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THIS ANNUAL REPORT IS BEING PREPARED PURSUANT TO REQUIREMENTS CONTAINED IN THE INDENTURE DATED AS OF JANUARY 23, 2020 GOVERNING THE 6.625% SENIOR NOTES DUE 2028 ISSUED BY ASHTON WOODS USA L.L.C., IN THE INDENTURE DATED AS OF AUGUST 2, 2021 GOVERNING THE 4.625% SENIOR NOTES DUE 2029 ISSUED BY ASHTON WOODS USA L.L.C., AND IN THE INDENTURE DATED AS OF SEPTEMBER 23, 2021 GOVERNING THE 4.625% SENIOR NOTES DUE 2030 ISSUED BY ASHTON WOODS USA L.L.C..

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

For the fiscal year ended May 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 \_\_\_\_\_.

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Commission file Number: N/A

**Ashton Woods USA L.L.C.**

(Exact Name of Registrant as Specified in Its Charter)

Nevada

(State or Other Jurisdiction of Incorporation or Organization)

37-1590746

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

3820 Mansell Road, Suite 400  
Alpharetta, GA

(Address of Principal Executive Offices)

30022

(Zip Code)

(770) 998-9663

Registrant's telephone number, including area code

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

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

Indicate by check mark whether the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act: Yes  No  N/A

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  N/A

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  N/A

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted 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 such files). Yes  No  N/A

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

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.

Indicated by a check mark if the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued the audit report: Yes  No

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

**ASHTON WOODS USA L.L.C.**  
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## **PART I.**

### **Item 1. *Business***

#### **Our company**

Headquartered in Atlanta, Georgia, Ashton Woods USA L.L.C., together with its subsidiaries (collectively, the “Company” or “Ashton Woods”), is one of the largest private homebuilders in the United States. Based on home closings for the calendar year ended December 31, 2021, we ranked second among private homebuilders and 14th among all homebuilders (private and public) in the U.S. according to Builder Magazine. We design, build, and market high-quality attached and detached single-family homes under the Ashton Woods Homes and Starlight Homes brand names. We serve a broad customer base and focus on achieving the highest standards in design, quality, and customer satisfaction.

Our homebuilding operations started in Dallas, Texas in 1989. We have delivered over 64,000 homes in the 33 years that we have been in business, and we have grown through the formation of homebuilding and land development operations in select strategic markets that we believe possess strong long-term housing and employment growth characteristics. Our geographic footprint is diversified across the Southeast and Southwest U.S., with operations in Atlanta, Georgia; Dallas, Houston, Austin, and San Antonio, Texas; Nashville, Tennessee; Orlando and Southwest Florida; Phoenix, Arizona; Coastal Carolinas, South Carolina; and Raleigh, North Carolina.

#### **Our brands**

Ashton Woods markets its homes through its two award-winning brands, Ashton Woods and Starlight Homes. The Ashton Woods brand is known for its design leadership and the ability to personalize one’s home through our Design Studio experience. The Starlight Homes brand is focused on the first-time and move-down buyer segments, offering affordable homes with thoughtful designs and quality finishes. Both Ashton Woods and Starlight Homes offer communities in attractive locations and are committed to providing reliable customer service. We believe Ashton Woods and Starlight Homes have become two of the most distinguished brands in the industry over the last several years.

The Ashton Woods brand focuses on buyers with a preference for and willingness to pay a premium for design and personalization. Our reputation as a design leader and our ability to offer personalization in a production model has allowed us to deliver a highly differentiated value proposition that is relevant and meaningful to a clearly-defined core target consumer. As a result, we attract buyers who seek out unique design and are willing to spend more to get what they want.

Ashton Woods’ brand pillars are a combination of what we deliver (design and personalization) and how we deliver it (through collaboration and expertise). These brand pillars come to life in our award-winning Design Studios, which are staffed by design professionals with significant expertise, extensive training, and the ability to translate buyers’ visions into homes that reflect their sense of style. Our focus on comprehensive research of local homebuyer preferences provides Ashton Woods homebuyers with the opportunity to select from a variety of floor plans designed for and tailored to address the local market. Our sales and marketing strategy leverages our national brand while allowing our operating divisions to customize execution to meet the needs and preferences of buyers in our local markets.

Where Ashton Woods’ value proposition is that of an industry leader in design, Starlight Homes is focused on affordability. With first-time homebuyers entering the market in larger numbers and demand outpacing supply for homes at lower price points, our strategy in approaching the entry-level market is primarily to convert renters into first-time homebuyers by offering affordable homes that include appealing features, without offering customers the opportunity to personalize their homes. Secondarily, we have also seen an increase in move-down buyers purchasing Starlight Homes due to the attractive finishes and high quality they can obtain at a lower price point.

Starlight Homes’ affordability value proposition is driven by operating efficiencies built into the brand. Starlight Homes’ marketing is driven by a direct data-based model, while sales efficiency is enhanced through a rigorous process to convert leads. With a highly efficient build process resulting from repeated construction of simplified, yet thoughtful, designs without changes or design options, our Starlight Homes business has shorter cycle times and

higher inventory turnover. The Starlight Homes offerings further strengthen the Ashton Woods portfolio and we believe position us for efficient growth into the future.

Included within the Starlight Homes brand, we also offer construction and development services specifically tailored to the single-family rental industry, which we typically sell under bulk sales agreements to real estate investors. We refer to such sales as our wholesale home sales, which are included in home sales revenues. The wholesale home sales, which are at times priced at a discount to retail, typically have lower average sales prices than retail home sales.

The Company develops land and lots and constructs homes for a fee. In the course of providing development, development oversight, and/or construction services, the Company routinely subcontracts for services and incurs other direct costs. The revenues and costs associated with these activities are included in financial services and other revenues and cost of sales - financial services and other revenues on the consolidated statements of income, respectively.

## **Our strategy**

### ***Integrated operating philosophy***

Our strategic decision-making incorporates all aspects of our business, including land acquisition and development, product design and offerings, community design, construction practices, sales and marketing, and customer care and warranty services.

Our integrated operations allow us to identify, research, and execute on market opportunities in an effective and efficient manner.

Through two wholly-owned title agency subsidiaries, the Company also performs title services in support of its operations and offers title services to its homebuyers in all of its operating divisions except Phoenix and Nashville. The Company offers or intends to offer residential mortgage services to its homebuyers and the public at large in all of its operating divisions through two unconsolidated mortgage joint ventures. Offering title and mortgage services to our customers provides the opportunity for a more streamlined homebuying experience for our buyers and additional efficiencies and revenue opportunities for the Company.

### ***Differentiated product focused on distinct target markets***

We are dedicated to providing high-quality, well-designed homes in desirable locations while endeavoring to meet the demands of today's homebuyers. The product lines offered in a particular community depend upon many factors, including the supply of existing housing and the demand for new housing in the general area. In an effort to better meet the demand in the marketplace, we conduct in-depth qualitative and quantitative market research. This research enables us to meet the specific lifestyle demands of our targeted homebuyers and create synergies between the design of our homes and the community development.

We believe our two brands, Ashton Woods and Starlight Homes, enable us to provide a differentiated value proposition to meet the needs of distinct customer segments. The target consumers for the core Ashton Woods brand are buyers who have a preference for and willingness to pay a premium for design and personalization. Our Design Studios provide Ashton Woods homebuyers the ability to make selections from an extensive array of options, including hardwoods, tiles, cabinets, light fixtures, countertops, and other fixtures and finishes, and technology, guided by deeply experienced and extensively trained in-house designers.

Starlight Homes addresses the needs of the growing entry-level market, guiding people through the process of achieving the dream of home ownership. Starlight Homes' tagline, Guiding You Home, speaks to the critical role the sales team plays in helping consumers realize that home ownership is attainable and guiding first-time homebuyers through what they may perceive to be an intimidating process. As such, every sales associate goes through a rigorous training program, which prepares them to move potential homebuyers through the marketing and sales process from lead to appointment to sale. Consistent and thorough analysis of these conversion metrics allows us to efficiently deploy resources where needed to optimize the business cost per lead and cost per sale.

Starlight Homes' business strategy is illustrated in selected operating metrics. Reflecting its entry-level focus, Starlight Homes' average selling price for the year ended May 31, 2022 of \$327,000 per home was lower than the Company average of \$385,000. Starlight Homes has experienced greater sales velocity on a per unit basis, with its communities reporting monthly new orders per active community of 7.6 homes per month, compared to a Company average of 5.7 homes per month, for the year ended May 31, 2022. Starlight Homes' growth is an important aspect of the Company's continued, planned shift toward entry-level communities, with generally lower average sales prices.

The powerful combination of Ashton Woods and Starlight Homes allows us to address a wide market, from entry-level to luxury, with compelling value propositions targeted to each buyer segment.

### ***Superior customer experience through design, quality, and service***

We strive to build and sell homes that combine high-quality craftsmanship with design characteristics that ultimately reflect the various lifestyles and aspirations of our broad customer base.

We differentiate ourselves through a combination of high-style architecture and design, high-quality materials and construction, and a dedication to homeowner satisfaction. Our product offerings are designed to enhance efficiency and livability, and align with modern tastes, and our product offerings continue to evolve as we commit to delivering innovative designs.

We focus on value engineering our products based on our market and customer segmentation studies, without compromising quality or selection of finishes. We also engage in efforts to reduce our construction cycle times, which ultimately generates better capital efficiency.

We instill in our employees the importance of high quality and superior customer service through extensive in-house training, as well as through a compensation structure directly tied in part to our customer satisfaction results. We are committed to achieving the highest level of customer service during the sales process, as well as after a home has closed. We have a variety of programs and services in place that seek to ensure customer satisfaction and seek to improve production efficiency and reduce warranty costs.

### ***Preserve and build on market position and pursue growth opportunities***

We maintain a rigorous focus on securing land only in premier locations for our target customers. We believe this focus provides us with competitive positioning and enhanced operational performance. We target land opportunities in each of our markets largely through the use of an in-depth analysis of supply and demand fundamentals, combined with site-specific financial feasibility studies, which we prepare in conjunction with our local operational managers. We undertake a detailed financial analysis as part of the evaluation of each land acquisition opportunity. This process enables us to enhance our financial returns while mitigating our land and inventory risk.

Through ongoing evaluation and assessment, we focus our operations and community development in those markets in which we operate that we believe exhibit positive demographic trends and offer attractive long-term growth opportunities. Maintaining and growing our share of those markets, through both selective growth and the expansion of our product offerings as we have done with Starlight Homes, enables us to source attractive acquisition opportunities and achieve economies of scale by leveraging our reputation as a preferred builder of choice by developers, land brokers, and trade partners.

We pursue growth where we believe it is merited based on existing market demand and economic attributes and where it is consistent with our integrated operating philosophy and land acquisition strategy and our commitment to best-in-class quality and superior customer experience. We have historically accessed new markets through organic growth. Since fiscal year 2010, we have opened operations in Austin, Coastal Carolinas, Nashville, Raleigh, San Antonio, and Sarasota to take advantage of market developments we believed offered attractive growth opportunities at the time. We will continue to evaluate opportunities, including in new markets, from time to time, including growing our business through select opportunistic acquisitions, joint ventures, and other strategic transactions, and we also believe we have ample growth opportunities across our existing geographic footprint and product offerings.

Enhancing our product offerings, as market conditions allow, is central to our growth strategy. We perform extensive research to determine demand for additional product offerings in each of our markets. Our single-family rental business, in which we sell homes and land, and build homes for a fee, has experienced meaningful growth and institutionalization as an asset class. In certain instances, we have built communities or dedicated sections of communities for single-family rental companies, either as part of our regular homebuilding operations, or as a contract developer and builder for single-family home rental companies. During the year ended May 31, 2022, we entered into contracts to sell 643 homes and closed on sales of 1,196 homes to single-family rental companies.

### ***Reduce leverage and maintain a prudent capital structure***

We believe it is important that we maintain a strong balance sheet with appropriate liquidity so that we can service our debt obligations, support our ongoing operations, and take advantage of select growth opportunities. As the housing cycle matures, we continue to focus on reducing our leverage ratios and lowering inventory holding risk as we also continue to focus on measured growth through increased retained earnings and Members' equity.

### **Operating divisions and products**

We currently operate in Atlanta, Georgia; Dallas, Houston, Austin, and San Antonio, Texas; Nashville, Tennessee; Orlando and Southwest Florida; Phoenix, Arizona; Coastal Carolinas, South Carolina; and Raleigh, North Carolina. We build and sell detached single-family homes in all of our markets and currently offer attached single-family homes in all of our operating divisions except Austin, Nashville, Phoenix, Southwest Florida, and San Antonio. During the year ended May 31, 2022, we closed 8,364 homes. Of those closings, 6,890 (82%) were detached single-family homes, while the remaining 1,474 (18%) of the homes closed were attached single-family homes.

We seek to maintain the flexibility to alter our product mix within a given market and to alter our development focus among markets depending on market conditions and consumer preferences. In determining our product mix in each market and our markets for development and growth, we consider demographic trends, demand for a particular type of product, margins, timing, and the economic strength of the market. We have focused, and intend to continue to focus, on our broad customer base. The base prices of our homes range from the low \$200,000s to over \$1,000,000, with an average sales price of \$385,000 for homes closed for the fiscal year ended May 31, 2022.

As of May 31, 2022, we had 112 active communities, comprised of 97 detached single-family home communities and 15 attached single-family home communities. Active communities are defined as communities that have sold at least five homes and have at least five homes left to sell.

### **Land acquisition and development**

We endeavor to achieve a balance between land owned and developed for our own use, and additional lots controlled through option contracts. We believe that our attractive land positions in our markets will enable us to continue to maintain market share in the current homebuilding environment. As of May 31, 2022, and based on the last twelve months' closings, we had land supply for use in our homebuilding operations of approximately 7.8 years, consisting of a 2.3 year supply of owned land and lots and homes available to close, and a 5.5 year supply of land and lots controlled through contracts.

We typically purchase land only after necessary entitlements have been obtained so that development or construction may begin as soon as market conditions dictate. The term "entitlements" refers to development agreements, tentative maps or recorded plats, as applicable, since the types of entitlements will vary depending on the jurisdiction within which the land is located. Even though entitlements are usually obtained before we purchase land, we are often required to secure a variety of other governmental approvals and permits during the land development process. The time required to obtain such approvals and permits can substantially lengthen the development process.

We select land and lots to purchase based upon a variety of considerations, including:

- in depth market studies to confirm pricing and selling pace assumptions;
- competition analysis to establish competitive positioning;

- suitability for development, generally within a one to three-year time period from the beginning of the development process to the delivery of the last home;
- financial review as to the feasibility of the proposed project, including projected profit margins, return on capital employed, and the capital payback period;
- results of environmental and legal due diligence;
- proximity to local traffic corridors and amenities;
- management's judgment on the state of the real estate market and the economic trends; and
- our experience in a particular market.

We acquire land through purchase and option contracts, as well as through joint ventures with other builders or developers. A substantial portion of our land is acquired through option contracts, which allows us to control lots and land without incurring the risks of land ownership or financial commitments other than non-refundable deposits. We generally enter into option contracts with third parties to purchase finished lots as home construction begins. These contracts are generally non-recourse and require non-refundable deposits. At May 31, 2022, we had \$357.4 million in non-refundable deposits on real estate under option or contract. At May 31, 2022, we had 65,392 total lots and homes under control for use in our homebuilding operations, of which we owned 30% or 19,513 lots and homes, and 70% or 45,879 lots were under contract. Once we acquire land, we generally initiate development and construction through contractual agreements with local subcontractors. These activities include site planning, engineering and home construction, as well as development activities to provide roads, sewerage, water supply, other utilities, drainage, recreation facilities, and other amenities.

### **Land joint ventures**

Occasionally we enter into partnerships or joint ventures to purchase and develop land. As of May 31, 2022, we did not control any lots for future use through our joint venture with a related party. In the future, we may form new partnerships or joint ventures where economically advantageous.

### **Letters of credit and surety bonds**

In the normal course of business, the Company provides letters of credit and surety bonds to third parties to secure performance and provide deposits under various contracts and commitments. The amount of such obligations outstanding at any time varies in accordance with our development activities and commitments. In the event any letters of credit or surety bonds are drawn upon, we would be obligated to reimburse the issuer of such letter of credit or surety bond. At May 31, 2022, the Company had letters of credit outstanding of \$6.2 million and surety bonds outstanding of \$196.4 million. As of May 31, 2022, the Company had \$43.8 million of unused letter of credit capacity under its revolving credit facility.

### **Backlog**

Homes covered by a sales contract but that are not yet closed are considered "backlog" and are representative of potential future revenues. Started homes are excluded from backlog until a sales contract is signed and cash deposit is received, and are referred to as unsold speculative or "spec" inventory.

We do not recognize any revenue from a home sale until a finished home is delivered to the homebuyer, payment is collected and other criteria for a sale and profit recognition are met. At May 31, 2022, of our total unsold homes in inventory, excluding model homes and sales centers, 98% were under construction and 2% were completed.

The number of homes in backlog decreased 24% to 2,585 units at May 31, 2022 from 3,395 units at May 31, 2021, with a 5% decrease in the value of backlog to \$1.2 billion from \$1.3 billion. We believe that during fiscal year 2023 we will deliver to customers substantially all homes in backlog at May 31, 2022, under existing or, in the case of cancellations, replacement sales contracts.

### **Seasonality**

Although significant changes in market conditions have impacted our seasonal patterns in the past and could do so again, we historically experience variability in our quarterly results from operations due to the seasonal nature of the homebuilding industry. We have historically experienced increases in revenues and cash flows provided by operations during the fourth quarter of each fiscal year based on the timing of home closings. The seasonal activity

usually increases our working capital requirements in our second and third quarters to support our home production. As a result of the seasonality of our operations, our quarterly results of operations are not necessarily indicative of the results that may be expected for the full fiscal year.

## **Marketing and sales**

We believe that we have established a reputation for building high quality, well-designed homes, which helps to generate interest in each new community. We drive awareness and consideration of our communities through a variety of marketing vehicles, most notably and increasingly through digital advertising and social media to drive visitors to our websites and communities. We focus on continually improving upon our brand awareness and maintaining consistency across our various operating divisions by applying standardized sales office designs and national marketing communications guidelines, while customizing by operating division to address the needs and wants of local homebuyers.

We typically build, decorate, furnish, and landscape between one and two model homes for each Ashton Woods community and maintain on-site sales offices in our Ashton Woods and Starlight Homes communities. As of May 31, 2022, we maintained 126 model homes and sales offices in all stages of construction. We believe that model homes play a particularly important role in the marketing of our Ashton Woods communities, helping homebuyers to imagine the possibilities of an Ashton Woods home. Our Starlight Homes sales offices play an equally important role, as they are housed in a fully completed Starlight Homes home, with features and finishes that will be included in the homebuyer's purchase.

Generally, interior decorations are undertaken by our internal design firm, and vary among our models based upon the lifestyles of targeted Ashton Woods homebuyers. Ashton Woods homebuyers may select various options and personalize their new homes at our award-winning Design Studios. Our Starlight Homes homebuyers do not make any selections through our Design Studios, as we generally maintain and sell speculative inventory that provides homebuyers with available homes to view and purchase.

Our sales counselors are available to assist prospective homebuyers by providing them with floor plans and price information, and tours of model and inventory homes. Sales counselors are trained by us and attend regular meetings to be updated on sales techniques, competitive products in the area, the availability of financing, construction schedules, and marketing and advertising strategy, which management believes results in a sales force with extensive knowledge of our operating practices and housing products.

We use various sales incentives in order to attract homebuyers, including sales price reductions, reductions in the prices of certain options or upgrades for our Ashton Woods homebuyers, and the payment of certain closing costs. The decision to offer incentives and the type of incentives offered at any point in time are driven by market forces and vary by location.

Sales of our homes are made pursuant to home sale contracts, the terms of which vary according to market practices and to the legal requirements of the states in which they are used. Typically, each contract requires a deposit from the homebuyer. In addition, the home sale contract typically contains one or more contingencies relating to financing, the sale of an existing home, or other factors that provide homebuyers with the right to cancel in the event they are unable to obtain financing at a prevailing interest rate, are not able to sell their home, or such other contingencies are not met within a specified time period after the execution of the home sales contract.

## **Other services**

Through two wholly-owned title agency subsidiaries, the Company also performs title services in support of its operations and offers title services to its homebuyers in all of its operating divisions except Phoenix and Nashville.

In addition, the Company offers or intends to offer residential mortgage services to its homebuyers and the public at large in all of its operating divisions through two unconsolidated mortgage joint ventures. The Company has an ownership interest of 49% in each of these mortgage joint ventures.



## **Construction and Sources of Materials**

We act as the general contractor for the construction of our homes. Subcontractors are typically engaged to complete construction of each home at a negotiated price. Agreements with our subcontractors and material suppliers are generally entered into after competitive bidding. Our operating divisions monitor the construction of each project to coordinate the activities of subcontractors and suppliers, and to seek to ensure subcontractor compliance with contract documents, zoning, building and safety codes, and quality and cost controls.

We specify that quality, durable materials be used in the construction of our homes. We have numerous suppliers of raw materials and services, and such materials and services have been and continue to be available, notwithstanding labor and supply chain constraints. From time to time, we enter into regional and national supply contracts with certain vendors to leverage our purchasing power and our size in order to control our costs. However, we do not have any material long-term contractual commitments with any of our subcontractors or suppliers. We do not maintain inventories of construction materials except for materials being utilized for homes under construction. Prices of materials may fluctuate due to various factors, including demand or supply shortages, which may be beyond the control of our vendors. We believe that our relationships with our suppliers and subcontractors are good.

Construction time for our homes depends on many factors, including the availability of labor, materials and supplies, the type and size of the home, location, and weather conditions. Our homes are designed to promote efficient use of space and materials, and to minimize construction costs and time. Construction of a home is typically completed within one year following commencement of construction.

## **Warranty program**

The Company provides its homebuyers with a limited warranty that generally provides for specified coverage, including, for example, structural coverage, coverage for plumbing, electrical and mechanical distribution systems, and coverage for workmanship and materials. We subcontract our homebuilding work to subcontractors who typically provide us with a two-year warranty for faulty work not in compliance with the plans, specifications, applicable building codes, and standard construction practices, and therefore, claims relating to workmanship and materials are generally the primary responsibility of our subcontractors. We contract with an independent third party that assists in administering our warranty program.

Warranty liabilities are initially established on a per home basis by charging cost of sales and establishing a warranty liability for each home delivered to cover expected costs of materials and labor during the warranty period. The amounts accrued are based on management's estimate of expected warranty-related costs under all unexpired warranty obligation periods. The Company's warranty liability is based upon historical warranty cost experience in each operating division and is adjusted as appropriate to reflect qualitative risks associated with the types of homes built and the geographic areas in which they are built.

## **Corporate operations**

We perform the following functions at a centralized level:

- the evaluation and selection of geographic markets;
- the allocation of capital resources to particular markets, including final approval of all land acquisitions;
- the establishment of financial policies and procedures;
- the consolidation of operating division and segment financial information;
- the capitalization of the Company;
- the maintenance of centralized information systems; and
- the monitoring of the decentralized operations of our subsidiaries and operating divisions.

We allocate the capital resources necessary for new projects in a manner consistent with our overall operating strategy. We utilize gross margins, net income margins, and inventory turnover as the primary criteria for our allocation of capital resources. Capital allocations are determined through consultation among certain corporate and operational management, who play an important role in seeking to ensure that new communities are consistent with our strategy, taking into account market conditions, results of operations, and other factors. Centralized financial controls are also maintained through the standardization of accounting and financial policies and procedures.

We operate through separate operating divisions, which are located near or within the geographic market in which they operate. Each operating division generally is managed by professionals with substantial experience in the operating division's market. In addition, each established operating division is equipped with the personnel to complete the functions of land acquisition, land development, construction, marketing, sales, and warranty service.

### **Competition and market factors**

The development and sale of residential properties is highly competitive and fragmented. We compete with numerous small and large residential builders for sales on the basis of a number of interrelated factors, including location, reputation, amenities, design, quality, and price. We compete with new home sales, re-sales of existing homes, and available rental housing.

We believe that we compare well with other builders in the markets in which we operate due primarily to:

- our experience within our geographic markets and the breadth of our product line, which allows us to vary our product offerings to reflect changing conditions within a market;
- our responsiveness to market conditions, which enables us to capitalize on the opportunities for attractive land acquisitions in desirable locations; and
- our reputation for quality design, construction, and service.

Some of our competitors have significantly greater financial resources or lower cost structures than we do. Because some of our competitors are larger than us, they may possess certain advantages over us, such as the ability to raise money at lower cost and the ability to negotiate better prices on materials and services with subcontractors. Certain of our smaller competitors may have an advantage over us based on length of operation in the market compared to us or better name recognition than us. Furthermore, many custom homebuilders may have an advantage over us because purchasers of custom homes tend to want a level of flexibility in the structural design of their homes that we do not offer.

The demand for new housing is directly related to consumer confidence levels and general economic conditions, including employment and interest rate levels. Other factors are also believed to affect the housing industry and the demand for new homes. Such other factors include:

- the availability of labor and materials and increases in the costs thereof;
- changes in costs associated with home ownership such as increases in property taxes and energy costs, and changes in income tax deductibility of mortgage interest and property taxes;
- changes in consumer preferences;
- demographic trends;
- the amount of resale housing inventory available in the market; and
- the availability of and changes in interest rates and mortgage financing programs.

### **Government regulation and environmental matters**

Substantially all of our land is purchased with entitlements, giving us the right to obtain building permits upon compliance with specified conditions, which generally are within our control. Upon compliance with such conditions, we must obtain building permits. The length of time necessary to obtain such permits and approvals affects the carrying costs of unimproved property acquired for the purpose of development and construction. In addition, the continued effectiveness of permits already granted is subject to factors such as changes in policies, rules and regulations, and their interpretation and application. Several governmental authorities have imposed impact fees as a means of defraying the cost of providing certain governmental services to developing areas. To date, the governmental approval processes discussed above have not had a material adverse effect on our development activities and have not had a material effect on our capital expenditures, earnings, and competitive position, and indeed all homebuilders in a given market face the same fees and restrictions. There can be no assurance, however, that these and other restrictions will not adversely affect us in the future.

We may also be subject to periodic delays or may be precluded entirely from developing communities due to building moratoriums or "slow-growth" or "no-growth" initiatives or building permit, water tap or sewer tap allocation ordinances which could be implemented in the future in the states and markets in which we operate. The majority of our land is entitled and, therefore, other than delays in the delivery of land and lots to us caused by such

delays, the moratoriums generally would only adversely affect us to the extent land is not entitled or if they arose from health, safety and welfare issues such as insufficient water or sewerage facilities. Local and state governments also have broad discretion regarding the imposition of development fees for projects in their jurisdiction. These fees are normally established, however, when we receive recorded final plats and building permits. We are also subject to a variety of local, state, and federal statutes, ordinances, rules, and regulations concerning the protection of health and the environment. Although in the future these laws may result in delays, cause us to incur substantial compliance and other costs, and prohibit or severely restrict development in certain environmentally sensitive regions or areas, these laws have not had a material effect on our capital expenditures, earnings, and competitive position to date.

### **Human capital resources**

As of May 31, 2022, we employed 1,183 employees, of whom 349 were sales and marketing personnel, 257 were executive, management and administrative personnel and 577 were construction personnel, including purchasing and warranty employees. We act solely as a general contractor, and all construction operations are monitored by our project managers and field superintendents who coordinate third party subcontractors. Although our employees are not covered by collective bargaining agreements, subcontractors may be represented by labor unions or may be subject to collective bargaining arrangements. We believe that our relations with our employees and subcontractors are good.

The people who work for our company are our most valuable resources and are critical to our continued success and execution of our strategies. As such, we focus on attracting, promoting and retaining qualified employees with the expertise needed to manage and support our operations. Our senior corporate and divisional leaders average 10 years of tenure with us and 26 years of homebuilding industry experience.

To attract and retain top talent in our industry, we offer our employees a broad range of company-paid benefits and highly competitive compensation plans. Our employees are eligible for medical, dental and vision insurance, a savings/retirement plan, life and disability insurance, various wellness programs, and tuition reimbursement.

### **Available information**

Our principal internet websites can be found at [www.ashtonwoods.com](http://www.ashtonwoods.com) and [www.starlighthomes.com](http://www.starlighthomes.com). We make available free of charge on or through our website [www.ashtonwoods.com](http://www.ashtonwoods.com), access to our annual report, quarterly reports and current reports. The contents of our websites are not, however, a part of any such report and are not incorporated by reference herein.

### **Item 1A. Risk Factors**

You should read the discussion of our business, included elsewhere in this annual report, in conjunction with the risks included below. We are or could become subject to the risks and uncertainties set forth below and/or those discussed elsewhere in this annual report, and/or additional risks not currently known to us or that we now consider to be immaterial. If we are negatively affected by any or a combination of such risks and uncertainties, our results of operations, cash flows, financial position or business prospects could be severely and negatively impacted.

#### **Risks Relating to our Business and Industry**

***Our business was materially and adversely disrupted by the outbreak and worldwide spread of COVID-19 and could be materially and adversely disrupted by another epidemic or pandemic, or similar public threat, or fear of such an event, and the measures that international, federal, state and local governments, agencies, law enforcement and/or health 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, and/or along with any associated economic and/or social instability or distress, have a significant adverse impact on our consolidated financial statements.

As a result of the COVID-19 outbreak, there were extraordinary and wide-ranging actions taken by federal, state, and local public health and governmental authorities to contain and combat the outbreak and spread of COVID-19

across the United States, including quarantines and “shelter-in-place” orders which substantially restricted daily activities. While states and most local municipalities have ended or substantially eased restrictions to varying degrees as conditions have improved and vaccines and advanced therapeutics, including oral anti-viral medication, have become widely available, new or additional restrictions may be imposed, and daily activities may be significantly impacted as increases in hospitalization rates occur due to the existence of more transmissible variants of COVID-19. In all of the markets in which we build homes, we were largely able to maintain our operations throughout the pandemic, although in an altered and sometimes more limited capacity due to various health, safety, and operational precautions adopted by the Company and/or required by local municipalities in response to COVID-19.

While our operations are currently fully functioning, additional outbreaks of COVID-19, and its variants, may in the future require us to implement restrictions to our operations. Future COVID-19 public health efforts could be intensified to such an extent that we would not be able to conduct business operations in certain of our markets or at all for an indefinite period.

The most significant impacts of COVID-19 to the homebuilding industry and our business have been labor shortages and supply chain disruptions. Our employees and those of our trade partners have been required to miss workdays due to illness or quarantine, and the increased level of new homebuilding activity to meet the demand for single-family homes has added to personnel shortages. In addition, our supply chain has been impacted by similar labor interruptions slowing production capacity and also by increased demand for building materials and appliances generated in part by the COVID-19 pandemic and restrictions imposed domestically and internationally to mitigate the spread of COVID-19 and its related variants. The combination of these factors has led to increased costs and elongated production cycles.

Should the adverse impacts described (or others that are currently unknown) occur, whether individually or collectively, we would expect to experience, among other things, increases in the cancellation rates for homes in our backlog, and decreases in our net new orders, homes delivered, revenues, and profitability. Such impacts could be material to our consolidated financial statements in future reporting periods. Along with a potential increase in cancellations of homes in our backlog, if there are prolonged governmental restrictions on our business and our customers, and/or an extended economic recession, we could be unable to produce revenues and cash flows sufficient to conduct our business, meet the terms of our covenants and other requirements under our debt obligations and/or land contracts, or service our outstanding debt. Such circumstances could, among other things, exhaust our available liquidity (and ability to access liquidity sources) and/or trigger an acceleration to pay a significant portion of all of our then-outstanding debt obligations, which we may be unable to do.

***The homebuilding industry is cyclical and a deterioration in industry conditions or adverse changes in general economic, real estate construction, or other business conditions could adversely affect our business or our financial results.***

The residential homebuilding industry is sensitive to changes in economic conditions and other factors, such as the level of unemployment, consumer confidence, consumer income, population growth, material and supply costs and availability, availability of financing, and interest rate levels. During the second half of fiscal 2022, mortgage interest rates increased significantly. The increase in mortgage interest rates, coupled with historic inflation in the broader economy and the rising cost of housing, has resulted in pressure on the affordability of single-family homes. While the demand for single-family homes remained strong and these concerns and conditions did not have a material impact to our business operations in fiscal 2022, these increased affordability concerns, increasing mortgage interest rates, declining macroeconomic conditions, and further adverse changes in any of the aforementioned economic conditions generally, or in the markets where we operate, could decrease demand and pricing for new homes in these areas or result in customer cancellations of pending contracts. This could adversely affect the number of home deliveries we make or reduce the prices we can charge for homes, either of which could result in a significant decrease in our revenues and earnings that could materially and adversely affect our financial condition.

During the homebuilding industry downturn between 2006 to 2012, the U.S. housing market was unfavorably impacted by severe weakness in new home sales attributable to, among other factors, weak consumer confidence, tightened mortgage standards, significant foreclosure activity, a more challenging appraisal environment, higher than normal unemployment levels, and significant uncertainty in the global economy. During this period, we incurred significant losses, including impairments of our land inventory and certain other assets.

***Raw materials and building supply shortages and price fluctuations could delay or increase the cost of home construction and adversely affect our operating results.***

The homebuilding industry has, from time to time, experienced shortages of raw materials, appliances and other building materials, in some cases due to volatility in global commodity prices. In particular, shortages and fluctuations in the price of lumber, concrete, drywall, or other important raw materials, as well as shortages of appliances and other building materials, could result in delays in the start or completion of, or increase the cost of, developing and building out one or more of our residential communities. Our lumber needs are particularly sensitive to shortages. In addition, the cost of petroleum products, which are used both to deliver our materials and to transport workers to our job sites, fluctuates and may be subject to increased volatility as a result of geopolitical events, catastrophic storms, other severe weather or significant environmental accidents. During the second half of fiscal 2022, the military conflict between Russia and Ukraine contributed to a significant increase in the cost of petroleum products which has and could continue to cause the price of raw materials, appliances, and other building materials to increase.

Environmental laws and regulations may also have a negative impact on the availability and price of certain raw materials such as lumber and concrete. Additionally, pricing for raw materials, appliances, and other building materials may be affected by various other national, regional and local economic and political factors. For example, in recent years the federal government has imposed 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 our homes, including steel, aluminum and lumber, raising our costs for these items (or products made with them). Such government-imposed tariffs and trade regulations on imported building supplies may in the future have significant impacts on the cost to construct our homes, including by causing disruptions or shortages in our supply chain and/or negatively impacting the U.S., regional or local economies. Additionally, we are generally unable to pass increases in construction costs on to our customers who have already entered into purchase contracts.

***Our future operations may be adversely impacted by high inflation.***

We, like other homebuilders, may be adversely affected during periods of high inflation, mainly from higher land, construction, labor and materials costs. Inflation could increase our cost of financing, materials and labor and could cause our financial results and profitability to decline. Traditionally, we have attempted to pass cost increases on to our customers through higher sales prices. Although inflation has not historically had a material adverse effect on our business, the current record levels of inflation have resulted in significant increases in the cost of land, labor, and materials. Sustained increases in costs could have a material adverse effect on our business if we are unable to correspondingly increase home sale prices.

***Our quarterly operating results may fluctuate because of the seasonal nature of our business and other factors.***

Our quarterly operating results generally fluctuate by season as a result of a variety of factors such as the timing of home deliveries and land sales, the changing composition and mix of our asset portfolio, and weather-related issues.

Weather-related problems may delay starts or closings and increase costs and thus reduce profitability. In some cases, we may not be able to recapture increased costs by raising prices. In addition, deliveries may be staggered over different periods of the year and may be concentrated in particular quarters. Our quarterly operating results may fluctuate because of these factors. See Item 1 — Business — Seasonality for further discussion.

***Fluctuations and declines in the market value of land and/or homes may have an adverse effect on the value of our inventory resulting in impairment charges, which could adversely affect our business and results of operations.***

We regularly acquire land for replacement and expansion of land inventory within our existing and new markets. The market value of land, building lots and housing inventories can fluctuate significantly as a result of changing market conditions, and the measures we employ to manage inventory risk may not be adequate to insulate our operations from a severe drop in inventory values. Further, as a result of these fluctuations, the book value of our real estate assets may not reflect current or future market value of these assets. When market conditions are such that land values are not appreciating, previously entered into option agreements may become less desirable, at which time we may elect to forgo deposits and pre-acquisition costs and terminate the agreements. At times in past years,

as a result of the negative impact of economic conditions in our markets on land values, we have had to recognize inventory impairment charges and have also, at times, chosen to write-off deposits on land. At May 31, 2022, we had \$1.5 billion in total real estate inventory and \$357.4 million in non-refundable deposits on real estate under option or contract, of which \$49.5 million is related to consolidated purchase and option agreements. If these conditions recur or worsen, we may have to incur additional and larger inventory impairment charges which would adversely affect our financial condition and results of operations and our ability to comply with certain covenants in our debt instruments linked to tangible net worth.

***Future increases in mortgage interest rates, reductions in mortgage availability, or other increases in the effective costs of owning a home could reduce consumer demand for our homes and adversely affect our business and financial results.***

A substantial number of purchasers of our homes finance their home purchase with mortgage financing. Housing demand is adversely affected by reduced availability of mortgage financing and factors that increase the upfront or monthly costs of financing a home such as increases in interest rates, property taxes, or insurance premiums. Increases, cumulatively or individually, in mortgage interest rates or unavailability of mortgage financing may adversely affect the ability of prospective homebuyers to obtain financing for our homes, as well as adversely affect the ability of prospective homebuyers to sell their current homes. These factors could adversely affect the sales or pricing of our homes and could also reduce the volume and/or margins in our financial services businesses. These developments could have a material adverse effect on the overall demand for new housing and thereby on the results of operations for our business.

Certain expenses of owning a home, including mortgage interest expenses and real estate taxes, generally have been deductible expenses for an individual's federal, and in some cases state, income taxes, subject to various limitations. The Tax Cuts and Jobs Act, which was signed into law at the end of calendar year 2017 and became effective January 1, 2018, includes provisions which impose significant limitations with respect to these income tax deductions. For instance, under the Tax Cuts and Jobs Act, the annual deduction for real estate taxes and state and local income or sales taxes is generally limited to \$10,000. Furthermore, through the end of 2025, the deduction for mortgage interest is generally only available with respect to acquisition indebtedness that does not exceed \$750,000. These changes and limitations on homeowner tax deductions could adversely impact demand for and sales prices of new homes particularly in areas with relatively high housing prices and/or high state and local income and real estate taxes. In addition, if the federal government further changes or any state government changes its income tax laws to eliminate or substantially limit these income tax deductions, the after-tax cost of owning a new home would increase for many of our potential customers. Also, increases in property tax rates or fees on developers by local governmental authorities, including those imposed in response to reduced federal and state funding or to fund local initiatives, such as funding schools or road improvements, can adversely affect the ability of potential homebuyers to obtain financing or their desire to purchase new homes, and can have an adverse impact on our business and financial results.

***An increase in unemployment or underemployment may lead to a decrease in sales pace or an increase in the number of loan delinquencies and property repossessions and may have an adverse impact on us.***

In the United States, the unemployment rate was 3.6% in May 2022, according to the U.S. Bureau of Labor Statistics. If changes in macroeconomic conditions worsen, unemployment or underemployment may increase, concerns about job loss may be exacerbated, and unemployed or underemployed individuals may become delinquent in their mortgage payments and other obligations, all of which may have an adverse impact on our business and financial results. People who are not employed or are underemployed, or are concerned about the loss, or potential loss, of their jobs, are less likely to purchase new homes, may be forced to try to sell the homes they own, and may face difficulties in making required mortgage payments. Therefore, high levels of unemployment or an increase in unemployment or underemployment may lead to a decrease in sales pace or an increase in the number of loan delinquencies and property repossessions, which may have an adverse impact on us both by reducing demand for the homes we build and by increasing the supply of homes for sale.

***High cancellation rates may negatively impact our business.***

Our backlog reflects the number and value of homes for which we have entered into sales contracts with customers but have not yet delivered those homes. In connection with the sale of a home, our policy is to collect a deposit from our customers, although typically this deposit reflects a small percentage of the total purchase price,

and due to local or other regulations or an applicable contract contingency, the deposit may, in certain circumstances, be fully or partially refundable prior to closing. If the prices for our homes in a given community decline, our neighboring competitors reduce their sales prices (or increase their sales incentives), interest rates increase, the availability of mortgage financing tightens or there is a downturn in local, regional or national economies, homebuyers may elect to cancel their home purchase contracts with us. Significant cancellations have previously had, and could in the future have, a material adverse effect on our business as a result of lost sales revenue and the accumulation of unsold housing inventory.

***As market conditions permit, we intend to continue to consider growth or expansion of our operations, which could have a material adverse effect on our cash flows or profitability and our ability to service our debt and meet our working capital requirements.***

We intend to continue to consider growth or expansion of our operations in our current operating divisions or in other markets, which may require substantial capital expenditures. The magnitude, timing, and nature of any future expansion will depend on a number of factors, including the identification of suitable markets, our financial capabilities, the availability of qualified personnel in the target market, and general economic and business conditions. Our expansion into new markets or existing operating divisions could have a material adverse effect on our cash flows and profitability.

Before a new community generates revenues, we invest significant time and material expenditures to acquire the land, obtain approvals, construct large portions of the community's infrastructure, put certain amenities in place, build model homes, and arrange sales facilities.

We may choose to enter new markets or expand operations in existing operating divisions through acquisitions, joint ventures, and other strategic transactions, which may result in us incurring additional debt, some of which could be secured or unsecured debt. Acquisitions or other strategic transactions may also involve numerous risks, including difficulties in the assimilation of the acquired company's operations, unanticipated liabilities or expenses, the diversion of management's attention from other business concerns, risks of entering markets in which we have limited or no direct experience, and the potential loss of key employees of an acquired company.

***Our future success is highly dependent on the availability of undeveloped land and improved lots at prices acceptable to us, as well as adequate liquidity to acquire such properties.***

Our success in land development and in the building and sale of homes depends in large part upon the continued availability of undeveloped land and improved lots at prices acceptable to us and with terms that meet our underwriting criteria. The availability of undeveloped land and improved lots at favorable prices depends on a number of factors that are beyond our control. Such factors include the risks of competitive over-bidding on land sites, restrictive governmental regulations that limit housing density, deterioration in market conditions, availability of financing to acquire land, and other market conditions. If the availability of suitable land opportunities is negatively affected, the number of homes we may be able to build and sell could decline. Further, increased demand for such land could cause prices to rise and we may not be able to pass the increased costs on to homebuyers. Such factors would negatively affect our revenues and profits. In addition, our ability to purchase land will depend upon us having satisfactory liquidity to fund these purchases and available financing sources, including through joint ventures or other purchase arrangements that give the Company access to land and lots over time, often referred to as "land banking" arrangements. Because such land purchases involve significant cash investments, we may be at a competitive disadvantage for these land purchases due to differences in levels of debt between us and other homebuilders and due to differing access to capital between us and other homebuilders. We may further be at a competitive disadvantage if land banking arrangements are not readily available on terms satisfactory to us, forcing us to finance the purchase of larger parcels of land and lots within a shorter time period or to forgo certain purchases.

To the extent that we are unable to purchase land timely or enter into new contracts for the purchase of land at reasonable prices, our home sales revenue and results of operations could be negatively impacted and/or we could be required to scale back our operations.

***Lack of greater geographic diversification could expose our business to increased risks if there are economic downturns in our markets.***

We currently operate in several states with a concentration on Texas. Negative factors affecting one or a number of the geographic regions we operate in at the same time could result in a relatively greater impact on our results of operations than they might have on other companies that have a more geographically diversified portfolio of operations. To the extent that regions in which our business is concentrated are impacted by an adverse event, we could be disproportionately affected compared to companies whose operations are less geographically concentrated.

***We could experience a reduction in the number of homes sold, reduced revenues, or reduced cash flows if we are unable to obtain reasonably priced financing to support our homebuilding and land acquisition and development activities.***

The homebuilding industry is capital intensive, and homebuilding operations require significant up-front expenditures to acquire land and begin development. Accordingly, we use significant amounts of capital to finance our homebuilding and land development activities. If, in the future, internally generated funds and other funds available to us are not sufficient to finance our capital needs (including capital required to fund land acquisition, development and construction activities), we would seek additional capital in the form of debt or equity financing from a variety of potential sources, including additional bank financing and/or securities offerings. The amount and types of indebtedness that we may incur are limited by the terms of our credit facility and the indentures governing our senior notes. In addition, the availability of borrowed funds to be utilized for land acquisition, development, and construction may be greatly reduced 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. Any shortage of financing, increased cost of such financing, unwillingness of third parties to engage in joint ventures and land banking transactions, failure to obtain capital to fund our planned capital investments, and other expenditures, and/or delays in obtaining such capital could have a material adverse effect on our business, cause project delays and result in increased costs.

***Physical impacts of adverse weather conditions and regulations relating to climate change could increase our costs and/or otherwise adversely impact our operations.***

Some of our business is in areas that are particularly vulnerable to the physical impacts of adverse weather conditions and climate change, such as from extended periods of rain, snow, extreme cold or drought, and the increased frequency and severity of natural disasters, such as hurricanes, tornadoes, floods, and wildfires. Such severe weather events can delay land development and community openings, delay completion and sale of homes, increase costs by damaging partially complete or other unsold homes in our inventory, reduce the availability of building materials, and/or negatively impact the demand for new homes or increase the cost of building homes in affected areas, as well as slow down or otherwise impair the ability of utilities and local governmental authorities to provide approvals and service to new housing communities. To the extent that natural disasters or adverse weather events occur, our business and results may be adversely affected. Furthermore, if our insurance does not fully cover our costs and other losses from these events, including those arising out of related business interruptions, our earnings, liquidity, or capital resources could be adversely affected. In addition, more stringent, expensive or constricting federal, state or local regulations relating to climate change or greenhouse gas emissions could materially and adversely affect our business, financial performance and operating results.

***We are dependent on the services of certain key employees, and the loss of their services could hurt our business.***

Our future success depends upon our ability to attract, train, assimilate, and retain skilled personnel. If we are unable to retain our key employees, attract, train, assimilate, or retain other skilled personnel in the future, or if one or more of our key employees becomes unable to perform their services for the Company for an extended period of time, due to illness or otherwise, it could hinder the execution of our business strategy. Competition for qualified personnel in all of our operating markets is intense, and it could be difficult for us to find experienced personnel to replace our current employees, many of whom have significant homebuilding experience. Furthermore, a significant increase in the number of our active communities would necessitate the hiring of a significant number of additional skilled personnel, who are in short supply in our markets.



***The supply of skilled labor may be adversely affected by changes in immigration laws and policies.***

The timing and quality of our development and construction activities depend upon the availability, cost and skill of contractors and subcontractors and their employees. The supply of labor in the markets in which we operate could be adversely affected by changes in immigration laws and policies as well as changes in immigration and migration trends. Accordingly, a sufficient supply of skilled labor may not be available to us in the future. In addition, changes in federal and state immigration laws and policies, or in the enforcement of current laws and policies may have the effect of increasing our labor costs. The lack of adequate supply of skilled labor or a significant increase in labor costs could materially and adversely affect our financial performance.

***Homebuilding is subject to home warranty and construction defect claims in the ordinary course of business that can lead to significant costs for us.***

As a homebuilder, we are subject to home warranty and construction defect claims arising in the ordinary course of business. Construction defects may occur on projects and developments and may arise a significant period of time after completion. Unexpected expenditures attributable to defects or previously unknown sub-surface conditions arising on a development project may have a material adverse effect on our business, financial condition and operating results.

We seek to mitigate this exposure by maintaining products and completed operations general liability insurance and by generally obtaining indemnities and evidence of insurance naming us as additional insured from subcontractors generally covering claims related to damages resulting from faulty workmanship and materials. Additionally, we establish warranty and other reserves for the homes we sell based on historical experience in our markets and our judgment of the risks associated with the types of homes built. Although we actively monitor our reserves and coverage, because of the uncertainties inherent in these matters, including the size, nature, and frequency of current and future potential demands and litigation, we cannot provide assurance that our insurance coverage, our subcontractor arrangements and our reserves will be adequate to address all of our warranty and construction defect claims in the future. While we generally confirm evidence of subcontractor insurance coverage, it is possible and at times we have determined that the limits evidenced have been, or will likely be, reduced or exhausted by other claims or losses, which increases our potential exposure. It is also possible that exclusionary endorsements will preclude or limit coverage, or that existing coverage will be canceled or not renewed. In addition, additional insured endorsement language varies and may change, making it more difficult to trigger or enforce additional insured coverage. Further, contractual indemnities may be difficult to enforce. Enforcement of contractual obligations can be impacted by the unforeseeable insolvency of a vendor or subcontractor, as well as compliance with evolving state anti-indemnity legislation. We may also be responsible for applicable deductibles or self-insured retentions, and some types of claims may not be covered by insurance or may exceed applicable coverage limits. Additionally, the availability of products and completed operations general liability insurance for construction defects is currently limited and costly. This coverage may be further restricted or become unavailable or costlier in the future, or may be canceled, denied or rescinded. To the extent that any insurance carrier providing insurance coverage to us or our subcontractors becomes insolvent or experiences financial difficulty in the future, we may be unable to recover on those policies.

***We are dependent on the continued availability and satisfactory performance of our subcontractors and our business could be materially and adversely impacted if qualified subcontractors are not available.***

We conduct our construction and development operations only as a general contractor. Our construction work is performed by unaffiliated third-party subcontractors. Consequently, we depend on the continued availability of, and satisfactory performance by, these subcontractors for the development of our communities and the construction of our homes. There may be insufficient availability of, or unsatisfactory performance by, these unaffiliated third-party subcontractors. In addition, inadequate subcontractor resources could have a material adverse effect on our business.

***We can be injured by failures of persons who act on our behalf to comply with applicable regulations and guidelines.***

Although we expect all of our employees, officers, and directors to comply at all times with all applicable laws, rules and regulations, there may be instances in which employees, subcontractors or others with whom we conduct business engage in practices that do not comply with applicable laws, rules, or regulations. When we learn of practices that do not comply with applicable laws, rules, or regulations, we promptly move actively to stop the non-

complying practices and will take appropriate disciplinary action with regard to employees of ours, through and including termination of their employment. However, regardless of the steps we take after we learn of practices that do not comply with applicable laws, rules, or regulations, we can in some instances be subject to fines or other governmental penalties, and our reputation can be injured.

***Products supplied to us and work done by subcontractors can expose us to risks that could adversely affect our business.***

We rely on subcontractors to perform the actual development of our communities and the construction of our homes, and in some cases, to select and obtain building materials. Despite our detailed specifications and quality control procedures, in some cases, subcontractors may use improper construction processes or defective products or materials. Defective products or materials widely used by the homebuilding industry can result in the need to perform extensive repairs to large numbers of homes. The cost of complying with our warranty and other legal obligations may be significant if we are unable to recover the cost of repairs from subcontractors, materials suppliers and insurers.

We also can suffer damage to our reputation, and may be exposed to possible liability, if subcontractors fail to comply with applicable laws, including laws involving matters that are not within our control. When we learn about possibly improper practices by subcontractors, we try to cause the subcontractors to discontinue them. However, we are not always able to do that, and even when we can, it may not avoid claims against us relating to prior improper practices of the subcontractors.

***If we are unsuccessful in competing against our competitors, our market share could decline or our growth could be impaired and, as a result, our financial results could be adversely affected.***

The homebuilding industry is highly competitive. Homebuilders compete for, among other things, desirable land, financing, raw materials, employees, skilled labor, and homebuyers. We compete for residential sales on the basis of a number of interrelated factors, including location, reputation, community amenities, design, quality, and price. We compete with numerous large and small homebuilders, including some homebuilders with nationwide operations and greater financial resources and/or lower costs than us. Any consolidation of homebuilding companies may create competitors that have greater financial, marketing, and sales resources than we do and may also create competitors that are able to compete more effectively against us. In addition, there may be new entrants into the markets in which we currently conduct business. We also compete for sales with the resale market for existing and foreclosed homes, with real estate speculators, and with available rental housing. If we are unable to successfully compete, our financial results could be adversely affected and the value of, or our ability to service, our debt could be adversely affected.

***Slower home sales may extend the time it takes us to recover land purchase and property development costs and force us to absorb additional costs, which could have an adverse impact on our operating results and financial condition.***

We incur many costs even before we begin to build homes in a community. These include costs related to preparing and developing land and installing roads, sewage, and other utilities, as well as taxes and other costs related to ownership of the land on which we plan to build homes. If the rate at which we build homes slows, which is related to the number of home sales and closings, or there are delays in the opening of new home communities or phases in existing communities, it could extend the length of time it takes us to recover these costs, which could have an adverse impact on our operating results and financial condition.

***We enter into unconsolidated joint ventures in which we do not have a controlling interest and we could be adversely impacted if our joint venture partners fail to fulfill their obligations.***

We enter into land development joint ventures from time to time as a means of accessing larger parcels of land and lot positions, while managing our risk profile and leveraging our capital base. At May 31, 2022, we had a noncontrolling equity investment of less than 50% in one land development joint venture. Generally, our partners in our land development joint ventures are both related parties and unrelated homebuilders, land developers, or other real estate entities.

The land development joint ventures from time to time obtain secured acquisition and development financing. We or our joint venture partners, may, from time to time, provide varying levels of guarantees associated with the debt of these unconsolidated entities. These guarantees may require the partners to repay their share of the debt of the unconsolidated joint venture entity in the event the entity defaults on its obligations under the borrowings, or may require the completion of development of the land owned by the joint venture.

In addition, we are currently party to two joint ventures that offer residential mortgage financing to homebuyers and the public at large. At May 31, 2022, we had a noncontrolling investment of less than 50% in each joint venture.

Our investments in joint ventures are considered illiquid since we do not have a controlling interest and therefore are limited in buy/sell decisions of joint venture assets. In addition, we may not necessarily agree with decisions made by our joint venture partners or our joint venture partners may fail to take actions that we would take if we had a controlling interest. Further, our financial condition and results of operations could be negatively impacted if any debt guarantees that we provide are drawn upon.

***Negative publicity or poor relations with the residents of our communities could negatively impact sales, which could cause our revenues or results of operations to decline.***

Unfavorable media or investor and analyst reports related to our industry, company, brand, marketing, personnel, operations, business performance, or prospects may affect the performance of our business, regardless of its accuracy or inaccuracy. Our success in maintaining, extending and expanding our brand image depends on our ability to adapt to a rapidly changing media environment. Adverse publicity or negative commentary on social media outlets, such as blogs, websites or newsletters, could hurt operating results, as consumers might avoid or protest brands that receive bad press or negative reviews. Customers and other interested parties could act on such information without further investigation and without regard to its accuracy. Accordingly, we could suffer immediate harm without affording us an opportunity for redress or correction.

In addition, we can be affected by poor relations with the residents of communities we develop because these residents sometimes look to us to resolve issues or disputes that may arise in connection with the operation or development of their communities. Efforts made by us to resolve these issues or disputes could be deemed unsatisfactory by the affected residents and subsequent actions by these residents could adversely affect sales or our reputation. In addition, we could decide or be required to make material expenditures related to the settlement of such issues or disputes or to modify our community development plans, which could adversely affect our results of operations.

***Failure in our financial, budgetary, and/or operational controls could result in significant cost overruns or errors in valuing sites.***

We own and purchase a large number of sites each year and are therefore dependent on our ability to process a very large number of transactions (which include, among other things, evaluating the site purchase, designing the layout of the community, sourcing materials and subcontractors, and managing contractual commitments) efficiently and accurately. Errors by employees, failure to comply with regulatory requirements and conduct of business rules, failings or inadequacies in internal control and budgeting processes, equipment failures, natural disasters, or the failure of external systems, including those of our suppliers, subcontractors, or counterparties, could result in operational losses that could adversely affect our business, financial condition, and operating results and our relationships with our homebuyers.

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

We provide surety bonds to governmental authorities and others to ensure the completion of our projects. If we are unable to obtain and provide required surety bonds for our projects, our business operations and revenues could be adversely affected. If we are unable to obtain and provide required surety bonds in the future or are required to provide credit enhancements with respect to our current or future surety bonds, our liquidity could be negatively impacted.

***Future terrorist attacks against the United States or increased domestic or international social, political, or economic unrest or instability could have an adverse effect on our operations.***

Adverse developments in the war on terrorism, future terrorist attacks against the United States, any outbreak or escalation of hostilities between the United States and any foreign power, or social, economic, or political instability domestically or internationally may cause disruption to the economy, consumer confidence, the U.S. housing market, our Company, our employees, and our homebuyers. Historically, perceived threats to national security and other actual or potential conflicts or wars and related geopolitical risks have also created significant social, economic, and political uncertainties. In addition, the economy, consumer confidence, the Company, our employees, and our homebuyers may be impacted by protests and civil unrest, including in relation to efforts to institute social, political, and law enforcement reform, as well as the impacts of implementing or failing to implement reforms. If any such events were to occur, or there was a perception that they were about to occur, they could adversely affect our revenues, operating expenses, and financial condition.

***Information technology failures and data security breaches could harm our business and subject us to adverse publicity, costly government enforcement actions, or private litigation, and expenses.***

We use information technology and other computer resources to carry out important operational activities and to maintain our financial and business records, including personal information and other confidential and sensitive information provided by our customers. Many of these resources are provided to us and/or maintained on our behalf by third-party service providers. Our computer systems, including our back-up systems, or those of the third-parties on whose systems we rely, are subject to damage or interruption from power outages, computer and telecommunications failures, computer viruses, security breaches (including through data-theft, ransomware, and cyber-attack), compromises, catastrophic events such as fires, tornadoes and hurricanes, and usage errors by our employees or independent contractors. If our computer systems and our back-up systems, or those of the third-parties on whose systems we rely, are damaged, or cease to function properly, we could suffer interruptions in our operations or unintentionally allow misappropriation of proprietary or confidential information or personal information (including information about our homebuyers, employees and business partners), which could require us to incur significant costs to remediate or otherwise resolve these issues. Our failure to maintain the security of the data (including personal information) we are required to protect could result in damage to our reputation, financial obligations to third parties, fines, penalties, regulatory proceedings and private litigation with potentially large costs, and also in deterioration in our customers' confidence in us and other competitive disadvantages. While we endeavor to protect our systems and information from such threats, such measures, which require ongoing monitoring and updating as technologies change and efforts to overcome security measures become increasingly sophisticated, are costly and may not be effective in preventing or mitigating significant negative occurrences or irregularities in our systems or those of third parties on whose systems we rely. Further, the increase in people working from home and other remote activities could increase our risk of such threats as a result of the use of less secure internet connections, increased difficulty in monitoring our employees and responding to third party threats, and increased hacking, phishing, and other fraudulent activity. In addition, the costs of maintaining adequate protection against such threats, as they develop in the future or as legal requirements related to data security change, are significant and continue to increase.

Further, as part of our business, we maintain proprietary information electronically and electronically collect, receive, use, process, disclose, store, and transmit confidential and sensitive business information, including that of our homebuyers, employees, and business partners. We rely on the security of our networks, databases, systems and processes and those of third parties, such as vendors, to protect our confidential and proprietary information and information about our homebuyers, employees, and business partners, including their personal information. Criminals and other wrongdoers are constantly devising schemes to circumvent information technology security safeguards and companies have suffered serious data security breaches. If unauthorized parties gain access to our networks or databases, or those of our vendors or third-party service providers, they may be able to steal, publish, delete, release, modify, or use in an unauthorized manner our sensitive proprietary information and sensitive third-party information, including confidential and personal information. In addition, employees may intentionally or inadvertently cause data or security breaches that result in unauthorized release or use of such personal or confidential information. In any such event, we could be required to incur significant expense to remediate or otherwise resolve and respond to these issues, including financial obligations to third parties, fines, penalties, regulatory investigations or proceedings, and private litigation with potentially large costs and other competitive disadvantages, any or all of which could adversely affect our financial condition, results of operations, and reputation.

Furthermore, there are numerous laws and regulations regarding data privacy and the collection, receipt, use, processing, storage, disclosure, and transmission of personal information, the scope of which is changing, subject to differing interpretations, and may be inconsistent between states and jurisdictions. We or our third-party service providers could be adversely affected if legislation or regulations are expanded to require changes in our or our third-party service providers' business practices or if governing jurisdictions interpret or implement their legislation or regulations in ways that negatively affect our or our third-party service providers' business, results of operations or financial condition.

### **Regulatory and Legal Risks**

***Governmental regulations relating to health, safety and the environment could increase the cost, limit the availability of our development and homebuilding projects, and adversely affect our business or financial results.***

We are subject to extensive and complex regulations that affect land development and home construction, including zoning, density restrictions, building design and building standards. These regulations often provide broad discretion to the administering governmental authorities as to the conditions we must meet prior to development or construction being approved, if approved at all. We are subject to determinations by these authorities as to the adequacy of water or sewage facilities, roads, or other local services, among other determinations. New housing developments may also be subject to various assessments for schools, parks, streets, and other public improvements. In addition, in many markets government authorities have implemented no growth or growth control initiatives, and have also imposed various building moratoria. Any of the foregoing and changes in any of these regulations can limit, delay, or increase the costs of development or home construction.

We are subject to a variety of local, state, and federal laws and regulations concerning protection of health, safety and the environment, including those regulating the emission or discharge of materials into the environment; the handling, use, storage, and disposal of hazardous substances; impacts to wetlands and other sensitive environments; safety on job sites; and the remediation of contamination at properties that we have owned and/or developed. Noncompliance with these laws and regulations, as well as conditions on properties for which we may be liable (such as properties we formerly owned or developed or facilities to which wastes from our operations may have been disposed of) without our having violated any laws or regulations, could result in fines or penalties, claims for personal injury or property damage, obligations to investigate or remediate or to pay for investigation or remediation by others, permit revocations, or other sanctions. The impact of environmental laws varies depending upon the prior uses of the building site or adjoining properties and may be greater in areas with less supply where undeveloped land or desirable alternatives are less available. These matters may result in delays, may cause us to incur substantial compliance, remediation, mitigation, and other costs, and can prohibit or severely restrict development and homebuilding activity in environmentally sensitive regions or areas. In addition, some of these laws and regulations that significantly affect how certain properties may be developed are contentious, attract intense political attention, and may be subject to significant changes over time. For example, regulations governing wetlands subject to permitting under the federal Clean Water Act have been the subject of extensive rulemakings for many years, resulting in several major joint rulemakings by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers that have expanded and contracted the scope of wetlands subject to regulation; and such rulemakings have been the subject of many legal challenges, some of which remain pending. As with other changes in regulations, these can limit, delay or increase the costs of development or home construction and can affect our opportunities. The current presidential administration has prioritized climate regulation and environmental protection and reversed many prior relaxations of environmental protection that were enacted by the prior administration. Such changes could limit, delay, or increase the costs of development or home construction.

We are also subject to other local, state, and federal laws and regulations in other aspects of our business, which are subject to evolving interpretation. Failure to comply with such laws and regulations could increase our costs or adversely affect our business or financial results.

***Government regulations relating to our title and mortgage operations could adversely affect the financial results of this portion of our business.***

Our financial services businesses are subject to numerous federal, state and local laws and regulations, which, among other things: prohibit discrimination and establish underwriting guidelines; provide for audits and inspections; require appraisals and/or credit reports on prospective borrowers and disclosure of certain information

concerning credit and settlement costs; establish maximum loan amounts; prohibit predatory lending practices; and regulate the referral of business to affiliated entities. In addition, our title operations are also subject to applicable insurance and banking laws and regulations as well as government audits, examinations and investigations, all of which may limit our ability to provide title services to potential purchasers. The regulatory environment for mortgage lending is complex and ever changing and has led to an increase in the number of audits, examinations and investigations in the industry. The 2008 housing downturn resulted in numerous changes in the regulatory framework of the financial services industry. Any changes or new enactments could result in more stringent compliance standards, which could adversely affect our financial condition and results of operations and the market perception of our business. Additionally, if our joint venture mortgage companies are unable to originate mortgages for any reason going forward, our customers may experience significant mortgage loan funding issues, which could have a material impact on our homebuilding business and our consolidated financial statements.

***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 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 actions by regulatory agencies or governmental authorities and penalties for non-compliance with relevant regulatory requirements, 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, our relationships with relevant regulatory agencies or governmental authorities, and our ability to develop land and build homes, which in turn could have a material adverse effect on our business, financial condition and operating results.

***We may face substantial damages or be enjoined from pursuing important activities as a result of existing or future litigation, arbitration or other claims.***

We are involved in various litigation and legal claims in the normal course of our business operations, including actions brought on behalf of various classes of claimants. We establish liabilities for legal claims and regulatory matters when such matters are both probable of occurring and any potential loss is reasonably estimable. We accrue for such matters based on the facts and circumstances specific to each matter and revise these estimates as the matters evolve. In such cases, there may exist an exposure to loss in excess of any amounts currently accrued. In view of the inherent difficulty of predicting the outcome of these legal and regulatory matters, we generally cannot predict the ultimate resolution, the related timing or any eventual loss. To the extent the liability arising from the ultimate resolution of any matter exceeds the estimates reflected in the recorded reserves relating to such matter, we could incur additional charges that could be significant and may have a material adverse effect on our results of operations. Unfavorable litigation, arbitration or claims could also generate negative publicity in various media outlets that could be detrimental to our reputation

***Efforts to impose liabilities or obligations on us with regard to labor law violations by subcontractors and other parties whose employees perform contracted services could have an adverse effect on our financial condition.***

The homes we sell are built by employees of subcontractors and other independent contract parties. We do not have the ability to control what these contract parties pay their employees or the work rules they impose on their employees. However, various governmental agencies have recently tried to hold contract parties like us responsible for violations of wage and hour laws and other work-related laws by companies whose employees are performing contracted services. Governmental rulings that make us responsible for labor practices by our subcontractors could create substantial exposures for us in situations that are not within our control, which could have an adverse impact on our financial condition.

***If we were subjected to a material amount of additional entity-level taxation by individual states and localities, it would negatively impact our operating results.***

Because of widespread state budget deficits and other reasons, several states are evaluating ways to subject partnerships and limited liability companies to entity-level taxation through the imposition of state income, franchise and other forms of taxation. Changes in current state law may subject us to additional entity-level taxation by individual states and localities, reducing our available cash.

***We are not subject to the requirements of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Sarbanes-Oxley Act of 2002.***

We are not subject to the requirements of the Securities Act of 1933, the Securities Exchange Act of 1934, the rules and regulations of the Securities and Exchange Commission (the "SEC") or the Sarbanes-Oxley Act of 2002, which require, among other things, public companies to have and maintain effective disclosure controls and procedures to ensure timely disclosure of material information, and have management review the effectiveness of those controls on a quarterly basis. The Sarbanes-Oxley Act of 2002 also requires public companies to have and maintain effective internal control over financial reporting to provide reasonable assurance regarding the reliability of financial reporting and preparation of financial statements, and have management review the effectiveness of those controls on an annual basis (and have the independent auditor attest to the effectiveness of such internal controls). If we were to become publicly traded, we would also be subject to these requirements of the Sarbanes-Oxley Act. Currently, we are not required to comply with these requirements.

### **Risks Associated with our Indebtedness and Organizational Structure**

***Our indebtedness could adversely affect our financial condition, limit our growth and make it more difficult for us to satisfy our debt obligations.***

As of May 31, 2022, we had \$1.0 billion of aggregate indebtedness outstanding (excluding accrued interest) and \$343.8 million available for borrowing under our revolving credit facility, after applying a borrowing base formula. Our indebtedness could have important consequences for us. Such indebtedness could, among other things:

- cause us to be unable to satisfy our obligations under our existing or new debt agreements;
- make us more vulnerable to adverse general economic and industry conditions;
- make it difficult to fund future working capital, land acquisition and development, home construction, acquisitions, and general corporate needs;
- cause us to be limited in our flexibility in planning for, or reacting to, changes in our business; and
- cause us to be less competitive than other companies with less indebtedness.

In addition, subject to restrictions in our existing debt instruments, we may incur additional indebtedness. If new debt is added to our current debt levels, the related risks that we now face could intensify.

***Any downgrade of our credit ratings could adversely affect our access to capital and the cost of obtaining such capital and have other adverse effects on us.***

Our credit ratings, ratings on our outstanding indebtedness and our current credit condition, among other factors, can impact our ability to access capital and any negative changes in these ratings may also result in more stringent covenants and higher interest rates. Our credit ratings could be downgraded in the future or credit agencies could issue negative commentaries about us in the future, any of which could adversely impact our business, financial condition, results of operations or liquidity. Any weakening of our financial condition, increase in leverage and/or decrease in profitability or cash flows could adversely affect our ability to access capital, cause a credit downgrade or result in a change in outlook or increase our cost of borrowing.

***Despite current indebtedness levels, we may still be able to incur substantially more debt. This could further exacerbate the risks associated with our substantial leverage.***

We may be able to incur substantial additional indebtedness in the future. Although the indentures governing our senior notes and the agreement governing our revolving credit facility contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions and, under certain circumstances, the amount of indebtedness that could be incurred in compliance with these restrictions could be substantial. As of May 31, 2022, we had \$343.8 million of availability under our revolving credit facility, based on a borrowing base formula, and \$6.2 million of outstanding letters of credit. If we incur additional indebtedness, the related risks that we now face would intensify and could further exacerbate the risks associated with our substantial leverage.

***We may be unable to generate sufficient cash to service our debt obligations.***

Our ability to pay our expenses and to pay the principal and interest on the senior notes and our other debt depends on our ability to generate positive cash flows in the future. Our operations may not generate cash flows in an amount sufficient to enable us to pay the principal and interest on our debt or to fund our other liquidity needs.

If we do not have sufficient cash flows provided by operations, we may be required to incur additional indebtedness, refinance all or part of our existing debt, or sell assets. Our ability to borrow funds under our revolving credit facility in the future will depend on the value of our borrowing base and our meeting the financial covenants of such credit facility, and sufficient borrowings may not be available to us. In addition, the terms of existing or future debt agreements may restrict us from effecting any of these alternatives. Any inability to generate sufficient cash flows or refinance our debt on favorable terms could significantly and adversely affect our financial condition, the value of the notes and our ability to pay the principal and interest on our debt.

***The families and family trusts that own the majority of our equity interests have the right to select our board members, can influence our business operations, including all matters subject to membership approval, and may have interests that conflict with the interests of our debt holders.***

Little Shots Nevada L.L.C. (“Little Shots”), which is directly or indirectly controlled by five families or family trusts, beneficially owns 96.11% of our equity interests as of May 31, 2022. Except as may be limited by our debt agreements, Little Shots, by virtue of this equity ownership, has the ability to:

- elect the entire membership of our board of directors;
- control all of our management policies, including decisions regarding payments to our Members or other affiliates, whether by way of dividend, compensation or otherwise or entering into other transactions with entities affiliated with the families and trusts controlling Little Shots; and
- determine the outcome of corporate matters or transactions, including mergers, joint ventures, consolidations, asset sales, equity issuances, or debt incurrences.

Additionally, three of our directors are affiliated with Little Shots and the families and trusts that control it.

Other affiliates of Little Shots and these families and trusts operate businesses that derive revenue from homebuilding and land development. Some of such affiliated entities have engaged, and will in the future continue to engage, in transactions with us. In particular, we are party to a service and software license agreement with an affiliate of this group pursuant to which we are provided with a license to use software critical to our business. The initial term of the services and software license agreement was two years and it automatically renews for successive one-year terms unless either party gives notice that the agreement will not be renewed. We are also party to various construction and development, home sales and lot purchase agreements with affiliates of Little Shots and the controlling families and trusts. See Note 11 to the Consolidated Financial Statements for a description of such transactions. In addition, we may enter into other agreements with affiliates of this group in the future. The families and family trusts controlling Little Shots are not restricted from engaging in homebuilding or land development activities in the United States through entities unrelated to us.

***Our revolving credit facility and the indentures governing our senior notes contain a variety of covenants imposing significant operating and financial restrictions, which may limit our ability to operate our business. Our failure to comply with these covenants could result in an event of default under the revolving credit facility or the indentures governing our senior notes.***

Our revolving credit facility requires us to maintain specified financial ratios and tests, among other obligations, including a minimum tangible net worth test and a maximum leverage ratio. In addition, our revolving credit facility and the indentures governing our senior notes have affirmative and negative covenants customary for financings of those types, which limit our ability to, among other things, borrow money, make investments and extend credit, engage in transactions with our affiliates, consummate certain asset sales, consolidate or merge with another entity or sell, transfer, lease or otherwise dispose of all or substantially all of our assets, and create liens on our assets. It is possible that these covenants could adversely impact our ability to finance our future operations or capital needs or to pursue available business opportunities. Additionally, a failure to comply with any of these covenants could lead to an event of default under our credit facility and/or the indentures, which could result in an acceleration of the indebtedness under the revolving credit facility and/or the indentures, depending on the covenant default.



Acceleration of any such indebtedness or other indebtedness would constitute an event of default under the revolving credit facility or the indentures governing our senior notes.

### **Item 1B. *Unresolved Staff Comments***

Not applicable

### **Item 2. *Properties***

The Company leases 27,642 square feet of office space in Alpharetta, Georgia for our corporate offices. In addition, we lease a total of approximately 143,000 square feet of space for our operating divisions under leases expiring at various times through June 2029. Periods under lease range from 9 months to 176 months, with various commencement dates and renewal options. The Company's properties are in good condition, adequately utilized, and sufficient for our current business operations.

Given the nature of our homebuilding operations, significant amounts of property are held as inventory in the ordinary course of business. Such properties are not included in response to this Item. See Note 4 to the consolidated financial statements in this Form 10-K for additional discussion of our inventory.

### **Item 3. *Legal Proceedings***

We are involved in lawsuits and other contingencies in the ordinary course of business. The amounts demanded by the claimants in these lawsuits and claims may vary widely, with large demands made in certain cases, which are disputed and aggressively defended by the Company. Management believes that, while the ultimate outcome of these ordinary course contingencies cannot be predicted with certainty, the ultimate liability, if any, net of anticipated recoveries including from any insurance, will not have a material adverse effect on our financial condition, results of operations or cash flows.

### **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***

We are a limited liability company, and the majority of our membership interests are owned indirectly through Little Shots by five families or family trusts related to the following individuals: Elly Reisman, the Estate of Norman Reisman, Bruce Freeman, Seymour Joffe, and Harry Rosenbaum. See Note 10 to the consolidated financial statements included in this Annual Report for additional information about the ownership of our membership interests. There is no established public trading market for our membership interests.

We periodically make distributions to our Members for the payment of federal and state income taxes. We made tax distributions of \$100.5 million, \$33.8 million, and \$12.5 million during the years ended May 31, 2022, 2021, and 2020, respectively. In addition, during the year ended May 31, 2022, we made non-tax distributions of \$35.0 million to our Members. We did not make any non-tax distributions to our Members during the years ended May 31, 2021 or 2020. Although we are restricted in our ability to pay distributions and dividends under various covenants of our debt agreements, we expect to continue to make distributions to our Members, subject to compliance with our debt agreements and our Regulations.

On April 30, 2022, we issued and awarded 208,371 Class D Units to one of the Company's executive officers as compensation. The Company received no cash from the issuance of the Class D Units, and the Class D Units were determined to have a grant-date fair value of \$5.8 million. The shares were issued pursuant to exemption from registration under Section 4(a)(2) of the Securities Act of 1933.

## **Item 6. Reserved**

## **Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

*The following management's discussion and analysis is intended to assist the reader in understanding the Company's business and is provided as a supplement to, and should be read in conjunction with, the Company's audited consolidated financial statements and accompanying notes included elsewhere in this annual report. The Company's results of operations discussed below are presented in conformity with accounting principles generally accepted in the United States ("GAAP").*

*The following tables and related discussion set forth key operating and financial data for our homebuilding operations as of and for the fiscal years ended May 31, 2022 and 2021. For similar operating and financial data and discussion of our fiscal 2021 results compared to our fiscal 2020 results, refer to Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" under Part II of our annual report for the fiscal year ended May 31, 2021, which is available [here](#).*

### **Forward-Looking Statements**

Certain statements included in this report contain forward-looking statements as defined by the Private Securities Litigation Reform Act of 1995, which represent our expectations or beliefs concerning future events, and no assurance can be given that the results described in this report will be achieved. These forward-looking statements can generally be identified by the use of statements that include words such as "estimate," "project," "believe," "expect," "anticipate," "intend," "plan," "foresee," "likely," "will," "target," "could," "seek", or other similar words or phrases. All forward-looking statements are based upon information available to us as of the date of this report.

A forward-looking statement speaks only as of the date on which such statement is made, and, except as required by law, we undertake no obligation to update or revise any forward-looking statement, to reflect events or circumstances after the date on which such statement is made, or to reflect the occurrence of unanticipated events or new information, even if future events make it clear that any expected results that we have expressed or implied will not be realized. Though we are of the view that such forward-looking statements are reasonable, the results or savings or benefits in the forward-looking statement may not be achieved. New factors emerge from time to time and it is not possible for management to predict all such factors.

These forward-looking statements reflect our best estimates and are subject to risks, uncertainties, and other factors, many of which are outside of our control, which could cause actual results to differ materially from the results discussed in the forward-looking statements. These factors include, but are not limited to, the risks set forth in Item 1A. Risk Factors in this annual report.

### **Overview and Outlook**

During the second half of fiscal 2022, the U.S. economy experienced significant inflationary pressure with prices of gas, food, and other household goods rising at the fastest rate in over 40 years. To combat the historic levels of inflation, the Federal Reserve began raising the federal funds rate which, in turn, has led to a significant increase in mortgage interest rates. The increase in mortgage interest rates, coupled with historic inflation in the broader economy and the rising cost of housing, has resulted in pressure on the affordability of single-family homes. Despite these increased affordability concerns and declining macroeconomic conditions, the US housing market remained strong, and we expect the demand for single-family homes to remain strong during fiscal 2023 due to the historical under-supply of new home construction, the limited supply of homes at affordable price points across our markets, the demographic shift towards homeownership during the COVID-19 pandemic, and a robust employment market which has resulted in wage growth across most sectors. In addition, resale home inventory levels remain low in our markets, adding to the demand for finished new homes. With the continued strong demand for new homes, we have been starting construction on additional homes, making new land investments, and developing land we own or control, while continuing to focus on maintaining adequate liquidity through the still uncertain times ahead.

COVID-19 has had a material impact on global and U.S. economies and has impacted our business operations. The most significant impacts of COVID-19 to the homebuilding industry and our business have been labor shortages

and supply chain disruptions. Our employees and those of our trade partners have been required to miss workdays due to illness or quarantine, and the increased level of new homebuilding activity to meet the demand for single-family homes has added to personnel shortages. In addition, our supply chain has been impacted by similar labor interruptions slowing production capacity and also by increased demand for building materials and appliances generated in part by the COVID-19 pandemic and restrictions imposed domestically and internationally to mitigate the spread of COVID-19 and its related variants. The combination of these factors has led to increased costs and elongated production cycles. The current environment makes it challenging to predict the impact that inflationary pressures, rising interest rates, and the lingering impacts of COVID-19 on supply chain disruptions and labor shortages may have on the future performance of our business.

Even with the significant demand for single-family homes, the development of vaccines and advanced therapeutics to combat COVID-19, a decline in COVID-19 restrictions, and reductions in hospitalization rates throughout the country, we remain cautious as to the impact that COVID-19 may have on our operations and on the overall economy in the future. There remains significant uncertainty regarding how COVID-19 and its related effects will impact the U.S. and global economy going forward, including the level of unemployment, availability of debt and capital, the health of the mortgage markets, consumer confidence, and demand for our homes. In addition, current economic conditions and our operations could be further impacted by the ongoing conflict between Russia and Ukraine and the associated economic sanctions imposed by the governments of various countries, including the United States, on Russia which could negatively affect supply chains and result in further increases to the cost of building materials and appliances due to rising prices for petroleum and other natural resources. Further, our operations have been, and may continue to be, adversely impacted by elongated cycle times due to lack of availability and rising costs of trade labor, building materials, and appliances, as well as the responsiveness of government services such as zoning, permitting and related government approvals. In addition, as the demand for single-family homes has caused an increase in the construction of new homes, the cost of building materials, most notably lumber, has been volatile and remains elevated compared to historical averages. Despite these challenges, we are optimistic about future single-family housing demand and our ability to continue growing and expanding our business.

### ***Business***

We design, build, and market detached and attached single-family homes in seven states under the Ashton Woods Homes and Starlight Homes brand names. The Company offers entry-level, move-up, and multi-move-up homes under the Ashton Woods Homes brand name, and offers entry-level and wholesale homes under the Starlight Homes brand name. Wholesale homes are typically sold under bulk sales agreements to real estate investors in the single family rental industry. The Company also offers land and lot development and construction services for a fee. In the course of providing development, development oversight, and/or construction services, the Company routinely subcontracts for services and incurs other direct costs. The revenues and costs associated with these activities are included in the Company's financial services and other revenues and cost of sales - financial services and other revenues on the consolidated statements of income, respectively.

Through two wholly-owned title agency subsidiaries, the Company also performs title services in support of its operations and offers title services to its homebuyers in all of its operating divisions except Phoenix and Nashville. The Company offers or intends to offer residential mortgage services to its homebuyers and the public at large in all of its operating divisions through two unconsolidated mortgage joint ventures. Offering title and mortgage services to our customers provides the opportunity for a more streamlined homebuying experience for our buyers and additional efficiencies and revenue opportunities for the Company.

Our Ashton Woods communities are created to deliver design and personalization for our homebuyers through collaboration and expertise. Our Ashton Woods sales and marketing strategy leverages our national brand while allowing our operating divisions to customize execution to meet the needs and preferences of our local markets. While Ashton Woods' value proposition is grounded in design and personalization, Starlight is focused on delivering more affordable homes. Our strategy in approaching the Starlight market is primarily to convert renters into first-time homebuyers by offering affordable homes that include attractive features, without offering customers the opportunity to personalize their homes.

**Select Consolidated Financial Data**

	Year ended May 31,		
	2022	2021	2020
<b>Revenues:</b>	(in thousands)		
Home sales	\$ 3,220,644	\$ 2,238,479	\$ 1,767,058
Land sales	8,686	12,862	8,753
Financial services and other revenues	43,699	39,250	40,291
	<u>\$ 3,273,029</u>	<u>\$ 2,290,591</u>	<u>\$ 1,816,102</u>
<b>Gross profit:</b>			
Home sales	\$ 905,888	\$ 498,747	\$ 317,436
Land sales	767	3,064	1,517
Financial services and other revenues	16,105	11,027	11,390
	<u>\$ 922,760</u>	<u>\$ 512,838</u>	<u>\$ 330,343</u>
Selling, general and administrative	\$ 370,914	\$ 266,348	\$ 234,806
Net income <sup>(1)</sup>	\$ 511,497	\$ 234,181	\$ 75,816

(1) Because the Company is structured as a limited liability company, income tax obligations are paid by our Members and are not borne by us. As a limited liability company, we periodically make tax distributions to our Members. The Company made tax distributions of \$100.5 million, \$33.8 million, and \$12.5 million during the fiscal years ended May 31, 2022, 2021, and 2020 respectively.

	Year ended May 31,		
	2022	2021	2020
<b>Supplemental data:</b>	(\$ in thousands)		
Active communities at end of period	112	108	139
Net new home orders (in units)	7,494	8,436	5,309
Homes closed (in units) <sup>(1)</sup>	8,364	6,549	5,109
Average sales price per home closed	\$ 385	\$ 342	\$ 346
Backlog at end of period (in units)	2,585	3,395	1,508
Sales value of backlog at end of period	\$ 1,210,007	\$ 1,278,653	\$ 555,323
Home sales gross margin percentage <sup>(2)</sup>	28.1 %	22.3 %	18.0 %
Adjusted home sales gross margin percentage <sup>(3)</sup>	29.9 %	24.3 %	20.3 %
Ratio of selling, general and administrative expenses to home sales revenue	11.5 %	11.9 %	13.3 %
Interest incurred <sup>(4)</sup>	\$ 57,365	\$ 63,243	\$ 57,753
Adjusted EBITDA <sup>(5)</sup>	\$ 621,476	\$ 303,496	\$ 140,602
Adjusted EBITDA margin <sup>(5)</sup>	19.0 %	13.2 %	7.7 %
Total debt to total capitalization ratio <sup>(6)</sup>	49.3 %	53.7 %	62.8 %
Total net debt to net capitalization ratio <sup>(7)</sup>	33.3 %	42.0 %	52.7 %
Cancellation rate (as a percentage of gross sales) <sup>(8)</sup>	13.4 %	14.3 %	20.5 %

(1) A home is included in “homes closed” when title to and possession of the property is transferred to the buyer. Revenues and cost of sales for a home are recognized at the time of the closing of a sale, when title to and possession of the property are transferred to the buyer.

(2) Home sales gross margin percentage is defined as the difference between home sales revenues and cost of sales—homes, expressed as a percentage of home sales revenues. Cost of sales—homes includes the land costs, home construction costs, indirect costs of construction, previously capitalized interest, a reserve for warranty expense, architecture fee amortization, impairment charges, closing costs, and pre-acquisition costs related to real estate purchases that are no longer probable.

- (3) Adjusted home sales gross margin percentage, which is defined as adjusted home sales gross margin expressed as a percentage of home sales revenues, is not a financial measure under GAAP and should not be considered an alternative to home sales gross margin percentage determined in accordance with GAAP as an indicator of operating performance. We use this measure to evaluate our performance against other companies in the homebuilding industry and believe it is also relevant and useful to investors. Adjusted home sales gross margin is home sales gross margin that is adjusted to remove inventory impairments, interest amortized to cost of sales, and purchase price accounting adjustments. The following is a reconciliation of home sales gross margin, which is the most directly comparable GAAP financial measure, to adjusted home sales gross margin:

	<b>Year ended May 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
<b>Homebuilding Consolidated:</b>	(\$ in thousands)		
Home sales revenues	\$ 3,220,644	\$ 2,238,479	\$ 1,767,058
Cost of sales homes	2,314,756	1,739,732	1,449,622
Home sales gross margin	905,888	498,747	317,436
Add: Inventory impairments	34	147	2,701
Interest amortized to cost of sales	56,409	45,984	39,127
Adjusted home sales gross margin	<u>\$ 962,331</u>	<u>\$ 544,878</u>	<u>\$ 359,264</u>
Ratio of home gross margin to home sales revenue	28.1 %	22.3 %	18.0 %
Ratio of adjusted home gross margin to home sales revenue	29.9 %	24.3 %	20.3 %

- (4) Interest incurred for any period is the aggregate amount of interest that is capitalized or charged directly to interest expense during such period. The following table summarizes interest costs incurred, amortized to cost of sales, and expensed during the years ended May 31, 2022, 2021, and 2020:

	<b>Year ended May 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
	(in thousands)		
Capitalized interest, beginning of period	\$ 24,610	\$ 21,646	\$ 19,040
Interest incurred	57,365	63,243	57,753
Interest amortized to cost of sales	(56,409)	(45,984)	(39,127)
Interest expensed	(566)	(14,295)	(16,020)
Capitalized interest, end of period	<u>\$ 25,000</u>	<u>\$ 24,610</u>	<u>\$ 21,646</u>

- (5) Adjusted EBITDA (earnings before interest expensed, depreciation and amortization, and interest amortized to cost of sales, further adjusted to eliminate loss on extinguishment of debt and adjustments resulting from the application of purchase price accounting included in the cost of sales) is a measure commonly used in the homebuilding industry and is presented as a useful adjunct to net income and other measurements under GAAP because it is a meaningful measure of a company's performance, as interest expense, depreciation and amortization, and interest amortized to cost of sales can vary significantly between companies due, in part, to differences in structure, levels of indebtedness, capital purchasing practices, and interest rates. Adjusted EBITDA is not a financial measure under GAAP and should not be considered an alternative to net income determined in accordance with GAAP as an indicator of operating performance, nor as an alternative to cash flows provided by operating activities determined in accordance with GAAP as a measure of liquidity. Because some analysts and companies may not calculate Adjusted EBITDA in the same manner as us, the Adjusted EBITDA information in this report may not be comparable to similar presentations by others. Adjusted EBITDA margin is calculated by dividing Adjusted EBITDA by total revenues.

The following is a reconciliation of net income, which is the most directly comparable GAAP measure, to Adjusted EBITDA:

	<b>Year ended May 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
	(in thousands)		
Net income	\$ 511,497	\$ 234,181	\$ 75,816
Depreciation and amortization	7,335	8,854	9,639
Interest amortized to cost of sales	56,409	45,984	39,127
Interest expensed	566	14,295	16,020
EBITDA	575,807	303,314	140,602
Loss from early extinguishment of debt	45,669	182	—
Adjusted EBITDA	<u>\$ 621,476</u>	<u>\$ 303,496</u>	<u>\$ 140,602</u>

- (6) The total debt to total capitalization ratio consists of total debt divided by total capitalization (total debt plus total Members' equity)

	<b>As of May 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
	(\$ in thousands)		
Total debt	\$ 1,000,000	\$ 755,000	\$ 759,725
Total Members' Equity	1,026,878	650,809	450,448
Total capitalization	<u>\$ 2,026,878</u>	<u>\$ 1,405,809</u>	<u>\$ 1,210,173</u>
Total debt to total capitalization	49.3 %	53.7 %	62.8 %

- (7) The total net debt to net capitalization ratio, which consists of total debt, net of cash, cash equivalents, and restricted cash ("net debt"), divided by net capitalization (net debt plus total Members' equity), is not a financial measure under GAAP and should not be considered an alternative to total debt to total capitalization ratio, which is the most directly comparable financial measure determined in accordance with GAAP. We use this measure to evaluate our performance against other companies in the homebuilding industry and believe it is also relevant and useful to investors to understand the leverage employed in our operations and as an indicator of our ability to obtain financing.

	<b>As of May 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
	(\$ in thousands)		
Total debt	\$ 1,000,000	\$ 755,000	\$ 759,725
Less cash, cash equivalents, and restricted cash	486,705	284,655	258,373
Net debt	\$ 513,295	\$ 470,345	\$ 501,352
Total Members' Equity	1,026,878	650,809	450,448
Total net capitalization	<u>\$ 1,540,173</u>	<u>\$ 1,121,154</u>	<u>\$ 951,800</u>
Total net debt to net capitalization	33.3 %	42.0 %	52.7 %

- (8) The following table presents the cancellation rates (as a percentage of gross sales) by buyer profile for the years ended May 31, 2022, 2021, and 2020:

	<b>Year ended May 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
Wholesale - Starlight Homes	20.3 %	2.4 %	0.0 %
Entry-Level - Starlight Homes	16.2 %	25.0 %	30.8 %
Entry-Level - Ashton Woods	10.1 %	10.0 %	14.7 %
Move-Up - Ashton Woods	8.9 %	8.0 %	15.2 %
Multi-Move-Up - Ashton Woods	8.5 %	9.7 %	13.6 %
Consolidated	13.4 %	14.3 %	20.5 %

Presented below are certain operating and other data for our consolidated business based on buyer profile:

	<b>Year ended May 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Net new home orders (units):</b>		
Wholesale - Starlight Homes	643	1,272
Entry-Level - Starlight Homes	3,371	2,922
Entry-Level - Ashton Woods	251	891
Move-Up - Ashton Woods	2,733	2,541
Multi-Move-Up - Ashton Woods	496	810
Company Total	7,494	8,436
<b>Homes closed (units):</b>		
Wholesale - Starlight Homes	1,196	394
Entry-Level - Starlight Homes	3,417	2,800
Entry-Level - Ashton Woods	253	799
Move-Up - Ashton Woods	2,796	2,022
Multi-Move-Up - Ashton Woods	702	534
Company Total	8,364	6,549
<b>Backlog (units) at end of period:</b>		
Wholesale - Starlight Homes	407	960
Entry-Level - Starlight Homes	537	523
Entry-Level - Ashton Woods	—	320
Move-Up - Ashton Woods	1,446	1,139
Multi-Move-Up - Ashton Woods	195	453
Company Total	2,585	3,395
<b>Active communities:</b>		
Entry-Level - Starlight Homes	45	43
Entry-Level - Ashton Woods	—	15
Move-Up - Ashton Woods	65	38
Multi-Move-Up - Ashton Woods	2	12
Company Total	112	108

	<b>Year ended May 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Average monthly sales orders per average active community: <sup>(1)</sup></b>		
Entry-Level - Starlight Homes <sup>(2)</sup>	7.6	9.6
Entry-Level - Ashton Woods	2.8	3.5
Move-Up - Ashton Woods	4.4	4.3
Multi-Move-Up - Ashton Woods	5.9	4.0
Company Average	5.7	5.7

(1) Average active community is calculated by averaging the active community counts at May 31 for the current year ended and May 31 for the prior year ended.

(2) Entry-Level - Starlight Homes includes 643 and 1,272 wholesale unit sales for the years ended May 31, 2022, and 2021, respectively.

	<b>Year ended May 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Average sales price per home closed (in thousands):</b>		
Wholesale - Starlight Homes	\$ 253	\$ 222
Entry-Level - Starlight Homes	\$ 327	\$ 251
Entry-Level - Ashton Woods	\$ 325	\$ 303
Move-Up - Ashton Woods	\$ 440	\$ 413
Multi-Move-Up - Ashton Woods	\$ 696	\$ 692
Company Average	\$ 385	\$ 342

During the year ended May 31, 2022, we closed 8,364 homes. Of those closings, 6,890 (82%) were detached single-family homes, while the remaining 1,474 (18%) were attached single-family homes.

During the year ended May 31, 2022, the Company added 65 new active communities, while closing out 61 communities. Of the 65 active communities added during the year ended May 31, 2022, 20 (31%) are considered to be entry-level Starlight Homes, 14 (21%) are considered to be entry-level Ashton Woods Homes, 29 (45%) are considered to be move-up Ashton Woods Homes, and 2 (3%) are considered to be multi-move-up Ashton Woods Homes communities.

### Results of operations - Segments

We have grouped our homebuilding operating divisions in two reportable segments, east and central. At May 31, 2022, our reportable homebuilding segments consisted of homebuilding operating divisions located in the following areas:

- 1) East:** Atlanta, Coastal Carolinas, Nashville, Orlando, Raleigh, and Southwest Florida
- 2) Central:** Austin, Dallas, Houston, Phoenix, and San Antonio

Presented below are certain operating and other data for our segments:



**Net new home orders (units):**

	<b>Year ended May 31,</b>	
	<b>2022</b>	<b>2021</b>
East:		
Wholesale - Starlight Homes	355	652
Entry-Level - Starlight Homes	1,359	1,295
Entry-Level - Ashton Woods	127	400
Move-Up - Ashton Woods	980	944
Multi-Move-Up - Ashton Woods	184	398
Total east	3,005	3,689
Central:		
Wholesale - Starlight Homes	288	620
Entry-Level - Starlight Homes	2,012	1,627
Entry-Level - Ashton Woods	124	491
Move-Up - Ashton Woods	1,753	1,597
Multi-Move-Up - Ashton Woods	312	412
Total central	4,489	4,747
Company total	7,494	8,436

**Homes closed (units):**

	<b>Year ended May 31,</b>	
	<b>2022</b>	<b>2021</b>
East:		
Wholesale - Starlight Homes	665	227
Entry-Level - Starlight Homes	1,381	1,306
Entry-Level - Ashton Woods	109	306
Move-Up - Ashton Woods	1,069	626
Multi-Move-Up - Ashton Woods	297	324
Total east	3,521	2,789
Central:		
Wholesale - Starlight Homes	531	167
Entry-Level - Starlight Homes	2,036	1,494
Entry-Level - Ashton Woods	144	493
Move-Up - Ashton Woods	1,727	1,396
Multi-Move-Up - Ashton Woods	405	210
Total central	4,843	3,760
Company total	8,364	6,549

**Average sales price per home closed:**

	<b>Year ended May 31,</b>	
	<b>2022</b>	<b>2021</b>
(in thousands)		
<b>East:</b>		
Wholesale - Starlight Homes	\$ 252	\$ 230
Entry-Level - Starlight Homes	\$ 321	\$ 255
Entry-Level - Ashton Woods	\$ 337	\$ 298
Move-Up - Ashton Woods	\$ 428	\$ 436
Multi-Move-Up - Ashton Woods	\$ 689	\$ 732
Average east	\$ 372	\$ 354
<b>Central:</b>		
Wholesale - Starlight Homes	\$ 254	\$ 211
Entry-Level - Starlight Homes	\$ 331	\$ 249
Entry-Level - Ashton Woods	\$ 316	\$ 307
Move-Up - Ashton Woods	\$ 447	\$ 403
Multi-Move-Up - Ashton Woods	\$ 702	\$ 629
Average central	\$ 395	\$ 333
Company average	\$ 385	\$ 342

**Backlog (units) at end of period:**

	<b>As of May 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>East:</b>		
Wholesale - Starlight Homes	181	491
Entry-Level - Starlight Homes	225	187
Entry-Level - Ashton Woods	—	171
Move-Up - Ashton Woods	583	485
Multi-Move-Up - Ashton Woods	68	179
Total east	<u>1,057</u>	<u>1,513</u>
<b>Central:</b>		
Wholesale - Starlight Homes	226	469
Entry-Level - Starlight Homes	312	336
Entry-Level - Ashton Woods	—	149
Move-Up - Ashton Woods	863	654
Multi-Move-Up - Ashton Woods	127	274
Total central	<u>1,528</u>	<u>1,882</u>
Company total	<u><u>2,585</u></u>	<u><u>3,395</u></u>

**Active communities:**

	As of May 31,	
	2022	2021
East:		
Entry-Level - Starlight Homes	19	16
Entry-Level - Ashton Woods	—	4
Move-Up - Ashton Woods	19	11
Multi-Move-Up - Ashton Woods	2	4
Total east	40	35
Central:		
Entry-Level - Starlight Homes	26	27
Entry-Level - Ashton Woods	—	11
Move-Up - Ashton Woods	46	27
Multi-Move-Up - Ashton Woods	—	8
Total central	72	73
Company total	112	108

**Average monthly sales per average active community: <sup>(1)</sup>**

	Year ended May 31,	
	2022	2021
East:		
Entry-Level - Starlight Homes <sup>(2)</sup>	8.2	9.8
Entry-Level - Ashton Woods	5.3	5.6
Move-Up - Ashton Woods	5.4	5.4
Multi-Move-Up - Ashton Woods	5.1	3.0
Average east	6.7	6.4
Central:		
Entry-Level - Starlight Homes <sup>(3)</sup>	7.2	9.4
Entry-Level - Ashton Woods	1.9	2.7
Move-Up - Ashton Woods	4.0	3.9
Multi-Move-Up - Ashton Woods	6.5	5.7
Average central	5.2	5.2
Company average	5.7	5.7

- (1) Average active community is calculated by averaging the active community counts at May 31 for the current year ended and May 31 for the prior year ended.
- (2) Entry-Level - Starlight Homes includes 355 and 652 wholesale unit sales for the years ended May 31, 2022, and 2021, respectively.
- (3) Entry-Level - Starlight Homes includes 288 and 620 wholesale unit sales for the years ended May 31, 2022, and 2021, respectively.

**Adjusted Home Sales Gross Margin:**

The Company presents adjusted home sales gross margin and adjusted home sales gross margin percentage on a segment basis in the following tables. Adjusted home sales gross margin is a non-GAAP financial measure (see “Overview and Outlook —Select Consolidated Financial Data” for a definition of adjusted home gross margin). The following is a reconciliation of home sales gross margin of our segments, the most directly comparable GAAP measure, to our segments' adjusted home sales gross margin.

	<b>Year ended May 31,</b>	
	<b>2022</b>	<b>2021</b>
	(in thousands)	
<b>Homebuilding East:</b>		
Home sales revenues	\$ 1,309,584	\$ 986,290
Cost of sales homes	980,679	796,767
Home sales gross margin	328,905	189,523
Add: Inventory impairments	34	91
Interest amortized to cost of sales	24,771	23,441
Adjusted home sales gross margin	<u>\$ 353,710</u>	<u>\$ 213,055</u>
Ratio of home gross margin to home sales revenues	25.1 %	19.2 %
Ratio of adjusted home gross margin to home sales revenues	27.0 %	21.6 %

#### **Homebuilding Central:**

Home sales revenues	\$ 1,911,060	\$ 1,252,189
Cost of sales homes	1,334,077	942,965
Home sales gross margin	576,983	309,224
Add: Inventory impairments	—	56
Interest amortized to cost of sales	31,638	22,543
Adjusted home sales gross margin	<u>\$ 608,621</u>	<u>\$ 331,823</u>
Ratio of home gross margin to home sales revenues	30.2 %	24.7 %
Ratio of adjusted home gross margin to home sales revenues	31.8 %	26.5 %

### **Results of operations - Discussion**

#### **Year Ended May 31, 2022 Compared to Year Ended May 31, 2021**

##### *Home sales revenues - Consolidated*

Home sales revenues increased by 43.9% (\$982.2 million) for the year ended May 31, 2022, to \$3.2 billion from \$2.2 billion for the year ended May 31, 2021. The increase in revenues for the year ended May 31, 2022, as compared to the year ended May 31, 2021, was due to an increase in the number of homes closed, in addition to an increase in the average sales price of homes closed.

The number of homes closed increased by 27.7% (1,815 homes) for the year ended May 31, 2022, to 8,364 from 6,549 for the year ended May 31, 2021. The increase was largely driven by an increase in demand during the prior fiscal year, the period during which most of the homes that closed during the current fiscal year ended May 31, 2022, were sold, and a continuation of increased demand throughout the current fiscal year.

Included in the number of homes closed are 1,196 wholesale home closings to real estate investors for the year ended May 31, 2022, and 394 for the year ended May 31, 2021. Excluding wholesale home closings to real estate investors, the number of homes closed increased 16.5% (1,013 homes) during the year ended May 31, 2022, compared to the year ended May 31, 2021. Although home closings during the year ended May 31, 2022 increased compared to the year ended May 31, 2021, on a consolidated basis, the number of home closings during the year ended May 31, 2022, remained impacted by elongated construction cycles resulting from labor and supply chain constraints.

The average sales price of homes closed increased 12.6% to \$385,000 for the year ended May 31, 2022, from \$342,000 for the year ended May 31, 2021. Excluding wholesale home closings to real estate investors, the average sales price of homes closed increased 16.6% to an average of \$407,000 for the year ended May 31, 2022, from an average of \$349,000 for the year ended May 31, 2021. The increase in the average sales price of homes closed on a consolidated basis for the year ended May 31, 2022, compared to the year ended May 31, 2021, reflected our ability

to raise prices in most of our communities across all of our markets due to the strong demand for new homes throughout the fiscal year ended May 31, 2021, and continuing through the year ended May 31, 2022.

#### *Home sales revenues - East segment*

Home sales revenues for the east segment increased by 32.8% (\$323.3 million) for the year ended May 31, 2022, to \$1.3 billion from \$986.3 million for the year ended May 31, 2021. The increase in revenues was due to an increase in the number of homes closed, in addition to an increase in the average sales price of homes closed.

The number of homes closed during the year ended May 31, 2022, increased 26.2% (732 homes) as compared to the year ended May 31, 2021. Included in the number of homes closed are 665 wholesale home closings to real estate investors for the year ended May 31, 2022, and 227 wholesale home closings for the year ended May 31, 2021. Excluding wholesale home closings to real estate investors, the number of homes closed increased 11.5% (294 homes) during the year ended May 31, 2022, compared to the year ended May 31, 2021. Closings for the east segment during the year ended May 31, 2022, compared to the year ended May 31, 2021, increased as a result of the completion of homes in backlog, which has been negatively impacted by elongated construction cycle times due to the availability of trade labor, building materials, and appliances, as well as the delayed responsiveness of government services such as zoning, permitting and related government approvals.

The average sales price of homes closed increased 5.1% to \$372,000 for the year ended May 31, 2022, from \$354,000 for the year ended May 31, 2021. Excluding wholesale home closings to real estate investors, the average sales price of homes closed increased 9.6% to an average of \$400,000 for the year ended May 31, 2022, from an average of \$365,000 for the year ended May 31, 2021. The increase in the average sales price of homes closed in the east segment for the year ended May 31, 2022, compared to the year ended May 31, 2021, reflected our ability to raise prices in most of our entry-level communities across all of our markets in the east segment due to the strong demand for new homes throughout the fiscal year ended May 31, 2021, and continuing through the year ended May 31, 2022.

#### *Home sales revenues - Central segment*

Home sales revenues for the central segment increased by 52.6% (\$658.9 million) for the year ended May 31, 2022, to \$1.9 billion from \$1.3 billion for the year ended May 31, 2021. The increase in revenues for the year ended May 31, 2022, as compared to the year ended May 31, 2021, was primarily due to an increase in the number of homes closed and an increase in the average sales price of homes closed.

The number of homes closed during the year ended May 31, 2022, increased 28.8% (1,083 homes) as compared to the year ended May 31, 2021. Included in the number of homes closed are 531 wholesale home closings to real estate investors for the year ended May 31, 2022, and 167 for the year ended May 31, 2021. Excluding wholesale home closings to real estate investors, the number of homes closed increased 20.0% (719 homes) during the year ended May 31, 2022, compared to the year ended May 31, 2021. Closings for the central segment during the year ended May 31, 2022, compared to the year ended May 31, 2021, increased as a result of the completion of homes in backlog, which has been negatively impacted by elongated construction cycles due in part to labor and supply chain constraints as discussed in further detail above.

The average sales price of homes closed increased 18.6% to \$395,000 for the year ended May 31, 2022, from \$333,000 for the year ended May 31, 2021. Excluding wholesale home closings to real estate investors, the average sales price of homes closed increased 21.5% to an average of \$412,000 for the year ended May 31, 2022, from an average of \$339,000 for the year ended May 31, 2021. The increase in the average sales price of homes closed for the year ended May 31, 2022, compared to the year ended May 31, 2021, reflected our ability to raise prices in most of our communities across all of our markets due to the strong demand for new homes throughout the fiscal year ended May 31, 2021, and continuing through the year ended May 31, 2022.

#### *Net new home orders, cancellations, and backlog - Consolidated*

Net new home orders and backlog do not have a current effect on our revenues; however, both provide important information about our future revenues and business prospects. New home orders are converted to revenues at the time of the home closing. Net new home orders decreased 11.2% (942 homes) for the year ended May 31, 2022, compared to the year ended May 31, 2021. The decrease in net new home orders was due to a decrease in the

number of average active communities, and a decrease in the average monthly sales per average active community among our entry-level buyer profiles on a consolidated basis. The number of average active communities decreased from 123.5 during the year ended May 31, 2021, to 110 during the year ended May 31, 2022, due primarily to selling out of communities at a faster pace due to the strong demand for new homes, coupled with elongated development times to open new communities. Demand remained high as reflected in the consolidated average monthly sales per average active community for the year ended May 31, 2022, which remained the same as the consolidated average monthly sales per average active community for the year ended May 31, 2021, at 5.7 for each respective year; at the same time, however, net new home orders decreased on a consolidated basis primarily due to a lack of available homesites and inventory to sell.

Included in net new home orders are 643 wholesale home orders to real estate investors for the year ended May 31, 2022, and 1,272 for the year ended May 31, 2021. These homes were sold under bulk sales agreements (see Note 1(j) to our consolidated financial statements). In the normal course of business we may also elect to sell one or more homes to buyers who may be real estate investors pursuant to individual retail purchase and sale agreements, which are not included in the wholesale home sales reported herein. Sales to real estate investors are opportunistic in nature and the timing and number of sales can vary from period to period. Excluding the wholesale home sales to real estate investors, net new home orders decreased 4.4% (313 homes) for the year ended May 31, 2022, compared to the year ended May 31, 2021. As previously discussed, the decrease in net new home orders, excluding wholesale home sales to real estate investors, for the year ended May 31, 2022, compared to the year ended May 31, 2021, is primarily the result of a decrease in the number of average active communities, and therefore, the number of available homesites and inventory to sell.

The cancellation rate (as a percentage of gross sales) on our entry-level homes have typically been higher than the cancellation rate on our move-up and multi-move-up homes. The most common reason for these cancellations is that the home buyer is not able to obtain financing. The largest improvement in cancellation rates for the year ended May 31, 2022, compared to the year ended May 31, 2021, was in our Starlight Homes business, largely because of the wholesale home sales to real estate investors, and improved credit profiles of our Starlight Homes buyers. Excluding wholesale home sales to real estate investors, the cancellation rates in our Starlight Homes business decreased from 25.0% for the year ended May 31, 2021, to 16.2% for the year ended May 31, 2022.

Backlog consists of homes that are under sales contracts that have not yet closed. Backlog decreased 23.9% from 3,395 homes in backlog at May 31, 2021, to 2,585 homes in backlog at May 31, 2022. Excluding wholesale home sales to real estate investors, backlog decreased 10.6% from 2,435 homes in backlog at May 31, 2021, to 2,178 homes in backlog at May 31, 2022. The decrease in backlog was a result of the increase in the number of homes closed and the decrease in the number of net new home orders during the year ended May 31, 2022, compared to the year ended May 31, 2021.

The sales value of backlog at May 31, 2022, was \$1.2 billion, a 5.4% decrease from the sales value of backlog at May 31, 2021, of \$1.3 billion. The decrease in the sales value of backlog, on a consolidated basis, was the result of the overall decrease in the number of homes in backlog, as discussed in further detail above, partially offset by an increase in the average sales price of homes in backlog from \$377,000 at May 31, 2021, to \$468,000 at May 31, 2022. Excluding wholesale home sales contracts with real estate investors, the sales value of backlog at May 31, 2022, was \$1,089.3 million, a 3.3% increase from the sales value of backlog at May 31, 2021 of \$1,055.0 million. The increase in the sales value of backlog, excluding wholesale home sales to real estate investors, is due to the increase in the average sales price of homes in backlog, excluding the wholesale home sales to real estate investors, from \$433,000 at May 31, 2021, to \$500,000 at May 31, 2022. Due to the strong demand for new homes throughout the fiscal year ended May 31, 2022, across all buyer profiles, we were able to raise prices and reduce incentives in most communities across all of our markets which resulted in the increase in the sales value of backlog, excluding wholesale home sales to real estate investors, at May 31, 2022, compared to May 31, 2021.

#### *Net new home orders and backlog - East segment*

Net new home orders in the east segment decreased 18.5% (684 homes) during the year ended May 31, 2022, compared to the year ended May 31, 2021. Excluding the wholesale home sales to real estate investors, net new home orders decreased 12.7% (387 homes) for the year ended May 31, 2022, compared to the year ended May 31, 2021. The decrease in net new home orders for the year ended May 31, 2022, as compared to the year ended May 31, 2021, was due to a decrease in the number of average active communities, and a decrease in the average monthly sales per average active community among our entry-level buyer profiles in our east segment. The number

of average active communities in the east segment decreased from 48 during the year ended May 31, 2021, to 37.5 during the year ended May 31, 2022, due primarily to selling out of communities at a faster pace due to the strong demand for new homes, coupled with elongated development times to open new communities. Demand remained high as reflected in the average monthly sales per average active community in the east segment increasing from 6.4 for the year ended May 31, 2021, to 6.7 for the year ended May 31, 2022; at the same time, however, net new home orders decreased due primarily to a lack of available homesites and inventory to sell.

Backlog consisted of 1,057 homes at May 31, 2022, which is a 30.1% decrease from 1,513 homes in backlog at May 31, 2021. Included in backlog at May 31, 2022, and 2021, were 181 and 491 wholesale home sales contracts with real estate investors, respectively. Excluding wholesale home sales contracts with real estate investors, backlog decreased 14.3% from 1,022 homes in backlog at May 31, 2021, to 876 homes in backlog at May 31, 2022. The decrease in backlog is a result of closing 516 more homes than we received orders for during the year ended May 31, 2022. The east segment sold 3,005 homes, while closing 3,521 homes during the year ended May 31, 2022.

The sales value of backlog at May 31, 2022, was \$474.3 million, a 16.2% decrease compared to the sales value of backlog at May 31, 2021, of \$566.3 million. Excluding wholesale home sales contracts with real estate investors, the sales value of backlog at May 31, 2022, was \$424.4 million, a 5.3% decrease from the sales value of backlog at May 31, 2021, of \$448.0 million. The decrease in the sales value of backlog, excluding wholesale home sales contracts with real estate investors, is due primarily to a decrease in the number of homes in backlog, partially offset by an increase in the average sales price of homes in backlog. The average sales price of homes in backlog, excluding wholesale home sales contracts with real estate investors, at May 31, 2022, was \$485,000 compared to \$438,000 at May 31, 2021. The increase in the average sales price of homes in backlog, excluding wholesale home sales contracts with real estate investors, is primarily due to the mix of communities with homes in backlog, combined with the continued strong demand for new homes, which allowed us to raise prices in most of our entry-level communities across all of our markets in the east segment. Of the 876 homes in backlog, excluding wholesale home sales to real estate investors, at May 31, 2022, 583 (67%) of the homes were considered move-up, compared to 485 (47%) of the 1,022 homes in backlog, excluding wholesale home sales to real estate investors, at May 31, 2021. The increase in the percentage of move-up homes in backlog at May 31, 2022, excluding wholesale home sales to real estate investors, was primarily driven by decreases in both entry-level and multi-move-up homes in backlog, due primarily to the mix of active communities in the east segment, as well as availability of homesites and inventory to sell.

#### *Net new home orders and backlog - Central segment*

Net new home orders in the central segment decreased 5.4% (258 homes) during the year ended May 31, 2022, compared to the year ended May 31, 2021. The decrease in net new home orders for the year ended May 31, 2022, as compared to the year ended May 31, 2021, was due primarily to a decrease in the number of average active communities, and a decrease in the average monthly sales per average active community among our entry-level buyer profiles in our central segment. The number of average active communities in the central segment decreased from 75.5 during the year ended May 31, 2021, to 72.5 during the year ended May 31, 2022, due primarily to selling out of communities at a faster pace due to the strong demand for new homes, coupled with elongated development times to open new communities. Demand remained high as reflected in the average monthly sales per average active community in the central segment for the year ended May 31, 2022, which remained the same as average monthly sales per average active community in the central segment for the year ended May 31, 2021 at 5.2 for each respective year; at the same time, however, net new home orders decreased due to a lack of available homesites and inventory to sell.

Excluding wholesale home orders to real estate investors, net new home orders increased 1.8% (74 homes) for the year ended May 31, 2022, compared to the year ended May 31, 2021. The increase in net new home orders, excluding wholesale home sales to real estate investors, was due to a decrease in the number of wholesale home sales to real estate investors from 620 year ended May 31, 2021, to 288 for the year ended May 31, 2022. Wholesale home sales, which typically have lower selling prices than retail homes, are less consistent from year to year as they are typically sold under bulk sales agreements to real estate investors which we enter into periodically and evaluate on a deal-by-deal basis.

Backlog consisted of 1,528 homes at May 31, 2022, which is an 18.8% decrease from 1,882 homes in backlog at May 31, 2021. Included in backlog at May 31, 2022, and 2021, were 226 and 469 wholesale home sales contracts with real estate investors, respectively. Excluding wholesale home sales contracts with real estate investors, backlog

decreased 7.9% from 1,413 homes in backlog at May 31, 2021, to 1,302 homes in backlog at May 31, 2022. The decrease in backlog is the result of closing 354 more homes than we received orders for during the year ended May 31, 2022. The central segment received orders for 4,489 homes, while closing 4,843 homes during the year ended May 31, 2022.

The sales value of backlog at May 31, 2022, was \$735.7 million, a 3.3% increase over the sales value of backlog at May 31, 2021 of \$712.4 million. Excluding wholesale home sales contracts with real estate investors, the sales value of backlog at May 31, 2022, was \$664.9 million, a 9.5% increase from the sales value of backlog at May 31, 2021, of \$607.0 million. The increase in the sales value of backlog, excluding wholesale home sales contracts with real estate investors, is due to the increase in the average sales price of homes in backlog. The average sales price of homes in backlog, excluding wholesale home sales contracts with real estate investors, at May 31, 2022, was \$511,000 compared to \$430,000 at May 31, 2021. The increase in the average sales price of homes in backlog, excluding wholesale home sales to real estate investors, is primarily a result of the continued strong demand for new homes, which allowed us to raise prices and decrease incentives in most communities across all of our markets in the central segment, as well as the mix of types of communities with homes in backlog. Of the 1,302 homes in backlog, excluding wholesale home sales to real estate investors, at May 31, 2022, 990 (76%) of the homes were considered move-up or multi-move-up, compared to 928 (66%) of the 1,413 homes in backlog, excluding wholesale home sales to real estate investors, at May 31, 2021.

#### *Home gross margins - Consolidated*

The gross margin from homes closed for the year ended May 31, 2022, increased to 28.1% from 22.3% for the year ended May 31, 2021. The increase in gross margin for the year ended May 31, 2022, was due primarily to the strong demand for new homes, which enabled us to raise prices in most communities across all of our markets. As a result, the average sales prices of homes closed on a consolidated basis increased for the year ended May 31, 2022, more than covering increases in the cost of materials and labor, thus increasing the gross margin percentage.

Adjusted gross margin from homes closed for the year ended May 31, 2022, increased to 29.9% from 24.3% for the year ended May 31, 2021. This increase in the adjusted gross margin was due to the improvement in gross margins as described above.

#### *Home gross margins - East segment*

The gross margin from homes closed in the east segment for the year ended May 31, 2022 increased to 25.1% from 19.2% for the year ended May 31, 2021. The increase in gross margin for the year ended May 31, 2022, was due primarily to the strong demand for new homes, which enabled us to raise prices in most communities across all of our markets. As a result, the average sales prices of homes closed for the east segment increased for the year ended May 31, 2022, more than covering increases in the cost of materials and labor, thus increasing the gross margin percentage.

#### *Home gross margins - Central segment*

The gross margin from homes closed in the central segment for the year ended May 31, 2022, increased to 30.2% from 24.7% for the year ended May 31, 2021. The increase in gross margin for the year ended May 31, 2022, was due primarily to the strong demand for new homes, which enabled us to raise prices in most communities across all of our markets. As a result, the average sales prices of homes closed for the central segment increased for the year ended May 31, 2022, more than covering increases in the cost of materials and labor, thus increasing the gross margin percentage.

#### *Selling, general and administrative expenses*

Selling, general and administrative expenses (“SG&A”) totaled \$370.9 million for the year ended May 31, 2022, compared to \$266.3 million for the year ended May 31, 2021. The increase in SG&A for the year ended May 31, 2022, as compared to the year ended May 31, 2021, was primarily due to increases in sales commissions due to an increase in the number of home closings and higher sales prices, as well as higher compensation expense. This increase was partially offset by a decrease in marketing and advertising related expenses and legal fees and settlements paid in the normal course of business.



While SG&A expenses increased for the year ended May 31, 2022, compared to the year ended May 31, 2021, SG&A as a percentage of home sales revenue decreased to 11.5% for the year ended May 31, 2022, from 11.9% for the year ended May 31, 2021. The decrease in SG&A as a percentage of home sales revenue for the year ended May 31, 2022, as compared to the year ended May 31, 2021, was primarily due to the decrease, as a percentage of home sales revenues, in advertising and marketing costs and sales commissions due to the increase in wholesale home closings to real estate investors for which we typically pay no sales commissions, as well as a decrease in legal fees and settlements paid in the normal course of business.

#### *Land sales*

We periodically elect to sell parcels of land or lots. We had \$8.7 million in sales of land and lots during the year ended May 31, 2022, and \$12.9 million in sales of land and lots during the year ended May 31, 2021.

#### *Loss from early extinguishment of debt*

We recognized losses from the early extinguishment of debt of \$45.7 million for the year ended May 31, 2022, comprised of redemption premiums and the write-off of unamortized deferred financing costs in connection with the redemptions of all outstanding 6.750% Senior Notes due 2025 (the "2025 Notes") and 9.875% Senior Notes due 2027 (the "2027 Notes"). We recognized a loss from the early extinguishment of debt of \$0.2 million for the year ended May 31, 2021, in connection with entering into the Sixth Amended and Restated Credit Agreement (as amended, the "Restated Revolver").

#### *Net income*

Net income increased \$277.3 million for the year ended May 31, 2022, as compared to the year ended May 31, 2021. The increase in net income for the year ended May 31, 2022, as compared to the year ended May 31, 2021, is primarily attributable to an increase in revenues for the year ended May 31, 2022, as compared to the year ended May 31, 2021, as a result of the 27.7% increase in the number of homes closed during the year ended May 31, 2022, as compared to the year ended May 31, 2021, the increase in home gross margins for the year ended May 31, 2022, as compared to the year ended May 31, 2021, and the decrease in SG&A, as a percentage of home sales revenue for the year ended May 31, 2022, as compared to the year ended May 31, 2021. These increases were partially offset during the year ended May 31, 2022, by the loss from the early extinguishment of debt of \$45.7 million.

## **Liquidity and Capital Resources**

### *Overview*

We currently fund our operations with proceeds from the sales of homes and land, borrowings under our Restated Revolver, and long-term senior note financing. As we utilize our capital resources and liquidity to fund the growth of our business, we monitor our balance sheet leverage ratios to ensure that we maintain reasonable levels. We also monitor current and expected operational requirements, as well as financial market conditions, to evaluate accessing other available financing sources.

Over the next twelve months, we expect our principal uses of liquidity and capital resources will be to fund our short-term working capital obligations, land and lot purchases, land development, home construction, and overhead expenditures, interest costs, and tax and non-tax distributions to our Members. Beyond the next twelve months, we believe our principal demand for funds will be consistent with our short-term uses, as well as repayment or refinancing of our senior notes, with the first maturity of such senior notes not occurring until 2028.

The Company's total liquidity, including cash, cash equivalents, restricted cash, and available additional borrowing capacity under our Restated Revolver, was \$830.5 million as of May 31, 2022. Based on our existing financial condition and credit relationships, we believe that our operations and capital resources are sufficient to provide for our current short-term and foreseeable long-term capital needs. However, we continue to evaluate the impact of market conditions on our liquidity and will consider, as appropriate, additional funding opportunities.

The total debt to total capitalization ratio consists of total debt divided by total capitalization (debt plus Members' equity). Our ratio of total debt to total capitalization improved to 49.3% at May 31, 2022, from 53.7% at May 31, 2021. The net debt to net capitalization ratio consists of total debt, net of cash and restricted cash ("Net Debt"), divided by net capitalization (Net Debt plus Members' equity). Our ratio of net debt to net capitalization improved to 33.3% at May 31, 2022, from 42.0% at May 31, 2021.

### Material Cash Requirements

Our material cash requirements from known contractual obligations under our debt agreements and lease payments under operating leases as of May 31, 2022, are presented below (in thousands):

	Total	Due in Fiscal Year			
		Less Than One Year	1-3 Years	3-5 Years	More Than 5 Years
6.625% Senior Notes due 2028 <sup>(1)</sup>	\$ 250,000	\$ —	\$ —	\$ —	\$ 250,000
4.625% Senior Notes due 2029 <sup>(2)</sup>	\$ 350,000	—	—	—	350,000
4.625% Senior Notes due 2030 <sup>(3)</sup>	\$ 400,000	—	—	—	400,000
Interest <sup>(1)(2)(3)</sup>	\$ 368,781	51,250	102,500	102,500	112,531
Operating leases <sup>(4)</sup>	\$ 21,163	4,469	8,142	5,888	2,664
	<u>\$1,389,944</u>	<u>\$ 55,719</u>	<u>\$ 110,642</u>	<u>\$ 108,388</u>	<u>\$1,115,195</u>

- (1) Interest on the 2028 Senior Notes accrues at a rate of 6.625% per annum, payable semiannually in arrears on January 15 and July 15 of each year.
- (2) Interest on the 2029 Senior Notes accrues at a rate of 4.625% per annum, payable semiannually in arrears on February 1 and August 1 of each year.
- (3) Interest on the 2030 Senior Notes accrues at a rate of 4.625% per annum, payable semiannually in arrears on April 1 and October 1 of each year.
- (4) Includes implicit amounts for interest.

At May 31, 2022, we controlled 65,392 lots and homes available to close. Of the 65,392 lots and homes controlled, we owned 30%, or 19,513 lots and homes, and 70%, or 45,879 lots, were under contract. In the ordinary course of business, we enter into purchase and option agreements in order to procure land for the construction of homes in the future. At May 31, 2022, these agreements had an aggregate remaining purchase price of \$2.4 billion, net of deposits of \$309.8 million. In addition, we had purchase and option agreements recorded under Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers* ("ASC 606"), or ASC Subtopic 470-40, *Product Financing Arrangements* ("ASC 470-40") with an aggregate remaining purchase price of \$260.1 million and cash deposits of \$49.5 million. Pursuant to these land purchase and land option agreements, we generally provide a deposit to the seller as consideration for the right, but not the obligation, to purchase land at different times in the future, usually at predetermined prices. In certain instances, we are required under applicable accounting standards to record the land under option as if we own it.

### Senior Unsecured Revolving Credit Facility

On January 28, 2022, the Company entered into the First Amendment to the Restated Revolver, which amends the Restated Revolver, dated as of February 2, 2021. The First Amendment to the Restated Revolver, among other changes, (i) increased the commitments thereunder from \$250.0 million to \$350.0 million, (ii) extended the maturity from February 2, 2025 to January 28, 2026 and (iii) replaced the London Interbank Offered Rate ("LIBOR") as the benchmark interest rate with the Secured Overnight Financing Rate ("SOFR"). The Restated Revolver provides for, among other things, up to \$50.0 million available for the issuance of letters of credit and up to \$20.0 million available for swingline loans.

Interest accrues on borrowings under the Restated Revolver at a SOFR or alternative base rate, in each case plus an applicable margin that varies based upon the leverage ratio of the Company from time to time.

Availability under the Restated Revolver is based upon a borrowing base formula, determined by applying certain advance rates to certain asset types provided for in the borrowing base.

The Restated Revolver contains affirmative and negative covenants that are customary for credit agreements of this nature, including (i) a minimum level of Tangible Net Worth, (ii) a maximum Leverage Ratio, (iii) a minimum Interest Coverage Ratio, and (iv) a minimum liquidity requirement. At May 31, 2022, the Company was in compliance with all of the covenants in the Restated Revolver.

The Company borrowed \$351.6 million under its revolving credit facilities to fund operations during the year ended May 31, 2022, all of which was repaid during the period. The Company had no borrowings outstanding under the Restated Revolver as of May 31, 2022.

#### *Senior Note Offerings and Repayments*

On January 23, 2020, Ashton Woods and Ashton Woods Finance Co., a wholly owned subsidiary of Ashton Woods ("Finance Co.", and together with Ashton Woods, the "Companies"), issued and sold, at an issue price of 100%, \$250.0 million aggregate principal amount of their 6.625% Senior Notes due 2028 (the "2028 Notes") through a private placement to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A and in offshore transactions pursuant to Regulation S, promulgated under the Securities Act of 1933, as amended (the "Securities Act"). Interest on the 2028 Notes is payable semi-annually in cash in arrears on January 15 and July 15 of each year. The 2028 Notes will mature on January 15, 2028. The 2028 Notes are guaranteed by substantially all of the Company's subsidiaries and have terms substantially similar to the Companies' 4.625% Senior Notes due 2029 (the "2029 Notes") and 4.625% Senior Notes due 2030 (the "2030 Notes").

On August 2, 2021, the Companies issued and sold, at an issue price of 100.00%, \$350 million aggregate principal amount of their 2029 Notes through a private placement to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A and in offshore transactions pursuant to Regulation S, promulgated under the Securities Act. Interest on the 2029 Notes is payable semi-annually in cash in arrears on February 1 and August 1 of each year, commencing February 1, 2022. The 2029 Notes will mature on August 1, 2029. The 2029 Notes are guaranteed by substantially all of the Company's subsidiaries and have terms substantially similar to the 2028 Notes and 2030 Notes.

On August 2, 2021, the Companies redeemed all of the previously outstanding 2025 Notes at a redemption price of 103.375% of the principal amount thereof plus accrued and unpaid interest thereon to, but excluding, the redemption date.

On September 23, 2021, the Companies issued and sold, at an issue price of 100.00%, \$300 million aggregate principal amount of their 2030 Notes through a private placement to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A and in offshore transactions pursuant to Regulation S, promulgated under the Securities Act. Interest on the 2030 Notes is payable semi-annually in cash in arrears on April 1 and October 1 of each year, commencing April 1, 2022. The 2030 Notes will mature on April 1, 2030. The 2030 Notes are guaranteed by substantially all of the Company's subsidiaries and have terms substantially similar to the 2028 Notes and 2029 Notes.

On October 4, 2021, the Companies redeemed all of the previously outstanding 2027 Notes at a redemption price of 111.94% of the principal amount thereof, comprised of the prepayment and make-whole premiums, plus accrued and unpaid interest thereon to, but excluding, the redemption date.

On January 27, 2022, the Companies issued and sold, at an issue price of 97.500% plus accrued and unpaid interest from September 23, 2021, an additional \$100 million aggregate principal amount of their 2030 Notes through a private placement to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A and in offshore transactions pursuant to Regulation S, promulgated under the Securities Act. The Notes represent a further issuance of the Companies' 2030 Notes.

Our debt obligations are fully discussed in Note 7 to our consolidated financial statements as of May 31, 2022.

#### *Letters of Credit and Surety Bonds*

In the ordinary course of business, we provide letters of credit and surety bonds to third parties to secure performance and provide deposits under various contracts and commitments. At May 31, 2022, we had letters of credit and surety bonds outstanding of \$6.2 million and \$196.4 million, respectively. As of May 31, 2022, we had \$43.8 million of unused letter of credit capacity under the Restated Revolver.

### *Off-Balance-Sheet Arrangements*

As of May 31, 2022, real estate not owned totaled \$146.1 million related to fourteen lot purchase agreements with \$49.5 million of non-refundable deposits. Refer to our discussion in Note 5 to our consolidated financial statements as of May 31, 2022.

As of May 31, 2022, we had an investment in one land development joint venture in which we have a non-controlling interest. We account for our interest in this joint venture under the equity method. Our share of profits from lots we purchase from the joint venture is deferred until we close on the home.

As of May 31, 2022, we had investments in two mortgage joint ventures in which the Company offers or intends to offer residential mortgage services to its homebuyers and the public at large in all of its operating divisions. The Company has a non-controlling interest in each of the joint ventures. We account for our interests in the mortgage joint ventures under the equity method. Our share of profits is included within equity in earnings in unconsolidated entities in the consolidated statements of income.

### *Operating cash flows*

Net cash provided by operating activities for the year ended May 31, 2022, was \$194.4 million compared to \$72.5 million of net cash provided by operating activities for the year ended May 31, 2021. The primary sources of funds from operations are from the closing of homes. The increase in net cash provided by operating activities for the year ended May 31, 2022, was primarily due to an increase in net income, accounts payable, and other liabilities, partially offset by an increase in capital spent for inventory, primarily due to new land investments, the construction of additional homes, and the elongation of construction times, as well as an increase in deposits on real estate under option or contract.

### *Investing cash flows*

Net cash used in investing activities was \$48.4 million for the year ended May 31, 2022, and \$6.3 million for the year ended May 31, 2021. Net cash used in investing activities for the year ended May 31, 2022, was primarily to fund the acquisition of substantially all of the assets of Capitol City Homes, LLC ("Capitol City Homes"). See Note 1(q) to our consolidated financial statements as of May 31, 2022, for information on the acquisition of substantially all of the assets of Capitol City Homes.

### *Financing cash flows*

Net cash provided by financing activities was \$56.1 million for the year ended May 31, 2022, compared to \$39.9 million of cash used in financing activities for the year ended May 31, 2021. The funds provided by financing activities during the year ended May 31, 2022, consisted of \$350.0 million related to the issuance of the 2029 Notes and \$397.5 million related to the issuance of the 2030 Notes, offset in part by the redemption of \$250.0 million of the 2025 Notes and the redemption of \$255.0 million of the 2027 Notes, prepayment premiums on the early extinguishment of the 2025 Notes and the 2027 Notes of \$38.9 million, the payment of \$12.0 million of debt issuance costs in connection with the issuance of the 2029 Notes and the 2030 Notes and the First Amendment to the Restated Revolver, and tax and non-tax distributions of \$100.5 million and \$35.0 million, respectively, to our Members. At May 31, 2022, we had no outstanding borrowings under our Restated Revolver and available additional borrowing capacity of \$343.8 million based on outstanding letters of credit and the borrowing base formula.

### **Inventory**

As of May 31, 2022, we had the following owned homes in our reportable segments (in units):

	Homes Under Construction			Completed Homes			Total Homes
	Unsold	Models <sup>(1)</sup>	Sold	Unsold	Models <sup>(2)</sup>	Sold	
East	728	18	770	10	30	42	1,598
Central	1,316	6	1,366	41	72	95	2,896
Company total	2,044	24	2,136	51	102	137	4,494

(1) Includes 17 models under the Ashton Woods brand name and 7 sales offices under the Starlight Homes brand name.

(2) Includes 67 models under the Ashton Woods brand name and 35 sales offices under the Starlight Homes brand name.

As of May 31, 2021, we had the following owned homes in our reportable segments (in units):

	Homes Under Construction			Completed Homes			Total Homes
	Unsold	Models <sup>(1)</sup>	Sold	Unsold	Models <sup>(2)</sup>	Sold	
East	247	8	945	20	39	39	1,298
Central	820	9	1,367	8	78	62	2,344
Company total	1,067	17	2,312	28	117	101	3,642

(1) Includes 16 models under the Ashton Woods brand name and 1 sales office under the Starlight Homes brand name.

(2) Includes 79 models under the Ashton Woods brand name and 38 sales offices under the Starlight Homes brand name.

As of May 31, 2022 and 2021, we had the following unsold homes in inventory (in units):

	As of May 31,	
	2022	2021
Entry-Level - Starlight Homes	1,362	742
Entry-Level - Ashton Woods	—	47
Move-Up	711	267
Multi-Move-Up	22	39
Consolidated	2,095	1,095

As of May 31, 2022, we controlled the following residential homes and lots (in units):

	Total Homes	Finished Lots	Land Under Development	Land Held for Future Development	Total Owned	Total Under Option	Total Controlled
East	1,598	1,395	1,980	878	5,851	21,868	27,719
Central	2,896	1,444	3,557	5,765	13,662	24,011	37,673
Total Company	4,494	2,839	5,537	6,643	19,513	45,879	65,392
Percentage of total controlled	6.9 %	4.3 %	8.5 %	10.1 %	29.8 %	70.2 %	100.0 %

As of May 31, 2021, we controlled the following residential homes and lots (in units):

	Total Homes	Finished Lots	Land Under Development	Residential Land Held for Future Development	Total Owned	Total Under Option	Total Controlled
East	1,298	1,759	1,460	651	5,168	14,769	19,937
Central	2,344	1,496	2,899	1,840	8,579	22,490	31,069
<b>Total Company</b>	<b>3,642</b>	<b>3,255</b>	<b>4,359</b>	<b>2,491</b>	<b>13,747</b>	<b>37,259</b>	<b>51,006</b>
Percentage of total controlled	7.1 %	6.4 %	8.5 %	4.9 %	27.0 %	73.0 %	100.0 %

In addition to the 19,513 lots we owned, we controlled, through the use of purchase and option agreements, 45,879 lots at May 31, 2022. Purchase and option agreements that did not require consolidation under ASC 810, ASC 606, or ASC 470-40 at May 31, 2022 had an aggregate remaining purchase price of \$2.4 billion. In connection with these agreements, we had cash deposits of \$309.8 million at May 31, 2022. In addition, we had purchase and option agreements recorded under ASC 606 or ASC 470-40 with an aggregate remaining purchase price of \$260.1 million and cash deposits of \$49.5 million (See Note 5 to our consolidated financial statements) as of May 31, 2022.

During the year ended May 31, 2022, we acquired 14,279 lots for a total purchase price of \$619.2 million. We spent \$180.8 million on land development during the year ended May 31, 2022. We spent \$7.8 million during the year ended May 31, 2022 to furnish and/or update furnishings in model homes and sales offices.

### Seasonality and inflation

Our historical quarterly results of operations have tended to be impacted by the seasonal nature of the homebuilding industry. We have historically experienced increases in revenues and cash flow from operations during the fourth quarter of each fiscal year based on the timing of home closings. Any period of high inflation is likely to have an adverse effect on us and the homebuilding industry in general since it may contribute to higher land, financing, labor, and construction costs. We attempt to pass on at least a portion of the cost increases to our homebuyers via increased sales prices; however, we may be limited in our ability to increase our prices. Further, higher mortgage interest rates may accompany inflation and affect the affordability of mortgage financing for homebuyers. If we are unable to increase our sales prices to compensate for any increased costs, or if mortgage interest rates increase and affect the ability or desire of potential homebuyers to obtain financing for their home purchases, our results of operations will likely be adversely affected.

Our operations are also affected by seasonality in cash use. Our cash needs are generally higher from January to April each year as we complete the spring building cycle.

### Critical accounting policies and estimates

#### *General*

The preparation of financial statements in conformity with accounting principles generally accepted in the U.S. ("GAAP") requires us to make decisions based upon estimates, assumptions, and factors we consider relevant to the circumstances. Such decisions include the selection of applicable accounting principles and the use of judgment in their application, the results of which impact reported amounts and disclosures. Some of our critical accounting policies require the use of judgment in their application or require estimates of inherently uncertain matters. Changes in future economic conditions or other business circumstances may affect the outcomes of our estimates and assumptions. Accordingly, actual results could differ materially from those anticipated. In instances where alternative methods of accounting are permissible under GAAP, we have chosen the method that most appropriately reflects the nature of our business, the results of our operations and our financial condition, and have consistently applied those methods over each of the periods presented in the financial statements.

A summary of the significant accounting policies followed in the preparation of the financial statements is contained in our audited Consolidated Financial Statements for the three year period ended May 31, 2022. Other footnotes in those financial statements describe various elements of the financial statements and the assumptions on

which specific amounts were determined. Listed below are those accounting policies and underlying estimates and judgments that we believe are critical and require the use of complex judgment in their application.

#### *Revenue recognition*

With respect to home sale revenues, revenue from a home sale is recognized when we have satisfied the performance obligation in the home sales contract, which is generally at the time of the closing of each sale, when title to and possession of the property are transferred to the buyer. The revenue recognized for each home sale includes the base sales price of the home, as well as any purchased options and upgrades and is reduced for any sales price incentives. Our performance obligation to deliver the agreed-upon home is generally satisfied in less than one year from the original contract date. Home sale contract assets consist of cash from home closings in transit or held in escrow for our benefit, which is typically received within two days of the home closing. Home sale contract assets totaled \$12.8 million and \$1.6 million at May 31, 2022 and 2021, respectively, and are classified as receivables in the consolidated balance sheets. Home sale contract liabilities include customer deposit liabilities related to sold but undelivered homes and wholesale customer deposit liabilities to secure the purchase of homes or land in future communities or future phases of existing communities, which totaled \$65.3 million and \$68.3 million at May 31, 2022 and 2021, respectively. Of the customer deposit liabilities at May 31, 2021, \$55.1 million was recognized as revenue during the year ended May 31, 2022, upon the closing of the related homes. See Note 1(l) to our consolidated financial statements included elsewhere in this annual report for additional discussion of warranties and obligations associated with home sales revenue.

With respect to land sale revenues, we periodically elect to sell parcels of land or lots. These land and lot sales are generally outright sales of specified land parcels with cash consideration due on the closing date, which is generally when performance obligations are satisfied. Land sale contract assets consist of cash from closed land sales in transit or held in escrow for our benefit, which is typically received within two days of closing on the land sale. Land sale contract assets are classified as receivables in the consolidated balance sheets. Land sale contract liabilities consist of customer deposit liabilities related to land parcels under contract for sale. There were no land sale contract assets or liabilities at May 31, 2022 and 2021.

Financial services and other revenues, financial services revenues, which are not within the scope of ASC 606, primarily consist of title premium income earned from the provision of title services for homebuyers and in support of our operations. Other revenues consists of revenue from forfeited customer deposits that is recognized upon cancellation of the home sales contract when the Company is contractually entitled to retain the deposit, other miscellaneous customer revenue that is recognized when the related performance obligation is satisfied, and revenue from fee development, development oversight, and/or construction agreements (collectively, “fee build arrangements”) entered into by the Company with third-party property owners. In accordance with ASC 606, the Company applies the percentage-of-completion method, using the cost-to-cost approach, to recognize revenue on its fee build arrangements as it most accurately measures the progress of our efforts in satisfying our obligations within the fee building agreements. Under this approach, revenue is earned in proportion to total costs incurred divided by total costs expected to be incurred plus the applicable fee. In the course of providing development, development oversight, and/or construction services, the Company routinely subcontracts for services and incurs other direct costs. These costs are typically passed through to the property owners and, in accordance with GAAP, are included in the Company’s financial services and other revenues and cost of sales - financial services and other revenues on the consolidated statements of income.

ASC 606 provides certain practical expedients that limit some accounting treatments and disclosure requirements. Accordingly, we do not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less. In addition, the expected revenue to be recognized in any future year relating to unsatisfied performance obligations with an original expected length greater than one year is not material.

#### *Inventories and cost of sales*

In addition to the costs of direct land acquisition, land development, and home construction, inventory costs include interest, real estate taxes, and indirect overhead costs incurred during development and home construction. The Company uses the specific identification method for the purpose of accumulating home construction costs. Cost of sales for homes closed includes the specific construction costs of each home (both incurred and estimated to be incurred) and all allocated land acquisition, land development, and related costs based upon the total number of

homes expected to be closed in each community. Any changes to the estimated total development costs subsequent to the initial home closings in a community are allocated to the remaining homes in the community.

When a home is closed, the Company generally has not yet recorded all incurred costs necessary to complete the home. Each month, the Company records as a liability and a charge to cost of sales - homes the amount it estimates will ultimately be paid related to completed homes that have been closed as of the end of that month. The Company compares its updated home construction budgets to actual recorded costs to estimate the additional costs remaining to be paid on each closed home. The Company monitors the accuracy of each month's accrual by comparing actual costs paid on closed homes in subsequent months to the amount accrued. Actual costs to be paid on closed homes in the future could differ from the current estimate.

Inventory is stated at cost, unless the carrying amount is determined not to be recoverable, in which case the inventory is written down to fair value in accordance with ASC Subtopic 360-10, *Property, Plant and Equipment* ("ASC 360-10"). The Company reviews its inventory in accordance with ASC 360-10, which requires long-lived assets to be assessed for impairment when facts and circumstances indicate an impairment may exist. On a quarterly basis, we assess our inventory for indicators of impairment at the community level (asset group). To identify indicators of impairment, management evaluates, among other things, the actual gross margins for homes closed and the estimated gross margins for homes sold in backlog (representing the number or value of sales that have not yet closed, net of cancellations) and future home sales for each community. If an indicator of impairment is identified for a community, the Company utilizes an undiscounted future cash flow model to conclude whether the cost of the inventory is recoverable. When the results of the undiscounted future cash flows are less than the carrying value of the community, an asset impairment must be recognized in the consolidated financial statements as a component of cost of sales. The amount of the impairment is calculated by subtracting the estimated fair value of the community, less cost to sell, from the carrying value. ASC 360-10 also requires that assets held for sale be stated at the lower of cost or fair value, as determined based on active negotiations with market participants, less costs to sell. Accordingly, land held for sale is stated at the lower of accumulated cost or fair value less costs to sell.

In order for management to identify indicators of impairment and assess the recoverability, and where necessary, the fair value of its real estate assets, certain assumptions must be made that are highly subjective and susceptible to change. Significant assumptions utilized, among others, include the actual gross margins for homes closed, the estimated gross margins for homes sold in backlog, future home sales prices, cost of sales, including levels of sales incentives, the monthly rate of sales, discount rates, and profit margins, which are critical in determining the fair value of the Company's real estate assets. Given the historical variability in the homebuilding industry cycle, the Company is of the view that the valuation of homebuilding inventories involves uncertainty and is sensitive to changes in economic conditions, such as interest rates, inflation, the availability of credit, and unemployment levels. Changes in these economic conditions could materially affect the projected home sales prices, the level of sales incentives, the costs to develop land and construct homes, and the monthly rate of sales. Because of these potential changes in economic and market conditions, in conjunction with the assumptions and estimates required of management in valuing homebuilding inventory, actual results could differ materially from management's assumptions and may require material inventory impairments to be recorded in the future.

Based on the Company's review of its inventory for impairment during the year ended May 31, 2022, the Company recognized inventory impairment charges totaling \$34.1 thousand, which is included as a component of cost of sales - homes in the consolidated statements of income. The Company recorded inventory impairment charges of \$0.1 million during the year ended May 31, 2021, which consisted of \$115.8 thousand of impairments on homes in inventory, which is included as a component of cost of sales - homes in the consolidated statements of income, and \$31.4 thousand of impairments on land that was held for sale, which is included as a component of cost of sales - land in the consolidated statements of income. The Company recorded inventory impairment charges of \$2.9 million during the year ended May 31, 2020, which consisted of \$2.7 million of impairments on homes in inventory, which is included as a component of cost of sales - homes in the consolidated statements of income, and \$0.2 million of impairments on land that was held for sale, which is included as a component of cost of sales - land in the consolidated statements of income. There have been no material changes in the accounting methodology we use to assess our real estate assets for impairment during the past three fiscal years.

#### *Deposits and pre-acquisition costs*

Deposits and pre-acquisition costs related to purchase agreements are capitalized when paid and classified in the consolidated balance sheets as deposits on real estate under option or contract (for deposits) and other assets (for



pre-acquisition costs) until the related land is acquired. These costs are transferred to inventory at the time the land or lots are acquired. Nonrefundable deposits and pre-acquisition costs are charged to expense when the real estate purchase is no longer considered probable. If the Company intends to terminate a purchase agreement, it records a charge to earnings for the costs associated with the purchase agreement in the period such a decision is made. This expense is included as a component of cost of sales – homes in the consolidated statements of income and totaled \$1.1 million, \$2.0 million, and \$3.1 million for the years ended May 31, 2022, 2021, and 2020, respectively.

#### *Warranty liabilities*

Warranty liabilities are initially established on a per home basis by charging cost of sales and establishing a warranty liability for each home delivered to cover expected costs of materials and labor during the warranty period. The amounts accrued are based on management's estimate of expected warranty-related costs under all unexpired warranty obligation periods. The Company's warranty liability is based upon historical warranty cost experience in each operating division and is adjusted on a quarterly basis to reflect qualitative risks associated with the types of homes built and the geographic areas in which they are built. Our analysis at the operating division level considers market specific factors, such as historical warranty expense, the number of home closings, the prices of homes, product mix, and other data in estimating our warranty liability. In addition, our analysis also factors in the existence of any non-recurring or community-specific warranty matters that might not be contemplated in our historical data and trends that may need to be separately estimated based on management's judgment of the ultimate cost of repair for that specific issue. While we believe that our current warranty reserve is adequate, there can be no assurances that historical data and trends will accurately predict our actual warranty costs or that future developments might not lead to a material change in the accrual.

We have not made any material changes in our methodology or significant assumptions used to establish our warranty liability during the past three fiscal years. The Company's warranty liability is included in other liabilities in the consolidated balance sheets.

#### **Transactions with related parties**

See Note 11 to our consolidated financial statements as of May 31, 2022 for transactions with related parties.

#### **Item 7A. *Quantitative and Qualitative Disclosures About Market Risk***

We maintain a mix of variable-rate and fixed-rate debt and our primary market risk exposure for these financial instruments relates to fluctuations in interest rates, which include changes in the U.S. Treasury, SOFR, and other similar reference rates. For our variable-rate debt, our primary exposure is in interest expense.

The borrowings under the Restated Revolver accrue interest at a variable rate. As of May 31, 2022, we had no outstanding borrowings under the Restated Revolver.

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

The financial statements are presented on pages 52 through 79.



## **Report of Independent Auditors**

The Members of Ashton Woods USA L.L.C.

### **Opinion**

We have audited the consolidated financial statements of Ashton Woods USA L.L.C. (the Company), which comprise the consolidated balance sheets as of May 31, 2022 and 2021, and the related consolidated statements of income, changes in members' equity and cash flows for each of the three years in the period ended May 31, 2022, and the related notes (collectively referred to as the "financial statements").

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

### **Basis for Opinion**

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

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

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

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

### **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free of material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will



always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

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

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

### **Other Information**

Management is responsible for the other information. The other information comprises the information included in the annual report but does not include the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

*Ernst & Young LLP*

July 12, 2022

**ASHTON WOODS USA L.L.C.**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands)

	<u>May 31,</u> <u>2022</u>	<u>May 31,</u> <u>2021</u>
<b>Assets:</b>		
Cash and cash equivalents	\$ 479,972	\$ 277,514
Restricted cash	6,733	7,141
Receivables	80,790	53,474
Inventory	1,463,509	1,116,391
Property and equipment, net	8,586	8,287
Investments in unconsolidated entities	6,990	7,025
Deposits on real estate under option or contract	309,794	192,471
Other assets	197,978	137,882
Total assets	<u>\$ 2,554,352</u>	<u>\$ 1,800,185</u>
<b>Liabilities and members' equity:</b>		
<b>Liabilities:</b>		
Accounts payable	\$ 157,978	\$ 135,783
Other liabilities	319,443	201,225
Customer deposits	65,251	68,332
Debt	984,802	744,036
Total liabilities	<u>1,527,474</u>	<u>1,149,376</u>
<b>Commitments and contingencies (Note 15)</b>		
<b>Members' equity</b>	<u>1,026,878</u>	<u>650,809</u>
Total liabilities and members' equity	<u>\$ 2,554,352</u>	<u>\$ 1,800,185</u>

*See accompanying notes to consolidated financial statements.*

**ASHTON WOODS USA L.L.C.**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(In thousands)

	Year ended May 31,		
	2022	2021	2020
<b>Revenues:</b>			
Home sales	\$ 3,220,644	\$ 2,238,479	\$ 1,767,058
Land sales	8,686	12,862	8,753
Financial services and other revenues	43,699	39,250	40,291
	<u>3,273,029</u>	<u>2,290,591</u>	<u>1,816,102</u>
<b>Cost of sales:</b>			
Homes	2,314,756	1,739,732	1,449,622
Land	7,919	9,798	7,236
Financial services and other revenues	27,594	28,223	28,901
	<u>2,350,269</u>	<u>1,777,753</u>	<u>1,485,759</u>
Gross profit	922,760	512,838	330,343
<b>Other expense (income):</b>			
Selling, general and administrative	370,914	266,348	234,806
Interest expense	566	14,295	16,020
Depreciation and amortization	7,335	8,854	9,639
Loss from early extinguishment of debt	45,669	182	—
Other income, net	(874)	(669)	(183)
	<u>423,610</u>	<u>289,010</u>	<u>260,282</u>
Equity in earnings in unconsolidated entities	12,347	10,353	5,755
Net income	<u>\$ 511,497</u>	<u>\$ 234,181</u>	<u>\$ 75,816</u>

*See accompanying notes to consolidated financial statements.*

**ASHTON WOODS USA L.L.C.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN MEMBERS' EQUITY**  
**(In thousands)**

	Class A interest	Class B interests	Class C interests	Class D interests	Total Members' equity
<b>Members' equity at May 31, 2019</b>	\$ 144,455	\$ 31,781	\$ 210,861	\$ —	\$ 387,097
Net income	29,502	7,251	39,063	—	75,816
Distributions	(4,851)	(1,192)	(6,422)	—	(12,465)
<b>Members' equity at May 31, 2020</b>	<b>\$ 169,106</b>	<b>\$ 37,840</b>	<b>\$ 243,502</b>	<b>\$ —</b>	<b>\$ 450,448</b>
Net income	91,126	22,396	120,659	—	234,181
Distributions	(13,160)	(3,234)	(17,426)	—	(33,820)
<b>Members' equity at May 31, 2021</b>	<b>\$ 247,072</b>	<b>\$ 57,002</b>	<b>\$ 346,735</b>	<b>\$ —</b>	<b>\$ 650,809</b>
Net income	199,038	48,916	263,543	—	511,497
Distributions	(52,736)	(12,961)	(69,828)	—	(135,525)
Equity-based compensation	—	—	—	97	97
<b>Members' equity at May 31, 2022</b>	<b>\$ 393,374</b>	<b>\$ 92,957</b>	<b>\$ 540,450</b>	<b>\$ 97</b>	<b>\$ 1,026,878</b>

*See accompanying notes to consolidated financial statements.*

**ASHTON WOODS USA L.L.C.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Year ended May 31,		
	2022	2021	2020
<b>Cash flows provided by operating activities:</b>			
Net income	\$ 511,497	\$ 234,181	\$ 75,816
Adjustments to reconcile net income to net cash provided by operating activities:			
Equity in earnings of unconsolidated entities	(12,347)	(10,353)	(5,755)
Returns on investments in unconsolidated entities	9,935	7,683	4,503
Long-term and equity-based compensation expense	52,003	18,838	7,114
Loss from early extinguishment of debt	45,669	182	—
Inventory impairments	34	147	2,914
Depreciation and amortization	7,335	8,854	9,639
Changes in operating assets and liabilities:			
Inventory	(307,142)	(231,519)	(3,031)
Receivables	(27,316)	(19,791)	(7,967)
Deposits on real estate under option or contract	(115,316)	(48,482)	(21,660)
Other assets	(49,653)	(18,383)	(15,079)
Accounts payable	17,799	65,336	(17,096)
Other liabilities	65,561	15,027	27,192
Customer deposits	(3,674)	50,752	(3,236)
Net cash provided by operating activities	<u>194,385</u>	<u>72,472</u>	<u>53,354</u>
<b>Cash flows used in investing activities:</b>			
Returns of investments in unconsolidated entities	1,942	1,225	1,860
Investments in unconsolidated entities	—	(980)	—
Additions to property and equipment	(7,742)	(6,554)	(7,616)
Business combination	(42,629)	—	—
Net cash used in investing activities	<u>(48,429)</u>	<u>(6,309)</u>	<u>(5,756)</u>
<b>Cash flows provided by (used in) financing activities:</b>			
Borrowings from revolving credit facility	351,600	—	1,229,200
Repayments of revolving credit facility	(351,600)	—	(1,249,627)
Proceeds from issuance of debt	747,500	—	250,000
Payment of debt issuance costs	(11,991)	(1,336)	(6,522)
Repayment of debt	(505,000)	—	—
Payment of premiums on extinguishment of debt	(38,890)	—	—
Repayment of note payable	—	(4,725)	—
Members' tax distributions	(100,525)	(33,820)	(12,465)
Members' non-tax distributions	(35,000)	—	—
Net cash provided by (used in) financing activities	<u>56,094</u>	<u>(39,881)</u>	<u>210,586</u>
Change in cash, cash equivalents, and restricted cash	202,050	26,282	258,184
<b>Cash, cash equivalents, and restricted cash, beginning of period</b>	<u>284,655</u>	<u>258,373</u>	<u>189</u>
<b>Cash, cash equivalents, and restricted cash, end of period</b>	<u>\$ 486,705</u>	<u>\$ 284,655</u>	<u>\$ 258,373</u>
<b>Supplemental cash flow information:</b>			
Cash paid for interest, net of amounts capitalized	<u>\$ 659</u>	<u>\$ 20,879</u>	<u>\$ 10,835</u>

**ASHTON WOODS USA L.L.C.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)**  
**(In thousands)**

The following table provides a reconciliation of cash, cash equivalents, and restricted cash reported within the consolidated balance sheets to the total of the same such amounts shown above (in thousands):

	<b>As of May 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
Cash and cash equivalents	\$ 479,972	\$ 277,514	\$ 255,314
Restricted cash	6,733	7,141	3,059
<b>Total cash, cash equivalents, and restricted cash</b>	<b>\$ 486,705</b>	<b>\$ 284,655</b>	<b>\$ 258,373</b>

*Supplemental disclosures of cash flows information (in thousands):*

	<b>Year ended May 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
Right-of-use assets obtained in exchange for new operating lease liabilities	\$ 6,197	\$ 3,677	\$ 99

*See accompanying notes to consolidated financial statements.*



**ASHTON WOODS USA L.L.C.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**May 31, 2022**

**Note 1 — Basis of Presentation and Significant Accounting Policies**

***(a) Operations***

Ashton Woods USA L.L.C. (the “Company” or “Ashton Woods”), is a limited liability company that, through its subsidiaries, designs, builds, and markets detached and attached single-family homes under the Ashton Woods Homes and Starlight Homes brand names. The Company offers entry-level, move-up, and multi-move-up homes under the Ashton Woods Homes brand name and offers entry-level homes under the Starlight Homes brand name. Included under the Starlight Homes brand, the Company offers construction and development services under fee arrangements specifically tailored to the single-family rental industry. In addition, the Company sells completed homes under the Starlight Homes brand, which we typically sell under bulk sales agreements, to real estate investors who purchase the homes for use as rental properties. We refer to such sales as our wholesale home sales. As of May 31, 2022, the Company had Ashton Woods and Starlight Homes operations in the following markets:

**East:** Atlanta, Coastal Carolinas, Nashville, Orlando, Raleigh, and Southwest Florida  
**Central:** Austin, Dallas, Houston, Phoenix, and San Antonio

Through two wholly-owned title agency subsidiaries, the Company also performs title services in support of its operations and offers title services to its homebuyers in all of its operating divisions except Phoenix and Nashville.

In addition, the Company offers or intends to offer residential mortgage services to its homebuyers and the public at large in all of its operating divisions through two unconsolidated mortgage joint ventures. The Company has an ownership interest of 49% in each of these mortgage joint ventures.

***(b) Basis of presentation***

The accompanying consolidated financial statements have been prepared in accordance with GAAP and include the accounts of the Company and its wholly-owned, majority-owned, and controlled subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

***(c) Cash, cash equivalents, and restricted cash***

The Company considers all highly liquid investments with an initial maturity of three months or less when purchased to be cash equivalents. Restricted cash, at times, consists of amounts held in restricted accounts as collateral for letters of credit issued and outstanding, as permitted by the Company's Sixth Amended and Restated Credit Agreement (as amended, the "Restated Revolver"), and other investments.

***(d) Inventory***

In addition to the costs of direct land acquisition, land development and home construction, inventory costs include interest, real estate taxes, and indirect overhead costs incurred during development and home construction. The Company uses the specific identification method for the purpose of accumulating home construction costs. Cost of sales for homes closed includes the specific construction costs of each home (both incurred and estimated to be incurred) and all allocated land acquisition, land development, and related costs based upon the total number of homes expected to be closed in each community. Any changes to the estimated total development costs subsequent to the initial home closings in a community are allocated to the remaining homes in the community.

When a home is closed, the Company generally has not yet recorded all incurred costs necessary to complete the home. Each month, the Company records as a liability and a charge to cost of sales - homes the amount it estimates will ultimately be paid related to completed homes that have been closed as of the end of that month. The Company compares its updated home construction budgets to actual recorded costs to estimate the additional costs remaining to be paid on each closed home. The Company monitors the accuracy of each month's accrual by comparing actual

costs paid on closed homes in subsequent months to the amount accrued. Actual costs to be paid on closed homes in the future could differ from the current estimate.

Inventory is stated at cost, unless the carrying amount is determined not to be recoverable, in which case the inventory is written down to fair value in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 360-10, *Property, Plant and Equipment* (“ASC 360-10”). The Company reviews its inventory in accordance with ASC 360-10, which requires long-lived assets to be assessed for impairment when facts and circumstances indicate an impairment may exist. The Company utilizes an undiscounted future cash flow model in this assessment. When the results of the undiscounted future cash flows are less than the carrying value of the community (asset group), an asset impairment must be recognized in the consolidated financial statements as a component of cost of sales. The amount of the impairment is calculated by subtracting the estimated fair value of the community, less cost to sell, from the carrying value. ASC 360-10 also requires that assets held for sale be stated at the lower of cost or fair value, as determined based on active negotiations with market participants, less costs to sell. Accordingly, land held for sale is stated at the lower of accumulated cost or fair value less cost to sell.

Based on the Company's review of its inventory for impairment during the year ended May 31, 2022, the Company recognized inventory impairment charges totaling \$34.1 thousand, which is included as a component of cost of sales – homes in the consolidated statements of income. The Company recorded inventory impairment charges of \$0.1 million during the year ended May 31, 2021, which consisted of \$115.8 thousand of impairments on homes in inventory, which is included as a component of cost of sales – homes in the consolidated statements of income, and \$31.4 thousand of impairments on land that was held for sale, which is included as a component of cost of sales – land in the consolidated statements of income. The Company recorded inventory impairment charges of \$2.9 million during the year ended May 31, 2020, which consisted of \$2.7 million of impairments on homes in inventory, which is included as a component of cost of sales – homes in the consolidated statements of income, and \$0.2 million of impairments on land that was held for sale, which is included as a component of cost of sales – land in the consolidated statements of income.

In order for management to assess the fair value of its real estate assets, certain assumptions must be made that are highly subjective and susceptible to change. Management evaluates, among other things, the actual gross margins for homes closed and the estimated gross margins for homes sold in backlog (representing the number or value of sales that have not yet closed, net of cancellations). This evaluation also includes assumptions with respect to future home sales prices, levels of sales incentives, construction and development costs, the monthly rate of sales, discount rates, profit margins, and potential buyers, which are critical in determining the fair value of the Company's real estate assets. Given the historical variability in the homebuilding industry cycle, the Company is of the view that the valuation of homebuilding inventories is sensitive to changes in economic conditions, such as interest rates, inflation, the availability of credit, and unemployment levels. Changes in these economic conditions could materially affect the projected home sales prices, the level of sales incentives, the costs to develop land and construct homes, and the monthly rate of sales. Because of these potential changes in economic and market conditions, in conjunction with the assumptions and estimates required of management in valuing homebuilding inventory, actual results could differ materially from management's assumptions and may require material inventory impairments to be recorded in the future.

**(e) Receivables**

Receivables at May 31, 2022 and 2021 consisted of the following (in thousands):

	<b>May 31, 2022</b>	<b>May 31, 2021</b>
Closing funds due	\$ 12,845	\$ 1,611
Land development receivables	43,933	34,163
MUD receivables <sup>(1)</sup>	13,075	10,626
Other receivables <sup>(2)</sup>	10,937	7,074
	<u>\$ 80,790</u>	<u>\$ 53,474</u>

(1) Includes certain land development costs to be reimbursed by seven and six Municipal Utility Districts ("MUD") in Houston, Texas at May 31, 2022 and 2021, respectively.

(2) Includes amounts due from utility companies, rebates due from trade partners, drawn amounts due from salespersons, and a loan to one of the Company's executive officers relating to the officer's income tax obligations arising from the Class D equity award (see Note 11 for additional discussion of this loan receivable).

**(f) Real estate not owned**

Real estate not owned reflects lots under option purchase agreements recorded pursuant to ASC 606, *Revenue From Contracts With Customers* ("ASC 606"), ASC Subtopic 470-40, *Product Financing Arrangements* ("ASC 470-40"), or ASC 810, *Consolidation* ("ASC 810") (see Note 5).

**(g) Investments in unconsolidated entities**

The Company participates in one land development joint venture in which it has less than a controlling interest. The Company accounts for its interest in this entity under the equity method. The Company's share of profits from lots it purchases from this joint venture is deferred and treated as a reduction of the cost basis of land purchased from the entity.

The Company offers or intends to offer residential mortgage services to its homebuyers and the public at large in all of its operating divisions through two unconsolidated mortgage joint ventures. The Company has an ownership interest of 49% in each of these mortgage joint ventures. The Company's investments in these mortgage joint ventures are accounted for under the equity method.

Investments in unconsolidated entities are evaluated for other-than-temporary impairment during each reporting period pursuant to ASC Subtopic 323-10, *Investments—Equity Method and Joint Ventures*. A series of operating losses or other factors may indicate an other-than-temporary decrease in the value of the Company's investment in the unconsolidated entity. The amount of impairment recognized is the excess of the investment's carrying value over its estimated fair value. The Company did not recognize any other-than-temporary impairments during the years ended May 31, 2022, 2021, and 2020, related to its investments in unconsolidated entities.

**(h) Deposits and pre-acquisition costs**

Deposits and pre-acquisition costs related to purchase agreements are capitalized when paid and classified in the consolidated balance sheets as deposits on real estate under option or contract (for deposits) and other assets (for pre-acquisition costs) until the related land is acquired. These costs are transferred to inventory at the time the land or lots are acquired. Nonrefundable deposits and pre-acquisition costs are charged to expense when the real estate purchase is no longer considered probable. If the Company intends to terminate a purchase agreement, it records a charge to earnings for the costs associated with the purchase agreement in the period such a decision is made. This expense is included as a component of cost of sales – homes in the consolidated statements of income and totaled \$1.1 million, \$2.0 million, and \$3.1 million for the years ended May 31, 2022, 2021, and 2020, respectively.

**(i) Property and equipment**

Property and equipment are recorded at cost. Depreciation and amortization are generally recorded using the straight-line method over the estimated useful lives of the assets, which range from two to five years. Depreciable

lives for leasehold improvements reflect the lesser of the economic life of the asset or the term of the lease. Repairs and maintenance costs are expensed as incurred. The Company's property and equipment at May 31, 2022 and 2021 consisted of the following (in thousands):

	<b>May 31, 2022</b>	<b>May 31, 2021</b>
Office furniture and equipment	\$ 3,096	\$ 3,134
Sales offices, design studios, and model furnishings	20,243	25,794
Leasehold improvements	3,693	2,576
	27,032	31,504
Accumulated depreciation and amortization <sup>(1)</sup>	(18,446)	(23,217)
	<u>\$ 8,586</u>	<u>\$ 8,287</u>

(1) Net of retirements and disposals.

Depreciation and amortization expense was \$7.3 million, \$8.9 million, and \$9.6 million for the years ended May 31, 2022, 2021, and 2020, respectively.

**(j) Revenue recognition**

With respect to home sales revenues, revenue from a home sale is recognized when we have satisfied the performance obligation in the home sales contract, which is generally at the time of the closing of each sale, when title to and possession of the property are transferred to the buyer. The revenue recognized for each home sale includes the base sales price of the home, as well as any purchased options and upgrades and is reduced for any sales price incentives. Our performance obligation to deliver the agreed-upon home is generally satisfied in less than one year from the original contract date. Home sale contract assets consist of cash from home closings in transit or held in escrow for our benefit, which is typically received within two days of the home closing. Home sale contract assets totaled \$12.8 million and \$1.6 million at May 31, 2022 and 2021, respectively, and are classified as receivables in the consolidated balance sheets. Home sale contract liabilities include customer deposit liabilities related to sold but undelivered homes and wholesale customer deposit liabilities to secure the purchase of homes or land in future communities or future phases of existing communities, which totaled \$65.3 million and \$68.3 million at May 31, 2022 and 2021, respectively. Of the customer deposit liabilities at May 31, 2021, \$55.1 million was recognized as revenue during the year ended May 31, 2022, upon the closing of the related homes. Also included in home sales revenues are our wholesale home sales within our Starlight Homes brand. Wholesale home sales primarily consist of completed homes sold under bulk sales agreements to real estate investors who purchase the homes for use as rental properties.

See Note 1(l) for additional discussion of warranties and obligations associated with home sales revenues.

With respect to land sales revenues, we periodically elect to sell parcels of land or lots. These land and lot sales are generally outright sales of specified land parcels with cash consideration due on the closing date, which is generally when performance obligations are satisfied. Land sale contract assets consist of cash from closed land sales in transit or held in escrow for our benefit, which is typically received within two days of closing on the land sale. Land sale contract assets are classified as receivables in the consolidated balance sheets. Land sale contract liabilities consist of customer deposit liabilities related to land parcels under contract for sale. There were no land sale contract assets or liabilities at May 31, 2022 and 2021.

With respect to financial services and other revenues, financial services revenues, which are not within the scope of ASC 606, primarily consist of title premium income earned from the provision of title services for homebuyers. Other revenues consists of revenue from forfeited customer deposits that is recognized upon cancellation of the home sales contract when the Company is contractually entitled to retain the deposit and other miscellaneous customer revenue that is recognized when the related performance obligation is satisfied. Other revenues also include revenues from fee development, development oversight, and/or construction agreements entered into by the Company with third-party property owners. For these types of contracts, the Company recognizes revenue based on the actual total costs it has incurred plus the applicable fee. In accordance with ASC 606, the Company applies the percentage-of-completion method, using the cost-to-cost approach, as it most accurately measures the progress of our efforts in satisfying our obligations within the fee building agreements. Under this approach, revenue is earned in proportion to total costs incurred divided by total costs expected to be incurred. In the course of providing

development, development oversight, and/or construction services, the Company routinely subcontracts for services and incurs other direct costs. These costs are typically passed through to the property owners and, in accordance with accounting principles generally accepted in the United States (“GAAP”), are included in the Company’s financial services and other revenues and cost of sales - financial services and other revenues in the consolidated statements of income.

ASC 606 provides certain practical expedients that limit some accounting treatments and disclosure requirements. Accordingly, we do not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less. In addition, the expected revenue to be recognized in any future year relating to unsatisfied performance obligations with an original expected length greater than one year is not material.

**(k) Prepaid expenses**

Included in other assets are prepaid expenses of \$11.0 million and \$14.0 million as of May 31, 2022 and 2021, respectively, which is predominantly comprised of prepaid insurance.

**(l) Warranty costs**

The Company provides its homebuyers with limited warranties that generally provide for specified coverages, including, for example, structural coverage, coverage for plumbing, electrical and heating, ventilation and air conditioning systems, and coverage for workmanship and materials. Warranty liabilities are initially established on a per home basis by charging cost of sales - homes and establishing a warranty liability for each home delivered to cover expected costs of materials and labor during the warranty period. The amounts accrued are based on management's estimate of expected warranty-related costs under all unexpired warranty obligation periods. The Company's warranty liability is based upon historical warranty cost experience in each operating division and is adjusted as appropriate to reflect qualitative risks associated with the types of homes built and the geographic areas in which they are built. The Company's warranty liability is included in other liabilities in the consolidated balance sheets.

Presented below are summaries of the activity in the Company’s warranty liability account for the years ended May 31, 2022, 2021, and 2020 (in thousands):

	<b>Year ended May 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
Warranty liability, beginning of period	\$ 10,040	\$ 10,122	\$ 11,933
Costs accrued during period	21,026	13,033	11,275
Costs incurred during period	(16,066)	(13,115)	(13,086)
Warranty liability, end of period	<u>\$ 15,000</u>	<u>\$ 10,040</u>	<u>\$ 10,122</u>

**(m) Advertising costs**

The Company expenses advertising costs as they are incurred. Advertising expense, which is included in selling, general and administrative expense in the consolidated statements of income, was approximately \$2.3 million, \$4.7 million, and \$12.5 million for the years ended May 31, 2022, 2021, and 2020, respectively.

**(n) Long-term incentive plan**

The Company offers a long-term incentive compensation program designed to align the interests of the Company and its executives by enabling key employees to participate in the Company’s future growth through the issuance of performance shares, which are the equivalent of phantom equity awards. The Company's performance shares are accounted for pursuant to ASC Subtopic 710-10-25-9 to 25-11, *Deferred Compensation Arrangements*, as the value is not based on the shares of a comparable set of public builders or other equity instruments, but is based on the book value of equity of the Company. The Company measures the value of the performance shares on a quarterly basis using the intrinsic value method. Additional compensation expense may be recognized subsequent to completion of the vesting period for appreciation-only performance shares. See Note 12 for additional discussion regarding the Company’s long-term incentive plan.

**(o) Income taxes**

The Company operates as a limited liability company and is treated as a partnership for income tax purposes. Accordingly, the Company incurs no liability for federal or state income taxes, since the taxable income or loss is passed through to its Members, but incurs liabilities for certain state taxes payable directly by the Company. The Company calculates its Members' potential tax liability related to their share of the Company's taxable income and may make distributions to such Members to allow them to satisfy their tax liability, subject to limitations contained in the Company's Restated Revolver and in the indentures governing its 6.625% Senior Notes due 2028 (the "2028 Notes"), its 4.625% Senior Notes due 2029 (the "2029 Notes"), and its 4.625% Senior Notes due 2030 (the "2030 Notes"). Any tax distributions made to the Members are treated as a reduction of equity. The Company made tax distributions to its Members of \$100.5 million, \$33.8 million, and \$12.5 million during the years ended May 31, 2022, 2021, and 2020, respectively.

**(p) Use of estimates**

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

**(q) Business Combinations**

The Company accounts for business combinations in accordance with the acquisition method of accounting as required under ASC 805, *Business Combinations* ("ASC 805"), by allocating the purchase price of the business to the assets acquired and liabilities assumed based on their estimated fair values as of the acquisition date. Any excess or deficit in the purchase price over the estimated fair value of the identifiable net assets acquired is recorded as either goodwill or a gain on bargain purchase, respectively. Significant judgment is required in estimating the fair value of assets acquired, particularly inventory. The estimated fair value of the acquired inventory was determined using a widely accepted valuation method (income approach) and based on the Company's estimate of key assumptions such as future home sales prices, margins, and development/construction costs.

On December 1, 2021, the Company acquired substantially all of the assets and assumed certain related liabilities of Capitol City Homes, LLC ("Capitol City Homes"), the fifth largest private homebuilder in Raleigh, North Carolina, for a purchase price of approximately \$42.6 million, which was funded in cash. The acquisition expands the land positions and number of communities of both of our brands in the Raleigh market with the acquisition of over 1,500 total lots and homes owned and controlled across 40 communities. The acquired assets and assumed liabilities were recorded at their estimated fair values as of the acquisition date and consisted primarily of \$36.8 million of inventory, \$10.7 million in lot and development contracts as well as \$4.3 million of accounts payable and accrued expenses and \$0.6 million of customer deposits. Of the \$10.7 million in lot and development contracts acquired, \$1.3 million was recorded in deposits on real estate under option or contract and \$9.4 million was recorded in other assets in the consolidated balance sheets as of the acquisition date. See Note 5 for additional information.

The purchase price accounting discussed above is preliminary and is based on estimates and assumptions that are subject to change within the measurement period, which is generally up to one year from the acquisition date pursuant to ASC 805.

The Company incurred and expensed approximately \$0.6 million of acquisition related costs for legal and due diligence services during the year ended May 31, 2022. These costs are included in selling, general and administrative expenses in the consolidated statements of income.

**(r) Segments**

ASC 280, *Segment Reporting* ("ASC 280"), provides standards for the way in which companies report information about operating segments. In accordance with ASC 280, the Company believes that each of its homebuilding operating markets, as summarized below, is an operating segment. In accordance with the aggregation criteria defined in ASC 280, the Company has grouped its homebuilding operations into two reportable segments as follows:

- 1) East: Atlanta, Coastal Carolinas, Nashville, Orlando, Raleigh, and Southwest Florida
- 2) Central: Austin, Dallas, Houston, Phoenix, and San Antonio

The Company has determined that the homebuilding operating markets within its respective reportable segments have similar economic characteristics and product types, and are similar in terms of geography. The Company's homebuilding operating markets also share all other relevant aggregation characteristics prescribed in ASC 280, such as similar product types, production processes and methods of distribution.

See Note 16 for further discussion of the Company's reportable segments.

**(s) Risks and uncertainties**

During the second half of fiscal 2022, the U.S. economy experienced significant inflationary pressure with prices of gas, food, and other household goods rising at the fastest rate in over 40 years. To combat the historic levels of inflation, the Federal Reserve began raising the federal funds rate which, in turn, has led to a significant increase in mortgage interest rates. The increase in mortgage interest rates, coupled with historic inflation in the broader economy and the rising cost of housing, has resulted in pressure on the affordability of single-family homes. In addition, COVID-19 has had a material impact on the global and U.S. economies and has impacted our business operations. The most significant impacts of COVID-19 to the homebuilding industry and our business have been labor shortages and supply chain disruptions. The combination of these factors has led to increased costs and elongated production cycles. The current environment makes it challenging to predict the impact that inflationary pressures, rising interest rates, and the lingering impacts of COVID-19 on supply chain disruptions and labor shortages may have on the future performance of our business. As a result, there remains significant uncertainty regarding how recent macroeconomic shifts and the lingering effects of COVID-19 will impact the U.S. and global economies going forward, including the level of unemployment, availability of debt, capital, the health of the mortgage markets, consumer confidence, and demand for our homes, and in turn, the impact it will have on our results.

**(t) Subsequent events**

The Company has evaluated subsequent events through July 12, 2022. This date represents the date on which the consolidated financial statements were available to be issued.

On June 15, 2022, the Board of Directors of the Company (the "Board") approved a non-tax distribution of \$60.0 million to its Members. The non-tax distribution was distributed to the Company's Members on June 21, 2022.

On July 12, 2022, the Board of Directors of the Company (the "Board") approved tax distributions of \$55.2 million to its Members based on estimates of its Members' tax liability related to their share of the Company's taxable income.

**Note 2 — Debt Transactions**

On August 2, 2021, Ashton Woods and Ashton Woods Finance Co., a wholly owned subsidiary of Ashton Woods ("Finance Co.", and together with Ashton Woods, the "Companies"), issued and sold, at an issue price of 100.00%, \$350 million aggregate principal amount of their 2029 Notes through a private placement to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A and in offshore transactions pursuant to Regulation S, promulgated under the Securities Act of 1933, as amended (the "Securities Act"). Interest on the 2029 Notes is payable semi-annually in cash in arrears on February 1 and August 1 of each year, commencing February 1, 2022. The Notes will mature on August 1, 2029. The 2029 Notes are guaranteed by substantially all of the Company's subsidiaries and have terms substantially similar to the Companies' 2028 Notes. The Company incurred deferred financing costs during the year ended May 31, 2022, of \$5.1 million in connection with the issuance of the 2029 Notes.

On August 2, 2021, the Companies redeemed all of the previously outstanding 6.750% Senior Notes due 2025 (the "2025 Notes") at a redemption price of 103.375% of the principal amount thereof plus accrued and unpaid interest thereon to, but excluding, the redemption date. During the year ended May 31, 2022, the Companies recognized a loss of \$10.8 million from the early extinguishment of the 2025 Notes.

On September 23, 2021, the Companies issued and sold, at an issue price of 100.00%, \$300 million aggregate principal amount of their 2030 Notes through a private placement to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A and in offshore transactions pursuant to Regulation S, promulgated under the Securities Act. Interest on the 2030 Notes is payable semi-annually in cash in arrears on April 1 and October 1 of each year, commencing April 1, 2022. The Notes will mature on April 1, 2030. The 2030 Notes are guaranteed by substantially all of the Company's subsidiaries and have terms substantially similar to the Companies' 2028 Notes and 2029 Notes. The Company incurred deferred financing costs during the year ended May 31, 2022, of \$3.7 million in connection with the issuance of this tranche of the 2030 Notes.

On October 4, 2021, the Companies redeemed all of the previously outstanding 9.875% Senior Notes due 2027 (the "2027 Notes") at a redemption price of 111.94% of the principal amount thereof, comprised of the prepayment and make-whole premiums, plus accrued and unpaid interest thereon to, but excluding, the redemption date. During the year ended May 31, 2022, the Companies recognized a loss of \$34.9 million from the early extinguishment of the 2027 Notes.

On January 27, 2022, the Companies issued and sold, at an issue price of 97.500% plus accrued and unpaid interest from September 23, 2021, an additional \$100 million aggregate principal amount of their 2030 Notes through a private placement to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A and in offshore transactions pursuant to Regulation S, promulgated under the Securities Act. The Notes represent a further issuance of the Companies' 2030 Notes issued on September 23, 2021. The Company incurred deferred financing costs during the year ended May 31, 2022, of \$1.7 million in connection with the additional issuance of the 2030 Notes.

On January 28, 2022, the Company entered into the First Amendment to the Restated Revolver, which amends the Restated Revolver, dated as of February 2, 2021. The First Amendment to the Restated Revolver, among other changes, (i) increased the commitments thereunder from \$250.0 million to \$350.0 million, (ii) extended the maturity from February 2, 2025 to January 28, 2026 and (iii) replaced the London Interbank Offered Rate ("LIBOR") as the benchmark interest rate with the Secured Overnight Financing Rate ("SOFR"). The Restated Revolver provides for, among other things, up to \$50.0 million available for the issuance of letters of credit and up to \$20.0 million available for swingline loans.

See Note 7 for further discussion on the Company's debt.

### **Note 3 — Pending and Recently Adopted Accounting Pronouncements**

In June 2016, the FASB issued Accounting Standards Update ("ASU") No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"), which changes the impairment model for most financial assets and certain other instruments from an "incurred loss" approach to a new "expected credit loss" methodology. The effective date of ASU 2016-13 was amended by the release of ASU 2019-10 in November 2019 and was extended for the Company to fiscal years beginning after December 15, 2022, and for annual and interim periods thereafter. The standard requires an entity to recognize the effects of adopting the new standard as a cumulative effect adjustment to opening retained earnings in the period of adoption. The Company is currently evaluating the impact that adoption of ASU 2016-13 will have on its consolidated financial statements and related disclosures.

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform* ("ASU 2020-04"), which provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by the discontinuation of LIBOR. ASU 2020-04 was effective beginning March 12, 2020 and can be applied prospectively through December 31, 2022. The Company has not elected to apply any of the expedients or exceptions of ASU 2020-04 to date and is currently evaluating the impact the guidance under ASU 2020-04 may have on its consolidated financial statements and related disclosures in future periods.



#### Note 4 — Inventory

Inventory consisted of the following at May 31, 2022 and 2021 (in thousands):

	May 31, 2022	May 31, 2021
Homes under construction and finished homes	\$ 901,231	\$ 683,615
Finished lots	270,073	269,547
Land under development	150,365	114,931
Land held for future development	137,476	44,597
Land held for sale	4,364	3,701
	<u>\$ 1,463,509</u>	<u>\$ 1,116,391</u>

The Company capitalizes all interest incurred to the extent its qualifying assets meet or exceed its debt obligations. If qualifying assets are less than the Company's debt obligations, there are limits on the amount of interest that can be capitalized, and the remainder of interest incurred must be directly expensed. The Company directly expensed interest of \$0.6 million, \$14.3 million, and \$16.0 million for the years ended May 31, 2022, 2021, and 2020, respectively, in the consolidated statements of income.

The following table summarizes interest costs incurred, charged to cost of sales and directly expensed during the years ended May 31, 2022, 2021, and 2020 (in thousands):

	Year ended May 31,		
	2022	2021	2020
Capitalized interest, beginning of period	\$ 24,610	\$ 21,646	\$ 19,040
Interest incurred	57,365	63,243	57,753
Interest amortized to cost of sales	(56,409)	(45,984)	(39,127)
Interest expensed	(566)	(14,295)	(16,020)
Capitalized interest, end of period	<u>\$ 25,000</u>	<u>\$ 24,610</u>	<u>\$ 21,646</u>

#### Note 5 — Other Assets

Other assets at May 31, 2022 and 2021 consisted of the following (in thousands):

	May 31, 2022	May 31, 2021
Real estate not owned	\$ 146,086	\$ 96,089
Right-of-use assets <sup>(1)</sup>	14,377	13,114
Prepaid expenses	10,956	13,993
Lot option and development contracts intangible	8,093	—
Architecture plans	3,675	3,437
Deferred financing costs	3,502	3,210
Pre-acquisition costs	9,478	5,905
Other deposits	1,811	2,134
	<u>\$ 197,978</u>	<u>\$ 137,882</u>

(1) See Note 15, *Leases*, for additional information.

In the ordinary course of business, the Company enters into lot purchase agreements in order to procure lots for the construction of homes in the future. Pursuant to these lot purchase agreements, the Company generally will provide a deposit to the seller as consideration for the right, but not the obligation, to purchase lots at different times in the future, usually at predetermined prices. Depending on the circumstances of such lot purchase agreements, "Real estate not owned" may be recorded based on the application of different accounting provisions in accordance

with ASC 810 or ASC 470-40. In applying these provisions, the Company regularly evaluates its land and lot purchase agreements.

Pursuant to ASC 810, when the Company enters into a purchase agreement to acquire land or lots from an entity and pays a non-refundable deposit, the Company has concluded that a variable interest entity (“VIE”), for which consolidation may be required, is created because the Company is deemed to have provided subordinated financial support that will absorb some or all of an entity’s expected losses if they occur. For each VIE, the Company assesses whether it is the primary beneficiary of the VIE and thus must consolidate the entity by first determining if it has the ability to control the activities of the VIE that most significantly impact its economic performance. Such activities include, but are not limited to, the ability to determine the budget and scope of land development work, if any; the ability to control financing decisions for the VIE; the ability to acquire additional land into the VIE or dispose of land in the VIE not under contract; and the ability to change or amend the existing purchase contract with the VIE. If the Company is determined not to control such activities, it is not considered the primary beneficiary of the VIE. If it does have the ability to control such activities, it will continue the analysis by determining if it is expected to absorb a potentially significant amount of the VIE’s losses or, if no party absorbs the majority of such losses, if it will potentially benefit from a significant amount of the VIE’s expected gain. If the Company determines that it is the primary beneficiary of the VIE, it will consolidate the VIE in its financial statements and reflect such assets as “Real estate not owned” within other assets and the related liabilities as “Liabilities for real estate not owned” within other liabilities. At May 31, 2022 and 2021, no purchase contracts or investments in unconsolidated entities were determined to require consolidation under ASC 810.

Pursuant to ASC 470-40, if a buying entity participates in an arrangement in which it is economically compelled to purchase land, then the entity is required to consolidate such an arrangement. From time to time, the Company enters into arrangements in which it identifies lots that it desires to purchase, finds an investor to purchase the lots and then enters into option purchase agreements to acquire the lots in staged takedowns. In consideration for such options, the Company generally makes nonrefundable deposits. While the Company is generally not obligated to purchase the lots that are the subject of such agreements, it would forfeit the remaining deposits if the lots are not purchased. Although the Company is not obligated to purchase the lots under option unless it enters into a contract with specific performance obligations, if, at the reporting date, the Company believes that due to the terms of the purchase contracts it is compelled to purchase the lots under option, the Company will record “Real estate not owned” within other assets and the related liabilities as “Liabilities for real estate not owned” within other liabilities, in connection with such option purchase agreements. The Company has no lot purchase agreements that are accounted for pursuant to ASC 470-40 as of May 31, 2022. At May 31, 2021, the Company recorded real estate not owned of \$16.0 million related to one lot purchase agreement accounted for pursuant to ASC 470-40.

Also, based on the provisions of ASC Subtopic 606-10, *Revenue From Contracts With Customers*, a seller may not recognize as a sale property it has sold if the seller has an obligation or a right to repurchase lots and if the repurchase agreement is considered to be a financing arrangement. ASC 606 considers a repurchase option contract to be a financing arrangement, in accordance with ASC 606-10-55-70, if the entity will repurchase the lots for an amount that is equal to or greater than the original selling price of the asset. Therefore, if the Company enters into lot purchase option agreements for land it has sold and determines that the repurchase agreement is considered to be a financing arrangement, the Company records the lots subject to such sale as “Real estate not owned” within other assets, and the related liabilities under the option agreement as “Liabilities for real estate not owned” within other liabilities. At May 31, 2022 and 2021, the Company recorded real estate not owned of \$146.1 million and \$80.1 million, respectively, for the sale of lots because its repurchase agreements related to this real estate were considered to be financing arrangements. While these option agreements contain no specific performance obligations, should the Company choose not to purchase the land, it will forfeit the deposited amount.

The lot option and development contracts intangible asset is comprised of the fair value adjustment recorded in accordance with the purchase price accounting for the Company's acquisition of Capitol City Homes. The fair value adjustment recorded as of the acquisition date represented the difference between the contractual purchase price of lots under option and the estimated fair value of such lots. Significant assumptions included in the Company's estimate of the fair value of lots under lot and development contracts acquired included market comparisons, gross margin comparisons, future development costs, and the timing of the completion of development activities. The lot and development contract fair value intangible is amortized to inventory as lots are purchased in accordance with the acquired contracts. During the year ended May 31, 2022, \$1.3 million of the lot and development contract fair value intangible was allocated to inventory upon the purchase of lots in accordance with the terms of the acquired contracts.

Architecture plans are comprised of the costs incurred related to architecture plans, associated engineering costs, and interactive floor plans for house plans, and are amortized through cost of sales on a per home basis.

Deferred financing costs included in other assets are comprised of costs incurred in connection with obtaining financing under the Restated Revolver. The Company incurred deferred financing costs of \$1.2 million and \$1.3 million during the years ended May 31, 2022, and 2021, respectively, as a result of amendments to the Company's revolving credit facility. See Note 2 for additional information on the current year amendment to the Restated Revolver.

See Note 1(h) for additional information on pre-acquisition costs.

#### **Note 6 — Investments in Unconsolidated Entities**

The Company enters into land joint ventures from time to time as a means of accessing larger parcels of land and lot positions, managing its risk profile and leveraging its capital base. As of May 31, 2022, the Company had an equity investment in one land joint venture with an affiliate of certain of the beneficial owners of the Company's equity or their affiliates (individually and collectively, the "Investors"). The Company has a 49% limited partner non-controlling interest in this joint venture and has accounted for it under the equity method. The Company has entered into a lot purchase agreement with the joint venture that permits but does not require the Company to purchase finished lots owned by the land joint venture. Lot prices are generally negotiated prices that approximate fair value when the purchase contract is signed. The Company's share of the unconsolidated entity's earnings on the sale of lots to the Company is deferred until homes related to the lots purchased by the Company are delivered and title passes to a homebuyer. The partners generally share profits and losses in accordance with their ownership interests. As of May 31, 2022 and 2021, the Company had recorded \$0.3 million and \$0.6 million, respectively, for its investment in this unconsolidated entity in the consolidated balance sheets. The Company has entered into a services agreement with the joint venture to provide accounting and administrative services to the joint venture. The Company receives a monthly fee of \$6.0 thousand for these services that is included in other income, net in the consolidated statements of income. As of May 31, 2022, there were no lots remaining to be purchased under the lot purchase agreement. As of May 31, 2022, the joint venture had no debt outstanding.

The Company offers or intends to offer residential mortgage services to its homebuyers and the public at large in all of its operating divisions through two unconsolidated mortgage joint ventures. The Company has an ownership interest of 49% in each of these mortgage joint ventures. The Company's investments in these mortgage joint ventures are accounted for under the equity method. The debt of the mortgage joint ventures is non-recourse to the Company.

Summarized unaudited financial information related to unconsolidated entities that are accounted for using the equity method as of May 31, 2022 and 2021, and for the years ended May 31, 2022, 2021, and 2020 was as follows (in thousands):

	<u>May 31, 2022</u>	<u>May 31, 2021</u>
Assets:		
Cash	\$ 7,930	\$ 10,829
Mortgage notes receivable	153,311	93,865
Real estate	599	1,764
Other	1,367	365
Total assets	<u>\$ 163,207</u>	<u>\$ 106,823</u>
Liabilities and equity:		
Liabilities:		
Accounts payable and other accruals	\$ 4,851	\$ 4,960
Notes payable <sup>(1)</sup>	144,222	87,646
Total liabilities	149,073	92,606
Equity	14,134	14,217
Total liabilities and equity	<u>\$ 163,207</u>	<u>\$ 106,823</u>

(1) The notes payable balance at May 31, 2022 is comprised of outstanding balances on three warehouse lines. The notes payable balance at May 31, 2021 is comprised of outstanding balances on two warehouse lines. The warehouse lines are non-recourse to the Company.

	<u>Year ended May 31,</u>		
	<u>2022</u>	<u>2021</u>	<u>2020</u>
Revenues:			
Financial services	\$ 42,949	\$ 34,912	\$ 20,753
Lot sales	4,385	9,406	5,658
Total revenues	<u>47,334</u>	<u>44,318</u>	<u>26,411</u>
Gross profit	<u>30,757</u>	<u>24,966</u>	<u>14,824</u>
General and administrative expenses:			
Financial services	6,541	3,844	3,164
Lot sales	33	11	—
Total general and administrative expenses	<u>6,574</u>	<u>3,855</u>	<u>3,164</u>
Net income	<u>\$ 24,183</u>	<u>\$ 21,111</u>	<u>\$ 11,660</u>

#### Note 7 — Debt

Debt at May 31, 2022 and 2021 consisted of the following (in thousands):

	<b>May 31, 2022</b>	<b>May 31, 2021</b>
6.750% Senior Notes due 2025 <sup>(1)</sup>	\$ —	\$ 247,559
9.875% Senior Notes due 2027 <sup>(2)</sup>	—	250,163
6.625% Senior Notes due 2028 <sup>(3)</sup>	246,979	246,314
4.625% Senior Notes due 2029 <sup>(4)</sup>	345,491	—
4.625% Senior Notes due 2030 <sup>(5)</sup>	392,332	—
	<u>\$ 984,802</u>	<u>\$ 744,036</u>

(1) Net of \$2.4 million of unamortized deferred financing costs as of May 31, 2021.

(2) Net of \$3.4 million of unamortized deferred financing costs and \$1.4 million of unamortized discount as of May 31, 2021.

(3) Net of \$3.0 million and \$3.7 million of unamortized deferred financing costs as of May 31, 2022 and 2021, respectively.

(4) Net of \$4.5 million of unamortized deferred financing costs as of May 31, 2022.

(5) Net of \$5.3 million of unamortized deferred financing costs and \$2.4 million of unamortized discount as of as of May 31, 2022.

### ***The 2025 Notes***

On August 8, 2017, the Companies issued \$250 million principal amount of 6.750% Senior Notes due 2025 in a private offering pursuant to Rule 144A and Regulation S under the Securities Act. The 2025 Notes were issued at a price of 100.00% of the principal amount to yield 6.750%.

On August 2, 2021, the Companies redeemed all of the previously outstanding 2025 Notes at a redemption price of 103.375% of the principal amount thereof plus accrued and unpaid interest thereon to, but excluding, the redemption date. See Note 2 for further discussion on the Companies' redemption of the 2025 Notes.

### ***The 2027 Notes***

On March 27, 2019, the Companies issued \$255.0 million principal amount of 9.875% Senior Notes due 2027 in a private offering pursuant to Rule 144A and Regulation S under the Securities Act. The 2027 Notes were issued at a price of 99.301% of the principal amount to yield 10.000%.

On October 4, 2021, the Companies redeemed all of the previously outstanding 2027 Notes at a redemption price of 111.94% of the principal amount thereof plus accrued and unpaid interest thereon to, but excluding, the redemption date. See Note 2 for further discussion of the Companies' redemption of the 2027 Notes.

### ***The 2028 Notes***

On January 23, 2020, the Company issued \$250.0 million principal amount of 6.625% Senior Notes due 2028 in a private offering pursuant to Rule 144A and Regulation S under the Securities Act. The 2028 Notes were issued at a price of 100.00% of the principal amount to yield 6.625%.

The 2028 Notes mature on January 15, 2028. Interest is payable on the 2028 Notes on January 15 and July 15 of each year. The 2028 Notes are senior, unsecured obligations of the Company and rank equally in right of payment to all of the Company's existing and future senior debt and senior in right of payment to all of the Company's existing and future subordinated debt. The 2028 Notes are effectively subordinated to any of the Company's existing and future secured debt, to the extent of the value of the assets securing such debt. The obligations under the 2028 Notes are jointly and severally guaranteed by all of the Company's Restricted Subsidiaries (as defined by the indenture governing the 2028 Notes), other than (i) subsidiaries that have assets with a book value of not more than \$2.0 million and that do not guarantee certain other indebtedness and (ii) Unrestricted Subsidiaries (as defined by the indenture governing the 2028 Notes) (all such Restricted Subsidiaries providing guarantees, the "Guarantors"). All of the Company's subsidiaries are Guarantors, with the exception of AW Mortgage, Inc. ("AW Mortgage") which holds the interests in the Company's two unconsolidated mortgage joint ventures, and which has been designated an Unrestricted Subsidiary pursuant to the indenture governing the 2028 Notes. As of and for the year ended May 31, 2022, the Company recognized equity in earnings from AW Mortgage of \$10.2 million, and AW Mortgage had \$6.7 million of assets and no liabilities.

The indenture governing the 2028 Notes gives the Company the option to redeem the 2028 Notes at any time or from time to time, in whole or in part, (a) until January 15, 2023, at a redemption price equal to 100% of their principal amount, together with accrued and unpaid interest thereon, if any, to and excluding the redemption date, plus an applicable premium as defined in the indenture governing the 2028 Notes, (b) on or after January 15, 2023 until January 15, 2026, at certain redemption prices set forth in the indenture governing the 2028 Notes together with accrued and unpaid interest thereon, if any, to and excluding the redemption date, and (c) on or after January 15, 2026, at 100% of the principal amount to be redeemed, together with accrued and unpaid interest thereon, if any, to and excluding the redemption date.

The indenture governing the 2028 Notes contains a number of covenants, including covenants relating to the following:

- Limitations on indebtedness;
- Limitations on restricted payments, including dividends and investments;
- Limitations on transactions with affiliates;
- Limitations on liens;
- Limitations on asset sales; and
- Limitations on mergers.

As of May 31, 2022, the Companies were in compliance with the covenants in the indenture governing the 2028 Notes.

### ***The 2029 Notes***

On August 2, 2021, the Companies issued \$350 million principal amount of 4.625% Senior Notes due 2029 in a private offering pursuant to Rule 144A and Regulation S under the Securities Act. The 2029 Notes were issued at a price of 100.00% of the principal amount to yield 4.625%.

The 2029 Notes mature on August 1, 2029. Interest is payable on the 2029 Notes on February 1 and August 1 of each year. The 2029 Notes are senior, unsecured obligations of the Company and rank equally in right of payment to all of the Company's existing and future senior debt and senior in right of payment to all of the Company's existing and future subordinated debt. The 2029 Notes are effectively subordinated to any of the Company's existing and future secured debt, to the extent of the value of the assets securing such debt. The obligations under the 2029 Notes are jointly and severally guaranteed by the Guarantors. The obligations under the 2029 Notes are required to be guaranteed by the same subsidiaries that are required to guarantee the 2028 Notes and 2030 Notes. All of the Company's subsidiaries are Guarantors, with the exception of AW Mortgage.

The indenture governing the 2029 Notes gives the Companies the option to redeem the 2029 Notes at any time or from time to time, in whole or in part, (a) until August 1, 2024, at a redemption price equal to 100% of their principal amount, together with accrued and unpaid interest thereon, if any, to and excluding the redemption date, plus an applicable premium as defined in the indenture governing the 2029 Notes, (b) on or after August 1, 2024 until August 1, 2025, at certain redemption prices set forth in the indenture governing the 2029 Notes together with accrued and unpaid interest thereon, if any, to and excluding the redemption date, and (c) on or after August 1, 2026, at 100% of the principal amount to be redeemed, together with accrued and unpaid interest thereon, if any, to and excluding the redemption date.

The indenture governing the 2029 Notes contains a number of covenants, which are substantially the same as those contained in the indentures governing the 2028 Notes and 2030 Notes.

As of May 31, 2022, the Companies were in compliance with the covenants in the indenture governing the 2029 Notes.

### ***The 2030 Notes***

On September 23, 2021, the Companies issued \$300 million principal amount of 4.625% Senior Notes due 2030 in a private offering pursuant to Rule 144A and Regulation S under the Securities Act. The 2030 Notes were issued at a price of 100.00% of the principal amount to yield 4.625%.

On January 27, 2022, the Companies issued an additional \$100 million principal amount of the 4.625% Senior Notes due 2030 in a private offering pursuant to Rule 144A and Regulation S under the Securities Act. The additional 2030 Notes were issued at a price of 97.500% of the principal amount to yield 4.625%.

The 2030 Notes mature on April 1, 2030. Interest is payable on the 2030 Notes on April 1 and October 1 of each year. The 2030 Notes are senior, unsecured obligations of the Company and rank equally in right of payment to all of the Company's existing and future senior debt and senior in right of payment to all of the Company's existing and future subordinated debt. The 2030 Notes are effectively subordinated to any of the Company's existing and future secured debt, to the extent of the value of the assets securing such debt. The obligations under the 2030 Notes are jointly and severally guaranteed by the Guarantors. The obligations under the 2030 Notes are required to be guaranteed by the same subsidiaries that are required to guarantee the 2028 Notes and 2029 Notes. All of the Company's subsidiaries are Guarantors, with the exception of AW Mortgage.

The indenture governing the 2030 Notes gives the Companies the option to redeem the 2030 Notes at any time or from time to time, in whole or in part, (a) until April 1, 2025, at a redemption price equal to 100% of their principal amount, together with accrued and unpaid interest thereon, if any, to and excluding the redemption date, plus an applicable premium as defined in the indenture governing the 2030 Notes, (b) on or after April 1, 2025 until October 1, 2025, at certain redemption prices set forth in the indenture governing the 2029 Notes together with accrued and unpaid interest thereon, if any, to and excluding the redemption date, and (c) on or after April 1, 2027, at 100% of the principal amount to be redeemed, together with accrued and unpaid interest thereon, if any, to and excluding the redemption date.

The indenture governing the 2030 Notes contains a number of covenants, which are substantially the same as those contained in the indentures governing the 2028 Notes and 2029 Notes.

As of May 31, 2022, the Companies were in compliance with the covenants in the indenture governing the 2030 Notes.

### ***Senior Unsecured Revolving Credit Facility***

The Restated Revolver provides for, among other things, (i) an aggregate revolving loan commitment of up to \$350.0 million, with up to \$50.0 million available for the issuance of letters of credit and up to \$20.0 million available for swingline loans, and an accordion feature to permit the size of the facility to be increased up to \$400.0 million in the future (dependent upon Company needs and available lender commitments), and (ii) a maturity date of January 28, 2026.

Interest accrues on borrowings under the Restated Revolver at a SOFR or alternative base rate, in each case plus an applicable margin that varies based upon the leverage ratio of the Company from time to time.

Availability under the Restated Revolver is based upon a borrowing base formula, determined by applying certain advance rates to certain asset types provided for in the borrowing base.

The Restated Revolver contains affirmative and negative covenants that are customary for credit agreements of this nature, including the following material financial covenants:

- A minimum level of Tangible Net Worth;
- A maximum Leverage Ratio;
- A minimum Interest Coverage Ratio; and
- A minimum liquidity requirement.

Other principal covenants in the Restated Revolver include covenants relating to:

- Limitations on liens;
- Limitations on mergers;
- Limitations on the aggregate value of certain land components that may be owned;
- Limitations on investments;
- Limitations on transactions with affiliates;
- Limitations on payment of certain indebtedness;
- Limitations on permitted indebtedness;

- Limitations on distributions;
- Limitations on sales of assets; and
- Limitations on restrictive agreements.

In addition, the Restated Revolver permits certain tax distributions to Members and permits certain other distributions to Members if certain conditions are met. As of May 31, 2022, the Company was in compliance with the covenants in the Restated Revolver.

At May 31, 2022, there were no borrowings outstanding under the Restated Revolver and \$6.2 million of letters of credit outstanding. As of May 31, 2022, the Company had available additional borrowing capacity of \$343.8 million under the Restated Revolver based on outstanding letters of credit and the borrowing base formula.

#### Note 8 — Other Liabilities

Other liabilities at May 31, 2022 and 2021 consisted of the following (in thousands):

	May 31, 2022	May 31, 2021
Liabilities for real estate not owned <sup>(1)</sup>	\$ 96,599	\$ 59,740
Salaries, bonuses and benefits	75,562	52,232
Accrued long-term compensation	70,430	27,844
Lease liabilities <sup>(2)</sup>	15,451	14,616
Accrued interest	14,634	16,159
Warranty accruals	15,000	10,040
Other	31,767	20,594
	<u>\$ 319,443</u>	<u>\$ 201,225</u>

(1) Net of deposits of \$49.5 million and \$36.3 million as of May 31, 2022 and 2021, respectively.

(2) See Note 15, *Leases*, for additional information.

#### Note 9 — Customer Deposits

Customer deposits at May 31, 2022 and 2021 consisted of the following (in thousands):

	May 31, 2022	May 31, 2021
Customer deposits - retail	\$ 52,323	\$ 40,680
Customer deposits - wholesale	12,928	27,652
	<u>\$ 65,251</u>	<u>\$ 68,332</u>

Customer deposits - retail contracts are deposits on retail homes that are under purchase contracts that have not yet closed. Customer deposits - wholesale contracts are deposits on wholesale homes that are under purchase contracts that have not yet closed, as well as deposits to secure the purchase of homes in future communities or future phases of existing communities.

#### Note 10 — Members' Equity, Amended Regulations, and Ownership

The Second Amended and Restated Regulations (as amended, the "Regulations") of the Company provides for four classes of Members and associated membership interests as follows: (1) Class A Membership Interest, which is held by Little Shots Nevada, L.L.C. ("Little Shots"), (2) Class B Membership Interests initially issued to the holders of our former 11.0% Senior Subordinated Notes due 2015, the majority of which are now held by Little Shots, (3) Class C Membership Interests created in June 2010, the majority of which are held by Little Shots, and (4) Class D Membership Interests created in March 2022, which are held by one of the Company's executive officers. The Regulations set forth each Member's respective membership interests and sharing ratio. No Member is required to make any additional contributions to the Company. Subject to certain limited exceptions, including for tax distributions, all items of income, gain, loss, deduction and credit of Ashton Woods will be allocated among the Members in accordance with their sharing ratios, as further provided in the Regulations.



Effective March 30, 2022, the Company and Little Shots entered into a fifth amendment to the Regulations to: (1) create a new class of membership interests, the Class D Membership Interests, and (2) amend and restate certain provisions to reflect the creation of the Class D Membership Interests. The Class D Membership Interests have no voting rights, do not participate in income or loss allocations, and do not participate in tax or non-tax distributions. The Class D Membership Interests convert to Class A Membership Interests upon the occurrence of various specified events.

On April 30, 2022, 208,371 Class D Units were awarded to one of the Company's executive officers (the "Class D equity award") as non-cash compensation valued at \$5.8 million which will be recognized as compensation expense over the five-year requisite service period. During the year ended May 31, 2022, the Company recognized compensation expense of \$0.1 million, which is included in selling, general and administrative expense in the consolidated statements of income. As of May 31, 2022, we had unrecognized compensation cost related to the Class D equity award of \$5.7 million which is expected to be recognized over a period of 4.9 years.

At May 31, 2022, there were 20,837,100 membership interests outstanding, comprised as follows:

	<b>Membership Interests</b>	<b>Ownership percentage</b>	<b>Percentage of membership class</b>
<b>Little Shots Nevada L.L.C.</b>			
Class A	8,027,200	38.52 %	100.00 %
Class B	1,970,988	9.46 %	99.91 %
Class C	10,029,200	48.13 %	94.36 %
<b>Total Little Shots Nevada L.L.C.</b>	<b>20,027,388</b>	<b>96.11 %</b>	
<b>Other Holders</b>			
Class B	1,812	0.01 %	0.09 %
Class C	599,529	2.88 %	5.64 %
Class D	208,371	1.00 %	100.00 %
	<u>20,837,100</u>	<u>100.00 %</u>	

On December 2, 2021, the Board approved a non-tax distribution totaling \$35.0 million in the aggregate to the Company's Members. The non-tax distribution was distributed to the Company's Members on December 6, 2021.

On June 15, 2022, the Board approved a non-tax distribution of \$60.0 million to its Members. The non-tax distribution was distributed to the Company's Members on June 21, 2022. Refer to Note 1(t) for further discussion regarding events occurring subsequent to May 31, 2022.

#### **Note 11 — Transactions with Related Parties**

##### *Services agreement*

The Company is a party to a services agreement with the Investors that provides the Company with a license, as well as development and support, for certain of the Company's computer systems and administrative services. The Company pays a fee of \$800 per home closing quarterly, in arrears, for these services, which is included in selling, general and administrative expense in the consolidated statements of income. The Company incurred fees of \$6.7 million, \$5.2 million, and \$4.1 million during the years ended May 31, 2022, 2021, and 2020, respectively, under the services agreement. As of May 31, 2022 and 2021, the balance due to the Investors under the terms of the service agreement was \$2.6 million and \$2.1 million, respectively, and was included in other liabilities in the consolidated balance sheets. Effective June 1, 2022, the services fee agreement with the Investors was amended to increase the fee to \$1,000 per home closing.

### *Lot purchase agreements*

The Company is a party to seven lot purchase agreements with the Investors. An initial deposit ranging from 15% to 20% was required under each of the purchase agreements, and there are no specific performance requirements for the Company. The Company is required to record one of these lot purchase agreements as real estate not owned within other assets and liabilities for real estate not owned within other liabilities in the consolidated balance sheets. As of May 31, 2022, the total purchase price of lots remaining to be purchased under such agreements was approximately \$74.1 million.

### *Joint venture*

The Company is a party to a land joint venture with the Investors, which is accounted for under the equity method. The Company has a non-controlling equity investment of less than 50% in the joint venture. During the year ended May 31, 2022, the Company was a party to a lot purchase agreement with the joint venture. A 10% deposit was required under the purchase agreement and there were no specific performance requirements for the Company. As of May 31, 2022, there were no lots remaining to be purchased under the lot purchase agreement. As of May 31, 2022, the joint venture had \$0.6 million of land inventory and no debt outstanding.

### *Sales of completed homes*

The Company entered into a sale agreement with the Investors during the year ended May 31, 2021. In accordance with the agreement, the Company reported 152 wholesale home orders to the Investors for an aggregate estimated purchase price of \$31.1 million. The Company closed on 110 of these sales during the year ended May 31, 2022. As of May 31, 2022, there was a deposit of \$0.9 million in connection with this agreement.

### *Land sales and fee arrangements to construct homes*

During the year ended May 31, 2021, the Company sold two parcels of land to the Investors for a gross profit of \$2.5 million and subsequently entered into two construction and development agreements with the Investors to develop lots for and build a total of 252 wholesale homes for a fee. The Company commenced construction on 132 of these homes during the year ended May 31, 2022.

### *Loan Receivable*

On April 30, 2022, the Company entered into an interest-free loan agreement with one of its executive officers to cover income tax obligations incurred in conjunction with the Class D equity award (see Note 10 for additional discussion regarding the Class D equity award). The interest-free loan's principal amount of approximately \$2.5 million is to be repaid in annual installments prior to maturity in August 2024. As of May 31, 2022, the balance due to Company under the terms of the interest-free loan agreement was \$2.5 million and was included in receivables in the consolidated balance sheets.

## **Note 12 — Long-Term Incentive Plan**

The Company has made grants to its executive officers and certain officers and employees under the Third Amended and Restated Performance Share Plan (the "Plan"), which is a long-term incentive compensation program designed to align the interests of the Company and its executives by enabling key employees to participate in the Company's future growth. The Plan provides for the grant to participants of full-value performance shares and appreciation-only performance shares, which are the equivalent of phantom equity awards. Full-value performance shares allow the participant to receive a cash payment equal to the total value of the performance share on the designated date of payment. Appreciation-only performance shares allow the participant to receive a cash payment equal to the increase in value of the performance share measured from the date of grant to the designated date of payment.

The value of a performance share under the Plan is determined by dividing the Company's book value, as defined under the Plan, by the number of hypothetical shares as defined by the Plan. Generally, except as otherwise determined by the Board upon grant, performance shares awarded under the Plan will vest ratably over three years and will be subject to forfeiture upon the occurrence of certain events, including termination of employment for cause. The Plan provides that performance shares will become fully vested upon a participant's resignation for good

reason, the participant's death or disability or a change of control, and with respect to certain grants, upon a termination without cause and an equity sale, as defined in the Plan. In the absence of a payment event otherwise defined in the Plan, the full-value performance share awards pay out after the third anniversary of the award date, and the appreciation-only performance share awards pay out after the fifth anniversary of the award date.

The following table represents a rollforward of the outstanding performance shares for the year ended May 31, 2022:

	<b>Full-value shares</b>	<b>Appreciation- only shares</b>	<b>Total shares</b>
Outstanding performance shares as of May 31, 2021	283,795	858,466	1,142,261
Performance shares awarded during the period	310,394	620,788	931,182
Shares forfeited during the period	—	—	—
Fully vested performance shares paid	(83,455)	(142,100)	(225,555)
Total outstanding performance shares as of May 31, 2022	510,734	1,337,154	1,847,888
Total vested performance shares as of May 31, 2022	262,334	840,356	1,102,690

The Company's liability for performance shares awarded under the Plan is remeasured quarterly to reflect the intrinsic value of the performance shares that have vested as of the balance sheet date. As a result, the Company may record an increase or decrease in compensation expense in any period. Compensation expense for the full-value and appreciation-only performance shares is included in selling, general and administrative expenses in the consolidated statements of income.

The total number of performance shares vested as of May 31, 2022 and 2021, was 1,102,690 and 819,471, respectively. The Company recorded \$51.9 million, \$18.8 million, and \$7.1 million for the years ended May 31, 2022, 2021, and 2020, respectively, in compensation expense associated with the full-value and appreciation-only performance shares. For the years ended May 31, 2022, 2021, and 2020, \$9.4 million (225,555 units), \$3.7 million (159,101 units), and \$2.9 million (144,394 units), respectively, of vested performance shares were paid out to employees. As of May 31, 2022 and 2021, the Company's liability for the performance shares was \$70.4 million and \$27.9 million, respectively, which is recorded in other liabilities in the consolidated balance sheets.

#### **Note 13 — Employee Benefit Plan**

The Company has a 401(k) plan for all full and eligible part-time employees who have been with the Company for a period of three months or more. Through March 31, 2020, the Company matched 50% of employees' voluntary contributions up to 6% of employees' compensation, limited by the maximum allowed under federal guidelines. On April 1, 2020, the Company suspended the match of employees' voluntary contributions, and reinstated the match effective August 1, 2020. The total amount of Company matches funded for the employees' voluntary contributions for the years ended May 31, 2022, 2021, and 2020 was \$2.9 million, \$1.6 million, and \$1.9 million, respectively, of which approximately \$522.8 thousand, \$246.4 thousand, and \$191.3 thousand was funded by forfeitures for the year ended May 31, 2022, 2021, and 2020, respectively. The remaining Company match is included within selling, general and administrative expenses in the consolidated statements of income.

#### **Note 14 — Fair Value Disclosures**

ASC 820, *Fair Value Measurement*, defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. This standard establishes a three-level hierarchy for fair value measurements based upon the significant inputs used to determine fair value. Observable inputs are those that are obtained from market participants external to the Company while unobservable inputs are generally developed internally, utilizing management's estimates, assumptions and specific knowledge of the assets/liabilities and related markets. The three levels are defined as follows:

- **Level 1:** Valuation is based on quoted prices in active markets for identical assets and liabilities.

- **Level 2:** Valuation is determined from quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar instruments in markets that are not active, or by model-based techniques in which all significant inputs are observable in the market.
- **Level 3:** Valuation is derived from model-based techniques in which at least one significant input is unobservable and based on the Company's own estimates about the assumptions that market participants would use to value the asset or liability.

The carrying amounts of cash and cash equivalents, restricted cash, receivables, accounts payable, customer deposits, and the Restated Revolver, as reported in the accompanying consolidated balance sheets, approximate their fair values due to their short-term maturity or floating interest rate terms, as applicable. The factors considered in determining fair values of the Company's communities when necessary under ASC 360-10 are described in the discussion of the Company's inventory impairment analysis (see Note 1(d)) and are classified as Level 2 or Level 3 valuations.

The following table presents the carrying amounts and estimated fair values of the Company's 2025 Notes, 2027 Notes, 2028 Notes, 2029 Notes, and 2030 Notes (collectively, the "Senior Notes") at May 31, 2022 and 2021:

	Fair Value Hierarchy	May 31, 2022		May 31, 2021	
		Carrying Amount	Fair Value	Carrying Amount	Fair Value
(in thousands)					
<b>Liabilities:</b>					
6.750% Notes due 2025	Level 2	\$ —	\$ —	\$ 247,559	\$ 258,750
9.875% Notes due 2027	Level 2	—	—	250,163	288,150
6.625% Notes due 2028	Level 2	246,979	236,250	246,314	268,075
4.625% Notes due 2029	Level 2	345,491	299,250	—	—
4.625% Notes due 2030	Level 2	392,332	332,000	—	—
		<u>\$ 984,802</u>	<u>\$ 867,500</u>	<u>\$ 744,036</u>	<u>\$ 814,975</u>

The Companies' Senior Notes are recorded at their carrying values in the consolidated balance sheets, which may differ from their respective fair values. The carrying values of the Companies' Senior Notes reflect their face amount, adjusted for any unamortized debt issuance costs and discount. The fair values of the Senior Notes are derived from quoted market prices by independent dealers (Level 2).

#### Note 15 — Commitments and Contingencies

The Company is involved in lawsuits and other contingencies in the ordinary course of business. The amounts demanded by the claimants in these lawsuits and claims may vary widely, with large demands made in certain cases, which are disputed and aggressively defended by the Company. The Company establishes liabilities for legal claims and related matters when such matters are both probable of occurring and any potential loss is reasonably estimable. The Company accrues for such matters based on the facts and circumstances specific to each matter and revises these estimates as the matters evolve. In such cases, there may be an exposure to loss in excess of any amounts currently accrued. In view of the inherent difficulty of predicting the outcome of these legal and related matters, we generally cannot predict the ultimate resolution of the pending matters, the related timing, or the eventual loss. While the outcome of such contingencies cannot be predicted with certainty, we do not believe that the resolution of such matters will have a material adverse effect on the Company's results of operations, financial condition, or cash flows. However, to the extent the liability arising from the ultimate resolution of any matter exceeds the estimates reflected in the recorded reserves relating to such matter, we could incur additional charges that could be significant.

The Company has entered into employment agreements with its executive officers and certain other employees that provide for severance payments based on salary and the most recent bonus paid or target bonus upon termination without cause, or, with respect to certain of these officers, following a change of control, by the Company without cause or by the executive for good reason.

In the normal course of business, the Company provides letters of credit and surety bonds to third parties to secure performance and provides deposits under various contracts and commitments. At May 31, 2022 and 2021, the Company had letters of credit outstanding of \$6.2 million and \$6.6 million, respectively, and surety bonds

outstanding of \$196.4 million and \$139.3 million, respectively. As of May 31, 2022, the Company had \$43.8 million of unused letter of credit capacity under the Restated Revolver.

The Company enters into various option purchase agreements to acquire land. In connection with such agreements, as of May 31, 2022, the Company has made nonrefundable deposits of \$357.4 million, which includes \$49.5 million of nonrefundable deposits related to purchase and option agreements recorded under ASC 606 or ASC 470-40 (See Note 5). The Company would forfeit the remaining deposits if the lots are not purchased. The total purchase price of lots remaining to be purchased under option agreements with nonrefundable deposits was approximately \$2.4 billion as of May 31, 2022.

### *Leases*

The Company leases office space and equipment under various operating leases with varying commencement dates and renewal options for use in our operations. We recognize lease expense for these leases on a straight-line basis over the lease term and combine lease and non-lease components for all leases. Right-of-use assets and lease liabilities are recorded on the consolidated balance sheets for all leases with an expected term of at least one year. Some leases include one or more options to renew. The exercise of lease renewal options is generally at our discretion. The depreciable lives of right-of-use assets and leasehold improvements are limited to the expected lease term. Our lease agreements do not contain any residual value guarantees or material restrictive covenants.

Right-of-use assets are classified within other assets on the consolidated balance sheets, while lease liabilities are classified within other liabilities on the consolidated balance sheets. Right-of-use assets and lease liabilities were \$14.4 million and \$15.5 million at May 31, 2022, respectively, and \$13.1 million and \$14.6 million at May 31, 2021, respectively. During the years ended May 31, 2022, 2021, and 2020, there were \$6.2 million, \$3.7 million, and \$0.1 million, respectively, of additions to the right-of-use assets under operating leases. Payments on lease liabilities during the years ended May 31, 2022, 2021, and 2020 totaled \$4.7 million, \$4.4 million, and \$4.0 million, respectively.

Lease expense includes costs for leases with terms in excess of one year as well as short-term leases with terms of less than one year. For the years ended May 31, 2022, 2021, and 2020, our total lease expense was approximately \$5.0 million, \$5.1 million, and \$5.6 million, respectively, inclusive of short-term lease costs. Sublease income, short-term lease costs, and variable lease costs are not material to the consolidated financial statements.

The future minimum lease payments required under our leases as of May 31, 2022 are as follows (in thousands):

Year ending May 31, 2023	\$ 4,469
Year ending May 31, 2024	4,332
Year ending May 31, 2025	3,810
Year ending May 31, 2026	3,544
Year ending May 31, 2027	2,344
Thereafter	2,664
Total future minimum lease payments <sup>(a)</sup>	<u>21,163</u>
Less: Interest <sup>(b)(c)</sup>	5,712
Total future minimum lease payments less interest <sup>(c)</sup>	<u>\$ 15,451</u>

(a) Lease payments include options to extend lease terms that are reasonably certain of being exercised.

(b) Our leases do not provide a readily determinable implicit rate. Therefore, we estimate our discount rate for such leases to determine the present value of lease payments at the lease commencement date.

(c) The weighted average lease term and weighted average discount rate used in calculating our lease liabilities were 4.9 years and 6.6%, respectively, at May 31, 2022.

## Note 16 — Information on Segments

The Company's homebuilding reportable segments are as follows:

- 1) **East:** Atlanta, Coastal Carolinas, Nashville, Orlando, Raleigh, and Southwest Florida
- 2) **Central:** Austin, Dallas, Houston, Phoenix, and San Antonio

The following table summarizes revenue, gross profit, depreciation and amortization, equity in earnings in unconsolidated entities, and net income for each of the Company's reportable segments (in thousands):

	Year ended May 31,		
	2022	2021	2020
<b>Revenues:</b>			
Home sales:			
East	\$ 1,309,584	\$ 986,290	\$ 805,731
Central	1,911,060	1,252,189	961,327
Total home sales revenues	3,220,644	2,238,479	\$ 1,767,058
Reconciling items:			
Land sales	8,686	12,862	8,753
Financial services and other revenues	43,699	39,250	40,291
Total revenues	<u>\$ 3,273,029</u>	<u>\$ 2,290,591</u>	<u>\$ 1,816,102</u>
<b>Gross profit <sup>(1)</sup>:</b>			
Home sales:			
East	\$ 328,905	\$ 189,523	\$ 122,180
Central	576,983	309,224	195,256
Total home sales gross profit	905,888	498,747	317,436
Reconciling items:			
Land sales gross profit	767	3,064	1,517
Financial services and other revenues gross profit	16,105	11,027	11,390
Total gross profit	<u>\$ 922,760</u>	<u>\$ 512,838</u>	<u>\$ 330,343</u>

	Year ended May 31,		
	2022	2021	2020
<b>Depreciation and amortization:</b>			
East	\$ 2,544	\$ 3,479	\$ 4,187
Central	4,726	5,283	5,358
Total depreciation and amortization	<u>\$ 7,270</u>	<u>\$ 8,762</u>	<u>\$ 9,545</u>
<b>Equity in earnings of unconsolidated entities:</b>			
East	\$ 3,349	\$ 2,004	\$ 677
Central	8,998	8,349	5,078
Total equity in earnings of unconsolidated entities	<u>\$ 12,347</u>	<u>\$ 10,353</u>	<u>\$ 5,755</u>
<b>Net income:</b>			
East	\$ 182,373	\$ 75,199	\$ 9,688
Central	375,358	173,278	82,147
	557,731	248,477	91,835
Other <sup>(2)</sup>	(46,234)	(14,296)	(16,019)
Total net income	<u>\$ 511,497</u>	<u>\$ 234,181</u>	<u>\$ 75,816</u>

(1) Includes inventory impairments totaling \$34.1 thousand, \$91.2 thousand, and \$2.7 million for the east segment during the years ended May 31, 2022, 2021, and 2020, respectively. There were no inventory impairments for the central segment during the year ended May 31, 2022. There were \$24.6 thousand and \$40.7 thousand of inventory impairments for the central segment during the years ended May 31, 2021 and 2020, respectively.

(2) "Other" primarily consists of loss from the early extinguishment of debt, and interest directly expensed.

The following table summarizes total assets for each of the Company's reportable segments (in thousands):

	May 31, 2022	May 31, 2021
<b>Assets:</b>		
Homebuilding:		
East	\$ 759,587	\$ 661,069
Central	1,290,473	839,758
	2,050,060	1,500,827
Other <sup>(1)</sup>	504,292	299,358
Total assets	<u>\$ 2,554,352</u>	<u>\$ 1,800,185</u>

(1) "Other" is comprised of cash, restricted cash, and corporate assets.

The following table summarizes additions to property and equipment for each of the Company's reportable segments for the periods presented (in thousands):

	Year ended May 31,		
	2022	2021	2020
<b>Additions to property and equipment:</b>			
Homebuilding:			
East	\$ 3,742	\$ 2,671	\$ 3,640
Central	4,040	3,844	3,746
	7,782	6,515	7,386
Other <sup>(1)</sup>	13	39	230
Total additions to property and equipment	<u>\$ 7,795</u>	<u>\$ 6,554</u>	<u>\$ 7,616</u>

(1) "Other" is comprised of property and equipment additions for the Company's corporate office.

## **Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure**

None.

### **Item 9A. Controls and Procedures**

Pursuant to section 4.03 of each of the indentures governing the 2028, 2029, and 2030 Notes, the Company is not required to comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the SEC.

### **Item 9B. Other Information**

None.

### **Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections**

None.

## **PART III.**

### **Item 10. Directors, Executive Officers, and Corporate Governance**

Our board of directors, which we refer to as our Board, consists of six members—Messrs. Patava (Chair), Reisman, Joffe, Kelly, and Tresham, and Mrs. Karson. As required by our Regulations, Messrs. Patava, Reisman, and Joffe are Class A Directors elected by our Class A Unit holder, Mr. Tresham is a Class B Director elected by our Class B Unit holders, Mr. Kelly is an Independent Director, as defined by our Regulations, elected by our Class A and Class B Unit holders, and Mrs. Karson is an at-large director. Each director serves a term of one year until a successor is elected and qualified, or until his or her earlier death, resignation, or removal.

The following table presents information with respect to our executive officers and directors:

#### **Executive officers and directors**

<b>Name</b>	<b>Age</b>	<b>Position</b>
Jerry Patava	68	Director, Chairman of the Board
Elly Reisman	72	Director
Seymour Joffe	69	Director, Chairman of the Audit Committee
R. David Kelly	58	Director
Arden M. Karson	60	Director
Bill Tresham	67	Director (Effective June 1, 2022)
Ken Balogh	51	President and Chief Executive Officer
Cory Boydston	63	Chief Financial Officer
Deborah Danzig	49	Chief Legal Officer and Corporate Secretary
Ryan Lewis	44	Chief Operating Officer

**Mr. Patava**, a member of our Board since February 2009, served as the Chief Executive Officer of the Great Gulf Group of Companies (the "Great Gulf Group"), an affiliate of the Company through common ownership, from July 2007 until January 2020. Mr. Patava currently serves on the Board and Investment Committee at Terra Firma Capital Corporation. Between 2005 and 2018, he served on several public company boards. Between 1998 and 2005 Mr. Patava served as Executive Vice President and Chief Financial Officer of Fairmont Hotels & Resorts Inc., between 1990 and 1998 as Vice President and Treasurer of Canadian Pacific Limited, and between 1986 and 1990 as Vice President and Director of RBC Dominion Securities. Mr. Patava has a Bachelor of Arts degree from the University of Toronto and a Master of Business Administration degree from York University.



**Mr. Reisman**, a member of our Board since April 2013, is the chair and co-founder of the Great Gulf Group. Mr. Reisman has over 40 years of real estate development and management experience throughout North America. Under his guidance, the Great Gulf Group has grown from a regional homebuilder to a broadly diversified international real estate company.

**Mr. Joffe**, a member of our Board and our prior management committee since 1997, is a co-founder and principal of the Great Gulf Group. Prior to 1983, Mr. Joffe worked in real estate and public accounting. Mr. Joffe qualified as a Chartered Accountant in South Africa and a Certified Public Accountant in Canada.

**Mr. Kelly**, a member of our Board of Directors since July 2021, is founder and managing partner of StraightLine Partners, an alternative investment platform with holdings in real estate, financial services and venture capital. Mr. Kelly serves as board director, founder, chair and CEO of Croesus and Company; as lead director of TCW Direct Lending VII; and as lead director of Invesco's INREIT real estate platform. Mr. Kelly also currently serves as a director of the Children's Medical Center Plano Governing Board, where he is also a member of Children's Medical Center's Investment and Finance Committees. From 2007 to 2017, Mr. Kelly served as a trustee and Chair of the \$150 billion Teacher's Retirement System of Texas. From 2001 to 2006, Mr. Kelly was a gubernatorial appointee to the Texas Public Finance Authority (TPFA) and served as Chair from 2002 to 2006. Mr. Kelly previously served as a special advisor to the Board of Directors of Croesus Merchants International Singapore; served as Chair of the Board of Directors of Hong Kong-based Everglory Financial Holdings; and served as a director of Dubai-based Al Masah Capital Limited. Mr. Kelly graduated as a John Harvard Scholar in Economics from Harvard University and completed a Master of Business Administration at Stanford University Graduate School of Business.

**Mrs. Karson**, a member of our Board of Directors since July 2021, is the Founder and Managing Principal of Karson & Co, a real estate advisory and investment firm. Previously, from 2017 to 2020, Mrs. Karson served as the Senior Managing Director for CBRE. From 2011 to 2017, Mrs. Karson was a Senior Vice President at the Related Group, where she directed the development, acquisition, and financing of condominium and operating properties. From 1999 to 2011, Mrs. Karson partnered with Barrow Street Capital, a real estate private equity firm, and Advenir Real Estate. Mrs. Karson also worked at Lennar Corporation and Arvida/JMB Partners, serving in a variety of project management and operational roles focused on homebuilding, land, and commercial development, and property/loan asset management across many asset classes and markets. Mrs. Karson started her career as a commercial lender at Bank of America. Mrs. Karson graduated *summa cum laude* from Tufts University and earned an MBA from Harvard Business School. She currently serves on the Board of Directors of the Friends of the Underline, the University of Miami Master's in Real Estate program, the Michigan Ross Real Estate Fund, and the Urban Land Institute.

**Mr. Tresham**, whose service as a member of our Board of Directors began on June 1, 2022, is the Founder, Chairman & CEO of RittenVest Inc., a Montreal-based real estate investment, advisory and asset management firm. Mr. Tresham also currently serves on the Board of Directors of Great Gulf Group, and serves as a director of Gilbane Inc., a private construction and development company headquartered in the United States. Mr. Tresham previously served as the President of Ivanhoe Cambridge, where he oversaw a \$60 billion real estate portfolio. Prior to that, Mr. Tresham was Chief Executive Officer of SITQ, a Canadian real estate investment, management and development firm; Partner and Chief Operating Officer of Callahan Capital Partners, a Chicago-based real estate private equity firm; Chief Operating Officer of Trizec Properties, a real estate investment trust headquartered in Chicago; Managing Director Real Estate Equity Investments at Metropolitan Life Insurance Company; and Partner at Equidev Group, a Canadian real estate investment firm. Mr. Tresham holds a Bachelor of Arts in Economics from Princeton University and a Bachelor of Laws from McGill University.

**Mr. Balogh** joined our Company as an executive vice president in September 2009 and was promoted to Chief Operating Officer in March 2010. In January 2011, he was appointed President and Chief Executive Officer. Prior to joining the Company, Mr. Balogh worked for Centex Homes (now part of the PulteGroup) for 16 years, serving in various positions including as Executive Vice President of its East Region (Florida, the Carolinas, Virginia and New Jersey). Prior to that, he served in various other roles at Centex, including Division President, Division Manager, Vice President of Land Acquisitions, Entitlement and Development, Vice President of Finance, Division Controller, Assistant Controller, and Accountant. He currently sits on the Board of Directors for HomeAid, one of the nation's leading non-profit providers of housing for the homeless population. Mr. Balogh has been in the homebuilding industry for over 20 years and has a finance degree from the University of Central Florida.

**Mrs. Boydston** has served as our Chief Financial Officer since 2009. Prior to joining the Company, Mrs. Boydston worked for Starwood Land Ventures for one and a half years, where she served as Senior Vice President and Chief Financial Officer. Prior to that, she was with Beazer Homes USA Inc., where she worked for 10 years and served as Senior Vice President and Treasurer. Between 1987 and 1997, Mrs. Boydston was with Lennar Corporation, where she served as Vice President of Finance and Chief Financial Officer, Corporate Controller, and Division Controller. She was also a Senior Auditor at Arthur Andersen LLP. From 2018 to 2020 she served on the Board of Directors and Audit Committee of BMC Holdings, Inc. (Nasdaq: BMCH), and in 2021 she joined the Board of Directors and Audit Committee of Builders FirstSource, Inc. (NYSE: BLDR), a leading provider of diversified building products and services in the U.S. residential construction market. Mrs. Boydston is also the Co-Founder of Women's Housing Leadership Group, and serves on the Georgia Advisory Board of The Trust for Public Land. Mrs. Boydston received a B.S. in Accounting from Florida State University and holds an active CPA license in the state of Georgia.

**Mrs. Danzig** has been our Chief Legal Officer since July 2011 and our Corporate Secretary since October 2011. Prior to joining the Company, Mrs. Danzig was with Beazer Homes USA Inc. for six years where she served most recently as Vice President, Compliance Officer. Prior to joining Beazer Homes USA Inc., Mrs. Danzig was in private practice with Sutherland, Asbill & Brennan in Atlanta, Georgia and Davis Polk & Wardwell in New York. Mrs. Danzig also clerked for the Honorable Phyllis A. Kravitch of the U.S. Court of Appeals for the Eleventh Circuit. Mrs. Danzig obtained her law degree from Cornell Law School and her B.A. from Emory University.

**Mr. Lewis** joined our Company as Division President of the Company's Charleston operating division in 2013 and later also became the Division President of the Company's Raleigh operating division. In February 2017, he was appointed to the position of Chief Operating Officer. Prior to joining the Company, from 2009 to 2013, Mr. Lewis worked for PulteGroup as Area Vice President of Construction Operations—Southeast Region and Vice President of Construction Operations—Atlanta Division. From 2000 to 2009, Mr. Lewis worked for Centex Homes, in several operational roles with progressive responsibilities. Mr. Lewis holds a degree in Construction Management from Georgia Southern University.

The Company does not currently have a separately designated compensation committee or nominating and corporate governance committee. The full Board performs all functions these committees would otherwise perform. The Company has an Audit Committee of the Board of Directors comprised of Messrs. Joffe and Patava and Mrs. Karson. The Audit Committee's primary function is to assist the Board in (a) the financial reporting process, including the integrity of the Company's financial statements and systems of internal controls regarding finance and accounting; (b) the qualifications and independence of the Company's independent auditors; (c) management of the Company's financial policies and procedures; and (d) the performance of the Company's independent auditors. The Audit Committee has direct responsibility for the appointment, compensation, retention, and oversight of the work of our outside accounting firm, Ernst & Young LLP. The Board has determined that each of the Audit Committee members satisfies the requirements for financial literacy under current SEC requirements. The Board has also determined that Mr. Patava, Mr. Joffe, and Mrs. Karson each is an "audit committee financial expert," as that term is defined by the SEC. Although neither Mr. Patava nor Mr. Joffe is an independent director, the Board chose them to serve on the Audit Committee due to their financial expertise and their expertise in the homebuilding and real estate industries, including their level of experience with financial matters related to these industries. The Audit Committee operates pursuant to a written charter.

The Company maintains a Code of Business Conduct and Ethics, which applies to all of its employees including its executive officers. The Company will provide to any person without charge, upon request to Deborah Danzig at 678-597-2122, a copy of its Code of Business Conduct and Ethics.

## **Item 11. *Executive Compensation***

Pursuant to section 4.03 of each of the indentures governing the 2028 Notes, 2029 Notes, and 2030 Notes, the Company is not required to provide disclosure regarding executive compensation, a description of employment agreements with officers, or a description of any incentive plans.

## ***Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

### **Outstanding Membership Interests**

The Company has four classes of membership interests, Class A, Class B, Class C, and Class D. All membership interests are pari passu and share ratably in the ownership of the Company, except for Class D membership interests which have no voting rights and do not participate in either income or loss allocations nor tax and non-tax distributions. For additional information about the ownership of our membership interests, see Note 10 to the consolidated financial statements included in this Annual Report.

### **Equity Compensation Plan Information**

On March 30, 2022, the Board of Directors of the Company adopted the Unit Award Plan; subsequently, effective April 27, 2022, the Board of Directors adopted the First Amended Unit Award Plan (the "Plan"). The purpose of the Plan is to align the interests of the Company and its management by enabling specified executives of the Company to participate in the Company's future growth and profitability. The Plan allows for the grant of any class of membership units of the Company, and all grants of units under the Plan must be approved by the Board of Directors of the Company. As of May 31, 2022, there are no options, warrants, or rights outstanding under the Plan, and there is no maximum number of units that may be awarded under the Plan.

## ***Item 13. Certain Relationships and Related Transactions, and Director Independence***

Pursuant to section 4.03 of each of the indentures governing the 2028 Notes, 2029 Notes, and 2030 Notes, the Company is not required to disclose related party transactions outside of the financial statement footnotes.

We do not have any equity listed on a securities exchange, and therefore are not required to comply with any independence requirements imposed by the exchanges. Pursuant to our Regulations, we are required to have one independent director, as defined by the regulations, but are not required to have a specified number in excess of that. Our Board has concluded that for the fiscal year ended May 31, 2022, Mr. Kelly and Mrs. Karson were independent directors under the requirements of our Regulations and under the standards applicable to companies listed on the New York Stock Exchange.

## ***Item 14. Principal Accountant Fees and Services***

Ernst & Young LLP served as the Company's independent auditor for the 2022, 2021, and 2020 fiscal years. For the year ended May 31, 2022 and 2021, total audit fees incurred were \$1.2 million and \$0.8 million, respectively, as well as \$0.1 million and \$0.1 million of audit-related fees during the years ended May 31, 2022, and 2021, respectively, related to the debt transactions discussed in Note 2 to our consolidated financial statements.

Each year, the Audit Committee approves the annual audit engagement in advance. The Audit Committee also has established procedures to pre-approve all non-audit services provided, if any, by the independent auditor.

## ***Item 15. Exhibits and Financial Statement Schedules***

The consolidated financial statements are included under Part II, Item 8 of this Annual Report.

The schedules have been omitted because of the absence of conditions under which they are required or because the required information is included in the consolidated financial statements or notes thereto.

## ***Item 16. Form 10-K Summary***

None.