

Offer to Purchase

DRIVE SHACK INC. **OFFER TO PURCHASE**

Drive Shack Inc. (“we” or the “Company”) is offering to purchase (such transaction, the “Offer to Purchase”), upon the terms and subject to the conditions set forth in this Offer to Purchase (such document, including *Appendix A* hereto, this “Offer”) and in the related letters of transmittal (as applicable for each series of Preferred Stock (as defined below) and each holder, the “Letter of Transmittal”) all of the outstanding shares of the following series of its preferred stock for the consideration (as applicable for each series of Preferred Stock and each holder, the “Preferred Stock Consideration”) defined below:

<u>Security</u>	<u>CUSIP</u>	<u>Symbol</u>	<u>Shares Outstanding</u>	<u>Consideration</u>
9.75% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share (“ <u>Series B Preferred Stock</u> ”)	262077209	DSHKP	1,347,321	\$5.00 in cash
8.05% Series C Cumulative Redeemable Preferred Stock, par value \$0.01 per share (“ <u>Series C Preferred Stock</u> ”)	262077308	DSHKO	496,000	\$5.00 in cash
8.375% Series D Cumulative Redeemable Preferred Stock, par value \$0.01 per share (“ <u>Series D Preferred Stock</u> ”)	262077407	DSHKN	620,000	\$5.00 in cash

The shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock are collectively referred to as the “Preferred Stock.” We will have no obligation to pay or make allowance for, and will not make any other payment or allowance for, the liquidation preference of, or any accrued and unpaid dividends on, any shares of Preferred Stock (whether or not such dividends have accumulated and whether or not such dividends accrued before or after completion of the Offer to Purchase) we acquire in the Offer to Purchase.

Concurrently with the Offer to Purchase, we will hold a stockholder meeting (the “Stockholder Meeting”) to seek stockholder approval for amending our Articles of Restatement, effective December 28, 2016 (our “Charter”), as follows:

- an amendment to the terms of the Series B Preferred Stock (the “Series B Amendment”) in our Charter permitting us to complete the Offer to Purchase for the Series C and Series D Preferred Stock without payment of, or allowance for, any accrued and unpaid dividends on any shares of Series B Preferred Stock (whether or not such dividends have accumulated);
- an amendment to the terms of the Series C Preferred Stock (the “Series C Amendment”) in our Charter permitting us to complete the Offer to Purchase for the Series B and Series D Preferred Stock without payment of, or allowance for, any accrued and unpaid dividends on any shares of Series C Preferred Stock (whether or not such dividends have accumulated); and
- an amendment to the terms of the Series D Preferred Stock (the “Series D Amendment”) and, together with the Series B Amendment and Series C Amendment, the “Proposed Amendments”) in our Charter permitting us to complete the Offer to Purchase for the Series B and Series C Preferred Stock without payment of, or allowance for, any accrued and unpaid dividends on any shares of Series D Preferred Stock (whether or not such dividends have accumulated).

In order to validly tender your shares of Preferred Stock, you must follow the procedures described in this Offer to Purchase and the applicable Letter(s) of Transmittal to the Proposed Amendments applicable to the series of Preferred Stock that you hold.

Among other conditions, consummation of the Offer to Purchase for any series of Preferred Stock is conditioned on the holders of at least 66²/₃% of each of (i) the outstanding shares of Preferred Stock and common stock of the Company, par value \$0.01 per share (the “Common Stock” and, together with the Preferred Stock, the “Capital Stock”), voting together as a single class, approving the Proposed Amendments at the Stockholder Meeting (the “Capital Stock Approval Condition”) and (ii) the outstanding shares of each series of Preferred Stock approving the Proposed Amendment relating to that series of Preferred Stock at the Stockholder Meeting (the “Individual Series Approval Condition”), and the filing by the Company of the applicable articles of amendment to the Charter (the “Articles of Amendment”) with the State Department of Assessments and Taxation of Maryland (the “SDAT”). The Charter is filed with the Securities and Exchange Commission (the “SEC”) on December 8, 2016 as Exhibit 3.2 to our Current Report on Form 8-K, and the amended text of the affected provisions of our Charter are attached to this Offer as *Appendix A*.

You must validly tender all shares that you own of a series of Preferred Stock in order to participate in the Offer to Purchase with respect to that series of Preferred Stock. No partial tenders within a series of Preferred Stock will be accepted. If you own more than one series of Preferred Stock, you can tender all shares that you own of one series of Preferred Stock without tendering any of the shares that you own of another series of Preferred Stock.

Shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock are not listed on any national securities exchange, but are quoted on the over-the-counter market under the symbols “DSHKP,” “DSHKO” and “DSHKN,” respectively. On October 15, 2024, the last sales price of our Series B Preferred Stock quoted over-the-counter was \$9.25 per share, the last sales price of our Series C Preferred Stock quoted over-the-counter was \$9.00 per share and the last sales price of our Series D Preferred Stock quoted over-the-counter was \$9.00 per share.

The Offer to Purchase will expire at 5:00 p.m., Eastern Time, on November 26, 2024 (the “Expiration Date”), unless extended or terminated by us. If we extend the period of time for which the Offer to Purchase is open, “Expiration Date” means the time and date on which the Offer to Purchase, as so extended, expires.

The Board of Directors of the Company (the “Board”) has authorized and approved the Offer to Purchase, has declared the Proposed Amendments to be advisable and has recommended that the holders of the Preferred Stock approve the Proposed Amendments and the Offer to Purchase. None of the Board members, our officers and employees, D.F. King & Co., Inc., as the information agent and solicitation agent, or Equiniti Trust Company, LLC, as the depositary, is making a recommendation to any holder of Preferred Stock as to whether such holder should tender shares in the Offer to Purchase. You must make your own investment decision regarding the Offer to Purchase based upon your own assessment of the value of the Preferred Stock, the likely value of the Preferred Stock Consideration you may receive in the Offer to Purchase, the effect of holding shares of Preferred Stock upon the approval of the Proposed Amendments, your liquidity needs, your investment objectives and any other factors you deem relevant.

The Offer to Purchase is subject to certain conditions. See “*The Offer to Purchase— General Terms — Conditions to the Offer to Purchase.*” **There are multiple conditions to the closing of the Offer to Purchase that are beyond our control, and we cannot provide you any assurance that these conditions will be satisfied or that the Offer to Purchase will close.**

See “**Risk Factors**” beginning on page 14 for a discussion of issues that you should consider with respect to the Offer to Purchase.

If you wish to (i) tender shares of Preferred Stock in the Offer to Purchase or (ii) withdraw your tender, you may do so by following the instructions set forth in this Offer and the applicable Letter(s) of Transmittal.

Important Notice Regarding the Availability of Offer Materials. This Offer and the Company’s Annual Report (as defined below) are also available on our website at <https://ir.driveshack.com>.

Neither the Securities and Exchange Commission nor any state securities authority has approved or disapproved this transaction or these securities or determined the fairness or merits of this transaction, or determined if this Offer is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this Offer is October 16, 2024

ADDITIONAL INFORMATION

All questions concerning the terms of the Offer to Purchase, including tender procedures and requests for additional copies of this Offer or applicable Letter(s) of Transmittal should be directed to:

D.F. King & Co., Inc.
48 Wall Street, 22 Floor
New York, New York 10005
Banks and Brokers Call Collect: (212) 269-5550
All Others Call Toll-Free: (866) 828-9088
Email: dshkpf@dfking.com

This Offer is first being mailed to holders of the Preferred Stock on or around October 16, 2024. We will amend this Offer and related Letters of Transmittal to the extent required by applicable securities laws to disclose any material changes to information previously published sent or given by us to the holders of our Preferred Shares.

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ABOUT THIS OFFER TO PURCHASE

You should read this Offer, including the detailed information regarding our Company and the Preferred Stock. You should retain your own professional advisors to review and evaluate the economic, tax, legal and other consequences of tendering before deciding whether or not to tender your Preferred Stock, and are not to construe the contents of this Offer or any other information furnished by the Company as legal, financial or other advice.

You should read this entire Offer and the applicable Letter(s) of Transmittal carefully. You may want to consult with your personal financial advisor or other legal or investment professional(s) regarding your individual circumstances.

You should rely only on the information contained or incorporated by reference in this Offer. We have not authorized anyone to provide you with information different from that contained or incorporated by reference in this Offer. If anyone makes any recommendation or representation to you, or gives you any information, you must not rely upon that recommendation, representation or information as having been authorized by us. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. You should not assume that the information in this Offer is accurate as of any date other than the date on the front of this Offer. You should not consider this Offer to be an offer or solicitation relating to the securities in any jurisdiction in which such an offer or solicitation relating to the securities is not authorized. Furthermore, you should not consider this Offer to be an offer or solicitation relating to the securities if the person making the offer or solicitation is not qualified to do so, or if it is unlawful for you to receive such an offer or solicitation.

None of our directors, officers, employees, the Information Agent (as defined below), the Depositary (as defined below) or any of our financial advisors is making a recommendation to any holder of Preferred Stock as to whether you should tender shares in the Offer to Purchase. You must make your own investment decision regarding the Offer to Purchase based upon your own assessment of the market value of the Preferred Stock, the effect of holding shares of Preferred Stock upon the approval of the Proposed Amendments, your liquidity needs, your investment objectives and any other factors you deem relevant.

Our officers, directors and employees may solicit tenders from holders of our Preferred Stock and may answer inquiries concerning the Offer to Purchase, but they will not receive additional compensation for soliciting tenders or answering any such inquiries. Except for the Information Agent, we have no arrangements for and have no understanding with any dealer, salesman or other person regarding the solicitation of tenders hereunder. None of us, the Depositary or the Information Agent has authorized any other person to provide you with different or additional information. If anyone provides you with different or inconsistent information, you should not rely on it.

D.F. King & Co., Inc. is acting as Information Agent (the “Information Agent”) for the Offer to Purchase. The Information Agent will receive reasonable and customary compensation for its services and will also be reimbursed for certain out-of-pocket expenses and indemnified against certain liabilities. Equinity Trust Company, LLC is acting as the Depositary for the Offer to Purchase (the “Depositary”).

Unless the context requires otherwise, in this Offer, we use the terms “our Company,” “we,” “us,” “our,” and similar references to refer to Drive Shack Inc. and its subsidiaries, and our use of the word “or” is non-exclusive of the word “and.”

INFORMATION REGARDING FORWARD-LOOKING STATEMENTS

This Offer contains certain “forward-looking statements,” which 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, 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, changes in the rate of inflation, 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 may pursue additional investments, including competition for sites for our entertainment golf venues;
- material increases in our expenses, including, but not limited to, unanticipated labor issues, rent or costs with respect to our workforce, and costs of goods, utilities and supplies;
- our inability to sell or exit certain properties, and unforeseen changes to our ability to develop, redevelop or renovate certain properties;
- our ability to further invest in our business and implement our strategies;
- difficulty monetizing our real estate debt investments;
- liabilities with respect to inadequate insurance coverage, accidents or injuries on our properties, adverse litigation judgments or settlements, or membership deposits;
- changes to and failure to comply with relevant regulations and legislation, including in order to maintain certain licenses and permits, and environmental regulations in connection with our operations;
- inability to execute on our growth and development strategy by successfully developing, opening and operating new venues;
- impacts of any failures of our information technology and cybersecurity systems;
- the impact of any current or further legal proceedings and regulatory investigations and inquiries; and
- other risks detailed in this Offer (including the documents incorporated by reference herein), particularly under the heading “Risk Factors” in our Annual Report for the Year Ended December 31, 2023 (our

“Annual Report”) and the described in the section entitled “Risk Factors” beginning on page 14 of this Offer.

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.

All subsequent written and oral forward looking statements that we make, or that are attributable to us, are expressly qualified in their entirety by this cautionary notice. Any forward-looking statement speaks only as of the date on which it is made. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

QUESTIONS AND ANSWERS ABOUT THE OFFER TO PURCHASE

The following are some questions regarding the Offer to Purchase that you may have as a holder of the Preferred Stock and the answers to those questions. We urge you to read carefully this entire Offer, including the section entitled “Risk Factors,” the related Letters of Transmittal and the Annual Report. Additional important information is contained in the remainder of this Offer.

Who is offering to buy my Preferred Stock?

Drive Shack Inc. is offering to repurchase all outstanding shares of Series B, Series C and Series D Preferred Stock in a self-tender offer. All shares of Preferred Stock that are validly tendered and accepted for purchase by us in the Offer to Purchase will become authorized but unissued shares.

Why is the Company offering to purchase Preferred Stock?

Since the issuance of the Preferred Stock, the Company has undergone a substantial transformation. All of the Preferred Stock was issued by the Company between March 2003 and March 2007. At the time of these issuances, our business consisted primarily of investments in mortgage-backed securities and mortgage servicing rights and we were a real estate investment trust for federal income tax purposes (a “REIT”). As a REIT, we were required to distribute 90% of our taxable income to stockholders. Since March 2007, we have disposed of our entire portfolio of mortgage-backed securities and mortgage servicing rights and terminated our REIT status for tax purposes. In addition, in 2017, we terminated our external management arrangements with a private equity company and internalized our management. Following this termination, we launched two entirely new businesses, consisting of entertainment golf and traditional golf.

While our business thesis as REIT intended to generate cash flows to dividend to stockholders, following our business transformation we became a growth business re-investing all of its income into the development, acquisition, and construction of new assets, including our Drive Shack and Puttery brands. In addition, we used financing in the form of debt and common equity to fund this transformation and expansion. The capital intensive requirements of a growth business, including the reinvestment of income into the business, are not compatible with the Preferred Stock, since the Company’s business model no longer includes the distribution of substantially all of our taxable income. In particular, we did not pay dividends on the Preferred Stock for 10 quarters. As of September 30, 2024, the accumulated and unpaid dividends on the Preferred Stock were \$15.4 million in aggregate.

We believe the Preferred Stock coupon inhibits our ability to secure equity financing, since we are unable to provide a cash return to our common equity investors while the accumulated dividend on the Preferred Stock remains unpaid. We have conducted two rounds of equity financing to grow our Drive Shack and Puttery brands since our substantial transformation, and our inability to issue additional common equity is, we believe, likely to have a materially adverse effect on our business and growth plans. In addition, one of our goals since our business transformation has been to restructure the costs of our operations to be sustainable by our cash flows (*i.e.*, after financing costs).

The acceptance of this Offer to Purchase would facilitate a beneficial restructuring the Company’s equity capital structure, by reducing the aggregate liquidation preference of the outstanding Preferred Stock and reducing the quantum of the cumulative, unpaid quarterly dividends on the Preferred Stock. This would support the Company’s intentions to use or preserve cash for other purposes, including payment of our obligations on our indebtedness and establish working capital reserves, raise equity financing, and restructure our costs to be sustainable by our cash flows. In addition, it would enable us to compensate our employees with equity compensation that is subordinated to Preferred Stock with a lower notional amount and accumulated dividend as prior to the tender and acceptance of the Preferred Stock pursuant to the Offer to Purchase, which would improve our ability to attract and retain employees. At the same time, we are also providing holders of our Preferred Stock with a liquidity option.

What will I receive in the Offer to Purchase if I tender my shares of Preferred Stock and they are accepted?

If successfully completed, in the Offer to Purchase:

- for each validly tendered (and not withdrawn) share of Series B Preferred Stock accepted for purchase by us, the holder will receive \$5.00;

- for each validly tendered (and not withdrawn) share of Series C Preferred Stock accepted for purchase by us, the holder will receive \$5.00; and
- for each validly tendered (and not withdrawn) share of Series D Preferred Stock accepted for purchase by us, the holder will receive \$5.00.

We do not intend to pay to holders of Preferred Stock that are tendered any accumulated and unpaid dividends on the Preferred Stock.

Why is the Company seeking stockholder approval of the Proposed Amendments?

Currently, the terms of the Preferred Stock do not allow us to (i) repurchase shares of Series B Preferred Stock pursuant to a purchase or exchange offer made on the same terms to all holders of the Series B Preferred Stock while shares of either Series C or Series D Preferred Stock are outstanding; (ii) repurchase shares of Series C Preferred Stock pursuant to a purchase or exchange offer made on the same terms to all holders of the Series C Preferred Stock while shares of either Series B or Series D Preferred Stock are outstanding; or (iii) repurchase shares of Series D Preferred Stock pursuant to a purchase or exchange offer made on the same terms to all holders of the Series D Preferred Stock while shares of either Series B or Series C Preferred Stock are outstanding. In addition, the terms of the Preferred Stock do not allow us to conduct open market repurchases of Preferred Stock unless full cumulative distributions on all shares of Preferred Stock have been or are contemporaneously authorized and paid or authorized and a sum sufficient set apart for payment for all past distribution periods and the then current distribution period.

The Proposed Amendment will modify the terms of the Preferred Stock so that:

- (1) the Company may repurchase shares of any of the Series B, Series C and Series D Preferred Stock while shares of the other two series of Preferred Stock are outstanding, so long as the repurchase offer is made pursuant to a purchase or exchange offer made on the same terms to all holders of all three series of Preferred Stock on an identical basis; and
- (2) The Company may conduct open market repurchases of any series of Preferred Stock even if full cumulative distributions on all shares of Preferred Stock have not been or are not contemporaneously authorized and paid or authorized with a sum sufficient set apart for payment for all past distribution periods and the then current distribution period.

Holders that tender their shares of Preferred Stock will receive the Preferred Stock Consideration pursuant to this Offer to Purchase. Assuming all shares of Preferred Stock are validly tendered (and not withdrawn) and repurchased by us, we will pay an aggregate purchase price of approximately \$12.3 million pursuant to this Offer to Purchase. Those holders who do not tender their shares of Preferred Stock, despite the completion of the Offer to Purchase, will not receive the Preferred Stock Consideration.

We believe the reduction of the outstanding Preferred Stock will give us the enhanced balance sheet flexibility to operate and grow our business. We additionally believe that with an improved capital structure there are multiple business opportunities we can pursue to enhance stockholder value that have not previously been feasible.

If the Offer to Purchase is not approved, there may be a near-term negative effect on our business, results of operations, and financial position, including the potential inability to satisfy the long-term dividend-related cash requirements of our Preferred Stock. We currently have no present intention to pay future dividends on the Preferred Stock.

When and how will I be paid for my tendered shares of Preferred Stock?

If all terms and conditions for completion of the Offer to Purchase are satisfied or waived, we will pay for all validly tendered (and not withdrawn) shares of Preferred Stock promptly after the Expiration Date of the Offer to Purchase. We refer to the date on which such payment is made as the “payment date.” We expect the payment date to be made approximately five (5) business days after the Expiration Date.

We will pay for your validly tendered (and not withdrawn) shares of Preferred Stock by depositing the aggregate applicable Preferred Stock Consideration with the Depository, which will act as your agent for purposes of receiving payments from us and transmitting the payments to you. In all cases, payment for validly tendered (and not withdrawn) shares of Preferred Stock will be made only after timely receipt by the Depository of your certificates for

such shares, or in the case of stockholders who own shares in book-entry form, an indication in the Letter of Transmittal that such stockholder is tendering its shares, plus a properly completed and duly executed Letter of Transmittal and any other required documents for such shares. See “Tender of Preferred Stock; Acceptance for Payment and Payment for Shares.”

How did the Board determine the consideration to be paid in the Offer to Purchase?

The Board took into account a number of factors in determining the purchase price for the shares of Preferred Stock, including historical and current trading levels of the Preferred Stock, the interests of the Company’s existing investors and the estimated recovery value of the securities in a liquidation scenario. In considering historical and current trading levels of each series of Preferred Stock, the Board considered how various announcements and releases effected the stock’s trading levels. It also took into account the effect of announcing that the Company does not intend to pay Preferred Stock dividends in the future. It also considered the effect of delisting from the New York Stock Exchange (the “NYSE”) on the pricing and relative market value of the securities and the volatility and limited liquidity of the securities. The Board also considered the liquidation value and distribution of assets, if any, to the Preferred Stock and Common Stock as well as the Preferred Stock’s position relative to its outstanding debt. The Board also considered the interest of all stockholders with the goal of maximizing participation in the Offer to Purchase.

Our Board has made no determination that the purchase price represents a fair valuation of the Preferred Stock. We did not retain any independent representative or consultant to render a fairness opinion or to provide any analysis of fairness in connection with the approval of the Offer to Purchase. We cannot assure you that if you tender your shares of Preferred Stock you will receive the same or greater value than if you choose to keep them.

What are the conditions to the closing of the Offer to Purchase?

We are not obligated to purchase any validly tendered (and not withdrawn) shares of Preferred Stock unless the following conditions are satisfied or waived:

- no action or proceeding by any government or governmental, regulatory or administrative agency, authority or tribunal or any other person, domestic or foreign, shall have been threatened, instituted or pending before any court, authority, agency or tribunal that directly or indirectly challenges the making of the Offer to Purchase, the tender of the Series B, Series C or Series D Preferred Shares pursuant to the Offer to Purchase or otherwise relates in any manner to the Offer to Purchase;
- there shall not have been any action threatened, instituted, pending or taken, or approval withheld, or any law, statute, rule, regulation, judgment, order or injunction threatened, proposed, sought, promulgated, enacted, entered, amended, enforced or deemed to be applicable to the Offer to Purchase or us, including, but not limited to, with respect to the solvency of the Company, by any court or any authority, agency or tribunal that, in our reasonable judgment, would or might, directly or indirectly, (i) make the acceptance of the Series B, Series C or Series D Preferred Shares illegal or otherwise restrict or prohibit completion of the Offer to Purchase, or (ii) delay or restrict our ability, or render us unable, to accept the Series B, Series C or Series D Preferred Shares;
- there shall not have occurred any general suspension of, or limitation on prices for, trading in securities in United States securities or financial markets, a declaration of a banking moratorium or any suspension of payments in respect to banks in the United States, any limitation (whether or not mandatory) by any government or governmental, regulatory or administrative authority, agency or instrumentality, domestic or foreign, or other event that, in our reasonable judgment, would or would be reasonably likely to affect the Offer to Purchase, or a commencement or significant worsening of a war or armed hostilities or other national or international calamity, including but not limited to, catastrophic terrorist attacks against the United States or its citizens or any outbreak of a pandemic or contagious disease;
- the Individual Series Approval Condition, with respect to each of Series B, Series C and Series D Preferred Stock, has been satisfied;
- the Capital Stock Approval Condition has been satisfied; and
- the Articles of Amendment have been filed by Company with the SDAT.

We will, in our reasonable judgment, determine whether each of the Offer to Purchase conditions have been satisfied and whether to waive any conditions that have not been satisfied.

See “The Offer to Purchase—Conditions of the Offer to Purchase” and “The Offer to Purchase—Extension, Termination and Amendment.”

If the Offer to Purchase is NOT successfully completed, what will be the consequences to the stockholders and the Company?

If the Offer to Purchase is not successfully completed, the Preferred Stock will remain issued and outstanding, and entitled to all of the preferential rights associated with the Preferred Stock as further described in this Offer under “Description of Capital Stock—Preferred Stock.” The holders of the Preferred Stock will continue to be entitled to the applicable cumulative dividend and any applicable liquidation preference. Given our current financial condition, we currently do not intend to pay future dividends on the Preferred Stock if the Offer to Purchase is not successfully completed. Since we have not paid dividends on our Preferred Stock for 10 quarterly periods, the holders of the Preferred Stock are and will remain entitled to elect two directors to our Board.

There may be significant adverse consequences to the Company if the Proposed Amendments are not approved by the holders of Preferred Stock or the Capital Stock Approval Condition is not satisfied, including the potential inability to satisfy our liabilities and the long-term dividend-related cash requirements of our Preferred Stock. The Company will continue to be obligated to pay accumulated dividends on the Preferred Stock and the holders of the Preferred Stock will continue to be entitled to elect two directors to our Board. If elected, two additional directors will add to the Company’s compensation costs paid to its Board, although Board members have not received compensation following our voluntary delisting from the NYSE. Future dividends payable to the holders of Preferred Stock would likely represent a significant reduction in our cash, making it difficult for us to satisfy other continuing obligations. We may not be able to raise additional capital if we cannot pay dividends on the Preferred Stock, attract additional investors given the dividend rights of the Preferred Stock or satisfy our outstanding obligations.

If I decide not to tender my shares of Preferred Stock and the Offer to Purchase is completed, how will the completion of the Offer to Purchase affect my shares of Preferred Stock?

If you decide not to tender your shares of Preferred Stock and the Proposed Amendments take effect, you will continue to own your Preferred Stock as modified by the Proposed Amendments. In particular, we will be permitted to repurchase shares of any of the Series B, Series C and Series D Preferred Stock while shares of the other two series are outstanding, so long as the repurchase offer is made pursuant to a purchase or exchange offer made on the same terms to all holders of all three series of Preferred Stock on an identical basis; and we may conduct open market repurchases of any series of Preferred Stock even if full cumulative distributions on all shares of Preferred Stock have not been or are not contemporaneously authorized and paid or authorized with a sum sufficient set apart for payment for all past distribution periods and the then current distribution period.

See “Risk Factors—Risks Related to the Offer to Purchase,” “The Offer to Purchase—Terms of the Offer to Purchase” and “The Offer to Purchase—Effects of Tenders” for more detail and *Appendix A* hereto for the complete text of the Proposed Amendments.

Will I receive accumulated and unpaid dividends if the Offer to Purchase is NOT successfully completed?

No, we do not intend to pay the accumulated and unpaid dividends on the Preferred Stock if the Offer to Purchase is not successfully completed.

When will the Offer to Purchase expire?

The Offer to Purchase is currently scheduled to expire at 5:00 p.m., Eastern Time, on November 26, 2024. We may, however, extend the Offer to Purchase from time to time as necessary until all the conditions to the Offer to Purchase have been satisfied or waived.

See “The Offer to Purchase—Extension, Termination and Amendment.”

Under what circumstances can the Offer to Purchase be extended?

We may extend the Offer to Purchase for any period at our sole discretion to increase the time during which holders of Preferred Stock may tender their shares. We will also extend the Expiration Date of the

Offer to Purchase if required by applicable law or regulation.

See “The Offer to Purchase—Extension, Termination and Amendment.”

What happens to my tendered shares if the Offer to Purchase is terminated?

The Offer to Purchase may be terminated if:

- we do not receive the requisite stockholder approvals for the Proposed Amendments; or
- the other conditions to the Offer to Purchase discussed in this Offer are not satisfied or (where within the Company’s discretion) waived.

If the Offer to Purchase is terminated and you tendered shares previously to such termination, we will return certificates for such shares of Preferred Stock tendered (or, in the case of shares of Preferred Stock tendered in uncertificated form, those shares of Preferred Stock will be credited back to an appropriate account) as soon as practicable following the termination of the Offer to Purchase, without expense to the tendering stockholder.

See “Tender of Preferred Stock; Acceptance for Payment and Payment for Shares.”

How will I be notified if the Offer to Purchase is extended, amended or terminated?

If the Offer to Purchase is extended, amended or terminated, we will promptly notify The Depository Trust Company (“DTC”) and make a public announcement by issuing a press release. In the case of an extension, the announcement will be issued no later than 9:00 a.m., Eastern Time, on the next business day after the previously scheduled Expiration Date of the Offer to Purchase.

See “The Offer to Purchase—Extension, Termination and Amendment.”

Will I have to pay any fees or commissions for participating in the Offer to Purchase?

If you hold your shares of Preferred Stock through a broker, dealer or other nominee, and your broker, dealer or other nominee tenders the shares on your behalf, your broker, dealer or other nominee may charge you a fee for doing so. You should consult your broker, dealer or other nominee to determine whether any charges will apply.

See “The Offer to Purchase—Terms of the Offer to Purchase” and “The Offer to Purchase—Expenses.”

May I tender only a portion of the shares of Preferred Stock that I hold?

No. You must validly tender all shares that you own of a series of Preferred Stock in order to participate in the Offer to Purchase for that series of Preferred Stock. No partial tenders within a series of Preferred Stock will be accepted.

If you own more than one series of Preferred Stock, you can tender all shares that you own in one series of Preferred Stock without tendering any of the shares that you own in another series of Preferred Stock.

How do I tender my shares of Preferred Stock?

In order to validly tender your shares of Preferred Stock, you should follow the instructions in the applicable Letter(s) of Transmittal. If your shares are held directly, you should execute, return and follow the instructions set forth in the Letter(s) of Transmittal. If your shares of Preferred Stock are held in book-entry through DTC, you must follow the procedures established by DTC for tendering such shares of Preferred Stock. DTC participants may tender shares of Preferred Stock by following the Automated Tender Offer Program (“ATOP”) procedures, which require that (i) the Information Agent receive, prior to the Expiration Date of the Offer to Purchase, an Agent’s Message (as defined below) that is transmitted through ATOP, and (ii) DTC has received (a) your instructions to tender your shares of Preferred Stock, and (b) your agreement to be bound by the terms of the accompanying Letter(s) of Transmittal.

If your shares of Preferred Stock are held in the name of your broker, dealer, commercial bank, trust company or other nominee or custodian, and you wish to tender in the Offer to Purchase, you should promptly contact the person in whose name your shares of Preferred Stock are held and instruct that person to tender your shares of Preferred Stock on your behalf. Holders of Preferred Stock should be aware that their broker, dealer, commercial bank, trust company or other nominee or custodian may establish their own earlier deadlines for participation in the Offer to Purchase. Accordingly, holders of Preferred Stock wishing to participate in the Offer to Purchase should contact their broker, dealer, commercial bank, trust company or other nominee or custodian as soon as possible in order to determine the times by which such holders must take action in order to participate in the Offer to Purchase. We have not provided guaranteed delivery procedures in conjunction with the Offer to Purchase.

For more information on how to tender your shares, see “The Offer to Purchase — Procedure for Tendering.”

If I recently purchased shares of Preferred Stock, can I still tender my shares of Preferred Stock in the Offer to Purchase?

Yes. If you have recently purchased shares of Preferred Stock, you may tender those shares in the Offer to Purchase. In order to tender such shares of Preferred Stock, you must ensure that your transaction settles prior to the Expiration Date.

What vote is required to approve the Proposed Amendments?

In order to effect the Proposed Amendments, both the (i) Individual Series Approval Condition, with respect to each of Series B, Series C and Series D Preferred Stock, and (ii) Capital Stock Approval Condition must be satisfied. In addition, the Articles of Amendment must be filed by the Company with the SDAT. If we do not receive the requisite stockholder approvals for the Proposed Amendments, then this Offer to Purchase will automatically terminate.

See “The Offer to Purchase—Terms of the Offer to Purchase.”

When will the Proposed Amendments become effective?

If we receive the requisite stockholder approvals and all other conditions are satisfied or waived, the Proposed Amendments will become effective upon the filing by the Company of the Articles of Amendment with the SDAT or at a later date and time specified in the Articles of Amendment that is not more than 30 days after the acceptance for recording of the Articles of Amendment by the SDAT. The Company intends to file the Articles of Amendment promptly after the Stockholder Meeting but before the expiration of the Offer to Purchase, if the (i) Individual Series Approval Condition, with respect to each of Series B, Series C and Series D Preferred Stock, and (ii) Capital Stock Approval Condition are satisfied, and all other conditions are waived or satisfied. The Board reserves the right not to make one or more of the Proposed Amendments, even if all Proposed Amendments are approved by our stockholders.

See “The Offer to Purchase—Terms of the Offer to Purchase.”

What must I do if I want to withdraw my shares of Preferred Stock from the Offer to Purchase?

Shares of Preferred Stock tendered pursuant to the Offer to Purchase may be withdrawn at any time prior to the Expiration Date.

You should review the instructions in the applicable Letter(s) of Transmittal. For a withdrawal to be effective, the Information Agent must receive a withdrawal notice that complies with the procedures set forth in this Offer to Purchase and the Letter(s) of Transmittal prior to the Expiration Date. If you hold shares through DTC, then you may withdraw your shares of Preferred Stock through DTC’s ATOP prior to the Expiration Date. For a withdrawal to be effective, your transmission notice of withdrawal of Preferred Stock must be effected prior to the Expiration Date by a properly transmitted “Request Message” through ATOP. Any such notice of withdrawal must (a) specify the name of the participant in DTC whose name appears on the security position listing as the owner of such shares of Preferred Stock, (b) include a statement that the holder is withdrawing its election to have its Preferred Stock exchanged and contain the description of the Preferred Stock to be withdrawn, and (c) be signed by such participant in the same manner as the DTC participant’s name is listed in the applicable Agent’s Message.

If you are a beneficial owner of shares of Preferred Stock that are held by or registered in the name of a bank, broker, dealer, custodian or other nominee, and you wish to withdraw your shares from the Offer to Purchase, you must promptly contact your bank, broker, dealer, custodian or other nominee prior to the Expiration Date to instruct it to withdraw your shares of Preferred Stock. You are urged to instruct your bank, broker, dealer, custodian or other nominee as soon as possible in order to determine the times by which you must take action in order to withdraw your shares from the Offer to Purchase. Withdrawals not received by the Information Agent prior to the Expiration Date or as described above and in the applicable Letter(s) of Transmittal will be disregarded and have no effect.

See “The Offer to Purchase—Withdrawal of Tenders.”

Are you making a recommendation regarding whether I should tender in the Offer to Purchase?

No. None of our directors, officers, employees, the Information Agent, the Depository or any of

our financial advisors is making a recommendation to any holder of Preferred Stock as to whether the holder should tender shares in the Offer to Purchase. You must make your own investment decision regarding the Offer to Purchase based upon your own assessment of the market value of the Preferred Stock, the effect of holding shares of Preferred Stock if the Proposed Amendments are approved, your liquidity needs, your investment objectives and any other factors you deem relevant.

See “Background Information.”

Whom do I call if I have any questions on how to tender my shares of Preferred Stock or any other questions relating to the Offer to Purchase?

Questions related to the terms of the Offer to Purchase and requests for assistance, as well as for additional copies of this Offer, Letter(s) of Transmittal or any other documents, may be directed to:

D.F. King & Co., Inc.
48 Wall Street, 22 Floor
New York, New York 10005
Banks and Brokers Call Collect: (212) 269-5550
All Others Call Toll-Free: (866) 828-9088
Email: dshkpf@dfking.com

In accordance with Maryland law, the Proposed Amendments will also be accessible, free of charge, on our website at <https://ir.driveshack.com>.

Questions relating to the tender of physical share certificates should be directed to the Depositary at:

Equiniti Trust Company, LLC
Operations Center
Attn: Reorganization Department
6201 15th Avenue
Brooklyn, NY 11219
Phone Number: (877) 248-6417 or (718) 921-8317

SUMMARY

This summary provides a brief overview of the key aspects of The Offer to Purchase. Because it is only a summary, it does not contain all of the detailed information contained elsewhere in this Offer. Accordingly, you are urged to carefully review this Offer in its entirety.

Our Company

Drive Shack Inc. is an owner and operator of 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. We were formed in 2002 and our Common Stock is traded on over-the-counter under the symbol “DSHK.” We conduct our business through three operating segments: (i) entertainment golf, (ii) traditional golf and (iii) corporate.

Corporate Contact Information

Our principal executive offices are located at 10670 N. Central Expressway, Suite 700, Dallas, Texas 75231. We maintain a website at <https://ir.driveshack.com>; however, the information on, or accessible through, our website is not incorporated into and does not constitute a part of this Offer.

The Offer to Purchase

Securities Sought in the Offer to Purchase

All issued and outstanding shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock.

Market Price of our Securities

The shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock are traded over-the-counter under the symbols “DSHKP,” “DSHKO” and “DSHKN,” respectively.

On October 15, 2024, the last quoted trading price per share of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock was \$9.25, \$9.00 and \$9.00, respectively.

Offer to Purchase

We are offering to purchase for \$5.00 per share of Series B Preferred Stock, \$5.00 per share of Series C Preferred Stock and \$5.00 per share of Series D Preferred Stock any and all of our shares of Preferred Stock validly tendered (and not validly withdrawn) prior to the expiration of the Offer to Purchase. See “The Offer to Purchase—Terms of the Offer to Purchase.”

Accumulated and Unpaid Dividends

The accumulated and unpaid dividends are \$6.39 per share of Series B Preferred Stock, \$5.93 per share of Series C Preferred Stock and \$6.14 per shares of Series D Preferred Stock. The aggregate accumulated and unpaid dividends on the Preferred Stock are \$15.4 million.

Expiration of the Offer to Purchase

The Offer to Purchase will expire at 5:00 p.m., Eastern Time, on November 26, 2024, or such later time and date to which we may extend the Offer to Purchase. We expressly reserve the right, in our sole discretion, at any time or from time to time,

	to extend the period of time for which the Offer to Purchase is open.
<i>Conditions to Completion of the Offer to Purchase</i>	The completion of the Offer to Purchase is subject to the closing conditions described in “The Offer to Purchase—Conditions of the Offer to Purchase.”
<i>Withdrawal of Tenders</i>	You may withdraw previously tendered shares of Preferred Stock at any time before the expiration of the Offer to Purchase. See “The Offer to Purchase—Withdrawal of Tenders.”
<i>Risk Factors</i>	You should consider carefully all of the information set forth in this Offer and, in particular, you should evaluate the specific risk factors set forth under “Risk Factors” before deciding whether to participate in the Offer to Purchase.
<i>Information Agent</i>	D.F. King & Co., Inc.
<i>Depositary</i>	Equiniti Trust Company, LLC
<i>Fees and Expenses</i>	<p>The expenses of soliciting tenders of the Series B, Series C and Series D Preferred Shares will be borne by us. The principal solicitations are being made by mail; however, additional solicitations may be made by facsimile transmission, telephone or in person by our officers and other employees and affiliates.</p> <p>You will not be required to pay any fees or commissions to us or the Depositary in connection with the Offer to Purchase. If your Series B, Series C or Series D Preferred Shares are held through a broker, dealer, commercial bank, trust company or other nominee that tenders your Series B, Series C or Series D Preferred Shares on your behalf, your broker or other nominee may charge you a commission or service fee for doing so. You should consult your broker, dealer, commercial bank, trust company or other nominee to determine whether any charges will apply.</p>
<i>Absence of Appraisal or Dissenters’ Rights</i>	<p>Holders of the Series B, Series C or Series D Preferred Shares do not have any appraisal or dissenters’ rights under applicable law in connection with the Offer to Purchase.</p>
<i>Material United States Federal Income Tax Consequences</i>	You should carefully consider the information described in the section entitled “Material United States Federal Income Tax Consequences” beginning on page 28 of this Offer.
<i>Additional Information</i>	<p>We recommend that holders of the Series B, Series C or Series D Preferred Shares review this Offer, the applicable Letter(s) of Transmittal and our other materials, including our Annual Report, before making a decision on whether to accept the Offer to Purchase.</p> <p>The Offer to Purchase is not made to those holders who reside in any jurisdiction where the offer would be unlawful.</p> <p>Our Board recognizes that the decision to accept or reject the Offer to Purchase is an individual one that should be based on a variety of factors and holders of the Series B, Series C or Series</p>

D Preferred Shares should consult with personal advisors if they have questions about their financial or tax situation.

RISK FACTORS

You should carefully consider the risks and uncertainties described throughout this Offer, including those described below, and the risk factors set forth in our Annual Report, regarding the risks of investment in our securities, before you decide whether to tender your shares of Preferred Stock.

Risks Related to the Offer to Purchase

We have not obtained a third-party determination that the Offer to Purchase is fair to holders of Preferred Stock.

We are not making a recommendation as to whether holders of Preferred Stock should tender their shares in the Offer to Purchase. We have not retained, and do not intend to retain, any unaffiliated representative to act solely on behalf of the holders of Preferred Stock for purposes of negotiating the Offer to Purchase or preparing a report concerning the fairness of the Offer to Purchase. You must make your own independent decision regarding your participation in the Offer to Purchase.

The purchase price offered per share in the Offer to Purchase is currently lower than the liquidation preference per share of the Preferred Stock.

The purchase price being offered per share of Preferred Stock in the Offer to Purchase is lower than the liquidation preference per share of the Preferred Stock. The shares of Preferred Stock have a liquidation preference of \$25.00 per share plus any accumulated and unpaid dividends on such share. The holders of the Series B, Series C and Series D Preferred Stock are being offered \$5.00 per share in the Offer to Purchase.

The purchase price offered per share in the Offer to Purchase is not dependent on or related to the market price of shares of the Preferred Stock, and could be lower than the sales price of the Preferred Stock on or prior to the Expiration Date.

The purchase price offered per share of the Preferred Stock in the Offer to Purchase was determined by the Board in good faith to further the best interests of stockholders and to encourage the fullest participation in the Offer to Purchase. The purchase price is fixed, and thus is not dependent on or related to the market price of shares of the Preferred Stock as quoted on the over-the-counter market. As a result, the sales price of shares of the Preferred Stock may be higher or lower than the purchase price at any time on or prior to the Expiration Date, and will not be subject to any adjustment related to the fluctuations in market price of the shares of Preferred Stock. If you tender your shares for repurchase and the Offer to Purchase is successfully completed, you may receive more or less consideration that you would have if you had alternately sold your shares of Preferred Stock in the open market or in an alternate transaction.

If the Offer to Purchase is successful, there may no longer be a trading market for any remaining shares of Preferred Stock that were not tendered.

If the Offer to Purchase is completed, we do not intend to apply for listing of any remaining outstanding shares of Preferred Stock on any national securities exchange. We do not believe there will be an active market for trading of the Preferred Stock following completion of the Offer to Purchase and, as a result, we believe that holders of the remaining Preferred Stock will have an illiquid investment indefinitely.

CAPITALIZATION

The following table (dollars in thousands, except share and per share data) shows our capitalization as of June 30, 2024, on a historical basis and on a pro forma basis assuming completion of the Offer to Purchase, 100% participation by holders of outstanding shares of Preferred Stock in the Offer to Purchase, payment of accumulated and unpaid dividends on the Preferred Stock and payment of any deferred payments, including interest thereon.

This table should be read in conjunction with, and is qualified in its entirety by reference to, the section captioned “Financial Information.”

	(unaudited)		
	As of June 30, 2024		
	As Reported	Pro Forma Adjustments (a)	Pro Forma
Assets			
Current assets			
Cash and cash equivalents	\$ 20,092	\$ (12,501)	\$ 7,591
Restricted cash	4,778		4,778
Accounts receivable, net	11,100		11,100
Other current assets	21,131		21,131
Total current assets	<u>57,101</u>		<u>44,600</u>
Restricted cash, noncurrent	216		216
Property and equipment, net of accumulated	196,231		196,231
Operating lease right-of-use assets	153,795		153,795
Intangibles, net of accumulated amortization	11,482		11,482
Other assets	10,634		10,634
Total assets	<u>\$ 429,459</u>		<u>\$ 416,958</u>
Liabilities and Equity			
Current liabilities			
Obligations under finance leases	\$ 2,860		\$ 2,860
Membership deposit liabilities	31,998		31,998
Accounts payable and accrued expenses	33,812		33,812
Deferred revenue	17,454		17,454
Credit facilities - current	1,303		1,303
Other current liabilities	21,656		21,656
Total current liabilities	<u>109,083</u>		<u>109,083</u>
Obligations under finance leases - noncurrent	4,581		4,581
Operating lease liabilities - noncurrent	169,999		169,999
Credit facilities, net - noncurrent	23,259		23,259
Junior subordinated notes payable	51,144		51,144
Membership deposit liabilities, noncurrent	110,340		110,340
Deferred revenue, noncurrent	17,090		17,090
Other liabilities	211		211
Total liabilities	<u>\$ 485,707</u>		<u>\$ 485,707</u>
Commitments and contingencies			

Equity			
Preferred stock, \$0.01 par value, 100,000,000 shares authorized, 1,347,321 shares of 9.75% Series B Cumulative Redeemable Preferred Stock, 496,000 shares of 8.05% Series C Cumulative Redeemable Preferred Stock, and 620,000 shares of 8.375% Series D Cumulative Redeemable Preferred Stock, liquidation preference \$25.00 per share, issued and outstanding as of June 30, 2024; Pro forma no preferred stock outstanding	\$	61,583	\$ (61,583) \$ —
Common stock, \$0.01 par value, 1,000,000,000 shares authorized, 199,442,524 and 159,544,168 shares		1,994	1,994
Additional paid-in capital		3,248,828	49,082 3,297,910
Accumulated deficit		(3,374,109)	(3,374,109)
Total deficit of the company	\$	(61,704)	\$ (74,205)
Noncontrolling interest		5,456	5,456
Total deficit	\$	(56,248)	\$ (68,749)
Total liabilities and deficit	\$	429,459	\$ 416,958

(a) Reflects repurchase of 2,463,321 shares of outstanding preferred stock at \$5.00 per share plus estimate of related closing costs.

FINANCIAL INFORMATION

We incorporate by reference the financial statements and notes thereto in Item 8 “Financial Statements and Supplementary Data” of our Annual Report.

BACKGROUND INFORMATION

Since the issuance of the Preferred Stock, the Company has undergone a substantial transformation. All of the Preferred Stock was issued by the Company between March 2003 and March 2007. At the time of these issuances, our business consisted primarily of investments in mortgage-backed securities and mortgage servicing rights and we were a REIT for federal income tax purposes. As a REIT, we were required to distribute 90% of our taxable income to stockholders. Since March 2007, we have disposed of our portfolio of mortgage-backed securities and mortgage servicing rights and terminated our REIT status for tax purposes. In addition, in 2017, we terminated our external management arrangements with a private equity company and internalized our management. Following the internalization, the Company dedicated its focus to its traditional golf operating segment and launched an entirely new business, consisting of entertainment golf.

While our business thesis as REIT intended to generate cash flows to dividend to stockholders, following our business transformation we began to reinvest our cash flows into the development, acquisition, and construction of new assets, including our Drive Shack and Puttery brands. In addition, we used financing in the form of debt and common equity to fund this transformation and expansion. The capital intensive requirements of a growth business, including the reinvestment of income into the business, are not compatible with the Preferred Stock. In particular, we did not pay dividends on the Preferred Stock for 10 quarters. As of September 30, 2024, the accumulated and unpaid dividends on the Preferred Stock were \$15.4 million in aggregate.

We believe the Preferred Stock coupon inhibits our ability to secure equity financing, since we are unable to provide a cash return to our common equity investors while the accumulated dividend on the Preferred Stock remains unpaid. We have conducted two rounds of equity financing to grow our Drive Shack and Puttery brands since our substantial transformation, and our inability to issue additional common equity is, we believe, likely to have a materially adverse effect on our business and growth plans. In addition, one of our goals since our business transformation has been to restructure the costs of our operations to be sustainable by our cash flows (*i.e.*, after financing costs).

The acceptance of the Offer to Purchase would reduce the Company’s continuing obligation to pay

or accumulate quarterly dividends on the Preferred Stock, thereby allowing the Company to use or preserve cash for other purposes, including payment of our obligations on our indebtedness and establish working capital reserves, raise equity financing, and restructure our costs to be sustainable by our cash flows. In addition, it would enable us to compensate our employees with equity compensation that is not subordinated to Preferred Stock, which would improve our ability to attract and retain employees.

Assuming all shares of Preferred Stock are validly tendered (and not withdrawn) and repurchased by us, we will pay an aggregate purchase price of approximately \$12.3 million pursuant to this Offer to Purchase. Those holders who do not tender their shares of Preferred Stock despite the completion of the Offer to Purchase will only receive the cumulated dividends on the Preferred Stock.

If the Offer to Purchase is not approved, there may be a near-term negative effect on our business, results of operations, and financial position, including the potential inability to satisfy our liabilities and the long-term dividend-related cash requirements of our Preferred Stock and obligations pursuant to the terms of our remaining trust preferred securities.

If the Offer to Purchase is not successfully completed, the Preferred Stock will remain issued and outstanding, and entitled to all of the preferential rights associated with the Preferred Stock as further described in this Offer under “Description of Capital Stock—Preferred Stock.” The holders of the Preferred Stock will continue to be entitled to the applicable cumulative dividend and any liquidation premium. Given our current financial condition, we currently do not intend to pay future dividends on the Preferred Stock if the Offer to Purchase is not successfully completed. Because the Company has not paid dividends on our Preferred Stock for six or more quarterly periods, the holders of the Preferred Stock continue to be entitled to elect two directors to our Board. Our failure to make dividend payments for the fourth quarter of 2008 and the first quarter of 2009 counts as two quarterly periods of non-payment towards the potential triggering of this right.

The Preferred Stock is entitled to receive \$25.00 per share (before any payments are made to the holders of our Common Stock and any other junior stock) upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs. The \$25.00 liquidation preference per share is not being modified in the proposed amendments to the Charter. However, if Proposed Amendments are not approved, upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the Preferred Stock will also continue to be entitled to any accumulated and unpaid dividends (whether or not declared). If our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Preferred Stock and any other parity stock, then the holders of the Preferred Stock and any other parity stock will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. Any liquidating distributions to capital stock are subject to payments on outstanding indebtedness. As of June 30, 2024, the Company had stockholders’ equity (deficit) of \$(61.7) million with an aggregate of \$485.7 million of total liabilities. The annual aggregate dividends on the outstanding Preferred Stock total approximately \$5.86 million and the aggregate liquidation value of the Preferred Stock is approximately \$61.6 million, excluding any liquidation premium and accumulated dividends.

If the Offer to Purchase is not successfully completed, the Preferred Stock will continue to rank senior to our Common Stock with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up and be entitled to a larger amount of our assets. Plus, our ability to make distributions to holders of Common Stock will remain limited. Unless full cumulative dividends are paid on the Preferred Stock, no dividends (other than in shares of Common Stock) or distributions can be paid and shares of Common Stock nor can any shares of Preferred Stock be redeemed, purchased or otherwise acquired.

There may be significant adverse consequences to the Company if the proposal to approve the Proposed Amendments is not approved by the holders of Preferred Stock or the Capital Stock Approval Condition is not satisfied, including the potential inability to satisfy our liabilities and the long-term dividend-related cash requirements of our Preferred Stock. The Company will continue to be obligated to pay accumulated dividends on the Preferred Stock. In addition, because the Company has not paid dividends for six or more quarterly periods, the holders of the Preferred Stock continue to be entitled to elect two directors to our Board. If elected, two additional directors will add to the Company’s compensation costs paid to its Board, although Board members have not received compensation following our voluntary delisting from the NYSE. Future dividends payable to the holders of Series B, Series C and Series D Preferred Stock would likely represent a significant reduction in our cash, making it difficult for us to satisfy other continuing obligations. We may not be able to raise additional capital if we cannot pay dividends on the Preferred Stock, attract additional investors given the dividend rights of the Preferred Stock or

satisfy our outstanding obligations.

We have not undertaken a valuation with respect to the purchase price for the Offer to Purchase of the Preferred Stock. Our Board has made no determination that the purchase price represents a fair valuation of the Preferred Stock. We did not retain any independent representative or consultant to render a fairness opinion or to provide any analysis of fairness in connection with the approval of the Offer to Purchase. We cannot assure you that if you tender your Preferred Stock you will receive the same or greater value than if you choose to keep them.

The consummation of the Offer to Purchase requires that we receive the requisite stockholder approvals for the Proposed Amendments.

Although our officers, directors and employees are authorized to solicit tenders and answer inquiries from holders of our Preferred Stock, none of our officers, employees, the Board, the Information Agent, the Depositary or any of our financial advisors is making a recommendation to any holder of Preferred Stock as to whether you should tender shares in the Offer to Purchase. You must make your own decision regarding the Offer to Purchase based upon your own assessment of the market value of the Preferred Stock, the effect of holding shares of Preferred Stock upon the approval of the Proposed Amendments, your liquidity needs, your investment objectives and any other factors you deem relevant.

For a discussion of the risks associated with not tendering in the Offer to Purchase and of the risks associated with a continuing investment in the Company, see “Risk Factors” and “Questions and Answers About the Offer to Purchase.”

Considerations in Determining the Purchase Price

The purchase price will not be adjusted due to any increases or decreases in the price of the Preferred Stock between the date of this Offer and the Expiration Date.

The Board’s objective in its analysis was to further the best interests of stockholders and toward that end the Board determined to encourage the fullest participation in the Offer to Purchase. The Board took into account a number of factors, including but not limited to the following factors, in determining the purchase price.

Trading Levels: The Board considered the historical and current trading levels of each series of Preferred Stock. It considered how the trading levels of the securities were affected by, among other things, the release of the Company’s quarterly reports and the effect of the various announcements made by the Company. The Board considered the effect of the recent delisting of the Company’s Preferred Stock from the NYSE and the effect on the pricing and relative market value of the securities. The Board considered the volatility and limited liquidity of the securities. The Board considered the effect that the different dividend rates on each series of Preferred Stock had on their trading value. The Board also took into account the effect that announcing that the Company currently does not intend to pay future dividends on the Preferred Stock could have on trading levels and relative values of the securities.

Recovery Value of the Securities: The Board considered the effect that a liquidation of the Company and subsequent distribution of the assets, if any, to the three classes of security holders would have on the relative valuation of the securities. The Board considered the relative position of the Preferred Stock in liquidation to the positions of the reverse repurchase line, the new notes and remaining trust preferred securities.

Existing Investors: The Board considered the interests of all stockholders with the goal of maximizing participation of the Preferred Stock in the Offer to Purchase. Our Board has made no determination that the purchase price represents a fair valuation of the Preferred Stock. We did not retain any independent representative or consultant to render a fairness opinion or to provide any analysis of fairness in connection with the approval of the Offer to Purchase. We cannot assure you that if you tender your shares of Preferred Stock you will receive the same or greater value than if you choose to keep them.

THE OFFER TO PURCHASE

Terms of the Offer to Purchase

If successfully completed, in the Offer to Purchase:

- for each validly tendered (and not withdrawn) share of Series B Preferred Stock accepted for purchase by us, the holder will receive \$5.00;

- for each validly tendered (and not withdrawn) share of Series C Preferred Stock accepted for purchase by us, the holder will receive \$5.00; and

- for each validly tendered (and not withdrawn) share of Series D Preferred Stock accepted for purchase by us, the holder will receive \$5.00.

If the Offer to Purchase is successfully completed, we do not intend to pay to holders of Preferred Stock any accumulated and unpaid dividends on the Preferred Stock, and under no circumstances will we pay interest as part of the consideration to be paid for the Preferred Stock, including, but not limited to, by reason of any delay in making payment.

We will not pay any commission or other remuneration to any broker, dealer, salesman or other person for soliciting tenders of Preferred Stock. Our officers, directors and employees may solicit tenders from holders of our Preferred Stock and will answer inquiries concerning the Offer to Purchase, but they will not receive additional compensation for soliciting tenders or answering any such inquiries.

D.F. King & Co., Inc. is acting as Information Agent for the Offer to Purchase. The Information Agent will receive reasonable and customary compensation for its services and will also be reimbursed for certain out-of-pocket expenses and indemnified against certain liabilities.

You should rely only on the information contained in this Offer. We have no arrangements for and have no understanding with any dealer, salesman or other person regarding the solicitation of tenders hereunder. None of us, the Depositary or the Information Agent has authorized any other person to provide you with different or additional information. If anyone provides you with different or inconsistent information, you should not rely on it. Neither the delivery of this Offer nor any purchase made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Company or its subsidiaries since the respective dates as of which information is given in this Offer. We are offering to purchase, and are seeking tenders of, the Preferred Stock only in jurisdictions where the offers or tenders are permitted.

The Proposed Amendments, if approved by our stockholders, would amend the Charter as set forth in *Appendix A*. For a discussion of the changes to the terms of the Preferred Stock that will take effect if the Proposed Amendments are adopted, see also “The Offer to Purchase—Effects of Tenders.” The following discussion of the changes to the Preferred Stock and the discussion contained in “The Offer to Purchase” are summaries of the Proposed Amendments and are qualified in their entirety by reference to the amended text of the affected provisions of the Charter reflecting the Proposed Amendments set forth in *Appendix A*. The Proposed Amendments would modify the terms of each series of Preferred Stock permit the Company to complete the Offer to Purchase for each of the Series B, Series C and Series D Preferred Stock without payment of, or allowance for, any accrued and unpaid dividends on any shares of Series B, Series C or Series D Preferred Stock, respectively (whether or not such dividends have accumulated).

In order to effect the Proposed Amendments, both the (i) Individual Series Approval Condition, with respect to each of Series B, Series C and Series D Preferred Stock, and (ii) Capital Stock Approval Condition must be satisfied. In addition, the Articles of Amendment must be filed by the Company with the SDAT. If we do not receive the requisite stockholder approvals for the Proposed Amendments, then this Offer to Purchase will automatically terminate. At any time before or after our stockholders approve the Proposed Amendments, the Board may determine that we will make less than all of the proposed modifications under the Proposed Amendments, extend the November 26, 2024 Expiration Date for the completion of the Offer to Purchase, change the terms of the Offer to Purchase or undertake a combination of the foregoing.

For more complete information, we urge you to review the terms of the Charter, as amended and supplemented, and the Articles Supplementary relating to the Series B, Series C and Series D Preferred Stock, all of which have been included as exhibits to documents filed with the SEC, and the proposed amended text of the affected provisions of our Charter, which is attached to this Offer as *Appendix A*.

Holders holding certificated shares of Preferred Stock who tender their shares directly to the Depositary will not have to pay any fees or commissions. Holders who tender their shares of Preferred Stock through a broker, dealer or other nominee may be charged a fee by their broker, dealer or other nominee for doing so. Such holders should consult their broker, dealer or other nominee to determine whether any charges will apply.

If the Offer to Purchase is not earlier extended, amended or terminated and if all conditions to the Offer to

Purchase have either been satisfied or waived, promptly after Stockholder Meeting but before the expiration of the Offer to Purchase, we will file the Articles of Amendment with the SDAT and then accept for purchase all shares validly tendered and not properly withdrawn by notifying DTC and the Depository of our acceptance. The Proposed Amendments will become effective upon filing with the SDAT or at a later date and time specified in the Articles of Amendment that is not more than 30 days after the acceptance for recording of the Articles of Amendment by the SDAT. Within four business days after the effectiveness of the Articles of Amendment, we will issue a press release announcing the effectiveness of the Proposed Amendments and the completion of our repurchase of shares of Preferred Stock.

Expiration Date means 5:00 p.m., Eastern Time, on November 26, 2024, unless we extend the period of time for which the Offer to Purchase is open, in which case Expiration Date means the latest time and date on which the Offer to Purchase, as so extended, expires.

If the Offer to Purchase expires or terminates without any shares of Preferred Stock validly tendered and not validly withdrawn being accepted for purchase by us following the expiration or termination of the Offer to Purchase, you will continue to hold your shares of Preferred Stock.

The Board has authorized and approved the Offer to Purchase. None of the Board, our officers and employees, the Information Agent, the Depository or any of our financial advisors is making a recommendation to any holder of Preferred Stock as to whether you should tender shares. You must make your own decision regarding the Offer to Purchase based upon your own assessment of the market value of the Preferred Stock, the effect of holding shares of Preferred Stock upon the approval of the Proposed Amendments, your liquidity needs, your investment objectives and any other factors you deem relevant.

Conditions of the Offer to Purchase

We are not obligated to accept for payment, purchase or pay for, and may delay the acceptance of, any shares of Preferred Stock tendered pursuant to the Offer to Purchase, in any event subject to Rule 14e-1(c) under the Exchange Act of 1934, as amended (the “Exchange Act”), if at any time on or after the date of this Offer and prior to the expiration of the Offer to Purchase, any of the following conditions shall exist:

- no action or proceeding by any government or governmental, regulatory or administrative agency, authority or tribunal or any other person, domestic or foreign, shall have been threatened, instituted or pending before any court, authority, agency or tribunal that directly or indirectly challenges the making of the Offer to Purchase, the tender of the Series B, Series C or Series D Preferred Shares pursuant to the Offer to Purchase or otherwise relates in any manner to the Offer to Purchase;
- there shall not have been any action threatened, instituted, pending or taken, or approval withheld, or any law, statute, rule, regulation, judgment, order or injunction threatened, proposed, sought, promulgated, enacted, entered, amended, enforced or deemed to be applicable to the Offer to Purchase or us, including, but not limited to, with respect to the solvency of the Company, by any court or any authority, agency or tribunal that, in our reasonable judgment, would or might, directly or indirectly, (i) make the acceptance of the Series B, Series C or Series D Preferred Shares illegal or otherwise restrict or prohibit completion of the Offer to Purchase, or (ii) delay or restrict our ability, or render us unable, to accept the Series B, Series C or Series D Preferred Shares;
- there shall not have occurred any general suspension of, or limitation on prices for, trading in securities in United States securities or financial markets, a declaration of a banking moratorium or any suspension of payments in respect to banks in the United States, any limitation (whether or not mandatory) by any government or governmental, regulatory or administrative authority, agency or instrumentality, domestic or foreign, or other event that, in our reasonable judgment, would or would be reasonably likely to affect the Offer to Purchase, or a commencement or significant worsening of a war or armed hostilities or other national or international calamity, including but not limited to, catastrophic terrorist attacks against the United States or its citizens or any outbreak of a pandemic or contagious disease;
- the Individual Series Approval Condition, with respect to each of Series B, Series C and Series D Preferred Stock, has been satisfied;
- the Capital Stock Approval Condition has been satisfied; and
- the Articles of Amendment have been filed by Company with the SDAT.

Under Maryland law, no distribution may be made if, after giving effect to the distribution: (a) the

corporation would not be able to pay indebtedness of the corporation as the indebtedness becomes due in the usual course of business; or (b) the corporation's total assets would be less than the sum of the corporation's total liabilities plus, unless the charter permits otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights on dissolution are superior to those receiving the distribution. The Company expects that it will meet the distribution requirements at the time of the closing of the Offer to Purchase.

We will, in our reasonable judgment, determine whether each condition to the Offer to Purchase has been satisfied or may be waived and whether any such condition(s) should be waived. If any of the conditions to the Offer to Purchase are unsatisfied on the Expiration Date and we do not or cannot waive such conditions, the Offer to Purchase will expire and we will not accept for purchase the shares of Preferred Stock that have been validly tendered.

Extension, Termination and Amendment

We expressly reserve the right, at any time and from time to time, to extend the period of time during which the Offer to Purchase is open. We will extend the Expiration Date of the Offer to Purchase if required by applicable law or regulation.

During any such extension, all Preferred Stock previously tendered and not properly withdrawn will remain subject to the Offer to Purchase, respectively, and subject to your right to withdraw your Preferred Stock in accordance with the terms of the Offer to Purchase.

Subject to SEC rules and other applicable rules and regulations, we reserve the right, at any time or from time to time, to:

- amend or make changes to the terms of the Offer to Purchase, including the conditions to the Offer to Purchase;
- delay our acceptance for purchase or our purchase of any shares of Preferred Stock pursuant to the Offer to Purchase, regardless of whether we previously accepted such shares of Preferred Stock for purchase, or to terminate the Offer to Purchase and not accept for purchase or purchase any shares of Preferred Stock not previously accepted for purchase or purchased, upon the determination that any of the conditions of the Offer to Purchase have not been satisfied, as determined by us; and
- waive any condition of the Offer to Purchase.

We will follow any extension, termination, amendment or delay, as promptly as practicable, with a public announcement. In the case of an extension, the announcement will be issued no later than 9:00 a.m., Eastern Time, on the next business day after the previously scheduled Expiration Date of the Offer to Purchase. If we amend the Offer to Purchase in a manner we determine to constitute a material change, we will promptly disclose the amendment as required by law and, depending on the significance of the amendment and the manner of disclosure to the registered holders, we will extend the Offer to Purchase as required by law if the Offer to Purchase would otherwise expire during that period.

Without limiting the manner in which we may choose to make public announcements of any delay in acceptance, extension termination or amendment of the Offer to Purchase, we will have no obligation to publish, advertise or otherwise communicate any public announcement, other than by making a timely release to an appropriate news agency.

If we make a material change in the terms of the Offer to Purchase or the information concerning the Offer to Purchase, or if we waive a material condition of the Offer to Purchase, we will extend the Offer to Purchase to the extent required under the Exchange Act. If, prior to the Expiration Date, we increase or decrease the percentage of Preferred Stock being sought or increase or decrease the consideration, or change the type of consideration, offered to holders of Preferred Stock, such modification will be applicable to all holders of the same series of Preferred Stock whose shares of Preferred Stock are accepted for purchase pursuant to the Offer to Purchase, and if, at the time notice of any such modification is first published, sent or given to holders of Preferred Stock, the Offer to Purchase is scheduled to expire at any time earlier than the tenth business day from and including the date that such notice is first so published, sent or given, the Offer to Purchase will be extended until the expiration of such ten business day period. For purposes of the Offer to Purchase, a "business day" means any day other than a Saturday, Sunday or a federal holiday and consists of the time period from 12:01 a.m. through 12:00 midnight, Eastern Time.

Tender of Preferred Stock; Acceptance for Payment and Payment for Shares.

Upon the terms and subject to the conditions of the Offer to Purchase (including, if the Offer to Purchase is extended or amended, the terms and conditions of any such extension or amendment), we will purchase, as promptly as practicable after the Expiration Date, by accepting for payment, and will pay for, shares of Preferred Stock validly tendered and not properly withdrawn promptly after the Expiration Date. We currently expect the payment date to be made approximately five (5) business days after the Expiration Date. In addition, subject to the applicable rules of the SEC, we expressly reserve the right to delay acceptance of, or the purchase of, any shares of Preferred Stock in order to comply with any applicable law. The reservation by this right to delay the acceptance or purchase of, or payment for, the shares is subject to the provisions of Rule 14e-1(c) under the Exchange Act, which requires us to pay the consideration offered or to return the shares deposited by, or on behalf of, stockholders, promptly after the termination or withdrawal of the Offer to Purchase.

For purposes of the Offer to Purchase, we will be deemed to have accepted for payment (and thereby purchased) shares of Preferred Stock validly tendered and not properly withdrawn, if and when we notify the Depository of our acceptance for payment of the tenders of shares pursuant to the Offer to Purchase. Upon the terms and subject to the conditions of the Offer to Purchase, payment for shares of Preferred Stock accepted pursuant to the Offer to Purchase will be made by deposit of the purchase price therefor with the Depository, which will act as agent for tendering stockholders for the purpose of receiving payments from us and transmitting payments to such tendering stockholders whose shares have been accepted for payment.

Under no circumstances will we pay interest on the purchase price for shares, regardless of any delay in making such payment or extension of the Expiration Date.

If, prior to the Expiration Date, we increase the consideration to be paid per share pursuant to the Offer to Purchase, we will pay such increased consideration for all such shares purchased pursuant to the Offer to Purchase, whether or not such shares were tendered prior to such increase in consideration.

In addition, if certain events occur, we may not be obligated to purchase shares pursuant to the Offer to Purchase. See “The Offer to Purchase—Conditions of the Offer to Purchase.”

In all cases, delivery of the consideration for Preferred Stock accepted for purchase pursuant to the Offer to Purchase will be made only after timely receipt by the Depository of (i) the share certificates or confirmation of a book-entry transfer of the Preferred Stock into the Depository’s account at DTC (a “Book-Entry Confirmation”) pursuant to the procedures set forth in “The Offer to Purchase—Procedure for Tendering”; (ii) the applicable Letter(s) of Transmittal (or a manually signed photocopy), properly completed and duly executed, with any required signature guarantees or, in the case of tender of shares held by a bank, broker or other nominee, an Agent’s Message (as described in “Procedure for Tendering—Book-Entry Transfer”) in lieu of the Letter(s) of Transmittal; and (iii) any other documents required by the applicable Letter(s) of Transmittal.

If we do not accept any tendered shares of Preferred Stock for purchase pursuant to the terms and conditions of the Offer to Purchase for any reason, we will return certificates for such shares of Preferred Stock without expense to the tendering stockholder (or, in the case of shares of Preferred Stock tendered through DTC, pursuant to the procedures set forth below under “The Offer to Purchase—Procedure for Tendering,” those shares of Preferred Stock will be credited to an account maintained within DTC) as soon as practicable following expiration or termination of the Offer to Purchase. All shares of Preferred Stock that are validly tendered and accepted for purchase by us in the Offer to Purchase will become authorized but unissued shares.

Any tendering stockholder or other payee who fails to complete fully, sign and return to the Depository the substitute Form W-9 included with the applicable Letter(s) of Transmittal or Form W-8BEN obtained from the Depository may be subject to required backup withholding on the gross proceeds paid to that stockholder or other payee pursuant to our offer.

Procedure for Tendering

We have forwarded to you, along with this Offer, the applicable Letter(s) of Transmittal relating to the Offer to Purchase.

If your shares are held directly, you should follow the instructions in the Letter(s) of Transmittal. If your shares of Preferred Stock are held in the name of your broker, dealer, commercial bank, trust company or other nominee or custodian, and you wish to tender your shares in the Offer to Purchase, you should promptly contact the person in whose name your shares of Preferred Stock are held and instruct that person to tender your shares and deliver the Letter(s) of Transmittal on your behalf. Holders of Preferred Stock should be aware that their broker,

dealer, commercial bank, trust company or other nominee or custodian may establish their own earlier deadlines for participation in the Offer to Purchase. Accordingly, holders of Preferred Stock wishing to participate in the Offer to Purchase should contact their broker, dealer, commercial bank, trust company or other nominee or custodian as soon as possible in order to determine the times by which such holders must take action in order to participate in the Offer to Purchase.

A holder of Preferred Stock that holds share certificates evidencing their Preferred Stock or that tenders shares of Preferred Stock by book-entry transfer to the account of the Depository at DTC must submit a Letter of Transmittal for each series of Preferred Stock held and following the other procedures set forth in such Letter of Transmittal; provided, that a holder need not submit the Letter of Transmittal if the holder tenders shares of Preferred Stock in accordance with the procedures mandated by DTC's ATOP. For additional information on tendering in the Offer to Purchase through book-entry procedures and through ATOP, see “— Book-Entry Transfer” below.

In order for shares of Preferred Stock to be properly tendered for exchange pursuant to the Offer to Purchase using a Letter of Transmittal, the registered holder of the shares of Preferred Stock being tendered must ensure that the Depository receives the following: (i) a properly completed and duly executed Letter of Transmittal for each series of Preferred Stock held, in accordance with the instructions of the applicable Letter of Transmittal (including any required signature guarantees); (ii) delivery of the shares of Preferred Stock by book-entry transfer to the exchange agent's account at DTC (or delivery of the stock certificates if share certificates are held); and (iii) any other documents required by the applicable Letter of Transmittal.

In the Letter of Transmittal, the tendering registered Preferred Stock holder must set forth: (i) its name and address; (ii) the number of shares of Preferred Stock being tendered by the holder for purchase; and (iii) certain other information specified in the applicable form of Letter of Transmittal. In certain cases, all signatures on the Letter of Transmittal must be guaranteed by an “Eligible Institution.” See the applicable Letter of Transmittal related to your series of Preferred Stock for more information.

Notwithstanding the date on which your tender is received, it shall not become effective until the Expiration Date.

If you need help in tendering your shares of Preferred Stock, please contact the Information Agent, whose address and telephone number are listed on the back cover of this Offer.

Book-Entry Transfer. The Depository will establish accounts with respect to the shares of Preferred Stock at DTC for purposes of the Offer to Purchase within two (2) business days after the date of the Offer to Purchase. Holders who tender (and do not validly withdraw) their shares of Preferred Stock to the Depository prior to the Expiration Date will be entitled to receive the applicable Preferred Stock Consideration on the settlement date, provided that the remaining conditions to the Offer to Purchase have been satisfied or waived. It is your responsibility to validly tender your shares of Preferred Stock. We have the right to waive any defects. However, we are not required to waive defects and are not required to notify you of defects in your tender. It is expected that the settlement date will be at least three (3) business days after the Expiration Date.

As of the date hereof, all of the shares of Preferred Stock are held in book-entry form and are represented by one or more global certificates registered in the name of a nominee of DTC. In order for shares of Preferred Stock to be validly tendered by book-entry transfer, the Depository must receive the following prior to the Expiration Date:

- (i) timely Book-Entry Confirmation of the transfer of such shares of Series B, Series C or Series D Preferred Stock into the Depository's account at DTC;
- (ii) either a properly completed and duly executed Letter of Transmittal, or a properly transmitted Agent's Message if the tendering stockholder has not delivered a Letter of Transmittal; and
- (iii) any other documents required by the applicable Letter of Transmittal.

The term “Agent's Message” means a message, transmitted by DTC to, and received by, the Depository and forming a part of a Book-Entry Confirmation, which states that DTC has received and agrees to be bound by the terms of the Offer to Purchase, and that the Company may enforce such agreement against the participant. If you are tendering by book-entry transfer, you must expressly acknowledge that you have received and agree to be bound by the Letter of Transmittal and that the Letter of Transmittal may be enforced against you.

Delivery of a Letter of Transmittal to the Company, the Information Agent or DTC will not constitute valid

delivery to the Depository. No Letter of Transmittal should be sent to the Company, the Information Agent or DTC.

Any financial institution that is a participant in DTC's system may make book-entry delivery of the shares of Preferred Stock by causing DTC to transfer such shares of Preferred Stock into the Depository's account in accordance with ATOP. By using the ATOP procedures to tender shares of Preferred Stock, you will not be required to deliver the Letter of Transmittal to the Depository. However, you will be bound by the terms of the Letter of Transmittal just as if you had signed it. You must allow sufficient time for completion of the ATOP procedures during the normal business hours of DTC to tender your shares of Preferred Stock.

Signature Guarantees and Stock Powers. No signature guarantee is required on the Letters of Transmittal (i) if the Letters of Transmittal are signed by the registered holder(s) (which term, for purposes of this section, includes any participant in DTC's system whose name appears on a security position listing as the owner of the Preferred Stock) of the Preferred Stock tendered or (ii) if the shares of Preferred Stock are tendered for the account of a financial institution (including most commercial banks, savings and loan associations and brokerage houses) that is a participant in the Security Transfer Agents Medallion Program or any other "eligible guarantor institution," as that term is defined in Rule 17Ad-15 under the Exchange Act (each an "Eligible Institution"). In all other cases, all signatures on applicable Letter(s) of Transmittal must be guaranteed by an Eligible Institution. See the instructions to the applicable Letter(s) of Transmittal. If a share certificate is registered in the name of a person or persons other than the signer of the Letter(s) of Transmittal, or if payment is to be made or delivered to, or a share certificate not accepted for purchase or not tendered is to be issued in, the name(s) of a person other than the registered holder(s), then the share certificate must be endorsed or accompanied by appropriate duly executed stock powers, in either case signed exactly as the name(s) of the registered holder(s) appear on the share certificate, with the signature(s) on the share certificate or stock powers guaranteed by an Eligible Institution as provided in the applicable Letter(s) of Transmittal. See the instructions to the applicable Letter(s) of Transmittal.

Notwithstanding any other provision of this Offer, purchase of Preferred Stock accepted pursuant to the Offer to Purchase will in all cases only be made after timely receipt by the Depository of (i) certificates evidencing the Preferred Stock or a Book-Entry Confirmation of a book-entry transfer of the Preferred Stock into the Depository's account at DTC pursuant to the procedures set forth in this section; (ii) the applicable Letter(s) of Transmittal (or a manually signed photocopy), properly completed and duly executed, with any required signature guarantees or, in the case of a book-entry transfer, an Agent's Message in lieu of the Letter(s) of Transmittal; and (iii) any other documents required by the applicable Letter(s) of Transmittal.

No Guaranteed Delivery. There are no guaranteed delivery provisions provided for by the Company in connection with the Offer to Purchase. Holders must tender their Preferred Stock in accordance with the procedures set forth above.

THE METHOD OF DELIVERY OF SHARES, THE LETTER(S) OF TRANSMITTAL AND ALL OTHER REQUIRED DOCUMENTS, INCLUDING DELIVERY THROUGH DTC, IS AT THE ELECTION AND RISK OF THE TENDERING STOCKHOLDER. DELIVERY OF ALL SUCH DOCUMENTS WILL BE DEEMED MADE ONLY WHEN ACTUALLY RECEIVED BY THE DEPOSITARY AND INFORMATION AGENT (INCLUDING, IN THE CASE OF A BOOK-ENTRY TRANSFER, BY BOOK-ENTRY CONFIRMATION). IF SUCH DELIVERY IS BY MAIL, IT IS RECOMMENDED THAT ALL SUCH DOCUMENTS BE SENT BY PROPERLY INSURED REGISTERED MAIL WITH RETURN RECEIPT REQUESTED. IN ALL CASES, SUFFICIENT TIME SHOULD BE ALLOWED TO ENSURE TIMELY DELIVERY.

Effects of Tenders

By tendering your shares as set forth above, you irrevocably appoint the Depository and its designees as your attorneys-in-fact and proxies, each with full power of substitution, to the full extent of your rights with respect to your shares of Preferred Stock tendered and accepted for purchase by us. Such appointment will be automatically revoked if we do not accept for purchase shares of Preferred Stock that you have tendered. All such proxies shall be considered coupled with an interest in the tendered shares of Preferred Stock and therefore shall not be revocable; provided that the Preferred Stock tendered pursuant to the Offer to Purchase may be withdrawn at any time on or prior to the Expiration Date, as it may be extended by us, subject to the withdrawal rights and procedures set forth below. Upon the effectiveness of such appointment, all prior proxies given by you will be revoked, and no subsequent proxies may be given (and, if given, will not be deemed effective) unless the tendered Preferred Stock is

validly withdrawn. If the Offer to Purchase is terminated or withdrawn, the Proposed Amendments will not become effective and will have no effect on the Preferred Stock.

We will determine all questions as to the validity, form, eligibility (including time of receipt) and acceptance for purchase of any tender of shares of Preferred Stock in the Offer to Purchase, in our sole discretion, and our determination shall be final and binding. We reserve the absolute right to reject any and all tenders of shares of Preferred Stock in the Offer to Purchase determined by us not to be in proper form or the acceptance for purchase or purchase of which may, in our opinion, be unlawful.

Subject to the applicable rules and regulations of the SEC, we also reserve the right to waive, in our reasonable judgment, any of the conditions of the Offer to Purchase and the absolute right to waive any defect or irregularity in the tender of any shares of Preferred Stock in the Offer to Purchase. No tender of shares of Preferred Stock in the Offer to Purchase will be deemed to have been made until all defects and irregularities in the tender of such shares in the Offer to Purchase have been cured or waived. Neither we, the Depository, the Information Agent nor any other person will be under any duty to give notification of any defects or irregularities in the tender of any shares of Preferred Stock in the Offer to Purchase or will incur any liability for failure to give any such notification. Our interpretation of the terms and conditions of the Offer to Purchase (including the applicable Letter(s) of Transmittal and instructions thereto) will be final and binding.

The tender of shares of Preferred Stock, pursuant to any of the procedures described above, will constitute a binding agreement between you and us upon the terms and subject to the conditions of the Offer to Purchase.

If we receive the requisite stockholder approvals for the Proposed Amendments and all other conditions are waived or satisfied, promptly after Stockholder Meeting but before the expiration of the Offer to Purchase, we will file the Articles of Amendment with the SDAT. The Proposed Amendments will become effective upon the filing of the Articles of Amendment with the SDAT or at any later date and time specified in the Articles of Amendment that is not more than 30 days after the acceptance for recording of the Articles of Amendment by SDAT. Only holders of the Preferred Stock who do not tender their shares in the Offer to Purchase will remain holders of Preferred Stock after the Proposed Amendments are approved by our stockholders and become effective. A majority of the entire Board may determine to make less than all of the modifications described herein to the terms of either series of Preferred Stock, so the Proposed Amendments, when they take effect, may not have all of the effects described in this Offer.

Withdrawal of Tenders

You may validly withdraw shares of Preferred Stock that you tender at any time prior to the Expiration Date of the Offer to Purchase, which is 5:00 p.m., Eastern Time, on November 26, 2024, unless we extend the period of time for which the Offer to Purchase is open.

A withdrawal of tendered shares of Preferred Stock must be for all shares of Preferred Stock tendered by a holder.

For a withdrawal to be effective, you must deliver a written notice of withdrawal to the Depository at the appropriate address specified on the back cover of this Offer prior to the Expiration Date. Any notice of withdrawal must identify the beneficial owner of the shares of Preferred Stock to be withdrawn, including the name of the beneficial owner of the shares of Preferred Stock, the name of the person who tendered the shares of Preferred Stock, if different, and the number of shares of Preferred Stock to be withdrawn. Your notice of withdrawal must comply with the requirements set forth in this Offer. If you tendered Preferred Stock pursuant to the procedures for a book-entry transfer, a withdrawal of shares of Preferred Stock will only be effective if you comply with the appropriate DTC procedures prior to the Expiration Date of the Offer to Purchase.

If we extend the Offer to Purchase, are delayed in our acceptance of the shares of Preferred Stock for purchase or are unable to accept shares of Preferred Stock pursuant to the Offer to Purchase for any reason, then, without prejudice to our rights under the Offer to Purchase, the Depository may retain tendered shares of Preferred Stock, and those shares of Preferred Stock may not be withdrawn except as otherwise provided in this Offer, subject to provisions under the Exchange Act that provide that an issuer making an offer to purchase shall either pay the consideration offered or return tendered securities promptly after the termination or withdrawal of the offer to purchase.

All questions as to the validity, form and eligibility, including time or receipt, of notices of withdrawal will be determined by us. Our determination will be final and binding on all parties. Any shares of Preferred Stock withdrawn will be deemed not to have been validly tendered for purposes of the Offer to Purchase, and no

consideration will be given, unless the shares of Preferred Stock so withdrawn are validly re-tendered and not properly withdrawn. Properly withdrawn shares of Preferred Stock may be re-tendered by following the procedures described above under “The Offer to Purchase—Procedure for Tendering” at any time prior to the Expiration Date of the Offer to Purchase.

Neither we, the Depositary, the Information Agent nor any other person will be under any duty to give notification of any defects or irregularities in any notice of withdrawal or will incur any liability for failure to give any such notification. Any shares of Preferred Stock properly withdrawn will be deemed not to have been validly tendered for purposes of the Offer to Purchase.

Security Ownership

William J. Clifford who is a director of the Company, owns 3,092 shares of Series B Preferred Stock and 9,151 shares of Series D Preferred Stock. Mr. Clifford has indicated to the Company that he currently intends to tender all of his shares of Preferred Stock in the Offer to Purchase. All tenders of Preferred Stock held by Mr. Clifford will be made on the same terms as those by unaffiliated stockholders.

Except as provided above, the Company is not aware of any of its directors or executive officers who own any Preferred Stock. Furthermore, neither we, nor any of our associates, subsidiaries, nor, to our knowledge, any of our directors or executive officers, have effected any transactions in the Preferred Stock during the 60 days before the date of the Offer to Purchase.

Other than as described herein, neither we nor any person controlling us nor, to our knowledge, any of our directors or executive officers, is a party to any contract, arrangement, understanding or relationship with any other person relating, directly or indirectly, to any of the Preferred Stock, including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any such securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or the giving or withholding of proxies, consents or authorizations.

The following table sets forth certain information known to us with respect to beneficial ownership of our Common Stock as of October 16, 2024 (taking into account cancellation of certain outstanding options) by (i) each director, (ii) each executive officer, (iii) each person known to us to beneficially own more than five percent of our Common Stock, and (iv) all directors and executive officers as a group. Unless otherwise indicated in the footnotes to the table, the beneficial owners named have, to our knowledge, sole voting and investment power with respect to the shares beneficially owned, subject to community property laws where applicable.

Name and Address of Beneficial Owner(1)	Amount
Wesley R. Edens(2)	86,498,257
William J. Clifford	1,313,187
Benjamin Crane	62,288
Keith Sbarbaro	500,000
Michael Compton(3)	19,949,178
Tony Hsu	0
All directors and executive officers as a group (6 persons)	108,260,622

(1) The address of all officers and directors listed above are in the care of Drive Shack Inc., 10670 N. Central Expressway, Suite 700, Dallas, TX 75231, other than Mr. Wesley R. Edens whose address is in the care of Baobob Advisers, 111 W 19th St., 8th Fl., New York, NY 10011.

(2) Includes (i) 19,949,178 shares of restricted common stock, par value \$0.01 per share (“Restricted Shares”), (ii) 5,847,728 shares held in a family trust for which Mr. Edens serves as trustee and (iii) 16,666 shares held in a charitable trust for which Mr. Edens serves as a trustee.

(3) Includes 8,500,000 Restricted Shares.

Source and Amount of Funds

The Offer to Purchase is not conditioned upon our receipt of financing. The total amount of funds required to purchase all shares of Preferred Stock is approximately \$12.6 million. We will have sufficient cash and cash equivalents to repurchase all validly tendered (and not withdrawn) shares pursuant to the Offer to Purchase.

Liquidity

Following the completion of the Offer to Purchase, the liquidity and trading price of any remaining untendered shares of Preferred Stock held by the public and the rights of the holders of those shares may be adversely affected. Shares of Preferred Stock are currently quoted over-the-counter.

The extent of the public market for shares of the Preferred Stock and the availability of such quotations would, however, depend upon the number of holders and/or the aggregate market value of the shares of Preferred Stock remaining at such time, the interest in maintaining a market in the shares of Preferred Stock on the part of securities firms, and other factors.

Appraisal Rights

You do not have appraisal rights in connection with the Offer to Purchase.

Certain Legal and Regulatory Matters

Except as set forth in this Offer, we are not aware of any material filing, approval or other action by or with any governmental authority or administrative or regulatory agency that would be required for our acquisition or ownership of Preferred Stock.

Subsequent Repurchases of Shares of Preferred Stock

Whether or not the Offer to Purchase is consummated, subject to the applicable covenant restrictions contained in our debt instruments, the terms of the Charter and applicable law, we or our affiliates may from time to time acquire shares of Preferred Stock, other than pursuant to the Offer to Purchase, through open market purchases, privately negotiated transactions, exchange offers, exercise of optional redemption rights, offer to purchase or otherwise, upon such terms and at such prices as we may determine, which may be more or less than the amount to be paid pursuant to the Offer to Purchase and could be paid in cash or other consideration not provided for in the Offer to Purchase.

Depository

We have retained Equiniti Trust Company, LLC as Depository. We will pay the Depository reasonable and customary compensation for its services in connection with the Offer to Purchase, reimburse it for its reasonable out-of-pocket expenses and indemnify it against certain liabilities and expenses in connection with the Offer to Purchase, including liabilities under federal securities laws.

Information Agent

D.F. King & Co., Inc. is serving as Information Agent in connection with the Offer to Purchase. The Information Agent will assist with the mailing of this Offer and related materials to holders of Preferred Stock, respond to inquiries of and provide information to holders of shares of Preferred Stock in connection with the Offer to Purchase, and provide other similar advisory services as we may request from time to time. Questions regarding the terms of the Offer to Purchase, and requests for assistance or for additional copies of this Offer and any other required documents, should be directed to the Information Agent at the address and telephone numbers set forth on the back cover of this Offer.

Expenses

We expect to incur reasonable and customary fees and expenses in connection with the Offer to Purchase. We also will pay brokerage houses and other custodians, nominees and fiduciaries the reasonable out-of-pocket expenses incurred by them in forwarding copies of this Offer to Purchase, the Letters of Transmittal and related documents to the beneficial owners of shares and in handling or forwarding tenders of shares by their customers. The following table sets forth all expenses incurred or estimated to be incurred in connection with the transaction:

Filing, Legal and Accounting Fees	\$70,000
Information Agent Expenses	30,000
Printing Costs	25,000
Other Expenses	52,000

Total Expenses

\$177,000

In connection with the Offer to Purchase, our directors, officers and employees may solicit tenders of shares by use of the mails, personally or by telephone, facsimile, telegram, electronic communication or other similar methods. These directors, officers and employees will not be specifically compensated for these services.

No brokerage commissions will be payable by tendering stockholders to us, the Information Agent or the Depository. Stockholders who tender their shares through a broker, dealer, commercial bank, trust company or other nominee should contact such institution as to whether it charges any service fees.

DIVIDENDS ON THE PREFERRED STOCK AND COMMON STOCK

Our Board may authorize in its discretion the payment of cash dividends on our Common Stock, subject to an ongoing review of our profitability, liquidity and future operating cash requirements. Certain debt arrangements require the maintenance of ratios and contain restrictive financial covenants that could limit the ability of our subsidiaries, and as a result of such limitation the ability of Drive Shack Inc., to pay dividends. Furthermore, we will be prohibited from paying dividends on our Common Stock until we satisfy all of the outstanding dividends owed on our Preferred Stock. The Company will not pay any accrued or unpaid dividends on any shares of Preferred Stock as part of the Offer to Purchase. The Board has not declared cash dividends on our Common Stock since the Company revoked its election to be treated as a REIT, effective January 1, 2017. The Company has not paid dividends on the Preferred Stock for an aggregate of 10 quarters. As of September 30, 2024, the accumulated and unpaid dividends on the Preferred Stock were \$15.4 million in aggregate. The Company currently has no present intention to pay future dividends on the Preferred Stock.

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a general summary of the material U.S. federal income and estate tax consequences to holders of Preferred Stock who, pursuant to the Offer to Purchase, tender such shares. This discussion does not address all of the tax consequences that may be relevant to particular stockholders in light of their personal circumstances, or to certain types of stockholders (such as (i) certain financial institutions, (ii) dealers in securities or commodities, (iii) real estate investment trusts and regulated investment companies, (iv) tax-exempt organizations, qualified retirement plans, individual retirement accounts, or other tax-deferred accounts, (v) insurance companies, (vi) U.S. expatriates or former long-term residents of the United States, (vii) grantor trusts and estates, (viii) persons whose “functional currency” is not the U.S. dollar, (ix) persons required to accelerate the recognition of any item of gross income with respect to Preferred Stock as a result of such income being recognized on an applicable financial statement, (x) governments or agencies or instrumentalities thereof, (xi) mutual funds, (xii) persons who acquired shares as compensation (including persons whose shares are subject to Section 1061 of the Code) and (xiii) persons who sold shares as a position in a “straddle” or as part of a “hedging” or “conversion” transaction for U.S. federal income tax purposes). Moreover, this discussion assumes that all stockholders hold shares of Preferred Stock as capital assets within the meaning of Section 1221 of the Code.

In this section, the following terms have the following meanings:

- “Code” means the Internal Revenue Code of 1986, as amended;
- “U.S. Stockholder” means a Stockholder that is a U.S. Person;
- “Non-U.S. Stockholder” means a Stockholder that is not a U.S. Person;
- “IRS” means the Internal Revenue Service;
- “Stockholder” means a holder of Preferred Stock and;
- “U.S. Person” means (i) a citizen or resident of the United States; (ii) a corporation (or entity treated as a corporation for U.S. federal income tax purposes) created or organized in the United States or under the laws of the United States or of any state thereof, including, for this purpose, the District of Columbia; (iii) a partnership (or entity treated as a partnership for tax purposes) organized in the United States or

under the laws of the United States or of any state thereof, including, for this purpose, the District of Columbia (unless provided otherwise by future Treasury regulations); (iv) an estate whose income is includible in gross income for U.S. federal income tax purposes regardless of its source; or (v) a trust, if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. Persons have authority to control all substantial decisions of the trust. Notwithstanding the preceding clause, to the extent provided in Treasury regulations, certain trusts that were in existence on August 20, 1996, that were treated as U.S. Persons prior to such date, and that elect to continue to be treated as U.S. Persons, also are U.S. Persons.

If a partnership, including for this purpose any entity that is treated as a partnership for U.S. federal income tax purposes, holds our Preferred Stock, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. An investor that is a partnership and the partners in such partnership should consult their tax advisors about the U.S. federal income tax consequences of the acquisition, ownership and disposition of our stock.

The statements in this discussion are based on the current U.S. federal income tax laws. There is no assurance that new laws, interpretations of law or court decisions, any of which may take effect retroactively, will not cause any statement in this section to be inaccurate. There is no assurance that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. This discussion does not address the U.S. federal 3.8% Medicare tax imposed on certain net investment income or any aspects of U.S. federal taxation other than those pertaining to the income tax, nor does it address any tax consequences arising under any U.S. state and local, or non-U.S. tax laws.

This summary provides general information only and is not tax advice. We urge you to consult your tax advisor regarding the specific tax consequences to you of a tender of Preferred Stock pursuant to the Offer to Purchase. Specifically, all Stockholders should consult their tax advisor regarding the U.S. federal, state, local, foreign and other tax consequences of the tender of Preferred Stock, as well as potential changes in applicable tax laws.

Treatment of U.S. Stockholders

Tax Treatment of Offer to Purchase

Our purchase of a U.S. Stockholder's shares of Preferred Stock will be a taxable transaction for U.S. federal income tax purposes. The amount of cash received that represents the payment of accrued but previously-unpaid dividends will be treated as a distribution to a U.S. Stockholder for U.S. federal income tax purposes in the manner described below under the heading "Section 302 Analysis—Amounts Treated as Distributions." Moreover, except as discussed below, the amount of any cash received that does not represent the payment of accrued but previously unpaid dividends will be treated as a sale or exchange, if certain conditions are met, and the U.S. Stockholder will recognize gain or loss in an amount equal to the difference between (1) the amount of cash received pursuant to the Offer to Purchase and (2) the U.S. Stockholder's adjusted tax basis in the shares surrendered pursuant to the Offer to Purchase. Any gain or loss recognized by a U.S. Stockholder on the sale or exchange of shares generally will be a capital gain or loss if the shares are a capital asset to the U.S. Stockholder, and will be long-term capital gain or loss if the shares have been held for more than one year at the time the Offer to Purchase is completed. However, the tax consequences of the Offer to Purchase may vary depending on the U.S. Stockholder's particular facts and circumstances, and the entire amount of cash received pursuant to the Offer to Purchase may be treated as a dividend. That is, a U.S. Stockholder may, depending on his or her particular circumstances, be treated not as having sold his or her shares, but rather as having received a distribution in respect of stock from us under Section 302 or Section 306 of the Code.

Section 302 Analysis

Under Section 302 of the Code, a U.S. Stockholder whose shares are purchased by us will be treated as having sold such holder's shares, and thus will recognize capital gain or loss if the purchase:

- results in a “complete termination” of such holder’s equity interest in us; or
- is “not essentially equivalent to a dividend” to such holder.

Both of these tests, referred to herein as the “Section 302 tests,” are explained in more detail below. If a U.S. Stockholder satisfies either of the Section 302 tests, the U.S. Stockholder will be treated as if such holder sold shares to us and will recognize capital gain or loss in an amount equal to the difference between (1) the amount of cash received (other than amounts which represent accrued but unpaid dividends) pursuant to the Offer to Purchase and (2) such U.S. Stockholder’s adjusted tax basis in the shares surrendered pursuant to the Offer to Purchase. A U.S. Stockholder’s adjusted tax basis in the shares generally will equal the cost of the shares held by such holder. Any gain or loss recognized by a U.S. Stockholder on the disposition of shares generally will be long-term capital gain or loss if the U.S. Stockholder’s holding period for the shares that were sold exceeds one year as of the date of purchase by us. Long-term capital gains of individuals generally may be subject to tax at a lower rate. The deduction of capital losses is subject to certain limitations. U.S. Stockholders should consult their tax advisors regarding the treatment of capital gains and losses. Amounts of cash received upon our purchase of shares that represent accrued but unpaid dividends will be subject to taxation as a dividend distribution in the manner discussed in the following paragraph.

Amounts Treated as Distributions. If a U.S. Stockholder does not satisfy any of the Section 302 tests explained below, our purchase of such holder’s shares of Preferred Stock will not be treated as a sale or exchange under Section 302 of the Code. Instead, the entire amount received by such U.S. Stockholder as a result of our purchase of such holder’s Preferred Stock will be treated as a distribution with respect to the Preferred Stock exchanged by such holder, and such distribution will be taxable as a dividend to the extent of such holder’s share of our current or accumulated earnings and profits, as calculated for U.S. federal income tax purposes. To the extent the amount of the distribution exceeds such U.S. Stockholder’s share of our current or accumulated earnings and profits, the excess will be treated first as a tax-free return of capital to the extent of such holder’s adjusted tax basis in the Preferred Stock exchanged by such holder and any remainder will be treated as capital gain (which may be long-term capital gain, as described above). To the extent that our purchase of a U.S. Stockholder’s shares is treated as the receipt by such holder of a dividend, such holder’s adjusted tax basis in the purchased shares will be added to any shares of Preferred Stock retained by such holder, and if the U.S. Stockholder retains no such shares, the adjusted tax basis will be added to any other stock of the Company owned by such holder. In addition, such U.S. Stockholder would not be permitted to recognize any loss on the transaction. A U.S. Stockholder that is a corporation may be eligible for a dividends received deduction for amounts received that are treated as dividends under these rules, and a non-corporate U.S. Stockholder may be able to treat such amounts as “qualified dividend income,” which is taxable at the same rate as long-term capital gains.

Constructive Ownership of Stock and Other Issues. In applying each of the Section 302 tests explained below, U.S. Stockholders must take into account not only shares and any other stock in the Company that they actually own but also shares of Preferred Stock and any Common Stock they are treated as owning under the constructive ownership rules of Section 318 of the Code. Under the constructive ownership rules, a U.S. Stockholder is treated as owning any shares of Preferred Stock and any Common Stock that is owned (actually, and in some cases, constructively) by certain related individuals and entities, as well as shares of Preferred Stock and any Common Stock that such holder has the right to acquire by exercise of an option or by conversion or redemption of another security, including any of our debt. Due to the factual nature of the Section 302 tests explained below, U.S. Stockholders should consult their own tax advisors to determine whether the purchase of their shares qualifies for sale treatment in their particular circumstances.

Section 302 Tests. One of the following tests must be satisfied with respect to a U.S. Stockholder in order for our purchase of shares to be treated as a sale or exchange by such U.S. Person for U.S. federal income tax purposes:

- *Complete Termination Test.* Assuming the U.S. Stockholder actually or constructively owns no stock in the Company other than shares of the Preferred Stock, our purchase of the shares of Preferred Stock will result in a “complete termination” of such holder’s equity interest in the Company if (i) all the shares that are actually owned by such holder are sold to us and (ii) all the shares that are constructively owned by such holder, if any, are sold to us or, with respect to shares owned by certain related individuals, such holder effectively waives, in accordance with Section 302(c) of the Code, attribution of shares which otherwise would be considered as constructively owned by such holder. U.S. Stockholders wishing to satisfy the “complete termination” test through waiver of the constructive ownership rules should consult their own tax advisors.
- *Not Essentially Equivalent to a Dividend Test.* The purchase of a U.S. Stockholder’s shares will be treated as “not essentially equivalent to a dividend” if the reduction in such holder’s proportionate interest in the Company as a result of the purchase constitutes a “meaningful reduction” given such holder’s particular circumstances. Whether the receipt of cash by a U.S. Stockholder who sells shares will be “not essentially equivalent to a dividend” will depend upon such holder’s particular facts and circumstances. The factors to be considered in determining whether a reduction in a stockholder’s proportionate interest in a corporation results in a “meaningful reduction” relate to the stockholder’s right to vote and exercise control, the right to participate in current earnings and accumulated surplus and the right to share in net assets on liquidation. For example, the IRS has ruled that any reduction in a stockholder’s proportionate interest is a “meaningful reduction” if the stockholder owns less than 1% of the shares of a corporation and did not have management control over the corporation. U.S. Stockholders should consult their own tax advisors as to the application of this test in their particular circumstances.

Section 306 Analysis

In general, if the shares of Preferred Stock constitute Section 306 stock to a U.S. Stockholder, the amount realized by such U.S. Stockholder in redemption of such shares will not be offset by his adjusted tax basis in such shares and will result in a distribution, which will be treated as a dividend to the extent of our available earnings and profits, unless the redemption completely terminates such holder’s entire actual and constructive ownership interest in our equity (as described under the heading “Section 302 Analysis—Complete Termination Test” above). If the redemption of such shares results in a distribution, to the extent the amount of the distribution exceeds a U.S. Stockholder’s share of our available earnings and profits, the excess will be treated first as a tax-free return of capital to the extent of such U.S. Stockholder’s adjusted tax basis in the shares owned by such holder and any remainder will be treated as capital gain (which may be long-term capital gain as described above). In addition, if amounts received by a U.S. Stockholder are treated as a dividend under these rules, such U.S. Stockholder would not be permitted to recognize any loss. A U.S. Stockholder that is a corporation may be eligible for a dividends received deduction for amounts received that are treated as dividends under these rules, and a non-corporate U.S. Stockholder may be able to treat such amounts as “qualified dividend income.” The law is unclear as to the treatment of any unused tax basis in a U.S. Stockholder’s shares of Preferred Stock if the redemption of such shares results in dividend income treatment to such U.S. Stockholder under Section 306 of the Code. Section 306 stock generally includes certain Preferred Stock received as a stock dividend on Common Stock, certain Preferred Stock received in a tax-free reorganization and stock the basis of which is determined by reference to Section 306 stock. U.S. Stockholders should consult their tax advisors as to the particular consequences to them in such a case.

Backup Withholding and Information Reporting

Under certain circumstances, U.S. Stockholders may be subject to information reporting and backup withholding (currently a rate of 24%) with respect to the amount of consideration received in connection with such holder’s sale of shares pursuant to the Offer to Purchase, unless such holder provides proof of an applicable exemption or a correct taxpayer identification number, certifies that such number is correct and otherwise complies with applicable requirements of the backup withholding rules. Amounts withheld under the backup withholding rules are not an additional tax and may be refunded or credited against the U.S. Stockholder’s U.S. federal income tax liability, provided the required information is furnished to the IRS.

Treatment of Non-U.S. Stockholders

As described above under the heading “Treatment of Domestic Stockholders—Tax Treatment of Offer to Purchase,” the amount of cash received that represents the payment of accrued but previously-unpaid dividends will be treated as a distribution to a Non-U.S. Stockholder. Moreover, except as discussed below, the amount of any cash received that does not represent the payment of accrued but previously unpaid dividends will be treated as a sale or exchange. Except as discussed below, gain recognized by a Non-U.S. Stockholder on the sale or exchange of our shares will not be subject to U.S. federal income tax unless our stock constitutes a U.S. real property interest within the meaning of Section 897 of the Code (a “USRPI”). Assuming that our stock does not constitute a USRPI, if you are a Non-U.S. Stockholder and you do not hold shares of Preferred Stock in connection with the conduct of a United States trade or business, you will generally not be subject to U.S. federal income tax on any gain resulting from your exchange of Preferred Stock for cash pursuant to the Offer to Purchase. If, however, you are a nonresident alien individual and were present in the United States for 183 days or more during the taxable year, then you will be subject to a 30% tax on any capital gain recognized. In addition, if your investment in our stock is effectively connected with your conduct of a U.S. trade or business, you will generally be subject to the same treatment as a U.S. Stockholder with respect to such gain.

Notwithstanding the above, the amount of cash received by a Non-U.S. Stockholder that represents the payment of accrued but previously-unpaid dividends will be treated as a distribution, which will be taxable as a dividend to the extent of such holder’s share of our current or accumulated earnings and profits, as calculated for U.S. federal income tax purposes. In addition, if a Non-U.S. Stockholder does not satisfy any of the Section 302 tests explained above, the amount received by such Non-U.S. Stockholder as a result of our purchase of such holder’s shares of Preferred Stock will also be treated as a distribution, which will be taxable as a dividend to the same extent. Any such amount in excess of such Non-U.S. Stockholder’s share of our current or accumulated earnings and profits will be treated first as a tax-free return of capital, and thereafter as capital gain. Amounts treated as dividends, to the extent that they are not effectively connected with a U.S. trade or business of the Foreign Stockholder, will be subject to U.S. withholding tax at the rate of 30% (unless reduced by an applicable income tax treaty between the United States and such Non-U.S. Stockholder’s country of residence for purposes of such treaty). In general, a Non-U.S. Stockholder will not be considered engaged in a U.S. trade or business solely as a result of its ownership of our stock. In cases where the dividend income from a Non-U.S. Stockholder’s investment in our stock is (or is treated as) effectively connected with the Non-U.S. Stockholder’s conduct of a U.S. trade or business, the Non-U.S. Stockholder generally will be subject to U.S. tax at graduated rates, in the same manner as U.S. Stockholders are taxed with respect to such dividends (and may also be subject to the 30% branch profits tax in the case of a Non-U.S. Stockholder that is a foreign corporation).

To claim a reduction or exemption from withholding, a Non-U.S. Stockholder generally will be required to provide (i) a properly executed IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form) and satisfy applicable certification and other requirements to claim the benefit of an applicable income tax treaty between the United States and such Non-U.S. Stockholder’s country of residence, or (ii) a properly executed IRS Form W-8ECI stating that dividends are not subject to withholding because they are effectively connected with such Non-U.S. Stockholder’s conduct of a trade or business within the United States. Non-U.S. Stockholders are urged to consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty.

A Non-U.S. Stockholder that is eligible for a reduced rate of U.S. withholding tax under an income tax treaty may obtain a refund or credit of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

Gain recognized by a Non-U.S. Stockholder on the sale or exchange of a USRPI is subject to U.S. federal income and withholding taxes pursuant to the Foreign Investment in Real Property Tax Act of 1980 (“FIRPTA”). If our stock constitutes a USRPI, a sale of our stock by a Non-U.S. Stockholder generally will be subject to U.S. federal income tax under FIRPTA. Our stock will generally constitute a USRPI if, at any time during the five year period preceding a Non-U.S. Stockholder’s disposition of its Preferred Stock (or the Non-U.S. Stockholder’s holding period, if shorter), the Company is treated as a “U.S. real property holding corporation.” Generally, a corporation is a U.S. real property holding corporation if the fair market value of its U.S. real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Since we may have been treated as a U.S. real property holding corporation in the five years preceding our purchase of a Non-U.S. Holder’s Preferred Stock, our stock may constitute a USRPI with respect to a Non-U.S. Stockholder, in which case the Non-U.S. Stockholder would

generally be subject to the same treatment as a U.S. Stockholder with respect to such gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals) and we, as the purchaser of the stock, could be required to withhold 15% of the purchase price and remit such amount to the IRS.

Backup Withholding and Information Reporting

Under certain circumstances, Non-U.S. Stockholders may be subject to information reporting and backup withholding (currently a rate of 24%) with respect to the amount of consideration received in connection with such holder's sale of shares pursuant to the Offer to Purchase, unless such holder provides certification that it is not a U.S. Person and otherwise complies with applicable requirements of the backup withholding rules. Amounts withheld under the backup withholding rules are not an additional tax and may be refunded or credited against the Non-U.S. Stockholder's U.S. federal income tax liability, provided the required information is furnished to the IRS.

Foreign Accounts

The Code generally imposes a U.S. federal withholding tax of 30% on dividends and, subject to the discussion below regarding proposed regulations issued by the U.S. Treasury Department, the gross proceeds of a disposition of our Preferred Stock paid to:

- a "foreign financial institution" (as defined in the Code), unless such institution enters into an agreement with the U.S. government to, among other things, withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding accounts held by certain "specific United States persons" or "United States owned foreign entities" (each as defined in the Code), or otherwise qualifies for an exemption from these rules; and
- a "non-financial foreign entity" (as defined in the Code), unless such entity provides the withholding agent with either a certification that it does not have any "substantial United States owners" (as defined in the Code), provides information regarding each substantial United States owners of the entity, or otherwise qualifies for an exemption from these rules.

An intergovernmental agreement between the United States and an applicable foreign country may modify the requirements described in this paragraph.

The withholding provisions described above currently apply to dividends paid on our Preferred Stock. The U.S. Treasury Department released proposed regulations which, if finalized in their present form, would eliminate the U.S. federal withholding tax of 30% applicable to the gross proceeds of a sale or other disposition of our Preferred Stock. In its preamble to such proposed regulations, the U.S. Treasury Department stated that taxpayers may generally rely on the proposed regulations until final regulations are issued.

Under certain circumstances, a Non-U.S. Stockholder might be eligible for refunds or credits of such taxes. Non-U.S. Stockholders are encouraged to consult with their own tax advisors regarding the possible implications of the foregoing rules on their sale of shares pursuant to the Offer to Purchase.

The U.S. federal income tax discussion set forth above is for general information only. It is a summary and does not discuss all aspects of U.S. federal income taxation that may be relevant to particular Stockholders in light of their particular circumstances and income tax situations. Stockholders should consult their own tax advisors as to the particular tax consequences to them of the Offer to Purchase, including the effect of any U.S. federal, state, local, foreign or other tax laws.

WHERE YOU CAN FIND MORE INFORMATION

Our internet website address is <https://ir.driveshack.com>. We make available free of charge, through our internet website our annual reports and quarterly reports. The information contained in or accessible from our internet website is not part of this Offer.

We have not authorized anyone to give any information or make any representation about the Offer to

Purchase that is different from, or in addition to, that contained in this Offer. Therefore, you should not rely on any other information. If you are in a jurisdiction where offers to purchase or sell, or solicitations of offers to purchase or sell, the securities offered by this Offer are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this Offer does not extend to you. The information contained in this Offer speaks only as of the date of this Offer unless the information specifically indicates that another date applies.

The Information Agent for this Offer to Purchase is:

D.F. King & Co., Inc.
48 Wall Street, 22 Floor
New York, New York 10005
Banks and Brokers Call Collect: (212) 269-5550
All Others Call Toll-Free: (866) 828-9088
Email: dshkpf@dfking.com

DESCRIPTION OF CAPITAL STOCK

The following description of the terms of our capital stock is only a summary. For a complete description, we refer you to the Maryland General Corporation Law (the “MGCL”), our charter and our bylaws. Please see “Where You Can Find More Information.”

General

Under our charter we are authorized to issue up to 1,100,000,000 shares of stock, consisting of 1,000,000,000 shares of Common Stock, and 100,000,000 shares of preferred stock, \$0.01 par value per share, of which 2,875,000 shares have been classified and designated as shares of “9.75% Series B Cumulative Redeemable Preferred Stock,” 1,800,000 shares have been classified and designated as shares of “8.05% Series C Cumulative Redeemable Preferred Stock,” 2,300,000 shares have been classified and designated as shares of “8.375% Series D Cumulative Redeemable Preferred Stock” and 1,000,000 shares have been classified and designated as shares of “Series E Junior Participating Preferred Stock.” The aggregate par value of all authorized shares of stock having par value is \$11,000,000. As of the date of this Offer, there are currently no other classes or series of preferred stock authorized. Under Maryland law, our stockholders generally are not liable for our debts or obligations.

Common Stock

All outstanding shares of our Common Stock are duly authorized, fully paid and nonassessable. Holders of our Common Stock are entitled to receive, when, as and if declared by the Board, dividends out of assets legally available for the payment of dividends. They are also entitled to share ratably in our assets legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up, after payment of or adequate provision for all of our known debts and liabilities. These rights are subject to the preferential rights of any other class or series of our stock.

Each outstanding share of Common Stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors. Except as provided with respect to any other class or series of stock, the holders of our Common Stock will possess exclusive voting power. There is no cumulative voting in the election of directors, and directors are elected by a plurality of votes cast.

Holders of our Common Stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any of our securities. All shares of Common Stock will have equal dividend, liquidation and other rights.

Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business, unless approved by the affirmative vote of stockholders holding at least two thirds of the shares entitled to vote on the matter. However, a Maryland corporation may provide in its charter for approval of these matters by a lesser percentage, but not less than a majority of all of the votes entitled to be cast on the matter. Our charter provides that these matters may be approved by a majority of all of the votes entitled to be cast on the matter.

Preferred Stock

Our Board may authorize the issuance of preferred stock in one or more series and may determine, with respect to any such series, the powers, preferences and rights of such series, and its qualifications, limitations and restrictions, including, without limitation:

- the number of shares to constitute such series and the designations thereof;
- the voting power, if any, of holders of shares of such series and, if voting power is limited, the circumstances under which such holders may be entitled to vote;
- the rate of dividends, if any, and the extent of further participation in dividend distributions, if any, and whether dividends shall be cumulative or non-cumulative;
- whether or not such series shall be redeemable, and, if so, the terms and conditions upon which shares of such series shall be redeemable;
- the extent, if any, to which such series shall have the benefit of any sinking fund provision for the redemption or purchase of shares;
- the rights, if any, of such series, in the event of the dissolution of the corporation, or upon any distribution of the assets of the corporation; and

- whether or not the shares of such series shall be convertible, and, if so, the terms and conditions upon which shares of such series shall be convertible.

Upon issuance, the shares of preferred stock will be fully paid and nonassessable, which means that its holders will have paid their purchase price in full and we may not require them to pay additional funds. Holders of our preferred stock will not have any preemptive rights.

Description of Series B Preferred Stock

Our charter establishes the number and fixes the terms, designations, powers, preferences, rights, limitations and restrictions of a series of preferred stock designated the 9.75% Series B Cumulative Redeemable Preferred Stock. The Series B Preferred Stock is quoted on the over-the-counter market under the symbol “DSHKP.”

Ranking. The Series B Preferred Stock, with respect to distribution rights and the distribution of assets upon our liquidation, dissolution or winding up, ranks (i) senior to all classes or series of our Common Stock and to all other equity securities the terms of which specifically provide that such equity securities rank junior to the Series B Preferred Stock; (ii) on a parity with all equity securities issued by us other than those referred to in clauses (i) and (iii); and (iii) junior to all equity securities issued by us the terms of which specifically provide that such equity securities rank senior to such Series B Preferred Stock. The term “equity securities” shall not include convertible debt securities.

Distributions. Holders of Series B Preferred Stock are entitled to receive, when and as authorized by our Board, out of legally available funds, cumulative preferential cash distributions at the rate of 9.75% of the liquidation preference per annum, which is equivalent to \$2.4375 per share of Series B Preferred Stock per year. Distributions on the Series B Preferred Stock cumulate from the date of original issuance (March 18, 2003) and are payable quarterly in arrears on January 31, April 30, July 31 and October 31 of each year, or, if not a business day, the next succeeding business day, commencing April 30, 2003.

Liquidation Preference. Upon any voluntary or involuntary liquidation, dissolution or winding up of us, holders of Series B Preferred Stock are entitled to receive out of our assets available for distribution to stockholders (after payment or provision for all of our debts and other liabilities) a liquidating distribution in the amount of a liquidation preference of \$25.00 per share, plus any accumulated and unpaid distributions to the date of payment, whether or not authorized, before any distribution of assets is made to holders of our Common Stock and any other shares of our equity securities ranking junior to the Series B Preferred Stock as to liquidation rights.

Redemption. We, at our option, upon giving of notice, may redeem the Series B Preferred Stock, in whole or from time to time in part (unless we are in arrears on the distributions on the Series B Preferred Stock, in which case we can only redeem in whole), for cash, at a redemption price of \$25.00 per share, plus all accumulated and unpaid distributions to the date of redemption, whether or not authorized.

Maturity. The Series B Preferred Stock does not have a stated maturity and is not subject to any sinking fund or mandatory redemption provisions.

Voting Rights. Holders of Series B Preferred Stock do not have any voting rights, except that if distributions on the Series B Preferred Stock are in arrears for six or more quarterly periods (whether or not consecutive), then holders of Series B Preferred Stock (voting together as a single class with all of our other equity securities upon which like voting rights have been conferred and are exercisable) shall be entitled to elect two additional directors. In addition, so long as any Series B Preferred Stock remains outstanding, subject to limited exceptions, we will be required to obtain approval of at least two-thirds of the then-outstanding Series B Preferred Stock (such series voting separately as a class) in order to (a) authorize, create or increase the authorized or issued amount of any class or series of equity securities ranking senior to the Series B Preferred Stock with respect to certain rights, or create, authorize or issue any obligation or security convertible into any such senior securities; or (b) amend, alter or repeal our charter in a way that materially and adversely affects any right, preference or voting power of the Series B Preferred Stock.

Conversion. The Series B Preferred Stock is not convertible into or exchangeable for our property or securities.

Description of Series C Preferred Stock

Our charter establishes the number and fixes the terms, designations, powers, preferences, rights, limitations and restrictions of a series of preferred stock designated the 8.05% Series C Cumulative Redeemable Preferred Stock. The Series C Preferred Stock is quoted on the over-the-counter market under the symbol “DSHKO.”

Ranking. The Series C Preferred Stock, with respect to distribution rights and the distribution of assets upon our

liquidation, dissolution or winding up, ranks (i) senior to all classes or series of our Common Stock and to all equity securities the terms of which specifically provide that such equity securities rank junior to the Series C Preferred Stock; (ii) on a parity with the 9.75% Series B Cumulative Redeemable Preferred Stock and all other equity securities issued by us other than those referred to in clauses (i) and (iii); and (iii) junior to all equity securities issued by us the terms of which specifically provide that such equity securities rank senior to such Series C Preferred Stock. The term “equity securities” shall not include convertible debt securities.

Distributions. Holders of Series C Preferred Stock are entitled to receive, when and as authorized by our Board, out of legally available funds, cumulative preferential cash distributions at the rate of 8.05% of the liquidation preference per annum, which is equivalent to \$2.0125 per share of Series C Preferred Stock per year. However, during any period of time that both (i) the Series C Preferred Stock is not listed on the NYSE or AMEX, or quoted on the NASDAQ, and (ii) we are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, but shares of Series C Preferred Stock are outstanding, we will increase the cumulative cash distributions payable on the Series C Preferred Stock to a rate of 9.05% of the liquidation preference per annum, which is equivalent to \$2.2625 per share of Series C Preferred Stock per year (the “Series C Special Distribution”). Distributions on the Series C Preferred Stock cumulate from the date of original issuance (October 25, 2005) or, with respect to the Series C Special Distribution, if applicable, from the date following the date on which both (i) the Series C Preferred Stock ceases to be listed on the NYSE or the AMEX or quoted on the NASDAQ and (ii) we cease to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, and are payable quarterly in arrears on January 31, April 30, July 31 and October 31 of each year or, if not a business day, the next succeeding business day, commencing January 31, 2006. The Series C Special Distribution, if applicable, shall cease to accrue on the date following the earlier of (i) the listing of the Series C Preferred Stock on the NYSE or the AMEX or its quotation on the NASDAQ or (ii) we become subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

Liquidation Preference. Upon any voluntary or involuntary liquidation, dissolution or winding up of us, holders of Series C Preferred Stock are entitled to receive out of our assets available for distribution to stockholders (after payment or provision for all of our debts and other liabilities) a liquidating distribution in the amount of a liquidation preference of \$25.00 per share, plus any accumulated and unpaid distributions to the date of payment, whether or not authorized, before any distribution of assets is made to holders of our Common Stock and any other shares of our equity securities ranking junior to the Series C Preferred Stock as to liquidation rights.

Regular Redemption. We, at our option, upon giving of notice, may redeem the Series C Preferred Stock, in whole or from time to time in part (unless we are in arrears on the distributions on the Series C Preferred Stock, in which case we can only redeem in whole), for cash, at a redemption price of \$25.00 per share, plus all accumulated and unpaid distributions to the date of redemption, whether or not authorized.

Special Redemption. If at any time both (i) the Series C Preferred Stock ceases to be listed on the NYSE or the AMEX or quoted on the NASDAQ and (ii) we cease to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, and any shares of Series C Preferred Stock are outstanding, we will have the option to redeem the Series C Preferred Stock, in whole but not in part, within 90 days of the date upon which both the Series C Preferred Stock ceases to be listed and we cease to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, for cash at \$25.00 per share, plus accumulated and unpaid distributions, if any, to the date of redemption, whether or not authorized.

Maturity. The Series C Preferred Stock does not have a stated maturity and is not subject to any sinking fund or mandatory redemption provisions.

Voting Rights. Holders of Series C Preferred Stock do not have any voting rights, except that if distributions on the Series C Preferred Stock are in arrears for six or more quarterly periods (whether or not consecutive), then holders of Series C Preferred Stock (voting together as a single class with all of our other equity securities (including the Series B Preferred Stock), as applicable, upon which like voting rights have been conferred and are exercisable) shall be entitled to elect two additional directors. In addition, so long as any Series C Preferred Stock remains outstanding, subject to limited exceptions, we will be required to obtain approval of at least two-thirds of the then-outstanding Series C Preferred Stock (such series voting separately as a class) in order to (a) authorize, create or increase the authorized or issued amount of any class or series of equity securities ranking senior to the Series C Preferred Stock with respect to certain rights, or create, authorize or issue any obligation or security convertible into any such senior securities; or (b) amend, alter or repeal our charter in a way that materially and adversely affects any right, preference or voting power of the Series C Preferred Stock.

Conversion. The Series C Preferred Stock is not convertible into or exchangeable for our property or securities.

Description of Series D Preferred Stock

Our charter establishes the number and fixes the terms, designations, powers, preferences, rights, limitations and restrictions of a series of preferred stock designated the 8.375% Series D Cumulative Redeemable Preferred Stock. The Series D Preferred Stock is quoted on the over-the-counter market under the symbol “DSHKN.”

Ranking. The Series D Preferred Stock, with respect to distribution rights and the distribution of assets upon our liquidation, dissolution or winding up, ranks (i) senior to all classes or series of our Common Stock and to all equity securities the terms of which specifically provide that such equity securities rank junior to the Series D Preferred Stock; (ii) on a parity with the 9.75% Series B Cumulative Redeemable Preferred Stock and 8.05% Series C Cumulative Redeemable Preferred Stock and all other equity securities issued by us other than those referred to in clauses (i) and (iii); and (iii) junior to all equity securities issued by us the terms of which specifically provide that such equity securities rank senior to such Series D Preferred Stock. The term “equity securities” shall not include convertible debt securities.

Distributions. Holders of Series D Preferred Stock are entitled to receive, when and as authorized by our Board, out of legally available funds, cumulative preferential cash distributions at the rate of 8.375% of the liquidation preference per annum, which is equivalent to \$2.09375 per share of Series D Preferred Stock per year. However, during any period of time that both (i) the Series D Preferred Stock is not listed on the NYSE or AMEX, or quoted on the NASDAQ, and (ii) we are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, but shares of Series D Preferred Stock are outstanding, we will increase the cumulative cash distributions payable on the Series D Preferred Stock to a rate of 9.375% of the liquidation preference per annum, which is equivalent to \$2.34375 per share of Series D Preferred Stock per year (the “Series D Special Distribution”). Distributions on the Series D Preferred Stock cumulate from the date of original issuance (March 15, 2007) or, with respect to the Series D Special Distribution, if applicable, from the date following the date on which both (i) the Series D Preferred Stock ceases to be listed on the NYSE or the AMEX or quoted on the NASDAQ and (ii) we cease to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, and are payable quarterly in arrears on January 31, April 30, July 31 and October 31 of each year or, if not a business day, the next succeeding business day, commencing July 31, 2007. The Series D Special Distribution, if applicable, shall cease to accrue on the date following the earlier of (i) the listing of the Series D Preferred Stock on the NYSE or the AMEX or its quotation on the NASDAQ or (ii) we become subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

Liquidation Preference. Upon any voluntary or involuntary liquidation, dissolution or winding up of us, holders of Series D Preferred Stock are entitled to receive out of our assets available for distribution to stockholders (after payment or provision for all of our debts and other liabilities) a liquidating distribution in the amount of a liquidation preference of \$25.00 per share, plus any accumulated and unpaid distributions to the date of payment, whether or not authorized, before any distribution of assets is made to holders of our Common Stock and any other shares of our equity securities ranking junior to the Series D Preferred Stock as to liquidation rights.

Regular Redemption. We, at our option, upon giving of notice, may redeem the Series D Preferred Stock, in whole or from time to time in part (unless we are in arrears on the distributions on the Series D Preferred Stock, in which case we can only redeem in whole), for cash, at a redemption price of \$25.00 per share, plus all accumulated and unpaid distributions to the date of redemption, whether or not authorized.

Special Redemption. If at any time both (i) the Series D Preferred Stock ceases to be listed on the NYSE or the AMEX or quoted on the NASDAQ and (ii) we cease to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, and any shares of Series D Preferred Stock are outstanding, we will have the option to redeem the Series D Preferred Stock, in whole but not in part, within 90 days of the date upon which both the Series D Preferred Stock ceases to be listed and we cease to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, for cash at \$25.00 per share, plus accumulated and unpaid distributions, if any, to the date of redemption, whether or not authorized.

Maturity. The Series D Preferred Stock does not have a stated maturity and is not subject to any sinking fund or mandatory redemption provisions.

Voting Rights. Holders of Series D Preferred Stock do not have any voting rights, except that if distributions on the Series D Preferred Stock are in arrears for six or more quarterly periods (whether or not consecutive), then holders of Series D Preferred Stock (voting together as a single class with all of our other equity securities upon which

voting rights have been conferred and are exercisable, including our Series B Preferred Stock and Series C Preferred Stock) shall be entitled to elect two additional directors. In addition, so long as any Series D Preferred Stock remains outstanding, subject to limited exceptions, we will be required to obtain approval of at least two-thirds of the then-outstanding Series D Preferred Stock (such series voting separately as a class) in order to (a) authorize, create or increase the authorized or issued amount of any class or series of equity securities ranking senior to the Series D Preferred Stock with respect to certain rights, or create, authorize or issue any obligation or security convertible into any such senior securities; or (b) amend, alter or repeal our charter in a way that materially and adversely affects any right, preference or voting power of the Series D Preferred Stock.

Conversion. The Series D Preferred Stock is not convertible into or exchangeable for our property or securities.

Description of Series E Junior Participating Preferred Stock

Our charter establishes the number and fixes the terms, designations, powers, preferences, rights, limitations and restrictions of a series of preferred stock designated the Series E Junior Participating Preferred Stock. Such number may be increased or decreased by resolution of our Board, provided that no decrease shall reduce the number of shares of Series E Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the exercise of any options, rights or warrants issuable upon conversion of any outstanding securities issued by us convertible into Series E Preferred Stock.

Ranking. The Series E Preferred Stock shall rank junior to all other series of our Preferred Stock as to the payment of dividends and distribution of assets, unless the terms of any such series shall provide otherwise.

Distributions. Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the shares of Series E Preferred Stock with respect to dividends, the holders of shares of Series E Preferred Stock, in preference to the holders of Common Stock, and of any other junior stock, shall be entitled to receive, when, as and if declared by our Board out of funds legally available for the purpose, quarterly dividends payable in cash on the 1st March, June, September and December in each year (each, a “Quarterly Dividend Payment Date”), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series E Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment set forth our charter, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series E Preferred Stock. In the event we shall at any time after December 20, 2016 (the “Rights Record Date”) (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine or consolidate the outstanding shares of Common Stock into a smaller number of shares through a reverse stock split or otherwise, then in each such case the amount to which holders of shares of Series E Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event. We shall declare a dividend or distribution on the Series E Preferred Stock immediately after we declare a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock), provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series E Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date. Dividends, to the extent payable, shall begin to accrue and be cumulative on outstanding shares of Series E Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series E Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series E Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series E Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-

by-share basis among all such shares at the time outstanding. Our Board may fix a record date for the determination of holders of shares of Series E Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than thirty days prior to the date fixed for the payment thereof.

Voting Rights. Subject to the provision for adjustment set forth in our charter, each share of Series E Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of our stockholders. Except as otherwise provided in our charter, in any other articles supplementary creating a series of Preferred Stock (or any similar stock), or by law, the holders of shares of Series E Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of our stockholders. In addition, if at any time dividends on any Series E Preferred Stock shall be in arrears in any amount equal to six quarterly dividends thereon, for the duration of such default period, all holders of Preferred Stock (including holders of the Series E Preferred Stock) with dividends in arrears in an amount equal to six quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect two directors.

Certain Restrictions. Whenever quarterly dividends or other dividends or distributions payable on the Series E Preferred Stock are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series E Preferred Stock outstanding shall not have been paid in full, we shall not: (i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior to the Series E Preferred Stock; (ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity with the Series E Preferred Stock, except dividends paid ratably on the Series E Preferred Stock; (iii) subjected to limited exceptions, redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior with the Series E Preferred Stock; or (iv) redeem or purchase or otherwise acquire for consideration any shares of Series E Preferred Stock, or any shares ranking on parity with the Series E Preferred Stock, except in accordance with a purchase offer made in writing or by publication to all holders of such shares upon such terms as our Board determines in good faith will result in fair and equitable treatment among the respective series or classes. In addition, so long as any Series E Preferred Stock are outstanding, neither our charter nor any articles supplementary shall be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series E Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority of the outstanding shares of Series E Preferred Stock, voting separately as a class.

Liquidation Preference. Upon any voluntary or involuntary liquidation, dissolution or winding up of us, no distribution shall be made to the holders of shares of stock ranking junior to the Series E Preferred Stock unless, prior thereto, the holders of shares of Series E Preferred Stock shall have received an amount equal to \$1,000 per share of Series E Preferred Stock, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the “Series E Liquidation Preference”). Following the payment of the full amount of the Series E Liquidation Preference, no additional distributions shall be made to the holders of shares of Series E Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the “Common Adjustment”) equal to the quotient obtained by dividing (i) the Series E Liquidation Preference by (ii) 1,000 (as appropriately adjusted as set forth in our charter to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the “Adjustment Number”). Following the payment of the full amount of the Series E Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series E Preferred Stock and Common Stock, respectively, holders of Series E Preferred Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively. In the event, however, that there are not sufficient assets available to permit payment in full of the Series E Liquidation Preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Series E Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

Consolidation or Merger. If we shall enter into any consolidation, merger, share exchange, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash or any other property, then in any such case each share of Series E Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share (subject to the provision for adjustment set forth in our charter) equal to 1,000 times the aggregate amount of stock, securities, cash or any other property (payable in kind),

as the case may be, into which or for which each share of Common Stock is changed or exchanged.

Redemption. The shares of Series E Preferred Stock shall not be redeemable.

Power to Reclassify Unissued Shares of Common and Preferred Stock

Our charter authorizes our Board to classify and reclassify any unissued shares of our Common Stock or preferred stock into other classes or series of stock. Prior to issuance of shares of each class or series, our board is required by Maryland law and by our charter to set, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Therefore, our Board could authorize the issuance of shares of another class or series of stock with terms and conditions more favorable than current terms, or which also could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of our Common Stock or otherwise be in their best interest. Our Board also could authorize the issuance of additional shares of our 9.75% Series B Cumulative Redeemable Preferred Stock, 8.05% Series C Cumulative Redeemable Preferred Stock, 8.375% Series D Cumulative Redeemable Preferred Stock or Series E Junior Participating Preferred Stock.

Power to Issue Additional Shares of Common and Preferred Stock

We believe that the power to issue additional shares of Common Stock or preferred stock and to classify or reclassify unissued shares of Common Stock or preferred stock and thereafter to issue the classified or reclassified shares provides us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs which might arise. These actions can be taken without stockholder approval, unless stockholder approval is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities are listed or traded. Although we have no present intention of doing so, we could issue a class or series of stock that could delay, defer or prevent a transaction or a change in control of us that might involve a premium price for holders of Common Stock or otherwise be in their best interest.

Dividend Reinvestment Plan

We may implement a dividend reinvestment plan whereby stockholders may automatically reinvest their dividends in our Common Stock. Details about any such plan would be sent to our stockholders following adoption thereof by our Board.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock and our Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock is Equiniti Trust Company, LLC. We will appoint a transfer agent, registrar and dividend disbursement agent for any new series of preferred stock. The registrar for the preferred stock will send notices to the holders of the preferred stock of any meeting at which those holders will have the right to elect directors or to vote on any other matter.

Tax Benefits Preservation Plan

We are party to a Tax Benefits Preservation Plan (the "Tax Benefits Preservation Plan") with American Stock Transfer & Trust Company, LLC, as rights agent, and the disinterested members of the Board have declared a dividend distribution of one right (a "Right") for each outstanding share of Common Stock of the Company to stockholders of record at the close of business on March 16, 2020 (the "Record Date"). Each Right is governed by the terms of the Tax Benefits Preservation Plan and entitles the registered holder to purchase from the Company a unit consisting of one one-thousandth of a share (a "Unit") of Series E Preferred Stock, at a purchase price of \$5.00 per Unit, subject to adjustment (the "Purchase Price"). The Tax Benefits Preservation Plan is intended to help protect the Company's ability to use its tax net operating losses and certain other tax assets ("Tax Benefits") by deterring an "ownership change" as defined under Section 382 of the Internal Revenue Code.

Rights Certificates; Exercise Period. Initially, the Rights were attached to all Common Stock certificates representing shares then outstanding, and no separate rights certificates ("Rights Certificates") will be distributed. Subject to certain exceptions specified in the Tax Benefits Preservation Plan, the Rights will separate from the Common Stock then outstanding and a distribution date (the "Distribution Date") will occur upon the earlier of (i) 10 business days following a public announcement that a person or group of affiliated or associated persons (an "Acquiring Person") has become the beneficial owner of 4.9% or more of the shares of the Common Stock (the "Stock Acquisition Date") and (ii) 10 business days (or such later date as the Board shall determine) following the commencement of a tender offer or exchange offer that would result in a person or group becoming an Acquiring

Person.

Until the Distribution Date, (i) the Rights will be evidenced by the Common Stock certificates (or, in the case of book-entry shares, by the notations in the book-entry accounts) and will be transferred with and only with such Common Stock, (ii) the Common Stock certificates issued after the Record Date will contain a notation incorporating the Tax Benefits Preservation Plan by reference and (iii) the surrender for transfer of any certificates for Common Stock outstanding will also constitute the transfer of the Rights associated with the Common Stock represented by such certificates. Pursuant to the Tax Benefits Preservation Plan, the Company reserves the right to require prior to the occurrence of a Triggering Event (as defined below) that, upon any exercise of Rights, a number of Rights be exercised so that only whole shares of Series E Preferred Stock will be issued.

The definition of “Acquiring Person” contained in the Tax Benefits Preservation Plan contains several exemptions, including (i) the Company or any of the Company’s subsidiaries; (ii) any employee benefit plan of the Company, or of any subsidiary of the Company, or any person or entity organized, appointed or established by the Company for or pursuant to the terms of any such plan; (iii) any person who becomes the beneficial owner of 4.9% or more of the shares of the Common Stock then outstanding as a result of a reduction in the number of shares of Common Stock by the Company or a stock dividend, stock split, reverse stock split or similar transaction, unless and until such person increases his ownership by more than one percentage point over such persons’ lowest percentage stock ownership on or after the consummation of the relevant transaction; (iv) any person who, together with all affiliates and associates of such person, was the beneficial owner of 4.9% or more of the shares of Common Stock then outstanding on the date of the Tax Benefits Preservation Plan, unless and until such person and its affiliates and associates increase their aggregate ownership by more than one percentage point over their lowest percentage stock ownership on or after the date of the Tax Benefits Preservation Plan or decrease their aggregate percentage stock ownership below 4.9%; (v) any person who, within 10 business days of being requested by the Company to do so, certifies to the Company that such person became an Acquiring Person inadvertently or without knowledge of the terms of the Rights and who, together with all affiliates and associates, thereafter within 10 business days following such certification disposes of such number of shares of Common Stock so that it, together with all affiliates and associates, ceases to be an Acquiring Person; (vi) Wesley R. Edens and any of his associates (“Mr. Edens”); provided that the foregoing exemption (x) shall apply only to the extent that the Company does not undergo an “owner shift” (as that term is defined in Section 382 of the Code) of 15% or more as a result of beneficial ownership of Company Securities by Mr. Edens and (y) may be revoked at any time by the disinterested members of the Board as to future acquisitions; and (vii) any person that the Board has affirmatively determined shall not be deemed an Acquiring Person.

The Rights are not exercisable until the Distribution Date and will expire at the earliest of (i) 11:59 P.M. (New York City time) on March May 2, 2033 or such later date and time as may be determined by the Board, (ii) the time at which the Rights are redeemed or exchanged as provided in the Tax Benefits Preservation Plan, (iii) the time at which the Board determines that the Tax Benefits Preservation Plan is no longer necessary or desirable for the preservation of Tax Benefits and (iv) the close of business on the first day of a taxable year of the Company to which the Board determines that no Tax Benefits may be carried forward.

As soon as practicable after the Distribution Date, Rights Certificates will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date and, thereafter, the separate Rights Certificates alone will represent the Rights. After the Distribution Date, the Company generally would issue Rights with respect to shares of Common Stock issued upon the exercise of stock options or pursuant to awards under any employee plan or arrangement, which stock options or awards are outstanding as of the Distribution Date, or upon the exercise, conversion or exchange of securities issued by the Company after the Tax Benefits Preservation Plan’s adoption (except as may otherwise be provided in the instruments governing such securities). In the case of other issuances of shares of Common Stock after the Distribution Date, the Company generally may, if deemed necessary or appropriate by the Board, issue Rights with respect to such shares of Common Stock.

Preferred Share Provisions. Each one one-thousandth of a share of Series E Preferred Stock, if issued:

- will not be redeemable;
- will entitle the holder thereof to quarterly dividend payments of \$0.001 or an amount equal to the dividend paid on one share of Common Stock, whichever is greater;
- will, upon any liquidation of the Company, entitle the holder thereof to receive either \$1.00 plus accrued and unpaid dividends and distributions to the date of payment or an amount equal to the payment made on

one share of Common Stock, whichever is greater;

- will have the same voting power as one share of Common Stock; and
- will, if shares of Common Stock are exchanged via merger, consolidation or a similar transaction, entitle holders to a per share payment equal to the payment made on one share of Common Stock.

Flip-in Trigger. In the event that a person or group of affiliated or associated persons becomes an Acquiring Person (unless the event causing such person or group to become an Acquiring Person is a transaction described under Flip-over Trigger, below), each holder of a Right will thereafter have the right to receive, upon exercise, Common Stock (or, in certain circumstances, cash, property or other securities of the Company) having a value equal to two times the exercise price of the Right. Notwithstanding the foregoing, following the occurrence of such an event, all Rights that are, or (under certain circumstances specified in the Tax Benefits Preservation Plan) were, beneficially owned by any Acquiring Person will be null and void. However, Rights are not exercisable following the occurrence of such an event until such time as the Rights are no longer redeemable by the Company as set forth below.

Flip-over Trigger. In the event that, at any time following the Stock Acquisition Date, (i) the Company engages in a merger or other business combination transaction in which the Company is not the surviving corporation or (ii) the Company engages in a merger or other business combination transaction in which the Company is the surviving corporation and the Common Stock is changed or exchanged, each holder of a Right (except Rights that have previously been voided as set forth above) shall thereafter have the right to receive, upon exercise, Common Stock of the acquiring company having a value equal to two times the exercise price of the Right. The events set forth in this paragraph and in the next preceding paragraph are referred to as the “Triggering Events.”

Exchange Feature. At any time after a person becomes an Acquiring Person and prior to the acquisition by such person or group of 50% or more of the Common Stock then outstanding, the Board may exchange the Rights (other than Rights owned by such person or group which have become void), in whole or in part, at an exchange ratio of one share of Common Stock, or one one-thousandth of a share of Series E Preferred Stock (or of a share of a class or series of the Company’s preferred stock having equivalent rights, preferences and privileges), per Right (subject to adjustment).

Equitable Adjustments. The Purchase Price payable, and the number of Units of Series E Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Series E Preferred Stock, (ii) if holders of the Series E Preferred Stock are granted certain rights or warrants to subscribe for Series E Preferred Stock or convertible securities at less than the current market price of the Series E Preferred Stock, or (iii) upon the distribution to holders of the Series E Preferred Stock of evidence of indebtedness or assets (excluding regular quarterly cash dividends) or of subscription rights or warrants (other than those referred to above).

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments amount to at least 1% of the Purchase Price. No fractional Units will be issued and, in lieu thereof, an adjustment in cash will be made based on the market price of the Series E Preferred Stock on the last trading day prior to the date of exercise.

Redemption Rights. At any time until 10 business days following the Stock Acquisition Date, the Company may, at the Company’s option, redeem the Rights in whole, but not in part, at a price of \$0.001 per Right (payable in cash, Common Stock or other consideration deemed appropriate by the Board). Immediately upon the action of the Board ordering redemption of the Rights, the Rights will terminate and the only right of the holders of Rights will be to receive the \$0.001 redemption price.

Amendment of Rights. Any of the provisions of the Tax Benefits Preservation Plan may be amended by the Board prior to the Distribution Date.

Miscellaneous. Until a Right is exercised, the holder thereof, as such, will have no separate rights as a stockholder of the Company, including the right to vote or to receive dividends in respect of the Rights. While the distribution of the Rights will not be taxable to the Company’s stockholders or to the Company, stockholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for Common Stock (or other consideration) of the Company or for Common Stock of the acquiring company or in the event of the redemption of the Rights as set forth above.

Appendix A – Proposed Amendments to Charter Provisions

Section 6.1.1(5)(c)

Notwithstanding anything to the contrary contained herein, unless full cumulative distributions on all shares of Series B Preferred Stock have been or contemporaneously are authorized and paid or authorized and a sum sufficient set apart for payment for all past distribution periods and the then current distribution period, no shares of Series B Preferred Stock shall be redeemed unless all outstanding shares of Series B Preferred Stock are simultaneously redeemed. In addition, unless full cumulative distributions on all shares of Series B Preferred Stock have been or contemporaneously are authorized and paid or authorized and a sum sufficient set apart for payment for all past distributions periods and the then current distribution period, the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series B Preferred Stock or any other shares of equity securities of the Corporation ranking junior to or on a parity with the Series B Preferred Stock as to distributions or upon liquidation (except by conversion into or exchange for shares of equity securities of the Corporation ranking junior to the Series B Preferred Stock as to distributions and upon liquidation). **Notwithstanding the foregoing, neither** ~~†~~the restrictions in this Section 5 on redemptions, purchases and other acquisitions **nor any other provision of these Articles** shall ~~not~~ prevent (i) the redemption, purchase or acquisition by the Corporation of Preferred Stock of any series pursuant to Article VII of the Charter or Section 5(a) hereof, or otherwise in order to ensure that the Corporation remains qualified as a REIT for United States federal income tax purposes, ~~or~~ (ii) the purchase or acquisition of Series B Preferred Stock pursuant to a purchase or exchange offer made on the same terms to **either** all holders of the Series B Preferred Stock **or all holders of the Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock** or (iii) the purchase or acquisition of securities (including Series B Preferred Stock) pursuant to open market repurchases by the Corporation.

Section 6.1.2(5)(c)

Notwithstanding anything to the contrary contained herein, unless full cumulative distributions on all shares of Series C Preferred Stock have been or contemporaneously are authorized and paid or authorized and a sum sufficient set apart for payment for all past distribution periods and the then current distribution period, no shares of Series C Preferred Stock shall be redeemed pursuant to the Regular Redemption Right unless all outstanding shares of Series C Preferred Stock are simultaneously redeemed. In addition, unless full cumulative distributions on all shares of Series C Preferred Stock have been or contemporaneously are authorized and paid or authorized and a sum sufficient set apart for payment for all past distribution periods and the then current distribution period, the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series C Preferred Stock or any other shares of equity securities of the Corporation ranking junior to or on a parity with the Series C Preferred Stock as to distributions or upon liquidation (except by conversion into or exchange for shares of equity securities of the Corporation ranking junior to the Series C Preferred Stock as to distributions and upon liquidation). **Notwithstanding the foregoing, neither** ~~†~~the restrictions in this Section 5 on redemptions, purchases and other acquisitions **nor any other provision of these Articles** shall ~~not~~ prevent (i) the redemption, purchase or acquisition by the Corporation of Preferred Stock of any series pursuant to Article VII of the Charter or Section 5(a) hereof, or otherwise in order to ensure that the Corporation remains qualified as a REIT for United States federal income tax purposes,

(ii) ~~or~~ the purchase or acquisition of Series C Preferred Stock pursuant to a purchase or exchange offer made on the same terms to either all holders of the Series C Preferred Stock or all holders of the Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock or (iii) the purchase or acquisition of securities (including Series C Preferred Stock) pursuant to open market repurchases by the Corporation.

Section 6.1.3(5)(c)

Notwithstanding anything to the contrary contained herein, unless full cumulative distributions on all shares of Series D Preferred Stock have been or contemporaneously are authorized and paid or authorized and a sum sufficient set apart for payment for all past distribution periods and the then current distribution period, no shares of Series D Preferred Stock shall be redeemed pursuant to the Regular Redemption Right unless all outstanding shares of Series D Preferred Stock are simultaneously redeemed. In addition, unless full cumulative distributions on all shares of Series D Preferred Stock have been or contemporaneously are authorized and paid or authorized and a sum sufficient set apart for payment for all past distribution periods and the then current distribution period, the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series D Preferred Stock or any other shares of equity securities of the Corporation ranking junior to or on a parity with the Series D Preferred Stock as to distributions or upon liquidation (except by conversion into or exchange for shares of equity securities of the Corporation ranking junior to the Series D Preferred Stock as to distributions and upon liquidation). **Notwithstanding the foregoing, neither ~~the~~ restrictions in this Section 5 on redemptions, purchases and other acquisitions nor any other provision of these Articles shall ~~not~~ prevent (i) the redemption, purchase or acquisition by the Corporation of Preferred Stock of any series pursuant to Article VII of the Charter or Section 5(a) hereof, or otherwise in order to ensure that the Corporation remains qualified as a REIT for United States federal income tax purposes, (ii) ~~or~~ the purchase or acquisition of Series D Preferred Stock pursuant to a purchase or exchange offer made on the same terms to either all holders of the Series D Preferred Stock or all holders of the Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock or (iii) the purchase or acquisition of securities (including Series D Preferred Stock) pursuant to open market repurchases by the Corporation.**