide guarantees of certain obligations of, our subsidiaries. We may engage in the purchase and sale of investments. Our officers and directors may change any of these policies and any investment guidelines without a vote of our stockholders. Our board of directors has the authority, without stockholder approval, to issue additional common stock or preferred stock in any manner and on such terms and for such consideration it deems appropriate, including in exchange for cash or property.

## **Competition**

We operate in a highly competitive industry and compete primarily on the basis of location, featured facilities, quality and breadth of product offerings and price. As a result, competition for market share in the industry in which we compete is significant.

Our entertainment golf business competes with restaurants, dining and social clubs and other entertainment attractions including movie theaters, sporting events, bowling alleys, sports activity centers, arcades and entertainment centers, nightclubs and theme parks.

Our traditional golf properties compete on a local and regional level with other country clubs and golf properties. The level of competition in the traditional golf business varies from region to region and is subject to change as existing facilities are renovated or new facilities are developed.

For more information about the competition we face generally and in our entertainment and traditional golf businesses specifically, see Part I, Item 1A. "Risk Factors-Risks Related to Our Business-Competition in the industry in which we operate could have a material adverse effect on our business and results of operations."

## **Seasonality**

Seasonality can affect our results of operations. Our traditional golf business is subject to seasonal fluctuations as colder temperatures and shorter days reduce the demand for outdoor activities. As a result, the traditional golf business generates a disproportionate share of its annual revenue in the second and third quarters of each year. In addition, our Drive Shack and

Puttery venues could be significantly impacted on a season-to-season basis, based on corporate event and social gathering volumes during holiday seasons and school vacation schedules. For this reason, a quarter-to-quarter comparison may not be a good indicator of our current and/or future performance.

### **Government Regulation of Our Business**

Our properties and operations are subject to a number of environmental laws. As a result, we may be required to incur costs to comply with the requirements of these laws, such as those relating to water resources, discharges to air, water and land, the handling and disposal of solid and hazardous waste and the cleanup of properties affected by regulated materials. Under these and other environmental requirements, we may be required to investigate and clean up hazardous or toxic substances or chemical releases from currently owned, formerly owned or operated facilities.

Environmental laws typically impose cleanup responsibility and liability on a property owner without regard to whether the property owner knew of or caused the presence of the contaminants. We may use certain substances and generate certain wastes that may be deemed hazardous or toxic under such laws, and from time to time have incurred, and in the future may incur, costs related to cleaning up contamination resulting from historic uses by us or by previous owners of certain of our current or former properties or our treatment, storage or disposal of wastes at facilities owned by others. Our facilities are also subject to risks associated with mold, asbestos and other indoor building contaminants. The costs of investigation, remediation or removal of regulated materials may be substantial, and the presence of those substances, or the failure to remediate a property properly, may impair our ability to use, transfer or obtain financing for our property. We may be required to incur costs to remediate potential environmental hazards, mitigate environmental risks in the future, or comply with other environmental laws and regulations.

In addition, in order to build, improve, upgrade or expand some of our facilities, we may be subject to environmental review under the National Environmental Policy Act and, for projects in California, the California Environmental Quality Act. Both acts require that a specified government agency study any proposal for potential environmental impacts and include in its analysis various alternatives. Any improvement proposal may not be approved or may be approved with modifications that substantially increase the cost or decrease the desirability of implementing the project.

We are also subject to regulation by the United States Occupational Safety and Health Administration and similar health and safety laws in other jurisdictions. These regulations impact a number of aspects of operations, including golf course maintenance and food handling and preparation.

The ownership and operation of our facilities subjects us to federal, state and local laws regulating zoning, land development, land use, building design and construction, and other real estate-related laws and regulations.

Our facilities and operations are subject to the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, which we refer to in this Annual Report as the ADA. The ADA generally requires that we remove architectural barriers when readily achievable so that our facilities are made accessible to people with disabilities. In addition, the ADA Amendments Act of 2008, included additional compliance requirements for golf facilities and recreational areas. Noncompliance could result in imposition of fines or an award of damages to private litigants. Federal legislation or regulations may further amend the ADA to impose more stringent requirements with which we would have to comply.

We are also subject to various local, state and federal laws, regulations and administrative practices affecting our business. For instance, we must comply with provisions regulating equal employment, wage and hour practices and licensing requirements and regulations for the sale of food and alcoholic beverages.

## **Human Capital Management**

### *Entertainment Golf*

As of December 31, 2022, there were approximately 1,230 employees in our entertainment golf segment including: 1,091 hourly venue employees, and 102 venue managers.

### *Traditional golf*

As of December 31, 2022, there were approximately 2,801 employees in our traditional golf segment: 2,492 hourly course employees, 283 course managers and 26 corporate personnel.

### *Corporate*

As of December 31, 2022, there were 37 employees in our corporate segment.

The number of Company employees represented by unions is zero. We believe our current relations with our employees are good. While the Company has not adopted any systematic human capital metrics, management focuses on fostering diversity including gender diversity in the executive suite and the Company conducts training on respectful workplace practices for its employees on a regular basis. The Company also employs safety management resources internally in order to ensure safety in our traditional golf and entertainment.

## **Corporate Governance**

We emphasize the importance of professional business conduct and ethics through our corporate governance initiatives. Our board of directors consists of a majority of independent directors under the OTCMKTS listing standards. The Audit, Compensation and Nominating and Corporate Governance Committees of our board of directors are composed exclusively of independent directors. We have adopted corporate governance guidelines and a code of business conduct and ethics, which delineate our standards for our directors, officers and employees.

## **Available Information**

We make available through our website annual, quarterly and current reports, proxy statements and other documents through our website, <http://ir.driveshack.com>, and by posting them to [otcmkts.com/DSHK/disclosure](http://otcmkts.com/DSHK/disclosure). Also posted on our website in the "Investor Relations-Corporate Governance" section are charters for the Company's Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee, as well as our Corporate Governance Guidelines and our Code of Business Conduct and Ethics governing our directors, officers and employees. Information on, or accessible through, our website is not a part of, and is not incorporated into, this report.

## Item 1A. Risk Factors

*An investment in our common stock involves risk and uncertainties. In addition to the information contained elsewhere in this Annual Report, the information posted on our website <http://ir.driveshack.com>, and on [otcmarkets.com/DSHK/disclosure](http://otcmarkets.com/DSHK/disclosure), the following risk factors should be carefully considered in evaluating our business or making an investment decision involving our common stock. The occurrence or manifestation in whole or in part of any of the following risks could harm our business, financial conditions and results of operations, cash flows and/or the trading price of our common stock. In addition, our actual performance could differ materially from any results expressed or implied by forward-looking statements contained in this Annual Report, the information posted on our website [IR site] and other filings that we make with the [OTCQX] and other communications by us, both written and oral, depending on a variety of factors, including the risks and uncertainties described below. Our business is also subject to general risks and uncertainties that affect many other companies, including, but not limited to, overall economic and industry conditions, and additional risks and uncertainties that are currently not known or we believe are immaterial may also have a material negative impact on our business, financial condition and results of operations.*

### **Risks Related to Our Business and Industry**

***We have opened six Puttery venues and plan to open additional Puttery venues in 2023. There can be no assurance that the Puttery venues will open or operate as expected.***

We opened two Puttery venues in 2021 and three Puttery venues in 2022. Our sixth Puttery venue opened in early 2023. We intend to open four more Puttery venues in 2023, for which we have executed leases. This plan depends on the completion of construction of four (4) additional locations, all of which remain in various stages of planning or process and may not occur on the timelines that we expect. Following the execution of any leases, we have in the past terminated, and may in the future terminate, such leases for various reasons prior to the construction or opening of the venue, which could delay our plans. In addition, we have in the past replaced or repaired and may in the future replace or repair the technology at our various venues which could further delay our plans. For example in 2019, we closed our Orlando location for approximately one month in order to install our TrackMan™ radar-based system, replacing our older technology. In the past, the construction time of our existing Drive Shack locations has exceeded our expected build timelines. For instance, our Orlando location opened approximately one month later than we had projected. If we are unable to develop and open the Puttery venues as expected, or, when and if opened, they do not accomplish the goals described herein, or if we experience delays or cost overruns in development, our business, operating results, cash flows, ability to obtain financing and liquidity could be materially and adversely affected.

We may experience time delays, unforeseen expenses, licensing and municipal approval delays and other complications while developing the Puttery venues as well as supply chain disruptions. These complications can delay the commencement of revenue-generating activities, reduce the amount of revenue we earn and increase our costs. Delays in development beyond our estimated timelines, or amendments or change orders to development contracts we have entered into and will enter into in the future, could increase the cost of completion beyond the amounts that we estimate. Increased costs could require us to obtain additional sources of financing to continue development on our estimated development timeline or to fund our operations during such development. Any delay in completion of a Puttery venue could cause a delay in the receipt of revenues estimated therefrom. As a result of any one of these factors, any significant development delay, whatever the cause, could have a material adverse effect on our business, operating results, cash flows and liquidity.

***The amount of revenue we generate at our venues may decrease in connection with changes in consumer spending patterns, particularly discretionary expenditures for leisure and recreation.***

Consumer spending patterns, particularly discretionary expenditures for leisure and recreation, are subject to factors beyond our control. Should consumers decrease their discretionary spending in general, and in particular on leisure and entertainment, our revenues could decline and our operating margins could decrease, either of which would adversely affect our business. In general, economic recessions or downturns, increased unemployment, low consumer confidence and outlook, and depressed housing markets could cause a decrease in discretionary spending among our customers and potential customers. In addition, because we generate revenues at physical locations that require our customers to travel, consumer spending could also be impacted in a way that is material for our business as a result of war, terrorist activities or threats and heightened travel security measures instituted in response to these events and the financial condition of the airline, automotive and other transportation-related industries and its impact on travel, gasoline prices and natural disasters, such as earthquakes, tornadoes, hurricanes, wildfires, blizzards, droughts and floods and outbreaks of epidemic, pandemic or influenza, coronavirus and other contagious diseases afflicting the geographic regions in which we operate. These factors and other global, national and regional conditions can adversely affect, and from time to time have adversely affected, individual

properties, particular regions or our business as a whole. Any one or more of these factors could negatively affect the sales volume and profitability of our services, food and beverages at our Entertainment Golf venues and Traditional Golf properties, and rounds played at our Traditional Golf properties. In addition, in the case of our traditional golf venues, during such periods of adverse economic conditions, we may experience increased rates of resignations of existing members, a decrease in the rate of new member enrollment, a decrease in golf rounds played or reduced spending, any of which may result in, among other things, financial losses and decreased revenues.

***We have incurred, and may in the future incur, debt financing.***

On an ongoing basis, we engage with lenders and other financial institutions in an effort to improve our liquidity and capital resources. In March 2023, we established a five-year senior secured delayed draw term loan facility in an aggregate principal amount of \$26.5 million (the “Facility”) at our Entertainment Golf segment. The terms and conditions of the Facility includes restrictive covenants that may limit our ability to operate our business, to incur or refinance our debt, engage in certain transactions, and require us to maintain certain financial ratios, among others, any of which may limit our ability to finance future operations and capital needs, react to changes in our business and in the economy generally, and to pursue business opportunities and activities. If we fail to comply with any of these restrictions or are unable to pay our debt service when due, our debt could be accelerated or cross-accelerated, and we cannot assure you that we will have the ability to repay such accelerated debt. Any such default could also have adverse consequences to our status and reporting requirements, reducing our ability to quickly access the capital markets. Our ability to service our existing and any future debt will depend on our performance and operations, which is subject to factors that are beyond our control and compliance with covenants in the agreements governing such debt. We may incur additional debt to fund our business and strategic initiatives. If we incur additional debt and other obligations, the risks associated with our substantial leverage and the ability to service such debt would increase, which could have a material adverse effect on our business, results of operation and financial condition.

***Our growth strategy may be materially and adversely affected by our inability to fund, develop and open new entertainment venues and operate them profitably.***

Our business strategy relies on our ability to develop, open and operate golf entertainment venues. Our strategy includes the continued expansion of our geographic footprint by opening four (4) additional Puttery venues by December 2023. Opening new venues requires us to construct our venues in compliance with applicable zoning, licensing, land use and environmental regulations and finance our development, construction and opening costs. Thus, there can be no assurance that we will successfully open new Puttery venues in accordance with the timing and cost assumptions inherent in our strategic plan. In addition, if the construction and compliance costs of any venue exceeds our budgeted estimates, our expected return on investment would be diminished, which could increase our cost of capital relative to returns and slow our growth strategy or ability to fund it.

In order to operate venues profitably, we must maintain efficient levels of costs, including hiring, training and retaining skilled management and other employees necessary to meet staffing needs and in procuring and pricing our products, including bay-play and food and beverages. Our failure to staff our venues on a cost-effective basis or set appropriate pricing levels creates the risk of diminished operating margins at the venue level. In addition, if we do not successfully attract consumers to our venue, or if they suffer a negative customer experience, we are at risk of not generating adequate revenues to create a favorable margin over our operating costs. Factors that could inhibit our ability to attract consumers to our venues include competition from other food and leisure venues, poor customer service at our venues and technological failures in our consumer-facing technology. Thus, there can be no assurance that we will achieve profitability at any individual venue, which could have a significant adverse effect on our overall operating results.

***We have a limited operating history at our Drive Shack and Puttery venues, which may not be sufficient to evaluate our business and prospects.***

We have a limited operating history and track record at Drive Shack and Puttery venues, in part because the COVID-19 pandemic occurred early in our operating history. A number of our entertainment golf venues are, and in the future others will be, located in areas where we have little or no meaningful operating experience. Those markets may have different competitive conditions, local regulatory requirements, consumer tastes and discretionary spending patterns than our existing markets, which may cause our new venues to be less successful than we expect. As a result, our prior operating history and historical financial statements may not be a reliable basis for evaluating our business prospects or the future value of our shares. Our strategy may not be successful, and if unsuccessful, we may be unable to modify it in a timely and successful

manner. We cannot give you any assurance that we will be able to implement our strategy on a timely basis, if at all, or achieve our internal model or that our assumptions will be accurate. Our limited operating history also means that we continue to develop and implement various policies and procedures including those related to data privacy and other matters. We will need to continue to build our team to implement our strategies.

We will continue to incur significant capital and operating expenditures while we expand the geographic footprint of our business. We will need to invest significant amounts of additional capital to implement our strategy. Any delays beyond the expected development period for these assets would prolong, and could increase the level of, operating losses and negative operating cash flows. Our future liquidity may also be affected by the timing of financing availability in relation to the incurrence of construction costs and other outflows and by the timing of receipt of cash flows in relation to the incurrence of project and operating expenses. Our ability to generate any positive operating cash flow and achieve profitability in the future is dependent on, among other things, the successful expansion of our business.

***Our business is dependent upon obtaining substantial funding from various sources, which may not be available or may only be available on unfavorable terms.***

We may need to incur additional indebtedness to continue to develop our business,. If we are unable to secure additional funding, or amendments to existing financing, or if additional funding is only available on terms that we determine are not acceptable to us, we may be unable to fully execute our business plan and our business, financial condition or results of operations may be adversely affected. Additionally, we may need to adjust the timing of our planned capital expenditures and venue development depending on the availability of such additional funding. Our ability to raise additional capital will depend on financial, economic and market conditions, our progress in executing our business strategy and other factors, many of which are beyond our control. We cannot assure you that such additional funding will be available on acceptable terms, or at all. To the extent that we raise additional equity capital by issuing additional securities at any point in the future, our then-existing shareholders may experience dilution. Debt financing, if available, may subject us to restrictive covenants that could limit our flexibility in conducting future business activities and could result in us expending significant resources to service our obligations. If we are unable to comply with these covenants and service our debt, we may lose control of our business and be forced to reduce or delay planned investments or capital expenditures, sell assets, restructure our operations or submit to foreclosure proceedings, all of which could result in a material adverse effect upon our business.

A variety of factors beyond our control could impact the availability or cost of capital, including domestic or international economic conditions, increases in key benchmark interest rates and/or credit spreads, the adoption of new or amended banking or capital market laws or regulations, the re-pricing of market risks and volatility in capital and financial markets, risks relating to the credit risk of our customers and the jurisdictions in which we operate, as well as general risks applicable to the consumer discretionary spending sector.

***Competition in the industry in which we operate could have a material adverse effect on our business and results of operations.***

We operate in a highly competitive industry and compete primarily on the basis of reputation, featured facilities, location, quality and breadth of product offerings and price. As a result, competition for market share in the industry in which we compete is significant.

Each market in which we operate is highly competitive and includes competition on a local and regional level with restaurants, dining and social clubs and other entertainment attractions including movie theaters, sporting events, bowling alleys, sports activity centers, arcades and entertainment centers, nightclubs and theme parks. Many of the entities operating these businesses are larger and better capitalized, have a greater number of stores, have been in business longer and are better established with stronger name recognition in the markets where our entertainment golf venues are located or are planned to be located. As a result, they may be able to invest greater resources than we can in attracting customers and succeed in attracting customers who would otherwise come to our venues. The legalization of casino and sports gambling in geographic areas near any current or future venues would create the possibility for entertainment alternatives, which could have a material adverse effect on our business and financial condition. We also face competition from increasingly sophisticated home-based forms of entertainment, such as internet and video gaming and home movie streaming and delivery.

The number and variety of competitors in our business vary based on the location and setting of each facility, with some situated in intensely competitive upscale urban areas characterized by frequent innovations in the products and services offered by competing restaurants, dining and social clubs and other entertainment attractions. In addition, new restaurants and other social and meeting venues may open or expand their amenities. As a result, the supply in a given region may exceed

the demand for such facilities, and any increase in the number or quality of restaurants and other social and meeting venues, or the products and services they provide, in such region could significantly impact the ability of our properties to attract and retain members, which could harm our business and results of operations.

Our traditional golf properties compete on a local and regional level with other country clubs and golf properties. The level of competition in the traditional golf business varies from region to region and is subject to change as existing facilities are renovated or new facilities are developed. An increase in the number or quality of similar clubs and other facilities in a particular region could significantly increase competition, which could have a negative impact on our business and results of operations. In addition, member-owned and individual privately-owned clubs may be able to create a perception of exclusivity that we have difficulty replicating given the diversity of our portfolio and the scope of our holdings.

***Our large workforce subjects us to risks associated with increases in the cost of labor as a result of increased competition for employees, higher employee turnover rates and required wage increases and health benefit coverage, lawsuits or labor union activity.***

Labor is one of our primary property-level operating expenses. We face the risks of labor shortages or increased labor costs because of increased competition for employees, higher employee turnover rates, or increases in the federal or state minimum wage or other employee benefit costs. For example, if the federal minimum wage were increased significantly, we would have to assess the financial impact on our operations as we have a large population of hourly employees. If labor-related expenses increase, our operating expense could increase in a manner that materially and adversely affects our operating margins and profitability.

We are subject to the Fair Labor Standards Act and various federal and state laws governing such matters as minimum wage requirements, gratuity policies, overtime compensation and other working conditions, citizenship requirements, discrimination and family and medical leave. In recent years, a number of companies have been subject to lawsuits, including class action lawsuits, alleging violations of federal and state law regarding workplace and employment matters, overtime wage policies, discrimination and similar matters. A number of these lawsuits have resulted in the payment of substantial damages by the defendants. Similar lawsuits have been threatened or instituted against us from time to time, and we may incur substantial damages and expenses resulting from lawsuits of this type, which could have a material adverse effect on our business, financial condition or results of operations.

***Our operations are susceptible to changes in the availability and the cost of food, goods, rent, water, utilities, repairs, maintenance and taxes, which could reduce our operating margins and harm our business, financial condition and results of operations.***

Our most significant operating costs, other than labor, are our cost of goods, water, utilities, rent and property taxes. Many, and in some cases all, of the factors affecting these costs are beyond our control. Increases in operating costs due to inflation, commodity prices and other factors may not be directly offset by increased revenue. Our cost of goods such as food and beverage costs account for a significant portion of our total property-level operating expense in our Entertainment and traditional golf segments. If our cost of goods increased significantly and we are not able to pass along those increased costs to our customers or members in the form of higher prices or otherwise, our operating margins would decrease, which would have an adverse effect on our business, financial condition and results of operations.

In addition, rent accounts for a significant portion of our property-level operating expense. Significant increases in our rent costs would increase our operating expense and our business, financial condition and results of operations may be adversely impacted. The prices of utilities are volatile, and shortages sometimes occur. In particular, in the case of our traditional golf business, municipalities are increasingly placing restrictions on the use of water for golf course irrigation and increasing the cost of water. Significant increases in the cost of our utilities, or any shortages, could interrupt or curtail our operations and lower our operating margins, which could have a negative impact on our business, financial condition and results of operations.

Each of our properties is subject to real and personal property taxes. The real and personal property taxes on our properties may increase or decrease as tax rates change and as our properties are assessed or reassessed by taxing authorities. If real and personal property taxes increase, our financial condition and results of operations may be adversely impacted.

***We could be required to make material cash outlays in future periods if the number of initiation deposit refund requests we receive materially increases or if we are required to surrender unclaimed initiation deposits to state authorities under applicable escheatment laws.***

We may be required to make significant cash outlays in connection with initiation deposits at our traditional golf properties. Historically, members of our private properties were generally required to pay an initiation deposit upon their acceptance as a member and, in most cases, such deposits are fully refundable after a fixed number of years (typically thirty (30) years) and upon the occurrence of other contract-specific conditions, whether or not the applicable golf property has undergone a transfer of ownership since the time of the deposit. We may be subject to various states' escheatment laws with respect to initiation deposits that have not been refunded to members. All states have escheatment laws and generally require companies to remit to the state cash in an amount equal to unclaimed and abandoned property after a specified period of dormancy, which is typically three to five years. Moreover, most of the states in which we conduct business hire independent agents to conduct unclaimed and abandoned property audits. We currently do not remit to states any amounts relating to initiation deposits that are eligible to be refunded to members based upon our interpretation of the applicability of such laws to initiation fee deposits. The analysis of the potential application of escheatment laws to our initiation deposits is complex, involving an analysis of constitutional and statutory provisions and contractual and factual issues. While we do not believe that initiation deposits must be escheated, we may be forced to remit such amounts if we are challenged and fail to prevail in our position.

***Our investments in real estate and facilities are subject to numerous risks, including the risk that the values of our investments may decline if there is a prolonged downturn in real estate values.***

Our operations encompass a large amount of real estate holdings, primarily in the form of leasehold interests. Accordingly, we are subject to the risks associated with holding real estate investments. Our real estate holdings (including our long-term leaseholds) are subject to risks typically associated with investments in real estate. The investment returns available from equity investments in real estate depend in large part on the amount of income earned, expenses incurred, and capital appreciation generated by the related properties. In addition, a variety of other factors affect income from properties and real estate values, including governmental regulations, real estate, insurance, zoning, tax and eminent domain laws, interest rate levels and the availability of financing. For example, new or existing real estate zoning or tax laws can make it more expensive and time-consuming to expand, modify or renovate older properties. Under eminent domain laws, governments can take real property. Sometimes this taking is for less compensation than the owner believes the property is worth. Any of these factors could have an adverse impact on our business, financial condition or results of operations.

***We may not be able to retain members at our public and private traditional golf properties, and attract golf rounds played, which could have an adverse effect on our business, financial condition and results of operations.***

Our success depends on our ability to attract and retain members and other customers at our public and private traditional golf properties, attract golf rounds played and maintain or increase revenues generated from our traditional golf properties. Changes in consumer financial condition, leisure tastes and preferences, particularly those affecting the popularity of golf, and other social and demographic trends could adversely affect our business. Significant periods where attrition rates exceed enrollment rates or where facilities usage is below historical levels at our traditional golf properties would have a material adverse effect on our business, financial condition and results of operations. A portion of our member base may not regularly use our facilities and may be more likely to cancel their membership. Factors that could lead to a decrease in membership include a decline in our ability to deliver quality service at our current membership prices, a decrease in public interest in the sport of golf, and direct and indirect competition in our industry. If we cannot attract new members and other customers, retain our existing members and other customers, or maintain golf rounds played at our traditional golf properties, our financial condition and results of operations could be harmed.

***We have significant operations concentrated in certain geographic areas, and any disruption in the operations of our properties in any of these areas could harm our results of operations.***

As of December 31, 2022, we operated multiple traditional golf properties in several metropolitan areas, including over two dozen in the greater Los Angeles, California region. As a result, any prolonged disruption in the operations of our properties in any of these markets, whether due to technical difficulties, power failures or destruction or damage to the properties as a result of a natural disaster, such as hurricanes or earthquakes, fire or any other reason, could harm our results of operations or may result in property closures. In addition, some of the metropolitan areas where we operate properties could be disproportionately affected by regional economic conditions, such as declining home prices and rising unemployment.



Concentration in these markets increases our exposure to adverse developments related to competition, as well as economic and demographic changes in these areas.

***Our results of operations in traditional golf are based on seasonality, and unusual weather patterns and extreme weather events, as well as forecasts of bad or mixed weather conditions or periodic and quasi-periodic weather patterns, could adversely affect the value of our golf courses or negatively impact our business and results of operations.***

Seasonality can affect our results of operations. Usage of traditional golf properties tends to decline significantly during the first and fourth quarters, when colder temperatures and shorter days reduce the demand for outdoor activities. As a result, we expect the traditional golf business to generate a greater share of its annual revenue in the second and third quarters of each year. Accordingly, our traditional golf business is especially vulnerable to events that may negatively impact its operations during the second and third quarters, when guest and member usage is highest. In addition, operations in the entertainment golf business could be significantly impacted on a season-to-season basis; including based on corporate events volume during holiday seasons and school vacation schedules. For this reason, a quarter-to-quarter comparison may not be a good indicator of our current and/or future performance.

Our businesses are subject to unusual weather patterns and extreme weather events, such as heavy rains, prolonged snow accumulations, high winds, extended heat waves and drought, which could negatively affect the income generated by our properties. Because our Drive Shack and traditional golf businesses are primarily or partially outdoors, attendance at our facilities could be adversely affected by forecasts of bad weather conditions since individuals may instead choose to participate in indoor activities.

The maintenance of satisfactory turf grass conditions on our traditional golf properties requires significant amounts of water. Our ability to irrigate a golf course could be adversely affected by a drought or other cause of water shortage, such as government imposed restrictions on water usage. Additionally, we may be subject to significant increases in the cost of water. We have a concentration of traditional golf properties in states such as California and New York that experience periods of unusually hot, cold, dry or rainy weather. Unfavorable weather patterns in such states, or any other circumstance or event that causes a prolonged disruption in the operations of our properties in such states (including, without limitation, economic and demographic changes in these areas), could have an adverse impact on our traditional golf segment which is vulnerable to all these factors.

***Food safety incidents at our properties or in our industry or supply chain may adversely affect customer perception of our brands or industry and result in declines in sales and profits.***

We cannot guarantee that our supply chain and food safety controls and training will be fully effective in preventing all food safety issues at our properties and venues, including any occurrences of foodborne illnesses such as salmonella, E. coli, norovirus, or hepatitis A. Some foodborne illness incidents could be caused by third-party vendors and distributors outside of our control. New illnesses may develop resistance to our current precautions in the future, or diseases with long incubation periods could arise, that could give rise to claims or allegations on a retroactive basis. One or more instances of foodborne illness in any of our properties or related to food products we sell could negatively affect our sales nationwide if highly publicized on national media outlets or through social media. This risk exists even if it were later determined that the illness was wrongly attributed to us or one of our properties. Further, any instances of food contamination, whether or not at our facilities, could subject us or our suppliers to a food recall, including pursuant to regulations of the Food and Drug Administration under the Food Safety Modernization Act.

***Our insurance policies may not provide adequate levels of coverage against all claims and we may incur losses that are not covered by our insurance.***

There are certain types of losses, generally of a catastrophic nature, such as pandemics, earthquakes, floods, hurricanes, terrorism or acts of war, that may be uninsurable or not economically insurable. Inflation, changes in building codes and ordinances, environmental considerations, and other factors, including terrorism or acts of war, also might make the insurance proceeds insufficient to repair or replace a property, if it is damaged or destroyed. Under such circumstances, the insurance proceeds received might not be adequate to restore our economic position with respect to the affected real property. For example, we may suffer losses from acts of terrorism that are not covered by insurance.

***The failure to comply with regulations applicable to our properties or the failure to retain licenses or permits relating to our properties may harm our business and results of operations.***

Our business is subject to extensive federal, state and local government regulation in the various jurisdictions in which our properties are located, including regulations relating to alcoholic beverage control, public health and safety, environmental hazards and food safety. Alcoholic beverage control regulations require each of our properties to obtain licenses and permits to sell alcoholic beverages on the premises. Typically, licenses must be renewed annually and may be revoked or suspended for cause at any time. In some states, the loss of a license for cause with respect to one location may lead to the loss of licenses at all locations in that state and could make it more difficult to obtain additional licenses in that state. Alcoholic beverage control regulations relate to numerous aspects of the daily operations of each venue, including minimum age of patrons and employees, hours of operation, advertising, wholesale purchasing, inventory control and handling and storage and dispensing of alcoholic beverages.

The failure of a property to obtain or retain its licenses and permits would adversely affect that property's operations and profitability, as well as our ability to obtain such a license or permit in other locations. We may also be subject to dram shop statutes in certain states, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. Even though we are covered by general liability insurance, a settlement or judgment against us under a dram shop lawsuit in excess of liability coverage could have a material adverse effect on our operations. In addition, any of our locations located near airports must comply with land-use zoning ordinances related to the height of objects around airports, which are promulgated at the federal level based on advice and guidance published by the Federal Aviation Administration.

We are also subject to the Americans with Disabilities Act (the "ADA") which, among other things, may require certain renovations to our facilities to comply with access and use requirements. A determination that we are not in compliance with the ADA or any other similar law or regulation could result in the imposition of fines or an award of damages to private litigants. While we believe we are operating in substantial compliance, and will continue to remove architectural barriers in our facilities when readily achievable, in accordance with current applicable laws and regulations, there can be no assurance that our expenses for compliance with these laws and regulations will not increase significantly and harm our business, financial condition and results of operations.

We are also subject to numerous other federal, state and local governmental regulations related to building and zoning requirements and the use and operation of clubs, including changes to building codes and fire and life safety codes, which can affect our ability to obtain and maintain licenses relating to our business and properties. If we were required to make substantial modifications at our properties to comply with these regulations or if we fail to comply with these regulations, our business, financial condition and results of operations could be negatively impacted.

***Our procurement of certain materials for developing, redeveloping or renovating our venues is dependent upon a few suppliers.***

Our ability to continue to procure certain materials is important to our business strategy for developing, redeveloping or renovating our venues. The number of suppliers from which we can purchase our materials is limited. In addition, the materials necessary to construct entertainment golf venues are subject to price fluctuation. To the extent that the number of suppliers declines, or the price of materials necessary to construct our entertainment golf venues increases, we could be subject to the risk increased capital expenditure costs, of distribution delays, pricing pressure, lack of innovation and other associated risks which could adversely affect our business, financial condition or results of operations.

***Changes in laws, regulations and other requirements could adversely affect our business, results of operations or financial condition.***

We are also subject to federal, state and local environmental laws, regulations and other requirements. More stringent and varied requirements of local and state governmental bodies with respect to zoning, land use and environmental factors could delay or prevent development of new venues in particular locations. Environmental laws and regulations also govern, among other things, discharges of pollutants into the air and water as well as the presence, handling, release and disposal of and exposure to hazardous substances. These laws provide for significant fines and penalties for noncompliance. Third parties may also make personal injury, property damage or other claims against us associated with actual or alleged release of, or exposure to, hazardous substances at our properties. We could also be strictly liable, without regard to fault, for certain environmental conditions at properties we formerly owned or operated as well as our current properties. The failure to

receive or retain a liquor license, or any other required permit or license, in a particular location, or to continue to qualify for, or renew licenses, could have a material adverse effect on operations and our ability to obtain such a license or permit in other locations. In addition, changes in federal law relating to the height of objects around airports may interfere with the planned design, construction and operation of any of our entertainment golf venues located near airports.

***Lawsuits, investigations and indemnification claims could result in significant liabilities and reputational harm, which could materially adversely affect our results of operations, financial condition and liquidity.***

From time to time, we are and may become involved in lawsuits, inquiries or investigations or receive claims for indemnification. Our efforts to resolve any such lawsuits, inquiries, investigations or claims could be very expensive and highly damaging to our reputation, even if the underlying claims are without merit. We could potentially be found liable for significant damages or indemnification obligations. Such developments could have a material adverse effect on our business, results of operations and financial condition.

Our risk of litigation includes, but is not limited to, lawsuits that could be brought by users of our properties and property-level employees. For instance, we are subject to federal and state laws governing minimum wage requirements, overtime compensation, discrimination and family and medical leave. Any lawsuit alleging a violation of any such laws could result in a settlement or other resolution that requires us to make a substantial payment, which could have a material adverse effect on our financial condition and results of operations. In addition, accidents or injuries in connection with our properties could subject us to liability and reputational harm.

***A failure in our systems or infrastructure which maintain our internal and customer data, or those of our third-party service providers, including as a result of cyber-attacks, could result in faulty business decisions or harm to our reputation or subject us to costs, fines or lawsuits.***

Certain information relating to our members and guests, including personally identifiable information and credit card numbers, is collected and maintained by us, or by third-parties that do business with us or facilitate our business activities. This information is maintained for a period of time for various business purposes, including maintaining records of member and guest preferences to enhance our customer service and for billing, marketing and promotional purposes. We also maintain personally identifiable information about our employees. The integrity and protection of our customer, employee and company data is critical to our business. Our members and guests and our employees expect that we will adequately protect their personal information, and the regulations applicable to security and privacy are increasingly demanding. Privacy regulation is an evolving area and compliance with applicable privacy regulations may increase our operating costs or adversely impact our ability to service our members and guests and market our properties and services.

While we have cyber security procedures and related insurance coverage in place, given the evolving nature of these threats, there can be no assurance that we will not suffer material losses in the future due to cyber-attacks or other systems or infrastructure failures. The theft, loss, misappropriation, fraudulent or unlawful use of customer, employee or company data, including in connection with one or more cyber-attacks on us or one of our third-party providers, could harm our reputation, result in loss of members or business disruption or result in remedial and other costs, fines or lawsuits. In addition, non-compliance with applicable privacy regulations by us (or in some circumstances non-compliance by third-parties engaged by us) could result in fines or restrictions on our use or transfer of data. Any of these matters could adversely affect our business, financial condition or results of operations.

***We rely on information technology in our operations, and any material failure, inadequacy, interruption or security failure of that technology could harm our business.***

We rely on information technology networks and systems, including the Internet, to process, transmit and store electronic information and to manage or support a variety of our business processes, including financial transactions and maintenance of records, which in the case of our business, may include personal identifying information. We rely on commercially available systems, software, tools and monitoring to provide security for processing, transmitting and storing this confidential information, such as individually identifiable information relating to financial accounts. Although we have taken steps to protect the security of the data maintained in our information systems, it is possible that our security measures will not be able to prevent the systems' improper functioning, or the improper disclosure of personally identifiable information such as in the event of cyber-attacks. Security breaches, including physical or electronic break-ins, computer viruses, attacks by hackers and similar breaches, can create system disruptions, shutdowns or unauthorized disclosure of confidential information. Any failure to maintain proper function, security and availability of our information systems could interrupt our operations,

damage our reputation, subject us to liability claims or regulatory penalties and could materially and adversely affect our business, financial condition and results of operations. If our incident response and disaster recovery plans do not resolve these issues in an efficient manner, remediation of these problems could result in significant, unexpected capital expenditures.

***Our investments may be subject to significant impairment charges, which would adversely affect our results of operations.***

We are required to periodically evaluate our investments for impairment indicators. The value of an investment is impaired when our analysis indicates that, with respect to a loan, it is probable that we will not be able to collect the full amount we intended to collect from the loan or, with respect to a security or property, it is probable that the value of the security or property is other than temporarily impaired. The judgment regarding the existence of impairment indicators is based on a variety of factors depending upon the nature of the investment and the manner in which the income related to such investment was calculated for purposes of our financial statements. If we determine that an impairment has occurred, we are required to make an adjustment to the net carrying value of the investment and the amount of accrued interest recognized as income from such investment, which could have a material adverse effect on our results of operations.

## **Risks Related to Our Stock**

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

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 unpaid accrued dividends on our preferred stock. So long as dividends remain accrued and not paid on our preferred stock, the terms of our preferred stock prohibit us from paying any dividends on our common stock, from repurchasing or otherwise acquiring shares of our common stock and from redeeming any shares of any series of our preferred stock without redeeming all of our outstanding preferred shares. 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, including with respect to the management of our business.

***Maryland takeover statutes may prevent a change of our control, which could depress our stock price.***

Under Maryland law, “business combinations” between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include certain mergers, consolidations, share exchanges, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities or a liquidation or dissolution. An interested stockholder is defined as:

- any person who beneficially owns 10% or more of the voting power of the corporation’s outstanding shares; or
- an affiliate or associate of a corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding stock of the corporation.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which he or she otherwise would have become an interested stockholder.

After the five-year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation voting together as a single group; and

- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder voting together as a single voting group.

The business combination statute may discourage others from trying to acquire control of us and increase the difficulty of consummating any offer, including potential acquisitions that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders.

***Our staggered board and other provisions of our charter and bylaws may prevent a change in our control.***

Our board of directors is divided into three classes of directors. Directors of each class are chosen for three-year terms upon the expiration of their current terms, and each year one class of directors is elected by the stockholders. The staggered terms of our directors may reduce the possibility of a tender offer or an attempt at a change in control, even though a tender offer or change in control might be in the best interest of our stockholders. In addition, our charter and bylaws also contain other provisions that may delay or prevent a transaction or a change in control that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders.

Our charter authorizes us to issue additional authorized but unissued shares of our common stock or preferred stock. In addition, our board of directors may classify or reclassify any unissued shares of our common stock or preferred stock and may set the preferences, rights and other terms of the classified or reclassified shares. As a result, our board of directors may establish a series of preferred stock that could delay or prevent a transaction or a change in control that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders.

## Item 2. Properties.

We lease our principal office in Dallas, TX. We also lease a corporate office in New York, NY that previously supported our entertainment golf business, which is currently subleased to a subtenant. As of December 31, 2022, our New York offices were subleased for the remaining term of the lease through August 2026 and we had ceased using the El Segundo offices which were used for our traditional golf segment and remained unused until lease expiration in May 2022.

### *Entertainment Golf Venues*

As of December 31, 2022, we operate four Drive Shack and five Puttery venues as shown in the following table by location, category and number of bays, as applicable.

Venue	City	State	Category	# of Bays
Drive Shack	Orlando	FL	Leased	90
Drive Shack	Raleigh	NC	Owned	96
Drive Shack	Richmond	VA	Leased	96
Drive Shack	West Palm Beach	FL	Leased	96
Puttery	Charlotte	NC	Leased	N/A
Puttery	Chicago	IL	Leased	N/A
Puttery	Houston	TX	Leased	N/A
Puttery	The Colony	TX	Leased	N/A
Puttery	Washington	DC	Leased	N/A

### *Traditional Golf Properties*

As of December 31, 2022, we own, lease or manage fifty-two (52) traditional golf properties located in seven (7) states, as shown in the following table by location, category and number of golf holes.

#### *Owned Properties*

Property Name	City	State	Category	Golf Holes
Tanoan	Albuquerque	NM	Private	27

*Leased Properties*

<b>Property Name</b>	<b>City</b>	<b>State</b>	<b>Category</b>	<b>Golf Holes</b>
Chester Washington	Los Angeles	CA	Public	18
Clearview	Bayside Queens	NY	Public	18
Coyote Hills	Fullerton	CA	Public	18
Diamond Bar	Diamond Bar	CA	Public	18
Dyker Beach	Brooklyn	NY	Public	18
El Dorado	Long Beach	CA	Public	18
Heartwell	Long Beach	CA	Public	18
Knollwood	Granada Hills	CA	Public	18
La Mirada	La Mirada	CA	Public	18
La Tourette	Staten Island	NY	Public	18
Lake Forest	Lake Forest	CA	Public	9
Lake Tahoe	S. Lake Tahoe	CA	Public	18
Lakewood	Lakewood	CA	Public	18
Lely	Naples	FL	Private	54
Los Coyotes	Buena Park	CA	Private	27
Los Verdes	Rancho PV	CA	Public	18
Mission Trails	San Diego	CA	Public	18
Mountain Meadows	Pomona	CA	Public	18
MountainGate	Los Angeles	CA	Private	27
National City	National City	CA	Public	9
Pelham Split Rock	Bronx	NY	Public	36
Recreation Park 18	Long Beach	CA	Public	18
Recreation Park 9	Long Beach	CA	Public	9
San Dimas	San Dimas	CA	Public	18
Saticoy	Ventura	CA	Public	9
Scholl Canyon	Glendale	CA	Public	18
Skylinks	Long Beach	CA	Public	18
South Shore	Staten Island	NY	Public	18
Tecolote Canyon	San Diego	CA	Public	18
Vineyard at Escondido	Escondido	CA	Public	18
Waterview	Rowlett	TX	Public	18
Whittier Narrows	Rosemead	CA	Public	27

*Managed Properties*

<b>Property Name</b>	<b>City</b>	<b>State</b>	<b>Category</b>	<b>Golf Holes</b>
Anaheim Hills	Anaheim	CA	Public	18
Bear Creek	Woodinville	WA	Private	18
Brookside	Pasadena	CA	Public	36
Canyon Oaks	Chico	CA	Private	18
Dad Miller	Anaheim	CA	Public	18
El Camino	Oceanside	CA	Private	18
Fullerton	Fullerton	CA	Public	18
Lomas Santa Fe (Executive)	Solana Beach	CA	Public	18
Marbella	SJ Capistrano	CA	Private	18
Monarch Bay	San Leandro	CA	Public	27
Monterey	Palm Desert	CA	Private	27
Oregon Golf Club	West Linn	OR	Private	18
Oso Creek	Mission Viejo	CA	Public	18
Palm Valley	Palm Desert	CA	Private	36
Rancho San Joaquin	Irvine	CA	Public	18
River Ridge	Oxnard	CA	Public	36
Sunset Hills	Thousand Oaks	CA	Private	18
Westchester	Los Angeles	CA	Public	18
Wood Ranch	Simi Valley	CA	Private	18

We maintain our properties in good condition and believe that our current facilities are adequate to meet the present needs of our business. We do not believe any individual property is material to our financial condition or results of operations.

**Item 3. Legal Proceedings.**

We are and may become involved in legal proceedings, including but not limited to regulatory investigations and inquiries, in the ordinary course of our business. Although we are unable to predict with certainty the eventual outcome of any litigation, regulatory investigation or inquiry, in the opinion of management, we do not expect our current or threatened legal proceedings to have a material adverse effect on our business, financial position or results of operations. Given the inherent unpredictability of these types of proceedings, however, it is possible that future adverse outcomes could have a material effect on our business, financial position or results of operations.



## PART II

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

We have one class of common stock and our initial public offering was in October 2002. We are listed and traded on the OTCMKTS under the symbol "DSHK".

Our board of directors elected not to pay common stock dividends in 2021 or 2022 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. We may declare quarterly distributions on our preferred stock at the discretion of our board of directors. The Company paid preferred dividends in the amount of \$5.6 million for the year 2022.

We currently have \$0.9 million of unpaid accrued dividends on our preferred stock. In addition, our board of directors elected not to declare the April 30 dividend on our preferred stock. As a result, we cannot pay any dividends on our common stock or pay any consideration to repurchase or otherwise acquire shares of our common stock unless full cumulative preferred dividends have been authorized and paid in accordance with the governing documentation.

On April 26, 2023, the closing sale price for our common stock, as reported on the OTCMKTS, was \$0.30. As of April 26, 2023, there were approximately 16 registered holders of record of our common stock. This number does not reflect the beneficial owners of shares held in nominee name by record holders on their behalf.

#### *Nonqualified Option and Incentive Award Plans*

See Note 11 in Part II, Item 8. "Financial Statements and Supplementary Data" for further information.

#### *Equity Compensation Plan Information*

The following table summarizes certain information about securities authorized for issuance under our equity compensation plans as of December 31, 2022:

Plan Category	(a) Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants, RSUs and Rights	(b) Weighted Average Exercise Price of Outstanding Options, Warrants, RSUs and Rights	(c) Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
<b>Equity Compensation Plans Approved by Security Holders:</b>			
Newcastle Investment Corp. Nonqualified Stock Option and Incentive Award Plan	787,757	\$ 1.00	—
2012 Newcastle Investment Corp. Nonqualified Stock Option and Incentive Award Plan	2,893,078	2.45	25,820 (D)
2014 Newcastle Investment Corp. Nonqualified Stock Option and Incentive Award Plan	765,416	4.01	— (E)
2015 Newcastle Investment Corp. Nonqualified Option and Incentive Award Plan	333	3.78	— (F)
Drive Shack Inc. 2018 Omnibus Incentive Plan	259,238 (A)	2.45 (C)	5,395,701 (G)
Total Approved	<u>4,705,822 (B)</u>	<u>\$ 2.53 (C)</u>	<u>5,421,521</u>
<b>Equity Compensation Plans Not Approved by Security Holders:</b>			
November 2013 Manager Option Award	489,148	\$ 3.57	—
Total Not Approved	<u>489,148</u>	<u>\$ 3.57</u>	—

See notes to table below.

- (A) Includes 143,609 RSUs granted to employees (net of forfeitures and releases), and (ii) 115,629 RSUs granted to our directors, net of forfeitures and releases, other than Mr. Wesley R. Edens, representing the aggregate annual automatic stock awards to each such director for the periods subsequent to the adoption of the 2018 Plan.
- (B) Includes (i) 3,138,097 options held by an affiliate of the former Manager; (ii) 1,308,154 options granted to the former Manager and assigned to certain of Fortress's former employees, (iii) 333 options and 115,629 RSUs granted to our directors, other than Mr. Edens, and (iv) 143,609 RSUs granted to employees.
- (C) Represents the weighted average exercise price of the 259,238 RSUs.
- (D) The maximum available for issuance is 3,333,333 shares in the aggregate over the term of the 2012 Plan and no award shall be granted on or after May 7, 2022 (but awards granted may extend beyond this date). The number of securities remaining available for future issuance is net of (i) an aggregate of 13,312 shares of our common stock awards to our directors, other than Mr. Edens, representing the annual stock awards to each such director for the periods subsequent to the adoption of the 2012 Plan and prior to the adoption of the 2014 Plan and (ii) an aggregate of 3,294,201 options which have been previously granted under the plan.
- (E) The maximum available for issuance was 166,666 shares in the aggregate over the term of the 2014 Plan and no award (other than a tandem award) may be granted after April 8, 2015 (but awards granted may extend beyond that date).
- (F) The maximum available for issuance was 300,000 shares in the aggregate over the term of the 2015 Plan and no award (other than a tandem award) may be granted after April 16, 2016 (but awards granted may extend beyond that date).
- (G) The maximum available for issuance is 5,395,701, subject to an annual limitation as detailed in the 2018 Plan, out of a total of 6,697,710 over the entire five-year term of the 2018 Plan.

#### **Material Features of the Equity Compensation Plans Not Approved by Security Holders**

##### *November 2013 Manager Option Award*

In November 2013, options to acquire a total of 489,148 shares of the Company's common stock were granted to an affiliate of the former Manager as compensation to the former Manager for its successful efforts in raising capital for the Company. The options have a per-share exercise price of \$3.57. The options were fully vested on the date of grant and became exercisable over a 30-month period in equal monthly installments beginning on the first of each month following the month in which the options were granted.

#### **Unregistered Sales of Equity Securities**

None.

#### **Issuer Purchases of Equity Securities**

None.

#### **Item 6. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

The following should be read in conjunction with our Consolidated Financial Statements and notes thereto included in Part II, Item 8. "Financial Statements and Supplementary Data," and Part I, Item 1A. "Risk Factors."

## General Overview

The Company is an owner and operator of golf-related leisure and entertainment venues focused on bringing people together through competitive socializing. Our common stock is traded on the OTCMKTS under the symbol “DSHK.”

The Company conducts its business through two primary operating segments:

### Entertainment Golf Business | Drive Shack and Puttery

Our entertainment golf business is primarily focused on competitive socializing within the leisure and social entertainment industry, combining chef-inspired food and beverage offerings, with innovative technology modernizing ways to experience golf as a sport and form of entertainment that appeals to a broad range of audiences and competitive appetites.

The Company launched its first Puttery venue in September 2021 in The Colony, Texas. As of December 31, 2022, the Company operated five leased Puttery venues located in The Colony, Texas, Charlotte, North Carolina, Washington, D.C., Houston, Texas, and Chicago, Illinois. The Company opened the Puttery venue in Pittsburgh, PA in February 2023. The Company is committed to four additional Puttery leases for venues in Miami, New York City (Manhattan), Minneapolis, and Kansas City. Puttery venues are indoor venues typically located in urban and suburban dining and entertainment districts.

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

Additionally, the Company is committed to a concession agreement in Manhattan (Randall’s Island), New York for a Drive Shack entertainment golf venues.

### Traditional Golf Business

Our traditional golf business, American Golf, is one of the largest operators of golf properties in the United States. As of December 31, 2022, we owned, leased or managed fifty-two (52) properties across seven states and have more than 30,000 members.

During 2022, the Company exited two management agreements.

For further information relating to our business, see “Item 1. Business.”

## 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 optimize our traditional golf business and obtain additional capital. We have substantially monetized our historical investments in loans and securities. We raised capital through the equity markets in February 2021; however, rising interest rates or stock market volatility could impair our future 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 2023 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, or 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 described below, 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 below to materially change in the future.

A summary of our significant accounting policies is presented in Note 2 to our Consolidated Financial Statements, which appear in Part II, Item 8. "Financial Statements and Supplementary Data." The following is a summary of our accounting policies that are most affected by judgments, estimates and assumptions.

#### *Impairment of Property and Equipment, Right of Use Assets and Intangible Assets*

Long-lived property, equipment and definite-lived intangible assets are tested for potential impairment when changes in circumstances indicate the carrying amount of the assets, or other appropriate grouping of assets, may not be fully recoverable. Indicators of impairment include material adverse changes in the projected revenues and expenses, significant underperformance relative to historical or projected future operating results, changes to our intent and ability to hold and use each asset, as well as any significant cost overruns on development of new venues, and significant negative industry or economic trends. An impairment is determined to have occurred if the future net undiscounted cash flows expected to be generated is less than the carrying value of an asset. The impairment is measured as the difference between the carrying value and the fair value. Significant judgment is required both in determining impairment and in estimating the fair value. We may use assumptions and estimates derived from a review of our operating results, business projections, expected growth rates, discount rates, and tax rates. We also make certain assumptions about future economic conditions interest rates, and other market data. Many of the factors used in these assumptions and estimates are outside the control of management and can change in future periods.

#### *Membership Deposit Liabilities*

In our traditional golf business, until 2021, private country club members generally paid an advance initiation deposit upon their acceptance as a member to their country club. Initiation deposits are refundable 30 years after the date of acceptance as a member. The difference between the initiation deposit paid by the member and the present value of the refund obligation is considered to be deferred revenue and recognized as 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 determination of the estimated average expected life of an active membership is based on company-specific historical data and involves judgment and estimation. 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, net in the Consolidated Statements of Operations.

As of the end 2021, all private country club members generally pay an advance initiation fee upon their acceptance as a member to their country club. Initiation fees are non-refundable after the date of acceptance as a member. The initiation fee revenue is deferred and recognized 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 determination of the estimated average expected life of an active membership is based on company-specific historical data and involves judgment and estimation.

## Results of Operations

The following tables summarize the changes in our consolidated results of operations from year-to-year (dollars in thousands):

### Comparison for Results of Operations for the years ended December 31, 2022 and 2021

	Year Ended December 31,		Increase (Decrease)	
	2022	2021	Amount	%
<b>Revenues</b>				
Golf operations (A)	\$ 255,176	\$ 232,560	\$ 22,616	9.7 %
Sales of food and beverages	70,567	49,304	21,263	43.1 %
Total revenues	325,743	281,864	43,879	15.6 %
<b>Operating costs</b>				
Operating expenses (A)	261,789	222,260	39,529	17.8 %
Cost of sales - food and beverages	19,375	12,814	6,561	51.2 %
General and administrative expense	38,844	33,809	5,035	14.9 %
Depreciation and amortization	25,683	24,018	1,665	6.9 %
Pre-opening costs	6,436	4,552	1,884	41.4 %
(Gain) Loss on lease terminations and impairment	17,176	5,035	12,141	241.1 %
Total operating costs	369,303	302,488	66,815	22.1 %
<b>Operating loss</b>	(43,560)	(20,624)	22,936	111.2 %
<b>Other income (expenses)</b>				
Interest and investment income	2,116	684	1,432	209.4 %
Interest expense, net	(13,666)	(10,698)	2,968	27.7 %
Other (loss) income, net	5,099	655	4,444	(678.5)%
Total other income (expenses)	(6,451)	(9,359)	2,908	31.1 %
Loss before income tax	\$ (50,011)	\$ (29,983)	\$ 20,028	66.8 %

N.M. – Not meaningful

(A) Includes \$59.7 million and \$54.4 million for the years ended December 31, 2022 and 2021, respectively, due to management contract reimbursements reported under revenue accounting standard, ASC 606.

## Revenues from Golf Operations

Revenues from golf operations increased by \$22.6 million during the year ended December 31, 2022 compared to the year ended December 31, 2021 primarily due to a \$13.3 million increase in entertainment golf revenue, which included \$6.7 million in entertainment bay play revenue and \$6.6 million in entertainment event revenue. The increase in entertainment golf revenue was primarily due to the openings of three new Puttery locations. Entertainment golf revenue increased by \$13.3 million, of which \$5.3 million is primarily due to higher traffic and increased events at the venues and \$8.0 million related to our Puttery Charlotte location completing its first year of operations and a full year of operations of our Puttery Colony location.

## **Sales of Food and Beverages**

Sales of food and beverages increased by \$21.3 million during the year ended December 31, 2022 compared to the year ended December 31, 2021 primarily due to a \$12.0 million increase in traditional golf sales and a \$9.3 million increase in entertainment golf sales. The increase in traditional golf sales was primarily due to the return of tournaments and large group event-related revenues. Entertainment golf increased by \$9.3 million of which \$5.7 million is due to higher traffic at the venues and \$3.6 million related to the Puttery Charlotte location completing its first year of operations and a full year of operations of our Puttery Colony location.

## **Operating Expenses**

Operating expenses increased by \$39.5 million during the year ended December 31, 2022 compared to the year ended December 31, 2021 primarily due to a \$24.7 million increase in traditional golf operating expenses, and a \$14.8 million increase in entertainment golf operating expenses. The increase in traditional golf expenses was driven by a \$8.4 million increase in payroll due to additional personnel, an additional \$16.3 million from facilities and general operating expenses from increased operations. Entertainment golf expenses increased \$14.8 million due to \$8.8 million of additional payroll and payroll related costs to support increased operations for our new Puttery locations, and \$6.0 million of supplies and general operating expenses.

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

Food and beverage cost of sales increased by \$6.6 million during the year ended December 31, 2022 compared to the year ended December 31, 2021 primarily due to a \$3.4 million increase in traditional golf cost of sales and a \$3.2 million increase in entertainment golf cost of sales. The increase in traditional golf cost of sales was due to higher food and beverage sales related to the return of tournaments and large group related revenues. Entertainment golf cost of sales increased by \$3.2 million due to higher food and beverage sales from increased traffic at the venues and the Puttery Charlotte location completing its first year of operations.

## **General and Administrative Expense**

General and administrative expense increased by \$5.0 million during the year ended December 31, 2022 compared to the year ended December 31, 2021 and included a \$4.6 million increase in traditional golf expense and an increase in entertainment and corporate expenses of \$0.4 million. The increase is primarily due to traditional golf expense increases of \$4.5 million related to professional fees, audit, accounting fees, and an increase in payroll expenses of \$5.2 million offset by a decrease in other miscellaneous expenses of \$5.1 million. The entertainment and corporate segments increased \$0.5 million of miscellaneous expenses and increased payroll expenses of \$0.9 million that largely related to one-time payments for future cost saving measures in our headcount with an offset decrease of \$1.0 million in professional fees.

## **Depreciation and Amortization**

Depreciation and amortization increased by \$1.7 million during the year ended December 31, 2022 compared to the year ended December 31, 2021 primarily due to the additions of the Puttery DC, Puttery Houston, Puttery Chicago and Puttery Charlotte completing its first year of operations during 2022.

## **Pre-Opening Costs**

Pre-opening costs increased by \$1.9 million during the year ended December 31, 2022 compared to the year ended December 31, 2021 due to the recent openings of three Puttery locations in DC, Houston and Chicago. Pre-opening costs for each future opening of Puttery locations are expected to decline significantly.

## **(Gain) Loss on Lease Terminations and Impairment**

During the year ended December 31, 2022, impairment and other losses primarily consisted of a \$11.3 million loss on the entertainment golf lease termination for the NOLA Drive Shack course, impairment and lease terminations related to several assets in the entertainment segment for a total of \$2.4 million, a \$1.3 million loss on traditional golf impairment related to Dyker Beach and other traditional golf courses, and a \$2.2 million loss on lease terminations, mainly related to the NOLA Drive Shack venue.

## **Interest and Investment Income**

There was an increase of \$1.4 million mainly due to the realization of gains on Real Estate Securities during the year ended December 31, 2022.

## **Interest Expense, net**

The increase in interest expense, net relates to additional interest accretion related to MDLs and to finance leases during the year ended December 31, 2022.

## **Other Income, Net**

Other income, net increased by \$4.4 million during the year ended December 31, 2022 compared to the year ended December 31, 2021 primarily due to insurance proceeds received in 2022 from fire related events at our traditional golf courses of \$2.8 million that occurred in 2021, and \$0.8 million in insurance premium refunds and adjustments and other miscellaneous items.

## Comparison of Results of Operations for the years ended December 31, 2021 and 2020

For details on Results of Operations for the years ended December 31, 2021 and 2020, please see our 2021 10-K filed on March 18, 2022.

## **Liquidity and Capital Resources**

### *Overview*

Our primary sources of liquidity are our current balances of cash and cash equivalents. We also generated liquidity through our common stock offering completed during the first quarter of 2021 and financing in the form of a five-year senior secured delayed draw term loan facility during the first quarter of 2023.

As of December 31, 2022, we had \$12.3 million of available cash, including \$7.9 million of cash from the traditional golf business.

Our primary cash needs are capital expenditures for developing and opening new Puttery venues and one Drive Shack venue, remodeling and maintaining existing facilities, funding working capital, operating lease 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. Based upon current levels of operations and anticipated growth, we expect that cash flows from operations, combined with other financing alternatives in place or available will be sufficient to meet our working capital and capital expenditure requirements for the foreseeable future.

On March 8, 2023, Drive Shack Inc. (the "Company") announced that its entertainment golf business had obtained financing in the amount of \$26.5 million to fund the continued expansion of the Puttery business, in the form of a five-year senior secured delayed draw term loan facility in an aggregate principal amount of \$26.5 million (the "Facility") to meet our near term liquidity requirements to fund our planned growth, including new venue development and construction, product innovation, and general corporate needs. Our financial objectives include diversifying our financing sources, optimizing the mix and maturity of new debt financings, public or private equity issuances, and strategically monetizing our remaining real estate securities and other investments. 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.

In February 2021, the Company raised \$54.6 million in net proceeds through an equity offering.

We also generated capital through the completion of the sales of 25 of our 26 owned traditional golf properties which was completed by December 31, 2020. The proceeds generated by these transactions were reinvested in our entertainment golf business and used to pay overhead expenses.

For a further discussion of risks that could affect our liquidity, access to capital resources and our capital obligations, see Part I, Item 1A. "Risk Factors" above.

#### *Summary of Cash Flows*

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

	Year ended December 31,		
	2022	2021	2020
Net cash (used in) provided by:			
Operating activities	\$ 15,446	\$ 254	\$ (1,325)
Investing activities	(50,823)	(32,587)	24,942
Financing activities	(10,253)	44,064	(4,748)
Net Increase (Decrease) in Cash and Cash Equivalents, Restricted Cash and Restricted Cash, noncurrent	\$ (45,630)	\$ 11,731	\$ 18,869

#### 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 flow used in operating activities changed from \$0.3 million for the year ended December 31, 2021 to net cash flow provided by operating activities of \$15.4 million for the year ended December 31, 2022. It changed from \$1.3 million for the year ended December 31, 2020 to \$0.3 million for the year ended December 31, 2021. These changes resulted primarily from the factors described below:

#### **2022 compared to 2021**

- Operating cash flows increased due to the following:
  - \$12.2 million in net operating cash flows generated from traditional golf operations;
  - \$3.9 million reduction in corporate payroll primarily due to reductions in headcount;
- Operating cash flows decreased due to the following:
  - \$2.6 million in net operating cash flows used from entertainment golf venues.

#### **2021 compared to 2020**

- Operating cash flows increased due to the following:
  - \$16.7 million in net operating cash flows generated from the entertainment venues;
  - \$1.8 million reduction in corporate payroll primarily due to reductions in headcount;
  - \$0.5 million reduction in interest payments associated with the junior subordinated notes due to a lower coupon rate.
- Operating cash flows decreased due to the following:
  - \$8.6 million in net operating cash flows used from traditional golf operations;
  - \$7.0 million primarily due to additional general and administrative payments;
  - \$1.2 million in tax payments;
  - \$0.6 million in payment of annual bonuses in 2021 that were earned in 2020.

#### Investing Activities

Cash flows used in investing activities primarily relate to capital expenditures related to the development of the entertainment golf venues, and renovations of existing facilities.



Cash used in investing activities increased by \$18.3 million in 2022 compared to 2021. Cash provided by investing activities decreased by \$57.6 million in 2021 compared to 2020.

*Capital Expenditures.* Our total capital expenditures for 2022, 2021, and 2020 were \$56.4 million, \$32.6 million, and \$10.7 million respectively.

We expect our capital expenditures over the next 12 months to range between \$46.0 and \$50.0 million, which includes developing new Puttery venues and maintaining existing facilities.

*Traditional Golf property dispositions.* We continue to own one traditional golf property, which is classified as held-for-use. We may continue to pursue the monetization of our owned golf property to generate capital for reinvestment in the entertainment golf business.

## Financing Activities

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

Cash provided by financing activities decreased by \$57.9 million in 2022 compared to 2021. Cash used in financing activities increased by \$48.8 million in 2021 compared to 2020.

*Dividends.* The Company has paid preferred dividends declared in the amount of \$5.6 million in 2021 and 2022. The Company did not declare preferred dividends in 2020. The Company has an ongoing obligation to satisfy the distribution requirements of the preferred shares, in accordance with the terms of the issuance. The timing and amount of distributions on our common stock are in the sole discretion of its board of directors, which has elected not to declare common stock dividends for 2018 through 2022 to retain capital for growth.

*Debt Obligations.* The Company made contractual payments on its finance leases in 2022, 2021 and 2020.

*Golf Membership Deposits.* Until 2021, private country club members generally paid an advance initiation deposit upon their acceptance as a member to the respective country club, which are refundable 30 years after the date of acceptance as a member.

## *Debt Instruments*

See Note 8 in Part II, Item 8. “Financial Statements and Supplementary Data” for further information related to our debt obligations and contractual maturities as of December 31, 2022.

## **Off-Balance Sheet Arrangements**

As of December 31, 2022, we had the following material off-balance sheet arrangements. We believe that these off-balance sheet structures presented the most efficient and least expensive form of financing for these assets at the time they were entered, and represented the most common market-accepted method for financing such assets.

- In April 2006, we securitized Subprime Portfolio I. The loans were sold to a securitization trust, of which 80% were treated as a sale, which is an off-balance sheet financing.
- In July 2007, we securitized Subprime Portfolio II. The loans were sold to a securitization trust, of which 90% were treated as a sale, which is an off-balance sheet financing.

We have no obligation to repurchase any loans from either of our subprime securitizations. Therefore, it is expected that our exposure to loss is limited to the carrying amount of our retained interests in the securitization entities, in the amount of \$1.6 million as of December 31, 2022. A subsidiary of ours gave limited representations and warranties with respect to the second securitization; however, it has no assets and does not have recourse to the general credit of the Company.

## Contractual Obligations

The following table summarizes our contractual arrangements as of December 31, 2022, and the timing and effect that such commitments are expected to have on our liquidity and capital requirements in future periods; it does not, however, include the five-year senior secured delayed draw term loan facility in an aggregate principal amount of \$26.5 million that was obtained in March 2023:

Contract	Fixed and Determinable Payments Due by Period				Total
	2023	2024-2025	2026-2027	Thereafter	
Finance lease obligations - Equipment <sup>(A)</sup>	4,316	5,224	1,719	—	11,259
Junior subordinated notes payable <sup>(B)</sup>	2,953	6,054	5,632	72,532	87,171
Operating lease obligations <sup>(C)</sup>	14,744	67,055	53,236	199,071	334,106
Membership deposit liabilities <sup>(D)</sup>	22,658	11,935	24,062	189,077	247,732
Total	<u>\$ 44,671</u>	<u>\$ 90,268</u>	<u>\$ 84,649</u>	<u>\$ 460,680</u>	<u>\$ 680,268</u>

- (A) Includes interest based on rates existing at lease inception or ASC 842 adoption on January 1, 2019. Leases that are repayable prior to maturity at our options are reflected as their contractual maturity dates. See Note 6 to our Consolidated Financial Statements for further discussions.
- (B) Includes interest based on rates existing at December 31, 2022 and assumes no prepayments. Obligations that are repayable prior to maturity at our option are reflected at their contractual maturity dates. See Note 8 to our Consolidated Financial Statements for further discussions.
- (C) Includes leases of golf courses and related facilities, carts and equipment. Excludes escalation charges which per our lease agreements are not fixed and determinable payments. Also excludes four month-to-month property leases which are cancellable by the parties with 30 days written notice and various month-to-month operating leases for carts and equipment. The aggregate monthly expense of these leases was \$0.1 million. See Notes 2 and 6 to our Consolidated Financial Statements for further discussions.
- (D) Amounts represent gross initiation deposits refundable 30 years after the date of acceptance of a member. See Notes 2 and 13 to our Consolidated Financial Statements for further discussion.

## **Item 7. 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.

### **Commodity Price Risk**

We are exposed to market price fluctuation in food and beverage product prices and these fluctuations can materially impact our costs. There is no assurance that supply and demand factors such as disease or inclement weather will not cause the prices of the commodities used in our operations to fluctuate. Significant increases in the price of commodities could have a material impact on our operating results to the extent that such increases cannot be offset by menu price increases or other operating efficiencies.

### **Inflation**

The primary inflationary factors affecting our operations include materials and labor costs. We have a substantial number of hourly employees who are paid wage rates at or based on the applicable federal, state or city minimum wage and increases in the minimum wage will increase our labor costs. In general, we have been able to partially offset cost increases resulting from inflation by increasing prices, improving productivity, or other operating changes. We may or may not be able to offset cost increases in the future. In addition, our leases require us to pay taxes, maintenance, repairs and utilities and these costs are subject to inflationary increases. In some cases, some of our lease commitments are tied to consumer price index increases.

### **Trends**

See Part II, Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations – Market Considerations" for a further discussion of recent trends and events affecting our liquidity, unrealized gains and losses.

**Item 8. Financial Statements and Supplementary Data.**

Index to Financial Statements:

Report of Independent Auditors

Consolidated Balance Sheets as of December 31, 2022 and December 31, 2021

Consolidated Statements of Operations for the years ended December 31, 2022, 2021 and 2020

Consolidated Statements of Comprehensive Loss for the years ended December 31, 2022, 2021 and 2020

Consolidated Statements of Changes in Equity for the years ended December 31, 2022, 2021 and 2020

Consolidated Statements of Cash Flows for the years ended December 31, 2022, 2021 and 2020

Notes to Consolidated Financial Statements



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## **REPORT OF INDEPENDENT AUDITORS**

To the Board of Directors and Stockholders of Drive Shack Inc. and Subsidiaries

### **Opinion**

We have audited the consolidated financial statements of Drive Shack, Inc. and Subsidiaries (the Company), which comprise the consolidated balance sheets as of December 31, 2022 and 2021, and the related consolidated statements of operations, comprehensive loss, changes in equity and cash flows for each of the three years ended December 31, 2022, and the related notes (collectively referred to as “the financial statements”).

In our opinion, the accompanying financial statements present fairly, in all material respects, the consolidated financial position of the Company at December 31, 2022 and 2021, and the results of its operations and cash flows for each of the three years ended December 31, 2022, in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor’s Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Responsibility of Management for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free of material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company’s ability to continue as a going concern for one year after the date that the financial statements are available to be issued.

### **Auditor’s Responsibility for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to fraud or error, and to issue an auditor’s report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtaining an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

*Ernst & Young LLP*

Dallas, Texas  
April 27, 2023

**DRIVE SHACK INC. AND SUBSIDIARIES**
**CONSOLIDATED BALANCE SHEETS**

(dollars in thousands, except share data)

	<b>December 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Assets</b>		
Current Assets		
Cash and cash equivalents	\$ 12,345	\$ 58,286
Restricted cash	4,373	3,480
Accounts receivable, net	8,305	5,563
Real estate securities, available-for-sale	1,631	3,486
Other current assets	24,872	30,034
Total Current Assets	51,526	100,849
Restricted cash, noncurrent	216	798
Property and equipment, net of accumulated depreciation	198,442	179,260
Operating lease right-of-use assets	189,993	181,915
Intangibles, net of accumulated amortization	14,108	13,430
Other assets	3,696	6,538
<b>Total Assets</b>	<b>\$ 457,981</b>	<b>\$ 482,790</b>
<b>Liabilities and Equity</b>		
Current Liabilities		
Obligations under finance leases	\$ 4,761	\$ 5,400
Membership deposit liabilities	22,479	18,039
Accounts payable and accrued expenses	41,477	34,469
Deferred revenue	29,490	26,301
Other current liabilities	28,904	26,524
Total Current Liabilities	127,111	110,733
Credit facilities and obligations under finance leases - noncurrent	5,849	9,075
Operating lease liabilities - noncurrent	177,867	166,031
Junior subordinated notes payable	51,169	51,174
Membership deposit liabilities, noncurrent	109,762	104,430
Deferred revenue, noncurrent	11,303	10,005
Other liabilities	1,877	1,487
<b>Total Liabilities</b>	<b>\$ 484,938</b>	<b>\$ 452,935</b>
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 December 31, 2022 and 2021	\$ 61,583	\$ 61,583
Common stock, \$0.01 par value, 1,000,000,000 shares authorized, 92,385,019 and 92,093,425 shares issued and outstanding at December 31, 2022 and 2021, respectively	924	921
Additional paid-in capital	3,232,104	3,233,608
Accumulated deficit	(3,326,357)	(3,268,876)
Accumulated other comprehensive income (loss)	(281)	1,163
Total equity of the company	\$ (32,027)	\$ 28,399
Noncontrolling interest	5,070	1,456
<b>Total Equity</b>	<b>\$ (26,957)</b>	<b>\$ 29,855</b>
<b>Total Liabilities and Equity</b>	<b>\$ 457,981</b>	<b>\$ 482,790</b>

See notes to Consolidated Financial Statements.



**DRIVE SHACK INC. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF OPERATIONS**

FOR THE YEARS ENDED DECEMBER 31, 2022, 2021 and 2020

(dollars in thousands, except share data)

	Year Ended December 31,		
	2022	2021	2020
<b>Revenues</b>			
Golf operations	\$ 255,176	\$ 232,560	\$ 189,972
Sales of food and beverages	70,567	49,304	30,015
Total revenues	325,743	281,864	219,987
<b>Operating costs</b>			
Operating expenses	261,789	222,260	188,745
Cost of sales - food and beverages	19,375	12,814	8,834
General and administrative expense	38,844	33,809	31,284
Depreciation and amortization	25,683	24,018	27,152
Pre-opening costs	6,436	4,552	1,328
(Gain) Loss on lease terminations and impairment	17,176	5,035	(721)
Total operating costs	369,303	302,488	256,622
Operating loss	(43,560)	(20,624)	(36,635)
<b>Other income (expenses)</b>			
Interest and investment income	2,116	684	565
Interest expense, net	(13,666)	(10,698)	(10,968)
Other (loss) income, net	5,099	655	(7,611)
Total other income (expenses)	(6,451)	(9,359)	(18,014)
Loss before income tax	(50,011)	(29,983)	(54,649)
Income tax expense	2,035	1,779	1,705
Consolidated net loss	(52,046)	(31,762)	(56,354)
Less: net loss attributable to noncontrolling interest	(145)	(393)	—
Net loss attributable to the Company	(51,901)	(31,369)	(56,354)
Preferred dividends	(5,580)	(5,580)	(5,580)
Loss applicable to common stockholders	\$ (57,481)	\$ (36,949)	\$ (61,934)
<b>Loss Applicable to Common Stock, per share</b>			
Basic	\$ (0.62)	\$ (0.41)	\$ (0.92)
Diluted	\$ (0.62)	\$ (0.41)	\$ (0.92)
<b>Weighted Average Number of Shares of Common Stock Outstanding</b>			
Basic	92,351,215	89,733,378	67,158,745
Diluted	92,351,215	89,733,378	67,158,745

See notes to Consolidated Financial Statements.

**DRIVE SHACK INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
FOR THE YEARS ENDED DECEMBER 31, 2022, 2021 and 2020  
(dollars in thousands)

	Year Ended December 31,		
	2022	2021	2020
Net loss	\$ (52,046)	\$ (31,762)	\$ (56,354)
Other comprehensive loss:			
Net unrealized (loss) on available-for-sale securities	(1,444)	(305)	(242)
Other comprehensive loss	(1,444)	(305)	(242)
Total comprehensive loss	(53,490)	(32,067)	(56,596)
Comprehensive loss attributable to noncontrolling interest	(145)	(393)	—
Comprehensive loss attributable to the Company	<u>\$ (53,345)</u>	<u>\$ (31,674)</u>	<u>\$ (56,596)</u>

See notes to Consolidated Financial Statements.

**DRIVE SHACK INC. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY**  
**FOR THE YEARS ENDED DECEMBER 31, 2022, 2021 and 2020**

Drive Shack Inc. Stockholders									
	Preferred Stock		Common Stock		Additional Paid in Capital	Accumulated Deficit	Accumulated Other Comp. Income (Loss)	Noncontrolling interest	Total Equity (Deficit)
	Shares	Amount	Shares	Amount					
Equity (deficit) - December 31, 2019	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	—	—	—	—	1,523	—	—	—	1,523
Shares issued from options and restricted stock units	—	—	254,841	2	(2)	—	—	—	—
Comprehensive loss	—	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	(56,354)	—	—	(56,354)
Other comprehensive income	—	—	—	—	—	—	(242)	—	(242)
Total comprehensive loss	—	—	—	—	—	—	—	—	(56,596)
Equity (deficit) - December 31, 2020	2,463,321	\$ 61,583	67,323,592	\$ 673	\$ 3,178,704	\$ (3,232,391)	\$ 1,468	\$ —	\$ 10,037
Dividends declared	—	—	—	—	—	(5,116)	—	—	(5,116)
Stock-based compensation	—	—	—	2	2,053	—	—	—	2,055
Purchase of common stock (directors)	—	—	—	—	—	—	—	—	—
Shares issued from options and restricted stock units	—	—	811,500	7	(7)	—	—	—	—
Shares issued from equity raise	—	—	23,958,333	239	53,666	—	—	—	53,905
Contributed Capital	—	—	—	—	(808)	—	—	1,849	1,041
Net loss	—	—	—	—	—	(31,369)	—	(393)	(31,762)
Other comprehensive loss	—	—	—	—	—	—	(305)	—	(305)
Total comprehensive loss	—	—	—	—	—	—	—	—	(32,067)
Equity (deficit) - December 31, 2021	2,463,321	\$ 61,583	92,093,425	\$ 921	\$ 3,233,608	\$ (3,268,876)	\$ 1,163	\$ 1,456	\$ 29,855
Dividends declared	—	—	—	—	—	(5,580)	—	—	(5,580)
Stock-based compensation	—	—	—	—	(345)	—	—	—	(345)
Shares issued from options and restricted stock units	—	—	291,594	3	—	—	—	—	3
Contributed Capital	—	—	—	—	(1,159)	—	—	4,044	2,885
Capital Distribution	—	—	—	—	—	—	—	(285)	(285)
Net loss	—	—	—	—	—	(51,901)	—	(145)	(52,046)
Other comprehensive loss	—	—	—	—	—	—	(1,444)	—	(1,444)
Total comprehensive loss	—	—	—	—	—	—	—	—	(53,490)
Equity (deficit) - December 31, 2022	2,463,321	\$ 61,583	92,385,019	\$ 924	\$ 3,232,104	\$ (3,326,357)	\$ (281)	\$ 5,070	\$ (26,957)

See notes to Consolidated Financial Statements.

**DRIVE SHACK INC. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

FOR THE YEARS ENDED DECEMBER 31, 2022, 2021 and 2020

(dollars in thousands)

	Year Ended December 31,		
	2022	2021	2020
<b>Cash Flows From Operating Activities</b>			
Net loss	\$ (52,046)	\$ (31,762)	\$ (56,354)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	25,683	24,018	27,152
Amortization of premium	(770)	(576)	(423)
Membership deposit liability accretion expense	10,463	8,198	8,160
Amortization of revenue on golf membership deposit liabilities	(2,275)	(2,148)	(1,611)
Amortization of prepaid golf member dues	(15,559)	(12,744)	(14,311)
Non-cash operating lease (benefit) expense	2,606	(1,221)	8,421
Stock based compensation	(342)	2,055	1,523
(Gain) Loss on Lease Terminations and Impairment	17,176	5,035	(1,970)
Gain from insurance proceeds for property loss	(3,205)	—	—
Realized gain on investment	(1,244)	—	—
Equity in (earnings), net of impairment from equity method investment	—	—	24,020
Other (gains) losses, net	403	(384)	(15,573)
Change in:			
Accounts receivable, net, other current assets and other assets - noncurrent	9,583	(12,069)	1,418
Accounts payable and accrued expenses, deferred revenue, other current liabilities and other liabilities - noncurrent	24,973	21,852	18,223
Net cash provided by (used in) operating activities	15,446	254	(1,325)
<b>Cash Flows From Investing Activities</b>			
Insurance proceeds for property loss	3,205	—	35,617
Redemption of Real Estate Securities	2,420	—	—
Acquisition and additions of property and equipment and intangibles	(56,448)	(32,587)	(10,675)
Net cash provided by (used in) from investing activities	(50,823)	(32,587)	24,942
<b>Cash Flows From Financing Activities</b>			
Preferred stock dividends paid	(5,580)	(4,185)	(1,395)
Repayments of debt obligations	(5,647)	(6,350)	(5,591)
Golf membership deposits received	45	1,601	2,994
Capital distribution paid	(285)	—	—
Issuance of common stock	3	53,905	—
Capital Contributions Received	2,883	—	—
Other financing activities	(1,672)	(907)	(756)
Net cash provided by (used in) financing activities	(10,253)	44,064	(4,748)

<b>Net Increase (Decrease) in Cash and Cash Equivalents, Restricted Cash and Restricted Cash, noncurrent</b>	(45,630)	11,731	18,869
<b>Cash and Cash Equivalents, Restricted Cash and Restricted Cash, noncurrent, Beginning of Period</b>	62,564	50,833	31,964
<b>Cash and Cash Equivalents, Restricted Cash and Restricted Cash, noncurrent, End of Period</b>	\$ 16,934	\$ 62,564	\$ 50,833
Cash paid during the period for income taxes	\$ 1,985	\$ 1,489	\$ 176
Cash paid during the period for interest expense	\$ 2,776	\$ 2,297	\$ 3,053
Supplemental Schedule of Non-Cash Investing and Financing Activities			
Preferred stock dividends declared but not paid	\$ 930	\$ 930	\$ —
Additions to finance lease assets and liabilities	\$ 1,936	\$ 1,955	\$ 6,068
Additions for Right of Use Asset and Liabilities	\$ 33,415	\$ 9,806	\$ 679
Increases (decreases) in accounts payable and accrued expenses related to the purchase of property and equipment	\$ 2,143	\$ (728)	\$ 3,260

See notes to Consolidated Financial Statements.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

DECEMBER 31, 2022, 2021 and 2020

(dollars in tables in thousands, except per share data)

**1. ORGANIZATION**

Drive Shack Inc., which is referred to in this Annual Report, as Drive Shack Inc. or the Company, is an owner and operator of golf-related leisure and entertainment 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 OTCMKTS under the symbol "DSHK."

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 December 31, 2022, the entertainment golf segment was comprised of nine owned or leased entertainment golf venues across six states with locations in Orlando, Florida; West Palm Beach, Florida; Raleigh, North Carolina; Richmond, Virginia; The Colony, Texas; Charlotte, North Carolina; Washington, District of Columbia; Houston, Texas; and Chicago, Illinois.

The Company's traditional golf business is one of the largest operators of golf courses and country clubs in the United States. As of December 31, 2022, the Company owned, leased or managed fifty-two (52) properties across seven states.

The corporate segment consists primarily of securities and other investments and executive management.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Accounting** — The accompanying Consolidated Financial Statements are prepared in accordance with U.S. generally accepted accounting principles or GAAP. The Consolidated Financial Statements include the accounts of the Company and its consolidated subsidiaries. All significant intercompany transactions and balances have been eliminated. The Company consolidates those entities in which it has an investment of 50% or more and has control over significant operating, financial and investing decisions of the entity.

**Risks and Uncertainties** — We plan to develop and construct our entertainment golf business through long term ground leases of existing retail real estate. Developing new entertainment golf venues requires a significant amount of time and resources and poses a number of risks. Construction of new venues may result in cost overruns, delays or unanticipated expenses related to zoning or tax laws. We face competition for potential site locations. Desirable sites may be unavailable or expensive, and the markets in which new venues are located may deteriorate over time. Additionally, the market potential of venues cannot be precisely determined, and our venues may face competition in new markets from unexpected sources. Constructed venues may not perform up to our expectations.

**Use of Estimates** — Our estimates are based on information available to management at the time of preparation of the Consolidated Financial Statements, including the results 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 judgements 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, we do not expect our assessments and assumptions to materially change in the future.

**Comprehensive Loss and Income** — Comprehensive income is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances, excluding those resulting from investments by and distributions to owners. For the Company's purposes, comprehensive income represents primarily net income (loss), as presented in the Consolidated Statements of Operations, adjusted for unrealized gains or losses on securities available-for-sale. As of December 31, 2022 and 2021, accumulated other comprehensive income (loss) included net unrealized gains/(losses) on securities of \$(0.3) million and \$1.2 million, respectively.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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**REVENUE RECOGNITION*****Golf Operations***

**Entertainment Golf** — Revenue from bay play, gameplay, events, and other operating activities (consisting primarily of instruction and merchandise sales) is generally recognized at a point in time which is at the time of sale or when services are rendered and collectability is probable.

**Traditional Golf** — Revenue from green fees, cart rentals, merchandise sales and other operating activities (consisting primarily of range income, banquets and club amenities) is generally recognized at a point in time which is at the time of sale or when services are rendered and collectability is probable.

Revenue from membership dues for private club members and The Players Club members 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 membership dues are generally structured to cover the club operating costs and membership services.

Private country club members generally pay an advance initiation fee upon their acceptance as a member to the respective country club. Initiation fees are non-refundable after the date of acceptance as a member and recorded as revenue over the expected life of an active membership, which is estimated to be seven years. The initiation fee revenue is deferred and recognized 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 determination of the estimated average expected life of an active membership is based on company-specific historical data and involves judgment and estimation. Until 2021, private country club members generally paid an advance initiation deposit which was refundable 30 years after the date of acceptance as a member. The difference between the initiation deposit paid by the member and the present value of the refund obligation is deferred and recognized into revenue in the Consolidated Statements of Operations on a straight-line basis over the seven year expected life of an active membership. 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.

Revenue from the reimbursement of certain operating costs incurred at the Company's managed traditional golf properties is recognized at the time the associated operating costs are incurred as collectability is probable per the terms of the management contracts and the repayment histories of the property owners.

**Seasonality**

Seasonality can affect our results of operations. Our traditional golf business is subject to seasonal fluctuations as colder temperatures and shorter days reduce the demand for outdoor activities. As a result, the traditional golf business generates a disproportionate share of its annual revenue in the second and third quarters of each year. In addition, our Drive Shack and Puttery venues could be significantly impacted on a season-to-season basis, based on corporate event and social gathering volumes during holiday seasons and school vacation schedules. For this reason, a quarter-to-quarter comparison may not be a good indicator of our current and/or future performance.

**Sales of Food and Beverages** — Revenue from food and beverage sales is recorded at the time of sale, net of discounts.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

DECEMBER 31, 2022, 2021 and 2020

(dollars in tables in thousands, except per share data)

**Realized (Gain) Loss on Investments and Other Income (Loss), Net** — These items are comprised of the following:

	Year Ended December 31,		
	2022	2021	2020
Gain on sale of traditional golf properties, net (A)	\$ —	\$ —	\$ 16,447
Insurance proceeds	3,205	—	—
Loss on sale of long-lived assets and intangibles	(38)	—	—
Collateral management fee income, net	96	191	259
Equity in earnings, net of impairment from equity method investments (B)	—	—	(24,020)
Gain on Lease Modification/Termination	(56)	—	—
Other income (loss)	1,892	464	(297)
Other income (loss), net	<u>\$ 5,099</u>	<u>\$ 655</u>	<u>\$ (7,611)</u>

(A) During the year ended December 31, 2020, the Company sold one traditional golf property, resulting in net proceeds of \$33.6 million. This property had a carrying value of \$17.0 million and resulted in a gain of \$16.6 million.

(B) During the year ended December 31, 2020, the Company recorded an other-than-temporary impairment charge of \$24.7 million on the Company's equity method investment.

## EXPENSE RECOGNITION

**Operating Expenses** — Operating expenses consist primarily of payroll, utilities, repairs and maintenance, supplies, marketing, technology support and operating lease rent expense. A majority of the properties and related facilities are leased under long-term operating leases. See Note 6 for additional information.

**General and Administrative Expense** — General and administrative expense consists of costs associated with corporate and administrative functions that support development and operations.

**Pre-Opening Costs** — Pre-opening costs are expensed as incurred and consist primarily of employee payroll, marketing expenses, operating lease costs, travel and related expenses, training costs, food, beverage and other restaurant operating expenses incurred prior to opening an entertainment golf venue.

**Deferred Costs** — Deferred costs consist primarily of costs incurred in obtaining financing which are amortized into interest expense over the term of such financing using either the straight-line basis or the interest method. Deferred financing costs are presented as a direct deduction from the carrying amount of the related debt liability.

**Interest Expense, Net** — The Company financed traditional golf and corporate using both fixed and floating rate debt, including mortgage loans and other financing vehicles. Certain of this debt has been issued at a discount. Discounts are accreted into interest expense on the effective yield or interest method, based upon a comparison of actual and expected cash flows, through the expected maturity date of the financing. See Note 8 for additional information.

**Stock-Based Compensation Expense** — The Company maintains an equity incentive plan under which non-qualified stock options, incentive stock options, and restricted stock units or RSUs are granted to employees and non-employee directors. Stock options and RSUs are expensed based on the fair value on the date of grant and amortized on a straight-line basis over the requisite service period. The fair value of RSUs is determined using the stock price on the date of grant. The fair value of stock options is estimated on the grant date using the Black-Scholes option valuation model. Unvested stock options and RSUs are forfeited by non-employee directors upon their departure from the board of directors and forfeited by employees upon their termination. All stock-based compensation expense is recorded as general and administrative expense in the Consolidated Statements of Operations. See Note 11 for additional information.



**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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**BALANCE SHEET MEASUREMENT**

**Property and Equipment, Net** — Real estate related improvements and equipment are recorded at cost less accumulated depreciation. Costs that both materially add value to an asset and extend the useful life of an asset by more than a year are capitalized which may include significant renovations, remodels and major repairs. Costs that do not meet this criteria, such as minor repairs and routine maintenance, are expensed as incurred.

Depreciation is calculated using the straight-line method based on the lesser of the following estimated useful lives or the lease term:

Buildings and improvements	10-40 years
Finance leases - equipment	2-6 years
Furniture, fixtures, and equipment	2-7 years

The Company leases certain golf carts and other equipment that are classified as finance lease ROUs. The value of finance leases is recorded as an asset on the balance sheet, along with a liability related to the present value of associated payments. Depreciation of finance lease assets is calculated using the straight-line method over the shorter of the estimated useful lives or the expected lease terms. The cost of equipment under finance leases is recorded in "Property and equipment, net of accumulated depreciation" on the Consolidated Balance Sheets. Payments under the leases are treated as reductions of the obligations under finance leases, with a portion being recorded as interest expense under the effective interest method.

**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 of sale. 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.

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. On October 16, 2020, the Company completed the sale of the last held-for-sale traditional golf property for a sale price of \$34.5 million and received net cash proceeds of approximately \$33.6 million. As of December 31, 2022 and 2021, the Company does not classify any traditional golf property as held-for-sale.

**Real Estate Securities** — The Company invested in securities, including real estate related asset backed securities which are classified as available-for-sale. Securities available-for-sale are carried at fair market value with the net unrealized gains or losses reported as a separate component of accumulated other comprehensive income. At disposition, the net realized gain or loss is determined on the basis of the cost of the specific investments and is included in earnings. Unrealized losses on securities are charged to earnings if there is an intent to sell or if they reflect a decline in value that is other-than-temporary. Income on these securities is recognized using a level yield methodology based upon a number of cash flow assumptions that are subject to uncertainties and contingencies.

**Impairment of Securities** — The Company continually evaluates securities for impairment. Securities are considered to be other-than-temporarily impaired, for financial reporting purposes, whenever there has been a probable adverse change in the timing or amounts of expected cash flows. The Company must record a write-down if it has the intent to sell a given security in an unrealized loss position, or if it is more likely than not that it will be required to sell such a security. Upon determination of impairment, the Company records a direct write-down for securities based on the estimated fair value of the security or underlying collateral using a discounted cash flow analysis or based on an observable market value. Actual losses may differ from the Company's estimates.

**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 the 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

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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(dollars in tables in thousands, except per share data)

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. ROU assets for operating leases are subsequently amortized over the initial lease term into lease cost on a straight-line basis less imputed interest on the lease liabilities. Depreciation of the finance lease ROU assets are 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.

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 the contingency is resolved.

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

**Intangibles, Net** — Intangible assets consist primarily of management contracts, membership base and internally-developed software. The management contract intangible represents the Company's golf course management contracts for both leased and managed properties. The management contract intangible for leased and managed properties was valued using the discounted cash flow method under the income approach and is amortized over the term of the underlying lease or management agreements, respectively. The membership base intangible represents the Company's relationship with its private country club members. The membership base intangible was valued using the multi-period excess earnings method under the income approach and is amortized over the expected life of an active membership. Internally-developed software represents proprietary software developed for the Company's exclusive use. Internally-developed software is amortized over the expected useful life of the software.

Amortization of intangible assets is included within depreciation and amortization in the Consolidated Statements of Operations. Amortization of all intangible assets is calculated using the straight-line method based on the following estimated useful lives:

Trade name	30 years
Management contracts	2 - 26 years
Internally-developed software	3 - 5 years
Membership base	7 years
Liquor licenses	Nonamortizable

**Impairment of Long-lived Assets** — The Company periodically reviews the carrying amounts of its long-lived assets or asset groups, 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 assets are 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.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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**Membership Deposit Liabilities** — Initiation fees are non-refundable and recorded as revenue over the expected seven year life of an active membership. Until 2021, private country club members generally paid an advance initiation deposit upon their acceptance as a member to the respective country club that is refundable 30 years after the date of acceptance as a member. The difference between the initiation 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.

In 2002, American Golf Corporation ("AGC"), when it was owned by a previous owner, entered into a Restated Membership Deposit Assumption Agreement, with two trusts established by a previous owner of AGC (the "Trusts") under which the Trusts agreed to unconditionally assume the obligations of AGC to refund certain membership deposit liabilities ("MDLs") in exchange for shares in AGC. The MDLs assumed were refundable 30 years from the date of acceptance of the member with the first liabilities assumed by the Trusts becoming refundable in 2020. The total redemption value of membership deposit liabilities assumed by the Trusts was \$181.9 million. No asset was recorded at the time of our acquisition of AGC in recognition of this assumption agreement for the \$181.9 million of liabilities assumed by the Trusts for the following reasons: 1) the substantial time period between the assumption of the liabilities and the first liabilities becoming refundable; 2) the inability of AGC to verify and monitor the assets of the Trusts to ensure the ability to perform under the terms of the assumption agreements; 3) the fact that the Trusts are not required to maintain any assets that would support such performance; 4) the Trust settlors were not required contractually to fund the Trusts; and 5) the Company does not have the ability to determine the likelihood that the Trusts will meet their obligations. In the event the Trusts are not able to fulfill their obligations, the Company would be responsible for refunding the outstanding balance of the MDL and therefore, recognizes these MDLs on its balance sheet. Though the Trusts initially assumed \$181.9 million of MDLs the balance of related MDLs carried on the books of AGC, as of December 31, 2022, has been reduced to an undiscounted nominal value of \$115 million through various assignments to third parties and partial membership refunds due to membership transfers. To-date, the Trust has met all of their obligations that have come due for which the Trust assumed responsibility under the Restated Membership Deposit Assumption Agreement. As of December 31, 2022 the Trusts had refunded a total of approximately \$0.6 million of MDLs, all of which they were obligated to pay under the terms of the assumption agreements.

**Other Investment** — The Company owns an approximately 22% economic interest in a limited liability company which owns preferred equity in a commercial entertainment and retail real estate project. The Company accounts for this investment as an equity method investment. As of December 31, 2022 the carrying value of this investment was zero. 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 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, guest visits, changes in market rental rates, and net operating results.

The operations and ongoing construction at the commercial real estate project halted due to the COVID-19 pandemic in mid-March 2020, and the Company recorded an other-than-temporary impairment charge of \$24.7 million during the three months ended June 30, 2020. The other-than temporary impairment charge was recorded in "Other income (loss), net" on the Consolidated Statements of Operations. The property reopened to the public with additional entertainment venues and retail shops in October 2020 while following COVID-19 related operational restrictions and capacity limitations and implementing social distancing measures. However, the ability of the commercial real estate project to obtain additional funding to complete the construction and attain the financial results needed to recover any of our investment remains highly uncertain.

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**Cash and Cash Equivalents and Restricted Cash** — The Company considers all highly liquid short-term investments with maturities of 90 days or less when purchased to be cash equivalents. Substantially all amounts on deposit with major financial institutions exceed insured limits. The Company has not experienced any losses in the accounts and believe that the Company is not exposed to significant credit risk because the accounts are at major financial institutions. Restricted cash consisted of:

	December 31,	
	2022	2021
CDO trustee accounts	\$ 103	\$ 103
Restricted cash for construction-in-progress	2,313	1,884
Restricted cash - traditional golf	1,424	1,561
Restricted cash - entertainment golf	749	730
Restricted cash, current and noncurrent	<u>\$ 4,589</u>	<u>\$ 4,278</u>

**Accounts Receivable, Net** — Accounts receivable are stated at amounts due from customers, net of an allowance for doubtful accounts of \$0.4 and \$0.9 million as of December 31, 2022 and 2021, respectively. The allowance for doubtful accounts is based upon several factors including the length of time the receivables are past due, historical payment trends, current economic factors, and our expectations of future events that affect collectability. Collateral is generally not required.

**Other Current Assets**

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

	December 31,	
	2022	2021
Managed property receivables	10,559	16,316
Prepaid expenses	2,421	2,524
Deposits	1,307	1,827
Inventory	2,828	2,229
Miscellaneous current assets, net	7,757	7,138
Other current assets	<u>\$ 24,872</u>	<u>\$ 30,034</u>

**Managed Property Receivables** — Managed property receivables consists of amounts due from traditional golf managed properties.

**Prepaid Expenses** — Prepaid expenses consists primarily of prepaid insurance and prepaid rent and are expensed over the usage period of the goods or services.

**Deposits** — Deposits consist primarily of property lease security deposits.

**Inventory** — Inventory is valued at lower of cost or net realizable value. Cost is determined on the first-in, first-out ("FIFO") method. Inventories consist primarily of food, beverages and merchandise for sale.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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(dollars in tables in thousands, except per share data)

**Other Assets**

The following table summarizes the Company's other assets:

	December 31,	
	2022	2021
Prepaid expenses	\$ 182	\$ 2,156
Deposits	3,014	3,335
Miscellaneous assets, net	500	1,047
Other assets	<u>\$ 3,696</u>	<u>\$ 6,538</u>

**Accounts Payable and Accrued Expenses** — Accounts payable reflect expenses related to goods and services received that have not yet been paid and accrued expenses reflect expenses related to goods received and services performed for which invoices have not yet been received.

**Deferred Revenue** — Payments received in advance of the performance of services are recorded as deferred revenue until the services are performed.

**Other Current Liabilities**

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

	December 31,	
	2022	2021
Operating lease liabilities	\$ 18,946	\$ 16,519
Accrued rent	3,803	3,455
Dividends payable	930	930
Miscellaneous current liabilities	5,225	5,620
Other current liabilities	<u>\$ 28,904</u>	<u>\$ 26,524</u>

**Operating Lease Liabilities** — Operating lease liabilities relate to ground leases and/or related facilities and office leases. See Note 6 for additional information

**Accrued Rent** - Accrued rent primarily relates to amounts accrued or owed for variable lease costs

**Dividends Payable** — Represents dividends declared but not paid.

**Stock Options** — Stock options granted to the Company's employees and non-employee directors were recorded as an increase in equity. See Note 11 for additional information.

**Restricted Stock Units or RSUs** — The fair value of the RSUs issued to the Company's employees and independent directors as part of annual compensation were recorded as an increase in equity. See Note 11 for additional information.

**Preferred Stock** — The Company's accounting policy for its preferred stock is described in Note 11.

**Income Taxes** — The Company accounts for income taxes pursuant to the asset and liability method which requires the recognition of deferred income tax assets and liabilities related to the expected future tax consequences arising from temporary differences between the carrying amounts and tax bases of assets and liabilities. Deferred tax assets and liabilities are measured using enacted tax rates applicable to the periods in which the temporary differences are expected to reverse. A valuation allowance is recognized if the Company determines it is more likely than not that all or a portion of a deferred tax asset will not be recognized.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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The Company recognizes tax benefits for uncertain tax positions only if it is more likely than not that the position is sustainable based on its technical merits. Interest and penalties on uncertain tax positions are included as a component of the provision for income taxes in the Consolidated Statements of Operations. See Note 14 for additional information.

**Amortization of Discount and Premium and Other Amortization** — As reflected in the Consolidated Statements of Cash Flows, these items are comprised of the following:

	Year Ended December 31,		
	2022	2021	2020
Accretion of net premium on securities, loans and other investments	\$ (765)	\$ (568)	\$ (413)
Amortization of net discount on debt obligations and deferred financing costs	(5)	(8)	(10)
Amortization of discount and premium	<u>\$ (770)</u>	<u>\$ (576)</u>	<u>\$ (423)</u>
Accretion of membership deposit liability	\$ 10,463	\$ 8,198	\$ 8,160

## 3. REVENUES

The majority of the Company's revenue is recognized 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, gameplay, 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 table disaggregates revenue by category: entertainment golf venues, public and private golf properties (owned and leased) and managed golf properties.

	For Year Ended December 31,											
	2022						2021					
	Ent. golf venues	Public golf properties	Private golf properties	Managed golf properties (A)	Corporate	Total	Ent. golf venues	Public golf properties	Private golf properties	Managed golf properties (A)	Corporate	Total
Golf operations	\$33,429	\$105,771	\$48,799	\$66,380	\$797	\$255,176	\$20,427	\$100,569	\$49,164	\$62,337	\$63	\$232,560
Sales of food and beverages	33,874	28,714	7,979	—	—	70,567	24,623	18,031	6,650	—	—	49,304
Total revenues	<u>\$67,303</u>	<u>\$134,485</u>	<u>\$56,778</u>	<u>\$66,380</u>	<u>\$797</u>	<u>\$325,743</u>	<u>\$45,050</u>	<u>\$118,600</u>	<u>\$55,814</u>	<u>\$62,337</u>	<u>\$63</u>	<u>\$281,864</u>

(A) Includes \$59.7 million and \$54.4 million for the years ended December 31, 2022 and 2021, respectively, due to management contract reimbursements reported under revenue accounting standard, ASC 606.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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**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 the Chief Executive Officer and President, who reviews discrete financial information for each reportable segment to manage the Company, including resource allocation and performance assessment.

As of December 31, 2022, the entertainment golf segment was comprised of nine owned or leased entertainment golf venues across six states with locations in Orlando, Florida; West Palm Beach, Florida; Raleigh, North Carolina; Richmond, Virginia; The Colony, Texas; Charlotte, North Carolina; Washington, District of Columbia; Houston, Texas; and Chicago, Illinois.

The Company's traditional golf business is one of the largest operators of golf courses and country clubs in the United States. As of December 31, 2022, the Company owned, leased or managed fifty-two (52) properties across seven states.

The corporate segment consists primarily of securities and other investments and executive management.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

	Entertainment Golf	Traditional Golf	Corporate	Total
<b>Year Ended December 31, 2022</b>				
<b>Revenues</b>				
Golf operations	\$ 33,429	\$ 220,950	\$ 797	\$ 255,176
Sales of food and beverages	33,874	36,693		70,567
Total revenues	67,303	257,643	797	325,743
<b>Operating costs</b>				
Operating expenses	40,502	221,555	(268)	261,789
Cost of sales - food and beverages	8,882	10,493	—	19,375
General and administrative expense (A)	6,090	15,027	17,727	38,844
Depreciation and amortization	14,679	10,547	457	25,683
Pre-opening costs (C)	6,436	—	—	6,436
Impairment and other losses	15,813	1,363	—	17,176
Total operating costs	92,402	258,985	17,916	369,303
Operating income (loss)	(25,099)	(1,342)	(17,119)	(43,560)
<b>Other income (expenses)</b>				
Interest and investment income	9	67	2,040	2,116
Interest expense (D)	(195)	(11,167)	(2,304)	(13,666)
Other income (loss), net	(687)	4,886	900	5,099
Total other income (expenses)	(873)	(6,214)	636	(6,451)
Income tax expense	61	2	1,972	2,035
Net income (loss)	(26,033)	(7,558)	(18,455)	(52,046)
Less: net loss attributable to NCI	—	—	(145)	(145)
Net income (loss) attributable to the company	(26,033)	(7,558)	(18,310)	(51,901)
Preferred dividends			(5,580)	(5,580)
Net income (loss) applicable to common stockholders	\$ (26,033)	\$ (7,558)	\$ (23,890)	\$ (57,481)

	Entertainment Golf	Traditional Golf	Corporate	Eliminations	Total
<b>December 31, 2022</b>					
Total assets	\$ 222,138	\$ 254,798	\$ 11,264	\$ (30,219)	\$ 457,981
Total liabilities	91,310	338,160	85,687	(30,219)	484,938
Preferred stock	—	—	61,583	—	61,583
Noncontrolling interest	5,893	—	(823)	—	5,070
Equity (loss) attributable to common stockholders	\$ 124,935	\$ (83,362)	\$ (135,183)	\$ —	\$ (93,610)
Additions to property and equipment (including finance leases) during the year ended December 31, 2022	\$ 46,772	\$ 8,406	\$ 1,312	\$ —	\$ 56,490



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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## Summary segment financial data (continued).

	Entertainment Golf	Traditional Golf	Corporate	Total
<b><u>Year Ended December 31, 2021</u></b>				
<b>Revenues</b>				
Golf operations	\$ 20,427	\$ 212,070	\$ 63	\$ 232,560
Sales of food and beverages	\$ 24,623	\$ 24,681		\$ 49,304
Total revenues	\$ 45,050	\$ 236,751	\$ 63	\$ 281,864
<b>Operating costs</b>				
Operating expenses	\$ 25,427	\$ 196,819	\$ 14	\$ 222,260
Cost of sales - food and beverages	\$ 5,727	\$ 7,087	\$ —	\$ 12,814
General and administrative expense (A)	\$ 12,287	\$ 10,414	\$ 11,108	\$ 33,809
General and administrative expense - acquisition and transaction expenses (B)				\$ —
Depreciation and amortization	\$ 11,938	\$ 11,656	\$ 424	\$ 24,018
Pre-opening costs (C)	\$ 4,551	\$ —	\$ 1	\$ 4,552
Impairment and other losses (gains)	\$ 36	\$ 1,812	\$ 3,187	\$ 5,035
Total operating costs	\$ 59,966	\$ 227,788	\$ 14,734	\$ 302,488
Operating loss	\$ (14,916)	\$ 8,963	\$ (14,671)	\$ (20,624)
<b>Other income (expenses)</b>				
Interest and investment income	\$ —	\$ 71	\$ 613	\$ 684
Interest expense (D)	\$ (319)	\$ (9,095)	\$ (1,284)	\$ (10,698)
Capitalized interest (D)				\$ —
Other income (loss), net	\$ 9	\$ 468	\$ 178	\$ 655
Total other income (expenses)	\$ (310)	\$ (8,556)	\$ (493)	\$ (9,359)
Income tax expense	\$ 1		\$ 1,778	\$ 1,779
Net income (loss)	\$ (15,227)	\$ 407	\$ (16,942)	\$ (31,762)
Less: net loss attributable to NCI	\$ (393)	\$ —	\$ —	\$ (393)
Net income (loss) attributable to the company	\$ (14,834)	\$ 407	\$ (16,942)	\$ (31,369)
Preferred dividends	\$ —	\$ —	\$ (5,580)	\$ (5,580)
Net income (loss) applicable to common stockholders	\$ (14,834)	\$ 407	\$ (22,522)	\$ (36,949)
	Entertainment Golf	Traditional Golf	Corporate	Total
<b><u>December 31, 2021</u></b>				
Total assets	180,729	260,003	42,058	482,790
Total liabilities	50,739	339,443	62,753	452,935
Preferred stock	—	—	61,583	61,583
Equity (loss) attributable to common stockholders	\$ 129,990	\$ (79,440)	\$ (83,734)	\$ (33,184)
Additions to property and equipment (including finance leases) during the year ended December 31, 2021	\$ 24,344	\$ 7,670	\$ 375	\$ 32,389

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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(dollars in tables in thousands, except per share data)

Summary segment financial data (continued).

	Entertainment Golf	Traditional Golf	Corporate	Total
<b>Year Ended December 31, 2020</b>				
Revenues				
Golf operations	\$ 10,536	\$ 179,436	\$ —	\$ 189,972
Sales of food and beverages	14,713	15,302	—	30,015
Total revenues	25,249	194,738	—	219,987
Operating costs				
Operating expenses	19,525	169,220	—	188,745
Cost of sales - food and beverages	3,744	5,090	—	8,834
General and administrative expense (A)	8,869	9,661	9,478	28,008
General and administrative expense - acquisition and transaction expenses (B)	1,885	210	1,181	3,276
Depreciation and amortization	11,960	14,903	289	27,152
Pre-opening costs (C)	1,328	—	—	1,328
Impairment and other losses	(1,960)	1,239	—	(721)
Total operating costs	45,351	200,323	10,948	256,622
Operating (loss) income	(20,102)	(5,585)	(10,948)	(36,635)
Other income (expenses)				
Interest and investment income	1	77	487	565
Interest expense (D)	(389)	(9,009)	(1,648)	(11,046)
Capitalized interest (D)	—	22	56	78
Other income, net	—	16,164	(23,775)	(7,611)
Total other income (expenses)	(388)	7,254	(24,880)	(18,014)
Income tax expense	75	(19)	1,649	1,705
Net loss	(20,565)	1,688	(37,477)	(56,354)
Preferred dividends	—	—	(5,580)	(5,580)
Loss applicable to common stockholders	<u>\$ (20,565)</u>	<u>\$ 1,688</u>	<u>\$ (43,057)</u>	<u>\$ (61,934)</u>

(A) General and administrative expenses include severance expense in the amount of \$0.9 million, \$0.3 million and \$1.1 million for the years ended December 31, 2022, 2021 and 2020, respectively.

(B) Acquisition and transaction expense includes 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 \$10.5 million, \$8.2 million and \$7.2 million for the years ended December 31, 2022, 2021 and 2020, respectively. Interest expense and capitalized interest total to interest expense, net on the Consolidated Statements of Operations.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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

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

	December 31, 2022			December 31, 2021		
	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	180,802	(54,999)	125,803	155,086	(46,399)	108,687
Furniture, fixtures and equipment	67,097	(37,796)	29,301	56,809	(28,821)	27,988
Finance leases - equipment	24,911	(13,991)	10,920	29,886	(15,602)	14,284
Construction in progress	25,648	—	25,648	21,531	—	21,531
Total Property and Equipment	<u>\$ 305,228</u>	<u>\$ (106,786)</u>	<u>\$ 198,442</u>	<u>\$ 270,082</u>	<u>\$ (90,822)</u>	<u>\$ 179,260</u>

Depreciation is calculated on a straight-line basis using the estimated useful lives detailed in Note 2. Depreciation expense, which included amortization of assets recorded under finance leases, was \$23.7 million, \$22.2 million and \$24.4 million for the years ended December 31, 2022, 2021 and 2020, respectively.

In October 2020, the Company sold its remaining traditional golf property classified as held for sale, for \$34.5 million, resulting in net proceeds of \$33.6 million and recognized a gain on sale of \$16.6 million.

**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. In addition to minimum payments, certain leases require payment of the excess of various percentages of gross revenue or net operating income over the minimum rental payments. The leases generally require the payment of taxes assessed against the leased property and the cost of insurance and maintenance. Certain leases include scheduled increases or decreases in minimum rental payments at various times during the term of the lease.

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.

As of December 31, 2022, the Company has additional operating leases that have not yet commenced of \$32.8 million.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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Lease related costs recognized in the Consolidated Statements of Operations for the years ended December 31, 2022, 2021 and 2020 are as follows:

	Year Ended December 31, 2022	Year Ended December 31, 2021	Year Ended December 31, 2020
<b>Finance lease cost</b>			
Amortization of right-of-use assets	\$ 4,633	\$ 5,512	\$ 6,062
Interest on lease liabilities	895	1,158	1,142
<b>Total finance lease cost</b>	<b>5,528</b>	<b>6,670</b>	<b>7,204</b>
<b>Operating lease cost</b>			
Operating lease cost	36,087	30,195	36,003
Short-term lease cost	—	255	1,396
Variable lease cost	23,400	22,394	11,087
<b>Total operating lease cost</b>	<b>59,487</b>	<b>52,844</b>	<b>48,486</b>
<b>Total lease cost</b>	<b>\$ 65,015</b>	<b>\$ 59,514</b>	<b>\$ 55,690</b>

Other information related to leases included on the Consolidated Balance Sheet as of and for the year ended December 31, 2022 is as follows:

	Operating Leases	Financing Leases
Right-of-use assets	\$ 189,993	\$ 10,919
Lease liabilities	196,813	10,410
<b>Cash paid for amounts included in the measurement of lease liabilities</b>		
Operating cash flows	31,856	895
Financing cash flows	—	5,647
Right-of-use assets obtained in exchange for lease liabilities	33,415	2,002
Weighted average remaining lease term	11.3	2.8
Weighted average discount rate	8.17 %	6.04 %

Future minimum lease payments under non-cancellable leases as of December 31, 2022 are as follows:

	Operating Leases	Financing Leases
2023	\$ 14,744	\$ 4,316
2024	37,026	3,134
2025	30,029	2,090
2026	27,681	1,302
2027	25,555	427
Thereafter	199,071	—
<b>Total minimum lease payments</b>	<b>334,106</b>	<b>11,269</b>
Less: Imputed interest	123,555	859
Less: Tenant Improvement Allowance	13,738	—
<b>Total lease liabilities</b>	<b>\$ 196,813</b>	<b>\$ 10,410</b>

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

DECEMBER 31, 2022, 2021 and 2020

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

The following table summarizes the Company's intangible assets:

	December 31, 2022			December 31, 2021		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Value	Gross Carrying Amount	Accumulated Amortization	Net Carrying Value
Trade name	\$ 700	\$ (210)	\$ 490	\$ 721	\$ (187)	\$ 534
Management contracts	28,488	(19,043)	9,445	28,913	(17,960)	10,953
Internally-developed software	2,977	(1,024)	1,953	417	(143)	274
Membership base	4,012	(3,361)	651	4,012	(3,304)	708
Nonamortizable liquor licenses	1,569	—	1,569	961	—	961
Total intangibles	<u>\$ 37,746</u>	<u>\$ (23,638)</u>	<u>\$ 14,108</u>	<u>\$ 35,024</u>	<u>\$ (21,594)</u>	<u>\$ 13,430</u>

Amortization expense for the years ended December 31, 2022, 2021, and 2020 was \$1.9 million, \$1.8 million and \$2.7 million, respectively.

The unamortized balance of intangible assets at December 31, 2022 is expected to be amortized as follows:

2023	\$ 2,010
2024	1,621
2025	1,498
2026	1,222
2027	799
Thereafter	5,388
Total amortizable intangible assets	12,538
Nonamortizable liquor and other licenses	1,570
Total intangible assets	<u>\$ 14,108</u>

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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## 8. DEBT OBLIGATIONS

The following table presents certain information regarding the Company's debt obligations:

	December 31, 2022								December 31, 2021	
Debt Obligation/ Collateral	Month Issued	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	1.79%	6.66 %	21	—	200	200
Finance Leases (Equipment)	Feb 2017 - Sep 2022	10,410	10,410	Jan 2023 - Aug 2027	3.95% to 9.06%	2.85 %	1.6	—	14,275	14,275
		10,610	10,610			2.92 %	2	0	14,475	14,475
Less current portion of obligations under finance leases		4,761	4,761						5,400	5,400
Credit facilities and obligations under finance leases - noncurrent		5,849	5,849						9,075	9,075
<u>Corporate</u>										
Junior subordinated notes payable (B)	Mar 2006	51,004	51,169	Apr 2035	3-mon LIBOR+2.25%	6.62 %	12.33	51,004	51,004	51,174
Total debt obligations		\$ 61,614	\$ 61,779			5.98 %	10.5	\$ 51,004	\$ 65,479	\$ 65,649

(A) Including the effect of deferred financing cost.

(B) Collateral for this obligation is the Company's general credit.

Credit Facilities

Traditional golf is obligated under a \$0.2 million loan with the City of Escondido, California ("Vineyard II"). The principal amount of the loan is payable in five equal installments upon reaching the "Achievement Date", which is the date on which the number of rounds of golf played on the property during the previous 36-month period equals or exceeds 240,000. As of December 31, 2022, the Achievement Date has not been reached. The interest rate is adjusted annually and is equal to 1% plus a short-term investment return, as defined in the loan agreement. As of December 31, 2022, the interest rate is 2.43%.

Finance Leases - Equipment

The Company leases certain golf carts and other equipment under finance lease agreements. The agreements typically provide for minimum rentals plus executory costs. Lease terms range from 36-66 months. Certain leases include bargain purchase options at lease expiration.

See Note 6 for the future minimum lease payments required under the finance leases and the present value of the net minimum lease payments as of December 31, 2022.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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Maturity Table

The Company's debt obligations have contractual maturities as follows:

	Nonrecourse	Recourse	Total
2023	\$ 3,923	\$ —	\$ 3,923
2024	2,865	—	2,865
2025	1,954	—	1,954
2026	1,251	—	1,251
2027	417	—	417
Thereafter	—	51,004	51,004
Total	<u>\$ 10,410</u>	<u>\$ 51,004</u>	<u>\$ 61,414</u>

**9. REAL ESTATE SECURITIES**

As of December 31, 2021, the Company held certain ABS – Non-Agency RMBS securities (the ABS - Non-Agency RMBS is a floating rate security and the collateral securing it is located in various geographic regions in the U.S. The Company does not have significant investments in any one geographic region) with an outstanding face amount of \$4.0 million and a fair value of \$3.5 million that were classified as available for sale. The Company redeemed \$2.4 million of face value of the real estate securities for \$2.4M during the year ended December 31, 2022 and recognized a realized gain of \$1.2 million on the redemption, which is recognized in Interest and investment income. As of December 31, 2022, the remaining ABS – Non-Agency RMBS securities have a face amount of \$1.6 million and a fair value of approximately \$1.6 million. See Note 10 regarding the estimation of fair value, which is equal to carrying value for all securities.

**10. FAIR VALUE OF FINANCIAL INSTRUMENTS**

The following table summarizes the carrying values and estimated fair values of the Company's financial instruments at December 31, 2022 and 2021:

	December 31, 2022			December 31, 2021	
	Carrying Value	Estimated Fair Value	Fair Value Method (A)	Carrying Value	Estimated Fair Value
<b>Assets</b>					
Real estate securities, available-for-sale	\$ 1,631	\$ 1,631	Pricing models - Level 3	\$ 3,486	\$ 3,486
Cash and cash equivalents	12,345	12,345		58,286	58,286
Restricted cash - current and noncurrent	4,589	4,589		4,278	4,278
<b>Liabilities</b>					
Junior subordinated notes payable	\$ 51,169	\$ 12,479	Pricing models - Level 3	\$ 51,174	\$ 27,625

(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:

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- 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.

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

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.

The Company redeemed \$2.4 million of real estate securities measured at fair value on a recurring basis using Level 3 inputs during the year ended December 31, 2022 and recognized a realized gain of \$1.2 million in investment income.

***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>



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**11. EQUITY AND EARNINGS PER SHARE****Earnings per Share**

The Company is required to present both basic and diluted earnings per share ("EPS"). The following table shows the amounts used in computing basic and diluted EPS:

	For Year Ended December 31,		
	2022	2021	2020
Numerator for basic and diluted earnings per share:			
Loss from continuing operations after preferred dividends	\$ (57,481)	\$ (36,949)	\$ (61,934)
Loss Applicable to Common Stockholders	<u>\$ (57,481)</u>	<u>\$ (36,949)</u>	<u>\$ (61,934)</u>
Denominator:			
Denominator for basic earnings per share - weighted average shares	92,351,215	89,733,378	67,158,745
Effect of dilutive securities			
Options	—	—	—
RSUs	—	—	—
Denominator for diluted earnings per share - adjusted weighted average shares	<u>92,351,215</u>	<u>89,733,378</u>	<u>67,158,745</u>
Basic earnings per share:			
Loss from continuing operations per share of common stock after preferred dividends	\$ (0.62)	\$ (0.41)	\$ (0.92)
Loss Applicable to Common Stock, per share	<u>\$ (0.62)</u>	<u>\$ (0.41)</u>	<u>\$ (0.92)</u>
Diluted earnings per share:			
Loss from continuing operations per share of common stock after preferred dividends	\$ (0.62)	\$ (0.41)	\$ (0.92)
Loss Applicable to Common Stock, per share	<u>\$ (0.62)</u>	<u>\$ (0.41)</u>	<u>\$ (0.92)</u>

Basic EPS is calculated by dividing net income (loss) applicable to common stockholders by the weighted average number of shares of common stock outstanding during each period. Diluted EPS is calculated by dividing net income (loss) applicable to common stockholders by the weighted average number of shares of common stock outstanding plus the additional dilutive effect of dilutive securities during each period. The Company's dilutive securities are its options and RSUs. During 2022, 2021, and 2020, based on the treasury stock method, the Company had 82,086, 550,753 and 623,140 potentially dilutive securities, respectively, which were excluded due to the Company's loss position. Net loss applicable to common stockholders is equal to net loss less preferred dividends.

**Common Stock Issuances**

In 2018, the Company issued a total of 50,000 shares of its common stock to an independent director as part of the Director Stock Program described below.

In 2019, the Company issued a total of 6,000 shares of its common stock to an independent director as part of the Director Stock Program.

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In 2019, the Company issued a total of 27,099 of its common stock to independent directors upon vesting of RSUs that were granted in 2018.

In 2019, the Company issued a total of 8,548 shares of its common stock to employees upon vesting of RSUs that were granted in 2019.

In 2020, the Company issued a total of 50,653 of its common stock to its independent directors upon vesting of RSUs that were granted in 2019.

In 2020, the Company issued a total of 160,792 shares of its common stock to employees upon vesting of RSUs that were granted in 2019.

In 2020, the Company issued 43,396 shares of its common stock to a former executive upon the exercise of vested options that were granted in 2018.

In 2021, the Company issued a total of 13,429 of its common stock to its independent directors upon vesting of RSUs that were granted in 2019.

In 2021, the Company issued a total of 61,520 shares of its common stock to employees upon vesting of RSUs that were granted in 2019.

In 2021, the Company issued 736,551 shares of its common stock to a former executive upon the exercise of vested options that were granted in 2018.

In 2021, the Company completed the public offering of 23,285,553 shares of common stock and the sale of 672,780 shares of common stock to the Chairman of our board of directors.

**Incentive and Option Plans**

The Drive Shack Inc. 2018 Omnibus Incentive Plan (the "2018 Plan") was effective upon approval by our shareholders in May 2018 and provides for the issuance of equity-based awards in various forms to eligible participants. As of December 31, 2022, the 2018 Plan has 5,292,231 shares available for grant in the aggregate, subject to an annual limitation.

All outstanding options granted under prior option plans will continue to be subject to the terms and conditions set forth in the agreements evidencing such options and the terms of respective option plan.

As detailed in the 2018 Plan, the board of directors may permit a first time non-employee director to make a one-time election to participate in a stock purchase and matching grant program (the "Director Stock Program") which provides that if the non-employee director purchases shares of the Company's common stock at fair value within 30 days following the date the individual becomes a non-employee director, then the Company will issue a matching grant of fully vested shares of common stock equal to 20% of the aggregate fair value of the purchased shares. In 2018, a non-employee director purchased 41,667 shares and the Company issued 8,333 shares representing the matching grant. In 2019, a non-employee director purchased 5,000 shares and the Company issued 1,000 shares representing the matching grant. There were no non-employee director purchases in 2022, 2021 and 2020.

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**Stock Options**

The following is a summary of the changes in the Company's outstanding options for the year ended December 31, 2022.

	Number of Options	Weighted Average Strike Price	Weighted Average Life Remaining (in years)
Balance at December 31, 2021	3,582,548	\$ 3.17	
Expired	(588,118)	2.43	
Balance at December 31, 2022	2,994,430	\$ 3.31	0.8 years
Outstanding and exercisable at December 31, 2022	2,578,926	\$ 3.24	0.7 years

The Company's outstanding options are summarized as follows:

	Year Ended December 31,	
	2022	2021
Held by the former Manager	2,578,926	2,578,926
Granted to the former Manager and subsequently transferred to certain Manager's employees (A)	415,504	1,003,622
Granted to the independent directors	—	—
Total	2,994,430	3,582,548

- (A) The Company and Fortress (the former Manager) agreed that options held by certain employees formerly employed by the Manager will not terminate or be forfeited as a result of the Termination and Cooperation Agreement, and the vesting of such options will 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.

Stock-based compensation expense is recognized on a straight-line basis from grant date through the vesting date of the options. Stock-based compensation expense related to the employee options was \$0.3 million, \$1.4 million, and \$0.8 million (gross of the reversals of stock compensation expenses described below), during the years ended December 31, 2022, 2021, and 2020 respectively, and was recorded in general and administrative expense on the Consolidated Statements of Operations. During the year ended December 31, 2022, the Company reversed \$0.6 million in stock compensation expense related to certain previously issued options. The unrecognized stock-based compensation expense related to the unvested options was \$0.1 million as of December 31, 2022 and will be expensed over a weighted average of 1.0 year.

The closing price on the New York Stock Exchange for the Company's common stock as of December 31, 2022 was \$0.17 per share.

**Restricted Stock Units (RSUs)**

The following is a summary of the changes in the Company's RSUs for the year ended December 31, 2022:

	Number of RSUs	Weighted Average Grant Date Fair Value (per unit)
Balance at December 31, 2021	193,190	\$ 2.20
Vested	(23,605)	\$ 4.66
Forfeited (A)	(8,047)	\$ 4.66
Outstanding and exercisable at December 31, 2022	161,538	\$ 1.71

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- (A) Unvested RSUs are forfeited by non-employee directors upon their departure from the board of directors and forfeited by employees upon their termination.

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 year ended December 31, 2022, the Company did not grant RSUs to employees and 87,757 RSUs granted to employees vested and were released. 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 year ended December 31, 2022, the Company did not grant RSUs to employees and 23,605 RSUs granted to employees vested.

Stock-based compensation expense related to the RSUs was \$0.2 million, \$0.7 million, and \$0.7 million (gross of the reversals of stock compensation expenses described below) during the years ended December 31, 2022, 2021, and 2020 respectively, and was recorded in general and administrative expense on the Consolidated Statements of Operations. During the year ended December 31, 2022 the Company reversed \$0.3 million in stock compensation expense related to certain previously issued RSUs. There is no unrecognized stock-based compensation expense as of December 31, 2022.

Preferred Stock

In March 2003, the Company issued 2.5 million shares (\$62.5 million face amount) of its 9.75% Series B Cumulative Redeemable Preferred Stock (the "Series B Preferred"). In October 2005, the Company issued 1.6 million shares (\$40.0 million face amount) of its 8.05% Series C Cumulative Redeemable Preferred Stock (the "Series C Preferred"). In March 2007, the Company issued 2.0 million shares (\$50.0 million face amount) of its 8.375% Series D Cumulative Redeemable Preferred Stock (the "Series D Preferred"). The Series B Preferred, Series C Preferred and Series D Preferred are non-voting, have a \$25 per share liquidation preference, no maturity date and no mandatory redemption. The Company has the option to redeem the Series B Preferred, the Series C Preferred and the Series D Preferred, at their liquidation preference. If the Series C Preferred or Series D Preferred cease to be listed on the NYSE or the AMEX, or quoted on the NASDAQ, and the Company is not subject to the reporting requirements of the Exchange Act, the Company has the option to redeem the Series C Preferred or Series D Preferred, as applicable, at their liquidation preference and, during such time any shares of Series C Preferred or Series D Preferred are outstanding, the dividend will increase to 9.05% or 9.375% per annum, respectively.

In connection with the issuance of the Series B Preferred, Series C Preferred and Series D Preferred, the Company incurred approximately \$2.4 million, \$1.5 million, and \$1.8 million of costs, respectively, which were netted against the proceeds of such offerings. If any series of preferred stock were redeemed, the related costs would be recorded as an adjustment to income available for common stockholders at that time.

In March 2010, the Company settled its offer to exchange (the "Exchange Offer") shares of its common stock and cash for shares of its preferred stock. After settlement of the Exchange Offer, 1,347,321 shares of Series B Preferred Stock, 496,000 shares of Series C Preferred Stock and 620,000 shares of Series D Preferred Stock remain outstanding for trading on the New York Stock Exchange.

On March 11, 2021 the board of directors declared dividends on the Company's preferred stock for the period beginning February 1, 2021 and ending April 30, 2021, payable on April 30, 2021 to holders of record of preferred stock on April 1, 2021, in an amount equal to \$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. Dividends totaling \$1.4 million were paid on April 29, 2021.

On May 5, 2021 the board of directors declared dividends on the Company's preferred stock for the period beginning May 1, 2021 and ending July 31, 2021, payable on July 30, 2021 to holders of record of preferred stock on July 1, 2021, in an amount equal to \$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. Dividends totaling \$1.4 million were paid on July 30, 2021.

On August 5, 2021 the board of directors declared dividends on the Company's preferred stock for the period beginning August 1, 2021 and ending October 31, 2021, payable on November 1, 2021 to holders of record of preferred stock on October 1, 2021, in an amount equal to \$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. Dividends totaling \$1.4 million were paid on October 29, 2021.

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On November 5, 2021, the board of directors of the Company declared dividends on the Company's preferred stock for the period beginning November 1, 2021, and ending January 31, 2022. The dividends are payable on January 31, 2022, to holders of record of preferred stock on January 1, 2022, in an amount equal to \$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.

Dividends totaling \$1.4 million were paid on January 31, 2022 to holders of record of preferred stock on January 1, 2022, in an amount equal to \$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.

Dividends totaling \$1.4 million were paid on May 2, 2022 to holders of record of preferred stock on April 1, 2022, in an amount equal to \$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.

Dividends totaling \$1.4 million were paid on August 1, 2022 to holders of record of preferred stock on July 1, 2022, in an amount equal to \$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.

Dividends totaling \$1.4 million were paid on October 31, 2022 to holders of record of preferred stock on October 3, 2022, in an amount equal to \$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.

Dividends totaling \$1.4 million were paid on January 31, 2023 to holders of record of preferred stock on January 2, 2023, in an amount equal to \$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. As of December 31, 2022, \$0.9 million remained unpaid.

*Non-Controlling Interests*

On July 12, 2021, the Company entered into an investment agreement among the Company and Symphony Ventures, which we refer to as Symphony, a company organized under the laws of Ireland, in which the Company agreed to sell to Symphony 10% of the partnership interests in each of the wholly owned subsidiary limited partnerships, which we refer to as "SLPs", formed by the Company to hold each of the Company's Puttery venues, in exchange for an amount in cash equal to 10% of the total cost to build the Puttery venue owned by such SLP. Symphony's purchase price in each such SLP will be fully committed on the date the certificate of occupancy for the Puttery venue is received, up to a total commitment of \$10 million. We control through a wholly owned subsidiary all general partnership interests and 90% of the limited partnership interests in the SLP, thus retaining all rights, powers and authority that govern the partnership and, as a result, we consolidate the financial results of this SLP, and report the noncontrolling interest representing the economic interest in the SLP held by Symphony. Currently the Company and Symphony are party to five SLPs, for the Puttery locations in The Colony, Texas, Charlotte, North Carolina, Washington, D.C., Houston, Texas, and Chicago, Illinois.

Tax Benefits Preservation Plan

In connection with the adoption of a Tax Benefit Preservation Plan in 2016 and subsequent years through 2020, our board of directors approved the Articles Supplementary of Series E Junior Participating Preferred Stock, which was filed with the State Department of Assessments and Taxation of Maryland on December 8, 2016.

**12. TRANSACTIONS WITH AFFILIATES AND AFFILIATED ENTITIES**Agreements with the Former Manager

At December 31, 2022, the Manager, through its affiliates, and principals of the Manager, owned 9.0 million shares of the Company's common stock and Fortress, through its affiliates, had options relating to an additional 2.6 million shares of the Company's common stock (Note 11).

**13. COMMITMENTS AND CONTINGENCIES**

**Litigation** — 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 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

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at December 31, 2022, 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.

**Environmental Costs** — As a commercial real estate owner, the Company is subject to potential environmental costs. At December 31, 2022, management of the Company is not aware of any environmental concerns that would have a material adverse effect on the Company's consolidated financial position or results of operations.

**Surety Bonds** — The Company is required to maintain bonds under certain third-party agreements, as requested by certain utility providers, and under the rules and regulations of licensing authorities and other governmental agencies. The Company had bonds outstanding of approximately \$0.9 million as of December 31, 2022 and 2021.

**Month-to-Month Leases** — Traditional golf has three month-to-month property leases which are cancellable by the parties with 30 days written notice. Traditional golf also has various month-to-month operating leases for carts and equipment. Lease expense is recorded in operating expenses.

**Membership Deposit Liability** — In the traditional golf business, until 2021 private country club members generally paid an advance initiation deposit upon their acceptance as a member to the respective country club. Initiation deposits are refundable 30 years after the date of acceptance as a member. As of December 31, 2022, the total face amount of initiation fee deposits was approximately \$247.6 million with annual maturities through 2051.

In 2002, American Golf Corporation ("AGC"), when it was owned by a previous owner, entered into a Restated Membership Deposit Assumption Agreement, with two trusts established by a previous owner of AGC (the "Trusts") under which the Trusts agreed to unconditionally assume the obligations of AGC to refund certain membership deposit liabilities ("MDLs") in exchange for shares in AGC. The MDLs assumed were refundable 30 years from the date of acceptance of the member with the first liabilities assumed by the Trusts becoming refundable in 2020. The total redemption value of membership deposit liabilities assumed by the Trusts was \$181.9 million. No asset was recorded at the time of our acquisition of AGC in recognition of this assumption agreement for the \$181.9 million of liabilities assumed by the Trusts for the following reasons: 1) the substantial time period between the assumption of the liabilities and the first liabilities becoming refundable; 2) the inability of AGC to verify and monitor the assets of the Trusts to ensure the ability to perform under the terms of the assumption agreements; 3) the fact that the Trusts are not required to maintain any assets that would support such performance; 4) the Trust settlors were not required contractually to fund the Trusts; and 5) the Company does not have the ability to determine the likelihood that the Trusts will meet their obligations. In the event the Trusts are not able to fulfill their obligations, the Company would be responsible for refunding the outstanding balance of the MDL and therefore, recognizes these MDLs on its balance sheet. Though the Trusts initially assumed \$181.9 million of MDLs the balance of related MDLs carried on the books of AGC, as of December 31, 2022, has been reduced to an undiscounted nominal value of \$115 million through various assignments to third parties and partial membership refunds due to membership transfers. To-date, the Trust has met all of their obligations that have come due for which the Trust assumed responsibility under the Restated Membership Deposit Assumption Agreement. As of December 31, 2022 the Trusts had refunded a total of approximately \$0.6 million of MDLs, all of which they were obligated to pay under the terms of the assumption agreements.

**Restricted Cash** — Approximately \$3.7 million of restricted cash at December 31, 2022 is used as credit enhancement for Traditional Golf's obligations related to the performance of lease agreements and certain insurance claims.

**Commitments** — As of December 31, 2022, the Company has additional operating leases that have not yet commenced of \$32.8 million. The leases are expected to commence over the next 12 months with initial lease terms of approximately 10 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.

**Preferred Dividends in Arrears** - As of December 31, 2022, \$5.6 million of dividends on the Company's cumulative preferred stock were unpaid and in arrears.

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**14. INCOME TAXES**

The provision for income taxes consists of the following:

	Year Ended December 31,		
	2022	2021	2020
<b>Current:</b>			
Federal	\$ 1,840	\$ 1,429	\$ 1,537
State and Local	189	350	168
Total Current Provision	\$ 2,029	\$ 1,779	\$ 1,705
<b>Deferred:</b>			
Federal	\$ —	\$ —	\$ —
State and Local	—	—	—
Total Deferred Provision	\$ —	\$ —	\$ —
<b>Total Provision for Income Taxes</b>	<b>\$ 2,029</b>	<b>\$ 1,779</b>	<b>\$ 1,705</b>

The Company is subject to U.S. federal and state corporate income tax. As of December 31, 2022, the Company has a net operating loss carryforward of approximately \$475.1 million that is available to offset future U.S. federal taxable income, if and when it arises. The Company has State net operating losses after apportionment and tax effect of approximately \$930.4 million. The net operating loss carryforwards will begin to expire in 2029. A portion of the net operating loss carryforward may be limited in its use due to certain provisions of the Code, including, but not limited to Section 382, which imposes an annual limit on the amount of net operating loss and net capital loss carryforwards that the Company can use to offset future taxable income.

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 2018.

The Company has assessed its tax positions for all open years. As of December 31, 2022, the Company reported a total of \$0.8 million of unrecognized tax benefits which, if recognized, would affect the Company's effective tax rate. The Company does not believe that it is reasonably possible that the total amount of unrecognized tax benefits will significantly change within the next twelve months.

A reconciliation of the unrecognized tax benefits is as follows:

Balance as of December 31, 2021	\$ 628
Increase due to tax positions of current year	308
Decrease due to expiration of statute of limitations	(153)
Balance as of December 31, 2022	<u>\$ 783</u>

Generally, the Company's effective tax rate differs from the federal statutory rate as a result of state and local taxes and changes in the valuation allowance.

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The difference between the Company's reported provision for income taxes and the U.S. federal statutory rate of 21% is as follows:

	December 31,		
	2022	2021	2020
Provision at the statutory rate	21.00 %	21.00 %	21.00 %
Permanent items	0.41 %	(0.57)%	(0.56)%
Excess Inclusion Income	(3.26)%	(7.39)%	(2.80)%
State and local taxes	(0.31)%	(0.63)%	(0.24)%
Valuation allowance	(21.24)%	(20.60)%	(20.61)%
Unrecognized tax benefits	(0.32)%	1.94 %	(0.01)%
Other	(0.25)%	— %	0.11 %
Total Benefit (Expense)	<u>(3.97)%</u>	<u>(6.25)%</u>	<u>(3.11)%</u>

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities as of December 31, 2022 and 2021 are presented below:

	December 31,	
	2022	2021
Deferred tax assets:		
Allowance for loan losses	\$ 145	\$ 285
Depreciation and amortization	11,537	5,600
Accrued expenses	1,214	878
Interest	3,378	3,610
Operating lease liabilities	53,589	57,002
Net operating losses	149,031	142,875
Capital losses	—	7,625
Deferred revenue	4,060	3,804
Investment in Partnership	4,483	5,245
Impairment Loss	6,045	2,671
Other	(457)	585
Total deferred tax assets	<u>233,025</u>	<u>230,180</u>
Less valuation allowance	<u>(176,611)</u>	<u>(169,675)</u>
Net deferred tax assets	<u>\$ 56,414</u>	<u>\$ 60,505</u>
Deferred tax liabilities:		
Operating lease right-of-use assets	53,165	56,971
Membership deposit liabilities	3,249	3,534
Total deferred tax liabilities	<u>\$ 56,414</u>	<u>\$ 60,505</u>
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

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.



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As of December 31, 2022, the Company recorded a full valuation allowance against its net deferred tax assets as management does not believe that it is more likely than not that the net deferred tax assets will be realized.

The following table summarizes the change in the deferred tax asset valuation allowance:

Valuation allowance at December 31, 2021	\$	169,675
Increase due to current year operations		6,936
Valuation allowance at December 31, 2022	\$	176,611

**15. (GAIN) LOSS ON LEASE TERMINATIONS AND IMPAIRMENT**

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

	Year Ended December 31,		
	2022	2021	2020
(Gain) loss on lease terminations	\$ 2,222	\$ 961	\$ (2,872)
Loss on asset retirement	447	—	—
Impairment on entertainment golf properties (held-for-use)	13,177	—	—
Impairment on traditional golf properties (held-for-use)	1,330	—	3,912
Impairment on corporate related assets	—	3,187	—
Other losses	—	887	(1,761)
Total (Gain) Loss on Lease Terminations and Impairment	\$ 17,176	\$ 5,035	\$ (721)

*Gain loss on lease terminations and Impairment (held-for-use):* During the year ended December 31, 2022, the Company recorded impairment charges of \$11.3 million related to construction in progress assets for its Drive Shack New Orleans venue as the Company determined that it will not restart construction of the venue. The assets consist primarily of a partially constructed, unfinished building and parking lot. During the second quarter of 2022, the Company entered into a termination agreement to terminate the underlying ground lease for the site and recorded a \$2.2 million loss on lease terminations. The Company also recorded impairment charges of \$0.3 million related to assets for its Puttery location in Philadelphia during the third quarter. The Company recorded impairment charges of \$1.6 million related to certain assets acquired for our Puttery venues in Charlotte, North Carolina; Miami, Florida; and Washington, DC. The assets consisted of gameplay tracking cameras and supporting hardware and software for our venues. The Company has determined that it will not utilize the devices and they will therefore not be installed. The Company is unable to recover the cost of the devices and the impairment charge represents the full value of the equipment. In addition, the Company also recorded impairment charges of \$1.0 million related to one of its traditional golf courses, Dyker Beach during the third quarter. The Company recorded impairment charges of \$0.4 million related to two of its traditional golf courses, Clearview and La Tourette, during the fourth quarter.

During the year ended December 31, 2021, the Company recorded a loss related to the Seacliff lease termination. During the year ended December 31, 2020, the Company recorded a gain of \$2.9 million on the termination of two traditional golf property leases. The gain primarily related to the net effect of the derecognition of long-lived asset, intangible, and ROU asset and liability balances.

In 2021, the Company recorded \$3.2 million related to the impairment on corporate related assets, including the New York Corporate office and related assets. In 2020, the Company recorded impairment charges totaling \$3.9 million for two golf courses.

The significant inputs used to value these real estate assets fall within Level 3 for fair value reporting.

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.

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*Other Losses:* For the year ended December 31, 2021, the Company recorded a \$0.9 million loss on asset retirements related to other lease terminations. For the year ended December 31, 2020, the Company recorded a reversal of other losses of \$2.0 million primarily due to the sale of equipment and recorded loss on asset retirements of \$0.2 million.

**16. SUBSEQUENT EVENTS**

The Company has evaluated subsequent events through April 27, 2023 and has determined that the below events that occurred that would require adjustments to our disclosures in the consolidated financial statements.

On March 8, 2023, Drive Shack Inc. (the “Company”) announced that its entertainment golf business had obtained financing in the amount of \$26.5 million to fund the continued expansion of the Puttery business, in the form of a five-year senior secured delayed draw term loan facility in an aggregate principal amount of \$26.5 million (the “Facility”).

*Description of Facility*

The Facility is being made available pursuant to a Financing Agreement, dated March 2, 2023, among New Drive Shack Holdings LLC (“NDSH”), a wholly owned subsidiary of the Company, Drive Shack Holdings LLC and Drive Shack Urban Box Holdings LLC (collectively, the “Borrowers”) and each other wholly-owned subsidiary of NDSH (together with NDSH and the Borrowers, the “Loan Parties”), the Lenders from time to time party thereto and the Collateral Agent and the Administrative Agent.

On March 3, 2023, the Borrowers borrowed term loans in the aggregate principal amount of \$16 million under the Facility. Terms loans in the amount of \$10.5 million are available for borrowing under the Facility until September 1, 2023, subject to customary conditions.

The obligations of the Borrowers under the Facility are guaranteed, jointly and severally, by, and secured by all of the assets of, the Loan Parties, subject to customary exceptions. The Loan Parties constitute the Company’s entertainment golf business.

The proceeds of the Facility will be used to finance the development and construction of the Company’s previously announced new Puttery venues and working capital and other general corporate purposes of the Company’s entertainment golf business.

Borrowings under the Revolving Credit Facility will bear interest at a per annum rate equal to 3-month SOFR plus 8.50%, subject to a credit spread adjustment of 100 bps and, if applicable, a 2% SOFR floor.

The Facility will amortize on a quarterly basis at a rate of 5% per year beginning in 2024. Loans under the Facility are required to be prepaid from time to time with the proceeds of certain non-ordinary course asset sales and casualty and condemnation events and the proceeds of indebtedness and equity not permitted under the Facility. In addition, 50% of the Company’s entertainment golf business excess cash flows will be applied to prepay the Facility beginning in 2024.

Borrowings under the Facility may be prepaid, at the option of NDSH, at any time, without premium, beginning on March 2, 2026. Voluntary prepayments prior to March 2, 2026, will include a make-whole premium in the first year of the Facility, 3% in the second year of the Facility and 1% in the third year of the Facility.

The Facility contains usual and customary representations and warranties, and usual and customary affirmative and negative covenants, including, but not limited to, a financial covenant which will require the Company’s entertainment golf business consolidated EBITDA to equal at least \$4.5 million for the 6 months ended June 30, 2023, \$9 million for the 9 months ended September 30, 2023, \$14 million for the 12 months ending December 31, 2023, \$16 million for the 12 months ending March 31, 2024, and \$17.5 million for the 12 months ending June 30, 2024 (and each fiscal quarter thereafter); a financial covenant which will require the Company’s entertainment golf business liquidity to equal a minimum of \$3 million during the term of the Facility; limitations on liens, indebtedness, fundamental changes and dispositions, changes in the nature of the business of the Company’s entertainment golf business, loans, advances and investments, sale and leaseback transactions, restricted payments or use of proceeds in violation of Federal Reserve regulations; covenants requiring compliance with anti-corruption, anti-terrorism and anti-money laundering regulations; covenants regarding transactions with affiliates, limitations on dividends and other payment restrictions affecting subsidiaries, limitations on negative pledges, modifications of

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indebtedness, organizational documents and certain other agreements, violations of the Investment Company Act of 1940, as amended, violations of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") and environmental regulations, and plans of division. The Facility also contains usual and customary events of default, including: non-payment of principal, interest, fees and other amounts; material breach of a representation or warranty; default on other material debt; bankruptcy or insolvency; incurrence of certain material ERISA liabilities; material judgments; impairment of loan documentation; violation of subordination provisions; continuing ownership of a specified minimum of the Company's common stock by specified holders; and change of control.

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**SIGNATURES**

This report has been duly signed on its behalf by the undersigned, thereunto duly authorized:

DRIVE SHACK INC.

By: /s/ Wesley R. Edens

Wesley R. Edens

Chairman of the Board

April 27, 2023

This report has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated.

By: /s/ Wesley R. Edens

Wesley R. Edens

Chairman of the Board

April 27, 2023

By: /s/ Stuart A. McFarland

Stuart A. McFarland

Director

April 27, 2023

By: /s/ Hana Khouri

Hana Khouri

Director, Chief Executive Officer and President

April 27, 2023

By: /s/ William J. Clifford

William J. Clifford

Director

April 27, 2023

By: /s/ Kelley Buchhorn

Kelley Buchhorn

Chief Financial Officer and Chief Accounting Officer

April 27, 2023

By: /s/ Virgis W. Colbert

Virgis W. Colbert

Director

April 27, 2023

By: /s/ Benjamin M. Crane

Benjamin M. Crane

Director

April 27, 2023