

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

**FORM 10-K**

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

**For the fiscal year ended December 31, 2022**

**OR**

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

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

**Commission file number 001-39266**

**Harbor Custom Development, Inc.**

**(Exact name of registrant as specified in its charter)**

**Washington**

(State of organization)

**46-4827436**

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

**1201 Pacific Avenue, Suite 1200**

**Tacoma, Washington 98402**

(Address of principal executive offices)

**(253) 649-0636**

Registrant's telephone number, including area code

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

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock	HCDI	The Nasdaq Stock Market LLC
Series A Cumulative Convertible Preferred Stock	HCDIP	The Nasdaq Stock Market LLC
Warrants	HCDIW	The Nasdaq Stock Market LLC
Warrants	HCDIZ	The Nasdaq Stock Market LLC

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

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Large accelerated filer



Accelerated filer



Non-accelerated filer



Smaller reporting company



Emerging growth company



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

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

The aggregate market value of voting stock held by non-affiliates of the Registrant on June 30, 2022, based on the closing price of \$27.80 for shares of the Registrant's common stock as reported by the Nasdaq Stock Market LLC, was approximately \$15.6 million. Shares of common stock beneficially owned by each executive officer, director, and holder of more than 10% of our common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The registrant had outstanding 719,152 shares of common stock as of March 28, 2023.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (“Annual Report”) contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements other than statements of historical fact included in this Annual Report are forward-looking statements. These forward-looking statements may include projections and estimates concerning the timing and success of specific projects and our future construction, revenues, income, cost of sales, expenses, and capital spending. Our forward-looking statements are generally accompanied by words such as “estimate,” “project,” “predict,” “believe,” “expect,” “intend,” “anticipate,” “potential,” “plan,” “goal,” “foresee,” “likely,” “target,” “may,” “should,” “could,” or other words that convey the uncertainty of future events or outcomes. The forward-looking statements in this Annual Report speak only as of the date of this document, and we disclaim any obligation to update these statements unless required by law, and we caution you not to rely on them unduly. We have based these forward-looking statements on our current expectations and assumptions about future events. While our management considers these expectations and assumptions to be reasonable, they are inherently subject to significant business, economic, competitive, regulatory, and other risks, contingencies, and uncertainties, most of which are difficult to predict and many of which are beyond our control.

These forward-looking statements reflect our management’s beliefs and views with respect to future events and are based on estimates and assumptions as of the date of this Annual Report and are subject to risks and uncertainties. Moreover, we operate in a very highly competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. Given these uncertainties, you should not place undue reliance on forward-looking statements contained herein.

You should read this Annual Report and the documents that we reference and have filed as exhibits with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

The forward-looking statements made in this Annual Report relate only to events as of the date on which such statements are made. We undertake no obligation to update any forward-looking statements after the date of this Annual Report or to conform such statements to actual results or revised expectations, except as required by law.

## SUMMARY OF RISK FACTORS

The following factors, among others, may cause our actual results, performance, or achievements to differ materially from any future results, performance, or achievements expressed or implied by these forward-looking statements:

- economic changes either nationally or in the markets in which we operate, including declines in employment, continued increases of mortgage interest rates, and inflation;
- downturn in the homebuilding industry;
- changes in assumptions used to make industry forecasts;
- volatility and uncertainty in the credit markets and broader financial markets;
- our future operating results and financial condition;
- our business operations;
- changes in our business and investment strategy;
- availability of land to acquire and our ability to acquire such land on favorable terms or at all;
- availability, terms, and deployment of capital;
- shortages of or increased prices for labor, land, or raw materials used in housing construction;
- delays in land development or home construction resulting from adverse weather conditions or other events outside our control;
- the cost and availability of insurance and surety bonds;
- changes in, or the failure or inability to comply with, governmental laws and regulations;
- the timing of receipt of regulatory approvals and the opening of projects;
- the degree and nature of our competition;
- our leverage and debt service obligations;
- general volatility of the capital markets;
- availability of qualified personnel and our ability to retain our key personnel;
- our financial performance;
- our expectations regarding the period during which we qualify as an emerging growth company under the JOBS Act; and
- additional factors discussed under the sections “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and “Our Business.”

## **PART I**

Throughout this Annual Report, references to the “Company,” “HCDI,” “we,” “us,” and “our” refer to Harbor Custom Development, Inc. and its consolidated subsidiaries, unless the context requires otherwise.

### **ITEM 1. BUSINESS**

#### **Our Company**

Harbor Custom Development, Inc. is a real estate development company involved in all aspects of the land development cycle, including land acquisition, entitlements, development, construction of project infrastructure, single and multi-family vertical construction, marketing, and sales of various residential projects in Washington, California, Texas, and Florida.

As a land developer and builder of apartments, single-family luxury homes, and townhomes, our business strategy is to acquire and develop land strategically based on an understanding of population growth patterns, entitlement restrictions and land use evaluation, infrastructure development, and geo-economic forces. We endeavor to acquire land with scenic views or convenient access to freeways and public transportation to develop and sell residential lots, new home communities, townhomes, and multi-story apartment properties within a 20- to 60-minute commute of some of the nation's fastest-growing metro employment corridors.

Our portfolio of land, lots, home plans, and entitled multi-family plats, coupled with low inventory of residential and multi-family housing in our principal geographic areas, provide an opportunity for us to increase revenue and overall market share. In addition to our single-family residential projects, we build and sell townhomes and apartments and have completed or substantially completed construction of several multi-family sites in Washington. (See Item 2. Properties.)

In an effort to strategically manage the expanding needs of our corporate team, we signed a lease on October 5, 2021, for a new office space in Tacoma, Washington, and moved our headquarters in the second quarter of 2022. This office space is designed with a hybrid workforce in mind and takes into account employment trends that arose after the COVID-19 global pandemic, specifically the increase in hybrid or remote employees.

For the years ended December 31, 2022, and December 31, 2021, our total revenues were \$55.4 million and \$72.4 million, respectively. As of December 31, 2022, and December 31, 2021, our backlogs of fully executed contracts for the sale of developed residential lots and single-family homes were \$8.4 million and \$13.7 million, respectively. Our fee build backlogs as of December 31, 2022, and December 31, 2021, were \$0.8 million and \$10.0 million, respectively.

It is customary for us to sign purchase and sale agreements containing a due diligence period which allows us time, usually between 60 and 120 days, to evaluate the acquisition. However, in many cases, the closing will not occur until the entitlement and permitting processes are complete which can further extend the due diligence period. At times, through our due diligence efforts, we find the property is not suitable for purchase due to economic forces, zoning issues, or other matters. If we determine that a property is not suitable for our desired purposes, we terminate the purchase and sale agreement. After termination within the due diligence period, our earnest money is returned to us.

We are a general contractor and construct single-family homes, townhomes, and apartments utilizing a base of employees in conjunction with third-party subcontractors.

As of March 28, 2023, we own or control 23 communities in Washington, Texas, California, and Florida, containing approximately 2,700 lots in various stages of development.

#### **Entitled Land, Developed Lot, and Home Sales**

In 2022, we had two entitled land sales and sold 33 developed lots and 27 homes. The two entitled land sales represented 14% of total revenue in 2022. The 33 developed lot sales represented 17% of total revenue in 2022. Our 2022 home sales represented 52% of total revenue, and home selling prices ranged from \$0.7 million to \$1.7 million.

In 2021, we had three entitled land sales and sold 157 developed lots and 30 homes. The three entitled land sales represented 29% of total revenue in 2021. The 157 developed lot sales represented 37% of total revenue in 2021. Our 2021 home sales represented 24% of total revenue and home selling prices ranged from \$0.5 million to \$0.8 million.

## **Strategy**

Our strategy is driven by the following:

### ***Offer Diversified Product Portfolio from Single to Multi-family Communities***

Our expertise allows for a diversified product strategy that enables us to better serve a wide range of buyers, adapt quickly to changing market conditions, and optimize performance and returns while strategically reducing portfolio risk. We are equipped to build to the surrounding communities' needs, including single-family homes, townhomes, and apartments. This flexible business model allows us to target a wide and diverse range of customers, from those looking at lower-income housing options through apartments to those seeking entry-level through luxury single-family homes.

### ***Provide Superior Quality and an Excellent Homeowner Experience***

Our operating philosophy is to provide our homeowners a positive and memorable experience. We seek to maximize customer satisfaction by offering beautiful homes built with quality materials and exceptional craftsmanship, thoughtfully designed floor plans, and located within a 20- to 60-minute commute from major metropolitan areas. We engineer our homes for energy-efficiency, which reduces the homeowner's environmental impact and energy costs. Our competitive edge in the selling process focuses on the home's features, design, and premium locations with scenic views. Our goal is to not just build houses, but to create desirable communities through superior design, location, and execution.

New homebuyers' needs are met across multiple communities and price points by maintaining a substantial inventory of ready-to-build lots and designer home plans. From move-up buyers needing more space for their growing families or \$1.5 million-plus luxury homes, our business model enables buyers to overcome inventory shortages and pricing challenges in high-growth metropolitan markets.

### ***Provide Diverse Products for Multi-family Living with Superior Quality***

The significant appreciation in rental rates over the past year, combined with relatively low inventory of rental housings in our target markets, have created a substantial opportunity to expand shareholder value utilizing the multi-family vertical space. In light of this opportunity, we began a strategic transition of our inventory into multi-family housing in 2021 with the understanding the active U.S. housing market over the past few years would eventually slow down. As the first three of our multi-family properties are now at or near substantial completion, we believe we are adequately poised to realize the benefits of this strategic transition.

Our product-agnostic building model provides us the flexibility to accommodate the current rapidly changing market conditions and related risks. We are equipped to build to the surrounding communities' needs, from, move-up and luxury homebuyers, or renters looking for an apartment to institutional investors searching for large tracts of entitled land, developed lots, or multi-family apartment projects. This flexible business model provides a competitive advantage and differentiates us from our peers.

Our inventory of entitled multi-family communities located 20-to-60 minutes from major metropolitan employment corridors, coupled with a low inventory of rental, move-up and luxury residential housing in our principal geographic areas, currently provide an opportunity to increase revenue and overall market share.

### ***Focus on Efficient Operations***

We strive to control costs through a disciplined planning process. Detailed budgets are prepared for all cost categories. Budgets are closely monitored throughout the building process as we continue to revisit and update the budget on an ongoing basis. Many components are provided by subcontractors and significant effort is expended to assure that scopes of work are complete and inclusive. Contract variances and change orders are closely scrutinized for appropriateness. At the sale and closing of each home in a project, the estimated and final margins are compared, and variances are identified and investigated to better control costs on future homes in the project. We believe our disciplined process of setting realistic budgets and expectations, monitoring, and evaluating them and making any necessary adjustments to correct deviations going forward enables us to prudently control our costs.

### ***Strategic Partnerships/Cost Control***

Our business model is flexible and facilitates partnering with companies that specialize in their local markets, including residential builders, general contractors, and land developers. By partnering with these specialists, our cost structure can be closely managed. Further, all internal shared services are centralized at our corporate office in Washington. Centralized functions include accounting, finance, operations, legal, human resources, information technology, transaction coordination, and permitting. Centralizing these essential functions keeps our infrastructure costs under tight control.

### **Our Markets**

Our business strategy is focused on the acquisition of land for development purposes and the design, construction, and sale of residential lots, single-family homes, townhomes, and apartments in Washington, California, Florida, and Texas.

### **Our Products**

We offer a diverse portfolio of finished lots, single-family homes and multi-family communities, including townhomes, and apartments. Being product-agnostic provides us great flexibility to maintain appropriate consumer product and price level diversification for our specific markets. We focus on underserved consumer groups for each of our locations while attempting to diversify as to not overly concentrate our land portfolio in any one area. Building at multiple price points enables us to quickly adjust to changing consumer and market demands. Buyer profiles are developed for each market, and our communities are designed with the specific needs of those buyers in mind.

### **Land Acquisition and Development Process**

We execute an integrated business model to monetize land during three distinct stages of the development cycle. As a result, risks may be mitigated by providing multiple exit points for our real estate assets.

- *Sale of Entitled Land* – Property sold following the controlling jurisdiction’s approval of a permitted residential use or other use, as applicable.
- *Sale of Developed Lots* - Property sold after infrastructure is completed, including roads, sidewalks, and utilities.
- *Sale of Completed Building Product* – Property sold following the construction of a single-family home, townhome, or apartment.

We also provide services as fee build revenues to construct the required infrastructure so that houses can be developed on the lots.

Our acquisition process generally includes the following steps to reduce development and market cycle risk:

- review of the status of entitlements and other governmental processing, including title reviews;
- complete due diligence on the land parcel prior to committing to the acquisition;
- prepare detailed budgets for all cost categories;
- complete environmental reviews and third-party market studies; and
- evaluate economic feasibility within the context of the above strategies.

Before purchasing large land tracts, we often engage outside engineers and consultants to help review the proposed acquisition and assist with community and home design.

### **Home Building, Marketing, and Sales Process**

Our philosophy is to develop beautiful and practical living spaces for the growing communities we serve. Our strategy is to acquire land with scenic views or convenient access to freeways and public transportation to develop and sell residential lots, new home communities, and multi-story apartment properties within a 20- to 60-minute commute of the nation’s fastest-growing metro employment corridors.

Since our founding in 2014, we are dedicated to building quality homes with thoughtful design. Our floorplans support the modern family’s lifestyle by providing flexible spaces, outdoor living, one-story homes, main-floor living with master bedroom suites on the first floor, and luxury finishes to appeal to universal design needs. Our homes are engineered for energy-efficiency to reduce impact on the environment and lower energy costs to our homebuyers.

Our multi-family construction often offers comparable finishes to a new construction home, featuring quartz countertops, stainless steel kitchen appliances, in-unit washer and dryer, and premium flooring. The floorplans are designed to support the communities we serve, including but not limited to, studios, one bedroom with one bath, two bedrooms with two baths, and a loft feature. Many communities offer recreational buildings for tenants to gather with neighbors, and entertain their families.

We utilize strategic partnerships with local real estate brokers and property management companies who specialize in their local markets. These partnerships keep our cost structure low while leveraging local market expertise. We sell our homes, land, and apartments through independent real estate brokers and sales representatives who assist potential buyers by providing them with basic floor plans, price information, development and construction timetables, and property tours. We rent our multi-family properties through property management companies who assist potential renters by providing them with floor plans, pricing information, tours of the apartments, and screening and processing applications.

Our marketing objective is to increase leads for potential homebuyers and tenants through strategic and dynamic marketing campaigns, including weekend and offsite signage, streaming and cable TV ads, printed collateral, public relations, and comprehensive digital marketing ads across various social media platforms and Google.

The home building revenues are recognized when home sales are finished, closed, and title and possession are transferred to the buyer. Our sales contracts typically require an earnest money deposit. Buyers are generally required to pay an additional deposit when they select options or upgrades for their homes. The amount of earnest money required varies between markets and communities but typically averages approximately 2.5% of the home's total purchase price. Most of our sales contracts stipulate when homebuyers cancel their contracts with us, following a specified period of time, we have the right to retain their earnest money and option deposits. Our sales contracts may also include contingencies that permit homebuyers to cancel and receive a partial or full refund of their deposits if they cannot obtain mortgage financing at prevailing or specified interest rates within a specified time period or if they cannot sell an existing home. The length of time between the signing of a sales contract for a home and delivery of the house to the buyer varies depending on customer preferences, permit approval, and construction cycles.

Our multi-family communities are constructed to satisfy market demand for available rental housing, and construction is generally facilitated when financing is secured. We begin renting the units once we have acquired occupancy permits with the intention to sell the project during construction or upon complete build-out of the project and rental stabilization.

### **Customer Relations, Quality Control, and Warranty Programs**

We pay particular attention to the product design process and carefully consider the quality and choice of materials to reduce building deficiencies. The quality and workmanship of the subcontractors we employ are monitored with regular inspections and evaluations, seeking to ensure all standards are met.

We maintain quality control and customer service staff whose role includes providing a positive experience for each customer throughout the pre-sale, sale, building, closing, and post-closing periods. We also provide post-sale customer support. Our quality and service initiatives include providing purchasers with a comprehensive walk-through of their home or apartment prior to closing.

#### ***Warranty Programs***

We provide each homeowner with product warranties covering workmanship and materials for one year from the time of closing and warranties covering structural systems for six years from the time of closing in connection with our general liability insurance policy. We believe our warranty program meets or exceeds terms customarily offered in the home building industry. The subcontractors who perform services also provide us with customary warranties on their workmanship.

### **Materials**

When constructing our projects, we use various materials and components. The typical build time for our single-family homes is six to 12 months, and for our multi-family communities is 18 to 24 months, during which time materials are subject to price fluctuations. Such price fluctuations are caused by several factors, including seasonal variations in availability, international trade disputes and resulting tariffs, and increased demand for materials due to the improved market. The current state of the global supply chain and inflation has increased and may continue to increase our costs for certain materials, such as quartz slabs for countertops, finished hardware, lighting fixtures, appliances, and engineered hardwood used in residential flooring.

Our material suppliers are subcontractors that are licensed, bonded, and insured. Each subcontractor provides a bid for the materials and work required and is awarded a contract based on price, reputation, and ability to meet our time frames.

Our material suppliers provide us with credit terms for materials used in the construction of our projects. Credit terms typically range from a 30 to 60-day payment cycle following the delivery or installation of a product or service.

### **Seasonality**

We experience seasonal variations in our quarterly operating results and capital requirements. We typically experience the highest new home order activity in the spring and summer, although this activity also highly depends on the number of active selling communities, the timing of new community openings, and other market factors. Since it typically takes six to 12 months to construct a new home, we generally deliver more homes in the second half of the year as spring and summer home orders convert to home deliveries. Because of this seasonality, home starts, construction costs, and related cash outflows have historically been highest in the second and third quarters, and the majority of cash receipts from home deliveries occur during the second half of the year. We expect this seasonal pattern to continue over the long-term, although it may be affected by volatility in the homebuilding industry.

While the leasing side of multi-family communities can experience some seasonality during the winter holiday months, the construction side typically doesn't show seasonality patterns. The building process typically takes 18 to 24 months, depending on the size of the project, the site development scope, and other project or market factors.

### **Governmental Regulation and Environmental Matters**

We are subject to numerous local, state, federal, and other statutes, ordinances, rules, and regulations concerning zoning, development, building design, construction, and similar matters which impose restrictive zoning and density requirements in order to limit the number of homes that can eventually be built within the boundaries of a particular area. Projects that are not entitled may be subject to periodic delays, changes in use, less intensive development, or elimination of development in certain specific areas due to government regulations. We may also be subject to periodic delays or may be precluded entirely from developing in certain communities due to building moratoriums or "slow-growth" or "no-growth" initiatives that could be implemented in the future. Local and state governments also have broad discretion regarding the imposition of development fees for projects in their jurisdiction. Projects for which we have received land use and development entitlements or approvals may still require a variety of other governmental approvals and permits during the development process and can also be impacted adversely by unforeseen health, safety, and welfare issues, which can further delay these projects or prevent their development.

We are also subject to a variety of local, state, federal, and other statutes, ordinances, rules, and regulations concerning the environment. The particular environmental laws which apply to any given construction site vary according to the site's location, its environmental conditions, and the present and former uses of the site, as well as adjoining properties. Environmental laws and conditions may result in delays, may cause us to incur substantial compliance and other costs, and can prohibit or severely restrict building activity in environmentally sensitive regions or areas. From time to time, the Environmental Protection Agency (the "EPA") and similar federal or state agencies review builders' compliance with environmental laws and may levy fines and penalties for failure to strictly comply with applicable environmental laws or impose additional requirements for future compliance as a result of past failures. Any such actions imposed on us may increase our costs. Environmental regulations can also have an adverse impact on the availability and price of certain raw materials such as lumber.

Under various environmental laws, current or former owners of real estate, as well as certain other categories of parties, may be required to investigate and remediate hazardous or toxic substances or petroleum product releases and may be held liable to a governmental entity or to third parties for property damage and for investigation and remediation costs incurred by such parties in connection with the contamination. In addition, in cases where an endangered species is involved, environmental rules and regulations can result in the elimination of development in identified environmentally sensitive areas. To date, we have not experienced material loss related to an environmental matter.



## **Competition and Market Factors**

We face competition in the homebuilding industry, which is characterized by relatively low barriers to entry. Homebuilders compete for, among other things, homebuying customers, desirable land parcels, financing, raw materials, and skilled labor. Increased competition may prevent us from acquiring attractive land parcels on which to build homes, apartments, townhomes, or deliver finished lots, make such acquisitions more expensive, hinder our market share expansion, or lead to pricing pressures that may adversely impact our margins and revenues. Competitors may independently develop land and construct housing units that are superior or substantially similar to our products and because they are or may be significantly larger, have a longer operating history, and have greater resources or lower cost of capital than us, may be able to compete more effectively in one or more of the markets in which we operate or plan to operate. We also compete with other homebuilders with longer-standing relationships with subcontractors and suppliers in the markets in which we operate or plan to operate.

## **Human Capital**

As of March 28, 2023, we had 41 full-time employees; six of our employees are covered by a collective bargaining agreement.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors, and consultants. The principal purposes of our equity incentive plans are to attract, retain, and reward personnel through the granting of equity-based compensation awards in order to increase shareholder value and the success of our business by motivating such individuals to perform to the best of their abilities and achieve our objectives.

## **Available Information**

Our website address is [www.harborcustomdev.com](http://www.harborcustomdev.com). Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and other publicly filed documents, including all exhibits filed therewith, are available and may be accessed free of charge through the Investor Relations section of our website under the SEC Filings subsection, as soon as reasonably practicable after those documents are filed with, or furnished to, the SEC at [www.sec.gov](http://www.sec.gov). Also available through the Investor Relations section of our website are reports filed by our directors and executive officers on Forms 3, 4, and 5, and amendments to those reports. Our website and included or linked information on our website are not incorporated into this Annual Report.

## **ITEM 1A. RISK FACTORS**

Our business, results of operations, and financial condition are subject to numerous risks and uncertainties. In connection with any investment decision with respect to our securities, you should carefully consider the following risk factors, as well as the other information contained in this report and our other filings with the SEC. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. Should any of these risks materialize, our business, results of operations, financial condition and future prospects could be negatively impacted, which in turn could affect the trading value of our securities. You should read these Risk Factors in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Item 7 and our consolidated financial statements and related notes in Item 8. Additionally, some statements herein constitute forward-looking statements. Please refer to the section entitled “Cautionary Note Concerning Forward-Looking Statements.”

## **Business and Industry Risks:**

***We are subject to demand fluctuations in the housing market and the homebuilding industry. The recent decline in demand in the housing market may continue or decline further. Any continuation in the recent decline in demand or any further decline in demand for our homes or in the homebuilding industry generally may materially and adversely affect our business, results of operations, and financial condition.***

Demand for our homes is subject to fluctuations, often due to factors outside of our control. We cannot predict whether and to what extent the housing markets in the geographic areas in which we operate will grow, particularly if interest rates for mortgage loans, land costs, and construction costs continue to rise. Currently, we believe we are in a housing market downturn, since demand for our homes has decreased; our revenues and results of operations have been adversely affected; we have had significant inventory impairments and other write-offs; our gross margins have declined significantly from historical levels; and we incurred substantial losses from operations. Demand began softening during the second quarter of 2022 and continued to decline in the third and fourth quarters of 2022 primarily due to inflationary pricing, rapidly rising interest rates for mortgage loans, and high construction costs. Other factors that have impacted and may continue to impact the homebuilding industry include uncertainty in domestic and international financial, credit and consumer lending markets amid slow economic growth or recessionary conditions in various regions or industries around the world, tight lending standards and practices for mortgage loans that limit consumers' ability to qualify for mortgage financing to purchase a home, including increased minimum credit score requirements, credit risk/mortgage loan insurance premiums and/or other fees and required down payment amounts, higher home prices, more conservative appraisals, changing consumer preferences, decreased consumer confidence, higher loan-to-value ratios and extensive buyer income and asset documentation requirements, changes to mortgage regulations, slower rates of population growth or population decline in our markets, Federal Reserve policy changes, and other factors, including those described elsewhere in this Report. At any particular time, we cannot accurately predict whether housing market conditions existing at that time will continue.

If there is limited economic growth, declines in employment and consumer income, changes in consumer behavior, and/or tightening of mortgage lending standards, practices and regulation in the geographic areas in which we operate, or if interest rates for mortgage loans continue to rise, there could likely be a corresponding adverse effect on our business, prospects, liquidity, financial condition and results of operations, including, but not limited to, the number of homes we sell, our average sales price per home closed, cancellations of home purchase contracts and the amount of revenues or profits we generate, and such effect may be material.

***Regional factors affecting the homebuilding industry in our current markets could materially and adversely affect us.***

Our business strategy is focused on the acquisition of suitable land and the design, construction, and sale of residential housing in Washington, California, Texas, and Florida. A prolonged economic downturn in one or more of these areas, or a particular industry that is fundamental to one or more of these areas could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. If adverse conditions in these markets develop in the future, it could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. Furthermore, if buyer demand for new homes in these markets decreases, home prices could decline, which would have a material adverse effect on our business.

***Our industry is cyclical and adverse changes in general and local economic conditions could reduce the demand for homes and, as a result, could have a material adverse effect on us.***

Our business can be substantially affected by adverse changes in general economic or business conditions that are outside of our control, including changes in short-term and long-term interest rates; employment levels and job and personal income growth; housing demand from population growth, household formation and other demographic changes, among other factors; availability and pricing of mortgage financing for homebuyers; consumer confidence generally and the confidence of potential homebuyers in particular; consumer spending; financial system and credit market stability; private party and government mortgage loan programs (including changes in FHA, USDA, VA, Fannie Mae and Freddie Mac conforming mortgage loan limits, credit risk/mortgage loan insurance premiums and/or other fees, down payment requirements and underwriting standards), and federal and state regulation, oversight and legal action regarding lending, appraisal, foreclosure and short sale practices; federal and state personal income tax rates and provisions, including provisions for the deduction of mortgage loan interest payments, real estate taxes and other expenses; supply of and prices for available new or resale homes (including lender-owned homes); interest of financial institutions or other businesses in purchases; and real estate taxes. Adverse changes in these conditions may affect our business nationally or may be more prevalent or concentrated in particular submarkets in which we operate. Inclement weather, natural disasters (such as earthquakes, hurricanes, tornadoes, floods, prolonged periods of precipitation, droughts, and fires), other calamities and other environmental conditions can delay the delivery of our homes and/or increase our costs. Civil unrest or acts of terrorism can also have a negative effect on our business. If the homebuilding industry experiences a significant or sustained downturn, it would materially adversely affect our business and results of operations in future years. The potential difficulties described above can cause demand and prices for our homes to fall or cause us to take longer and incur more costs to develop the land and build our homes. We may not be able to recover these increased costs by raising prices because of market conditions. The potential difficulties described above could also lead some homebuyers to cancel or refuse to honor their home purchase contracts altogether.

***Tightening of mortgage lending standards and mortgage financing requirements, untimely or incomplete mortgage loan originations for our homebuyers and rising mortgage interest rates could adversely affect the availability of mortgage loans for potential purchasers of our homes and thereby materially and adversely affect our business, prospects, liquidity, financial condition, and results of operations.***

Almost all of our customers finance their home purchases through lenders that provide mortgage financing. Mortgage interest rates have generally trended downward for the last several decades and reached historic lows in the prior year which has made the homes we sell more affordable. However, the interest rates have significantly jumped in the recent year. When mortgage interest rates increase, the ability of prospective homebuyers to finance home purchases may be adversely affected, and, as a result, our operating results may be significantly negatively impacted. Our homebuilding activities are dependent upon the availability of mortgage financing to homebuyers, which is expected to be impacted by continued regulatory changes and fluctuations in the risk appetites of lenders. The financial documentation, down payment amounts and income to debt ratio requirements are subject to change and could become more restrictive. The federal government has a significant role in supporting mortgage lending through its conservatorship of Federal National Mortgage Association (“Fannie Mae”) and Federal Home Loan Mortgage Corporation (“Freddie Mac”), both of which purchase or insure mortgage loans and mortgage loan-backed securities, and its insurance of mortgage loans through or in connection with the Federal Housing Administration (“FHA”), the Veterans Administration (“VA”) and the U.S. Department of Agriculture (“USDA”). FHA and USDA backing of mortgage loans has been particularly important to the mortgage finance industry and to our business. If either the FHA or USDA raised their down payment requirements or lowered maximum loan amounts, our business could be materially affected. Increased lending volume and losses insured by the FHA have resulted in a reduction of the FHA insurance fund. The USDA rural development program provides for zero down payment and 100% financing for homebuyers in qualifying areas. If the USDA program was discontinued or if funding was decreased, then our business could be adversely affected. In addition, if the USDA changed its determination of areas that are eligible to qualify for the program, it could have an adverse effect on our business. In addition, changes in governmental regulation with respect to mortgage lenders could adversely affect demand for housing. The availability and affordability of mortgage loans, including mortgage interest rates for such loans, could also be adversely affected by a scaling back or termination of the federal government’s mortgage loan-related programs or policies. Because Fannie Mae-, Freddie Mac-, FHA-, USDA- and VA-backed mortgage loans have been an important factor in marketing and selling many of our homes, any limitations, or restrictions in the availability of, or higher consumer costs for, such government-backed financing could adversely affect our business, prospects, liquidity, financial condition, and results of operations. The elimination or curtailment of state bonds to assist homebuyers could materially and adversely affect our business, prospects, liquidity, financial condition, and results of operations. In addition, certain current regulations impose, and future regulations may strengthen or impose new, standards and requirements relating to the origination, securitization, and servicing of residential consumer mortgage loans, which could further restrict the availability and affordability of mortgage loans and the demand for such loans by financial intermediaries and, as a result, adversely affect our home sales, financial condition, and results of operations. Further, if, due to credit or consumer lending market conditions, reduced liquidity, increased risk retention or minimum capital level obligations and/or regulatory restrictions related to certain regulations, laws or other factors or business decisions, these lenders refuse or are unable to provide mortgage loans to our homebuyers, or increase the costs to borrowers to obtain such loans, the number of homes we close and our business, prospects, liquidity, financial condition and results of operations may be materially adversely affected. First-time homebuyers are generally more affected by the availability of mortgage financing than other potential homebuyers. These homebuyers are a key source of demand for our new homes. A limited availability of suitable mortgage financing may adversely affect the volume and sales price of our home sales.

***Fluctuations in real estate values may require us to write-down the book value of our real estate assets.***

The homebuilding and land development industries are subject to significant variability and fluctuations in real estate values. As a result, we may be required to write-down the book value of our real estate assets in accordance with GAAP, and some of those write-downs could be material. Any material write-downs of assets could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations.

***We may be required to take write-downs or write-offs, restructuring, and impairment or other charges that could have a significant negative effect on our financial condition, results of operations, and our stock price, which could cause you to lose some or all of your investment.***

Factors outside of our business and outside of our control may arise. As a result of these factors, we may be forced to write down or write off assets, restructure operations, or incur impairment or other charges that could result in losses. Further, unexpected risks may arise, and previously known risks may materialize in a manner not consistent with our risk analysis. Even though these charges may be non-cash items and not have an immediate impact on our liquidity, the fact that we report charges of this nature could contribute to negative market perceptions about us or our securities. Accordingly, our securities could suffer a reduction in value.

***Because real estate is illiquid, we may not be able to sell properties when in our best interest.***

Sometimes, real estate may not be sold quickly. The capitalization rates at which properties may be sold could be higher than historic rates, thereby reducing our potential proceeds from sale. Consequently, we may not be able to alter our inventory promptly in response to changes in economic or other conditions. All of these factors reduce our ability to respond to changes in the performance of our inventory and could adversely affect our business, financial condition, and results of operations.

***Inflation could adversely affect our business and financial results.***

Inflation could adversely affect our business and financial results by increasing the costs of land, raw materials and labor needed to operate our business. If our markets have an oversupply of homes, relative to demand, we may be unable to offset any such increases in costs with corresponding higher sales prices for our homes. During 2022, we experienced the fastest interest rate increase cycle since the 1980s. The Federal Reserve has already made an interest rate increase in 2023 and may again raise interest rates in the near future to combat the effects of inflation. These interest rate increases have adversely impacted and could continue to adversely impact potential customers' ability to obtain financing on favorable terms, thereby further decreasing demand. If we are unable to raise the prices of our homes to offset the increasing costs of our operations, our margins could decrease. Furthermore, if we need to lower the price of our homes to meet demand, the value of our land inventory may decrease. Inflation may also raise our costs of capital and decrease our purchasing power, making it more difficult to maintain sufficient funds to operate our business.

***Reduced numbers of home sales extend the time it takes us to recover land purchase and property development costs, negatively impacting profitability and our results of operations.***

We incur many costs even before we begin to build homes in a community. Depending on the stage of development a land parcel is in when we acquire it, these may include costs of preparing land, financing, finishing and entitling lots, installing roads, sewers, water systems and other utilities, taxes and other costs related to ownership of the land on which we plan to build homes. If the rate at which we sell and deliver homes slows, or if we delay the opening of new home communities, we may incur additional pre-construction costs and it may take longer for us to recover our costs, which could adversely affect our profitability and results of operations.

***Development, redevelopment and construction risks could affect our profitability.***

We intend to continue to develop multi-family home communities. These activities can include long planning and entitlement timelines and can involve complex and costly activities, including significant environmental remediation or construction work in high-density urban areas. These activities may expose us to the following risks, among others:

- we may abandon opportunities that we have already begun to explore for a number of reasons, including changes in local market conditions or increases in construction or financing costs, and, as a result, we may fail to recover expenses already incurred in exploring those opportunities;
- occupancy rates and rents at a community may fail to meet our original expectations for a number of reasons, including changes in market and economic conditions beyond our control and the development by competitors of competing communities;
- we may be unable to obtain, or experience delays in obtaining, necessary zoning, occupancy or other required governmental or third party permits and authorizations, which could result in increased costs, or the delay or abandonment of opportunities;
- we may incur costs that exceed our original estimates due to increased material, labor or other costs;

- we may be unable to complete construction of a community on schedule or for the originally projected cost resulting in increased construction and financing costs;
- we may incur liabilities to third parties during the development process; and
- we may incur liability if our communities are not constructed in compliance with the accessibility provisions of the Americans with Disabilities Acts, the Fair Housing Act or other federal, state or local requirements. Noncompliance could result in imposition of fines, an award of damages to private litigants and a requirement that we undertake structural modifications to remedy the noncompliance.

***Difficulties with appraisal valuations in relation to the proposed sales price of our homes could force us to reduce the price of our homes for sale.***

Each of our home sales may require an appraisal of the home value before closing. These appraisals are professional judgments of the market value of the property and are based on a variety of market factors. If our internal valuations of the market and pricing do not line up with the appraisal valuations and appraisals are not at or near the agreed upon sales price, we may be forced to reduce the sales price of the home to complete the sale. These appraisal issues could have a material adverse effect on our business and results of operations.

***Unfavorable changes in market and economic conditions could adversely affect occupancy, rental rates, operating expenses, and the overall market value of our real estate assets.***

Local conditions in our markets significantly affect occupancy, rental rates and the operating performance of our properties, and may be adversely affected by the following risks:

- corporate restructurings and/or layoffs, and industry slowdowns;
- an oversupply of, or a reduced demand for, apartment homes;
- a decline in household formation or employment or lack of employment growth;
- the inability or unwillingness of residents to pay rent increases; and
- economic conditions that could cause an increase in our operating expenses, such as increases in property taxes, utilities, compensation of on-site associates and routine maintenance.

***Changes to population growth rates in certain of the markets in which we operate or plan to operate could affect the demand for homes in these regions.***

Slower rates of population growth or population declines in our markets in Washington, California, Texas, Florida, or other key markets in the United States that we may decide to enter in the future, especially as compared to the high population growth rates in prior years, could affect the demand for housing, cause home prices in these markets to fall and adversely affect our plans for growth, business, financial condition, and operating results.

***A major health and safety incident relating to our business could be costly in terms of potential liabilities and reputational damage.***

Building sites are inherently dangerous and operating in the homebuilding and land development industry poses certain inherent health and safety risks. Due to health and safety regulatory requirements and the number of projects we work on, health and safety performance is critical to the success of all areas of our business. Any failure in health and safety performance may result in penalties for non-compliance with relevant regulatory requirements or litigation, and a failure that results in a major or significant health and safety incident is likely to be costly in terms of potential liabilities incurred as a result. Such a failure could generate significant negative publicity and have a corresponding impact on our reputation and our relationships with relevant regulatory agencies, governmental authorities, and local communities, which in turn could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations.

***Development of properties entails a lengthy, uncertain, and costly entitlement process.***

Approval to develop real property sometimes requires political support and generally entails an extensive entitlement process involving multiple and overlapping regulatory jurisdictions and often requires discretionary action by local governments. Real estate projects must generally comply with local land development regulations and may need to comply with state and federal regulations. We incur substantial costs to comply with legal and regulatory requirements. An increase in legal and regulatory requirements may cause us to incur substantial additional costs, or in some cases cause us to determine that the property is not feasible for development. In addition, our competitors and residents may challenge our efforts to obtain entitlements and permits for the development of properties. The process to comply with these regulations is usually lengthy and costly, may not result in the approvals we seek and can be expected to materially affect our development activities.

***We cannot make any assurances that our growth or expansion strategies will be successful or not expose us to additional risks.***

We have expanded our business through selected investments in new geographic markets and by diversifying our products in certain markets. Investments in land, finished lots and home inventories can expose us to risks of economic loss and inventory impairments if housing conditions weaken or we are unsuccessful in implementing our growth strategies. We may develop communities in which we build homes, sell acreage home sites as a part of the development, and sell homes. We can give no assurance that we will be able to successfully identify, acquire, or implement these new strategies in the future. Accordingly, any such expansion could expose us to significant risks, beyond those associated with operating our existing business, including understanding and complying with the laws and regulations of new jurisdictions, diversion of our management's attention from ongoing business concerns, and incurrence of unanticipated liabilities and expenses and may materially adversely affect our business, prospects, liquidity, financial condition, and results of operations.

***The homebuilding industry is highly competitive and, if our competitors are more successful or offer better value to customers, it may materially and adversely affect our business and financial condition.***

We operate in a very competitive environment that is characterized by competition from a number of other homebuilders and land developers in each geographical market in which we operate. There are relatively low barriers to entry into the homebuilding business. We compete with numerous large national and regional homebuilding companies and with smaller local homebuilders and land developers for, among other things, homebuyers, desirable land parcels, financing, raw materials and skilled management and labor resources. If we are unable to compete effectively in our markets, our business could decline disproportionately to the businesses of our competitors and our financial condition could be materially and adversely affected. Increased competition could hurt our business by preventing us from acquiring attractive land parcels on which to build homes or making acquisitions more expensive, hindering our market share expansion and causing us to increase selling incentives and reduce prices. Additionally, an oversupply of homes available for sale or a discounting of home prices could materially and adversely affect pricing for homes in the markets in which we operate. We also compete with the resale, or "previously owned," home market, the size of which may change significantly as a result of changes in the rate of home foreclosures, which is affected by changes in economic conditions both nationally and locally. We may be at a competitive disadvantage with regard to certain large national and regional homebuilding competitors whose operations are more geographically diversified, as these competitors may be better able to withstand any future regional downturn in the housing market. We compete directly with a number of large national and regional homebuilders that may have longer operating histories and greater financial and operational resources than we do, including a lower cost of capital. Many of these competitors also have longstanding relationships with subcontractors, local governments, and suppliers in the markets in which we operate or in which we may operate in the future. This may give our competitors an advantage in securing materials and labor at lower prices, marketing their products and allowing their homes to be delivered to customers more quickly and at more favorable prices. This competition could reduce our market share and limit our ability to expand our business.

***Our geographic concentration could materially and adversely affect us if the homebuilding industry in our current markets should experience a decline.***

Our current business involves the design, construction, and sale of properties in growing markets in Washington, California, Florida, and Texas. Because our operations are concentrated in these areas, a prolonged economic downturn affecting one or more of these areas, or affecting any sector of employment on which the residents of such area are dependent, could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. Accordingly, our sales, results of operations, financial condition and business would be negatively impacted by a decline in the economy, the job sector, or the homebuilding industry in the regions in which our operations are concentrated. In addition, our ability to acquire land parcels for new homes may be adversely affected by changes in the general availability of land parcels, the willingness of land sellers to sell land parcels at reasonable prices, competition for available land parcels, availability of financing to acquire land parcels, zoning, and other market conditions. If the supply of land parcels appropriate for development of homes is limited in our markets, or for any other reason, our ability to grow could be significantly limited, and the number of homes that we build, and sell could decline.

***Any joint venture investments that we make could be adversely affected by our lack of sole decision-making authority, our reliance on the financial condition of our joint venture partners and disputes between us and our joint venture partners.***

We may co-invest in the future with third parties through partnership, joint ventures, or other entities, acquiring non-controlling interests in or sharing responsibility for managing the affairs of a land acquisition and/or a development. In this event, we would not be in a position to exercise sole decision-making authority regarding the acquisition and/or development, and our investment may be illiquid due to our lack of control. Investments in partnerships, joint ventures, or other entities may, under certain circumstances, involve risks not present were a third-party not involved, including the possibility that our joint venture partners might become bankrupt, fail to fund their share of required capital contributions, make poor business decisions, or block or delay necessary decisions. Our joint venture partners may have economic or other business interests or goals which are inconsistent with our business interests or goals and may be in a position to take actions contrary to our policies or objectives. Such investments may also have the potential risk of impasses on decisions, such as a sale, because neither we nor our joint venture partners would have full control over the land acquisition or development. Disputes between us and our joint venture partners may result in litigation or arbitration that would increase our expenses and prevent our officers and/or directors from focusing their time and effort on our business. In addition, we may in certain circumstances be liable for the actions of our joint venture partners.

***Natural disasters, severe weather and adverse geological conditions may increase costs, cause project delays, and reduce consumer demand for housing, all of which could materially and adversely affect us.***

Our homebuilding and development operations are located in many areas that are subject to natural disasters, severe weather or adverse geological conditions. These include, but are not limited to, hurricanes, tornadoes, droughts, floods, brushfires, wildfires, prolonged periods of precipitation, landslides, soil subsidence, earthquakes, and other natural disasters. The occurrence of any of these events could damage our land parcels and projects, cause delays in completion of our projects, reduce consumer demand for housing, and cause shortages and price increases in labor or raw materials, any of which could affect our sales and profitability. In addition to directly damaging our land or projects, many of these natural events could damage roads and highways providing access to our assets or affect the desirability of our land or projects, thereby adversely affecting our ability to market homes or sell land in those areas and possibly increasing the costs of homebuilding completion. Furthermore, the occurrence of natural disasters, severe weather and other adverse geological conditions has increased in recent years due to climate change and may continue to increase in the future. Climate change may have the effect of making the risks described above occur more frequently and more severely, which could amplify the adverse impact on our business, prospects, liquidity, financial condition, and results of operations. There are some risks of loss for which we may be unable to purchase insurance coverage. For example, losses associated with hurricanes, landslides, prolonged periods of precipitation, earthquakes and other weather-related and geologic events may not be insurable and other losses, such as those arising from terrorism, may not be economically insurable. A sizeable uninsured loss could materially and adversely affect our business, prospects, liquidity, financial condition, and results of operations.

***If we are unable to develop or construct our properties successfully or within expected time-frames, our results of operations could be adversely affected.***

It can take some time to generate revenue after we acquire land for developed lots, homes, and multi-family properties. Delays in the development and construction, including delays associated with subcontractors performing the development activities or entitlements, expose us to the risk of changes in market conditions for real estate. A decline in our ability to develop and market our real estate successfully and to generate positive cash flow from these operations in a timely manner could have a material adverse effect on our business and results of operations and on our ability to service our debt and to meet our working capital requirements.

***New and existing laws and regulations or other governmental actions may increase our expenses, limit our operations where we can purchase and build or delay completion of our projects.***

We are subject to numerous local, state, federal and other statutes, ordinances, rules, and regulations concerning zoning, development, building design, construction, accessibility, anti-discrimination, and other matters, which, among other things, impose restrictive zoning and density requirements, the result of which is to limit our operations within the boundaries of a particular area. We may encounter issues with entitlement, not identify all entitlement requirements during the pre-development review of a project site, or encounter zoning changes that impact our operations. Projects for which we have not received land use and development entitlements, or approvals may be subjected to periodic delays, changes in use, less intensive development, or elimination of development in certain specific areas due to government regulations. We may also be subject to periodic delays or may be precluded entirely from developing in certain communities due to building moratoriums or zoning changes. Such moratoriums generally relate to insufficient water supplies, sewage facilities, delays in utility hook-ups, or inadequate road capacity within specific market areas or subdivisions. Local governments also have broad discretion regarding the imposition of development fees for projects in their jurisdiction. Projects for which we have received land use and development entitlements, or approvals may still require a variety of other governmental approvals and permits during the development process and can also be impacted adversely by unforeseen health, safety, and welfare issues, which can further delay these projects or prevent their development. As a result of any of these statutes, ordinances, rules or regulations, the timing of our home sales could be delayed, the number of our home sales could decline and/or our costs could increase, which could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations.

***We are subject to environmental, health and safety laws and regulations, which may increase our costs, result in liabilities, limit the areas in which we can operate and delay completion of our projects.***

We are subject to a variety of local, state, federal and other laws, statutes, ordinances, rules, and regulations concerning the environment, hazardous materials, the discharge of pollutants and human health and safety. The particular environmental requirements that apply to any given site vary according to multiple factors, including the site's location, its environmental conditions, the present and former uses of the site, the presence or absence of endangered plants or animals or sensitive habitats, and environmental conditions at adjoining or nearby properties. We may not identify all of these concerns during any pre-acquisition or pre-development review of project sites. Environmental requirements and conditions may result in delays, may cause us to incur substantial compliance and other costs, and can prohibit or severely restrict development and homebuilding activity in environmentally sensitive regions or in areas contaminated by others before we commence development. In some instances, regulators from different governmental agencies do not concur on development, remedial standards or property use restrictions for a project, and the resulting delays or additional costs can be material for a given project. From time to time, the EPA and similar federal, state, or local agencies review land developers' and homebuilders' compliance with environmental laws and may levy fines and penalties, among other sanctions, for failure to strictly comply with applicable environmental laws, including those applicable to control storm water discharges during construction, or impose additional requirements for future compliance as a result of past failures. Any such actions taken with respect to us may increase our costs and result in project delays. Further, we expect that increasingly stringent requirements will be imposed on land developers and homebuilders in the future. We cannot assure you that environmental, health and safety laws will not change or become more stringent in the future in a manner that could have a material adverse effect on our business.

***Environmental laws and regulations relating to climate change and energy can have an adverse impact on our activities, operations, and profitability and on the availability and price of certain raw materials, such as lumber, steel, and concrete.***

There is a growing concern from advocacy groups and the general public that the emissions of greenhouse gases and other human activities have caused, and will continue to cause, significant changes in weather patterns and temperatures and the frequency and severity of natural disasters. Government mandates, standards and regulations enacted in response to these projected climate change impacts and concerns could result in restrictions on land development in certain areas or increased energy, transportation, and raw material costs. As climate change concerns continue to grow, legislation, regulations, mandates, standards, and other requirements of this nature are expected to continue to be enacted and become costlier for us to comply with. Similarly, energy-related initiatives affect a wide variety of companies throughout the United States and because our operations are heavily dependent on significant amounts of raw materials, such as lumber, steel, and concrete, these initiatives could have an adverse impact on our operations and profitability to the extent the manufacturers and suppliers of our materials are burdened with expensive cap and trade or similar energy-related regulations.

***Increases in cancellations of agreements of sale could have an adverse effect on our business.***

Our backlog reflects agreements of sale with our buyers for properties that have not yet been delivered. We typically receive a deposit from our buyers for each property, which is reflected in our backlog, and we generally have the right to retain the deposit if the buyer does not complete the purchase. In some situations, however, a buyer may cancel the agreement of sale and receive a complete or partial refund of the deposit for reasons such as state and local law, an inability to obtain mortgage financing at prevailing interest rates (including financing arranged or provided by us), an inability to sell the current property, or our inability to complete and deliver the property within the specified time. If mortgage financing becomes less accessible, or if economic conditions deteriorate, buyers may cancel their agreements of sale with us, which could have an adverse effect on our business and results of operations.

***Third-party lenders may not complete mortgage loan originations for our homebuyers in a timely manner or at all, which can lead to cancellations and a reduction in the backlog of orders, or significant delays in our closing homes sales and recognizing revenues from those homes.***

Our buyers may obtain mortgage financing for their home purchases from any lender or other provider of their choice, including an unaffiliated lender. If, due to credit or consumer lending market conditions, regulatory requirements, or other factors or business decisions, these lenders refuse or are unable to provide mortgage loans to our buyers, the number of homes that we deliver, and our consolidated financial statements may be materially and adversely affected. We can provide no assurance as to a lenders' ability or willingness to complete, in a timely fashion or at all, the mortgage loan originations they start for our homebuyers. Such inability or unwillingness may result in mortgage loan funding issues that slow deliveries of our homes or cause cancellations, which in each case may have a material adverse effect on our consolidated financial statements. In addition, recent changes to mortgage loan disclosure requirements to consumers may potentially delay lenders' completion of the mortgage loan funding process for borrowers. Specifically, the Consumer Financial Protection Bureau has adopted a rule governing the content and timing of mortgage loan disclosures to borrowers, commonly known as TILA-RESPA Integrated Disclosures ("TRID"). Lender compliance with TRID could result in delays in loan closings and the delivery of homes that materially and adversely affect our financial results and operations.



***Our business and results of operations are dependent on the availability, skill, and performance of subcontractors.***

We engage subcontractors to perform the construction of our single and multifamily homes and, in many cases, to select and obtain the raw materials used in constructing our homes. Accordingly, the timing and quality of our construction depend on the availability and skill of our subcontractors. In addition, as we expand into new markets, we typically must develop new relationships with subcontractors in such markets, and there can be no assurance that we will be able to do so in a cost-effective and timely manner, or at all. The inability to contract with skilled subcontractors at reasonable rates on a timely basis could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. Despite our quality control and jobsite safety efforts, we may discover from time to time that our subcontractors have engaged in improper construction or safety practices or have installed defective materials in our homes. When we discover these issues, we utilize our subcontractors to repair the homes in accordance with our new home warranty and as required by law. The adverse costs of satisfying our warranty and other legal obligations in these instances may be significant and we may be unable to recover the costs of warranty-related repairs from subcontractors, suppliers, and insurers, which could have a material adverse impact on our business, prospects, liquidity, financial condition, and results of operations. We may also suffer reputational damage from the actions of subcontractors, which are beyond our control.

***We rely on third-party suppliers and long supply chains, and if we fail to identify and develop relationships with a sufficient number of qualified suppliers, or if there is a significant interruption in our supply chains, our ability to timely and efficiently access raw materials that meet our standards for quality could be adversely affected.***

Our ability to identify and develop relationships with qualified suppliers who can satisfy our standards for quality and our need to access products and supplies in a timely and efficient manner is a significant challenge. We may be required to replace a supplier if their products do not meet our quality or safety standards. In addition, our suppliers could discontinue selling products at any time for reasons that may or may not be in our control or the suppliers' control. Our operating results and inventory levels could suffer if we are unable to promptly replace a supplier who is unwilling or unable to satisfy our requirements with a supplier providing similar products. Our suppliers' ability to deliver products may also be affected by financing constraints caused by credit market conditions, which could negatively impact our revenue and cost of products sold, at least until alternate sources of supply are arranged.

***Labor and raw material shortages and price fluctuations could delay or increase the cost of home construction, which could materially and adversely affect us.***

The residential construction industry experiences labor and raw material shortages from time to time, including shortages in qualified subcontractors and tradespeople and supplies of insulation, drywall, cement, steel, and lumber. These labor and raw material shortages can be more severe during periods of strong demand for housing, during periods following natural disasters that have a significant impact on existing residential structures or as a result of broader economic or geopolitical disruptions. It is uncertain whether these shortages will continue as is, improve or worsen. In addition, our activities in recently entered markets or those we may choose to enter in the future depends substantially on our ability to source labor and local materials on terms that are favorable to us. Our markets may exhibit a reduced level of skilled labor relative to increased homebuilding demand in these markets. In the event of shortages in labor or raw materials in such markets, local subcontractors, tradespeople, and suppliers may choose to allocate their resources to homebuilders with an established presence in the market and with whom they have longer-standing relationships. Furthermore, the cost of labor and raw materials may also increase during periods of shortage or high inflation. During the economic downturn in 2007 through 2012, a large number of qualified trade partners went out of business or otherwise exited the market into new fields. Price increases could cause delays in and increase our costs of home construction, which we may not be able to recover by raising home prices due to market demand and because the price for each home is typically set prior to its delivery pursuant to the agreement of sale with the homebuyer. In addition, the federal government has, at various times, imposed tariffs on a variety of imports from foreign countries and may impose additional tariffs in the future. Significant tariffs or other restrictions placed on raw materials that we use in our homebuilding operation, such as lumber or steel, could cause the cost of home construction to increase, which we may not be able to recover by raising home prices or which could slow our absorption due to being constrained by market demand. Labor and raw material shortages and price increases for labor and raw materials could cause delays in and increase our costs of home construction, which in turn could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. We have experienced delays or increased costs for certain materials, such as cabinets, electrical components, and appliances, which has had a material adverse effect on our financial condition and results of operations. If the current state of the global supply chain continues, such delays or costs may continue to increase, which may further affect our business.

***New trade policies could make sourcing raw materials from foreign countries more difficult and more costly.***

The federal government from time to time imposes new or increased tariffs or duties on an array of imported materials and goods that are used in connection with the construction and delivery of homes, including steel, aluminum, lumber, solar panels and washing machines, and has threatened to impose further tariffs, duties, or trade restrictions on imports. Foreign governments, including China, Russia, and the European Union, have responded by imposing or increasing tariffs, duties, or trade restrictions on U.S. goods, and are reportedly considering other measures. These trading conflicts and related escalating governmental actions that result in additional tariffs, duties or trade restrictions could cause disruptions or shortages in our supply chains, increase our construction costs or home-building costs generally or negatively impact the U.S., regional or local economies, and individually or in the aggregate, materially and adversely affect our financial results.

***We may change our operational policies, investment guidelines, and our business and growth strategies without stockholder consent, which may subject us to different and more significant risks in the future.***

Our board of directors will determine our operational policies, investment guidelines, and our business and growth strategies. Our board of directors may make changes to, or approve transactions that deviate from, those policies, guidelines, and strategies without a vote of, or notice to, our stockholders. This could result in us conducting operational matters, making investments, or pursuing different business or growth strategies than those contemplated in this Annual Report. Under any of these circumstances, we may expose ourselves to different and more significant risks in the future, which could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations.

***We could be adversely affected by efforts to impose joint employer liability on us for labor law violations committed by our subcontractors.***

Our homes are constructed by employees of subcontractors and other third parties. We do not have the ability to control what these parties pay their employees or the rules they impose on their employees. However, various governmental agencies have taken actions to hold parties like us responsible for violations of wage and hour laws and other labor laws by subcontractors. Governmental rulings that hold us responsible for labor practices by our subcontractors could create substantial exposures for us under our subcontractor relationships, which could have a material adverse impact on our business, prospects, liquidity, financial condition, and results of operations.

***Our quarterly operating results fluctuate due to the seasonal nature of our business.***

Our quarterly operating results generally fluctuate by season. We typically experience the highest new home order activity in the spring and summer, although this activity is also highly dependent on the number of active selling communities, timing of new community openings, and other market factors. Since it typically takes six to 12 months to construct a new home, we usually deliver more homes in the second half of the year as spring and summer home orders convert to home deliveries. Because of this seasonality, home starts, construction costs, and related cash outflows have historically been highest in the second and third quarters and the majority of cash receipts from home deliveries occurs during the second half of the year. We expect this seasonal pattern to continue over the long-term, although it may be affected by volatility in the homebuilding industry.

***Risks associated with our land and lot inventories could adversely affect our business or financial results.***

Risks inherent in controlling, purchasing, holding, and developing land for new home construction are substantial. The risks inherent in purchasing and developing land parcels increase as consumer demand for housing decreases and the holding period increases. As a result, we may buy and develop land parcels on which homes cannot be profitably built and sold. In certain circumstances, a grant of entitlements or development agreement with respect to a particular parcel of land may include restrictions on the transfer of such entitlements to a buyer of such land, which could negatively impact the price of such entitled land by restricting our ability to sell it for its full entitled value. In addition, inventory carrying costs can be significant and can result in reduced margins or losses in a poorly performing community or market. Developing land and constructing homes takes a significant amount of time and requires a substantial cash investment. Land development is a key part of our operations, and we develop land in most of our markets. The time and investment required for development may adversely impact our business. We have substantial real estate inventories that regularly remain on our balance sheet for significant periods of time prior to their sale, during which time we are exposed to the risk of adverse market developments. Our business model is based on building homes before a sales contract is executed and a customer deposit is received. Interest and other expenses are capitalized until sold. In the event there is a downturn in home sales in our markets, our inventory of completed homes could increase, leading to additional financing costs and lower margins, which could have a material adverse effect on our financial results and operations. In the event of significant changes in economic or market conditions, we may have to sell homes at significantly lower margins or at a loss, if we are able to sell them at all. Additionally, deteriorating market conditions could cause us to record significant inventory impairment charges. The recording of a significant inventory impairment could negatively affect our reported earnings per share and negatively impact the market perception of our business.

***The long-term sustainability and growth in our home closings depends in part upon our ability to acquire land parcels suitable for residential projects at reasonable prices.***

The long-term sustainability of our operations as well as future growth depends in large part on the price at which we are able to obtain suitable land parcels for development or homebuilding operation. Our ability to acquire land parcels for various residential projects may be adversely affected by changes in the general availability of land parcels, the willingness of land sellers to sell land parcels at reasonable prices, competition for available land parcels, availability of financing to acquire land parcels, zoning, regulations that limit housing density, the ability to obtain building permits, environmental requirements and other market conditions and regulatory requirements. If suitable lots or land at reasonable prices become less available, the number of homes we may be able to build and sell could be reduced, and the cost of land could be increased substantially, which could adversely impact us. As competition for suitable land increases, the cost of undeveloped lots and the cost of developing owned land could also rise and the availability of suitable land at acceptable prices may decline, which could adversely impact us. The availability of suitable land assets could also affect the success of our land acquisition strategy, which may impact our ability to maintain or increase the number of our active communities, as well as to sustain and grow our revenues and margins, and achieve or maintain profitability. Additionally, developing undeveloped land is capital intensive and time consuming and we may develop land based upon forecasts and assumptions that prove to be inaccurate, resulting in projects that are not economically viable.

***We are subject to warranty and liability claims arising in the ordinary course of business that can be significant.***

As a homebuilder and developer, we are subject to construction defect, product liability and home and other warranty claims, including moisture intrusion and related claims, arising in the ordinary course of business. These claims are common to the homebuilding industry and can be costly. There can be no assurance that any developments we undertake will be free from defects once completed and any defects attributable to us may lead to significant contractual or other liabilities. We rely on subcontractors to perform the construction of our homes and, in some cases, to select and obtain building materials. Although we provide subcontractors with detailed specifications and perform quality control procedures, subcontractors may, in some cases, use improper construction processes or defective materials. Defective products used in the construction of our homes can result in the need to perform extensive repairs. The cost of performing such repairs, or litigation arising out of such issues, may be significant if we are unable to recover the costs from subcontractors, suppliers and/or insurers. Warranty and construction defect matters can also result in negative publicity, including on social media outlets, which could damage our reputation and negatively affect our ability to sell homes. We maintain, and require our subcontractors to maintain, general liability insurance (including construction defect and bodily injury coverage) and workers' compensation insurance and generally seek to require our subcontractors to indemnify us for liabilities arising from their work. While these insurance policies, subject to deductibles and other coverage limits, and indemnities protect us against a portion of our risk of loss from claims related to our land development and homebuilding activities, we cannot provide assurance that these insurance policies and indemnities will be adequate to address all our home and other warranty, product liability and construction defect claims in the future, or that any potential inadequacies will not have an adverse effect on our business, financial condition or results of operations. Further, the coverage offered by, and the availability of, general liability insurance for completed operations and construction defects are currently limited and costly. We cannot provide assurance that coverage will not be further restricted, increasing our risks and financial exposure to claims, and/or become costlier.

***We may be unable to obtain suitable bonding for the development of our communities.***

We provide performance bonds and letters of credit in the ordinary course of business to governmental authorities and others to ensure the completion of our projects or in support of obligations to build community improvements such as roads, sewers, water systems and other utilities. We may also be required to provide performance bonds or letters of credit to secure our performance under various escrow agreements, financial guarantees, and other arrangements. If we are unable to obtain performance bonds or letters of credit when required or the cost or operational restrictions or conditions imposed by issuers to obtain them increases significantly, we may be significantly delayed in developing our communities or may incur significant additional expenses and, as a result, our financial condition and results of operations could be materially and adversely affected.

## Financial and Liquidity Risks:

***Our ability to operate and to respond to changing business and economic conditions depends on the availability of adequate capital. Failure to generate cash flow or obtain financing could have a material adverse effect on our financial condition and results of operation and could cast uncertainty on our ability to continue as a going concern.***

The continued operation of our business and our ability to respond to changing business and economic conditions depend on the availability of adequate capital, which in turn depends on cash flow generated by our business and, if necessary, the availability of equity or debt capital. We also require sufficient cash flow to meet our obligations under our existing debt agreements. (See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Liabilities and Quantitative And Qualitative Disclosures About Market Risk.) We cannot assure you that our cash flow from operations or cash available under our financing agreements will be sufficient to meet our needs. If we are unable to generate sufficient cash flows from operations in the future and if availability under our financing agreements is not sufficient or unavailable, we may have to obtain additional financing. If we obtain additional capital by issuing equity, the interests of our existing stockholders will be diluted. If we incur additional indebtedness, that indebtedness may contain significant financial and other covenants that may significantly restrict our operations. Uncertainty regarding our ability to continue as a going concern could also have a material and adverse impact on the price of our common stock which could negatively impact our ability to obtain stock-based financing. There can be no assurance that we will be successful in obtaining additional capital when and if needed. If we are unable to generate sufficient revenues, utilize existing financing facilities, or obtain new financing, we may have to delay, scale back, or terminate some of our proposed projects; liquidate assets at unfavorable prices; or not be able to continue operations and possibly seek bankruptcy protection. (See Note 1. to our Financial Statements, Nature of Operations and Summary of Significant Accounting Policies—Going Concern Uncertainty.)

***If we fail to meet the ongoing obligations of any of our loan agreements, our lenders could require a restructuring of the loan or declare a default under the loan agreement and accelerate the payments of all amounts due, which may require us to take drastic actions which could impact our results of operations.***

Some of our loan agreements contain financial covenants that we must meet over the course of the loan. There can be no guarantee that we will be able to meet these financial covenants at any given time. If any violations of such covenants are not cured within their applicable cure periods, a lender could declare a default. At the option of the lender, declaration of a default could require a restructuring of the loan with onerous requirements (see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—BankUnited Loan

Restructuring) or the lender could declare all amounts due under the loan immediately due and payable, in which case we would be required to pay all amounts of outstanding principal and interest immediately ("Acceleration"). If an Acceleration was demanded by a lender, we may not have cash available to pay the entire amount of the Acceleration and would have to borrow funds at egregious terms, raise dilutive financing, sell assets, or take other adverse actions and there can be no assurance that we would be successful in accomplishing any such remedial measures to satisfy an Acceleration.

On February 23, 2023, we entered into an Amendment to the Loan Agreement (the "Amendment") with BankUnited, N.A. ("BankUnited") which amended the terms of our March 2022 Loan Agreement (the "Loan Agreement") as a result of a restructuring of the Loan (as defined below) due to a default under the Loan Agreement when we failed to meet two financial covenants of the Loan Agreement. Pursuant to the Amendment, in exchange for BankUnited waiving its right to accelerate the debt and declaring all amounts under the Loan Agreement due and payable, we agreed to certain monthly payments, remittances of proceeds from certain sales, and pledging of certain collateral, among other things. (See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—BankUnited Loan Restructuring.) The restrictions in the Amendment with BankUnited may interfere with our ability to obtain additional financing or affect the way we structure such financing or engage in other business activities. If we default on the Amendment, BankUnited will be able to declare all amounts owed under the Loan immediately due and payable and will have full recourse to foreclose on all of our properties. In the event that this occurs, it will have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations.

A default on any of our obligations could also result in an event of default under certain of our other existing debt agreements (a "Cross-Default"). Declaration of a Cross-Default by other lenders would increase our financial pressures and could impact our ability to continue as a going concern. A Cross-Default could also significantly limit our alternatives to refinance our indebtedness.

***Difficulty in obtaining sufficient capital could result in an inability to acquire land or increased costs and delays in the completion of development projects, increase home construction costs or delay home construction entirely.***

The homebuilding and land development industry is capital-intensive and requires significant up-front expenditures to acquire land parcels and begin development. In addition, if housing markets are not favorable or permitting or development takes longer than anticipated, we may be required to hold our investments in land for extended periods of time. If internally generated funds are not sufficient, we may seek additional capital in the form of equity or debt financing from a variety of potential sources, including additional bank financings and/or securities offerings. The availability of borrowed funds, especially for land acquisition and construction financing, may be constrained regionally or nationally, and the lending community may require increased amounts of equity to be invested in a project by borrowers in connection with both new loans and the extension of existing loans. Since the global recession in 2008, credit and capital markets have, from time to time, experienced unusual volatility. If we are required to seek additional financing to fund our operations, continued volatility in these markets may restrict our flexibility to access such financing. Furthermore, any downgrade of our credit ratings or other negative rating actions by credit agencies may make it more difficult and costly for us to access capital. If we are not successful in obtaining sufficient funding for our planned capital and other expenditures or if we do not properly allocate our funding, we may be unable to acquire additional land for development and/or to construct new housing. Additionally, if we cannot obtain additional financing to fund the purchase of land under our purchase contracts, we may incur contractual penalties, fees, and increased expenses from the write-off of due diligence and pre-acquisition costs. Any difficulty in obtaining sufficient capital for planned development expenditures could also cause project delays and any such delay could result in cost increases. Any one or more of the foregoing events could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations.

***Access to financing sources may not be available on favorable terms, or at all, especially in light of current market conditions, which could adversely affect our ability to maximize our returns.***

Our access to additional third-party sources of financing will depend, in part, on:

- general market conditions;
- the market's perception of our growth potential;
- with respect to acquisition and/or development financing, the market's perception of the value of the land parcels to be acquired and/or developed;
- our current debt levels;
- our current and expected future earnings;
- our cash flow; and
- the market price per share of our common stock.

The global credit and equity markets and the overall economy can be extremely volatile, which could have a number of adverse effects on our operations and capital requirements. For the past decade, the domestic financial markets have experienced a high degree of volatility, uncertainty and, during certain periods, tightening of liquidity in both the high yield debt and equity capital markets, resulting in certain periods where new capital has been both more difficult and more expensive to access. If we are unable to access the credit markets, we could be required to defer or eliminate important business strategies and growth opportunities in the future. In addition, if there is volatility and weakness in the capital and credit markets, potential lenders may be unwilling or unable to provide us with financing that is attractive to us or may increase collateral requirements or may charge us prohibitively high fees in order to obtain financing. Consequently, our ability to access the credit market in order to attract financing on reasonable terms may be adversely affected. Investment returns on our assets and our ability to make acquisitions could be adversely affected by our inability to secure additional financing on reasonable terms, if at all. Depending on market conditions at the relevant time, we may have to rely more heavily on additional equity financings or on less efficient forms of debt financing that require a larger portion of our cash flow from operations, thereby reducing funds available for our operations, future business opportunities and other purposes. We may not have access to such equity or debt capital on favorable terms at the desired times, or at all.

***Our sources of liquidity are limited and may not be sufficient to meet our needs.***

We are largely dependent on our current cash balance and future cash flows from operations (which may not be positive) to enable us to service our indebtedness, to cover our operating expenses and/or to fund our other liquidity needs. Depending on the levels of our land purchases, we could generate positive or negative cash flow in future years. If the market conditions in the homebuilding industry deteriorate, our cash flows could be insufficient to fund our obligations and support land purchases, and if we cannot buy additional land, we would ultimately be unable to generate future revenues from the sale of houses. If our cash flows and capital resources are insufficient to fund our debt service obligations or we are unable to refinance our indebtedness, we may be forced to reduce or delay investments and capital expenditures, sell assets, seek additional capital, or restructure our indebtedness. These alternative measures may not be successful or, if successful, made on desirable terms and may not permit us to meet our debt service obligations. If our available cash and capital resources are insufficient to meet our debt service and other obligations, we could face liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. We may not be able to consummate those dispositions or the proceeds from the dispositions may not be permitted under the terms of our debt instruments to be used to service indebtedness or may not be adequate to meet any debt service obligations then due. For additional information about capital resources and liquidity. (See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources.)

***Our indebtedness could adversely affect our business, prospects, financial condition, or results of operations and prevent us from fulfilling our obligations under loan agreements.***

We have a significant amount of indebtedness. (See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Liabilities.) If we incur additional indebtedness, the risks related to our level of indebtedness could intensify. Specifically, an increased level of indebtedness could have negative ramifications, including but not limited to the following:

- making it more difficult for us to satisfy our obligations with respect to our indebtedness, including our loan agreements;
- limiting our ability to obtain additional financing to fund future working capital, capital expenditures, debt service requirements, execution of our business strategy or finance other general corporate requirements;
- requiring us to make non-strategic divestitures, particularly when the availability of financing in the capital markets is limited, which may adversely impact sales prices;
- requiring a substantial portion of our cash flow to be allocated to debt service payments instead of other business purposes, thereby reducing the amount of cash flow available for working capital, capital expenditures, acquisitions, dividends and other general corporate purposes;
- increasing our vulnerability to general adverse economic and industry conditions, including increases in interest rates, particularly given that certain indebtedness bears interest at variable rates;
- limiting our ability to capitalize on business opportunities, reinvest in and develop properties and to react to competitive pressures and adverse changes in government regulations;
- placing us at a disadvantage compared to other, less leveraged competitors;
- limiting our ability or increasing the costs to refinance indebtedness resulting in an event of default if we fail to satisfy our obligations under our indebtedness, which default could result in all or part of our indebtedness becoming immediately due and payable and, in the case of our secured debt, could permit the lenders to foreclose on our assets securing such debt.

***A breach of the covenants under any of the agreements governing our indebtedness could result in an event of default.***

A default under any of the agreements governing our indebtedness may allow our creditors to accelerate the related debt and may result in the acceleration of any other debt to which a cross-acceleration or cross-default provision applies. In addition, an event of default under the credit agreement governing our credit facility would permit the lenders thereunder to terminate all commitments to extend further credit under the applicable facility. Furthermore, if we were unable to repay the amounts due and payable under any secured indebtedness, those lenders could proceed against the collateral granted to them to secure that indebtedness. In the event our lenders or the holders of our notes accelerate the repayment of our borrowings, we cannot assure that we would have sufficient assets to repay such indebtedness. As a result of these restrictions, we may be:

- limited in how we conduct our business;
- unable to raise additional debt or equity financing to operate during general economic or business downturns;  
or
- unable to compete effectively or to take advantage of new business opportunities.

These restrictions may affect our ability to grow or continue our existing operations.

***Our stock price is volatile and could decline.***

The securities markets in general and our common stock in particular have experienced significant price and volume volatility. The market price and volume of our common stock may continue to experience significant fluctuations due not only to general stock market conditions, but also to a change in sentiment in the market regarding our industry, operations, or business prospects. The price and volume volatility of our common stock may be affected by:

- operating results that vary from the expectations of securities analysts and investors;
- factors influencing home purchases, such as higher interest rates and availability of home mortgage loans, credit criteria applicable to prospective borrowers, ability to sell existing residences and homebuyer sentiment in general;
- the operating and securities price performance of companies that investors consider comparable to us;
- announcements of strategic developments, acquisitions and other material events by us or our competitors; and
- changes in global financial markets and global economies and general market conditions, such as interest rates, commodity and equity prices and the value of financial assets.

Our ability to raise funds through the issuance of equity or otherwise use our common stock as consideration is impacted by the price of our common stock. A low stock price may adversely impact our ability to reduce our financial leverage, as measured by the ratio of total debt to total capital. Continued high levels of leverage or significant increases may adversely affect our credit ratings and make it more difficult for us to access additional capital. These factors may limit our ability to implement our operating and growth plans.

***We may not realize the value of our tax assets.***

Certain provisions of the Internal Revenue Code could limit our ability to fully utilize certain tax assets due to a previous change in control, or if we were to experience a future change in control. If such an event were to occur, the cash flow benefits we might otherwise have received could be decreased.

***Any limitation on, or reduction or elimination of tax benefits associated with homeownership would have an adverse effect upon the demand for homes, which could be material to our business.***

While tax laws generally permit significant expenses associated with homeownership, primarily mortgage interest expense and real estate taxes, to be deducted for the purpose of calculating an individual's federal and, in many cases, state taxable income, the ability to deduct mortgage interest expense and real estate taxes for federal income tax purposes is limited. The federal government or a state government may change its income tax laws by eliminating, limiting, or substantially reducing these income tax benefits without offsetting provisions, which may increase the after-tax cost of owning a new home for many of our potential homebuyers. Any such future changes may have an adverse effect on the homebuilding industry in general. For example, the loss or reduction of homeowner tax deductions could decrease the demand for new homes. Any such future changes could also have a material adverse impact on our business, prospects, liquidity, financial condition, and results of operations.

***Federal income tax credits available to builders of certain energy efficient new homes may not be extended by future legislation.***

On August 12, 2022, the U.S. Congress passed the Inflation Reduction Act of 2022, which President Biden signed into law on August 16, 2022. This Act extended the availability of Code Section 45L credit for energy efficient new homes ("federal energy efficient homes tax credits"), which provides a tax credit of \$5,000 per qualifying home to eligible homebuilders and made such tax credits available for homes delivered through December 31, 2032. It is uncertain whether an extension or similar tax credit will be adopted in the future.

***We may suffer uninsured losses or material losses in excess of insurance limits.***

We could suffer physical damage to property and liabilities resulting in losses that may not be fully recoverable by insurance. Insurance against certain types of risks, such as terrorism, earthquakes, floods, or personal injury claims, may be unavailable, available in amounts that are less than the full market value or replacement cost of investment or underlying assets or subject to a large deductible or self-insurance retention amount. In addition, there can be no assurance that certain types of risks that are currently insurable will continue to be insurable on an economically feasible basis. Should an uninsured loss or a loss in excess of insured limits occur or be subject to deductibles or self-insurance retention, we could sustain financial loss or lose capital invested in the affected property, as well as anticipated future income from that property. Furthermore, we could be liable to repair damage or meet liabilities caused by risks that are uninsured or subject to deductibles. We may also be liable for any debt or other financial obligations related to the affected property.

***Changes in accounting rules, assumptions and/or judgments could materially and adversely affect us.***

Accounting rules and interpretations for certain aspects of our financial reporting are highly complex and involve significant assumptions and judgment. These complexities could lead to a delay in the preparation and dissemination of our financial statements. Furthermore, changes in accounting rules and interpretations or in our accounting assumptions and/or judgments, such as those related to asset impairments, could significantly impact our financial statements. In some cases, we could be required to apply a new or revised standard retroactively, resulting in restating prior period financial statements. Any of these circumstances could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations.

***If we fail to implement and maintain an effective system of internal controls, we may not be able to accurately determine our financial results or prevent fraud. As a result, investors could lose confidence in our financial results, which could materially and adversely affect us.***

Effective internal controls are necessary for us to provide reliable financial reports and effectively prevent fraud. We may in the future discover areas of our internal controls that need improvement. We cannot be certain that we will be successful in maintaining adequate internal control over our financial reporting and financial processes. Furthermore, as we grow our business, our internal controls will become more complex, and we will require significantly more resources to ensure our internal controls remain effective. Additionally, the existence of any material weakness or significant deficiency would require management to devote significant time and incur significant expense to remediate any such material weakness or significant deficiency and management may not be able to remediate any such material weakness or significant deficiency in a timely manner. The existence of any material weakness in our internal control over financial reporting could also result in errors in our financial statements that could require us to restate our financial statements, cause us to fail to meet our reporting obligations and cause investors to lose confidence in our reported financial information, all of which could materially and adversely affect us.

**Organizational and Structural Risks:**

***Our performance may be negatively impacted by loss of key management personnel and other experienced employees.***

Our success depends to a significant degree upon the contributions of certain key management personnel, including, but not limited to, Sterling Griffin, our Chief Executive Officer and Chairman of our board of directors. Although we have entered into an employment agreement with Mr. Griffin, there is no guarantee that he will remain employed by us. Our ability to retain our key management personnel or to attract suitable replacements should any members of our management team leave is dependent on the competitive nature of the employment market. The loss of services from key management personnel or a limitation in their availability could materially and adversely impact our business, prospects, liquidity, financial condition, and results of operations. Further, such a loss could be negatively perceived in the capital markets. We have not obtained key man life insurance that would provide us with proceeds in the event of the death or disability of any of our key management personnel. Experienced employees in the homebuilding, land acquisition, development, and construction industries are fundamental to our ability to generate, obtain and manage opportunities. In particular, local knowledge and relationships are critical to our ability to source attractive land acquisition opportunities. Experienced employees working in the homebuilding, development and construction industries are highly sought after. Failure to attract and retain such personnel or to ensure that their experience and knowledge is not lost when they leave the business through retirement, redundancy, or otherwise, may adversely affect the standards of our service and may have an adverse impact on our business, prospects, liquidity, financial condition, and results of operations.



***Nasdaq may delist our securities from trading on its exchange which could limit investors' ability to make transactions in our securities and subject us to additional trading restrictions.***

Our common stock, preferred stock, and public warrants are listed on The Nasdaq Stock Market LLC ("Nasdaq"). As reported on a Current Report on Form 8-K filed on December 16, 2022, on December 13, 2022, we received a notification letter from the Nasdaq Listing Qualifications Staff notifying us that the closing bid price for our common stock was below \$1.00 for a period of 30 consecutive business days and had until June 12, 2023 to regain compliance with the minimum bid price continued listing standard. On March 6, 2023, we effected a 1-for-20 reverse stock split, and as of the date of this Annual Report, we are meeting the minimum bid price requirements. On March 20, 2023, we received written confirmation from Nasdaq that we had regained compliance with the minimum bid price continued listing standard. However, there can be no assurance that we will not violate another listing requirement or that our securities will continue to be listed on Nasdaq in the future. In order to continue listing our securities on Nasdaq, we must also maintain certain financial requirements in addition to the minimum bid price levels. In general, we must maintain a minimum number of holders of our securities. If Nasdaq delists any of our securities from trading on its exchange and we are not able to list our securities on another national securities exchange, we expect our securities could be quoted on an over-the-counter market. If this were to occur, we could face significant material adverse consequences, including:

- a limited availability of market quotations for our securities;
- reduced liquidity for our securities;
- a determination that the Common Stock is a "penny stock" which will require brokers trading in our common stock to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for our securities;
- a limited amount of news and analyst coverage; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

The National Securities Markets Improvement Act of 1996, which is a federal statute, prevents or preempts the states from regulating the sale of certain securities, which are referred to as "covered securities." Because the common stock, preferred stock, and public warrants are listed on Nasdaq, they will be covered securities. However, if our securities are no longer listed on Nasdaq, our securities would not be covered securities, and we would be subject to regulation in each state in which we offer our securities.

***The exercise of our warrants and conversion of our preferred stock will result in dilution to our stockholders.***

We issued warrants to purchase shares of common stock and issued preferred stock that include an option for the holder to convert the shares into common stock. (See Note 17. Stockholders' Equity.) The shares of common stock issued upon exercise of our warrants and conversion of our preferred stock will result in dilution to the then existing holders of common stock and increase the number of shares eligible for resale in the public market. Sales of such shares in the public market could adversely affect the market price of our common stock or public warrants.

***We do not intend to pay dividends on our common stock and preferred stock for the foreseeable future.***

We currently intend to retain our future earnings to finance the development and expansion of our business and, therefore, do not intend to pay cash dividends on our common stock for the foreseeable future. Any future determination to pay dividends on our common stock will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in any financing instruments, applicable legal requirements, and such other factors as our board of directors deems relevant. Accordingly, stockholders may need to sell their shares of our common stock to realize a return on investment and may not be able to sell shares at or above the price paid for them. We have suspended the cash dividend payments on our 8.0% Series A Cumulative Convertible Preferred Stock as a result of the restructuring terms of the Amendment to our Loan Agreement with BankUnited. (See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—BankUnited Loan Restructuring.) Dividends on our preferred stock will accrue as a liability at the rate of \$0.6 million per month until paid or otherwise settled.

***Future offerings of debt securities, which would rank senior to our common stock upon our bankruptcy or liquidation, and future offerings of equity securities that may be senior to our common stock for the purposes of dividend and liquidation distributions, may adversely affect the market price of our common stock.***

In the future, we may attempt to increase our capital resources by making offerings of debt securities or additional offerings of equity securities. Upon bankruptcy or liquidation, holders of our debt securities and shares of preferred stock and lenders with respect to other borrowings will receive a distribution of our available assets prior to the holders of our common stock.

Additional equity offerings may dilute the holdings of our existing stockholders or reduce the market price of our common stock, or both. Our preferred stock will have a preference on liquidating distributions and dividend payments, which could limit our ability to make a dividend distribution to the holders of our common stock. Our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control. As a result, we cannot predict or estimate the amount, timing or nature of our future offerings, and purchasers of our common stock in this offering bear the risk of our future offerings reducing the market price of our common stock and diluting their ownership interest in our company.

#### **General Risk Factors:**

***The JOBS Act permits “emerging growth companies” like us to take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies.***

We qualify as an “emerging growth company” as defined in Section 2(a)(19) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012, which we refer to as the “JOBS Act.” As such, we take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies for as long as we continue to be an emerging growth company, including (i) the exemption from the auditor attestation requirements with respect to internal control over financial reporting under Section 404 of SOX, (ii) the exemptions from say-on-pay, say-on-frequency and say-on-golden parachute voting requirements and (iii) reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. As a result, our stockholders may not have access to certain information they deem important. We will remain an emerging growth company until the earliest of (i) the last day of the fiscal year (a) following the fifth anniversary of our IPO, (b) in which we have total annual gross revenue of at least \$1.235 billion or (c) in which we are deemed to be a large accelerated filer, which means the market value of our common stock and public warrants that is held by non-affiliates exceeds \$700 million as of the last business day of our prior second fiscal quarter, and (ii) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period. We cannot predict if investors will find our common stock less attractive if we choose to rely on these exemptions. If some investors find our common stock less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our common stock and the price of our common stock may be more volatile. In addition, Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the exemption from complying with new or revised accounting standards provided in Section 7(a)(2)(B) of the Securities Act as long as we are an emerging growth company. An emerging growth company can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies, but any such election to opt out is irrevocable. We have elected to avail ourselves of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of our financial statements with another public company that is neither an emerging growth company nor an emerging growth company that has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used. As a result of our reliance on these exemptions or reduced disclosures, investors may not have access to certain information they deem important or may find our securities less attractive. This may result in a less active trading market for our securities and the price of our securities, including our common stock or public warrants may be more volatile.

***Our business could be materially and adversely disrupted by an epidemic or pandemic or similar public threat, or fear of such an event, and the measures that federal, state, and local governments and other authorities implement to address it.***

An epidemic, pandemic or similar serious public health issue, and the measures undertaken by governmental authorities to address it, could significantly disrupt or prevent us from operating our business in the ordinary course for an extended period, and thereby, along with any associated economic and social instability or distress, have a material adverse impact on our business, financial condition, results of operations, cash flows, strategies, or prospects.

***Acts of war or terrorism may seriously harm our business.***

Acts of war, any outbreak or escalation of hostilities between the United States and any foreign power, acts of terrorism, political uncertainty or civil unrest may cause disruption to the U.S. economy, or the local economies of the markets in which we operate, cause shortages of building materials, increase costs associated with obtaining building materials, result in building code changes that could increase costs of construction, result in uninsured losses, affect job growth and consumer confidence, or cause economic changes that we cannot anticipate, all of which could reduce demand for our homes and adversely impact our business, prospects, liquidity, financial condition and results of operations.

***We are subject to litigation, arbitration, or other claims, which could materially and adversely affect us.***

We are subject to litigation, and we may in the future be subject to enforcement actions, such as claims relating to our operations, securities offerings and otherwise in the ordinary course of business. Some of these claims may result in significant defense costs and potentially significant judgments against us, some of which are not, or cannot be, insured against. We cannot be certain of the ultimate outcomes of any claims that may arise in the future, and legal proceedings may result in the award of substantial damages. Resolution of these types of matters against us may result in our having to pay significant fines, judgments, or settlements, which, if uninsured or in excess of insured levels, could adversely impact our earnings and cash flows, thereby materially and adversely affecting us. Furthermore, plaintiffs may in certain of these legal proceedings seek class action status with potential class sizes that vary from case to case. Class action lawsuits can be costly to defend, and if we were to lose any certified class action suit, it could result in substantial liability for us. Certain litigation or the resolution thereof may affect the availability or cost of some of our insurance coverage, which could materially and adversely impact us, expose us to increased risks that would be uninsured, and materially and adversely impact our ability to attract directors and officers.

***Information system failures, interruptions, cyber incidents, or breaches in security could adversely affect us.***

We rely on accounting, financial, operational, management and other information systems, including the Internet and third-party hosted services, to conduct our operations, store sensitive data, process financial information and results of operations for internal reporting purposes and comply with financial reporting, legal and tax requirements. Our information systems, and those of our vendors and service providers, are subject to damage or interruption from power outages, computer and telecommunication failures, computer viruses, security breaches, including malware and phishing, cyberattacks, natural disasters, usage errors by employees and other related risks. Any cyber incident or attack or other disruption or failure in these information systems, or other systems or infrastructure upon which they rely, could adversely affect our ability to conduct our business and could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. Furthermore, any failure or security breach of information systems or data could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation, or a loss of confidence in our security measures, which could harm our business and could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. Although we have implemented systems and processes intended to secure our information systems, there can be no assurance that our efforts to maintain the security and integrity of our information systems will be effective or that future attempted security breaches or disruptions would not be successful or damaging.

***Our business is subject to complex and evolving U.S. laws and regulations regarding privacy and data security.***

As part of our normal business activities, we collect and store certain information, including information specific to homebuyers, customers, employees, vendors, and suppliers. We may share some of this information with third parties who assist us with certain aspects of our business. Consumer personal privacy and data security have become significant issues and the subject of rapidly evolving regulation in the United States. Furthermore, federal, state, and local government bodies or agencies have in the past adopted, and may in the future adopt, more laws and regulations affecting data privacy. Laws and regulations governing data privacy and the unauthorized disclosure of confidential information including recently implemented may significantly impact our business activities and require substantial compliance costs, which could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. Any failure, or perceived failure, by us to adequately address privacy and data security concerns, even if unfounded, or comply with applicable privacy and data security laws, regulations and policies could result in proceedings or actions against us by governmental entities or others, subject us to significant fines, penalties, judgments, and negative publicity, require us to change our business practices, increase the costs and complexity of compliance, and adversely affect our business. If we are not able to adjust to changing laws, regulations and standards relating to privacy or data security, our business may be materially harmed. As noted above, we are also subject to the possibility of cyber incidents or attacks, which themselves may result in a violation of these laws.

***Failure to comply with laws and regulations may adversely affect us.***

We are required to comply with laws and regulations governing many aspects of our business, such as land acquisition and development, home construction and sales, and employment practices. Despite our oversight, contractual protections, and other mitigation efforts, our employees or subcontractors could violate some of these laws or regulations, as a result of which we may incur fines, penalties, or other liabilities, which could be significant, and our reputation with governmental agencies, customers, vendors, or suppliers could be damaged.

***Increasing attention to environmental, social, and governance matters may impact our business, financial results, or stock price.***

In recent years, increasing attention has been given to corporate activities related to environmental, social, and governance (“ESG”) matters in public discourse and the investment community. A number of advocacy groups, both domestically and internationally, have campaigned for governmental and private action to promote change at public companies related to ESG matters, including through the investment and voting practices of investment advisers, public pension funds, universities, and other members of the investing community. These activities include increasing attention and demands for action related to climate change and promoting the use of energy saving building materials. A failure to comply with investor or customer expectations and standards, which are evolving, or if we are perceived to not have responded appropriately to the growing concern for ESG issues, regardless of whether there is a legal requirement to do so, could also cause reputational harm to our business and could have a material adverse effect on us.

***Negative publicity could adversely affect our reputation as well as our business, financial results, and stock price.***

Our reputation and brand are critical to our success. Unfavorable media related to our industry, company, brands, marketing, personnel, operations, business performance, or prospects may affect our stock price and the performance of our business, regardless of its accuracy or inaccuracy. The speed at which negative publicity can be disseminated has increased dramatically with the capabilities of electronic communication, including social media outlets, websites, blogs, newsletters, and other digital platforms. Our success in maintaining, extending, and expanding our brand image depends on our ability to adapt to this rapidly changing media environment. Adverse publicity or negative commentary from any media outlets could damage our reputation and reduce the demand for our homes, which would adversely affect our business.

***Changes in laws, regulations or rules, or a failure to comply with any laws, regulations, or rules, may adversely affect our business, investments, and results of operations.***

We are subject to laws, regulations and rules enacted by national, regional, and local governments and Nasdaq. In particular, we are required to comply with certain SEC, Nasdaq, and other legal or regulatory requirements. Compliance with, and monitoring of, applicable laws, regulations and rules may be difficult, time consuming and costly. Those laws, regulations or rules and their interpretation and application may also change from time to time and those changes could have a material adverse effect on our business, investments, and results of operations. In addition, a failure to comply with applicable laws, regulations, or rules, as interpreted and applied, could have a material adverse effect on our business and results of operations.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

Not applicable.

**ITEM 2. PROPERTIES**

We leased several suites of office space at 11505 Burnham Dr., Gig Harbor, Washington under multiple lease agreements for 26 to 60 month periods with the leases ending in February 2023 through May 2023. During 2022, we terminated the leases for three suites and have the remaining leases for four suites as of December 31, 2022. Additionally, we lease office space at 1201 Pacific Avenue, Tacoma, Washington, for a 126-month period from the commencement date of February 2022 to July 2032.

We leased land where one of our field offices is located to store our heavy equipment and quarry materials such as dirt and rocks for sale to customers (9000 W. Werner Road, Bremerton, Washington). This land was under a lease initiated as of January 28, 2019 for a 24-month period and had been renewed annually through March 8, 2023, at which time the lease terminated.

The following table summarizes certain key metrics of the residential properties we own or control as of March 28, 2023:

Project Name	Location	Total Units	Unsold Units	Business Plan	Status
Bridgeview Trails .....	Washington	138	138	Develop + Sell Land or Build + Sell Apartments	Owned
Broadmoor Commons .....	Washington	18	18	Build + Sell Apartments	Controlled
Fircrest Ridge .....	Washington	145	145	Develop + Sell Apartments	Controlled
Grandis Pond .....	Washington	997	997	Develop + Sell Lots	Controlled
Horizon at Semiahmoo .....	Washington	143	72	Develop + Sell Lots	Owned
Inverness .....	Washington	63	63	Develop + Sell Lots/Build + Sell Apartments	Owned
Meadowscape .....	Washington	177	177	Build + Sell Apartments	Owned
Mill's Crossing .....	Washington	36	36	Build + Sell Apartments	Owned
Olympic Sunset .....	Washington	228	228	Build + Sell Apartments	Owned
Pacific Ridge .....	Washington	80	80	Build + Sell Apartments	Owned
Stanwood .....	Washington	225	225	Build + Sell Apartments + Townhomes	Controlled
Wyndstone .....	Washington	76	76	Build + Sell Apartments	Owned
Darkhorse .....	California	68	61	Sell Lots	Owned
Winding Lane .....	California	22	11	Sell Lots	Owned
Punta Gorda .....	Florida	180	180	Sell Land	Owned
Bunker Ranch .....	Texas	4	1	Build + Sell Homes	Owned
Cimarron Hills .....	Texas	5	5	Build + Sell Homes	Owned
Creek's Edge .....	Texas	2	2	Build + Sell Homes	Owned
Flintrock Falls .....	Texas	1	1	Build + Sell Homes	Owned
Siena Creek .....	Texas	35	31	Sell Lots/Build + Sell Homes	Owned
Stone House .....	Texas	68	68	Develop + Sell Lots/ Build + Sell Homes	Owned
Summit Rock .....	Texas	108	76	Sell Lots/ Build + Sell Homes	Owned
The Trails of HSB .....	Texas	10	8	Sell Lots/ Build + Sell Homes	Owned

### ITEM 3. LEGAL PROCEEDINGS

We are not party to any legal proceedings the resolution of which we believe would have a material adverse effect on our business, prospects, financial condition, liquidity, or results of operation. However, we may from time to time after the date of this Annual Report become subject to claims and litigation arising in the ordinary course of business. One or more unfavorable outcomes in any claim or litigation against us could have a material adverse effect for the period in which such claim or litigation is resolved. In addition, regardless of their merits or their ultimate outcomes, such matters are costly, divert management's attention, and may materially adversely affect our reputation, even if favorably resolved.

### ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### Market Information

Our common stock is traded on the Nasdaq Capital Market ("Nasdaq") under the symbol "HCDI."

Our 8.0% Series A Cumulative Convertible Preferred Stock (the "Series A Preferred Stock") and warrants are traded on the Nasdaq Capital Market ("Nasdaq") under the symbols "HCDIP," "HCDIW," and "HCDIZ," respectively.

#### Dividends

**Common Stock.** We have not declared a dividend on our common stock, and we do not anticipate the payment of dividends in the near future as we intend to reinvest profits to grow our business. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in any financing instruments, and such other factors as our board of directors deems relevant in its sole discretion.

**Series A Preferred Stock.** The holders of our Series A Preferred Stock are entitled to receive dividends at a rate of 8% per annum payable monthly in arrears. During the year ended December 31, 2022, we paid dividends on our Series A Preferred Stock of \$7.8 million and accrued dividends of \$0.6 million as of December 31, 2022, which were paid to the holders of the Series A Preferred Stock on January 20, 2023. On January 20, 2023, our Board of Directors voted to suspend the cash dividend on the Series A Preferred Stock as announced on a Current Report on Form 8-K on January 25, 2023. On February 23, 2023, as part of the Amendment to our Loan Agreement with BankUnited, we agreed that we will pay \$0.6 million to BankUnited each month, which otherwise would have been paid as a dividend to the holders of the Series A Preferred Stock. (See Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—BankUnited Loan Restructuring.) These dividends will accrue as a liability until paid or otherwise settled.

### Number of Holders of Record

We have approximately 12 record holders of our common stock as of March 28, 2023 according to the records of our transfer agent. The number of our stockholders of record excludes any estimate by us of the number of beneficial owners of shares held in street name, the accuracy of which cannot be guaranteed.

Our transfer agent is Mountain Share Transfer, Inc., 2030 Powers Ferry Rd. SE, Suite # 212, Atlanta, Georgia 30339. Their telephone number is (404) 474-3110.

### Repurchase of Equity Securities

On May 10, 2022, the Board of Directors approved a stock repurchase program authorizing the repurchase of up to \$5.0 million worth of shares of common stock. The amount of the repurchase program represented approximately 15% of the outstanding shares of our common stock valued at the closing price on May 10, 2022. During the year ended December 31, 2022, we repurchased 12,597 shares of common stock under this repurchase program at an average price of \$35.23 per share for a total of approximately \$0.4 million.

As part of the Amendment to the Loan Agreement with BankUnited, we agreed that we will not repurchase any of our currently outstanding securities. Therefore, the stock repurchase program has been terminated. (See Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—BankUnited Loan Restructuring.)

### 2020 Restricted Stock Plan

The following table sets forth the shares of our common stock we acquired during the fourth quarter as a result of the surrender of shares by employees to satisfy tax withholding obligations in connection with the vesting of restricted shares of common stock awarded under our 2020 Restricted Stock Plan.

Period	Total Number of Shares Purchased (1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Program	Approximate Dollar Value of Shares That May Yet be Purchased Under the Plans or Programs
October 1, 2022 - October 31, 2022 .....	6	\$ 17.60	6	\$ —
November 1, 2022 - November 30, 2022 .....	502	\$ 19.08	502	\$ —
December 1, 2022 - December 31, 2022 .....	5	\$ 12.00	5	\$ —
Total.....	513		513	

(1) Represents shares surrendered to us by employees to satisfy tax withholding obligations arising in connection with the vesting of 1,729 shares of common stock awarded under our 2020 Restricted Stock Plan.

## **Reverse Stock Split**

On February 17, 2023, we held a special meeting of stockholders at which the stockholders approved a proposal to effect a reverse split of our issued and outstanding shares of common stock at a ratio of between 1-for-3 and 1-for-25 (the “Reverse Stock Split”), such ratio to be selected at the sole discretion of the Board without further stockholder action.

On February 27, 2023, our Board of Directors approved the implementation of the Reverse Stock Split at a ratio of 1-for-20 shares of our common stock. We filed Articles of Amendment to our Articles of Incorporation for the Reverse Stock Split with the Washington Secretary of State on March 1, 2023 and the Reverse Stock Split was effected on the Nasdaq Capital Market on March 6, 2023.

As a result of the Reverse Stock Split, every 20 shares of common stock either issued and outstanding immediately prior to the effective time was, automatically and without any action on the part of the respective holders thereof, combined and converted into one share of common stock. The Reverse Stock Split also applied to common stock issuable upon the exercise of our outstanding warrants, outstanding stock options, unvested restricted stock awards, stock and stock option plans, and upon the conversion of our Series A Preferred Stock. The Reverse Stock Split did not affect the par value of our common stock or the shares of common stock we are authorized to issue under our Articles of Incorporation, as amended. No fractional shares were issued in connection with the Reverse Stock Split. Fractional shares which would otherwise result from the Reverse Stock Split were rounded up to the nearest whole share. All share and per share amounts of common stock presented in this Annual Report on Form 10-K have been retroactively adjusted to reflect the 1-for-20 Reverse Stock Split.

## **ITEM 6. [Reserved]**

## **ITEM 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

### **Overview**

Harbor Custom Development, Inc. is a real estate development company involved in all aspects of the land development cycle, including land acquisition, entitlements, development, construction of project infrastructure, home and apartment building construction, marketing, and sales of various residential projects in Western Washington's Puget Sound region; Sacramento, California; Austin, Texas; and Punta Gorda, Florida.

As a land developer and builder of apartments, and single-family luxury homes, Harbor Custom Development's business strategy is to acquire and develop land strategically based on an understanding of population growth patterns, entitlement restrictions, infrastructure development, and geo-economic forces. Harbor focuses on acquiring land with scenic views or convenient access to freeways and public transportation to develop and sell residential lots, new home communities, and multi-story apartment properties within a 20- to 60-minute commute of the nation's fastest-growing metro employment corridors.

Our portfolio of land, lots, home plans, and finishing options, coupled with the low inventory of residential and multi-family housing in our principal geographic areas, provide an opportunity for us to increase revenue and overall market share. In addition to our single-family residential projects, we build and sell townhomes and apartments and have completed or substantially completed construction of several multi-family sites in Washington. (See Item 2. Properties.)

In an effort to strategically manage the expanding needs of our corporate team, we signed a lease on October 5, 2021 for a new office space in Tacoma, Washington and moved our headquarters in April 2022. This office space is designed with a hybrid workforce in mind and takes into account employment trends that arose after the COVID-19 global pandemic, specifically the increase in hybrid or remote employees.

It is customary for us to sign purchase and sale agreements that contain a due diligence period which allows us time, usually between 60 and 120 days, to evaluate the acquisition. However, in many cases, the closing will not occur until the entitlement and permitting processes are complete, which can further extend the due diligence period. At times, through our due diligence efforts, we find that a property is not suitable for purchase due to economic forces, zoning issues, or other matters. If we determine that a property is not suitable for our desired purposes, we terminate the purchase and sale agreement. After termination within the due diligence period, our earnest money is returned to us.

Our infrastructure development division constructs a diverse range of residential communities and improved lots. We own and lease heavy equipment which we utilize to build and develop residential subdivisions and multi-family communities. The equipment is primarily used for land clearing, site development, public and private road improvements, installation of wet utilities such as sewer, water, and storm sewer lines, in addition to construction of dry utility lines for power, gas, telephone, and cable service providers. A significant portion of this equipment was sold in December 2022. (See Note 4. Property and Equipment.)

We are a general contractor and construct single-family homes, townhomes, and apartments utilizing a base of employees in conjunction with third-party subcontractors.

As of December 31, 2022, we own or control 25 communities in Washington, Texas, California, and Florida, containing approximately 2,900 lots or units in various stages of development.

## Results of Operations

The following table sets forth the summary statements of operations for the years ended December 31, 2022 and 2021. For information on the year ended December 31, 2020, refer to Part II, Item 7 of our 2021 Annual Report on Form 10-K/A.

	<u>2022</u>	<u>2021</u>
Sales.....	\$ 55,414,300	\$72,352,700
Cost of sales.....	55,866,800	50,419,400
Gross profit (loss).....	(452,500)	21,933,300
Operating expenses.....	16,237,700	11,151,600
Other expense, net of other income .....	4,690,200	158,000
Income tax expense (benefit).....	(4,458,200)	1,766,900
Net income (loss).....	<u><u>\$(16,922,200)</u></u>	<u><u>\$ 8,856,800</u></u>

### Sales

Our sales decreased by (23.4)% to \$55.4 million for the year ended December 31, 2022 as compared to \$72.4 million for the year ended December 31, 2021. This decrease was primarily due to decreases in sales of developed lots of \$17.3 million, sales of entitled land of \$12.7 million, partially offset by increases in home sales of \$11.0 million, and fee build of \$2.3 million. The decreases in developed lots and entitled land sales were mainly due to large prior year sales in Blaine, Belfair, and Bremerton, Washington, and Horseshoe Bay, Texas that did not recur in 2022. The 2022 home sales largely increased due to continued expansion into a new geographic location in Texas where \$18.0 million of luxury homes sold at high sales prices.

### Gross Profit

Our overall gross profit (loss) for the year ended December 31, 2022 decreased to \$(0.5) million compared to gross profit of \$21.9 million for the year ended December 31, 2021. Gross margin loss was (0.8)% for the year ended December 31, 2022 compared to gross margin of 30.3% for the year ended December 31, 2021. The \$(22.4) million decrease in gross profit was primarily due to decreases in developed lots gross profit of \$11.2 million, fee build gross profit of \$5.3 million, entitled land gross profit of \$5.1 million, and multi-family gross profit of \$2.4 million, which was partially offset by an increase in home sales gross profit of \$2.2 million. The (31.1)% decrease in gross margin was primarily driven by a (43.8)% decline in developed lots gross profit including \$1.2 million impairment loss related to the Winding Lane property, a \$4.5 million gross loss due to cost overruns with fee build projects, and a \$2.4 million impairment loss incurred on the Pacific Ridge apartment project. These gross margin declines were partially offset by gross margin increases from homes and entitled land sales.

### Operating Expenses

Our operating expenses increased by 45.6% to \$16.2 million for the year ended December 31, 2022, as compared to \$11.2 million for the year ended December 31, 2021. The increase in total operating expenses is primarily attributable to the following:

- 1) Payroll and benefits expenses increased by \$1.6 million due to increase in staff from the investment we made in our public company infrastructure and to support our future growth plan;
- 2) We incurred bad debt expenses of \$2.1 million associated with the Horizon Tract Q note receivable and Winding Lane note and interest receivable from the sale of developed lots in March 2022;
- 3) We incurred \$0.5 million in pre-acquisition due diligence costs associated with the Westry Village project that we did not purchase;



- 4) Professional fees increased by \$0.3 million primarily driven by establishing and maintaining public company infrastructure and oversight;
- 5) Advertising and marketing increased by \$0.3 million as a result of increased marketing activities to promote our company and real estate projects;
- 6) We incurred additional depreciation expense of \$0.3 million related to furniture, fixtures, and leasehold improvements for the new corporate office and equipment additions; and
- 7) We incurred additional right of use expense of \$0.1 million from leasing an office space in Tacoma, Washington for our new corporate headquarters.

### ***Other Expense***

Other expense increased for the year ended December 31, 2022 to \$4.7 million as compared to \$0.2 million for the year ended December 31, 2021. The increase in other expense was primarily due to a \$3.3 million loss incurred from selling a significant portion of machinery and equipment which was primarily used for fee build and quarry projects as these projects are nearing completion and are wrapping up. The increase was also attributable to \$1.6 million of interest expense from a revolving line of credit, partly offset by \$0.5 million of interest income from notes receivables.

### ***Net Income (Loss)***

Our net income (loss) decreased by 291.1% to \$(16.9) million for the year ended December 31, 2022 as compared to a net income of \$8.9 million for the year ended December 31, 2021. The decrease in net income was primarily attributable to a decrease in gross margins and increased operating expenses and other expenses as explained above.

## **Liquidity and Capital Resources**

### **Overview**

Our principal uses of capital were operating expenses, land purchases, land development, single and multi-family construction, the payment of routine liabilities, payments on construction loans and related party construction loans, financing fees for the revolving line of credit and construction loans, and repurchase of company equity securities. We used funds generated by operations and available borrowings to meet our short-term working capital requirements. We remain focused on generating positive margins in land acquisitions and development operations and home construction operations in order to maintain a strong balance sheet and keep us poised for growth.

We employ both debt and equity as part of our ongoing financing strategy to provide us with the financial flexibility to access capital on the best terms available. In that regard, we employ prudent leverage levels to finance the acquisition and development of our lots and construction of our homes, townhomes, and apartments. Our existing indebtedness is recourse to us and we anticipate that future indebtedness will likewise be recourse.

Our management considers a number of factors when evaluating our level of indebtedness and when making decisions regarding the incurrence of new indebtedness, including the purchase price of assets to be acquired with debt financing, the estimated market value of our assets, and the ability of particular assets, and our company as a whole, to generate cash flow to cover the expected debt service costs. Our governing documents do not contain a limitation on the amount of debt we may incur and our board of directors may change our target debt levels at any time without the approval of our shareholders.

We intend to finance future acquisitions and developments with the most advantageous source of capital available to us at the time of the transaction, which may include a combination of common and preferred equity, secured and unsecured corporate level debt, property level debt and mortgage financing, property level equity, and other public, private, or bank debt.

### ***Real Estate Assets***

Our real estate assets have increased to \$205.5 million as of December 31, 2022 from \$122.1 million as of December 31, 2021. This increase was due to an increase in development and construction activities for houses, townhomes, and apartments.

### ***BankUnited Loan Restructuring***

As previously announced on a Current Report on Form 8-K on October 28, 2022, and as updated on a Current Report on Form 8-K on January 25, 2023, we were working with BankUnited, N.A. (“BankUnited”) to restructure our Loan (defined below) after failing to meet two financial covenants of the Loan Agreement (defined below), namely the minimum interest coverage ratio and consolidated liquidity covenants.

As previously announced on a Current Report on Form 8-K filed on February 24, 2023, on or about February 23, 2023, we entered into that certain Amendment to the Loan Agreement (the “Amendment”) with BankUnited for the restructuring of its Loan Agreement dated March 7, 2020 (the “Loan Agreement”), which loan currently consists of a \$24,613,051 principal balance plus any accrued interest (the “Loan”).

Pursuant to the Amendment, BankUnited agreed to:

- i. waive any and all defaults to date in the Loan Agreement;
- ii. waive our future compliance requirements with the financial covenants contained in Article 7 of the Loan Agreement until the Loan is repaid in full and the Loan Agreement terminated; and
- iii. waive its right to accelerate the Loan and receive immediate payments.

In consideration of BankUnited’s waivers described above, we agreed that we will:

- i. Not repurchase any of our currently outstanding securities;
- ii. Not make any dividend payments to our Series A Preferred stockholders but instead pay the amount that would have been paid in dividends to the Series A Preferred stockholders to BankUnited;
- iii. Grant BankUnited a second mortgage on our Winding Lane and Punta Gorda properties and remit to BankUnited 25% of the net proceeds from any sales of such properties;
- iv. Remit to BankUnited 25% of the net proceeds of all asset sales;
- v. Remit to BankUnited 25% of the net proceeds from public offerings of any class of stock or debt, private equity recaptures, and any capital raise;
- vi. Transfer to BankUnited the membership certificates of our subsidiaries, solely as collateral, in order to perfect BankUnited’s security interests; and
- vii. Not close on any new projects without BankUnited’s express written consent, but we may continue to identify, conduct due diligence, and negotiate the purchase of new projects.

The aforementioned payments will continue to be made until the earlier of: (i) March 7, 2024 or (ii) the Loan has been repaid in full. If we fail to make any of the payments or meet any of the agreed upon conditions, such failure will constitute an event of default under the Loan Agreement. BankUnited has no further lending obligations to us.

### ***Liabilities***

Liabilities increased to \$160.6 million as of December 31, 2022 from \$70.0 million as of December 31, 2021. This increase is primarily attributable to the following:

1. An increase in our construction loans, net of related party loans of \$67.2 million to fund the development of land and construction of houses, townhomes, and apartments;
2. A new revolving credit facility was entered into with BankUnited from which we have borrowed \$24.4 million net of debt discount to fund our general working capital needs;
3. Accounts payable and accrued expenses increased by \$3.4 million, primarily driven by an increase in trade accounts payable due to an increase of real estate projects in process; and
4. Equipment loan decreased by \$3.2 million due to early pay-offs of loans related to our machinery and equipment sold at auction in late December 2022 and monthly equipment payments during 2022.

### ***Unrestricted Cash Balance***

As of December 31, 2022, our unrestricted cash balance was \$9.7 million compared to \$25.6 million as of December 31, 2021.

### ***Operating Activities***

Net cash used in operating activities for the year ended December 31, 2022 was \$93.9 million as compared to net cash used of \$86.4 million for the year ended December 31, 2021. The increase in cash used is primarily attributable to a decrease in net income of \$25.8 million, decrease in accounts payable and accrued expenses of \$4.5 million, increase in deferred tax asset of \$3.4 million, partially offset by decrease in real estate assets of \$13.9 million, a decrease in contract assets of \$4.3 million, loss on sale of equipment of \$3.4 million, impairment loss on real estate of \$3.6 million, and impairment loss on note receivable of 1.2 million.

### ***Investing Activities***

Net cash provided in investing activities for the year ended December 31, 2022 was \$2.5 million as compared to net cash used of \$0.7 million for the year ended December 31, 2021. During the year ended December 31, 2022, \$2.6 million was used for the furniture, fixtures, and leasehold improvements of the new corporate office and purchase of equipment compared to \$0.7 million used for the acquisition of new equipment for the year ended December 31, 2021. These purchases were offset by proceeds from the sale of equipment of \$5.1 million during the year ended December 31, 2022.

### ***Financing Activities***

Net cash provided by financing activities for the year ended December 31, 2022 was \$75.4 million as compared to \$110.9 million for the year ended December 31, 2021. This decrease was primarily caused by net proceeds from a common stock offering of \$25.1 million and net proceeds from a preferred stock offering of \$66.6 million in 2021 that did not recur in the 2022 comparable period, a decrease in cash received from related party construction loans, net of payments of \$13.4 million, and an increase in cash used for 2022 preferred dividends of \$5.7 million. This decrease was partially offset by cash provided by the revolving line of credit loan of \$25.0 million in 2022, an increase in cash provided by construction loans, net of payments of \$43.1 million, and a decrease in repurchase of common stock of \$4.6 million.

### ***Cash Resources***

Although the expected revenue growth and control of expenses leads management to believe that it is probable that our cash resources will be sufficient to meet cash requirements through the fiscal year ending December 31, 2023, we may require additional funding to finance the growth of our current and expected future operations as well as to achieve our strategic objectives. There can be no assurance that financing will be available in amounts or terms acceptable to us, if at all. In that event, we would be required to change our growth strategy and seek funding on that basis, though there is no guarantee we will be able to do so. (See Note 1. Nature of Operations and Summary of Significant Accounting Policies.)

### **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements, financings, or other relationships with unconsolidated entities or other persons, also known as “special purpose entities” (SPEs).

### **Inflation**

Our operations can be adversely impacted by inflation, primarily from higher land, financing, labor, material, and construction costs. In addition, inflation can lead to higher mortgage rates which can significantly affect the affordability of mortgage financing to homebuyers. While we attempt to pass on cost increases to customers through increased prices, when weak housing market conditions exist, we may be unable to offset cost increases with higher selling prices. Please refer to “Item 1A. Risk Factors” for further details on industry and economic risks.

### **Critical Accounting Policies**

Our consolidated financial statements and related public financial information are based on the application of accounting principles generally accepted in the United States (“GAAP”). GAAP requires the use of estimates, assumptions, judgments, and subjective interpretations of accounting principles that have an impact on the assets, liabilities, revenues, and expense amounts reported. These estimates can also affect supplemental information contained in our external disclosures including information regarding contingencies, risk, and financial condition. We believe our use of estimates and underlying accounting assumptions adhere to GAAP and are consistently applied. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ materially from these estimates under different assumptions or conditions. We continue to monitor significant estimates made during the preparation of our financial statements.

Our significant accounting policies are summarized in Note 1 of our consolidated financial statements.

### ***Implications of Being an Emerging Growth Company***

We are an “emerging growth company” as defined in the JOBS Act and we are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies.” These provisions include:

- a requirement to present only two years of audited financial statements and only two years of related Management’s Discussion and Analysis of Financial Condition and Results of Operations included in a public offering registration statement;
- an exemption to provide fewer than five years of selected financial data in a public offering registration statement;
- an exemption from the auditor attestation requirement of Section 404 of the Sarbanes-Oxley Act (“SOX”) in the assessment of the emerging growth company’s internal control over financial reporting;
- an exemption from the adoption of new or revised financial accounting standards until they would apply to private companies; and
- an exemption from compliance with any new requirements adopted by the Public Company Accounting Oversight Board requiring mandatory audit partner rotation or a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer.

We have elected to adopt the reduced disclosure requirements available to emerging growth companies. As a result of this election, the information that we provide in this Annual Report may be different than the information you may receive from other public companies in which you hold equity interests.

We will cease to be an “emerging growth company” upon the earliest of: (i) the end of the fiscal year following the fifth anniversary of our initial public offering (December 31, 2025), (ii) the first fiscal year after our annual gross revenues are \$1.235 billion or more, (iii) the date on which we have, during the previous three-year period, issued more than \$1.0 billion in non-convertible debt securities or (iv) as of the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeded \$700 million as of the end of the second quarter of that fiscal year.

### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We borrow from lenders using financial instruments such as term loans, notes payable, and a revolving credit facility. We utilize both fixed and variable interest rates in these financing operations. Interest incurred from our term loans and notes payables is calculated primarily using a fixed rate, whereas interest incurred from our revolving credit facility is calculated using a variable rate. We do not have the obligation to prepay these prior to maturity, and, as a result, interest rate risk and changes in fair market value should not have a significant impact on our fixed-rate debt.

We are exposed to market risks related to fluctuations in interest rates on our outstanding revolving line of credit and construction loan relating to Meadowscape apartments. The interest rate for our variable rate indebtedness as of December 31, 2022 was equal to the daily simple secured overnight financing rate (SOFR) plus an applicable margin of 4.75% for the line of credit and equal to the SOFR one month rate plus an applicable margin of 7.25% for the construction loan. At December 30, 2022, the daily SOFR was 4.30% and one month SOFR was 4.06%. A hypothetical 100 basis point increase in the interest rate on our variable rate indebtedness would increase our annual interest cost by approximately \$0.3 million for the line of credit and \$0.1 million for the construction loan, respectively. Based on this, we do not believe that the future interest rate risks related to our existing indebtedness will have a material adverse impact on our financial position, results of operations, or liquidity.

At December 31, 2022, we had outstanding fixed-rate borrowings net of debt discount and financing fees of approximately \$104.1 million and outstanding variable-rate borrowings net of debt discount and financing fees of approximately \$38.5 million.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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## **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of  
Harbor Custom Development, Inc.

### **Opinion on the Consolidated Financial Statements**

We have audited the accompanying consolidated balance sheets of Harbor Custom Development, Inc. (the “Company”) as of December 31, 2022 and 2021, and the related consolidated statements of operations, stockholders’ equity (deficit), and cash flows for each of the years in the two-year period ended December 31, 2022, and the related notes (collectively referred to as the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Rosenberg Rich Baker Berman P.A.

We have served as the Company’s auditor since 2019.  
Somerset, New Jersey  
March 31, 2023

**HARBOR CUSTOM DEVELOPMENT, INC. AND SUBSIDIARIES**  
**D/B/A HARBOR CUSTOM HOMES**  
**CONSOLIDATED BALANCE SHEETS**  
**As of December 31, 2022 and 2021**

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
<b>ASSETS</b>		
Cash.....	\$ 9,665,300	\$ 25,629,200
Restricted Cash .....	597,600	597,600
Accounts Receivable, net.....	1,707,000	1,113,500
Contract Assets .....	—	2,167,200
Note Receivable, net .....	4,525,300	2,000,000
Prepaid Expense and Other Assets.....	5,318,100	2,778,100
Real Estate.....	205,478,200	122,136,100
Property and Equipment, net.....	2,289,500	9,199,700
Right of Use Assets .....	1,926,100	3,429,700
Deferred Tax Asset .....	4,659,300	649,000
<b>TOTAL ASSETS.....</b>	<b><u>\$ 236,166,400</u></b>	<b><u>\$ 169,700,100</u></b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>LIABILITIES</b>		
Accounts Payable and Accrued Expenses.....	\$ 14,090,700	\$ 10,662,800
Dividends Payable.....	634,700	670,900
Contract Liabilities.....	497,400	—
Deferred Revenue .....	52,000	44,800
Note Payable D&O Insurance .....	378,500	903,800
Revolving Line of Credit Loan, net of Unamortized Debt Discount of \$0.6 million and \$0 respectively .....	24,359,700	—
Equipment Loans .....	2,057,100	5,268,500
Finance Leases .....	154,500	543,400
Construction Loans, net of Unamortized Debt Discount of \$1.9 million and \$4.4 million respectively .....	107,483,700	34,957,100
Construction Loans - Related Parties, net of Unamortized Debt Discount of \$0.1 million and \$1.1 million respectively .....	8,122,800	13,426,600
Right of Use Liabilities .....	2,779,400	3,484,400
<b>TOTAL LIABILITIES .....</b>	<b><u>\$ 160,610,500</u></b>	<b><u>\$ 69,962,300</u></b>
<b>COMMITMENTS AND CONTINGENCIES - SEE NOTE 13</b>		
<b>STOCKHOLDERS' EQUITY</b>		
Preferred Stock, no par value per share, 10,000,000 shares authorized and 3,799,799 issued and outstanding at December 31, 2022 and 4,016,955 issued and outstanding at December 31, 2021 .....	\$ 62,912,100	\$ 66,507,500
Common Stock, no par value per share, 50,000,000 shares authorized and 718,835 issued and outstanding at December 31, 2022 and 657,767 issued and outstanding at December 31, 2021 .....	35,704,700	32,122,700
Additional Paid In Capital.....	1,266,300	752,700
Retained Earnings (Accumulated Deficit) .....	(24,327,200)	1,646,500
Stockholders' Equity.....	75,555,900	101,029,400
Non-Controlling Interest .....	—	(1,291,600)
<b>TOTAL STOCKHOLDERS' EQUITY.....</b>	<b><u>75,555,900</u></b>	<b><u>99,737,800</u></b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY .....</b>	<b><u>\$ 236,166,400</u></b>	<b><u>\$ 169,700,100</u></b>

See accompanying notes to the consolidated financial statements.  
(Amounts rounded to the nearest \$100)

**HARBOR CUSTOM DEVELOPMENT, INC. AND SUBSIDIARIES**  
**D/B/A HARBOR CUSTOM HOMES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**Years Ended December 31, 2022 and 2021**

	<u>2022</u>	<u>2021</u>
Sales.....	\$ 55,414,300	\$ 72,352,700
Cost of Sales .....	<u>55,866,800</u>	<u>50,419,400</u>
Gross Profit (Loss).....	(452,500)	21,933,300
Operating Expenses .....	<u>16,237,700</u>	<u>11,151,600</u>
Operating Income (Loss) .....	(16,690,200)	10,781,700
Other Income (Expense)		
Interest Expense .....	(1,760,000)	(249,300)
Interest Income .....	465,600	—
Loss on Sale of Equipment .....	(3,433,800)	(35,900)
Other Income.....	<u>38,000</u>	<u>127,200</u>
Total Other Expense .....	(4,690,200)	(158,000)
Income (Loss) Before Income Tax .....	(21,380,400)	10,623,700
Income Tax Expense (Benefit) .....	<u>(4,458,200)</u>	<u>1,766,900</u>
Net Income (Loss) .....	(16,922,200)	8,856,800
Net Loss Attributable to Non-controlling interests.....	(500)	(1,700)
Preferred Dividends .....	<u>(7,759,900)</u>	<u>(2,724,900)</u>
Net Income (Loss) Attributable to Common Stockholders .....	<u>\$ (24,681,600)</u>	<u>\$ 6,133,600</u>
Earnings (Loss) Per Share – Basic.....	<u>\$ (35.29)</u>	<u>\$ 8.56</u>
Earnings (Loss) Per Share – Diluted.....	<u>\$ (35.29)</u>	<u>\$ 8.13</u>
Weighted Average Common Shares Outstanding – Basic.....	<u>699,490</u>	<u>716,837</u>
Weighted Average Common Shares Outstanding – Diluted .....	<u>699,490</u>	<u>1,089,678</u>

See accompanying notes to the consolidated financial statements.  
(Amounts rounded to the nearest \$100)



**HARBOR CUSTOM DEVELOPMENT, INC. AND SUBSIDIARIES**  
**D/B/A HARBOR CUSTOM HOMES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**Years Ended December 31, 2022 and 2021**

	<u>2022</u>	<u>2021</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net Income (Loss).....	\$(16,922,200)	\$ 8,856,800
Adjustments to reconcile net income (loss) to net cash from operating activities:		
Depreciation.....	1,407,400	1,084,200
Amortization of right of use assets .....	542,800	387,900
Loss on sale of equipment .....	3,433,800	35,900
Provision for loss on contract .....	159,100	—
Impairment loss on real estate .....	3,602,600	—
Impairment loss on note receivable .....	1,200,000	—
Stock compensation .....	515,500	499,900
Forgiveness on PPP loan .....	—	(10,000)
Amortization of revolver issuance costs.....	457,400	—
Net change in assets and liabilities:		
Accounts receivable .....	(593,500)	(1,035,300)
Contract assets .....	2,167,200	(2,167,200)
Notes receivable .....	(3,725,300)	(2,000,000)
Prepaid expenses and other assets .....	(1,499,900)	290,300
Real estate .....	(84,637,700)	(98,527,500)
Deferred tax asset .....	(4,010,300)	(649,000)
Accounts payable and accrued expenses .....	3,428,100	7,962,800
Contract liabilities .....	338,300	—
Deferred revenue .....	7,200	(851,500)
Payments on right of use liability, net of incentives .....	255,800	(301,100)
<b>NET CASH USED IN OPERATING ACTIVITIES.....</b>	<b>(93,873,700)</b>	<b>(86,423,800)</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchase of property and equipment.....	(2,646,400)	(745,600)
Proceeds on the sale of equipment .....	5,113,300	69,500
<b>NET CASH PROVIDED BY (USED IN) INVESTING ACTIVITIES.....</b>	<b>2,466,900</b>	<b>(676,100)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Construction loans.....	89,559,300	53,366,600
Payments on construction loans .....	(17,115,900)	(24,069,200)
Financing fees construction loans .....	(2,470,200)	(5,574,900)
Related party construction loans .....	8,669,900	19,789,600
Payments on related party construction loans .....	(14,071,800)	(11,793,800)
Financing fees related party construction loans .....	(105,400)	(1,982,900)
Revolving line of credit loan, net of payments.....	25,000,000	—
Financing fees revolving line of credit loan.....	(1,097,700)	—
Payments on note payable D&O insurance.....	(1,115,500)	(1,247,700)
Payments on equipment loans.....	(3,894,200)	(1,893,700)
Payments on financing leases.....	(104,100)	(356,900)
Payments on PPP loan.....	—	(9,300)
Net proceeds from issuance of common stock .....	—	25,101,000
Net proceeds from issuance of preferred stock .....	—	66,572,300
Preferred dividends .....	(7,796,100)	(2,054,000)

Repurchase of common stock .....	(437,700)	(5,000,000)
Proceeds from exercise of stock options .....	8,600	18,000
Proceeds from exercise of warrants .....	413,700	—
Deferred offering costs .....	—	65,100
NET CASH PROVIDED BY FINANCING ACTIVITIES .....	75,442,900	110,930,200
NET INCREASE (DECREASE) IN CASH AND RESTRICTED CASH .....	(15,963,900)	23,830,300
CASH AND RESTRICTED CASH AT BEGINNING OF YEAR .....	26,226,800	2,396,500
CASH AND RESTRICTED CASH AT END OF YEAR .....	\$ 10,262,900	\$ 26,226,800
SUPPLEMENTAL CASH FLOW INFORMATION .....		
Interest paid .....	\$ 8,635,600	\$ 4,190,200
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES		
New right of use obligations .....	\$ —	\$ 2,943,800
Termination of right of use leases .....	\$ 346,900	\$ —
Amortization of debt discount capitalized .....	\$ 2,307,000	\$ 3,238,300
Promissory notes issued for earnest money .....	\$ 450,000	\$ —
Financing of D&O insurance .....	\$ 590,100	\$ 1,410,400
Conversion of finance lease to equipment loan .....	\$ 394,800	\$ —
Cancellation of finance leases .....	\$ —	\$ 99,100
Financing of fixed assets additions .....	\$ 110,000	\$ 1,566,800
Dividends declared but not paid .....	\$ 634,600	\$ 670,900
Conversion of preferred to common stock .....	\$ 3,595,400	\$ 64,800

See accompanying notes to the consolidated financial statements.  
(Amounts rounded to the nearest \$100)

**HARBOR CUSTOM DEVELOPMENT, INC. AND SUBSIDIARIES**  
**D/B/A HARBOR CUSTOM HOMES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)**  
**For the Periods January 1, 2021 through December 31, 2022**

	<b>Common Stock</b>		<b>Preferred Stock</b>		<b>Additional</b>	<b>Retained</b>	<b>Stockholders'</b>	<b>Non-</b>	<b>Total Equity</b>
	<b>Shares Issued</b>	<b>No Par</b>	<b>Shares Issued</b>	<b>No Par</b>	<b>Paid in</b>	<b>Earnings</b>	<b>Equity</b>	<b>Controlling</b>	<b>(Deficit)</b>
					<b>Capital</b>	<b>(Accumulated</b>	<b>(Deficit)</b>	<b>Interest</b>	
						<b>Deficit)</b>			
<b>Balance, January 1, 2021 .....</b>	<b>281,827</b>	<b>\$ 11,956,900</b>	<b>—</b>	<b>\$ —</b>	<b>\$ 234,800</b>	<b>\$ (4,487,100)</b>	<b>\$ 7,704,600</b>	<b>\$ (1,289,900)</b>	<b>\$ 6,414,700</b>
Net proceeds issuance of common stock .....	460,000	25,101,000					25,101,000		25,101,000
Exercise of stock options .....	2,252				18,000		18,000		18,000
Stock Compensation Expense .....	3,025				499,900		499,900		499,900
Net proceeds issuance of Preferred Stock .....			4,020,555	66,572,300			66,572,300		66,572,300
Preferred Stock Dividends .....						(2,724,900)	(2,724,900)		(2,724,900)
Repurchase of Stock .....	(90,337)	(5,000,000)					(5,000,000)		(5,000,000)
Conversion of Preferred stock .....	1,000	64,800	(3,600)	(64,800)			—		—
Net (Loss) Income .....						8,858,500	8,858,500	(1,700)	8,856,800
<b>Balance, December 31, 2021 .....</b>	<b>657,767</b>	<b>\$ 32,122,700</b>	<b>4,016,955</b>	<b>\$ 66,507,500</b>	<b>\$ 752,700</b>	<b>\$ 1,646,500</b>	<b>\$ 101,029,400</b>	<b>\$ (1,291,600)</b>	<b>\$ 99,737,800</b>
Exercise of Stock Options .....	1,081	10,500			(1,900)		8,600		8,600
Stock Compensation Expense .....	5,293				515,500		515,500		515,500
Dissolution of Non-Controlling Interest .....						(1,292,100)	(1,292,100)	1,292,100	—
Preferred Stock Dividends .....						(7,759,900)	(7,759,900)		(7,759,900)
Repurchase of Stock .....	(12,597)	(437,700)					(437,700)		(437,700)
Conversion of Preferred stock .....	60,326	3,595,400	(217,156)	(3,595,400)			—		—
Exercise of Warrants .....	6,965	413,800					413,800		413,800
Net Income (Loss) .....						(16,921,700)	(16,921,700)	(500)	(16,922,200)
<b>Balance, December 31, 2022 .....</b>	<b>718,835</b>	<b>\$ 35,704,700</b>	<b>3,799,799</b>	<b>\$ 62,912,100</b>	<b>\$ 1,266,300</b>	<b>\$ (24,327,200)</b>	<b>\$ 75,555,900</b>	<b>\$ —</b>	<b>\$ 75,555,900</b>

See accompanying notes to the consolidated financial statements.  
(Amounts rounded to the nearest \$100)

## 1. NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### Nature of Operations

The Company's principal business activity involves acquiring raw land and developed lots for the purpose of building and selling single family and multi-family dwellings in Washington, California, Texas, and Florida. It utilizes its heavy equipment resources to develop an inventory of developed lots and provide development infrastructure construction, on a contract basis, for other home builders.

On August 1, 2019, the Company changed its name from Harbor Custom Homes, Inc. to Harbor Custom Development, Inc.

The Company became an effective filer with the SEC and started trading on The Nasdaq Stock Market LLC ("Nasdaq") on August 28, 2020.

### Principles of Consolidation

The consolidated financial statements include the following subsidiaries of Harbor Custom Development, Inc. as of the reporting period ending dates as follow:

Names	Dates of Formation	Attributable Interest	
		December 31, 2022	December 31, 2021
Saylor View Estates, LLC*	March 30, 2014	N/A	51%
Harbor Materials, LLC**	July 5, 2018	N/A	N/A
Belfair Apartments, LLC	December 3, 2019	100%	100%
Pacific Ridge CMS, LLC	May 24, 2021	100%	100%
Tanglewilde, LLC	June 25, 2021	100%	100%
HCDI FL CONDO LLC	July 30, 2021	100%	100%
HCDI Mira, LLC	August 31, 2021	100%	100%
HCDI, Bridgeview LLC	October 28, 2021	100%	100%
HCDI Wyndstone, LLC	September 15, 2021	100%	100%
HCDI Semiahmoo, LLC	December 17, 2021	100%	100%
Mills Crossing, LLC	July 21, 2022	100%	N/A
Broadmoor Ventures, LLC	August 24, 2022	100%	N/A
Winding Lane Estate LLC	November 30, 2022	100%	N/A

\* Saylor View Estates, LLC was voluntarily dissolved with the State of Washington as of January 20, 2022.

\*\* Harbor Materials, LLC was voluntarily dissolved with the State of Washington as of January 29, 2021.

As of December 31, 2022 and December 31, 2021, the aggregate non-controlling interest was \$0 and \$(1.3) million, respectively.

### Basis of Presentation

The accompanying consolidated financial statements include the accounts of Harbor Custom Development, Inc and, its wholly owned subsidiaries, and are presented using the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). All intercompany accounts and transactions have been eliminated in consolidation. References to the "ASC" hereafter refer to the Accounting Standards Codification established by the Financial Accounting Standards Board ("FASB") as the source of authoritative U.S. GAAP.

All numbers in the financial statements are rounded to the nearest \$100, except for Earnings (Loss) per Share ("EPS") data, and numbers in the notes to the financial statements are rounded to the nearest million.

### Reclassification

Certain prior year amounts have been reclassified for consistency with the current year presentation. These reclassifications had no effect on the reported results of operations.

### Use of Estimates

Management uses estimates and assumptions in preparing these financial statements in accordance with GAAP. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could vary from the estimates that were used.

### Going Concern Uncertainty

Under ASC 205-40, Company management has the responsibility to evaluate whether conditions and/or events raise substantial doubt about the Company's ability to meet its future financial obligations as they become due within one year after the date that the financial statements are issued. As required by this standard, the evaluation shall initially not take into consideration the potential mitigating effects of the Company's plans that have not been fully implemented as of the date the financial statements are issued.

Regarding the first step of this assessment, the Company's cash and liquidity position as of year-end may not be sufficient to meet its financial obligations for the next 12 months without implementing one or more of management's plans and initiatives to generate or raise additional capital. Further, the following detrimental events occurred: the closing bid price of the Company's common stock on the Nasdaq Capital Market was below \$1.00 for more than 30 consecutive trading days and the Company received a potential delisting notification from Nasdaq; the Company failed to maintain compliance with certain financial covenants within its loan agreements requiring loan amendment or covenant waivers; the Company has no borrowing availability under its revolving credit facility; it has significant construction related debt maturing over the next 12 months; it has had significant uses of cash flows from operations over the past two years; it had a \$16.9 million net loss in 2022; and the real estate and construction industries are experiencing declining market conditions which have negatively impacted property valuations as well as financing capabilities and terms.

In performing the second step of this assessment, management is required to evaluate whether the Company's plans to mitigate the conditions above alleviate the substantial doubt about the Company's ability to meet its obligations as they become due within one year after the date that the financial statements are issued.

As part of management's evaluation of the second step of this assessment, management notes that subsequent to year end, but prior to the filing of these financial statements, the Company has done the following: completed a 1-for-20 reverse stock split increasing its closing bid price above the \$1.00 minimum NASDAQ requirement and regaining compliance with this Nasdaq Continued Listing Requirement; executed an Amendment to the Revolver Loan Agreement with BankUnited to alleviate the breach of financial covenants and the bank's ability to call the loan; has \$24.4 million sales closed after December 31, 2022 or under contract as of March 28, 2023 and significant additional assets that are held for sale; has construction loans in place; has met its equity requirement for its Pacific Ridge, Wyndstone, Meadowscape, and Belfair Phase 1 projects; has substantially completed its fee build contracts; shut down its quarry operations; eliminated most of its full time employees in its horizontal infrastructure division; and sold a significant majority of its equipment, all of which was directly or indirectly associated with significant net loss generating activities during 2022. Additionally, the Company's future plans include: raising additional funds through the sales of assets; obtaining new debt financing and/or refinancing existing debt; pulling cash out of one or more of its multifamily properties by obtaining a project level equity partner; and/or raising capital in the private or public equity or debt markets. Based on the properties under contract for sale, interest in the Company's available for sale properties, its prior track record of raising both debt and equity capital, and management's ongoing discussions and negotiations with potential financing partners, management believes it is probable that the Company's plans will be effectively implemented and probable that those plans will mitigate the previously mentioned conditions and events that raised substantial doubt.

The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The accompanying consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the Company's failure to continue as a going concern.

### Stock-Based Compensation

Effective November 19, 2018, the Company's Board of Directors and stockholders approved and adopted the 2018 Incentive and Non-Statutory Stock Option Plan (the "2018 Plan"). The 2018 Plan allows the Administrator (as defined in the 2018 Plan), currently the Board of Directors, to determine the issuance of incentive stock options and non-qualified stock options to eligible employees and outside directors and consultants of the Company. The Company reserved 33,784 shares of common stock for issuance under the 2018 Plan. On June 1, 2022, the stockholders of the Company voted to approve an amendment to the 2018 Plan to increase, by 100,000, the authorized number of shares of common stock reserved for issuance as options under the 2018 Plan.

Effective December 3, 2020, the Company's Board of Directors and stockholders approved and adopted the 2020 Restricted Stock Plan (the "2020 Plan"). The 2020 Plan allows the Administrator, currently the Compensation Committee, to determine the issuance of restricted stock to eligible officers, directors, and key employees. The Company reserved 35,000 shares of common stock for issuance under the 2020 Plan. On June 1, 2022, the stockholders of the Company voted to approve an amendment to the 2020 Plan to increase, by 100,000, the authorized number of shares of common stock available for awards under the 2020 Plan.

The Company accounts for stock-based compensation in accordance with Financial Accounting Standards Board ("FASB") Accounting Standard Codification ("ASC") Topic 718, "Compensation – Stock Compensation" ("ASC 718") which establishes financial accounting and reporting standards for stock-based employee and non-employee compensation. It defines a fair value-based method of accounting for an employee stock option or similar equity instrument.

The Company recognizes all forms of share-based payments, including stock option grants, warrants and restricted stock grants, at their fair value on the grant date.

Options and warrants are valued using a Black-Scholes option pricing model. Grants of share-based payment awards issued to non-employees for services rendered have been recorded at the fair value of the share-based payment. The grants are amortized on a straight-line basis over the requisite service periods, which is generally the vesting period. The Company accounts for forfeitures of stock options as they occur. When forfeitures occur, the unvested portion of the previously recognized compensation cost is reversed in the period of the forfeiture.

Stock-based compensation expenses are included in operating expenses in the consolidated statements of operations.

For the years ended December 31, 2022 and 2021 when computing fair value of share-based payments, the Company has considered the following range of assumptions:

	December 31, 2022	December 31, 2021
Risk-free interest rate.....	1.73%-3.54%	0.17%-0.84%
Exercise price .....	\$22.40-\$60.00	\$55.20 - \$100.00
Expected life of grants in years .....	3.93-6.51	2.50-6.50
Expected volatility of underlying stock.....	42.34%-48.13%	42.30%-56.00%
Dividends.....	—	—

The expected term is computed using the "simplified" method as permitted under the provisions of FASB ASC Topic 718-10-S99. The Company uses the simplified method to calculate the expected term of share options and similar instruments as the Company does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term. The share price is the closing price on the date of grant. Expected volatility is based on the historical stock price volatility of comparable companies' common stock as the stock does not have sufficient historical trading activity. Risk free interest rates were obtained from U.S. Treasury rates for the applicable periods.

#### Repurchase of Equity Securities

Share repurchases are recorded to common stock at the value of the cash consideration paid, as the Company's common stock has no par value. These shares were being repurchased for the purpose of constructive retirement. (See Note 17. Stockholders' Equity.)

#### Reverse Stock Split

On March 6, 2023, the Company effected a 1-for-20 reverse stock split of its issued and outstanding shares of common stock (the "Reverse Stock Split") on the Nasdaq Capital Market. Accordingly, all share and per share data included in these consolidated financial statements and notes thereto have been adjusted retroactively to reflect the impact of the Reverse Stock Split.

### Earnings (Loss) Per Share

EPS is the amount of earnings attributable to each share of common stock. For convenience, the term is used to refer to either earnings or loss per share. EPS is computed pursuant to topic 260-10-45 of the FASB ASC. Pursuant to ASC Paragraphs 260-10-45-10 through 260-10-45-16, basic EPS shall be computed by dividing income available to common stockholders (the numerator) by the weighted-average number of common shares outstanding (the denominator) during the period. Income available to common stockholders shall be computed by deducting both the dividends declared in the period on preferred stock (whether or not paid) and the dividends accumulated for the period on cumulative preferred stock (whether or not earned) from income from continuing operations (if that amount appears in the income statement) and also from net income. The computation of diluted EPS is similar to the computation of basic EPS except that the numerator may have to adjust for any dividends and income or loss associated with potentially dilutive securities that are assumed to have resulted in the issuance of shares of common stock and the denominator may have to adjust to include the number of additional shares of common stock that would have been outstanding if the dilutive potential shares of common stock had been issued during the period to reflect the potential dilution that could occur from shares of common stock issuable through a contingent shares issuance arrangement, stock options, warrants, RSUs, or convertible preferred stock. For purposes of determining diluted earnings per common share, the treasury stock method is used for stock options, warrants, and RSUs, and the if-converted method is used for convertible preferred stock as prescribed in FASB ASC Topic 260.

The following table provides a reconciliation of the numerator and denominator used in computing basic and diluted net income (loss) attributable to common stockholders per share of common stock for the years ended December 31, 2022 and 2021.

	<b>Year Ended December 31, 2022</b>	<b>Year Ended December 31, 2021</b>
Numerator:		
Net income (loss) attributable to common stockholders.....	\$ (24,681,600)	\$ 6,133,600
Effect of dilutive securities:.....	—	2,724,900
Diluted net income (loss).....	<u>\$ (24,681,600)</u>	<u>\$ 8,858,500</u>
Denominator:		
Weighted average common shares outstanding – basic.....	699,490	716,837
Dilutive securities (a):		
Restricted Stock Awards .....	—	89
Options .....	—	7,372
Warrants .....	—	971
Convertible Preferred Stock.....	<u>—</u>	<u>364,409</u>
Weighted average common shares outstanding and assumed conversion – diluted .....	699,490	1,089,678
Basic net earnings (loss) per common share.....	<u>\$ (35.29)</u>	<u>\$ 8.56</u>
Diluted net earnings (loss) per common share.....	<u>\$ (35.29)</u>	<u>\$ 8.13</u>
(a) - Outstanding anti-dilutive securities excluded:		
Unvested restricted stock awards .....	12,000	2,250
Stock options.....	37,546	13,500
Warrants to purchase common stock (1).....	18,447,564	18,464,335
Convertible preferred stock (2) .....	3,799,799	—
Warrants to purchase convertible preferred stock (2) .....	12,000	12,000

- (1) The number of outstanding warrants did not change or split pursuant to the reverse stock split, but the number of shares of common stock issuable upon exercise will be adjusted based on a 1 to 0.050 ratio.
- (2) Preferred stock and warrants to purchase convertible preferred stock are convertible into common stock on a 0.2778 to 1 ratio.

### Fair Value of Financial Instruments

For purpose of this disclosure, the fair value of a financial instrument is the amount at which the instrument could be exchanged in a current transaction between willing parties, other than in a forced sale or liquidation. The carrying amount of the Company's short-term financial instruments approximates fair value due to the relatively short period to maturity for these instruments.

### Cash and Cash Equivalents

The Company considers all short-term debt securities purchased with a maturity of three months or less to be cash equivalents. There were no cash equivalents as of December 31, 2022 and December 31, 2021.

### Restricted Cash

On August 10, 2021, the Company entered into a Letter of Credit ("LOC") agreement with WaFd Bank in the amount of \$0.6 million. The Company signed a lease on October 5, 2021 for a new office space. The landlord of the property, University Street Properties I, LLC, is the beneficiary of the LOC. The amount of funds that cover this LOC were moved by WaFd Bank to a controlled account on August 13, 2021. (See Note 10. Letter of Credit.)

### Accounts Receivable

Accounts receivables are reported at the amount the Company expects to collect from outstanding balances. The Company provides for an allowance for doubtful accounts based upon a review of the outstanding accounts receivable, historical collection information, and existing economic conditions. The Company determines if receivables are past due based on days outstanding, and amounts are written off when determined to be uncollectible by management. The allowance for doubtful accounts was \$0 as of December 31, 2022 and December 31, 2021.

### Notes Receivable

Notes receivables are recorded at amounts due to the Company according to the contractual terms of the loan agreement. The Company's notes receivables are for the sale of real estate properties or financing the development of the properties prior to acquisition and are each secured by the underlying improved real estate properties.

The Company reviews notes receivable for impairment whenever events or circumstances indicate that the note may not be fully recoverable. Impairment is present when, based on current information and events, it is probable that the Company will be unable to collect all amounts due according to the contractual terms of the loan agreement. If management determines an amount to be uncollectible, impairment is measured based on the estimated uncollectible amount less the fair value of the underlying collateral. Impairment is recognized with a valuation allowance against the note receivable with a corresponding charge to bad debt expense under operating expenses. The valuation allowance was \$1.2 million for notes receivable as of December 31, 2022. No impairment loss was recognized as of December 31, 2021. (See Note 3. Notes Receivable.)

In March 2022, the Company entered into a promissory note with Rocklin Winding Lane 22, LLC for \$4.8 million ("the note") for the sale of developed lots. In the third quarter of 2022, Rocklin Winding Lane 22, LLC defaulted on the note due to a missed interest payment on June 30, 2022. As a result, the Company issued a letter of default in August 2022 and began foreclosure proceedings on the underlying real estate asset in October 2022. In the third quarter of 2022, the Company recorded a valuation allowance against the note and related bad debt expense within operating expenses of \$0.8 million. In the fourth quarter of 2022, the Company was successful in the foreclosure of the underlying property and took ownership of the property, which was recorded for a fair value of \$5.1 million at the time of repossession. Pursuant to the subordination agreement, the underlying real estate asset had a \$1.0 million senior loan to a third party that was taken over by the Company upon the foreclosure of the property.

### Property and Equipment and Depreciation

Property and equipment are recorded at cost. Expenditures for major additions and betterments are capitalized. Maintenance and repair charges are expensed as incurred. Depreciation is computed by the straight-line method (after considering their respective estimated residual values) over the estimated useful lives:

Construction Equipment .....	5-10 years
Leasehold Improvements.....	The lesser of 10 years or the remaining life of the lease
Furniture and Fixtures .....	5 years
Computers.....	3 years
Vehicles .....	10 years



## Real Estate Assets

Real estate assets are recorded at cost, except when real estate assets are acquired that meet the definition of a business combination in accordance with FASB ASC Topic 805, “Business Combinations,” where acquired assets are recorded at fair value. Interest, property taxes, insurance, and other incremental costs (including salaries) directly related to a project are capitalized during the construction period of major facilities and land improvements. The capitalization period begins when activities to develop the parcel commence and ends when the asset constructed is completed. The capitalized costs are recorded as part of the asset to which they relate and are expensed when the underlying asset is sold.

The Company capitalized interest from related party borrowings of \$1.1 million and \$1.0 million for the years ended December 31, 2022 and 2021, respectively. The Company capitalized interest from third-party borrowings of \$5.7 million and \$2.4 million for the years ended December 31, 2022 and 2021, respectively.

A property is classified as “held for sale” when all of the following criteria for a plan of sale have been met:

- (1) Management, having the authority to approve the action, commits to a plan to sell the property;
- (2) The property is available for immediate sale in its present condition, subject only to terms that are usual and customary;
- (3) An active program to locate a buyer and other actions required to complete the plan to sell have been initiated;
- (4) The sale of the property is probable and is expected to be completed within one year of the contract date;
- (5) The property is being actively marketed for sale at a price that is reasonable in relation to its current fair value; and
- (6) Actions necessary to complete the plan of sale indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn.

In addition to the annual assessment of potential triggering events in accordance with FASB ASC Topic 360, the Company applies a fair value-based impairment test to the net book value of assets on an annual basis and on an interim basis if certain events or circumstances indicate that an impairment loss may have occurred.

As of December 31, 2022, the Company recorded impairment charges of \$1.2 million and \$2.4 million relating to the Winding Lane lots and Pacific Ridge apartments, respectively. These charges are included in the real estate balance as presented in Note 5. Real Estate. The Company did not identify any other real estate that qualified for an impairment charge. As of December 31, 2021, the Company did not identify any trigger events that would require further investigation under ASC 360 and no impairment was recorded for the period.

## Revenue and Cost Recognition

FASB ASC Topic 606, Revenue from Contracts with Customers (“ASC 606”), establishes principles for reporting information about the nature, amount, timing and uncertainty of revenue and cash flows arising from the entity’s contracts to provide goods or services to customers.

In accordance with ASC 606, revenue is recognized when a customer obtains control of the promised good or service. The amount of revenue recognized reflects the consideration to which the Company expects to be entitled to receive in exchange for these goods or services. The provision of ASC 606 includes a five-step process by which the Company determines revenue recognition, depicting the transfer of goods or services to customers in amounts reflecting the payment to which the Company expects to be entitled in exchange for those goods or services.

ASC 606 requires the Company to apply the following steps: (1) identify the contract with the customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when, or as, performance obligations are satisfied.

A detailed breakdown of the five-step process for revenue recognitions is as follows:

### ***Homes, Developed Lots, and Entitled Land***

#### ***1. Identify the contract with a customer.***

The Company signs an agreement with a buyer to purchase the parcel of entitled land, developed lots that have completed infrastructure, or completed homes.

#### ***2. Identify the performance obligations in the contract.***

Performance obligations of the Company include delivering entitled land, developed lots, and completed homes to the customer, which are required to meet certain specifications outlined in the contract.

#### ***3. Determine the transaction price.***

The transaction price is fixed and specified in the contract. Any subsequent change orders or price changes are required to be approved by both parties.

#### ***4. Allocation of the transaction price to performance obligations in the contract.***

The parcel, lots, and homes are separate performance obligations for which the specific price is in the contract.

#### ***5. Recognize revenue when (or as) the entity satisfies a performance obligation.***

The Company recognizes revenue when title is transferred. The Company does not have any further material performance obligations once title is transferred.

### ***Fee Build***

#### ***1. Identify the contract with a customer.***

The Company signs an agreement with a customer to construct the required infrastructure so that houses can be developed on the lots.

#### ***2. Identify the performance obligations in the contract.***

Performance obligations of the Company include delivering developed lots which are required to meet certain specifications that are outlined in the contract.

#### ***3. Determine the transaction price.***

The transaction price is fixed and specified in the contract. Any subsequent change orders or price changes are required to be approved by both parties.

#### ***4. Allocation of the transaction price to performance obligations in the contract.***

The nature of the industry involves a number of uncertainties that can affect the current state of the contract. Variable considerations are the estimates made due to a contract modification in the contractual service. Change orders, claims, extras, or back charges are common in contractual services activity as a form of variable consideration. If there is going to be a contract modification, judgment by management will need to be made to determine if the variable consideration is enforceable. The following factors are considered in determining if the variable consideration is enforceable:

1. The customer's written approval of the scope of the change order;
2. Current contract language that indicates clear and enforceable entitlement relating to the change order;
3. Separate documentation for the change order costs that are identifiable and reasonable; and
4. The Company's experience in negotiating change orders, especially as it relates to the specific type of contract and change order being evaluated.

Once the Company receives a contract, it generates a budget of projected costs for the contract based on the contract price. If the scope of the contract during the contractual period needs to be modified, the Company files a change order. The Company does not continue to perform services until the change modification is agreed upon with documentation by both the Company and the customer. There are few times that claims, extras, or back charges are included in the contract.

If there are multiple performance obligations to the contract, the costs must be allocated appropriately and consistently to each performance obligation. In the Company's experience, usually only one performance obligation is stated per contract. If there are multiple services provided for one customer, the Company has a policy of splitting out the services over multiple contracts.

*5. Recognize revenue when (or as) the entity satisfies a performance obligation.*

The Company uses the total costs incurred on the project relative to the total expected costs to satisfy the performance obligation. The input method involves measuring the resources consumed, labor hours expended, costs incurred, time lapsed, or machine hours used relative to the total expected inputs to the satisfaction of the performance obligation. Costs incurred prior to actual contract (i.e., design, engineering, procurement of material, etc.) should not be recognized as the Company does not have control of the good/service provided. When the estimate on a contract indicates a loss or claims against costs incurred reduce the likelihood of recoverability of such costs, the Company records the entire estimated loss in the period the loss becomes known. Project contracts typically provide for a schedule of billings or invoices to the customer based on the Company's job to date percentage of completion of specific tasks inherent in the fulfillment of its performance obligation(s). The schedules for such billings usually do not precisely match the schedule on which costs are incurred. As a result, contract revenue recognized in the statement of operations can and usually does differ from amounts that can be billed or invoiced to the customer at any point during the contract. Amounts by which cumulative contract revenue recognized on a contract as of a given date exceed cumulative billings and unbilled receivables to the customer under the contract are reflected as a current contract asset in the Company's balance sheet. Amounts by which cumulative billings to the customer under a contract as of a given date exceed cumulative contract revenue recognized on the contract would be reflected as a current contract liability in the Company's balance sheet. (See Note 19. Uncompleted Contracts.)

Revenues from contracts with customers are summarized by category as follows for the years ended December 31, 2022 and 2021:

	<b>Year Ended December 31, 2022</b>	<b>Year Ended December 31, 2021</b>
Homes.....	\$ 28,670,000	\$ 17,654,600
Developed Lots.....	9,510,000	26,825,500
Entitled Land .....	7,880,000	20,625,000
Fee Build .....	9,124,000	6,802,900
Multi-family .....	175,900	—
Construction Materials .....	54,400	444,700
Total Revenue.....	<u>\$ 55,414,300</u>	<u>\$ 72,352,700</u>

The following table disaggregates the Company's revenue based on the timing of satisfaction of performance obligations for the years ended December 31, 2022 and 2021:

	<b>Year Ended December 31, 2022</b>	<b>Year Ended December 31, 2021</b>
Performance obligations satisfied at a point in time .....	\$ 46,290,300	\$ 65,549,800
Performance obligations satisfied over time.....	9,124,000	6,802,900
Total Revenue.....	<u>\$ 55,414,300</u>	<u>\$ 72,352,700</u>

Cost of Sales

Land acquisition costs are typically allocated to each lot based on the size of the lot in relation to the size of the total project. Development costs and capitalized interest are allocated to lots sold based on the same criteria.

Fee build costs are charged to cost of sales as incurred. See the revenue recognition criteria above.

Costs relating to the handling of recycled construction materials and converting items into usable construction materials for resale are charged to cost of sales as incurred.

### Advertising

Advertising expenses, which are expensed as incurred and included in operating expenses, were \$0.4 million and \$0.1 million for the years ended December 31, 2022 and 2021.

### Leases

The Company's leases consist of leaseholds on office space. The Company determines if an arrangement contains a lease at inception as defined by ASC 842. In order to meet the definition of a lease under ASC 842, the contractual arrangement must convey to us the right to control the use of an identifiable asset for a period of time in exchange for consideration. ROU assets represent the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. ROU assets and liabilities are recognized at the lease commencement date based on the estimated present value of lease payments over the lease term.

The Company is a lessor for its residential apartment leases during the development and until the property is sold. The lease agreement is evaluated to determine the accounting treatment as a finance or operating lease in accordance with the ASC 842 lease standard. Rental income attributable to residential leases is recorded when due from residents and recognized monthly as it was earned. Residential apartment leases may include lease income related to such items as utility recoveries, parking rent, storage rent and pet rent that the Company treats as a single lease component because the amenities cannot be leased on their own and the timing and pattern of revenue recognition are the same. Leases entered into between a resident and a property for the rental of an apartment unit are generally 6 months to a year, and typically renewed on a month-to-month basis after the initial term.

### Income Taxes

Deferred income tax assets and liabilities are determined based on the estimated future tax effects of net operating loss, credit carryforwards, and temporary differences between the tax basis of assets and liabilities and their respective financial reporting amounts measured at the current enacted tax rates. Management applies the criteria established under FASB ASC Topic 740, Income Taxes, to determine whether any valuation allowances are needed each year.

The Company recognizes a tax benefit for an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities based on the technical merits of the position. There are no uncertain tax positions as of December 31, 2022 and December 31, 2021.

On August 16, 2022, the Inflation Reduction Act of 2022 ("IRA") was signed into law. The IRA includes a 15% Corporate Alternative Minimum Tax ("Corporate AMT") for tax years beginning after December 31, 2022. The Company does not expect the Corporate AMT to have a material impact on its consolidated financial statements. Additionally, the IRA imposes a 1% excise tax on net repurchases of stock by certain publicly traded corporations. The excise tax is imposed on the value of the net stock repurchased or treated as repurchased. The new law will apply to stock repurchases occurring after December 31, 2022. The IRA also extended the federal tax credit for building new energy-efficient homes delivered from January 1, 2022 (retroactively) through December 31, 2032, as well as modifies and increases it starting in 2023. The federal tax credits in 2022 reflected the impact of the extension under the IRA.

### Recent Accounting Pronouncements

On June 16, 2016, the FASB issued ASU No. 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurements of Credit Losses on Financial Instruments ("ASU 2016-13"), which changes the impairment model for most financial assets. This update is intended to improve financial reporting by requiring timelier recording of credit losses on loans and other financial instruments held by financial institutions and other organizations. The underlying premise of the update is that financial assets measured at amortized cost should be presented at the net amount expected to be collected, through an allowance for credit losses that is deducted from the amortized cost basis. The allowance for credit losses should reflect management's current estimate of credit losses that are expected to occur over the remaining life of a financial asset. The income statement will be effected for the measurement of credit losses for newly recognized financial assets, as well as the expected increases or decreases of expected credit losses that have taken place during the period. Pursuant to ASU No. 2019-10, Financial Instruments – Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842), ASU 2016-13 is effective for annual and interim periods beginning after December 15, 2022 for small reporting companies, non-SEC filers, and all other companies. The adoption of ASU 2016-13 is not expected to have a material impact on the Company's consolidated financial statements.

On March 12, 2020, the FASB issued ASU No. 2020-04, Reference Rate Reform (ASC 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting. ASC 848 contains optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform. The amendments in this update are elective and apply to all entities, subject to meeting certain criteria, that have contracts, hedging relationships, and other transactions that reference London Interbank Offered Rate (LIBOR) or another reference rate expected to be discontinued because of reference rate reform. The expedients and exceptions provided by the amendments do not apply to contract modifications made and hedging relationships entered into or evaluated after December 31, 2022, except for hedging relationships existing as of December 31, 2022, for which an entity has applied certain optional expedients that are retained through the end of the hedging relationship. In December 2022, ASU 2022-06 was issued which was effective upon issuance, defers the sunset date of this prior guidance from December 31, 2022 to December 31, 2024, after which entities will no longer be permitted to apply the relief guidance in Topic 848. The adoption of ASU 2020-04 and ASU 2022-06 did not have a material impact on the Company's consolidated financial statements.

On May 3, 2021, the FASB released ASU No. 2021-04, Compensation – Earning Per Share (Topic 260), Debt - Modifications and Extinguishments (subtopic 470-50), Compensation - Stock Compensation (Topic 718), Contracts in Entity's Own Equity (Subtopic 815-40), Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options. The FASB issued this update to clarify and reduce diversity in an issuer's accounting for modifications or exchanges of freestanding equity-classified written call options (for example warrants) that remain equity classified after modification or exchange. The standard is effective for fiscal years beginning after December 15, 2021. The Company adopted ASU 2021-04 on January 1, 2022, however the adoption did not have an impact on the Company's Financial Statements.

#### Impairment of Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or circumstances indicate that the carrying value of such assets may not be fully recoverable. Impairment is present when the sum of estimated undiscounted future cash flow expected to result from use of the assets is less than carrying value. If impairment is present, the carrying value of the impaired asset is reduced to its fair value. Fair value is determined based on discounted cash flow or appraised values, depending on the nature of the assets. As of December 31, 2022 and December 31, 2021, there were no impairment losses recognized for long-lived assets.

## **2. CONCENTRATIONS**

#### Cash Concentrations

The Company maintains cash balances at various financial institutions. These balances are secured by the Federal Deposit Insurance Corporation. These balances generally exceed the federal insurance limits. Uninsured cash balances were \$8.1 million and \$24.5 million as of December 31, 2022 and December 31, 2021, respectively.

#### Revenue Concentrations

##### **Homes**

There were no concentrations in relation to the homes revenue segment for the years ended December 31, 2022 and 2021.

##### **Developed Lots**

For the year ended December 31, 2022, two customers each represented 59% and 25% of the developed lots revenue, respectively. For the year ended December 31, 2021, five customers each represented 26%, 23%, 18%, 14%, and 14% of the developed lots revenue, respectively.

##### **Entitled Land**

For the year ended December 31, 2022, two customers each represented 57% and 43% of the entitled land revenue, respectively. For the year ended December 31, 2021, two customers each represented 51% and 45% of the entitled land revenue, respectively.

## Fee Build

One customer represented 100% of fee build revenue for the years ended December 31, 2022 and 2021.

### 3. NOTES RECEIVABLE

As of December 31, 2022, the total principal balance of notes receivable amounted to \$4.5 million. These notes arose as financing by the Company for the sale of real estate properties or financing the development of the properties prior to acquisition. These notes are secured by the underlying improved real estate properties and accrue interest at annual rates ranging from 5% to 9%. All payments of principal and interest are due in full between March 30, 2023 and December 20, 2024. The outstanding balance of the notes amounted to \$4.5 million and \$2.0 million at December 31, 2022 and December 31, 2021, respectively. Interest income was \$0.5 million and \$0 for the years ended December 31, 2022 and 2021, respectively.

In March 2022, the Company and Noffke Horizon View, LLC entered into a promissory note with a payment in full due on March 31, 2023 of \$3.3 million ("the note") for the sale of land. In March 2023, Noffke Horizon View, LLC notified the Company that they are unable to pay this amount in full by the due date and the Company agreed to settle the note for a reduced amount totaling \$2.1 million. The Company has evaluated this settlement as a recognized subsequent event prior to the issuance of the financial statements and has determined that the note is not fully collectible as of December 31, 2022. The Company recorded a valuation allowance against the note and related bad debt expense within operating expenses of \$1.2 million for the year ended December 31, 2022.

The details of notes receivables, net of valuation allowance are as follows:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Broadmoor Commons LLC .....	\$ 1,000,300	\$ 500,000
Modern Homestead LLC .....	1,445,000	1,500,000
Noffke Horizon View, LLC .....	2,080,000	—
Total Notes Receivable .....	<u>\$ 4,525,300</u>	<u>\$ 2,000,000</u>

### 4. PROPERTY AND EQUIPMENT

Property and equipment stated at cost, less accumulated depreciation and amortization, consisted of the following:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Machinery and Equipment .....	\$ 505,300	\$10,577,600
Vehicles .....	26,200	71,800
Furniture and Fixtures .....	695,600	420,300
Leasehold Improvements .....	1,524,000	81,200
Total Fixed Assets .....	2,751,100	11,150,900
Less Accumulated Depreciation .....	(461,600)	(1,951,200)
Fixed Assets, Net .....	<u>\$ 2,289,500</u>	<u>\$ 9,199,700</u>

In December of 2022, the Company sold a significant portion of machinery and equipment which was primarily used for fee build and quarry projects as these projects are nearing completion.

Depreciation expense was \$1.4 million and \$1.1 million for the years ended December 31, 2022 and 2021, respectively.

### 5. REAL ESTATE

Real Estate consisted of the following components:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Land Held for Development .....	\$ 47,166,700	\$ 73,524,400
Construction in Progress .....	123,927,300	43,362,700
Held for Sale .....	34,384,200	5,249,000
Total Real Estate .....	<u>\$205,478,200</u>	<u>\$122,136,100</u>

## 6. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued liabilities consisted of the following:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Trade Accounts Payable .....	\$11,472,100	\$ 5,558,400
Income Tax Payable .....	—	2,415,900
Retainage Payable.....	1,130,300	445,800
Accrued Compensation, Bonuses, and Benefits .....	384,700	1,071,700
Accrued Quarry Reclamation Costs .....	76,200	500,000
Other Accruals .....	1,027,400	671,000
Total Accounts Payable and Accrued Expenses .....	<u>\$14,090,700</u>	<u>\$10,662,800</u>

## 7. REVOLVING LINE OF CREDIT

On March 7, 2022, the Company entered into a senior secured revolving credit facility (“the credit facility”) with BankUnited, N.A. (the “Lender”) for \$25.0 million. The credit facility has a two year term, with a maturity date of March 7, 2024. The unpaid principal bears interest at a fluctuating rate of interest per annum equal to the daily simple secured overnight financing rate (SOFR) plus the applicable margin of 4.75%. The credit facility is used to fund the Company’s general working capital needs and interest is expensed as incurred. For the year ended December 31, 2022, the Company capitalized debt issuance costs of \$1.1 million, respectively. These costs are recorded as debt discount and amortized ratably over the life of the loan. The credit facility is collateralized by all of the Company’s assets wherein the Lender is granted a junior priority interest in all collateralized Company assets that Lender has previously identified as a permitted lien or other encumbrance that the Company regularly incurs through its ordinary course of business; in all other Company assets, Lender maintains a first priority security interest. The credit facility also contains specific financial covenants. As of December 31, 2022, the Company was not in compliance with the minimum interest coverage ratio requirement and consolidated liquidity covenant.

On February 23, 2023, the Company entered into an amended loan agreement (the “Amendment”) with the Lender, whereby the Lender agreed to waive its right to accelerate and declare all of the debt immediately due and owing, based upon the previously disclosed non-compliance with financial covenants resulting in technical default under the loan agreement. Further, the Lender waived the requirement that the Company comply with certain financial covenants through maturity of the debt. These concessions were made as a result of the Company granting the Lender second mortgage positions for certain properties owned by the Company, as well as transferring to the Lender membership certificates pledging certain properties as collateral and perfecting the Lender’s security interest in the pledged LLCs. Additionally, the Company agreed to make principal reduction payments including paying the Lender \$0.6 million on the 20th of every month which otherwise would have been paid to preferred shareholders as a dividend on the preferred stock, and pay to the Lender 25% of all net cash proceeds from asset sales, public offerings of any class of stock or debt, private equity recaptures, or any capital raise. The Company also agreed that it will not close on any new projects without the Lender’s express written consent and will not repurchase any of its outstanding securities. The aforementioned payments will continue to be made until the earlier of March 7, 2024 or until the loan has been paid in full.

Interest expense was \$1.6 million and \$0 for the years ended December 31, 2022 and 2021, respectively.

As of December 31, 2022, the revolving line of credit loan balance was \$25.0 million and the unamortized debt discount balance was \$0.6 million.

## 8. EQUIPMENT LOANS

Equipment loans consists of the following:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Various notes payable to banks and financial institutions with interest rates varying from 0.00% to 13.89%, collateralized by equipment with monthly payments ranging from \$400 to \$11,600: .....	\$ 2,057,100	\$ 5,268,500
Book value of collateralized equipment: .....	\$ 11,800	\$ 7,229,000

Future equipment loan maturities are as follows:

For the year ended December 31:

2023 .....	\$ 2,057,100
2024 .....	—
2025 .....	—
2026 .....	—
2027 .....	—
Total.....	<u>\$ 2,057,100</u>

Interest expense was \$0.2 million and \$0.2 million for the years ended December 31, 2022 and 2021, respectively.

## **9. CONSTRUCTION LOANS**

The Company has various construction loans with private individuals and finance companies. The loans are collateralized by specific construction projects. Most loans are generally on one to two year terms but will be extended or refinanced if the project is not completed within one to two years and will be due upon the completion of the project. Interest accrues on the loans and is included with the payoff of the loan. Interest ranges from 5% to 13%. Interest expense and amortization of debt discount are capitalized when incurred and expensed as cost of goods sold when the corresponding property is sold. The loan balances related to third party lenders as of December 31, 2022 and December 31, 2021 were \$109.4 million and \$39.4 million, respectively. The unamortized debt discounts related to these construction loans as of December 31, 2022 and December 31, 2021 were \$1.9 million and \$4.4 million, respectively. The book value of collateralized real estate as of December 31, 2022 and December 31, 2021 was \$193.1 million and \$122.1 million, respectively.

## **10. LETTER OF CREDIT**

The Company entered into a letter of credit agreement with WaFd Bank of \$0.6 million on August 10, 2021. The letter of credit expires February 1, 2032. The interest rate of the letter of credit is Prime plus 1%. The letter of credit has been established for the purpose of collateralizing the Company's new Tacoma office lease obligations with the landlord which is the beneficiary of the letter of credit. (See Note 1. Restricted Cash.)

## **11. NOTE PAYABLE DIRECTORS & OFFICERS INSURANCE**

The Company purchased Directors & Officers (D&O) insurance on August 28, 2022 for \$0.6 million. A down payment of \$0.1 million was made and the remaining balance was financed over 11 months. The interest rate on the loan is 4.75%. The loan balance as of December 31, 2022 was \$0.4 million.

The Company purchased D&O insurance on August 28, 2021 for \$1.5 million. A down payment of \$0.1 million was made and the remaining balance of \$1.4 million was financed over 11 months. The interest rate on the loan is 4.42%. The loan balance as of December 31, 2021 was \$0.9 million.

## **12. DEFINED CONTRIBUTION PLAN**

Effective January 1, 2016, the Company established a 401(k) plan for qualifying employees; employee contributions are voluntary. Company contributions to the plan for the years ended December 31, 2022 and 2021 were \$0.1 million and \$0.1 million, respectively.

## **13. COMMITMENTS AND CONTINGENCIES**

From time to time the Company is subject to compliance audits by federal, state, and local authorities relating to a variety of regulations including wage and hour laws, taxes, and workers' compensation. There are no significant or pending litigation or regulatory proceedings known at this time.



On June 15, 2020, the Company entered into a purchase and sale agreement to acquire property for the construction of 33 townhomes located in East Bremerton, Washington for \$2.0 million. Closing is expected to take place in Q3 2023.

On December 2, 2021, the Company entered into a purchase and sale agreement for the acquisition of 438 acres of land in Blaine, Washington for \$13.5 million. Closing is expected to take place in Q4 2023.

On April 21, 2022, the Company entered into a purchase and sale agreement for the acquisition of 4.81 acres of land located in Port Orchard, Washington for \$2.6 million. Closing is expected to take place in Q2 2023.

On November 15, 2022, the Company entered into a purchase and sale agreement to acquire 15.30 acres of land located in Stanwood, Washington for \$4.6 million. Closing is expected to take place by Q2 2024.

On December 1, 2022, the Company entered into a purchase and sale agreement to acquire 0.70 acres of land located in Tacoma, Washington for \$5.8 million. Closing is expected to take place in Q1 2024.

#### **14. RELATED PARTY TRANSACTIONS**

##### **Notes Payable**

The Company entered into construction loans with Sound Equity, LLC of which Robb Kenyon, a former director and minority shareholder, is a partner. These loans were originated between April 2019 and June 2021; the loans generally have a 12 to 21 month maturity, including those that have been extended. The interest rates range between 7.99% and 9.99%. As of December 31, 2022, and December 31, 2021, the outstanding loan balances were \$8.2 million and \$14.5 million, respectively. For the years ended December 31, 2022, and December 31, 2021, the Company capitalized loan fees of \$0.1 million and \$0.6 million, respectively. These fees are recorded as debt discount and amortized over the life of the loan. The amortization is capitalized to real estate. As of December 31, 2022 and December 31, 2021, there were \$0.1 and \$0.2 million of remaining unamortized debt discounts, respectively. The interest is capitalized to real estate as incurred and will be expensed to cost of goods sold when the property is sold. For the years ended December 31, 2022, and December 31, 2021, the Company incurred interest of \$1.1 million and \$1.0 million, respectively.

Robb Kenyon resigned as a director of the Company on July 8, 2021.

##### **Due to Related Party**

The Company utilizes a quarry to process waste materials from the completion of raw land into sellable/buildable lots. The materials produced by the quarry and sold by the Company to others are subject to a 25% commission payable to SGRE, LLC, which is 100% owned by the Company's Chief Executive Officer and President. The commission expense is recorded in operating expenses. On December 31, 2022 and December 31, 2021, the commission payable was \$0 and \$0.01 million, respectively. The commission expense for the years ended December 31, 2022 and 2021, was \$0.04 million and \$0.1 million, respectively.

#### **15. LEASES**

The Company determines if an arrangement contains a lease at inception. ROU assets represent the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. ROU assets and liabilities are recognized at the lease commencement date based on the estimated present value of lease payments over the lease term.

The Company's leases consist of leaseholds on office space, machinery, and equipment. The Company utilized a portfolio approach in determining the discount rate. The portfolio approach takes into consideration the range of the term, the range of the lease payments, the category of the underlying asset and the Company's estimated incremental borrowing rate, which is derived from information available at the lease commencement date, in determining the present value of lease payments. The Company also considered its recent debt issuances as well as publicly available data for instruments with similar characteristics when calculating the incremental borrowing rates.

The lease term includes options to extend the lease when it is reasonably certain that the Company will exercise that option. These operating leases contain renewal options for periods ranging from three to five years that expire at various dates with no residual value guarantees. Future obligations relating to the exercise of renewal options are included in the measurement if, based on the judgment of management, the renewal option is reasonably certain to be exercised. Factors in determining whether an option is reasonably certain of exercise include, but are not limited to, the value of leasehold improvements, the value of the renewal rate compared to market rates, and the presence of factors that would cause a significant economic penalty to the Company if the option is not exercised. Management reasonably plans to exercise all options, and as such, all renewal options are included in the measurement of the right-of-use assets and operating lease liabilities.

Leases with a term of 12 months or less are not recorded on the balance sheet, per the election of the practical expedient noted above. The Company recognizes lease expense for these leases on a straight-line basis over the lease term.

The Company recognizes variable lease payments in the period in which the obligation for those payments is incurred. Variable lease payments that depend on an index or a rate are initially measured using the index or rate at the commencement date, otherwise variable lease payments are recognized in the period incurred.

The components of lease expense were as follows:

	<b>Year Ended December 31, 2022</b>	<b>Year Ended December 31, 2021</b>
Finance leases expense		
Depreciation of assets .....	\$ 76,000	\$ 152,700
Interest on lease liabilities .....	17,700	43,400
Operating lease expense .....	677,400	550,400
Total net lease cost .....	<u>\$ 771,100</u>	<u>\$ 746,500</u>

Supplemental balance sheet information related to leases was as follows:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Operating leases:		
Operating lease ROU assets .....	\$ 1,926,100	\$ 3,429,700
Total ROU Liabilities .....	<u>\$ 2,779,400</u>	<u>\$ 3,484,400</u>
Finance leases:		
Property and equipment, at cost .....	\$ 178,800	\$ 1,365,500
Less: Accumulated depreciation .....	79,100	293,100
Property and equipment, net .....	<u>\$ 99,700</u>	<u>\$ 1,072,400</u>
Total Finance lease liabilities .....	<u>\$ 154,500</u>	<u>\$ 543,400</u>

Supplemental cash flow and other information related to leases was as follows:

	<b>Year Ended December 31, 2022</b>	<b>Year Ended December 31, 2021</b>
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases - lease payments .....	\$ (358,100)	\$ (301,100)
Operating cash flows from operating leases - lease incentives .....	613,900	—
Financing cash flows from finance leases - lease payments .....	(104,100)	(356,900)
Assets obtained in exchange for lease liabilities:		
Operating leases .....	\$ —	\$ 2,943,800
Finance leases .....	110,000	—
Weighted average remaining lease term (in years):		
Operating leases .....	9.2	8.6
Finance leases .....	0.9	2.7
Weighted average discount rate:		
Operating leases .....	4.0%	4.7%
Finance leases .....	7.5%	4.8%

The minimum lease payments under the terms of the leases are as follows for the years ended December 31:

	<b>Operating Leases</b>	<b>Finance Leases</b>	<b>Total</b>
2023 .....	\$ 331,500	\$ 134,700	\$ 466,200
2024 .....	316,300	29,900	346,200
2025 .....	325,700	—	325,700
2026 .....	335,400	—	335,400
2027 .....	345,500	—	345,500
Thereafter .....	<u>1,721,600</u>	<u>—</u>	<u>1,721,600</u>
Total lease payments .....	\$ 3,376,000	\$ 164,600	\$ 3,540,600
Less amount of discount/interest .....	<u>(596,600)</u>	<u>(10,100)</u>	<u>(606,700)</u>
	<u>\$ 2,779,400</u>	<u>\$ 154,500</u>	<u>\$ 2,933,900</u>

## 16. INCOME TAX

The components of net deferred tax assets and liabilities at December 31, 2022 and 2021 are set forth below:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Deferred tax assets:		
Federal NOL carryforwards .....	\$ 1,905,900	\$ 1,926,000
UNICAP .....	1,865,900	598,400
Lease liability .....	586,300	736,400
Stock based compensation .....	15,400	54,900
Investments .....	200	7,000
Impairment loss on note receivable and real estate and loss provision on fee build contracts ..	1,046,700	—
Sec. 163(j) interest deduction carryforwards .....	273,100	—
Tax Credits .....	<u>72,000</u>	<u>—</u>
Total assets .....	\$ 5,765,500	\$ 3,322,700
Deferred tax liabilities:		
Property and equipment .....	\$ 480,200	\$ 1,948,900
Right of use assets .....	553,800	724,800
Sec. 481(a) adjustments .....	<u>72,200</u>	<u>—</u>
Total liabilities .....	\$ 1,106,200	\$ 2,673,700
Subtotal deferred tax assets .....	\$ 4,659,300	\$ 649,000
Valuation allowance .....	<u>—</u>	<u>—</u>
Net deferred tax assets .....	<u>\$ 4,659,300</u>	<u>\$ 649,000</u>

In accordance with GAAP, management assesses whether it is more-likely-than-not that some portion or all of the deferred tax assets will not be realized, and if a valuation allowance is warranted. As of December 31, 2022 and 2021, management determined that it was more-likely-than-not that the Company's deferred tax assets would be realized. No valuation allowance was recorded against the Company's federal net deferred tax assets for the years ended December 31, 2022 and 2021.

The Company has approximately \$9.0 million and \$9.2 million of federal net operating losses ("NOL") for the years ended December 31, 2022 and December 31, 2021, respectively. Section 382 of the Internal Revenue Code limits the utilization of NOL carryforwards following a change of control. Based on our analysis under Section 382, the Company is subjected to such restrictions for the years ended December 31, 2022 and December 31, 2021. The Company has utilized \$1.3 million of NOL carryforwards for the year ended December 31, 2021. The Company has not utilized the NOL carryforwards for the year ended December 31, 2022. This will be updated pending finalization of the analysis and the filing of the 2022 tax return. These NOLs will not expire and will remain available for future periods, but are limited to 80% of taxable income, due to the Tax Cuts and Jobs Act, passed in 2017.

The components of income tax expense (benefit) and the effective tax rates for the years ended December 31, 2022 and 2021 are as follows:

	Year Ended December 31, 2022	Year Ended December 31, 2021
Current:		
Federal.....	\$ (456,300)	\$ 2,394,500
State.....	8,400	21,400
Total Current .....	(447,900)	2,415,900
Deferred:		
Federal.....	(3,989,100)	(649,000)
State.....	(21,200)	—
Total Deferred .....	(4,010,300)	(649,000)
Valuation Allowance.....	—	—
Total Income Tax Expense (Benefit).....	<u>\$ (4,458,200)</u>	<u>\$ 1,766,900</u>

The expected tax rate differs from the U.S. Federal statutory rate as follows:

	2022	2021
US federal statutory rate .....	21.0%	21.0%
Change in federal valuation allowance .....	—%	(3.1)%
Accrual to return changes and other adjustments to deferred balances .....	(0.5)%	0.2%
Tax credits .....	0.3%	(2.6)%
Incentive stock options .....	(0.1)%	0.5%
State taxes .....	0.1%	0.2%
Change in tax rate .....	0.1%	0.1%
Other .....	—%	0.1%
Effective Tax Rate .....	<u>20.9%</u>	<u>16.4%</u>

The Company has not recorded any uncertain tax positions for any tax year and treats accrued interest and penalties on income tax liabilities as income tax expense for the years ended December 31, 2022 and 2021.

The Company files an income tax return in the U.S. and is subject to examination by the IRS for the tax years 2018, 2019, 2020 and 2021.

## 17. STOCKHOLDERS' EQUITY

### Common Stock

The Company is authorized to issue 50,000,000 shares of common stock, at no par value per share. At December 31, 2022, the Company has 718,835 shares of common stock issued and outstanding and 657,767 shares of common stock issued and outstanding as of December 31, 2021.

Each share of common stock has one vote per share for all purposes. Common stock does not provide any preemptive, subscription or conversion rights and there are no redemption or sinking fund provisions or rights. Common stockholders are not entitled to cumulative voting for purposes of electing members to the Board of Directors.

### Preferred Stock

The Company is authorized to issue 10,000,000 shares of preferred stock, no par value per share. As of December 31, 2022, the Company has 3,799,399 shares of Series A Cumulative Convertible Preferred Stock ("Series A Preferred Shares") issued and outstanding, and had 4,016,955 shares issued and outstanding as of December 31, 2021. The holders of the Series A Preferred Shares are entitled to receive dividends at \$2.00 per share per annum which are paid monthly in arrears starting June 30, 2021. Beginning on June 9, 2024, the Company may, at its option, redeem the Series A Preferred Shares, in whole or in part, by paying \$25.00 per share, plus any accrued and unpaid dividends to but not including the date of redemption. To the extent declared by the Board of Directors, dividends will be payable not later than 20 days after the end of each calendar month. Dividends on the Series A Preferred Shares will accumulate whether or not the Company has earnings, whether or not there are funds legally available for the payment of such dividends, and whether or not such dividends are declared by the Board of Directors.

*Conversion at Option of Holder.* Each Series A Preferred Share, together with accrued but unpaid dividends, is convertible into 0.2778 shares of common stock (subject to adjustment) at any time at the option of the holder.

#### Dividends

*Preferred Stock.* The holders of the Series A Preferred Shares are entitled to receive dividends in the amount of \$2.00 per share, which is equivalent to 8% of the \$25.00 liquidation preference per share. The Company has accrued dividends of \$0.6 million as of December 31, 2022 which were paid to the shareholders on January 20, 2023. The company had accrued dividends of \$0.7 million as of December 31, 2021, which were paid to the shareholders on January 20, 2022.

*Common Stock.* The declaration of any future cash dividends is at the discretion of the board of directors and depends upon the Company's earnings, if any, capital requirements and financial position, general economic conditions, and other pertinent conditions. It is the Company's present intention not to pay any cash dividends on the Company's common stock in the foreseeable future, but rather to reinvest earnings, if any, in business operations.

#### 2021 Common Stock Offering

There were no common stock offerings for the year ended December 31, 2022.

On January 15 and 20, 2021, the Company closed on an offering (the "Follow-On Offering") of 460,000 shares of common stock at the public offering price of \$60.00 per share, which includes 60,000 shares of common stock sold upon full exercise of the underwriters' option to purchase additional shares of common stock for gross proceeds of \$27.6 million. The net proceeds after deducting stock issuance costs were \$25.1 million.

In addition, upon closing of the Follow-On Offering, the Company issued to the underwriters, 400,000 warrants with an exercise price of \$3.75 per warrant to purchase 20,000 shares of common stock for a term of five years beginning on January 12, 2021 which vested on July 12, 2021. Each warrant is exercisable into 0.050 shares of common stock (subject to adjustment) at any time at the option of the holder. The fair value of these warrants is \$0.5 million.

#### Preferred Stock Offerings

There were no preferred stock offerings for the year ended December 31, 2022.

On June 11, 2021, the Company closed an offering (the "Preferred Stock Offering") for 1,200,000 Series A Preferred Shares and 4,140,000 warrants with an exercise price of \$5.00 per warrant to purchase 207,000 shares of common stock, which included 540,000 warrants to purchase 27,000 shares of common stock pursuant to the underwriter's partial exercise of their over-allotment option, for gross proceeds of \$30.0 million. Each warrant is exercisable into 0.050 shares of common stock (subject to adjustment) at any time at the option of the holder.

On June 30, 2021, the underwriters made another partial exercise of their over-allotment option and purchased an additional 60,555 Series A Preferred Shares for additional gross proceeds of \$1.4 million. The net proceeds from the Preferred Stock Offering after deducting stock issuance costs was \$28.7 million.

In addition, upon closing of the Preferred Stock Offering, the Company issued to the underwriters two warrants, including (i) warrants to purchase 12,000 Series A Preferred Shares; and (ii) 36,000 warrants with an exercise price of \$5.00 per warrant to purchase 1,800 shares of common stock. Each warrant is exercisable into 0.050 shares of common stock (subject to adjustment) at any time at the option of the holder.

Each warrant issued in the Preferred Stock Offering has a life of five years from the date of issue. The fair value of the warrants was \$3.7 million, which was valued using the Black Scholes Model.

On October 7, 2021, the Company closed an offering (the "Follow-On Preferred Stock Offering") for 2,400,000 Series A Preferred Shares and 13,800,000 warrants with an exercise price of \$2.97 per warrant to purchase 690,000 shares of common stock, which included 1,800,000 warrants to purchase 90,000 shares of common stock pursuant to the underwriter's partial exercise of their over-allotment option, for gross proceeds of \$36.0 million. Each warrant is exercisable into 0.050 shares of common stock (subject to adjustment) at any time at the option of the holder.

On October 7, 2021, the underwriters made another partial exercise of their over-allotment option and purchased an additional 360,000 Series A Preferred Shares for additional gross proceeds of \$5.4 million. The net proceeds from the Follow-On Preferred Stock Offering after deducting stock issuance costs was \$37.9 million.

Each warrant issued in the Follow-On Preferred Stock Offering has a life of five years from the date of issue. The fair value of the warrants was \$6.0 million, which was valued using the Black Scholes Model.

### Repurchase of Equity Securities

On May 10, 2022, the Board of Directors approved a stock repurchase program authorizing the repurchase of up to \$5.0 million worth of shares of common stock beginning May 10, 2022. The amount of the repurchase program represented approximately 15% of the outstanding shares of the Company's common stock valued at the closing price on May 10, 2022. During the year ended December 31, 2022, the Company repurchased 12,597 shares of common stock under this repurchase program at an average price of \$35.23 per share for a total of approximately \$0.4 million.

As a part of the amended loan agreement reached with BankUnited, N.A. on February 23, 2023, the Company agreed that it will not repurchase any of its currently outstanding securities.

On November 3, 2021, the Board of Directors approved a stock repurchase program authorizing the repurchase of up to \$5.0 million worth of shares of common stock beginning November 22, 2021. The amount of the repurchase program represented approximately 17% of the outstanding shares of the Company's common stock valued at the closing price on November 3, 2021. During the year ended December 31, 2021, the Company repurchased 90,337 shares of common stock under this repurchase program at an average price of \$55.40 per share for a total of approximately \$5.0 million.

### Reverse Stock Split

On February 17, 2023, the Company held a special meeting of stockholders at which the stockholders approved a proposal to effect a reverse split of its issued and outstanding shares of common stock at a ratio of between 1-for-3 and 1-for-25 (the "Reverse Stock Split"), such ratio to be selected at the sole discretion of the Company's Board without further stockholder action.

On February 27, 2023, the Board of Directors approved the implementation of the Reverse Stock Split at a ratio of 1-for-20 shares of our common stock. The Company filed Articles of Amendment to our Articles of Incorporation for the Reverse Stock Split with the Washington Secretary of State on March 1, 2023 and the Reverse Stock Split was effected on the Nasdaq Capital Market on March 6, 2023.

As a result of the Reverse Stock Split, every 20 shares of common stock either issued and outstanding immediately prior to the effective time was, automatically and without any action on the part of the respective holders thereof, combined and converted into one share of common stock. The Reverse Stock Split also applied to common stock issuable upon the exercise of the Company's outstanding warrants, outstanding stock options, unvested restricted stock awards, stock and stock option plans, and upon the conversion of the Series A Preferred Stock. The Reverse Stock Split did not affect the par value of common stock or the shares of common stock authorized to issue under the Articles of Incorporation, as amended. No fractional shares were issued in connection with the Reverse Stock Split. Fractional shares which would otherwise result from the Reverse Stock Split were rounded up to the nearest whole share.

### **(A) Options**

The following is a summary of the Company's option activity:

	<b>Options</b>	<b>Weighted Average Exercise Price</b>
<b>Outstanding – January 1, 2021</b> .....	22,109	\$ 50.54
<b>Exercisable – January 1, 2021</b> .....	10,954	\$ 26.16
Granted .....	12,000	\$ 64.68
Exercised .....	(2,252)	\$ 8.00
Forfeited/Cancelled .....	(8,694)	\$ 65.37
<b>Outstanding – December 31, 2021</b> .....	23,163	\$ 56.43
<b>Exercisable – December 31, 2021</b> .....	17,186	\$ 55.47
Granted .....	19,600	\$ 23.79
Exercised .....	(1,081)	\$ 8.00
Forfeited/Cancelled .....	(4,135)	\$ 34.48
<b>Outstanding – December 31, 2022</b> .....	37,546	\$ 41.51
<b>Exercisable – December 31, 2022</b> .....	19,696	\$ 55.55

Exercise Price	Number Outstanding	Options Outstanding		Number Exercisable	Options Exercisable	
		Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price		Weighted Average Exercise Price	
\$7.99 - \$130.00	37,546	7.94	\$ 41.51	19,696	\$	55.55

During the year ended December 31, 2022, the Company issued 19,600 options to employees. The options have an exercise price between \$22.40 and \$41.80 per share, a term of ten years, and vest over one or three years. The options have an aggregated fair value of approximately \$0.2 million that was calculated using the Black-Scholes option-pricing model based on the assumptions discussed above and in Note 1 under Stock-Based Compensation.

During the year ended December 31, 2022, the Company had 1,081 options exercised by former employees. These options were exercised at \$8.00 per share for a total of \$0.01 million.

The Company recognized share-based compensation net of forfeitures related to options of \$0.1 million and \$0.3 million for the years ended December 31, 2022 and 2021, respectively.

On December 31, 2022, unrecognized share-based compensation was \$0.2 million.

The intrinsic value for outstanding and exercisable options as of December 31, 2022 was \$0 and \$0 and as of December 31, 2021 was \$0.4 million and \$0.3 million, respectively.

## (B) Warrants

The following is a summary of the Company's common stock warrant activity:

	Warrants	Weighted Average Exercise Price
<b>Outstanding – January 1, 2021</b> .....	110,859	\$ 6.06
<b>Exercisable – January 1, 2021</b> .....	22,524	\$ 0.40
Granted .....	18,376,000	\$ 3.45
Exercised .....	—	\$ —
Forfeited/Cancelled .....	—	\$ —
<b>Outstanding – December 31, 2021</b> .....	18,486,859	\$ 3.46
<b>Exercisable – December 31, 2021</b> .....	18,486,859	\$ 3.46
Granted .....	100,000	\$ 3.00
Exercised .....	(139,295)	\$ 2.97
Forfeited/Cancelled .....	—	\$ —
<b>Outstanding – December 31, 2022</b> .....	18,447,564	\$ 3.47
<b>Exercisable – December 31, 2022</b> .....	18,380,897	\$ 3.47

Exercise Price	Number Outstanding	Warrants Outstanding		Number Exercisable	Warrants Exercisable	
		Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price		Weighted Average Exercise Price	
\$0.40 - \$7.50	18,447,564	3.68	\$ 3.47	18,380,897	\$	3.47

During the year ended December 31, 2022, the Company issued 100,000 warrants to purchase 5,000 shares of common stock in connection with investor relation services being performed. The warrants have an exercise price of \$3.00 per warrant, a term of five years, and vest over three years. The fair value of these warrants is \$0.1 million as of December 31, 2022.

The intrinsic value for outstanding and exercisable warrants as of December 31, 2022 and 2021 was \$0 and \$0.1 million, respectively.

The following is a summary of the Company's preferred stock warrant activity:

	<b>Warrants</b>	<b>Weighted Average Exercise Price</b>
<b>Outstanding – January 1, 2021</b> .....	—	\$ —
<b>Exercisable – January 1, 2021</b> .....	—	\$ —
Granted .....	12,000	\$ 24.97
Exercised .....	—	\$ —
Forfeited/Cancelled .....	—	\$ —
<b>Outstanding – December 31, 2021</b> .....	12,000	\$ 24.97
<b>Exercisable – December 31, 2021</b> .....	12,000	\$ 24.97
Granted .....	—	\$ —
Exercised .....	—	\$ —
Forfeited/Cancelled .....	—	\$ —
<b>Outstanding – December 31, 2022</b> .....	12,000	\$ 24.97
<b>Exercisable – December 31, 2022</b> .....	12,000	\$ 24.97

<b>Exercise Price</b>	<b>Warrants Outstanding</b>				<b>Warrants Exercisable</b>	
	<b>Number Outstanding</b>	<b>Weighted Average Remaining Contractual Life (in years)</b>	<b>Weighted Average Exercise Price</b>		<b>Number Exercisable</b>	<b>Weighted Average Exercise Price</b>
\$ 24.97	12,000	3.44	\$ 24.97		12,000	\$ 24.97

The intrinsic value for outstanding and exercisable preferred warrants as of December 31, 2022 and 2021 was \$0.

### (C) Restricted Stock Plan

The following is a summary of the Company's restricted stock activity:

	<b>Restricted Stock</b>	<b>Weighted Average Fair Value</b>
<b>Non Vested Balance - January 1, 2021</b> .....	1,275	\$ 90.60
Granted .....	9,000	\$ 51.62
Vested .....	3,025	\$ 74.29
Forfeited/Cancelled .....	—	\$ —
<b>Non Vested Balance - December 31, 2021</b> .....	7,250	\$ 49.02
Granted .....	11,555	\$ 39.16
Vested .....	6,805	\$ 50.87
Forfeited/Cancelled .....	—	\$ —
<b>Non Vested Balance - December 31, 2022</b> .....	12,000	\$ 38.48

The Company periodically grants restricted stock awards to the Board of Directors and certain employees pursuant to the 2020 Plan. These typically are awarded by the Compensation Committee at one time and from time to time, to vest over one to three years, unless otherwise determined by the Compensation Committee.

The Company recognized \$0.4 million and \$0.2 million of share-based compensation during the years ended December 31, 2022 and 2021, respectively.

On December 31, 2022, there was \$0.4 million of unrecognized compensation related to non-vested restricted stock.



## 18. SEGMENTS

In accordance with FASB ASC Topic 280, Segment Reporting, an operating segment is defined as a component of an enterprise for which discrete financial information is available and reviewed regularly by the chief operating decision maker (“CODM”), or decision making group, to evaluate performance and make operating decisions.

The Company identified its CODM group as its three executive officers, the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer. In determining the reportable segments, the CODM group considers similar economics and characteristics including product types, construction processes, customer type, regulatory environments, and underlying demand and supply.

The Company’s business is organized into five material reportable segments which aggregate 99.9% of revenue for the year ended December 31, 2022:

- 1) Homes
- 2) Developed lots
- 3) Entitled land
- 4) Multi-family
- 5) Fee Build

The following represents revenue, cost of goods sold, and gross profit (loss) information for the Company’s reportable segments for the years ended December 31, 2022 and 2021.

	<b>Year Ended December 31, 2022</b>	<b>Year Ended December 31, 2021</b>
<b>Revenue by segment</b>		
Homes .....	\$ 28,670,000	\$ 17,654,600
Developed lots.....	9,510,000	26,825,500
Entitled land .....	7,880,000	20,625,000
Multi-family .....	175,900	—
Fee Build .....	9,124,000	6,802,900
Other .....	54,400	444,700
	<u>\$ 55,414,300</u>	<u>\$ 72,352,700</u>
<b>Cost of goods sold by segment</b>		
Homes .....	\$ 24,027,100	\$ 15,168,500
Developed lots.....	9,797,700	15,885,300
Entitled land .....	4,060,200	11,689,100
Multi-family .....	2,564,400	—
Fee Build .....	13,597,500	5,991,300
Other .....	1,819,900	1,685,200
	<u>\$ 55,866,800</u>	<u>\$ 50,419,400</u>
<b>Gross profit (loss) by segment</b>		
Homes .....	\$ 4,642,900	\$ 2,486,100
Developed lots.....	(287,700)	10,940,200
Entitled land .....	3,819,800	8,935,900
Multi-family .....	(2,388,500)	—
Fee Build .....	(4,473,500)	811,600
Other .....	(1,765,500)	(1,240,500)
	<u>\$ (452,500)</u>	<u>\$ 21,933,300</u>

The following represents total assets for the Company's reportable segments at December 31, 2022 and December 31, 2021:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Homes.....	\$ 29,880,500	\$ 36,615,600
Developed lots .....	43,469,900	8,219,500
Entitled land.....	9,499,600	28,157,800
Multi-family .....	131,485,900	47,679,400
Fee Build .....	1,703,200	3,325,300
Unallocated (Shared) .....	20,127,300	45,702,500
<b>Total Assets .....</b>	<b><u>\$ 236,166,400</u></b>	<b><u>\$ 169,700,100</u></b>

## 19. UNCOMPLETED CONTRACTS

Costs, estimated earnings and billings on uncompleted contracts are summarized as follows at December 31, 2022 and December 31, 2021:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Costs incurred on uncompleted contracts .....	\$ 19,429,800	\$ 5,991,300
Estimated earnings (loss).....	(3,495,100)	811,600
Costs and estimated earnings on uncompleted contracts .....	15,934,700	6,802,900
Billings to date.....	16,273,000	4,635,700
Costs and estimated earnings in excess of billings on uncompleted contracts .....	—	2,167,200
Billings in excess of costs and estimated earnings on uncompleted contracts.....	(338,300)	—
Provision for loss on contract .....	(159,100)	—
Contract Assets (Liabilities), net .....	<b><u>\$ (497,400)</u></b>	<b><u>\$ 2,167,200</u></b>

At December 31, 2022, the contract liability was \$0.5 million as compared to a contract asset of \$2.2 million at December 31, 2021. The uncollected billings were \$1.7 million and \$1.0 million as of December 31, 2022 and December 31, 2021, respectively.

## 20. SUBSEQUENT EVENTS

On January 12, 2023, the Company entered into a purchase and sale agreement for the sale of the Mills Crossing multifamily development located in Bremerton, Washington for \$14.3 million. Closing is expected to take place in Q2 2023.

On January 20, 2023, the Company's Board of Directors (the "Board") voted to suspend the Company's cash dividend payments on the Company's 8.0% Series A Cumulative Convertible Preferred Stock, in relation to the negotiation of terms, for the restructuring its loan from BankUnited, N.A. The suspension is beginning with the February 2023 dividend payment and continuing until such time as the Company, with the approval of the Board, reaches a final agreement with the BankUnited, N.A.

On February 23, 2023, the Company entered into an amended loan agreement (the "Amendment") with BankUnited N.A. (the "Lender") for the restructuring of its Loan Agreement dated March 7, 2022. Pursuant to the Amendment, the Lender agreed to waive any and all defaults to date, the Company's future compliance with certain financial covenants, and its right to accelerate the loan payments. The Company granted the Lender second mortgage positions on certain properties as well as transferred the membership certificates to the Company's subsidiaries as collateral. Additionally, the Company agreed to pay the Lender \$0.6 million on the 20th of every month which otherwise would have been paid as a dividend to preferred shareholders, and 25% of all net cash proceeds from asset sales, public offerings or any class of stock or debt, private equity captures, or any capital raise. The Company also agreed that it will not close on any new projects without the Lender's express written consent and will not repurchase any of its outstanding securities. The aforementioned payments will continue to be made until the earlier of March 7, 2024 or until the loan has been paid in full.

On February 27, 2023, the Board approved the implementation of the Reverse Stock Split at a ratio of 1-for-20 shares of our common stock. The Company filed Articles of Amendment to its Articles of Incorporation for the Reverse Stock Split with the Washington Secretary of State on March 1, 2023 and the Reverse Stock Split was effected on the Nasdaq Capital Market on March 6, 2023. As a result of the Reverse Stock Split, every 20 shares of common stock issued and outstanding immediately prior to the effective time was, automatically and without any action on the part of the respective holders thereof, combined and converted into one share of common stock. All share and per share amounts of common stock presented in this Report have been retroactively adjusted to reflect the 1-for-20 Reverse Stock Split.

On March 24, 2023 the Company agreed to settle the note receivable with Noffke Horizon View, LLC, which was entered into in March 2022 for \$3.3 million, for a reduced amount of \$2.1 million. (See Note 3. Notes Receivable.)

## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES**

No events occurred requiring disclosure under Item 304 of Regulation S-K.

### **ITEM 9A. CONTROLS AND PROCEDURES**

#### **Evaluation of Disclosure Controls and Procedures**

Our management, under the supervision of our Chief Executive Officer and President and Chief Financial Officer performed an evaluation (the “Evaluation”) of the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this Annual Report. Disclosure controls and procedures include, without limitation, controls and procedures designed to provide a reasonable level of assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms, and is accumulated and communicated to our management, including our principal executive and principal financial and accounting officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

The material weakness in internal control relating to diluted earnings per share as indicated in the 2021 Annual Report on Form 10-K/A as well as the third quarter 2021 Quarterly Report on Form 10-Q/A was remediated within the year ended December 31, 2022. Management improved the system of evaluating and implementing the accounting standards that apply to our financial statements and has significantly enhanced our accounting team through the hirings of a Director of Accounting, Senior Manager of SEC Reporting, Senior Finance Manager, and Tax Manager. We also provided additional training to our personnel and have engaged a nationally recognized third-party accounting firm with whom our management and accounting personnel can consult regarding the application of complex accounting transactions. Management monitored the improvements made to the overall control environment during the first two quarters of the year and sufficiently tested the effectiveness of internal controls surrounding diluted earnings per share during Q2 of 2022.

Based on the evaluation, our Chief Executive Officer and President and Chief Financial Officer concluded that our disclosure controls and procedures are operating effectively.

#### **Changes in Internal Control over Financial Reporting**

Other than the enhancements to internal controls related to diluted earnings per share, there was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the period covered by this Annual Report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

#### **Management’s Report on Internal Control Over Financial Reporting**

This Annual Report does not include a report of management’s assessment regarding internal control over financial reporting or an attestation report of our registered public accounting firm due to an exemption established by rules of the SEC for emerging growth companies as defined in the JOBS Act.

### **ITEM 9B. OTHER INFORMATION**

Not applicable.

### **ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTION THAT PREVENT INSPECTIONS**

Not applicable.

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE

#### Directors and Executive Officers

Our board of directors consists of seven directors. We currently have five independent directors. Our directors will serve for one-year terms and until their successors are duly elected and qualified. There is no cumulative voting in the election of directors. Consequently, at each annual meeting, the successors to each of our seven directors will be elected by a plurality of the votes cast at that meeting.

Set forth below are the names, ages and positions of our directors and executive officers.

Name	Age	Position with the Company
Sterling Griffin .....	61	Chief Executive Officer, President, and Chairman of our Board of Directors
Jeffrey B. Habersetzer .....	33	Chief Operating Officer, General Counsel, and Corporate Secretary
Lance Brown .....	41	Chief Financial Officer
Richard Schmidtke .....	61	Director
Larry Swets.....	48	Independent Director
Dennis Wong .....	53	Independent Director
Wally Walker.....	68	Independent Director
Karen Bryant .....	55	Lead Independent Director
Chris Corr .....	61	Independent Director

#### Biographical Information

The following is a summary of certain biographical information concerning our current directors and our executive officers.

**Sterling Griffin.** Our founder, Sterling Griffin, began his career at James S. Griffin Co. in January 1985 as a principal and Vice President of Marketing, where he focused on the syndication of apartment properties, raw land, and retirement home facilities in the Puget Sound region of Washington State. Beginning in June 1989, Mr. Griffin co-founded several businesses over a 12-year period, while actively self-employed as a real estate broker, investor, and developer. In January 2012, he became the Chief Operating Officer for Hudson Homes LLC, a Washington-based residential builder and developer focused on construction of upscale homes in Pierce and Kitsap Counties, where he was responsible for land acquisition, construction, marketing, and sales. In 2014, Mr. Griffin founded Harbor Custom Development, Inc. Mr. Griffin is a lifelong Washington resident who graduated from Colorado College with a BA in History in 1984.

**Jeffrey B. Habersetzer.** Jeffrey B. Habersetzer serves as our Chief Operating Officer, General Counsel and Corporate Secretary. Mr. Habersetzer has ten years of experience in real estate, contracts, and corporate governance. Mr. Habersetzer has served as General Counsel since 2019, playing an integral role in four successful capital raises for Harbor; was extensively involved in taking Harbor public in 2020, and currently chairs the acquisitions and due diligence committee. Prior to joining Harbor, Mr. Habersetzer owned a legal practice specializing in real estate, corporate law, multi-family leasing and acquisitions. Mr. Habersetzer holds a Bachelor's degree from the University of Washington, and a law degree and a Master's in Business Administration from Seattle University, graduating Cum Laude in both programs simultaneously. Mr. Habersetzer has been a licensed attorney in the state of Washington since 2017.

**Lance Brown.** Mr. Brown serves as our Chief Financial Officer. His primary focus is raising capital, providing financial support and oversight for operations, investor relations, financial planning & analysis, general ledger accounting, SEC reporting, and tax. Prior to joining Harbor, Mr. Brown was Vice President and Chief Accounting Officer at Select Interior Concepts (NASDAQ: SIC), where he was responsible for Finance, Accounting, SEC Reporting, and Tax. During his time at SIC, Mr. Brown developed the public company accounting and reporting infrastructure; was extensively involved in the diligence and integration for multiple completed acquisitions; assisted with the sale, divestiture, and de-integration of SIC's largest business unit to a major competitor; and provided significant support for the sale and going private transaction of SIC. Mr. Brown started his career in public accounting at PricewaterhouseCoopers. He holds a Bachelor of Business Administration degree from the University of Georgia and a Master of Accountancy from Auburn University. Mr. Brown is a Certified Public Accountant.

**Richard Schmidtke, CPA.** Richard Schmidtke has been a Director on our board of directors since October 2018. Mr. Schmidtke is the founder of Schmidtke & Associates, PLLC, a full-service accounting company he founded in August 2008. Mr. Schmidtke has 30 years of public accounting experience. Mr. Schmidtke has played an essential role in the success of numerous businesses in a wide range of industries including, tax planning, real estate, retail, and manufacturing. As a native of Tacoma, Washington, Mr. Schmidtke has established strong relationships in the community. His past and current involvement includes Trustee and Board Member of Tacoma Goodwill Foundation, past president of the Tacoma Goodwill, Trustee of the Tacoma Art Museum, board member of the Tacoma Community Redevelopment Authority Board, and Tacoma Lawn and Tennis Club. Mr. Schmidtke graduated from the University of Washington with a BA in Economics.

**Larry Swets.** Larry Swets has been an Independent Director on our board of directors since February 2020. Mr. Swets has over 25 years of experience within financial services encompassing both non-executive and executive roles. Mr. Swets founded Itasca Financial LLC, an advisory and investment firm, in 2005 and has served as its managing member since inception. Mr. Swets also founded and is the President of Itasca Golf Managers, Inc., a management services and advisory firm focused on the real estate and hospitality industries, in August 2018. Mr. Swets has served as the Chief Executive Officer of FG Financial Group, Inc. (Nasdaq: FGF) (formerly 1347 Property Insurance Holdings, Inc.), which operates as a diversified reinsurance, investment management and real estate holding company, since November 2020, after having served as Interim CEO from June 2020 to November 2020. Mr. Swets has also served as Senior Advisor to Aldel Financial Inc. (NYSE: ADF), a special purpose acquisition company since March 2021, and as Chief Executive Officer of FG New America Acquisition II Corp., a special purpose acquisition company in the process of going public and focused on merging with a company in the InsureTech, FinTech, broader financial services and insurance sectors since February 2021. Mr. Swets is a member of the board of directors of FG Financial Group, Inc. (Nasdaq: FGF) since November 2013; GreenFirst Forest Products Inc. (TSXV: GFP), a public company focused on investments in the forest products industry since June 2016; Harbor Custom Development, Inc. (Nasdaq: HCDI) since February 2020; Ballantyne Strong, Inc. (NYSE American: BTN) since October 2021; Insurance Income Strategies Ltd. since October 2017; Alexian Brothers Foundation since March 2018; and Unbounded Media Corporation since June 2019.

Previously, Mr. Swets served as a Director and Chief Executive Officer of FG New America Acquisition Corp. (NYSE: FGNA), a special purpose acquisition company which merged with OppFi Inc. (NYSE: OPFI), a leading financial technology platform that powers banks to help everyday consumers gain access to credit, from July 2020 to July 2021. Mr. Swets served as Chief Executive Officer of GreenFirst Forest Products Inc. (TSXV: GFP) (formerly Itasca Capital Ltd.) from June 2016 to June 2021. Mr. Swets served as the Chief Executive Officer of Kingsway Financial Services Inc. (NYSE: KFS) from July 2010 to September 2018, including as its President from July 2010 to March 2017. He served as Chief Executive Officer and a director of 1347 Capital Corp., a special purpose acquisition company, from April 2014 to July 2016 when the company completed its initial business combination to form Limbach Holdings, Inc. (Nasdaq: LMB). Mr. Swets also previously served as a member of the board of directors of Limbach Holdings, Inc. (Nasdaq: LMB) from July 2016 to August 2021; Kingsway Financial Services Inc. (NYSE: KFS) from September 2013 to December 2018; Atlas Financial Holdings, Inc. (Nasdaq: AFH) from December 2010 to January 2018; FMG Acquisition Corp. (Nasdaq: FMGQ) from May 2007 to September 2008; United Insurance Holdings Corp. from 2008 to March 2012; and Risk Enterprise Management Ltd. from November 2007 to May 2012.

Prior to founding Itasca Financial LLC, Mr. Swets served as an insurance company executive and advisor, including the role of director of investments and fixed income portfolio manager for Lumbermens Mutual Casualty Company, formerly known as Kemper Insurance Companies. Mr. Swets began his career in insurance as an intern in the Kemper Scholar program in 1994. Mr. Swets earned a Master's Degree in Finance from DePaul University in 1999 and a Bachelor's Degree from Valparaiso University in 1997. He is a member of the Young Presidents' Organization and holds the Chartered Financial Analyst (CFA) designation.

**Dennis A. Wong.** Dennis Wong has been an Independent Director on our board of directors and Chair of our Audit Committee since October 2020. Since 2005, Mr. Wong is the owner of and a consultant with Insurance Resolution Group, a consulting firm focused on providing strategic advisory services to the insurance and financial services sector. From 1997 to 2005, Mr. Wong worked in a variety of corporate roles with Kemper Insurance Companies, a leading national insurance provider, including as Chief Financial Officer of its international operations. From 1991 to 1997, Mr. Wong worked as a public accountant with KPMG LLP, where he specialized in accounting and operational advisory services for the insurance industry. From 2015 through 2021, he served as an independent member of the Board of Directors for FG Financial Group, Inc. (Nasdaq: FGF) (formerly 1347 Property Insurance Holdings, Inc.). Mr. Wong obtained a Bachelor of Arts degree in Economics with an Accountancy Cognate from the University of Illinois. Mr. Wong is a Certified Public Accountant.

**Walter ("Wally") Walker.** Wally Walker has been an Independent Director on our board of directors since October 2020. Mr. Walker served as a Vice President in Goldman, Sachs & Co.'s Private Client Services group from 1987 through 1994.

In April 1994, Mr. Walker formed Walker Capital, Inc., a San Francisco based money management firm. In September 1994, Mr. Walker became President and General Manager of the Seattle SuperSonics and the Seattle Storm, and in addition to being an owner, served as Chief Executive Officer and President of the teams until their sale in 2006. In his seven years as General Manager, the Sonics had the third best winning percentage (65.1%) in the NBA and won the Western Conference Championship in 1996. During his entire tenure as an executive, the Sonics had the fifth best winning percentage in the NBA and won four of the six division titles in Seattle Sonics' 41 year history. The Seattle Storm won the WNBA Championship in 2004. In 1998, he was voted runner-up by his peers, for NBA Executive of the Year. In late 2007, he formed Hana Road Capital LLC, where he remains as its owner and Chief Investment Officer. Mr. Walker graduated from the University of Virginia in 1976 as an Academic All-American with a BA in psychology. He was the first ever Virginia player to win the Everett Case Award, for being MVP of the ACC tournament. His number 41 has been retired by the University of Virginia. In 2001 he was named as one of six recipients of the NCAA Silver Anniversary Scholar-Athlete Award. He received his Masters of Business Administration from Stanford University Graduate School of Business in 1987. He was conferred as a Chartered Financial Analyst in 1992. He served on the Board of Visitors, at the University of Virginia from 1997 – 2001. In addition to his investment and management experience, Mr. Walker was drafted in the first round (5th overall) by the Portland Trailblazers in 1976 and was a member of the Portland Trailblazers 1977 Championship team. After the 1977 season, Mr. Walker was traded to the Seattle SuperSonics, where he was a member of the SuperSonics 1979 Championship team. In 1982, Mr. Walker was traded to the Houston Rockets. He retired from professional basketball in 1985. He received the George W. Kirchner Award for contributions to Lancaster County sports in 1986. In 1993, he was inducted into the Pennsylvania State Sports Hall of Fame and was named the greatest player of the 20th Century from Lancaster County, Pa. He was a member of the USA's gold winning World University Games team in 1973, played in Russia. Since 2005, Mr. Walker has been a member of the Advisory Council of Stone Arch Capital, a Minneapolis based private equity firm. Mr. Walker also serves as an independent trustee at Smead Capital Management, a Seattle based mutual fund. In 2018, he joined the Governing Council of the Miller Center of Public Affairs, at The University of Virginia.

**Karen Bryant.** Ms. Bryant has been an Independent Director on our board of directors since June 2021. In December 2022, Ms. Bryant was appointed Lead Independent Director for Harbor. For 25 years, Karen Bryant has run high-profile organizations, navigating complex internal and external dynamics while driving business growth and operational excellence. Ms. Bryant has been at the helm of women's professional basketball for over 18 years. In January 2023, Ms. Bryant was appointed to the role of Chief Administrative Officer and General Manager of the Los Angeles Sparks. Previously, she served as General Manager of the Seattle Reign and then, ultimately, as President and CEO of the Seattle Storm from 2008 through 2014. Under her leadership, the Seattle Storm won two WNBA Championships, set multiple attendance and revenue records, and established itself as one of the WNBA's premier franchises. In 2014, Ms. Bryant started and led a management consulting firm until one of her clients, Atavus Sports, appointed her CEO in 2016. With Atavus, Ms. Bryant led a three-year process of market research, competitive analysis, customer discovery, product development, and sales. In Fall 2019, Atavus was acquired by a private equity firm in a successful exit. After a successful 13-year run as CEO for two organizations, Ms. Bryant returned to her management consulting firm in March 2020. Ms. Bryant also serves as an Executive Coach to business leaders and entrepreneurs and is well-recognized for leading high-performing teams. Ms. Bryant's recognition includes Seattle Sports Commission Executive of the Year, Sports Business Journal Gamechanger, Puget Sound Business Journal Woman of Influence, Greater Seattle Business Association Businessperson of the Year Finalist, and Girl Scouts of Western Washington Woman of Distinction. Ms. Bryant was a scholarship athlete at Seattle University and the University of Washington, where she graduated in 1991 with a Bachelor of Arts degree in Communication.

**Chris Corr.** Mr. Corr has been an Independent Director on our board of directors since September 2021. Mr. Corr is a shareholder and Executive Vice President of Kidder Mathews, the largest independent commercial real estate firm on the West Coast. Mr. Corr specializes in selling and leasing office and industrial properties in South King County, Washington. Since joining Kidder Mathews in 1986, Mr. Corr has managed over two million square feet of real estate as a property manager, assisted in the development and leasing of real estate throughout the region, and, over the past 30+ years, completed over several thousand commercial sale and lease transactions. In 2001, Mr. Corr won the Washington Chapter Society of Industrial and Office Realtors (SIOR) Broker of the Year award. He is frequently quoted in and writes for both the Puget Sound Business Journal and Daily Journal of Commerce. Mr. Corr has also spoken on real estate trends at the NAIOP Commercial Real Estate Development Association Forecast Breakfast. Mr. Corr graduated with honors from the University of Washington, earning his Bachelor of Science in building construction and Bachelor of Arts in business administration. He is a former member of the Seattle University Board of Regents and Kidder Mathews Board of Directors. In his spare time, Mr. Corr is a member of and served as membership chair for both the Seattle Tennis Club and Broadmoor Golf Club.

## Family Relationships

There are no family relationships between any of our directors or executive officers.

## Involvement in Certain Legal Proceedings

During the past five years, none of our officers, directors, promoters, or control persons has been a party to or executive officer of an entity that has filed any bankruptcy petitions. During the past five years, none of our officers, directors, promoters, or control persons have been convicted or been a named subject of any pending criminal proceedings. During the past five years, none of our officers, directors, promoters, or control persons has been held to have violated any state or Federal Securities laws or any Federal commodities law or otherwise have been subject to any order, judgment, or decree not subsequently reversed, suspended, or vacated permanently enjoining such officer, director promoters, or control persons from the activities enumerated in Regulation S-K Item 4.01(f)(3).

## Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires that our officers, directors, and persons who own more than 10% of our common stock file reports of ownership and changes in ownership with the SEC. Based solely on our review of the SEC's EDGAR database, copies of such forms received by us, or written representations from certain reporting persons, we believe that during the fiscal year ended December 31, 2022, the following delinquencies have occurred:

Name and Affiliation	No. of Late Reports	No. of Transactions Not Filed on a Timely Basis	Known Failures to File
Sterling Griffin, Chief Executive Officer and President.....	2	4	None
Jeffrey B. Habersetzer, Chief Operating Officer .....	2	4	None
Lance Brown, Chief Financial Officer .....	2	5	None

## Code of Business Conduct and Ethics

We adopted a written code of business conduct and ethics that applies to our directors, officers, and employees, including our principal executive officer, principal financial and accounting officer, controller, or persons performing similar functions and agents and representatives, including consultants. A copy of the code of business conduct and ethics is available on our website at [www.harborcustomdev.com](http://www.harborcustomdev.com). We intend to disclose future amendments to such code, or any waivers of its requirements, applicable to any principal executive officer, principal financial and accounting officer, controller, or persons performing similar functions or our directors on our website identified above. The inclusion of our website address in this Annual Report does not include or incorporate by reference the information on our website into this Annual Report.

## Board Diversity

Pursuant to Nasdaq's Board Diversity Rule 5605(f), we have taken steps to meet the diversity objective as set out in this rule within the applicable transition period. The following is our Board Diversity Matrix as of March 28, 2023:

### Board Diversity Matrix

Total Number of Directors

7

#### Part I: Gender Identity

	Female	Male
Directors .....	1	6
<b>Number of Directors who Identify in Any of the Categories Below:</b>		
Asian (other than South Asian).....	0	1
White .....	1	5
LGBTQ+ .....	1	

## Audit Committee and Audit Committee Financial Expert

We have a separately designated Audit Committee consisting of Larry Swets, Dennis Wong, and Wally Walker, all of whom are independent directors, and all of whom qualify as financial experts.

## ITEM 11. EXECUTIVE COMPENSATION

### Executive Compensation

On March 6, 2023, we effected a 1-for-20 reverse stock split of our issued and outstanding shares of common stock (the “Reverse Stock Split”). All share and per share data included below have been adjusted retroactively to reflect the impact of the Reverse Stock Split.

#### Summary Compensation Table

The following is a summary of the elements of our compensation arrangements paid to our executive officers for fiscal years 2022 and 2021.

Name and Principal Position	Year	Salary (\$)	Stock Awards (\$)	Option Awards (\$)	All Other Compensation (\$)	Total (\$)
Sterling Griffin .....	2022	707,140	247,834(1)	—	127,770(2)	1,082,744
Chief Executive Officer and President	2021	442,750	31,200(3)	—	164,690(4)	638,640
Jeffrey Habersetzer.....	2022	379,639	130,184(5)	—	33,640(6)	543,463
Chief Operating Officer	2021	199,250	—	133,787(7)	19,892(8)	352,929
Lance Brown, .....	2022	376,633	74,489(9)	—	80,808(10)	531,930
Chief Financial Officer	2021	43,616 (11)	216,000(12)	—	17,942(13)	277,558
Lynda Meadows .....	2022	—	—	—	—	—
Former Chief Financial Officer	2021	141,192 (14)	—	133,787(15)	53,054(16)	328,033
Tim O’Sullivan.....	2022	—	—	—	—	—
Interim Chief Financial Officer	2021	143,023 (17)	—	—	14,312(18)	157,335

- (1) On January 10, 2022, in his capacity as Chief Executive Officer, Mr. Griffin was granted 1,410 RSUs pursuant to our 2020 Restricted Stock Plan, whereby all RSUs vested immediately on January 10, 2022. The grant date fair value of the RSU Award was \$47.40. On May 26, 2022, in his capacity as Chief Executive Officer, Mr. Griffin was granted 5,000 RSUs pursuant to our 2020 Restricted Stock Plan, whereby 1/3 of the RSUs vest on the anniversary date each year, beginning on May 26, 2023. The grant date fair value of the RSU Award was \$36.20.
- (2) Consists of commuting expense of \$44,845, 401K matching of \$19,275, \$15,214 of health insurance paid by us, \$12,748 in director compensation, as well as \$35,688 of commissions earned by SGRE, LLC, which is 100% owned by Mr. Griffin.
- (3) On August 12, 2021, in his capacity as a member of our board, Mr. Griffin was granted 500 RSUs pursuant to our 2020 Restricted Stock Plan, whereby equal installments of 125 RSUs vest on the last day of each calendar quarter, beginning on September 30, 2021. The grant date fair value of the RSU Award was \$62.40.
- (4) Consists of commuting expense of \$7,507, 401K matching of \$11,600, \$25,883 of health insurance paid by us, \$15,000 in director compensation, as well as \$104,700 of commissions earned by SGRE, LLC, which is 100% owned by Mr. Griffin.
- (5) On January 10, 2022 Mr. Habersetzer was granted 1,410 RSUs pursuant to our 2020 Restricted Stock Plan, whereby all RSUs vested immediately on January 10, 2022. The grant date fair value of the RSU Award was \$47.40. On May 26, 2022, Mr. Habersetzer was granted 1,750 RSUs pursuant to our 2020 Restricted Stock Plan, whereby 1/3 of the RSUs vest on the anniversary date each year, beginning on May 26, 2023. The grant date fair value of the RSU Award was \$36.20.
- (6) Consists of car allowance of \$12,000, 401K matching of \$14,109, and \$7,531 of health insurance payments.
- (7) On June 28, 2021, Mr. Habersetzer was granted 5,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 208 stock options vest on the last day of each calendar month, beginning on June 28, 2021. The exercise price of the stock options is \$65.00.
- (8) Consists of car allowance of \$5,500, 401K matching of \$8,190, and \$6,202 of health insurance payments.
- (9) On January 10, 2022, Mr. Brown was granted 235 RSUs pursuant to our 2020 Restricted Stock Plan, whereby all RSUs vested immediately on January 10, 2022. The grant date fair value of the RSU Award was \$47.40. On May 26, 2022, Mr. Brown was granted 1,750 RSUs pursuant to our 2020 Restricted Stock Plan, whereby 1/3 of the RSUs vest on the anniversary date each year, beginning on May 26, 2023. The grant date fair value of the RSU Award was \$36.20.
- (10) Consists of commuting expense of \$49,517, 401K matching of \$14,877, \$15,214 of health insurance payments, and \$1,200 of cell phone allowance.
- (11) Mr. Brown was hired on November 1, 2021. This amount reflects the pro-rated portion of Mr. Brown's annual salary.



- (12) On November 8, 2021, Mr. Brown was granted 5,000 RSUs pursuant to his employment agreement, whereby 1,667 shares vested on November 8, 2022, and the remaining 3,333 shares will vest on a quarterly basis in eight equal installments, beginning on February 8, 2023. The grant date fair value of the RSU was \$43.20.
- (13) Consists of commuting expense of \$13,509, and \$4,433 of health insurance paid by us.
- (14) Ms. Meadows resigned on August 24, 2021.
- (15) On June 28, 2021, Ms. Meadows was granted 5,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 208 stock options vest on the last day of each calendar month, beginning on June 28, 2021. The exercise price of the stock options is \$65.00. These options were forfeited following her resignation on August 24, 2021.
- (16) Consists of consulting fees of \$41,195, 401K matching of \$5,648, and \$6,211 of health insurance payments.
- (17) Mr. O’Sullivan was acting as interim Chief Financial Officer, effective August 24, 2021 until we appointed Mr. Brown as Chief Financial Officer on November 1, 2021. This amount represents the annual salary paid to Mr. O’Sullivan. Mr. O’Sullivan resigned on February 24, 2022.
- (18) Consists of 401K matching of \$5,721, and \$8,591 of health insurance payments for the full year.

We believe that the primary goal of executive compensation is to align the interests of our executive officers with those of our shareholders in a way that allows us to attract and retain the best executive talent. Additionally, in order to ensure our executive officers are compensated within the current industry ranges for their respective duties we engaged a national, independent, professional employee consulting firm to evaluate and provide an assessment and recommendations for executive compensation in 2022.

The compensation incentives designed to further these goals take the form of annual cash compensation and equity awards, as well as long-term cash and/or equity incentives measured by Company and/or individual performance targets to be established by our Compensation Committee. In addition, our Compensation Committee may determine to make equity-based awards to new executive officers in order to attract talented professionals to serve us.

*Annual Base Salary.* Base salary is designed to compensate our named executive officers at a fixed level of compensation that serves as a retention tool throughout the executive’s career. In determining base salaries, our Compensation Committee considers each executive’s role and responsibility, unique skills, future potential with us, salary levels for similar positions in our market, and internal pay equity.

*Option Plan.* Certain executives were issued options pursuant to our 2018 Equity Incentive Plan. We plan to continue to offer option awards to executives, in the discretion of the board of directors, considering the executive’s role and other compensation.

*Stock Award plan.* Certain executives were issued restricted stock units (“RSUs”) pursuant to our 2020 Restricted Stock Plan. We plan to continue to offer RSUs awards to executives, in the discretion of the Compensation Committee, considering the executive’s role and other compensation.

### Outstanding Equity Awards at Year End

The following table sets forth information regarding outstanding stock options held by our executive officers as of December 31, 2022:

Name and Principal Position	Grant Date	Number of Securities Underlying Options	Vesting Commencement Date	Exercise Price per share	Expiration Date
Sterling Griffin, .....	12/31/2018	3,378	1/1/2019 <sup>(1)</sup>	\$ 8.88	12/31/2023
Chief Executive Officer and President	10/13/2020	1,000	12/31/2020 <sup>(2)</sup>	\$ 92.40	10/13/2030
Jeffrey Habersetzer, .....	12/19/2019	451	12/19/2019 <sup>(3)</sup>	\$ 7.99	12/19/2029
Chief Operating Officer	9/1/2020	1,000	9/1/2020 <sup>(4)</sup>	\$ 130.00	9/1/2030
	6/28/2021	5,000	6/28/2021 <sup>(5)</sup>	\$ 65.00	6/28/2031

- (1) Effective January 1, 2019, Mr. Griffin was entitled to 3,378 stock options pursuant to the 2018 Equity Incentive Plan. One hundred percent of the shares subject to this option vested immediately upon granting of the option. The exercise price of the stock options is \$8.88.

- (2) On October 24, 2020, in his capacity as a member of our board, Mr. Griffin was granted 1,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 250 stock options vest on the last day of each calendar quarter, beginning on December 31, 2020. The exercise price of the stock options is \$92.40.
- (3) Mr. Habersetzer was granted 451 stock options pursuant to our 2018 Equity Incentive Plan. One thirty-sixth of the shares subject to this option vest each month, subject to Mr. Habersetzer continuing to be an employee. The exercise price of the stock options is \$7.99.
- (4) On September 1, 2020, Mr. Habersetzer was granted 1,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 83 stock options vest on the last day of each calendar month, beginning on September 30, 2020. The exercise price of the stock options is \$130.00.
- (5) On June 28, 2021, Mr. Habersetzer was granted 5,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 208 stock options vest on the last day of each calendar month, beginning on June 28, 2021. The exercise price of the stock options is \$65.00.

The following table sets forth information regarding RSUs held by our executive officers as of December 31, 2022:

<b>Name and Principal Position</b>	<b>Grant Date</b>	<b>Number of RSUs Granted</b>	<b>Fair Value of Stock Award</b>	<b>Vesting Commencement Date</b>	<b>Number of Unvested RSUs</b>	<b>Fair Value of Unvested RSUs</b>
Sterling Griffin, ..... Chief Executive Officer and President	12/3/2020	250	\$ 22,650	12/31/2020(1)	—	\$ —
	8/12/2021	500	\$ 31,200	9/30/2021(2)	—	\$ —
	1/10/2022	1,410	\$ 66,834	1/10/2022(3)	—	\$ —
	5/26/2022	5,000	\$ 181,000	5/26/2023(4)	5,000	\$ 181,000
Jeffrey Habersetzer..... Chief Operating Officer	1/10/2022	1,410	\$ 66,834	1/10/2022(5)	—	\$ —
	5/26/2022	1,750	\$ 63,350	5/26/2023(6)	1,750	\$ 63,350
Lance Brown, ..... Chief Financial Officer	11/8/2021	5,000	\$ 216,000	11/8/2022(7)	3,333	\$ 144,000
	1/10/2022	235	\$ 11,139	1/10/2022(8)	—	\$ —
	5/26/2022	1,750	\$ 63,350	5/26/2023(9)	1,750	\$ 63,350

- (1) On December 3, 2020, in his capacity as a member of our board, Mr. Griffin was granted 250 RSUs pursuant to our 2020 Restricted Stock Plan, whereby 4 equal installments vest on the last day of each calendar quarter, beginning on December 31, 2020. The grant date fair value of the RSU Award was \$90.60.
- (2) On August 12, 2021, in his capacity as a member of our board, Mr. Griffin was granted 500 RSUs pursuant to our 2020 Restricted Stock Plan, whereby equal installments of 125 RSUs vest on the last day of each calendar quarter, beginning on September 30, 2021. The grant date fair value of the RSU Award was \$62.40.
- (3) On January 10, 2022, in his capacity as Chief Executive Officer, Mr. Griffin was granted 1,410 RSUs pursuant to our 2020 Restricted Stock Plan, whereby all RSUs vested immediately on January 10, 2022. The grant date fair value of the RSU Award was \$47.40.
- (4) On May 26, 2022, in his capacity as Chief Executive Officer, Mr. Griffin was granted 5,000 RSUs pursuant to our 2020 Restricted Stock Plan, whereby 1/3 of the RSUs vest on the anniversary date each year, beginning on May 26, 2023. The grant date fair value of the RSU Award was \$36.20.
- (5) On January 10, 2022, Mr. Habersetzer was granted 1,410 RSUs pursuant to our 2020 Restricted Stock Plan, whereby all RSUs vested immediately on January 10, 2022. The grant date fair value of the RSU Award was \$47.40.
- (6) On May 26, 2022, Mr. Habersetzer was granted 1,750 RSUs pursuant to our 2020 Restricted Stock Plan, whereby 1/3 of the RSUs vest on the anniversary date each year, beginning on May 26, 2023. The grant date fair value of the RSU Award was \$36.20.
- (7) On November 8, 2021, Mr. Brown was granted 5,000 RSUs pursuant to his employment agreement, whereby 1,667 shares vested on November 8, 2022 and the remaining 3,333 shares will vest on a quarterly basis in eight equal installments, beginning on February 8, 2023. The grant date fair value of the RSU was \$43.20.
- (8) On January 10, 2022, Mr. Brown was granted 235 RSUs pursuant to our 2020 Restricted Stock Plan, whereby all RSUs vested immediately on January 10, 2022. The grant date fair value of the RSU Award was \$47.40.
- (9) On May 26, 2022, Mr. Brown was granted 1,750 RSUs pursuant to our 2020 Restricted Stock Plan, whereby 1/3 of the RSUs vest on the anniversary date each year, beginning on May 26, 2023. The grant date fair value of the RSU Award was \$36.20.

## **Other Elements of Compensation**

*401(k) Plan.* We offer all of our employees, including executives, a 401k safe harbor match, where 100% of contributions are matched on the first 3% of monies contributed on a pre-tax basis from payroll and a 50% match on the next 2% that is contributed on a pre-tax basis from payroll.

*Health/Welfare Plans.* We have a health care, dental, and vision plan available to all employees, including our executives, who become eligible on the first day of the month following the commencement of their employment.

*PTO Plan.* Executives may take PTO at any time, at their own reasonable discretion.

*Other Benefits.* Executives are provided with car allowance or reimbursement of commuting and cell phone expenses.

## **Employment Agreements with our Named Executive Officers**

### ***Employment Agreement with Sterling Griffin***

We have an employment agreement with Sterling Griffin as our Chief Executive Officer and President, effective January 1, 2019. This employment agreement is for a term of ten years with automatic one-year renewals unless either party gives notice of termination at least 30 days prior to the expiration of its initial term or any renewal term. Mr. Griffin is entitled to an annual salary of \$420,000, discretionary bonuses in the discretion of the board of directors, 3,378 options pursuant to the 2018 Equity Incentive Plan, an automobile allowance in the discretion of the board, and participation in all benefit plans, such as paid vacation and health insurance. In the event of our termination of Mr. Griffin without cause, Mr. Griffin is entitled to 26 weeks of his then salary as severance. On June 11, 2021, Mr. Griffin's salary was increased to \$462,000.

On May 26, 2022, Mr. Griffin signed a new employment agreement as our Chief Executive Officer. This employment agreement is for a term of three years with automatic one-year renewals unless either party gives notice of termination at least 90 days prior to the expiration of its initial term or any renewal term. Mr. Griffin is entitled to an annual salary of \$510,000, discretionary bonuses in the discretion of the Compensation Committee, participation in all benefit plans, and reimbursement of business expenses including related travel expenses. In the event of our termination of Mr. Griffin without cause, Mr. Griffin is entitled to his unreimbursed business expenses, 100% of his annual base salary plus 100% of his target annual bonus as severance. Additionally, all outstanding restricted stock units and other previously granted awards that would have vested within 12 months of the date of termination shall become fully vested.

In addition to the 2021 compensation listed above, Mr. Griffin received a cash bonus of \$217,140 from 2021 performance on January 18, 2022. No cash bonus was received for 2022. Mr. Griffin was granted 1,410 common shares pursuant to our 2020 Restricted Stock Plan on January 10, 2022 and granted 5,000 common shares pursuant to our 2020 Restricted Stock Plan on May 26, 2022.

### ***Offer Letter and Employment Agreement with Jeff Habersetzer***

On December 18, 2019, Mr. Habersetzer was offered employment with a starting salary of \$112,500, with a retention bonus of \$12,500 following a successful one-year performance review. Mr. Habersetzer was issued 1,000 options pursuant to the 2018 Equity Incentive Plan, as well as participation in all benefit plans including paid vacation, health insurance, and our 401k program. Mr. Habersetzer's salary was increased to \$140,000 on June 15, 2020, and \$160,000 on March 22, 2021. On June 28, 2021, the Board of Directors approved new compensation terms for Mr. Habersetzer, in connection with his promotion to Chief Operating Officer. The new terms include an annual base salary increase to \$225,000, effective July 1, 2021. On February 7, 2022, Mr. Habersetzer's salary was increased to \$280,000.

On May 26, 2022, Mr. Habersetzer signed an employment agreement as our Chief Operating Officer. This employment agreement is for a term of three years with automatic one-year renewals unless either party gives notice of termination at least 90 days prior to the expiration of its initial term or any renewal term. Mr. Habersetzer is entitled to an annual salary of \$280,000, discretionary bonuses in the discretion of the Compensation Committee, participation in all benefit plans, and reimbursement of business expenses including related travel expenses. In the event of our termination of Mr. Habersetzer without cause, Mr. Habersetzer is entitled to his unreimbursed business expenses, 100% of his annual base salary plus 100% of his target annual bonus as severance. Additionally, all outstanding restricted stock units and other previously granted awards that would have vested within 12 months of the date of termination shall become fully vested.

In addition to the compensation listed above, Mr. Habersetzer was awarded a cash bonus of \$105,750 from 2021 performance on January 18, 2022. No cash bonus was received for 2022. Mr. Habersetzer was also granted 1,410 shares of common stock pursuant to our 2020 Restricted Stock Plan on January 10, 2022 and 1,750 shares of common stock pursuant to our 2020 Restricted Stock Plan on May 26, 2022.

### ***Employment Agreement with Lance Brown***

On November 1, 2021, we entered into an employment agreement with Lance Brown to serve as our Chief Financial Officer, reporting to our Chief Executive Officer. The employment agreement is for a term of three years, and will automatically renew for additional one year periods unless either party provides the other party with notice of non-renewal at least 90 days before any such anniversary. In accordance with the terms of the employment agreement, Mr. Brown is paid an annual salary of \$280,000 and has the opportunity to earn an annual target bonus of 50% of his base salary with the actual payout determined based on the achievement of annual individual and performance objectives established by the Compensation Committee. In addition, Mr. Brown received a one-time sign on bonus of \$75,000, which was paid on January 14, 2022 and was granted 5,000 shares of common stock pursuant to our 2020 Restricted Stock Plan, 1,667 shares of which vested on November 8, 2022, and thereafter, the remaining 3,333 shares will vest on a quarterly basis in eight equal installments, whereby all shares shall be vested by November 8, 2024. Mr. Brown may participate in all benefit plans, such as paid vacation, health insurance, and our 401k program. In the event of our termination of Mr. Brown without cause, Mr. Brown is entitled to 100% of his annual base salary plus 100% of his target annual bonus as severance. Additionally, all outstanding restricted stock units and other previously granted awards that would have vested within 12 months of the date of termination shall become fully vested.

In addition to the compensation listed above, Mr. Brown was awarded a cash bonus of \$21,633 from 2021 performance on January 14, 2022. No cash bonus was received for 2022. Mr. Brown was also granted 235 shares of common stock pursuant to our 2020 Restricted Stock Plan on January 10, 2022 and 1,750 shares of common stock pursuant to our 2020 Restricted Stock Plan on May 26, 2022.

### **Director Compensation**

The following table sets forth information regarding the compensation earned for service on our board of directors in 2022. We reimburse all directors for their reasonable out of pocket expenses incurred in connection with the performance of their duties as directors, including without limitation, travel expenses in connection with their attendance in-person at board and committee meetings. There were no RSUs or stock options granted to our directors in 2022.

<b>Director Name</b>	<b>Cash</b>
Sterling Griffin .....	\$ 12,500
Richard Schmidtke .....	\$ 30,000
Larry Swets.....	\$ 40,000
Dennis Wong.....	\$ 111,250
Wally Walker.....	\$ 40,000
Karen Bryant .....	\$ 30,000
Chris Corr .....	\$ 30,000

### **2018 Equity Incentive Plan**

On November 12, 2018, we adopted the 2018 Equity Incentive Plan which provides for the grant of incentive stock options within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the “Code”), to our employees and the employees of any subsidiary corporation, and for the grant of non-statutory stock options to non-employees, including directors and other service providers.

Authorized shares. A total of 133,784 shares of our common stock has been reserved for issuance pursuant to the exercise of options issued from the 2018 Equity Incentive Plan.

Plan administration. Our board of directors administers our 2018 Equity Incentive Plan.

**Stock options.** Stock options may be granted under our 2018 Equity Incentive Plan. The exercise price of options granted under our 2018 Equity Incentive Plan must at least be equal to the fair market value of our common stock on the date of grant. The term of an incentive stock option may not exceed ten years, except that with respect to any participant who owns more than 10% of the voting power of all classes of our outstanding stock, the term must not exceed five years and the exercise price must equal at least 110% of the fair market value on the grant date. The administrator will determine the methods of payment of the exercise price of an option, which may include cash, shares, or other property acceptable to the administrator, as well as other types of consideration permitted by applicable law. After the termination of service of an employee, director, or consultant, he or she may exercise his or her option for the period of time stated in his or her option agreement. Generally, if termination is due to death or disability, the option will remain exercisable for 12 months. In all other cases, the option will generally remain exercisable for three months following the termination of service. However, in no event may an option be exercised later than the expiration of its term. Subject to the provisions of our 2018 Equity Incentive Plan, the administrator determines the other terms of options.

**Options Granted.** As of December 31, 2022 pursuant to our 2018 Equity Incentive Plan, we have issued 40,880 options to purchase shares of our common stock to our employees, officers, and directors.

**Non-transferability of awards.** Unless the administrator provides otherwise, our 2018 Equity Incentive Plan generally does not allow for the transfer of awards and only the recipient of an award may exercise an award during his or her lifetime.

**Certain adjustments.** In the event of certain changes in our capitalization, to prevent diminution or enlargement of the benefits or potential benefits available under our 2018 Equity Incentive Plan, the administrator will adjust the number and class of shares that may be delivered under our 2018 Equity Incentive Plan and/or the number, class and price of shares covered by each outstanding award and the numerical share limits set forth in our 2018 Equity Incentive Plan. In the event of our proposed liquidation or dissolution, the administrator will notify participants as soon as practicable and all awards will terminate immediately prior to the consummation of such proposed transaction.

#### **Merger or change in control**

Our 2018 Equity Incentive Plan provides that in the event of a merger or change in control, as defined under the 2018 Equity Incentive Plan, each outstanding award will be treated as the administrator determines, except that if a successor corporation or its parent or subsidiary does not assume or substitute an equivalent award for any outstanding award, then such award will fully vest, all restrictions on the shares subject to such award will lapse, all performance goals or other vesting criteria applicable to the shares subject to such award will be deemed achieved at 100% of target levels, and all of the shares subject to such award will become fully exercisable, if applicable, for a specified period prior to the transaction. The award will then terminate upon the expiration of the specified period of time.

**Amendment, termination.** The administrator has the authority to amend, suspend, or terminate the 2018 Equity Incentive Plan provided such action will not impair the existing rights of any participant. Our 2018 Equity Incentive Plan will automatically terminate in 2028, unless we terminate it sooner.

### **2020 Restricted Stock Plan**

**Purpose of the 2020 Restricted Stock Plan.** The 2020 Restricted Stock Plan is intended to provide incentives which will attract, retain, motivate, and reward officers, directors, and key employees of us or any of our Affiliates (“Participants”), by providing them opportunities to acquire shares of our common stock (“Awards”).

**Stock Subject to the Plan.** The aggregate number of shares of common stock that may be subject to Awards granted under the 2020 Restricted Stock Plan is 135,000 shares of common stock. If any shares of common stock are forfeited, retained by us as payment of tax withholding obligations with respect to an Award, or surrendered to us to satisfy tax withholding obligations, such shares will be added back to the shares available for Awards. The 2020 Restricted Stock Plan contains certain adjustment provisions relating to stock dividends, stock splits, and the like.

**Administration of the 2020 Restricted Stock Plan.** The 2020 Restricted Stock Plan is administered by the Compensation Committee of the board of directors. The Compensation Committee has the full power and authority to grant Awards to the persons eligible to receive such Awards and to determine the amount, type, terms, and conditions of each such Award.

**Eligibility.** Participants consist of such officers, directors, and key employees of us or any of our Affiliates as the Compensation Committee, in its sole discretion, determines to be significantly responsible for our success and future growth and profitability and whom the Compensation Committee may designate from time to time to receive Awards under the 2020 Restricted Stock Plan.

**Types of Awards.** Stock Awards and Performance Awards may, as determined by the Compensation Committee, in its discretion, constitute Performance-Based Awards.

### *Stock Awards*

The Compensation Committee is authorized to grant Stock Awards and will, in its sole discretion, determine the recipients and the number of shares of common stock underlying each Stock Award. Each Stock Award will be subject to such terms and conditions consistent with the 2020 Restricted Stock Plan as determined by the Compensation Committee and as set forth in an Award agreement, including, without limitation, restrictions on the sale or other disposition of such shares and our right to reacquire such shares for no consideration upon termination of the Participant's employment or membership on the board, as applicable, within specified periods.

### *Performance Awards*

The Compensation Committee is authorized to grant Performance Awards and will, in its sole discretion, determine the recipients and the number of shares of common stock that may be subject to each Performance Award. Each Performance Award will be subject to such terms and conditions consistent with the 2020 Restricted Stock Plan as determined by the Compensation Committee and as set forth in an Award agreement. The Compensation Committee will set performance targets at its discretion which, depending on the extent to which they are met, will determine the number of Performance Awards that will be paid out to the Participants and may attach to such Performance Awards one or more restrictions. Performance targets may be based upon, without limitation, Company-wide, divisional, and/or individual performance.

The Compensation Committee has the authority to adjust performance targets. The Compensation Committee also has the authority to permit a Participant to elect to defer the receipt of any Performance Award, subject to the 2020 Restricted Stock Plan.

### *Performance-Based Awards*

Certain Stock Awards and Performance Awards granted under the 2020 Restricted Stock Plan and the compensation attributable to such Awards are intended to (i) qualify as Performance-Based Awards or (ii) be otherwise exempt from the deduction limitation imposed by Section 162(m) of the Code. The Compensation Committee determines whether Stock Awards and Performance Awards granted under the 2020 Restricted Stock Plan qualify as Performance-Based Awards. The Compensation Committee will establish in writing the performance goals, the vesting period, the performance targets, and any other terms and conditions of the Award in its sole discretion.

Vesting. Awards granted to Participants under the 2020 Restricted Stock Plan may be subject to a vesting period, unless otherwise determined by the Compensation Committee.

If we have a Change in Control, all unvested Awards granted under the 2020 Restricted Stock Plan will become fully vested immediately upon the occurrence of the Change in Control and such vested Awards will be paid out or settled, as applicable, within 60 days upon the occurrence of the Change in Control, subject to requirements of applicable laws and regulations.

Subject to the discretion of the Compensation Committee, if a Participant's employment or membership on the board is terminated due to death or Disability, then all unvested and/or unearned Awards will be forfeited as of such date.

### Section 409A of the Code

Awards under the 2020 Restricted Stock Plan are intended either to be exempt from the rules of Section 409A of the Code or to satisfy those rules and shall be construed accordingly. However, we will not be liable to any Participant or other holder of an Award with respect to any Award-related adverse tax consequences arising under Section 409A or other provision of the Code.

Transferability. Each Award granted under the 2020 Restricted Stock Plan will not be transferable other than by a will or the laws of descent and distribution or as otherwise decided by the Compensation Committee.

Fair Market Value. For purposes of the 2020 Restricted Stock Plan, "Fair Market Value" means, as of any given date, the closing price of a share of common stock on Nasdaq or such other public trading market on which shares of common stock are listed or quoted on that date.

Withholding. All payments or distributions of Awards made pursuant to the 2020 Restricted Stock Plan will be net of any amounts required to be withheld pursuant to applicable federal, state, and local tax withholding requirements.

Amendments. Our board or the Compensation Committee may amend the 2020 Restricted Stock Plan from time to time or suspend or terminate it at any time. However, no amendment will be made, without approval of our shareholders to (i) increase the total number of shares which may be issued under the 2020 Restricted Stock Plan; (ii) modify the requirements as to eligibility for Awards under the 2020 Restricted Stock Plan; or (iii) otherwise materially amend the 2020 Restricted Stock Plan as provided in Nasdaq rules.

Term of the 2020 Restricted Stock Plan. The 2020 Restricted Stock Plan will terminate on the seventh anniversary of its Effective Date.

Outstanding Awards. As of December 31, 2022, there were 22,255 Awards issued under the 2020 Restricted Stock Plan.

### Rule 10b5-1 Sales Plan

Our directors and executive officers may adopt written plans, known as Rule 10b5-1 plans, in which they would contract with a broker to buy or sell shares of our common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades pursuant to parameters established by the director or officer when entering into the plan, without further direction from them. The director or executive officer may amend a Rule 10b5-1 plan in some circumstances and may terminate a plan at any time. Our directors and executive officers also may buy or sell additional shares outside a Rule 10b5-1 plan when they are not in possession of material nonpublic information subject to compliance with the terms of our policy on insider trading and communications with the public. Our directors and executive officers may not establish any such plan prior to the expiration of certain lock-up agreements.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNER AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

### Equity Compensation Plan Information

We filed Articles of Amendment to our Articles of Incorporation for a 1-for-20 Reverse Stock Split with the Washington Secretary of State on March 1, 2023 and the Reverse Stock Split was effected on the Nasdaq Capital Market on March 6, 2023. All share and per share data included below have been adjusted retroactively to reflect the impact of the Reverse Stock Split.

The following table sets forth information as of December 31, 2022 regarding shares of common stock that may be issued under our equity compensation plans, consisting of our 2018 Equity Incentive Plan and our 2020 Restricted Stock Plan. We do not have any non-stockholder approved equity compensation plans.

<b>Plan Category</b>	<b>Number of securities to be issued upon exercise of outstanding options, warrants and rights</b>	<b>Weighted-average exercise price of outstanding options, warrants and rights</b>	<b>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))</b>
	(a)	(b)	(c)
Equity compensation plans approved by security holders .....	49,546 <sup>(1)</sup>	\$ 41.51 <sup>(2)</sup>	205,649 <sup>(3)</sup>
Equity compensation plans not approved by security holders ...	—		—
Total .....	49,546		205,649

(1) Includes 37,546 outstanding options under the 2018 Equity Incentive Plan and 12,000 unvested RSUs under the 2020 Restricted Stock Plan.

(2) Does not include 12,000 restricted stock awards as they do not have an exercise price.

(3) Includes 92,904 options remaining under the 2018 Equity Incentive Plan and 112,745 RSUs remaining under the 2020 Restricted Stock Plan.

## Security Ownership of Certain Beneficial Owners and Management

The following table sets forth the beneficial ownership of our common stock as of March 28, 2023 by:

- each director;
- each named executive officer;
- all of our directors and executive officers as a group; and
- each person known by us to be the beneficial owner of 5% or more of our outstanding common stock.

The percentage ownership information is based on 719,152 shares of our common stock outstanding.

We have determined beneficial ownership in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of common stock issuable pursuant to the exercise of stock options and warrants that are either immediately exercisable or exercisable on or before the date which is 60 days after the date of this document. The rules also include restricted stock units that are vested over 60 days after the date of this document. These shares are deemed to be outstanding and beneficially owned by the person holding those options, warrants, or restricted stock units for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to applicable community property laws.

Name and Address of Beneficial Owner(8)	Amount and Nature of Beneficial Ownership	
	Number of Shares of Common Stock	Percentage of Class
<b>Directors and Named Executive Officers:</b>		
Sterling Griffin, Chief Executive Officer, President, Director .....	141,156 <sup>(1)</sup>	19.5%
Jeffrey B. Habersetzer, Chief Operating Officer .....	7,989 <sup>(2)</sup>	1.1%
Lance Brown, Chief Financial Officer .....	3,707 <sup>(3)</sup>	*
Richard Schmidtke, Director .....	8,544 <sup>(4)</sup>	1.2%
Larry Swets, Director .....	6,022 <sup>(5)</sup>	*
Dennis Wong, Director .....	2,842 <sup>(6)</sup>	*
Wally Walker, Director .....	5,450 <sup>(7)</sup>	*
Karen Bryant, Director .....	500	*
Chris Corr, Director .....	998	*
All directors and executive officers as a group (nine persons) .....	177,208	24.0%

\* Less than 1.0%

(1) Includes options to purchase 4,378 shares of common stock and 1,667 restricted stock units.

(2) Includes options to purchase 6,242 shares of common stock and 583 restricted stock units.

(3) Includes 1,000 restricted stock units.

(4) Includes options to purchase 1,000 shares of our common stock.

(5) Includes options to purchase 2,689 shares of our common stock.

(6) Includes options to purchase 1,000 shares of our common stock.

(7) Includes options to purchase 1,000 shares of our common stock.

(8) Unless otherwise indicated, the address of each beneficial owner is 1201 Pacific Avenue, Suite 1200, Tacoma, Washington 98402.



### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

Refer to Note 14. Related Party Transactions in the Notes to Consolidated Financial Statements (Part II, Item 8) for disclosure on related party transactions, which is incorporated by reference herein.

#### **Policies and Procedures for Transactions with Related Persons**

All related party transactions are voted upon and approved by the disinterested board of directors. The Audit Committee of the board of directors is responsible for evaluating each related party transaction and making a recommendation to the disinterested members of the board of directors as to whether the transaction at issue is fair, reasonable, and within our policy and whether it should be ratified and approved. The Audit Committee, in making its recommendation, will consider various factors, including the benefit of the transaction to us, the terms of the transaction and whether they are at arm's-length and in the ordinary course of our business, the direct or indirect nature of the related person's interest in the transaction, the size and expected term of the transaction, and other facts and circumstances that bear on the materiality of the related party transaction under applicable law and listing standards. The Audit Committee will review, at least annually, a summary of our transactions with our directors and officers and with firms that employ our directors, as well as any other related person transactions.

#### **Director Independence**

We ceased to be a "controlled company" under the Nasdaq rules on August 28, 2020.

We currently have five independent directors on our board of directors. We use Nasdaq's definition of "independence" to make this determination. Nasdaq provides that an "independent director" is a person other than an executive officer or employee of the company or any other individual having a relationship with which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The rules provide that a director cannot be considered independent if:

- the director is, or at any time during the past three years was, one of our employees;
- the director who accepted or who has a Family Member who accepted any compensation from us in excess of \$120,000 during any period of 12 consecutive months within the three years preceding the determination of independence (subject to certain exemptions, including, among other things, compensation for board or board committee service);
- the director who is a Family Member of an individual who is, or at any time during the past three years was, employed as one of our Executive Officers;
- the director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which we made, or from which we received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more (subject to certain exemptions); or
- the director who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during the past three years any of our Executive Officers served on the Compensation Committee of such other entity; or
- the director who is, or has a Family Member who is, a current partner of an outside auditor, or was a partner or employee of an outside auditor who worked on our audit at any time during any of the past three years.

Under such definitions, our board of directors has undertaken a review of the independence of each director and will review the independence of any new directors based on information provided by each director concerning his background, employment, and affiliations, in order to make a determination of independence. Our board of directors has determined that there are five independent directors on our board of directors.

#### **Role of our Board of Directors in Risk Oversight**

One of the key functions of our board of directors is informed oversight of our risk management process. We have formed supporting committees, including the Audit Committee, the Compensation Committee, and the Nominating and Corporate Governance Committee, each of which supports the Board of Directors by addressing risks specific to its respective areas of oversight. In particular, our Audit Committee has the responsibility to consider and discuss our major financial risk exposures and the steps our management takes to monitor and control these exposures, including guidelines and policies to govern the process by which risk assessment and management is undertaken. The Audit Committee also monitors compliance with legal and regulatory requirements, in addition to oversight of the performance of our internal audit function. Our Compensation Committee assesses and monitors whether any of our compensation policies and programs has the potential to encourage excessive risk-taking. Our Nominating and Corporate Governance Committee provides oversight and monitors the effectiveness of our corporate governance. The full Board of Directors oversees risk management.

## **Lead Independent Director**

Karen Bryant currently serves as our board's lead independent director. The lead independent director has the following duties and powers:

- serving as the liaison between the independent members of the board and the chair;
- presiding at all board meetings at which the chair is not present, including executive sessions and meetings of non-management directors and/or independent directors;
- approving the agendas for board meetings and the meeting schedule to assure that there is sufficient time for discussion of all agenda items;
- reviewing information to be sent to the board;
- reviewing with the chair whether there are major risks which the board should focus upon at such meetings;
- facilitating communication among the independent directors and with the chair;
- directing the chief executive officer or corporate secretary to call a special meeting of the board or of the independent members of the board;
- consulting and communicating directly with major stockholders, when requested by management and when it is appropriate to do so; and
- performing such other duties as may from time to time be delegated to the lead independent director by the board.

## **Committees of our Board of Directors**

We are required to have an audit committee, compensation committee, and nominating and corporate governance committee. In addition to these required committees, we have utilized a Special Pricing Committee associated with our equity raises. We intend to comply with the requirements of Rule 10A-3 of the Exchange Act and applicable Nasdaq corporate governance rules within the required timeframe.

Nasdaq corporate governance rules require that our Audit Committee be composed of at least three members, all of which must be "independent directors" who are "financially literate" as defined under the Nasdaq listing standards. The Nasdaq listing standards define "financially literate" as being able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement. In addition, we are required to certify to Nasdaq that the Audit Committee has, and will continue to have, at least one member who has past employment experience in finance or accounting, requisite professional certification in accounting, or other comparable experience or background that results in the individual's financial sophistication.

As of the fiscal year ended December 31, 2022, our Audit Committee is composed of Larry Swets, Dennis Wong, and Wally Walker. Our board of directors has affirmatively determined that all of the members of the Audit Committee meet the definition of "independent director" for purposes of serving on an Audit Committee under Rule 10A-3 and Nasdaq rules.

We have established a written charter for our Audit Committee, in which we set forth the duties of the Audit Committee, which among other matters include:

- oversight of our financial reporting, auditing, and internal control activities, the integrity and audits of our financial statements, and our compliance with legal and regulatory requirements;
- oversight of the performance of our internal audit function and independent auditors;
- our overall risk exposure and management;
- the annual review and assessment of the adequacy of the Audit Committee charter and the performance of the Audit Committee;
- the evaluation of the qualifications, performance, and independence of our internal audit function and independent auditors;
- the appointment, retention, and termination of our independent auditors and determine the compensation of our independent auditors;
- the review with the independent auditors of the plans and results of the audit engagement;
- the sole authority to approve in advance all audit and non-audit services by our independent auditors, the scope and terms thereof, and the fees therefor; and
- meeting at least quarterly with our executive officers, internal audit staff, and our independent auditors in separate executive sessions.

A copy of the Audit Committee charter is available on our website at [www.harborcustomdev.com](http://www.harborcustomdev.com).

Nasdaq also requires that our Compensation Committee and Nominating and Corporate Governance Committee be composed solely of independent directors. The members of our Nominating and Corporate Governance Committee are Wally Walker, Dennis Wong, and Karen Bryant. The members of our Compensation Committee are Larry Swets, Wally Walker, and Chris Corr. We have also established charters for each of our Nominating Committee and Compensation Committee.

#### ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Rosenberg Rich Baker Berman, P.A. (RRBB) an independent registered public accounting firm, audited the financial statements and performed quarterly reviews of the company for 2022 and has been selected to do so for 2023.

##### Audit Fees

The aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the annual audit of our financial statements and review of financial statements included in our quarterly reports and services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for these fiscal periods were as follows:

	For the Fiscal Year Ended	
	2022	2021
Audit Fees.....	\$ 165,200 <sup>(1)</sup>	\$ 138,000 <sup>(1)</sup>
Audit Related Fees.....	4,450 <sup>(2)</sup>	103,345 <sup>(2)</sup>
Tax Fees.....	—	—
All Other Fees .....	—	—
Total.....	<u>\$ 169,650</u>	<u>\$ 241,345</u>

(1) Audit fees for 2022 and 2021 include fees for professional services rendered by RRBB for the audit of our consolidated financial statements included in our Annual Report on Form 10-K, and review of our condensed consolidated financial statements included in our Quarterly Reports on Form 10-Q.

(2) Audit-related fees for 2022 include fees related to consents and 2021 include fees related to consents and comfort letters for our public offering documents.

##### Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Auditors

Our Audit Committee pre-approves all audit and permissible non-audit services. These services may include audit services, audit-related services, tax services, and other services. Our Audit Committee approves these services on a case-by-case basis.

#### PART IV

#### ITEM 15. EXHIBITS

Exhibit No.	Description	Form	Exhibit	Filing Date	Filed Herewith
3.1	Certificate of Conversion and Articles of Incorporation of the Registrant dated October 1, 2018	S-1	3.1	3/31/2020	
3.2	Articles of Amendment of Articles of Incorporation of the Registrant dated December 7, 2018	S-1	3.2	3/31/2020	
3.3	Articles of Amendment of Articles of Incorporation of the Registrant dated August 1, 2019	S-1	3.3	3/31/2020	
3.4	2nd Amended and Restated Bylaws of the Registrant, dated January 15, 2020	S-1	3.4	3/31/2020	
3.5	Articles of Amendment of Articles of Incorporation of the Registrant, dated April 16, 2020	S-1	3.5	4/28/2020	
3.6	Articles of Amendment of Articles of Incorporation of the Registrant, dated March 1, 2023	8-K	3.1	3/03/2023	
4.1	2018 Incentive and Non-Statutory Stock Option Plan, dated November 19, 2018	S-1	4.1	3/31/2020	

4.2	2020 Restricted Stock Plan, dated October 13, 2020	10-Q	10.1	11/16/2020	
4.3	Certificate of Designation of 8.0% Series A Cumulative Convertible Preferred Stock, dated June 8, 2021	8-K	3.1	6/10/2021	
4.4	Warrant Agency Agreement between the Registrant and Mountain Share Transfer, Inc., dated June 11, 2021	8-K	4.1	6/14/2021	
4.5	Certificate of Amendment of Certificate of Designation of 8.0% Series A Cumulative Convertible Preferred Stock, dated August 13, 2021	S-1	3.7	9/10/2021	
4.6	Warrant Agency Agreement between the Registrant and Mountain Share Transfer, Inc., dated October 7, 2021	8-K	4.1	10/08/2021	
4.7	Description of Capital Stock		4.7		X
10.1	Director Agreement between the Registrant and Richard Schmidtke, dated October 17, 2018	S-1	10.4	3/31/2020	
10.2	Independent Director Agreement with Larry Swets, dated March 22, 2020	S-1	10.11	3/31/2020	
10.3	SoundEquity, Inc. Loan Package, dated November 13, 2019	S-1	10.12	4/28/2020	
10.4	Indemnification Agreement with Larry Swets, dated June 1, 2020	S-1	10.17	6/19/2020	
10.5	Lease Agreement with Burnham Partners LLC, dated February 18, 2021	10-K	10.22	3/31/2021	
10.6	SoundEquity, Inc. Loan Package, dated October 4-5, 2021	10-K	10.25	3/31/2021	
10.7	Promissory Note with Sound Capital Loans, LLC, dated January 22, 2021	10-K	10.26	3/31/2021	
10.8	Lease Agreement with University Street Properties I, LLC, dated July 27, 2021	10-K	10.13	3/24/2022	
10.9	Offer of Employment to Lance Brown dated November 1, 2021.	10-K	10.14	3/24/2022	
10.10	Loan Agreement with BankUnited, N.A., dated March 7, 2022	8-K	1.1	3/10/2022	
10.11	Security Agreement with BankUnited, N.A., dated March 7, 2022	8-K	1.2	3/10/2022	
10.12	Revolving Line of Credit Promissory Note with BankUnited, N.A., dated March 7, 2022	8-K	1.3	3/10/2022	
10.15	Employment Agreement with Sterling Griffin, dated May 26, 2022		10.15		X
10.16	Employment Agreement with Jeffrey Habersetzer, dated May 26, 2022		10.16		X
10.17	Amended Loan Agreement with BankUnited N.A., dated February 22, 2023		10.17		X
31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002		31.1		X
31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002		31.2		X
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002		32.1		X
101. INS	XBRL Instance Document				
101. SCH	XBRL Taxonomy Extension Schema Document				
101. CAL	XBRL Taxonomy Extension Calculation Linkbase Document				
101. DEF	XBRL Taxonomy Extension definition Linkbase Document				
101. LAB	XBRL Taxonomy Extension Label Linkbase Document				
101. PRE	XBRL Taxonomy Extension Presentation Linkbase Document				
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)				

## ITEM 16. FORM 10-K SUMMARY

Not applicable.

## SIGNATURES

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

### HARBOR CUSTOM DEVELOPMENT, INC.

Date: March 31, 2023

By /s/ Sterling Griffin  
Sterling Griffin Chief Executive Officer and President  
(Principal Executive Officer)

Date: March 31, 2023

By /s/ Lance Brown  
Lance Brown Chief Financial Officer  
(Principal Financial and Accounting Officer)

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Sterling Griffin</u> Sterling Griffin	President, Chief Executive Officer, Chairman of the Board, and Director (Principal Executive Officer)	March 31, 2023
<u>/s/ Lance Brown</u> Lance Brown	Chief Financial Officer (Principal Financial and Accounting Officer)	March 31, 2023
<u>/s/ Richard Schmidtke</u> Richard Schmidtke	Director	March 31, 2023
<u>/s/ Larry Swets</u> Larry Swets	Director	March 31, 2023
<u>/s/ Dennis Wong</u> Dennis Wong	Director	March 31, 2023
<u>/s/ Wally Walker</u> Wally Walker	Director	March 31, 2023
<u>/s/ Karen Bryant</u> Karen Bryant	Director	March 31, 2023
<u>/s/ Chris Corr</u> Chris Corr	Director	March 31, 2023