Risk Factors Comparison 2023-11-17 to 2022-11-17 Form: 10-K

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Discussion of our business and operations included in this annual report on Form 10- K should be read together with the risk factors set forth below. They describe various risks and uncertainties we are or may become subject to, many of which are difficult to predict or beyond our control. Although the risks are organized and described separately, many of the risks are interrelated. These risks and uncertainties, together with other factors described elsewhere in this report, have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. Risks Related to our Concentrated Ownership So long as D. R. Horton controls us, our other stockholders will have limited ability to influence matters requiring stockholder approval, and D. R. Horton' s interest may conflict with the interests of other current or potential holders of our securities. D. R. Horton beneficially owns approximately 63 % of our common stock. As a result, until such time as D. R. Horton and its controlled affiliates hold shares representing less than a majority of the votes entitled to be cast by our stockholders at a stockholder meeting, D. R. Horton generally has the ability to control the outcome of any matter submitted for the vote of our stockholders, except in certain circumstances set forth in our certificate of incorporation or bylaws. In addition, under the terms of our certificate of incorporation and the Stockholder' s Agreement with D. R. Horton, so long as D. R. Horton or its affiliates own 35 % or more of our voting securities, we may not take certain actions without D. R. Horton' s approval, including certain actions with respect to equity issuances, indebtedness, acquisitions, fundamental changes in our business and executive hiring, termination and compensation. For so long as D. R. Horton and its controlled affiliates hold shares of our common stock representing at least 20 % of the votes entitled to be cast by our stockholders at a stockholder meeting, D. R. Horton is able to designate a certain number of the members of our Board of Directors. Currently, D. R. Horton has the right to designate four out of five members of our Board, subject to a requirement that we and D. R. Horton use reasonable best efforts to cause at least three directors to qualify as " independent directors, " as such term is defined in the New York Stock Exchange (" NYSE") listing rules, and applicable law. The directors designated by D. R. Horton have the authority to make decisions affecting our capital structure, including the issuance of additional capital stock or options, the incurrence of additional indebtedness, the implementation of stock repurchase programs and the declaration of dividends. The interests of D. R. Horton may be materially different than the interests of our other stakeholders. The interests of D. R. Horton may not coincide with the interests of our current or potential stockholders. D. R. Horton' s ability, subject to the limitations in the Stockholder' s Agreement and our certificate of incorporation and bylaws, to control matters submitted to our stockholders for approval limits the ability of other stockholders to influence corporate matters, which may cause us to take actions that our other stockholders do not view as beneficial to them. In such circumstances, the market price of our common stock could be adversely affected, and our ability to access the capital markets may also be adversely affected. In addition, the existence of a controlling stockholder may have the effect of making it more difficult for a third party to acquire us, or may discourage a third party from seeking to acquire us. A third party would be required to negotiate any such transaction with D. R. Horton, and the interests of D. R. Horton with respect to such transaction may be different from the interests of our other stockholders. Subject to limitations in the Stockholder' s Agreement and our certificate of incorporation that limit D. R. Horton' s ability to take advantage of certain corporate opportunities that are presented directly to our officers or directors in their capacity as such, D. R. Horton is not restricted from competing with us or otherwise taking for itself or its other affiliates certain corporate opportunities that may be attractive to us. Any inability to resolve favorably any disputes that may arise between us and D. R. Horton may result in a significant reduction of our revenues and earnings. Disputes may arise between D. R. Horton and us in a number of areas, including: • business combinations involving us; • sales or dispositions by D. R. Horton of all or any portion of its ownership interest in us; • performance under the Master Supply Agreement; • arrangements with third parties that are exclusionary to D. R. Horton or us; and • business opportunities that may be attractive to both D. R. Horton and us. We may not be able to resolve any potential conflicts, and even if we do, the resolution may be less favorable than if we were dealing with an unaffiliated party. New agreements may be entered into between D. R. Horton and us, and agreements we enter into with D. R. Horton may be amended upon agreement between the parties. Because we are controlled by D. R. Horton, we may not have the leverage to negotiate these agreements, or amendments thereto if required, on terms as favorable to us as those that we would negotiate with an unaffiliated third party. D. R. Horton' s ability to control our Board may make it difficult for us to recruit independent directors. So long as D. R. Horton and its controlled affiliates hold shares of our common stock representing at least 20 % of the votes entitled to be cast by our stockholders at a stockholders' meeting, D. R. Horton is able to designate a certain number of the members of our Board. Our Nominating and Governance Committee has the right to designate the remaining number of individuals to the Board, and in any event not less than one. Currently, D. R. Horton has the right to designate four out of five members of our Board. Further, the interests of D. R. Horton and our other stockholders may diverge. Under these circumstances, persons who might otherwise accept an invitation to join our Board may decline. We qualify as a controlled company within the meaning of the NYSE rules and, as a result, may elect to rely on exemptions from certain corporate governance requirements that provide protection to stockholders of companies that are not controlled companies. So long as D. R. Horton owns more than 50 % of the total voting power of our common stock, we qualify as a" controlled company" under the NYSE corporate governance standards. As a controlled company, we may under the NYSE rules elect to be exempt from obligations to comply with certain NYSE corporate governance requirements, including the requirements: • that a majority of our Board consist of independent directors; • that we have a nominating and governance committee that is composed entirely of independent directors with a written charter addressing the committee' s purpose and responsibilities; • that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee' s purpose and responsibilities; and • that an annual performance evaluation of the nominating and governance committee and compensation committee be performed. We have not elected to utilize the " controlled company " exemptions at this time. However, if we elect to use the controlled company exemptions, our stockholders will not have the same protections afforded to stockholders of companies that are subject to all of the NYSE corporate governance requirements. We may not realize potential benefits of the strategic relationship with D. R. Horton, including the transactions contemplated by the Master Supply Agreement with D. R. Horton. The Master Supply Agreement establishes a strategic relationship between us and D. R. Horton for the supply of developed lots. Under the Master Supply Agreement, we will, and D. R. Horton may, present lot development opportunities to each other, subject to certain exceptions. The parties may collaborate with respect to such opportunities and, if they elect to develop such opportunities, D. R. Horton has a right of first offer or right to purchase some or all of the lots developed by us, as set forth in the Master Supply Agreement, on market terms offered by Forestar. There are numerous uncertainties associated with our relationship with D. R. Horton, including the risk that the parties will be unable to negotiate mutually acceptable terms for lot development opportunities and the fact that D. R. Horton is not obligated to present its lot development opportunities to us. As a result, we may not realize potential growth or other benefits from the strategic relationship with D. R. Horton, which may affect our financial condition or results of operations. D. R. Horton' s control of us or the strategic relationship between D. R. Horton and us may negatively affect our business relationships with other builder customers. So long as D. R. Horton controls us or the strategic relationship between D. R. Horton and us remains in place, our business relationships with other builder customers may be negatively affected, including the risk that such other builder customers may believe that we will favor D. R. Horton over our other customers. In addition, we have in the past relied on builder referrals as a source for land development opportunities, and there is a risk that builders may refer such opportunities to land developers other than us as a result of our close alignment with D. R. Horton. Risks Related to Our Business **Operations** ~~and our Industry~~ The homebuilding and lot development industries are cyclical and **significantly** affected by changes in economic, real estate or other conditions that could adversely affect our business ~~or~~ **and** financial results. The homebuilding and lot development industries are cyclical and are significantly affected by changes in general and local economic and real estate conditions, such as: • employment levels; • consumer confidence and spending; • demand for residential lots; • availability of financing for homebuyers; • availability of financing for companies that purchase our residential lots; • interest rates; • inflation; and • demographic trends. Adverse changes in general and local economic conditions or deterioration in the broader economy may negatively impact our business and financial results and increase the risk of asset impairments and write- offs. Changes in economic conditions may affect some of our regions or markets more than others. If adverse conditions affect our larger markets, they could have a proportionately greater impact on us than on some other real estate development companies. The federal government' s fiscal policies and the Federal Reserve' s monetary policies may negatively impact the financial markets and consumer confidence and could hurt the U. S. economy and the real estate market, and in turn, could adversely affect the operating results of our ~~businesses~~ -- **business** . **In** ~~During fiscal 2022, in~~ response to increased inflation, the Federal Reserve **has** raised interest rates significantly ~~and~~ **, which** has ~~signaled it expects additional future interest rate increases. As a result~~ **resulted** ~~,~~ **in higher** mortgage interest rates ~~increased significantly, and we began to see a moderation in housing demand~~ . ~~Increases in~~ **Prolonged periods of elevated** mortgage interest rates ~~would likely reduce demand for~~ - **or** ~~our residential lots and may~~ **further increases in mortgage interest rates could** have an adverse impact on our business ~~or~~ **and** financial results. Deployments of U. S. military personnel to foreign regions, terrorist attacks, other acts of violence or threats to national security and any corresponding response by the United States or others, domestic or international instability or social or political unrest may cause an economic slowdown in the markets where we operate, which could adversely affect our business. If we experience any of the foregoing, homebuilders may be less willing or able to buy our residential lots. Additionally, cancellations of lot sales contracts may increase if homebuilders do not honor their contracts due to any of the factors discussed above. Our pricing and product strategies may also be limited by market conditions. We may be unable to change the **pricing or** mix of our product offerings, reduce the costs of the residential lots we develop, or satisfactorily address changing market conditions in other ways without adversely affecting our profits and returns. Our business and financial results could be adversely affected by significant inflation, higher interest rates or deflation. **During the past two years, the economy has experienced significant inflationary pressures.** Inflation can adversely affect us by increasing costs of land, materials ~~and~~ **,** labor **and our cost of capital** . In addition, significant inflation is often accompanied by higher interest rates, which have a negative impact on housing affordability. **In an effort** ~~During fiscal 2022, we began~~ to **lower the current rate of** ~~see a moderation in housing demand as inflationary~~ --- **inflation** ~~pressures~~ **, the Federal Reserve has raised interest rates significantly, which has resulted in higher mortgage rates. The increase in mortgage rates has reduced the affordability of our lots and has required us to use pricing adjustments and incentives to adapt to current market conditions. If inflation** and mortgage interest rates **remain high or continue to** ~~increased~~ - **increase** ~~. In an inflationary environment~~ , **lot affordability** ~~depending on industry and other economic conditions, we~~ may be **further impacted** ~~precluded from raising residential lot prices enough to keep up with the rate of inflation~~ , which could reduce our profit margins ~~. Moreover, in an~~ **and** ~~inflationary environment, our cost of capital, labor and materials can increase and the purchasing power of our cash resources can decline, which can~~ have an adverse impact on our business ~~or~~ **and** financial results. Alternatively, a significant period of deflation could cause a decrease in overall spending and borrowing levels. This could lead to deterioration in economic conditions, including an increase in the rate of unemployment. Deflation could also cause the value of our real estate to decline. These, or other factors related to deflation, could have a negative impact on our business ~~or~~ **and** financial results. Supply shortages and other risks related to acquiring land, materials and skilled labor **and obtaining regulatory approval** could increase our costs and delay lot deliveries. The residential lot development industry may experience significant difficulties that can affect the cost or timing of lot development, including: • difficulty in acquiring land suitable for residential development at affordable prices in locations that are attractive to homebuilders; • **delays in receiving the necessary approvals from municipalities or other government agencies; •** shortages of qualified subcontractors; • reliance on local subcontractors, manufacturers and distributors who may be inadequately capitalized; • shortages of construction materials; and • significant increases in the cost of materials and other inputs, including petroleum- based products. ~~These factors may cause construction delays or increase our costs.~~ During ~~fiscal 2021 and 2022~~ **the last few years** , we ~~have~~ experienced multiple disruptions in our supply chain, which ~~have~~ resulted in shortages of certain building materials and tightness in the labor market. This ~~has~~ caused our construction cycle to lengthen and costs of building materials to increase. ~~If~~ **Although our construction cycle times have decreased more recently, if** shortages and cost increases in building materials and tightness in the labor market **increase, our construction cycle** ~~persist for a prolonged period of~~ time **and** ~~, our~~ profit margins could be adversely impacted ~~if we are unable to offset future cost increases by increasing the selling price of our lots~~ . Public health issues such as a major epidemic or pandemic could adversely affect our business ~~or~~ **and** financial results. The U. S. and other countries have experienced, and may experience in the future, outbreaks of contagious diseases that affect public health and public perception of health risk. ~~The ongoing~~ **In the event of a resurgence of** COVID- 19 ~~pandemic continues to~~ **, or a widespread, prolonged actual or perceived outbreak of any contagious disease, our operations could be negatively impacted. Such events have had, and could in the future have, an effect on our operations, including a reduction in homebuilder traffic, a disruption in our supply chain, tightness in the labor market or other factors, all of which could reduce demand for our lots. These or other repercussions of a public health crisis that** affect the global economy **could have** ~~. The effects of the pandemic contributed to disrupting our supply chain, which has resulted in shortages of certain building materials and~~ - **an adverse** ~~tightness in the labor market. There is uncertainty regarding the extent to which and how long COVID- 19 and its variant strains will continue to impact the global economy and our supply chain, and the effect of the pandemic on our operational and financial performance will depend on future developments, including its~~ impact on our ~~customers, trade partners and employees, all of which are highly uncertain and cannot be predicted. If COVID- 19 and its variant strains continue to have a negative impact on economic conditions, our~~ results of operations and financial condition ~~could be adversely impacted~~ . Our business and financial results could be adversely affected by weather conditions and natural disasters. Physical risks, including weather conditions and natural disasters, such as hurricanes, tornadoes, earthquakes, volcanic activity, droughts, floods, hailstorms, heavy or prolonged precipitation, wildfires and others, can harm our business. Additionally, the physical impacts of climate change may cause these occurrences to increase in frequency, severity and duration. Any such events can temporarily delay our development work and lot sales, unfavorably affect the cost or availability of materials or labor, damage residential lots under construction, lead to changing customer preferences and / or negatively impact demand for residential lots in affected areas. We have experienced temporary delays in production and short- term impacts on our lot sales from weather events in recent years. However, there has been no material impact on our business from these events or material operational challenges resulting from these events, but they could adversely affect our business in the future. The climates and geology of many of the states in which we operate, including California, Florida, Texas and other coastal areas where we have some of our larger operations and which have experienced recent natural disasters, present increased risks of adverse weather or natural disasters. A health and safety incident relating to our operations could be costly in terms of potential liability and reputational damage. Land development sites are inherently dangerous, and operating in this industry poses certain inherent health and safety risks. Due to health and safety regulatory requirements and the number of residential lots we develop, health and safety performance is critical to the success of our business. Any failure in health and safety performance may result in 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 and could expose us to liability that could be costly. Such an incident 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 attract customers and employees, which in turn could have a material adverse effect on our financial results and liquidity. From time to time, we obtain performance bonds, the unavailability of which could adversely affect our results of operations and cash flows. From time to time, we provide surety bonds to secure our performance or obligations under construction contracts, development agreements and other arrangements. At September 30, ~~2022~~ **2023** , we had $ 632. ~~7~~ **3** million of outstanding surety bonds. Our ability to obtain surety bonds primarily depends upon our credit rating, financial condition, past performance and other factors, including the capacity of the surety market and the underwriting practices of surety bond issuers. The ability to obtain surety bonds also can be impacted by the willingness of insurance companies to issue performance bonds for construction and development activities. If we are unable to obtain surety bonds when required, our results of operations and cash flows could be adversely affected. result in substantial penalties,reputational damage or litigation **.We provide employee awareness training about cybersecurity threats** .We routinely utilize information technology security experts to assist us in our evaluations of the effectiveness of the security of our information technology systems,and we regularly enhance our security measures ~~,which include multiple redundant safeguards,~~ to protect our systems and data.We use various encryption,tokenization and authentication technologies to mitigate cybersecurity risks and have increased our monitoring capabilities to enhance early detection and rapid response to potential cyber threats.However,because the techniques used to obtain unauthorized access,disable or degrade systems change frequently and **are** ~~increasingly~~ -- **increasing** ~~leverage~~ **in** ~~sophisticated~~ **sophistication** ~~technologies such as artificial intelligence~~ ,they often are not recognized until launched against a target.As such,we may be unable to anticipate these techniques,to implement adequate preventative measures or to identify and investigate cybersecurity incidents.Although past cybersecurity incidents have not had a **material effect** Governmental regulations and environmental matters could increase the cost and limit the availability of property suitable for residential lot development and could adversely affect our business ~~or~~ **and** financial results. We are subject to extensive and complex regulations that affect land acquisition, development and home construction, including zoning, density restrictions and building standards. These regulations often provide broad discretion to the administering governmental authorities as to the conditions we must meet prior to acquisition or development 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. New housing developments may also be subject to various assessments for schools, parks, streets and other public improvements. In addition, **government authorities** in many markets ~~, government authorities~~ have implemented no growth or growth control initiatives. Any of these may limit, delay or increase the costs of acquisition of land for residential use and development or home construction. We are also subject to a significant number and variety of local, state and federal laws and regulations concerning protection of health, safety, labor standards and the environment. 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 land acquisition and development activity in environmentally sensitive regions or areas. Government agencies also routinely initiate audits, reviews or investigations of our business practices to ensure compliance with these laws and regulations, which can cause us to incur costs or create other disruptions in our business that can be significant. ~~Recently~~ **In recent years** , ~~there has been growing concern from~~ advocacy groups, government agencies and the general public ~~over~~ **have expressed growing concerns regarding** the effects of climate change on the environment. Transition risks, such as government restrictions, standards or regulations intended to reduce greenhouse gas emissions and potential climate change impacts, are emerging and may increase in the future in the form of restrictions or additional requirements on land development in certain areas. Such restrictions and requirements could increase our operating and compliance costs or require additional technology and capital investment, which could adversely affect our results of operations. This is a particular concern in the western United States, where some of the most extensive and stringent environmental laws and residential building construction standards in the country have been enacted, and where we have business operations. We believe we are in compliance in all material respects with existing climate- related government restrictions, standards and regulations applicable to our business, and such compliance has not had a material impact on our business. However, given the rapidly changing nature of environmental laws and matters that may arise that are not currently known, we cannot predict our future exposure concerning such matters, and our future costs to achieve compliance or remedy potential violations could be significant. Additionally, actual or perceived environmental, social, governance (" ESG") and other sustainability matters and our response to these matters could harm our business. Increasing governmental and societal attention to ESG matters, including expanding mandatory and voluntary reporting, diligence, and disclosure on topics such as climate change, human capital, labor **, cybersecurity** and risk oversight, could expand the nature, scope, and complexity of matters that we are required to control, assess and report. These factors may alter the environment in which we do business and may increase the ongoing costs of compliance, and adversely impact our results of operations and cash flows. If we are unable to adequately address such ESG matters or fail to comply with all laws, regulations, policies and related interpretations, it could negatively impact our reputation and our business results. The subcontractors we rely on to perform the actual development of our residential lots are also subject to a significant number of local, state and federal laws and regulations, including laws involving matters that are not within our control. If the subcontractors who develop our residential lots fail to comply with all applicable laws, we can suffer reputational damage and may be exposed to possible liability. We are also subject to an extensive number of laws and regulations because our common stock is publicly traded in the capital markets. These regulations govern our communications with our shareholders and the capital markets, our financial statement disclosures and our legal processes, and they also impact the work required to be performed by our independent registered public accounting firm and our legal counsel. Changes in these laws and regulations, including the subsequent implementation of rules by the administering government authorities, may require us to incur additional compliance costs, and such costs may be significant. There can be no assurance that our current business strategy will be successful. Our business strategy is focused on expanding our unique residential lot development business across a geographically diversified national platform while consolidating market share in the fragmented U. S. lot development industry, primarily through our strategic relationship with D. R. Horton. There can be no assurance that our unique model will continue to succeed as intended or that we will be able to continue to execute it effectively because of the risks described elsewhere in this " Risk Factors " section, or other unforeseen issues or problems that arise. If we are not successful in achieving our objectives, our business, results of operations, cash flows and financial condition may be negatively affected. We may have continuing liabilities relating to assets that have been sold, which could adversely impact our results of operations. In the course of selling assets we are typically required to make contractual representations and warranties and to provide contractual indemnities to the buyers. These contractual obligations typically survive the closing of the transactions for some period of time. If a buyer is successful in sustaining a claim against us we may incur additional expenses pertaining to an asset we no longer own, and we may also be obligated to defend and / or indemnify the buyer from certain third- party claims. Such obligations could be material and they could adversely impact our results of operations. Our real estate development operations span several markets and as a result, our financial results may be significantly influenced by the local economies of those markets. The local economic growth and strength of the markets in which our real estate development activity is located are important factors in sustaining demand for our land and lots. Any adverse impact on the economic growth and health, or infrastructure development, of a local economy in which we develop real estate could materially adversely affect our business, liquidity, financial condition and results of operations. Our real estate development operations are highly dependent upon national, regional and local homebuilders. We are highly dependent upon our relationships with national, regional, and local homebuilders to purchase lots in our residential developments. If homebuilders do not view our developments as desirable locations for homebuilding operations, or if homebuilders are limited in their ability to conduct operations due to economic conditions, our business, liquidity, financial condition and results of operations will be adversely affected. In addition, we enter into contracts to sell lots to homebuilders. A homebuilder could decide to delay purchases of lots in one or more of our developments, subject to loss of earnest money, due to adverse real estate conditions wholly unrelated to our areas of operations, such as corporate decisions regarding allocation of limited capital or human resources. As a result, we may sell fewer lots and may have lower sales revenues, which could have an adverse effect on our business, liquidity, financial condition and results of operations. Delays or failures by governmental authorities to take expected actions could reduce our returns or cause us to incur losses on certain real estate development projects. For certain projects, we rely on governmental districts to issue bonds to reimburse us for qualified expenses, such as road and utility infrastructure costs. Bonds are often supported by assessments of district tax revenues, usually from ad valorem taxes. Slowing new home sales, decreasing real estate values or difficult credit markets for bond sales can reduce or delay district bond sale revenues and tax or assessment receipts, causing such districts to delay reimbursement of our qualified expenses. Failure to receive reimbursement for qualified expenses could adversely affect our cash flows and reduce our returns or cause us to incur losses on certain real estate development projects. Failure to succeed in new markets may limit our growth. We may from time to time commence development activity or make acquisitions outside of our existing market areas if appropriate opportunities arise. Our historical experience in existing markets does not ensure that we will be able to operate successfully in new markets. We may be exposed to a variety of risks if we choose to enter new markets, including, among others: • an inability to accurately evaluate local housing market conditions and local economies; • an inability to obtain land for development or to identify appropriate acquisition opportunities; • an inability to hire and retain key personnel; • an inability to successfully integrate operations; and • lack of familiarity with local governmental and permitting procedures. We plan to raise additional capital in the future, and such capital may not be available when needed or at all. We have a $ 410 million senior unsecured revolving credit facility with an uncommitted accordion feature that could increase the size of the facility to $ 600 million, subject to certain conditions and availability of additional bank commitments. The facility also provides for the issuance of letters of credit with a sublimit equal to the greater of $ 100 million and 50 % of the **total** revolving credit ~~commitment~~ **commitments** . The maturity date of the facility is October 28, 2026. The revolving credit facility is guaranteed by our wholly- owned subsidiaries that are not immaterial subsidiaries or have not been designated as unrestricted subsidiaries. We also have outstanding $ 400 million principal amount of 3. 85 % senior notes due 2026 and $ 300 million principal amount of 5. 0 % senior notes due 2028, both of which may be redeemed prior to maturity, subject to certain limitations and premiums defined in the indenture agreements. The notes represent senior unsecured obligations that rank equally in right of payment to all existing and future senior unsecured indebtedness and are guaranteed by each of our subsidiaries to the extent such subsidiaries guarantee our revolving credit facility. We regularly assess our projected capital requirements to fund growth in our business, repay debt obligations and support other general corporate and operational needs, and we regularly evaluate our opportunities to raise additional capital. At September 30, ~~2022~~ **2023** , we had an effective shelf registration statement filed with the SEC in October 2021 registering $ 750 million of equity securities, of which $ 300 million was reserved for sales under our at- the- market equity offering program that became effective November 2021. At September 30, ~~2022~~ **2023** , $ 748. 2 million remained available for issuance under the shelf registration statement, of which $ 298. 2 million is reserved for sales under our at- the- market equity offering program. We plan to raise additional capital in the future, in the form of additional debt or equity, to have sufficient capital resources and liquidity to fund our business needs and future growth plans and repay existing indebtedness. Our ability to raise additional capital will depend on, among other things, conditions in the capital markets at that time, which are outside of our control, and our financial condition, operating performance and growth prospects. Economic conditions may increase our cost of funding and limit access to certain customary sources of capital or make such capital only available on unfavorable terms. We may not be able to obtain capital on acceptable terms or at all. Any occurrence that may limit our access to the capital markets, such as a decline in the confidence of debt purchasers or counterparties participating in the capital markets or other disruption in capital markets, may adversely affect our capital costs and our ability to raise capital and, in turn, our liquidity. Further, we may need to raise capital in the future when other real estate- related companies are also seeking to raise capital and would then have to compete with those companies for investors. An inability to raise additional capital on acceptable terms when needed could have a material adverse effect on our business, financial condition and results of operations. The real estate development industry is highly competitive and a number of entities with which we compete are larger and have greater resources or are smaller and have lower cost structures, and competitive conditions may adversely affect our results of operations. **We** ~~The real estate development industry in which we~~ operate ~~is~~ **in a** highly competitive **industry** . Competitive conditions in the real estate development industry may result in difficulties acquiring suitable land at acceptable prices, lower sales volumes and prices, increased development or construction costs and delays in construction. We compete with numerous regional and local developers for the acquisition of land suitable for development. We also compete with national, regional and local homebuilders who develop real estate for their own use in homebuilding operations, many of which are larger and have greater resources than we do or are smaller and have lower cost structures than we do. Any improvement in the cost structure or service of our competitors will increase the competition we face. Our business, financial condition and results of operations may be negatively affected by any of these factors. Risks Related to Our Indebtedness We have significant amounts of consolidated debt and may incur additional debt; our debt obligations and our ability to comply with related covenants, restrictions or limitations could adversely affect our financial condition. As of September 30, ~~2022~~ **2023** , our consolidated debt was $ ~~706~~ **695** . 0 million, including $ 400 million principal amount of 3. 85 % senior notes due 2026 and $ 300 million principal amount of 5. 0 % senior notes due 2028. Our revolving credit facility and the indentures governing the senior notes impose restrictions on our and our restricted subsidiaries' ability to incur secured and unsecured debt, but still permit us and our restricted subsidiaries to incur a substantial amount of future secured and unsecured debt, and do not restrict the incurrence of future secured and unsecured debt by our unrestricted subsidiaries. The indentures governing the senior notes allow us to incur a substantial amount of additional debt. Possible Consequences The amount and the maturities of our debt could have important consequences. For example, they could: • require us to dedicate a substantial portion of our cash flow from operations to payment of our debt and reduce our ability to use our cash flow for other operating or investing purposes; • limit our flexibility to adjust to changes in our business or economic conditions; and • limit our ability to obtain future financing for working capital, capital expenditures, acquisitions, debt service requirements or other requirements. In addition, our debt and the restrictions imposed by the instruments governing those obligations expose us to additional risks, including: Dependence on Future Performance Our ability to meet our debt service and other obligations, including our obligations under the senior notes and the financial covenants under our revolving credit facility, will depend, in part, upon our future financial performance. Our future results are subject to the risks and uncertainties described in this " Risk Factors " section. Our revenues and earnings vary with the level of general economic activity in the markets we serve. Our business is also affected by financial, political, business and other factors, many of which are beyond our control. The factors that affect our ability to generate cash can also affect our ability to raise additional funds for these purposes through the sale of debt or equity, the refinancing of debt or the sale of assets. Risks of Variable Rate Debt Changes in prevailing interest rates may affect the cost of our debt service obligations, because borrowings under our revolving credit facility bear interest at floating rates. Borrowings under our revolving credit facility primarily bear interest based on the Secured Overnight Financing Rate (" SOFR"). Changes in Debt Ratings There can be no assurance that we will be able to maintain the credit ratings on our senior unsecured debt. Any lowering of our debt ratings could make accessing the capital markets or obtaining additional credit from banks more difficult and / or more expensive. Change of Control Purchase Option and Change of Control Default. Upon the occurrence of a change of control triggering event, as defined in the indentures governing our senior notes, we will be required to offer to repurchase such notes at 101 % of their principal amount, together with all accrued and unpaid interest, if any. Moreover, a change of control, as defined in our revolving credit facility, would constitute an event of default under our revolving credit facility that could result in the acceleration of the repayment of any borrowings outstanding under our revolving credit facility, a requirement to cash collateralize all letters of credit outstanding thereunder and the termination of the commitments thereunder. If the maturity of our revolving credit facility and / or other indebtedness together having an aggregate principal amount outstanding of $ 40 million or more is accelerated, an event of default would result under the indentures governing the senior notes, entitling the trustee for the notes or holders of at least 25 % in aggregate principal amount of the then outstanding notes to declare all such notes to be due and payable immediately. If purchase offers were required under the indentures for the senior notes, repayment of the borrowings under our revolving credit facility were required, or if the notes were accelerated, we can give no assurance that we would have sufficient funds to pay the required amounts. Our debt agreements contain a number of restrictive covenants which will limit our ability to finance future operations, acquisitions or capital needs or engage in other business activities that may be in our interest. The covenants in the indentures governing our senior notes and the credit agreement governing our revolving credit facility impose, and the terms of any future indebtedness may impose, operating and other restrictions on us and our subsidiaries. Such restrictions affect or will affect, and in many respects limit or prohibit, among other things, our ability and the ability of certain of our subsidiaries to: • incur additional indebtedness; • create liens; • pay dividends and make other distributions in respect of our equity securities; • redeem or repurchase our equity securities; • make certain investments or certain other restricted payments; • sell certain kinds of assets; • enter into certain types of transactions with affiliates; and • effect mergers or consolidations. In addition, our revolving credit facility contains financial covenants requiring the maintenance of a minimum level of tangible net worth, a minimum level of liquidity, a maximum allowable leverage ratio and a borrowing base restriction based on the book value of our real estate assets and unrestricted cash. The restrictions contained in the indentures and the credit agreements could (1) limit our ability to plan for or react to market or economic conditions or meet capital needs or otherwise restrict our activities or business plans and (2) adversely affect our ability to finance our operations, acquisitions, investments or strategic alliances or other capital needs or to engage in other business activities that would be in our interest. A breach of any of these covenants could result in a default under all or certain of our debt instruments. If an event of default occurs, such creditors could elect to: • declare all amounts outstanding, together with accrued and unpaid interest, to be immediately due and payable; • require us to apply all of our available cash to repay such amounts; or • prevent us from making debt service payments on certain of our debt instruments. General Risk Factors The market price of and trading volume of our shares of common stock may be volatile. The market price of our shares of common stock has fluctuated substantially and may continue to fluctuate in response to many factors which are beyond our control, including: • fluctuations in our operating results, including results that vary from the expectations of management, analysts and investors; • announcements of strategic developments, acquisitions, financings and other material events by us or our competitors; • the sale of a substantial number of shares of our common stock held by existing security holders in the public market; and • general conditions in the real estate industry. The stock markets in general may experience extreme volatility that may be unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock, make it difficult to predict the market price of our common stock in the future and cause the value of our common stock to decline. Our business may suffer if we lose key personnel. We depend to a large extent on the services of certain key management personnel. These individuals have ~~extensive~~ **significant** experience and ~~expertise in our business. The loss of any of these individuals could have a material adverse effect on our operations. We do not maintain key- person life insurance with respect to any of our employees. Our success may be dependent on our ability to continue to employ and retain skilled~~ **skills** personnel. Information technology failures, data...... European Union and other international regulators, as well as ~~state governments~~ **leadership and management abilities that are vital to our success. Our ability to attract and retain our key personnel may be impacted by matters involving reputation** , **culture, diversity and inclusion, compensation and benefits and our management of executive succession. We seek to retain our key personnel to** have ~~enacted or enhanced data privacy regulations, such as the California Consumer Privacy Act (and its successor~~ **succession and transition plans in place to address** the ~~California Privacy Rights Act that will go into effect on January 1~~ **potential loss of key personnel and to manage personnel transitions due to retirements** , **promotions** ~~2023)~~ , **transfers** and other ~~governments~~ **circumstances. However, if our retention, succession and transition implementation efforts** are **unsuccessful** ~~considering establishing similar or stronger protections. These regulations impose certain obligations for handling specified personal information in our systems~~ , ~~including notifying individuals regarding information we have~~

~~collected from them~~ - **the loss of key personnel** ~~. We have incurred costs in an effort to comply with these requirements, but our costs may increase significantly if new requirements are enacted and based on how individuals exercise their rights. Any noncompliance~~ could **adversely** result in substantial penalties, reputational damage...... incidents have not had a material effect **affect** ~~on~~ our business ~~or operations to date, in the future, a data security breach, a significant and extended disruption in the functioning of our information technology systems or a breach of any of our data security controls could disrupt our business operations, damage our reputation and cause us to lose customers~~ . **22** ~~We cannot provide assurances that a security breach, cyber- attack, data theft or other significant systems or security failures will not occur in the future, and such occurrences could have a material and adverse effect on our consolidated results of operations or financial position.~~