

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-K**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended December 31, 2021

**OR**  
☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from to

Commission file number 001-39266

**Harbor Custom Development, Inc.**  
**(Exact name of registrant as specified in its charter)**

Washington

(State of organization)

46-4827436

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

11505 Burnham Dr., Suite 301  
Gig Harbor, Washington 98332  
(Address of principal executive offices)

(253) 649-0636

Registrant's telephone number, including area code

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

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

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

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

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 ☒ X

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 ☒ X No

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/> X	Smaller reporting company	<input checked="" type="checkbox"/> X
		Emerging growth company	<input checked="" type="checkbox"/> X

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

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

The aggregate market value of voting stock held by non-affiliates of the Registrant on June 30, 2021, based on the closing price of \$3.24 for shares of the Registrant's Class A common stock as reported by the Nasdaq Stock Market LLC, was approximately \$39.8 million. Shares of common stock beneficially owned by each executive officer, director, and holder of more than 10% of our common stock have been excluded in that such persons may be deemed to be

affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The registrant had outstanding 13,206,165 shares of common stock as of March 21, 2022.

DOCUMENTS INCORPORATED BY REFERENCE

None.

## Table of Contents

	Page
<b>PART I</b>	<b>1</b>
Item 1. Business	1
Item 1A. Risk Factors	6
Item 1B. Unresolved Staff Comments	24
Item 2. Properties	24
Item 3. Legal Proceedings	25
Item 4. Mine Safety Disclosures	25
<b>PART II</b>	<b>26</b>
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	26
Item 6. [Reserved]	27
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations	28
Item 7A. Quantitative and Qualitative Disclosures About Market Risk	31
Item 8. Financial Statements and Supplementary Data	32
Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosures	63
Item 9A. Controls and Procedures	63
Item 9B. Other Information	63
Item 9C. Disclosure Regarding Foreign Jurisdiction That Prevents Inspections	63
<b>PART III</b>	<b>64</b>
Item 10. Directors, Executive Officers, and Corporate Governance	64
Item 11. Executive Compensation	68
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	75
Item 13. Certain Relationships and Related Transactions, and Director Independence	76
Item 14. Principal Accounting Fees and Services	78
<b>PART IV</b>	<b>80</b>
Item 15. Exhibits, Financial Statement Schedules	80
Item 16. Form 10-K Summary	81
<a href="#"><u>SIGNATURES</u></a>	82

## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

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

- economic changes either nationally or in the markets in which we operate, including declines in employment, volatility of mortgage interest rates, and inflation;
- downturn in the homebuilding industry;
- changes in assumptions used to make industry forecasts;
- volatility and uncertainty in the credit markets and broader financial markets;
- our future operating results and financial condition;
- our business operations;
- changes in our business and investment strategy;
- availability of land to acquire and our ability to acquire such land on favorable terms or at all;
- availability, terms, and deployment of capital;
- shortages of or increased prices for labor, land, or raw materials used in housing construction;
- delays in land development or home construction resulting from adverse weather conditions or other events outside our control;
- the cost and availability of insurance and surety bonds;
- changes in, or the failure or inability to comply with, governmental laws and regulations;
- the timing of receipt of regulatory approvals and the opening of projects;
- the degree and nature of our competition;
- our leverage and debt service obligations;
- general volatility of the capital markets;
- availability of qualified personnel and our ability to retain our key personnel;
- our financial performance;
- our expectations regarding the period during which we qualify as an emerging growth company under the JOBS Act;
- the extent to which the COVID-19 pandemic continues to impact our business; and
- additional factors discussed under the sections "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and "Our Business."

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

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

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

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## PART I

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

### ITEM 1. BUSINESS

#### Our Company

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

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

We are leading the real estate industry as the first national land developer and home builder accepting payment in the form of cryptocurrency for our properties.

Our portfolio of land, lots, home plans, and finishing options, coupled with a historic low inventory of residential and multi-family housing in our principal geographic areas, provide an opportunity for us to increase revenue and overall market share. In addition to our single-family residential projects, we plan to build and sell townhomes, condominiums, and apartments and anticipate commencement of land development and construction on ten multi-family sites in Washington and Florida in 2022. (See "Item 2. Properties.") In an effort to strategically control the expanding needs of our corporate team, we signed a lease on October 5, 2021 for a new office space in Tacoma, Washington and expect to move our headquarters in the second quarter of 2022. This office space is designed with a hybrid workforce in mind and takes into account employment trends that arose after the COVID-19 global pandemic, specifically the increase in hybrid or remote employees.

Since 2015, we have grown quickly with increasing revenues each year of operation. For the years ended December 31, 2021 and December 31, 2020, our total revenues were \$72.4 million and \$50.4 million, respectively. As of December 31, 2021 and December 31, 2020, our backlogs of fully executed contracts for the sale of developed residential lots and single-family homes were \$13.7 million and \$9.1 million, respectively. Our fee build backlogs as of December 31, 2021 and December 31, 2020 were \$10.0 million and \$0, respectively.

It is customary for us to sign purchase and sale agreements that contain a due diligence period which allows us time, usually between 30 and 60 days, to evaluate the acquisition. At times, through our due diligence efforts, we find that a property is not suitable for purchase due to economic forces, zoning issues, or other matters. If we determine that a property is not suitable for our desired purposes, we terminate the purchase and sale agreement. After termination within the due diligence period, our earnest money is returned to us.

Our infrastructure development division efficiently constructs a diverse range of residential communities and improved lots in a cost-effective manner. We own and lease heavy equipment, which we utilize to build and develop residential subdivisions and multi-family communities. The equipment is primarily used for land clearing, site development, public and private road improvements, installation of wet utilities such as sewer, water, and storm sewer lines, in addition to construction of dry utility lines for power, gas, telephone, and cable service providers.

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

As of March 21, 2022, we own or control 26 communities in Washington, Texas, California, and Florida, containing more than 2,700 lots in various stages of development.

Recently completed projects include the following:



Properties Type	Project Name	Location	Completion Date
Entitled Land	Soundview Estate Phase 7	Washington	Q2 2021
Entitled Land	Olympic Ridge	Washington	Q3 2021
Entitled Land	Stonehouse	Texas	Q4 2021
Developed Lots	Soundview Estate Phase 6	Washington	Q1 2021
Developed Lots	The Ranch at Lakeside	Texas	Q3 2021
Developed Lots	Semiahmoo - Horizon	Washington	Q4 2021
Home Communities	Lakeland Village	Washington	Q1 2021
Home Communities	Port Washington Park	Washington	Q2 2021
Home Communities	Settlers Field	Washington	Q3 2021

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

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

In 2020, we sold 104 developed lots and 76 homes. The 104 developed lot sales represented 25% of total revenue in 2020. Our 2020 single-family home selling prices ranged from \$0.4 million to \$0.8 million.

#### **Strategy**

Our strategy is driven by the following:

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

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

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

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

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

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

The significant appreciation in rental rates over the past year, combined with moderate capitalization rates and low inventory of rental housings in our target markets, have created a substantial opportunity to expand our product portfolio within the multi-family vertical space.

Our product agnostic building model provides us the flexibility to accommodate the current rapidly changing market conditions. We are equipped to build to the surrounding communities' needs from, first-time homebuyers searching for a starter townhome, condominium, or apartment to institutional investors looking for large tracts of entitled land, developed

lots, or multi-family apartment projects. This flexible business model provides us with a competitive advantage and differentiates us from our peers.

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

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

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

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

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

### **Our Markets**

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

### **Our Products**

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

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

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

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

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

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

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

- evaluate economic feasibility within the context of the above strategies.

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

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

Our philosophy is to provide a positive, memorable experience to homeowners by actively engaging them in the building process and by enhancing communication, knowledge, and satisfaction. Options are available to suit individual and family lifestyle needs. Home designs include features such as outdoor living spaces, one-story living, and first floor master bedroom suites to appeal to universal design needs. Our homes are engineered for energy-efficiency which is aimed at reducing impact on the environment and lowering energy costs to our homebuyers.

We sell our homes through independent real estate brokers. Sales representatives and independent brokers assist potential buyers by providing them with basic floor plans, price information, development and construction timetables, tours of model homes, and the selection of options, if applicable. We, along with our design consultants, strive for superior design choices that coincide with the lifestyles of targeted homebuyers.

Our selling agents and brokers advertise directly to potential homebuyers through the internet and in newspapers and trade publications, as well as through marketing brochures and newsletters.

Construction may start when a customer has selected a lot, chosen a floor plan, and received preliminary mortgage approval. However, construction usually begins prior to that point in order to satisfy market demand for completed homes and to facilitate construction scheduling and/or cost savings. Home building revenues are recognized when home sales are finished and closed and title and possession are transferred to the buyer.

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

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

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

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

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

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

### **Materials**

When constructing our projects, we use various materials and components. The typical build time for our single-family homes is six to ten months and our multi-family communities is 15 to 24 months, during which time materials are subject to price fluctuations. Such price fluctuations are caused by several factors, including seasonal variations in availability, international trade disputes and resulting tariffs, and increased demand for materials due to the improved market. The

current state of the global supply chain has the potential to increase our cost on certain materials such as quartz slabs for countertops, finished hardware, lighting fixtures, appliances, and engineered hardwood used in residential flooring. While it has had a minimal effect on our sourcing of materials and supplier components thus far, the continuing global supply chain disruptions, and the ongoing COVID-19 pandemic could impact our sourcing needs in the future.

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

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

## **COVID-19**

On March 25, 2020, the Governor of Washington imposed a complete moratorium on construction of single-family low-risk construction in the State (the "Moratorium"). We had to cease construction operations on that date. The Moratorium was lifted on April 24, 2020, provided that safety measures were implemented, including the creation of a COVID-19 safety plan, exposure response procedure plan, and mandatory construction site safety meetings. We implemented the safety measures and re-started housing construction activities. The possibility remains that the Governor could impose new or additional requirements or restrict or completely halt construction again depending on the development of the COVID-19 infection rate.

We have not experienced any material sales contract cancellations due to the pandemic or otherwise. We have experienced minimal supply-chain issues with both cabinetry and appliances related to COVID-19. As of the date of this Annual Report, our projects are on-schedule and operations are not being materially impacted by the COVID-19 pandemic.

## **Seasonality**

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

While the leasing side of multi-family communities can experience some seasonality during the winter holiday months, the construction side typically doesn't show seasonality patterns. The building process typically takes 15 to 24 months, depending on the size of the project, the site development scope, and other market factors.

## **Governmental Regulation and Environmental Matters**

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

We are also subject to a variety of local, state, federal, and other statutes, ordinances, rules, and regulations concerning the environment. The particular environmental laws which apply to any given construction site vary according to the site's location, its environmental conditions, and the present and former uses of the site, as well as adjoining properties. Environmental laws and conditions may result in delays, may cause us to incur substantial compliance and other costs, and can prohibit or severely restrict homebuilding activity in environmentally sensitive regions or areas. From time to time, the Environmental Protection Agency (the "EPA") and similar federal or state agencies review homebuilders' compliance with environmental laws and may levy fines and penalties for failure to strictly comply with applicable environmental laws or

impose additional requirements for future compliance as a result of past failures. Any such actions imposed on us may increase our costs. Environmental regulations can also have an adverse impact on the availability and price of certain raw materials such as lumber.

Under various environmental laws, current or former owners of real estate, as well as certain other categories of parties, may be required to investigate and remediate hazardous or toxic substances or petroleum product releases and may be held liable to a governmental entity or to third parties for property damage and for investigation and remediation costs incurred by such parties in connection with the contamination. In addition, in those cases where an endangered species is involved, environmental rules and regulations can result in the elimination of development in identified environmentally sensitive areas. To date, we have never experienced a significant environmental issue.

#### **Competition and Market Factors**

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

#### **Human Capital**

As of March 21, 2022, we had 80 full-time employees; 41 of our employees are covered by a collective bargaining agreement.

The safety and well-being of our employees are important to us. We take guidance from the State of Washington regarding COVID-19 protocols in the workplace. Some employees that are able to perform their job functions remotely are working remotely. However, this may change if there are any other developments in state or local laws and on a case-by-case basis.

#### **Available Information**

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

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

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

**Business and Industry Risks:**

*The housing market may not continue to grow at the same rate, or may decline, and any decline in our markets or for the homebuilding industry generally may materially and adversely affect our business and financial condition.*

We cannot predict whether and to what extent the housing markets in the geographic areas in which we operate will continue to grow, particularly if interest rates for mortgage loans, land costs, and construction costs rise. Other factors that might impact growth in the homebuilding industry include uncertainty in domestic and international financial credit and consumer lending markets amid slow economic growth or recessionary conditions in various regions or industries around the world, including as a result of the COVID-19 pandemic, tight lending standards and practices for mortgage loans that limit consumers' ability to qualify for mortgage financing to purchase a home, including increased minimum credit score requirements, credit risk/mortgage loan insurance premiums and/or other fees and required down payment amounts, higher home prices, more conservative appraisals, changing consumer preferences, higher loan-to-value ratios and extensive buyer income and asset documentation requirements, changes to mortgage regulations, slower rates of population growth or population decline in our markets, or Federal Reserve policy changes. Given these factors, we can provide no assurance that the present housing market will continue to be strong, whether overall or in our markets. If there is limited economic growth, declines in employment and consumer income, changes in consumer behavior, including as a result of the COVID-19 pandemic, and/or tightening of mortgage lending standards, practices and regulation in the geographic areas in which we operate, or if interest rates for mortgage loans or home prices rise, there could likely be a corresponding adverse effect on our business, prospects, liquidity, financial condition and results of operations, including, but not limited to, the number of homes we sell, our average sales price per home closed and the amount of revenues or profits we generate, and such effect may be material.

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

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

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

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

*Tightening of mortgage lending standards and mortgage financing requirements, untimely or incomplete mortgage loan originations for our homebuyers and rising mortgage interest rates could adversely affect the availability of mortgage*

***loans for potential purchasers of our homes and thereby materially and adversely affect our business, prospects, liquidity, financial condition, and results of operations.***

Almost all of our customers finance their home purchases through lenders that provide mortgage financing. Mortgage interest rates have generally trended downward for the last several decades and reached historic lows in the past 18 months, which has made the homes we sell more affordable. However, we cannot predict whether mortgage interest rates will continue to fall, remain low or rise. If mortgage interest rates increase, the ability of prospective homebuyers to finance home purchases may be adversely affected, and, as a result, our operating results may be significantly negatively impacted. Our homebuilding activities are dependent upon the availability of mortgage financing to homebuyers, which is expected to be impacted by continued regulatory changes and fluctuations in the risk appetites of lenders. The financial documentation, down payment amounts and income to debt ratio requirements are subject to change and could become more restrictive. The federal government has a significant role in supporting mortgage lending through its conservatorship of Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac"), both of which purchase or insure mortgage loans and mortgage loan-backed securities, and its insurance of mortgage loans through or in connection with the Federal Housing Administration ("FHA"), the Veterans Administration ("VA") and the U.S. Department of Agriculture ("USDA"). FHA and USDA backing of mortgage loans has been particularly important to the mortgage finance industry and to our business. If either the FHA or USDA raised their down payment requirements or lowered maximum loan amounts, our business could be materially affected. Increased lending volume and losses insured by the FHA have resulted in a reduction of the FHA insurance fund. The USDA rural development program provides for zero down payment and 100% financing for homebuyers in qualifying areas. If the USDA program was discontinued or if funding was decreased, then our business could be adversely affected. In addition, if the USDA changed its determination of areas that are eligible to qualify for the program, it could have an adverse effect on our business. In addition, changes in governmental regulation with respect to mortgage lenders could adversely affect demand for housing. The availability and affordability of mortgage loans, including mortgage interest rates for such loans, could also be adversely affected by a scaling back or termination of the federal government's mortgage loan-related programs or policies. Because Fannie Mae-, Freddie Mac-, FHA-, USDA- and VA-backed mortgage loans have been an important factor in marketing and selling many of our homes, any limitations, or restrictions in the availability of, or higher consumer costs for, such government-backed financing could adversely affect our business, prospects, liquidity, financial condition, and results of operations. The elimination or curtailment of state bonds to assist homebuyers could materially and adversely affect our business, prospects, liquidity, financial condition, and results of operations. In addition, certain current regulations impose, and future regulations may strengthen or impose new, standards and requirements relating to the origination, securitization, and servicing of residential consumer mortgage loans, which could further restrict the availability and affordability of mortgage loans and the demand for such loans by financial intermediaries and, as a result, adversely affect our home sales, financial condition, and results of operations. Further, if, due to credit or consumer lending market conditions, reduced liquidity, increased risk retention or minimum capital level obligations and/or regulatory restrictions related to certain regulations, laws or other factors or business decisions, these lenders refuse or are unable to provide mortgage loans to our homebuyers, or increase the costs to borrowers to obtain such loans, the number of homes we close and our business, prospects, liquidity, financial condition and results of operations may be materially adversely affected. First-time homebuyers are generally more affected by the availability of mortgage financing than other potential homebuyers. These homebuyers are a key source of demand for our new homes. A limited availability of suitable mortgage financing may adversely affect the volume and sales price of our home sales.

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

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

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

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

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

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

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

Inflation could adversely affect our business and financial results by increasing the costs of land, raw materials and labor needed to operate our business. If our markets have an oversupply of homes, relative to demand, we may be unable to offset any such increases in costs with corresponding higher sales prices for our homes. Inflation may also accompany higher interest rates, which could adversely impact potential customers' ability to obtain financing on favorable terms, thereby further decreasing demand. If we are unable to raise the prices of our homes to offset the increasing costs of our operations, our margins could decrease. Furthermore, if we need to lower the price of our homes to meet demand, the value of our land inventory may decrease. Inflation may also raise our costs of capital and decrease our purchasing power, making it more difficult to maintain sufficient funds to operate our business.

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

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

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

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

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

Slower rates of population growth or population declines in our markets in Washington, California, Texas, Florida, or other key markets in the United States that we may decide to enter in the future, especially as compared to the high population growth rates in prior years, could affect the demand for housing, cause home prices in these markets to fall and adversely affect our plans for growth, business, financial condition, and operating results. Furthermore, while we have recently observed an increase in our business as a result of people moving to the suburbs during the COVID-19 pandemic, we cannot assure you that this trend will continue or not reverse.

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

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



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

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

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

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

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

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

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

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

parcels, availability of financing to acquire land parcels, zoning, and other market conditions. If the supply of land parcels appropriate for development of homes is limited in our markets, or for any other reason, our ability to grow could be significantly limited, and the number of homes that we build, and sell could decline.

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

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

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

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

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

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

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

We are subject to numerous local, state, federal and other statutes, ordinances, rules, and regulations concerning zoning, development, building design, construction, accessibility, anti-discrimination, and other matters, which, among other things, impose restrictive zoning and density requirements, the result of which is to limit our operations within the boundaries of a particular area. We may encounter issues with entitlement, not identify all entitlement requirements during the pre-development review of a project site, or encounter zoning changes that impact our operations. Projects for which

we have not received land use and development entitlements, or approvals may be subjected to periodic delays, changes in use, less intensive development, or elimination of development in certain specific areas due to government regulations. We may also be subject to periodic delays or may be precluded entirely from developing in certain communities due to building moratoriums or zoning changes. Such moratoriums generally relate to insufficient water supplies, sewage facilities, delays in utility hook-ups, or inadequate road capacity within specific market areas or subdivisions. Local governments also have broad discretion regarding the imposition of development fees for projects in their jurisdiction. Projects for which we have received land use and development entitlements, or approvals may still require a variety of other governmental approvals and permits during the development process and can also be impacted adversely by unforeseen health, safety, and welfare issues, which can further delay these projects or prevent their development. As a result of any of these statutes, ordinances, rules or regulations, the timing of our home sales could be delayed, the number of our home sales could decline and/or our costs could increase, which could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations.

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

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

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

There is a growing concern from advocacy groups and the general public that the emissions of greenhouse gases and other human activities have caused, and will continue to cause, significant changes in weather patterns and temperatures and the frequency and severity of natural disasters. Government mandates, standards and regulations enacted in response to these projected climate change impacts and concerns could result in restrictions on land development in certain areas or increased energy, transportation, and raw material costs. On January 20, 2021, President Biden signed an instrument that will lead to the United States' reentry into the Paris Agreement, which requires countries to review and "represent a progression" in their intended nationally determined contributions, which set greenhouse gas emission reduction goals, every five years. We anticipate that a variety of new legislation may be enacted or considered for enactment at the federal, state, and local levels relating to climate change and energy, including in response to the United States' reentry into the Paris Agreement. This legislation could relate to, for example, matters such as greenhouse gas emissions control and building and other codes that impose energy efficiency standards or require energy saving construction materials. New building or other code requirements that impose stricter energy efficiency standards or requirements for building materials could significantly increase our cost to construct homes. As climate change concerns continue to grow, legislation, regulations, mandates, standards, and other requirements of this nature are expected to continue to be enacted and become costlier for us to comply with. Similarly, energy-related initiatives affect a wide variety of companies throughout the United States and because our operations are heavily dependent on significant amounts of raw materials, such as lumber, steel, and concrete, these initiatives could have an adverse impact on our operations and profitability to the extent the manufacturers and suppliers of our materials are burdened with expensive cap and trade or similar energy-related regulations.

***Our business could be materially and adversely disrupted by an epidemic or pandemic (such as the continuing COVID-19 pandemic), or similar public threat, or fear of such an event, and the measures that federal, state, and local governments and other authorities implement to address it.***

An epidemic, pandemic or similar serious public health issue, and the measures undertaken by governmental authorities to address it, could significantly disrupt or prevent us from operating our business in the ordinary course for an extended period, and thereby, along with any associated economic and social instability or distress, have a material adverse impact on our business, financial condition, results of operations, cash flows, strategies, or prospects. We experienced some disruptions to our business operations during the continuing COVID-19 pandemic, including a brief cessation of construction in March 2020 and some temporary closures of our office for a limited period of time. The ultimate impacts of COVID-19 and related mitigation efforts will depend on future developments, including, but not limited to, the duration and geographic spread of COVID-19; the impact of government actions designed to prevent the spread of COVID-19; the availability and timely distribution of effective treatments and vaccines; actions taken by customers, subcontractors, suppliers and other third parties; workforce availability; and the timing and extent to which normal economic and operating conditions resume. Our business could also be negatively impacted over the medium-to-longer term if the disruptions related to COVID-19 decrease consumer confidence generally or with respect to purchasing a home; cause civil unrest; negatively impact mortgage availability or the federal government's mortgage loan-related programs or policies; delay mortgage originations; tighten mortgage lending standards; or precipitate a prolonged economic downturn or an extended rise in unemployment or tempering of wage growth, any of which could lower demand for our products; negatively impact general consumer interest in purchasing a home compared to choosing other housing alternatives; impair our ability to sell and build homes in a typical manner or at all, generate revenues and cash flows or access our Credit Agreement (as defined herein) or the capital or lending markets (or significantly increase the costs of doing so), as may be necessary to sustain our business; increase the costs or decrease the supply of building materials or the financial viability or availability of subcontractors, including as a result of infections or medically necessary or recommended self-quarantining, or governmental mandates to direct production activities to support public health efforts; and result in our recognizing charges in future periods, which may be material, for real estate impairments or land option contract abandonments, or both, related to our current real estate assets. The inherent uncertainty surrounding COVID-19, due in part to changing governmental directives, public health challenges and progress and market reactions thereto, also makes it more challenging for our management to estimate the future performance of our business and develop strategies to generate growth or achieve our objectives. Should the adverse impacts described above (or others that are currently unknown) occur, whether individually or collectively, we would expect to experience, among other things, decreases in our net orders, homes closed, average sales prices per home closed, revenues and profitability, and such impacts could be material to our business, financial condition, results of operations, cash flows, strategies or prospects in future quarters. In addition, if the U.S. experiences another surge of COVID-19 cases and the public health effort related thereto intensifies to such an extent that we cannot operate in most or all of our markets, we could generate few or no orders and deliver few, if any, homes during the applicable period, which could be prolonged. Along with a potential increase in cancellations of home purchase contracts, if prolonged government restrictions on our business and our customers return in response to increases in COVID-19 cases, or if there is 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 the loan agreements, and/or mortgages and land contracts due to land sellers and other loans; or service our outstanding indebtedness. Such a circumstance could, among other things, exhaust our available liquidity and ability to access liquidity sources or trigger an acceleration to pay a significant portion or all of our then-outstanding debt obligations, which we may be unable to do.

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

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

***The war in Ukraine may adversely affect our business, financial condition, and results of operation.***

The war in Ukraine could have an impact on the overall stock market as well as impact the costs and availability of construction materials. Additionally, it may have an impact on the demand of homebuyers and other negative impacts that are unforeseen.

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

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

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

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

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

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

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

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

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

The residential construction industry experiences labor and raw material shortages from time to time, including shortages in qualified subcontractors and tradespeople and supplies of insulation, drywall, cement, steel, and lumber. These labor and raw material shortages can be more severe during periods of strong demand for housing, during periods following natural disasters that have a significant impact on existing residential structures or as a result of broader economic or geopolitical disruptions. It is uncertain whether these shortages will continue as is, improve or worsen. In addition, our activities in recently entered markets or those we may choose to enter in the future depends substantially on our ability to source labor and local materials on terms that are favorable to us. Our markets may exhibit a reduced level of skilled labor relative to increased homebuilding demand in these markets. In the event of shortages in labor or raw materials in such markets, local subcontractors, tradespeople, and suppliers may choose to allocate their resources to homebuilders with an established presence in the market and with whom they have longer-standing relationships. Furthermore, the cost of labor and raw materials may also increase during periods of shortage or high inflation. During the economic downturn in 2007 through 2011, a large number of qualified trade partners went out of business or otherwise exited the market into new fields. Price increases could cause delays in and increase our costs of home construction, which we may not be able to recover by raising home prices due to market demand and because the price for each home is typically set prior to its delivery pursuant to the agreement of sale with the homebuyer. In addition, the federal government has, at various times, imposed tariffs on a variety of imports from foreign countries and may impose additional tariffs in the future. Significant tariffs or other restrictions placed on raw materials that we use in our homebuilding operation, such as lumber or steel, could cause the cost of home construction to increase, which we may not be able to recover by raising home prices or which could slow our absorption due to being constrained by market demand. Labor and raw material shortages and price increases for labor and raw materials could cause delays in and increase our costs of home construction, which in turn could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations.

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

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

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

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

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

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

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

Our quarterly operating results generally fluctuate by season. We typically experience the highest new home order activity in the spring and summer, although this activity is also highly dependent on the number of active selling communities,

timing of new community openings, and other market factors. Since it typically takes six to ten months to construct a new home, we deliver more homes in the second half of the year as spring and summer home orders convert to home deliveries. Because of this seasonality, home starts, construction costs, and related cash outflows have historically been highest in the second and third quarters and the majority of cash receipts from home deliveries occurs during the second half of the year. We expect this seasonal pattern to continue over the long-term, although it may be affected by volatility in the homebuilding industry.

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

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

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

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

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

As a homebuilder and developer, we are subject to construction defect, product liability and home and other warranty claims, including moisture intrusion and related claims, arising in the ordinary course of business. These claims are common to the homebuilding industry and can be costly. There can be no assurance that any developments we undertake will be free from defects once completed and any defects attributable to us may lead to significant contractual or other liabilities. We rely on subcontractors to perform the construction of our homes and, in some cases, to select and obtain building materials. Although we provide subcontractors with detailed specifications and perform quality control procedures, subcontractors may, in some cases, use improper construction processes or defective materials. Defective products used in the construction of our homes can result in the need to perform extensive repairs. The cost of performing such repairs, or litigation arising out of such issues, may be significant if we are unable to recover the costs from subcontractors, suppliers and/or insurers. Warranty and construction defect matters can also result in negative publicity, including on social media outlets, which could damage our reputation and negatively affect our ability to sell homes. We maintain, and require our subcontractors to maintain, general liability insurance (including construction defect and bodily

injury coverage) and workers' compensation insurance and generally seek to require our subcontractors to indemnify us for liabilities arising from their work. While these insurance policies, subject to deductibles and other coverage limits, and indemnities protect us against a portion of our risk of loss from claims related to our land development and homebuilding activities, we cannot provide assurance that these insurance policies and indemnities will be adequate to address all our home and other warranty, product liability and construction defect claims in the future, or that any potential inadequacies will not have an adverse effect on our business, financial condition or results of operations. Further, the coverage offered by, and the availability of, general liability insurance for completed operations and construction defects are currently limited and costly. We cannot provide assurance that coverage will not be further restricted, increasing our risks and financial exposure to claims, and/or become costlier.

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

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

#### **Financial and Liquidity Risks:**

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

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

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

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

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

The global credit and equity markets and the overall economy can be extremely volatile, which could have a number of adverse effects on our operations and capital requirements. For the past decade, the domestic financial markets have



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

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

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

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

We have a significant amount of indebtedness (See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources). If we incur additional indebtedness, the risks related to our level of indebtedness could intensify. Specifically, an increased level of indebtedness could have important consequences, including: making it more difficult for us to satisfy our obligations with respect to our indebtedness, including our loan agreements-limiting our ability to obtain additional financing to fund future working capital, capital expenditures, debt service requirements, execution of our business strategy or finance other general corporate requirements-requiring us to make non-strategic divestitures, particularly when the availability of financing in the capital markets is limited, which may adversely impact sales prices-requiring a substantial portion of our cash flow to be allocated to debt service payments instead of other business purposes, thereby reducing the amount of cash flow available for working capital, capital expenditures, acquisitions, dividends and other general corporate purposes-increasing our vulnerability to general adverse economic and industry conditions, including increases in interest rates, particularly given that certain indebtedness bears interest at variable rates-limiting our ability to capitalize on business opportunities, reinvest in and develop properties and to react to competitive pressures and adverse changes in government regulations-placing us at a disadvantage compared to other, less leveraged competitors-limiting our ability, or increasing the costs, to refinance indebtedness-resulting in an event of default if we fail to satisfy our obligations under our indebtedness, which default could result in all or part of our indebtedness becoming immediately due and payable and, in the case of our secured debt, could permit the lenders to foreclose on our assets securing such debt.

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

A default under any of the agreements governing our indebtedness may allow our creditors to accelerate the related debt and may result in the acceleration of any other debt to which a cross-acceleration or cross-default provision applies. In addition, an event of default under the credit agreement governing our credit facility would permit the lenders thereunder to terminate all commitments to extend further credit under the applicable facility. Furthermore, if we were unable to repay the amounts due and payable under any secured indebtedness, those lenders could proceed against the collateral granted to them to secure that indebtedness. In the event our lenders or the holders of our notes accelerate the repayment of our

borrowings, we cannot assure that we would have sufficient assets to repay such indebtedness. As a result of these restrictions, we may be:

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

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

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

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

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

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

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

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

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

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

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

On December 21, 2020, the U.S. Congress passed the Taxpayer Certainty and Disaster Tax Relief Act of 2020, which former President Trump signed into law on December 27, 2020. This Act extended the availability of Code Section 45L credit for energy efficient new homes ("federal energy efficient homes tax credits"), which provides a tax credit of \$2,000 per qualifying home to eligible homebuilders and made such tax credits available for homes delivered through December 31, 2021. It is uncertain whether an extension or similar tax credit will be adopted in the future.

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

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

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

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

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

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

**Organizational and Structural Risks:**

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

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

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

We qualify as an "emerging growth company" as defined in Section 2(a)(19) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012, which we refer to as the "JOBS Act." As such, we take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies for as long as we continue to be an emerging growth company, including (i) the exemption from the auditor attestation requirements with respect to internal control over financial reporting under Section 404 of SOX, (ii) the exemptions from say-on-pay, say-on-frequency and say-on-golden parachute voting requirements and (iii) reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. As a result, our stockholders may not have access to certain information they deem important. We will remain an emerging growth company until the earliest of (i) the last day of the fiscal year (a) following the fifth anniversary of our IPO, (b) in which we have total annual gross revenue of at least \$1.07 billion or (c) in which we are deemed to be a large accelerated filer, which means the market value of our common stock and public warrants that is held by non-affiliates exceeds \$700 million as of the last business day of our prior second fiscal quarter, and (ii) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period. We cannot predict if investors will find our common stock less attractive if we choose to rely on these exemptions. If some investors find our common stock less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our common stock and the price of our common stock may be more volatile. In addition, Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the exemption from complying with new or revised accounting standards provided in Section 7(a)(2)(B) of the Securities Act as long as we are an emerging growth company. An emerging growth company can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies, but any such election to opt out is irrevocable. We have elected to avail ourselves of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of our financial statements with another public company that is neither an emerging growth company nor an emerging growth company that has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used. As a result of our reliance on these exemptions or reduced disclosures, investors may not have access to certain information they deem important or may find our securities less attractive. This may result in a less active trading market for our securities and the price of our securities, including our common stock or public warrants may be more volatile.

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

Our common stock, preferred stock, and public warrants are listed on the Nasdaq stock exchange. There is no guarantee that these securities will remain listed on Nasdaq. There can be no assurance that these securities will continue to be listed on Nasdaq in the future. In order to continue listing our securities on Nasdaq, we must maintain certain financial, distribution and share price levels. In general, we must maintain a minimum number of holders of our securities. If Nasdaq delists any of our securities from trading on its exchange and we are not able to list our securities on another national securities exchange, we expect our securities could be quoted on an over-the-counter market. If this were to occur, we could face significant material adverse consequences, including:

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

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

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

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

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

We currently intend to retain our future earnings to finance the development and expansion of our business and, therefore, do not intend to pay cash dividends on our common stock for the foreseeable future. Any future determination to pay dividends on our common stock will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in any financing instruments, applicable legal requirements, and such other factors as our board of directors deems relevant. Accordingly, stockholders may need to sell their shares of our common stock to realize a return on investment and may not be able to sell shares at or above the price paid for them.

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

In the future, we may attempt to increase our capital resources by making offerings of debt securities or additional offerings of equity securities. Upon bankruptcy or liquidation, holders of our debt securities and shares of preferred stock and lenders with respect to other borrowings will receive a distribution of our available assets prior to the holders of our common stock. Additional equity offerings may dilute the holdings of our existing stockholders or reduce the market price of our common stock, or both. Our preferred stock will have a preference on liquidating distributions and dividend payments, which could limit our ability to make a dividend distribution to the holders of our common stock. Our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control. As a result, we cannot predict or estimate the amount, timing or nature of our future offerings, and purchasers of our common stock in this offering bear the risk of our future offerings reducing the market price of our common stock and diluting their ownership interest in our company.

**General Risks:**

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

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

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

We rely on accounting, financial, operational, management and other information systems, including the Internet and third-party hosted services, to conduct our operations, store sensitive data, process financial information and results of operations for internal reporting purposes and comply with financial reporting, legal and tax requirements. Our information systems, and those of our vendors and service providers, are subject to damage or interruption from power outages, computer and telecommunication failures, computer viruses, security breaches, including malware and phishing, cyberattacks, natural disasters, usage errors by employees and other related risks. Any cyber incident or attack or other disruption or failure in these information systems, or other systems or infrastructure upon which they rely, could adversely affect our ability to conduct our business and could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. Furthermore, any failure or security breach of information systems or data could result in a violation

of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation, or a loss of confidence in our security measures, which could harm our business and could have a material adverse effect on our business, prospects, liquidity, financial condition, and results of operations. Although we have implemented systems and processes intended to secure our information systems, there can be no assurance that our efforts to maintain the security and integrity of our information systems will be effective or that future attempted security breaches or disruptions would not be successful or damaging.

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

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

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

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

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

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

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

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

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

We are subject to laws, regulations and rules enacted by national, regional, and local governments and Nasdaq. In particular, we are required to comply with certain SEC, Nasdaq and other legal or regulatory requirements. Compliance

with, and monitoring of, applicable laws, regulations and rules may be difficult, time consuming and costly. Those laws, regulations or rules and their interpretation and application may also change from time to time and those changes could have a material adverse effect on our business, investments, and results of operations. In addition, a failure to comply with applicable laws, regulations, or rules, as interpreted and applied, could have a material adverse effect on our business and results of operations.

## ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

## ITEM 2. PROPERTIES

We lease several suites of office space at 11505 Burnham Dr., Gig Harbor, Washington under multiple lease agreements for 26 to 60 month periods with the leases ending in February 2023 through May 2023. Additionally, we signed a lease for a new office space (1201 Pacific Avenue, Tacoma, Washington) under a lease initiated as of October 5, 2021 for a 126-month period from October 1, 2021 to March 31, 2032.

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

The following table summarizes certain key metrics of the residential properties we own or control as of March 21, 2022:

Project Name	Location	Unsold Units	Business Plan	Status
Bridge View Trails	Washington	138	Build + Sell Apartments	Owned
Broadmoor Commons	Washington	33	Build + Sell Condos	Controlled
East Campus Development	Washington	181	Develop + Sell Apartments	Controlled
Grandis Pond	Washington	997	Develop + Sell Lots	Controlled
Horizon at Semiahmoo	Washington	145	Develop + Sell Lots	Owned
Mill's Crossing	Washington	36	Build + Sell Condos	Owned
Mira	Washington	112	Sell Entitled Land	Owned
Olympic Sunset	Washington	228	Build + Sell Apartments	Owned
Pacific Ridge	Washington	80	Build + Sell Apartments	Owned
Soundview Estates	Washington	3	Build + Sell Homes	Owned
Tanglewilde	Washington	177	Build + Sell Apartments	Owned
Wyndstone	Washington	75	Build + Sell Apartments	Owned
Westry Village	Washington	66	Build + Sell Townhomes	Controlled
Darkhorse	California	63	Sell Lots	Owned
Sierra College	California	4	Sell Lots	Owned
Winding Lane	California	22	Sell Lots	Owned
Punta Gorda	Florida	189	Build + Sell Condos	Owned
Bunker Ranch	Texas	4	Build + Sell Homes	Owned
Cimarron Hills	Texas	5	Build + Sell Homes	Owned
Creek's Edge	Texas	2	Build + Sell Homes	Owned
Flintrock Falls	Texas	1	Build + Sell Homes	Owned
La Ventana	Texas	8	Build + Sell Homes	Owned
Siena Creek	Texas	35	Build + Sell Homes	Owned
Stone House	Texas	68	Develop + Sell Lots/ Build + Sell Homes	Owned
Summit Rock	Texas	78	Sell Lots/ Build + Sell Homes	Owned
The Trails of HSB	Texas	10	Sell Lots/ Build + Sell Homes	Owned

### **ITEM 3. LEGAL PROCEEDINGS**

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

### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.



## PART II

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

#### Market Information

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

Our preferred stock and warrants are traded on the Nasdaq Capital Market ("Nasdaq") under the symbols "HCDIP," "HCDIW," and "HCDIZ," respectively.

#### Dividends

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

**Preferred Stock.** The holders of the Series A Preferred Shares are entitled to receive dividends at a rate of 8% per annum payable monthly in arrears. During the year ended December 31, 2021, we paid dividends on our preferred stock of \$2.1 million and accrued dividends of \$0.7 million as of December 31, 2021, which were paid to the shareholders on January 11, 2022.

#### Number of Holders of Record

We have approximately six record holders of our common stock as of March 21, 2022 according to the records of our transfer agent. The number of our stockholders of record excludes any estimate by us of the number of beneficial owners of shares held in street name, the accuracy of which cannot be guaranteed.

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

#### Repurchase of Equity Securities

On November 3, 2021, the Board of Directors approved a stock repurchase program authorizing the repurchase of up to \$5.0 million worth of shares of common stock beginning November 22, 2021. The amount of the repurchase program represented approximately 17% of the outstanding shares of our common stock valued at the closing price on November 3, 2021. During the year ended December 31, 2021, we repurchased 1,806,752 shares of common stock under this repurchase program at an average price of \$2.77 per share for a total of approximately \$5.0 million.

#### Use of Initial Public Offering Proceeds

On September 1, 2020, we sold 2,031,705 shares of our common stock in an initial public offering at a price of \$6.00 per share pursuant to a Registration Statement on Form S-1 (Registration No. 333-237507), which was declared effective by the Securities and Exchange Commission ("SEC") on August 28, 2020. The aggregate proceeds to us were approximately \$10.8 million reflecting gross proceeds of \$12.2 million, net of underwriting fees and other offering costs. During the period from the offering through December 31, 2020, we used the proceeds from the initial public offering as follows: approximately \$3.3 million for land acquisition and development; approximately \$3.4 million to purchase land from Olympic Views, LLC; approximately \$0.79 million for Directors and Officers insurance; \$1.1 million for debt reduction; and approximately \$0.1 million to fund our operations. There was no material change in the planned use of proceeds from our initial public offering as described in our final prospectus filed with the SEC on August 31, 2020 pursuant to Rule 424(b)(4).

#### Use of Underwritten Public Offering Proceeds

On January 15 and 20, 2021, we closed on an offering (the "Follow-On Offering") of 9,200,000 shares of common stock at the public offering price of \$3.00 per share, which includes 1,200,000 shares of common stock sold upon full exercise of the underwriters' option to purchase additional shares of common stock for gross proceeds of \$27.6 million, prior to deducting underwriting discounts and estimated offering expenses. We used the net proceeds from the Follow-On Offering

for land acquisition, construction, and development, and working capital. There was no material change in the planned use of proceeds from our public offering as described in our final prospectus filed with the SEC on January 13, 2021 pursuant to Rule 424(b)(4).

On June 11, 2021, we closed the public offering of 1,200,000 shares of 8.0% Series A Cumulative Convertible Preferred Stock and 4,140,000 warrants to each purchase one share of common stock at an exercise price of \$5.00, including 540,000 warrants as a result of a partial exercise of the over-allotment option granted to the underwriter. We received gross proceeds of \$30.0 million from the offering, prior to deducting underwriting discounts and estimated offering expenses. We used the net proceeds from the offering for land acquisition, construction, and development; debt reduction; and working capital. There was no material change in the planned use of proceeds from our public offering as described in our final prospectus filed with the SEC on June 10, 2021 pursuant to Rule 424(b)(4).

On October 7, 2021, we closed the public offering of 2,400,000 shares of 8.0% Series A Cumulative Convertible Preferred Stock and 13,800,000 warrants to each purchase one share of common stock, including 1,800,000 warrants as a partial exercise of the over allotment option granted to the underwriter. We received gross proceeds of approximately \$36.0 million from the offering, prior to deducting underwriting discounts and estimated offering expenses. We used the net proceeds from the offering for land acquisition, construction, and development, and working capital. There was no material change in the planned use of proceeds from our public offering as described in our final prospectus filed with the SEC on October 5, 2021 pursuant to Rule 424(b)(4).

**ITEM 6. [Reserved]**

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

### Overview

Harbor Custom Development, Inc. is a real estate development company involved in all aspects of the land development cycle including land acquisition, entitlements, development, construction of project infrastructure, single and multi-family vertical construction, marketing, sales, and management of various residential projects in Washington, California, Texas, and Florida. Please refer to "Item 1. Business" and "Item 2. Properties" for further information.

### Results of Operations

The following table sets forth the summary statements of operations for the years ended December 31, 2021 and 2020. For information on the year ended December 31, 2019, refer to Part II, Item 7 of our 2020 Annual Report on Form 10-K.

	2021	2020
Sales	\$ 72,352,700	\$ 50,397,000
Cost of sales	50,419,400	48,393,800
Gross profit	21,933,300	2,003,200
Operating expenses	11,151,600	5,493,900
Other expense, net of other income	158,000	154,600
Income tax expense	1,766,900	116,800
Net income (loss)	\$ 8,856,800	\$ (3,762,100)

### Sales

Our sales increased by 43.6% to \$72.4 million for the year ended December 31, 2021 as compared to \$50.4 million for the year ended December 31, 2020. Sales increased in 2021 due to an increase in sale of entitled land of \$20.6 million, developed lot sales of \$14.3 million, and fee build income of \$6.8 million from Lennar, which were partially offset by a decrease in home sales of \$19.6 million.

### Gross Profit

Our overall gross profit margin was 30.3% for the year ended December 31, 2021 compared to 4.0% for the year ended December 31, 2020. For the years ended December 31, 2021 and 2020, the gross margin on land sales was 43.3% and 0%, respectively. Gross margin on developed lot sales for the years ended December 31, 2021 and 2020, was 40.8% and (5.7)%, respectively. Gross margin for homes closed was 14.1% and 5.7%, respectively. For the years ended December 31, 2021 and 2020, the gross margin for fee build was 11.9% and 0%, respectively.

### Operating Expenses

Our operating expenses increased by 103.0% to \$11.2 million for the year ended December 31, 2021, as compared to \$5.5 million for the year ended December 31, 2020. The increase in total operating expenses is primarily attributable to the following:

- 1) Payroll and related benefits increased by \$1.7 million due to increase in staff from the continued investment in our public company infrastructure and personnel to support our future growth plan;
- 2) Insurance costs increased by \$1.1 million, primarily driven by the purchase of director's and officer's insurance;
- 3) Professional fees and investor relations costs increased by \$0.5 million, and \$0.4 million, respectively, primarily driven by establishing and maintaining public company infrastructure and oversight;
- 4) Additional depreciation expense of \$0.5 million related to equipment additions;
- 5) Stock compensation costs increased by \$0.4 million, primarily driven by stock options and restricted stock issued to directors, executives, and employees; and
- 6) Additional right of use expense of \$0.3 million from leasing an office space in Tacoma, Washington for new headquarters.

### ***Other Expense***

Other expense increased by 2.2% to \$0.2 million for the year ended December 31, 2021 as compared to \$0.2 million for the year ended December 31, 2020. For the year ended December 31, 2021, \$0.01 million of our PPP loan was forgiven as compared to \$0.6 million for the year ended December 31, 2020. We incurred \$0.2 million of interest expense related to our fixed assets financing arrangements as compared to \$0.4 million for the year ended December 31, 2020. In addition, we recorded \$0.04 million of loss on sales of equipment for the year ended December 31, 2021 as compared to \$0.3 million for the year ended December 31, 2020. For the year ended December 31, 2021, other income increased mainly due to timber sales of \$0.1 million as compared to \$0.004 million for the year ended December 31, 2020.

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

Our net income (loss) increased by 335.4% to \$8.9 million for the year ended December 31, 2021 as compared to a loss of \$3.8 million for the year ended December 31, 2020. The increase in net income was primarily attributable to an increase in revenue and improved gross margins in 2021 as explained above.

### **Liquidity and Capital Resources**

#### **Overview**

Our principal uses of capital were operating expenses, land purchases, land development, home construction, the payment of routine liabilities, and common stock repurchases. We used funds generated by operations, capital raises, and available borrowings to meet our short-term working capital requirements. We remain focused on generating increasingly positive margins in land acquisitions and development operations and home construction operations in order to maintain a strong balance sheet and keep us poised for growth.

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

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

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

*Secured Revolving Credit Facility* - On March 7, 2022, we entered into a senior secured revolving credit facility with BankUnited for \$25.0 million. The unpaid principal bears interest at a fluctuating rate of interest per annum equal to the daily simple secured overnight financing rate (SOFR) plus the applicable margin of 4.75%.

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

Our real estate assets have increased to \$122.1 million as of December 31, 2021 from \$20.4 million as of December 31, 2020. This increase was due to an increase in the number of houses, condominiums, and apartments under construction, and the purchase of additional developed and undeveloped lots.

#### ***Liabilities***

Liabilities increased to \$70.0 million as of December 31, 2021 from \$27.2 million as of December 31, 2020. This increase is primarily attributable to the following:

1. An increase in construction loans of \$25.4 million due to purchases of real estate;
2. An increase in related party construction loans of \$7.6 million due to purchases of real estate; and
3. An increase in accounts payable and accrued expenses of \$8.0 million primarily due to the increase of real estate projects in process and income tax payable.

**Cash & Restricted Cash Balance**

As of December 31, 2021, our cash balance was \$26.2 million compared to \$2.4 million as of December 31, 2020.

**Operating Activities**

Net cash used in operating activities for the year ended December 31, 2021 was \$86.4 million as compared to net cash provided of \$3.0 million for the year ended December 31, 2020. The decrease in operating cash flows is primarily due to the acquisition and development of real estate assets of \$98.5 million in 2021 and partially offset by net income of \$8.9 million and change in accounts payable and accrued expenses of \$8.0 million in 2021.

**Investing Activities**

Net cash used in investing activities for the year ended December 31, 2021 was \$0.7 million as compared to net cash provided of \$0.6 million for the year ended December 31, 2020. During the year ended December 31, 2021, \$0.7 million was used for the acquisition of new property and equipment and there were proceeds from the sale of equipment of \$0.1 million. During the year ended December 31, 2020, \$0.4 million was used for the acquisition of new property and equipment and there were proceeds from the sale of equipment of \$1.0 million.

**Financing Activities**

Net cash provided by financing activities for the year ended December 31, 2021 was \$110.9 million as compared to net cash used of \$1.6 million for the year ended December 31, 2020. During the year ended December 31, 2021, there was net proceeds from common stock issuances of \$25.1 million, net proceeds from the preferred stock issuances of \$66.6 million, net proceeds from construction loans of \$29.3 million, and net proceeds from related party construction loans of \$8.0 million. These net proceeds were primarily offset by cash outflows for financing fees from construction loans of \$5.6 million, repurchase of common stock of \$5.0 million, repayment of equipment loans of \$1.9 million, financing fees from related party construction loans of \$2.0 million, and preferred stock dividend payments of \$2.1 million. Also, during the year ended December 31, 2020, there were net proceeds from a common stock offering of \$10.8 million, which were primarily offset by cash outflows to net repayment on related party construction loans of \$8 million, financing fees from related party construction loans of \$1.4 million, repayment on equipment loans of \$1.4 million, and financing fees from construction loans of \$1.0 million.

**Cash Resources**

Although the expected revenue growth and control of expenses leads management to believe that it is probable that our cash resources will be sufficient to meet cash requirements through the fiscal year ending December 31, 2022, we may require additional funding to finance the growth of our current and expected future operations as well as to achieve our strategic objectives. There can be no assurance that financing will be available in amounts or terms acceptable to us, if at all. In that event, we would be required to change our growth strategy and seek funding on that basis, though there is no guarantee we will be able to do so.

**Off-Balance Sheet Arrangements**

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

**Inflation**

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

**Critical Accounting Policies**

Our consolidated financial statements and related public financial information are based on the application of accounting principles generally accepted in the United States ("GAAP"). GAAP requires the use of estimates, assumptions, judgments, and subjective interpretations of accounting principles that have an impact on the assets, liabilities, revenues, and expense amounts reported. These estimates can also affect supplemental information contained in our external disclosures including

information regarding contingencies, risk, and financial condition. We believe our use of estimates and underlying accounting assumptions adhere to GAAP and are consistently applied. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ materially from these estimates under different assumptions or conditions. We continue to monitor significant estimates made during the preparation of our financial statements.

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

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

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

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

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

We will cease to be an "emerging growth company" upon the earliest of: (i) the end of the fiscal year following the fifth anniversary of our initial public offering, (ii) the first fiscal year after our annual gross revenues are \$1.07 billion or more, (iii) the date on which we have, during the previous three-year period, issued more than \$1.0 billion in non-convertible debt securities or (iv) as of the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeded \$700 million as of the end of the second quarter of that fiscal year.

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

We borrow from lenders using financial instruments such as term loans, and notes payable. In many cases, the interest costs we incur under term loans and notes payables are calculated using a fixed rate. We do not have the obligation to prepay them prior to maturity, and, as a result, interest rate risk and changes in fair market value should not have a significant impact on our fixed-rate debt. We are not exposed to material market risks related to fluctuations in interest rates.

At December 31, 2021, we had outstanding fix-rate borrowings of approximately \$55.1 million.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

	Page
Report of Independent Registered Public Accounting Firm	33
Consolidated Balance Sheets	34
Consolidated Statements of Operations	35
Consolidated Statements of Cash Flows	36
Consolidated Statements of Changes in Stockholders' Equity (Deficit)	38
Notes to Consolidated Financial Statements	39

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Harbor Custom Development Inc. and Subsidiaries (the Company) as of December 31, 2021 and 2020, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2021, and the related notes (collectively referred to as the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

### Basis for Opinion

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

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

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

/s/ Rosenberg Rich Baker Berman P.A.

PCAOB Number 89

We have served as the Company's auditor since 2019.  
Somerset, New Jersey  
March 24, 2022



**HARBOR CUSTOM DEVELOPMENT, INC. AND SUBSIDIARIES**  
**D/B/A HARBOR CUSTOM HOMES**  
**CONSOLIDATED BALANCE SHEETS**  
**As of December 31, 2021 and 2020**

	December 31, 2021	December 31, 2020
<b>ASSETS</b>		
Cash	\$ 25,629,200	\$ 2,396,500
Restricted Cash	597,600	—
Accounts Receivable, net	1,113,500	78,200
Contract Assets, net	2,167,200	—
Notes Receivable	2,000,000	—
Prepaid Expense	2,778,100	1,658,000
Real Estate	122,136,100	20,370,300
Property, Plant and Equipment, net	9,199,700	8,176,000
Right of Use Assets	3,429,700	873,800
Deferred Tax Assets	649,000	—
Deferred Offering Costs	—	65,100
<b>TOTAL ASSETS</b>	<b>\$ 169,700,100</b>	<b>\$ 33,617,900</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>LIABILITIES</b>		
Accounts Payable and Accrued Expenses	\$ 10,662,800	\$ 2,700,000
Dividends Payable	670,900	—
Deferred Revenue	44,800	896,300
Equipment Loans	5,268,500	5,595,500
Note Payable D&O Insurance	903,800	741,200
Note Payable PPP	—	19,300
Finance Leases	543,400	999,400
Construction Loans, net of Debt Discount of \$4.4 million and \$0.5 million respectively	34,957,100	9,590,100
Construction Loans - Related Parties, net of Debt Discount of \$1.1 million and \$0.7 million respectively	13,426,600	5,819,700
Right of Use Liabilities	3,484,400	841,700
<b>TOTAL LIABILITIES</b>	<b>\$ 69,962,300</b>	<b>\$ 27,203,200</b>
<b>COMMITMENTS AND CONTINGENCIES - SEE NOTE 13</b>		
<b>STOCKHOLDERS' EQUITY</b>		
Preferred Stock, No Par 10,000,000 shares authorized and 4,016,955 issued and outstanding at December 31, 2021 and 0 issued and outstanding at December 31, 2020	\$ 66,507,500	\$ —
Common Stock, No Par 50,000,000 shares authorized and 13,155,342 issued and outstanding at December 31, 2021 and 5,636,548 issued and outstanding at December 31, 2020	32,122,700	11,956,900
Additional Paid In Capital	752,700	234,800
Retained Earnings (Accumulated Deficit)	1,646,500	(4,487,100)
<b>Total Stockholders' Equity</b>	<b>101,029,400</b>	<b>7,704,600</b>
Non-Controlling Interest	(1,291,600)	(1,289,900)
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>99,737,800</b>	<b>6,414,700</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 169,700,100</b>	<b>\$ 33,617,900</b>

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

**HARBOR CUSTOM DEVELOPMENT, INC. AND SUBSIDIARIES**  
**D/B/A HARBOR CUSTOM HOMES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**Years Ended December 31, 2021 and 2020**

	<b>2021</b>	<b>2020</b>
Sales	\$ 72,352,700	\$ 50,397,000
Cost of Sales	<u>50,419,400</u>	<u>48,393,800</u>
Gross Profit	21,933,300	2,003,200
Operating Expenses	<u>11,151,600</u>	<u>5,493,900</u>
Operating Income (Loss)	10,781,700	(3,490,700)
Other Income (Expense)		
Loss on Sale of Equipment	(35,900)	(267,700)
Forgiveness of Debt PPP Loan	10,000	562,300
Other Income	146,000	4,000
Other Expense	(28,800)	(70,300)
Interest Expense	(249,300)	(382,900)
Total Other Income (Expense)	<u>(158,000)</u>	<u>(154,600)</u>
Income (Loss) Before Income Tax	10,623,700	(3,645,300)
Income Tax Expense	1,766,900	116,800
Net Income (Loss)	<u>8,856,800</u>	<u>(3,762,100)</u>
Net Loss Attributable to Non-controlling interests	(1,700)	(229,300)
Preferred Dividends	(2,724,900)	—
Net Income (Loss) Attributable to Common Stockholders	<u>\$ 6,133,600</u>	<u>\$ (3,532,800)</u>
Earnings (Loss) Per Share - Basic	<u>\$ 0.43</u>	<u>\$ (0.84)</u>
Earnings (Loss) Per Share - Diluted	<u>\$ 0.24</u>	<u>\$ (0.84)</u>
Weighted Average Common Shares Outstanding - Basic	<u>14,336,789</u>	<u>4,214,418</u>
Weighted Average Common Shares Outstanding - Diluted	<u>36,915,491</u>	<u>4,214,418</u>

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

**HARBOR CUSTOM DEVELOPMENT, INC. AND SUBSIDIARIES**  
**D/B/A HARBOR CUSTOM HOMES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**Years Ended December 31, 2021 and 2020**

	2021	2020
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net Income (Loss)	\$ 8,856,800	\$ (3,762,100)
Adjustments to reconcile net income (loss) to net cash from operating activities:		
Depreciation	1,084,200	619,800
Amortization of right of use assets	387,900	258,900
Forgiveness on PPP loan	(10,000)	(562,300)
Loss on sale of equipment	35,900	267,700
Stock compensation	499,900	115,700
Net change in assets and liabilities:		
Accounts receivable	(1,035,300)	(66,400)
Contract assets	(2,167,200)	—
Prepaid expenses	290,300	(314,900)
Real estate	(98,527,500)	6,755,900
Deferred revenue	(851,500)	823,100
Deferred income tax	(649,000)	171,600
Note receivable	(2,000,000)	—
Payments on right of use liability	(301,100)	(273,800)
Accounts payable and accrued expenses	7,962,800	(1,015,400)
<b>NET CASH (USED IN) PROVIDED BY OPERATING ACTIVITIES</b>	<b>(86,423,800)</b>	<b>3,017,800</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchase of property and equipment	(745,600)	(408,000)
Proceeds on the sale of equipment	69,500	987,200
<b>NET CASH (USED IN) PROVIDED BY INVESTING ACTIVITIES</b>	<b>(676,100)</b>	<b>579,200</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Construction loans	53,366,600	21,722,100
Payments on construction loans	(24,069,200)	(21,277,300)
Financing fees construction loans	(5,574,900)	(1,048,700)
Construction loans related parties	19,789,600	19,758,300
Payments on construction loans related parties	(11,793,800)	(28,203,400)
Financing fees related party construction loans	(1,982,900)	(1,421,200)
Payments on financing leases	(356,900)	(564,400)
Proceeds from note payable PPP loan	—	582,800
Payments on PPP loan	(9,300)	(1,200)
Due to related party	—	(8,100)
Repayments on note payable D&O insurance	(1,247,700)	(484,300)
Net proceeds from issuance of common stock	25,101,000	10,789,000
Net proceeds from issuance of preferred stock	66,572,300	—
Dividends	(2,054,000)	—
Repurchase of common stock	(5,000,000)	—
Repayment on equipment loans	(1,893,700)	(1,409,000)
Proceeds from exercise of stock options	18,000	—
Deferred offering cost	65,100	(65,100)
<b>NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES</b>	<b>110,930,200</b>	<b>(1,630,500)</b>
<b>NET INCREASE IN CASH AND RESTRICTED CASH</b>	<b>23,830,300</b>	<b>1,966,500</b>
<b>CASH AT BEGINNING OF PERIOD</b>	<b>2,396,500</b>	<b>430,000</b>
<b>CASH AND RESTRICTED CASH AT END OF PERIOD</b>	<b>\$ 26,226,800</b>	<b>\$ 2,396,500</b>

## SUPPLEMENTAL CASH FLOW INFORMATION

Interest paid	\$ 4,190,200	\$ 1,266,300
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## SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES

Financing of assets additions	\$ 1,566,800	\$ 4,570,800
Dividends declared but not paid	\$ 670,900	\$ —
Amortization of debt discount capitalized	\$ 3,238,300	\$ 2,299,500
Stock issued for conversion of related party interest and principal	\$ —	\$ 497,000
Cancellation of finance leases	\$ 99,100	\$ —
New right of use obligations	\$ 2,943,800	\$ —
Financing of D&O insurance	\$ 1,410,400	\$ 1,225,500
Conversion of preferred to common stock	\$ 64,800	\$ —

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

**HARBOR CUSTOM DEVELOPMENT, INC. AND SUBSIDIARIES**  
**D/B/A HARBOR CUSTOM HOMES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)**  
**For the Periods January 1, 2020 through December 31, 2021**

	Common Stock		Preferred Stock		Additional Paid in Capital	Retained Earnings (Accumulated Deficit)	Stockholders' Equity (Deficit)	Non-Controlling Interest	Total Equity (Deficit)
	Shares Issued	No Par	Shares Issued	No Par					
<b>Balance, January 1, 2020</b>	<b>3,513,517</b>	<b>\$ 670,900</b>			<b>\$ 119,100</b>	<b>\$ (954,300)</b>	<b>\$ (164,300)</b>	<b>\$ (1,060,600)</b>	<b>\$ (1,224,900)</b>
Net proceeds from issuance of common stock	2,031,705	10,789,000					10,789,000		10,789,000
Conversion of related party debt to common stock	82,826	497,000					497,000		497,000
Stock Compensation Expense	8,500				115,700		115,700		115,700
Net Loss						(3,532,800)	(3,532,800)	(229,300)	(3,762,100)
<b>Balance, December 31, 2020</b>	<b>5,636,548</b>	<b>\$ 11,956,900</b>	<b>—</b>	<b>\$ —</b>	<b>\$ 234,800</b>	<b>\$ (4,487,100)</b>	<b>\$ 7,704,600</b>	<b>\$ (1,289,900)</b>	<b>\$ 6,414,700</b>
Net proceeds from issuance of common stock	9,200,000	25,101,000					25,101,000		25,101,000
Exercise of stock options	45,046				18,000		18,000		18,000
Stock Compensation Expense	60,500				499,900		499,900		499,900
Net proceeds from issuance of Preferred Stock			4,020,555	66,572,300			66,572,300		66,572,300
Preferred Stock Dividends						(2,724,900)	(2,724,900)		(2,724,900)
Repurchase of Stock	(1,806,752)	(5,000,000)					(5,000,000)		(5,000,000)
Conversion of Preferred stock	20,000	64,800	(3,600)	(64,800)					
Net Income (Loss)						8,858,500	8,858,500	(1,700)	8,856,800
<b>Balance, December 31, 2021</b>	<b>13,155,342</b>	<b>\$ 32,122,700</b>	<b>4,016,955</b>	<b>\$ 66,507,500</b>	<b>\$ 752,700</b>	<b>\$ 1,646,500</b>	<b>\$ 101,029,400</b>	<b>\$ (1,291,600)</b>	<b>\$ 99,737,800</b>

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

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

### Nature of Operations

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

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

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

### Principles of Consolidation

The consolidated financial statements include the following subsidiaries of Harbor Custom Development, Inc. as of the reporting period ending dates as follows (all entities are formed as Washington LLCs):

Names	Dates of Formation	Attributable Interest	
		December 31, 2021	December 31, 2020
Saylor View Estates, LLC	March 30, 2014	51 %	51 %
Harbor Materials, LLC*	July 5, 2018	N/A	100 %
Belfair Apartments, LLC	December 3, 2019	100 %	100 %
Pacific Ridge CMS, LLC	May 24, 2021	100 %	N/A
Tanglewilde, LLC	June 25, 2021	100 %	N/A
HCDI FL CONDO LLC	August 3, 2021	100 %	N/A
HCDI Mira, LLC	August 30, 2021	100 %	N/A
HCDI Bridgeview LLC	October 28, 2021	100 %	N/A
HCDI Wyndstone, LLC	September 15, 2021	100 %	N/A
HCDI Semiahmoo, LLC	December 17, 2021	100 %	N/A

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

As of December 31, 2021 and December 31, 2020, the aggregate non-controlling interest was \$(1.3) million and \$(1.3) million, respectively.

### Basis of Presentation

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

The Company's Board of Directors and stockholders approved a 1-for-2.22 reverse split of the Company's common stock, which was effected on April 15, 2020. The reverse split combined each 2.22 shares of the Company's outstanding common stock into one share of common stock. No fractional shares were issued in connection with the reverse split, and any fractional shares resulting from the reverse split were rounded up to the nearest whole share. All references to common stock, options to purchase common stock, restricted stock, share data, per share data, and related information, as applicable have been adjusted in the financial statements to reflect the split of the common stock as if it had occurred at the beginning of the earliest period presented.

All numbers in these financial statements are rounded to the nearest \$100.

Reclassification

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

Use of Estimates

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

Stock-Based Compensation

Effective as of November 19, 2018, the Company’s Board of Directors and stockholders approved and adopted the 2018 Incentive and Non-Statutory Stock Option Plan (the "2018 Plan"). The 2018 Plan allows the Administrator (as defined in the 2018 Plan), currently the Board of Directors, to determine the issuance of incentive stock options and non-qualified stock options to eligible employees and outside directors and consultants of the Company. The Company reserved 675,676 shares of common stock for issuance under the 2018 Plan.

Effective as of December 3, 2020, the Company’s Board of Directors and stockholders approved and adopted the 2020 Restricted Stock Plan (the "2020 Plan"). The 2020 Plan allows the Administrator (currently the Compensation Committee) to determine the issuance of restricted stock to eligible officers, directors, and key employees. The Company reserved 700,000 shares of common stock for issuance under the 2020 Plan.

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

The Company recognizes all forms of share-based payments, including stock option grants, warrants and restricted stock grants, at their fair value on the grant date, which is based on the estimated number of awards that are ultimately expected to vest.

Options and warrants are valued using a Black-Scholes option pricing model, with the exception of the preferred warrants which were valued using an 8% dividend rate. Grants of share-based payment awards issued to non-employees for services rendered have been recorded at the fair value of the share-based payment. The grants are amortized on a straight-line basis over the requisite service periods, which is generally the vesting period. If an award is granted, but vesting does not occur, any previously recognized compensation expense is reversed in the period related to the termination of service.

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

For the years ended December 31, 2021 and 2020 when computing fair value of share-based payments, the Company has considered the following variables:

	December 31, 2021	December 31, 2020
Risk-free interest rate	0.17%-0.84%	0.14%-1.46%
Exercise price	\$2.76-\$5.00	\$2.22 - \$6.50
Expected life of grants	2.50-6.50	2.86-6.00
Expected volatility of underlying stock	42.30%-56.00%	32.39%-51.94%
Dividends	0	0

The expected term is computed using the "simplified" method as permitted under the provisions of ASC 718-10-S99. The Company uses the simplified method to calculate the expected term of share options and similar instruments as the Company does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term. The share price as of the grant date was determined by an independent third party 409(a) valuation until the Company’s stock became publicly traded. Now the share price is the public trading price at the time of grant. Expected

volatility is based on the historical stock price volatility of comparable companies' common stock, as the stock does not have sufficient historical trading activity. Risk free interest rates were obtained from U.S. Treasury rates for the applicable periods.

#### Earnings (Loss) Per Share

Earnings (Loss) per share ("EPS") is the amount of earnings attributable to each share of common stock. For convenience, the term is used to refer to either earnings or loss per share. EPS is computed pursuant to Section 260-10-45 of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"). Pursuant to ASC Paragraphs 260-10-45-10 through 260-10-45-16, basic EPS shall be computed by dividing income available to common stockholders (the numerator) by the weighted-average number of common shares outstanding (the denominator) during the period. Income available to common stockholders shall be computed by deducting both the dividends declared in the period on preferred stock (whether or not paid) and the dividends accumulated for the period on cumulative preferred stock (whether or not earned) from income from continuing operations (if that amount appears in the income statement) and also from net income. The computation of diluted EPS is similar to the computation of basic EPS except that the denominator is increased to include the number of additional common shares that would have been outstanding if the dilutive potential common shares had been issued during the period to reflect the potential dilution that could occur from common shares issuable through contingent shares issuance arrangement, stock options, warrants, or RSUs.

The following table provides a reconciliation of the numerator and denominator used in computing basic and diluted net income (loss) attributable to common stockholders per common share for the years ended December 31, 2021 and 2020.

	Year Ended December 31, 2021	Year Ended December 31, 2020
<b>Numerator:</b>		
Net income (loss) attributable to common stockholders	\$ 6,133,600	\$ (3,532,800)
Effect of dilutive securities:	2,724,900	—
<b>Diluted net income (loss)</b>	<b>\$ 8,858,500</b>	<b>\$ (3,532,800)</b>
<b>Denominator:</b>		
Weighted average common shares outstanding - basic	14,336,789	4,214,418
<b>Dilutive securities (a):</b>		
Options	19,482	—
Warrants	144,456	—
Restricted Stock Awards	29,890	—
Convertible Preferred Stock	22,384,874	—
<b>Weighted average common shares outstanding and assumed conversion – diluted</b>	<b>36,915,491</b>	<b>4,214,418</b>
<b>Basic net income (loss) per common share</b>	<b>\$ 0.43</b>	<b>\$ (0.84)</b>
<b>Diluted net income (loss) per common share</b>	<b>\$ 0.24</b>	<b>\$ (0.84)</b>
(a) - Anti-dilutive securities excluded:	18,901,282	241,609

#### Fair Value of Financial Instruments

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



### Cash and Cash Equivalents

For purposes of the statement of cash flows, the Company considers all short-term debt securities purchased with a maturity of three months or less to be cash equivalents. There were no cash equivalents as of December 31, 2021 and December 31, 2020.

### Restricted Cash

On August 10, 2021, the Company entered a Letter of Credit ("LOC") agreement with WaFd bank in the amount of \$0.6 million. The Company signed a lease on October 5, 2021 for a new office space. The landlord of the property, University Street Properties I, LLC, is the beneficiary of the LOC. The amount of funds that cover this LOC were moved by the WaFd bank to a controlled account on August 13, 2021. (See Note 9. Letter of Credit).

### Accounts Receivable

Accounts receivables are reported at the amount the Company expects to collect from outstanding balances. The Company provides an allowance for doubtful accounts based upon a review of the outstanding accounts receivable, historical collection information and existing economic conditions. The Company determines if receivables are past due based on days outstanding, and amounts are written off when determined to be uncollectible by management. The allowance for doubtful accounts was \$0 as of December 31, 2021 and December 31, 2020, respectively.

### Property and Equipment and Depreciation

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

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

### Real Estate Assets

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

The Company capitalized interest from related party borrowings of \$1.0 million and \$1.0 million for the years ended December 31, 2021 and 2020, respectively. The Company capitalized interest from third-party borrowings of \$2.4 million and \$2.4 million for the years ended December 31, 2021 and 2020, respectively.

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

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

(6) Actions necessary to complete the plan of sale indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn.

When all these criteria have been met, the property is classified as "held for sale."

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

As of December 31, 2021 and December 31, 2020, the Company did not have any projects that qualified for an impairment charge.

#### Revenue and Cost Recognition

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

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

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

A detailed breakdown of the five-step process for the revenue recognition of Entitled Land Revenue is as follows:

*1. Identify the contract with a customer.*

The Company signs an agreement with a buyer to purchase the parcel of entitled land.

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

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

*3. Determine the transaction price.*

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

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

The parcel is a separate performance obligation for which the specific price is in the contract.

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

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

A detailed breakdown of the five-step process for the revenue recognition of Developed Lots Revenue is as follows:

*1. Identify the contract with a customer.*

The Company signs an agreement with the buyer to purchase lots that have completed infrastructure.

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

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

3. *Determine the transaction price.*

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

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

All lots are a single performance obligation for the specific price in the contract.

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

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

A detailed breakdown of the five-step process for the revenue recognition of Fee Build Revenue is as follows:

1. *Identify the contract with a customer.*

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

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

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

3. *Determine the transaction price.*

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

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

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

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

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

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

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

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

A detailed breakdown of the five-step process for the revenue recognition of Home Revenue is as follows:

*1. Identify the contract with a customer.*

The Company signs an agreement with a homebuyer to purchase a lot with a completed house.

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

Performance obligations of the Company include delivering a developed lot with a completed house to the customer, which is required to meet certain specifications that are outlined in the contract.

*3. Determine the transaction price.*

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

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

Each lot with a completed house is a separate performance obligation, for which the specific price in the contract is allocated.

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

The Company recognizes revenue when title is transferred. The Company does not have any further performance obligations once title is transferred. A detailed breakdown of the five-step process for the revenue recognition of Construction Materials sold to or received from contractors is as follows:

*1. Identify the contract with a customer.*

There are no signed contracts. Each transaction is verbally agreed to with the customer.

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

The Company delivers or receives materials from customers based on the verbal agreement reached.

*3. Determine the transaction price.*

The Company has a set price list for receiving approved fill materials to recycle or provides customers with a combination of said materials.

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

There is only one performance obligation, which is to pick up or deliver the materials. The entire transaction price is therefore allocated to the performance obligation.

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

The performance obligation is fulfilled, and revenue is recognized when the materials have been received or delivered by the Company.

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

	Year Ended December 31, 2021	Year Ended December 31, 2020
Entitled Land	\$ 20,625,000	\$ —
Developed Lots	26,825,500	12,538,000
Fee Build	6,802,900	—
Homes	17,654,600	37,276,400
Construction Materials	444,700	582,600
Total Revenue	<u>\$ 72,352,700</u>	<u>\$ 50,397,000</u>

**Disaggregation of Revenue from Contracts with Customers**

The following table disaggregates the Company's revenue based on the type of sale or service and the timing of satisfaction of performance obligations for the years ended December 31, 2021 and 2020:

	Year Ended December 31, 2021	Year Ended December 31, 2020
Performance obligations satisfied at a point in time	\$ 65,549,800	\$ 50,397,000
Performance obligations satisfied over time	6,802,900	—
Total Revenue	<u>\$ 72,352,700</u>	<u>\$ 50,397,000</u>

Cost of Sales

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

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

Advertising

Advertising expense for the years ended December 31, 2021 and 2020 was \$0.1 million and \$0.04 million, respectively.

Leases

The Company adopted ASC Topic 842, Leases, as amended, on January 1, 2019. We elected the package of practical expedients permitted under the transition guidance within the new standard, which among other things, allowed the Company to not separate non-lease components from lease components and instead to account for each separate lease component and the non-lease components associated with that lease component as a single lease.

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

#### Income Taxes

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

The Company recognizes a tax benefit for an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. There are no uncertain tax positions as of December 31, 2021 and December 31, 2020.

#### Recent Accounting Pronouncements

On December 18, 2019, the FASB released Accounting Standards Update No. 2019-12, Income taxes (Topic 740) (the Update). The Board issued this update as part of its initiative to reduce complexity in accounting standards. The company has adopted this standard; there were no material impacts to the balance sheet, income statement, statement of cash flows, or tax footnote.

In August 2020, the FASB issued Accounting Standards Update 2020-06, Debt — Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40) ("ASU 2020-06") to simplify accounting for certain financial instruments. ASU 2020-06 eliminates the current models that require separation of beneficial conversion and cash conversion features from convertible instruments and simplifies the derivative scope exception guidance pertaining to equity classification of contracts in an entity's own equity. The new standard also introduces additional disclosures for convertible debt and freestanding instruments that are indexed to and settled in an entity's own equity. ASU 2020-06 amends the diluted earnings per share guidance, including the requirement to use the if-converted method for all convertible instruments. ASU 2020-06 is effective January 1, 2022 and should be applied on a full or modified retrospective basis, with early adoption permitted beginning on January 1, 2021. The Company adopted ASU 2020-06 on January 1, 2021. The ASU 2020-06 had an impact on the Company's preferred stock disclosures and EPS as well as eliminating the accounting for beneficial conversion features.

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

#### Impairment of Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or circumstances indicate that the carrying value of such assets may not be fully recoverable. Impairment is present when the sum of estimated undiscounted future cash flow expected to result from use of the assets is less than carrying value. If impairment is present, the carrying value of the impaired asset is reduced to its fair value. Fair value is determined based on discounted cash flow or appraised values, depending on the nature of the assets. As of December 31, 2021 and December 31, 2020, there were no impairment losses recognized for long-lived assets.

#### Offering Costs Associated with a Public Offering

The Company complies with the requirements of FASB ASC 340-10-S99-1 and SEC Staff Accounting Bulletin ("SAB") Topic 5A — "*Expenses of Offering.*"

On January 15 and 20, 2021, the Company closed on a follow-on public offering and over-allotment option, respectively, of common stock. During 2020, the Company incurred approximately \$0.1 million of capitalizable costs associated with the follow-on public offering, which were netted against the proceeds received in 2021. These costs were capitalized as of December 31, 2020 and are shown on the Balance Sheet as Deferred Offering Costs.

## 2. CONCENTRATION, RISKS, AND UNCERTAINTIES

### Cash Concentrations

The Company maintains cash balances at various financial institutions. These balances are secured by the Federal Deposit Insurance Corporation. These balances generally exceed the federal insurance limits. Uninsured cash balances were \$24.5 million and \$2.1 million as of December 31, 2021 and December 31, 2020, respectively.

### Revenue Concentrations

#### Homes

For the year ended December 31, 2021 and 2020, there were no concentrations in relation to the homes revenue segment.

#### Developed Lots

For the year ended December 31, 2021 and 2020, Lennar Northwest, Inc. ("Lennar") represented 26% and 100% of the developed lots revenue, respectively. Additionally, Modern Homestead, LLC, Mainvue WA LLC, Century Communities of Washington, LLC, and Noffke Homes Horizon at Semiahmoo LLC represented 23%, 18%, 14%, and 14% of the developed lots revenue for the year ended December 31, 2021, respectively.

#### Entitled Land

For the year ended December 31, 2021 and 2020, Lennar represented 51% and 0% of entitled land revenue, respectively. Additionally, AG Essential Housing Multi State 1, LLC represented 45% of the entitled land revenue for the year ended December 31, 2021.

#### Fee Build

For the years ended December 31, 2021 and 2020, Lennar represented 100% and 0% of fee build revenue, respectively.

### COVID-19

In March 2020, the World Health Organization declared the outbreak of a novel coronavirus ("*COVID-19*") as a pandemic which continues to spread throughout the United States and the world. The Company is monitoring the outbreak of COVID-19 and the related business and travel restrictions and changes to behavior intended to reduce its spread, in addition to the impact on its employees. Due to the rapid development and fluidity of this situation, the magnitude and duration of the pandemic and its impact on the Company's operations and liquidity are uncertain as of the date of this report.

The COVID-19 Pandemic has had the following effect on the Company's business:

1. Construction not related to safety, spoliation, or critical infrastructure was halted by Washington State Governor Inslee (the "Governor") on March 23, 2020. Some operations could continue based on the aforementioned exceptions to the shutdown order, but the Company did experience a significant operational slowdown.
2. Soundview Estates (a large Harbor Custom Development, Inc. site) continued selective activities that yielded rock byproduct, considered an essential material, needed for critical infrastructure projects for an Amazon distribution center and a local hospital.
3. On April 24, 2020, the Governor approved the restart of most residential housing projects, deeming them essential, as long as they adhered to certain safety measures. Under this order, most existing permitted residential homes or projects were considered essential. The order allowed the Company to resume near full construction activities on all permitted lots.
4. On May 1, 2020, the Governor established a four-phase plan for Washington businesses to follow. All Harbor Custom Development, Inc. development sites were in Phase 3 of the plan where construction was able to continue, and new construction was allowed, as long as the Company created a safety plan adhering to certain safety practices, which the Company had done.
5. As of June 30, 2021, Washington State reopened the state under the Washington Ready plan. All industry sectors previously covered by the Roadmap to Recovery or the Safe Start Plan (which included all Harbor Custom Development, Inc. operational activities) returned to usual capacity and operations.

The Company has not experienced any material cancellations of sales contract. The Company has experienced some supply-chain issues with both cabinetry and appliances related to COVID-19. As of the date of this report, the Company’s projects are on-schedule and operations are not being materially impacted by the COVID-19 pandemic. While there could ultimately be a material impact on operations and liquidity of the Company, at the time of issuance of this report, the ultimate impact could not be determined.

3. NOTES RECEIVABLE

The total principal balance of the notes amounted to \$2.0 million, which consists of notes from Broadmoor Commons LLC for \$0.5 million and Modern Homestead LLC, for \$1.5 million. These notes arose as financing by the Company for the sale of real estate properties or financing the development of the properties prior to purchasing. These notes are secured by the underlying improved real estate properties and accrue interest at annual rates of 8% and 9%, respectively, accruing interest beginning December 2021. All payments of principal and interest are due in full on December 1, 2024 and December 20, 2024, respectively. The outstanding balance of the notes amounted to \$2.0 million and \$0 at December 31, 2021 and 2020, respectively. The Company considers the note receivable plus accrued interest to be fully collectible and, therefore, has determined that an allowance is not necessary.

4. PROPERTY AND EQUIPMENT

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

	December 31, 2021	December 31, 2020
Machinery and Equipment	\$ 10,577,600	\$ 8,908,000
Vehicles	71,800	73,500
Furniture and Fixtures	420,300	136,300
Leasehold Improvements	81,200	7,000
Total Fixed Assets	11,150,900	9,124,800
Less Accumulated Depreciation	(1,951,200)	(948,800)
Fixed Assets, Net	\$ 9,199,700	\$ 8,176,000

Depreciation expense was \$1.1 million and \$0.6 million for the years ended December 31, 2021 and 2020, respectively.

5. REAL ESTATE

Real Estate consisted of the following components:

	December 31, 2021	December 31, 2020
Land Held for Development	\$ 73,524,400	\$ 9,532,800
Construction in Progress	43,362,700	9,042,700
Held for Sale	5,249,000	1,794,800
	\$ 122,136,100	\$ 20,370,300



## 6. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued liabilities consisted of the following:

	December 31, 2021	December 31, 2020
Trade Accounts Payable	\$ 5,558,400	\$ 2,358,800
Income Tax Payable	2,415,900	—
Accrued Compensation, Bonuses, and Benefits	1,071,700	108,900
Accrued Quarry Reclamation Costs	500,000	124,500
Retainage Payable	445,800	—
Other Accruals	671,000	107,800
	<u>\$ 10,662,800</u>	<u>\$ 2,700,000</u>

## 7. EQUIPMENT LOANS

Equipment loans consists of the following:

	December 31, 2021	December 31, 2020
Various notes payable to banks and financial institutions with interest rates varying from 0.00% to 13.89%, collateralized by equipment with monthly payments ranging from \$400 to \$11,600 through 2025:	\$ 5,268,500	\$ 5,595,500
Book value of collateralized equipment:	\$ 7,229,000	\$ 6,475,600

Future equipment loan maturities are as follows:

For the year ended December 31:

2022	\$ 1,887,800
2023	1,738,300
2024	1,491,700
2025	150,700
2026	—
	<u>\$ 5,268,500</u>

## 8. CONSTRUCTION LOANS

The Company has various construction loans with private individuals and finance companies. The loans are collateralized by specific construction projects. All loans are generally on a one-year term but will be refinanced if the project is not completed within one year and will be due upon the completion of the project. Interest accrues on the loans and is included with the payoff of the loan. Interest ranges from 5% to 39%. Interest expense and amortization of debt discount are capitalized when incurred and expensed as cost of goods sold when the corresponding property is sold. The loan balances related to third party lenders as of December 31, 2021 and December 31, 2020, were \$39.4 million and \$10.1 million, respectively. The book value of collateralized real estate as of December 31, 2021 and December 31, 2020 was \$122.1 million and \$20.4 million, respectively.

## 9. LETTER OF CREDIT

The Company entered into a letter of credit agreement with WaFd bank of \$0.6 million on August 10, 2021. The letter of credit expires February 1, 2032. The interest rate of the letter of credit is Prime plus 1%. The letter of credit has been established for the purpose of collateralizing the Company's lease obligations with their new landlord, the landlord is the beneficiary of the letter of credit. As of December 31, 2021, the letter of credit amount was classified as restricted cash.

## **10. NOTE PAYABLE D&O INSURANCE**

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

The Company purchased D&O insurance on August 28, 2020 for \$1.5 million. A down payment of \$0.3 million was made and the remaining balance of \$1.2 million was financed over ten months. The interest rate on the loan is 4.74%. The loan balance as of December 31, 2020 was \$0.7 million.

## **11. NOTE PAYABLE PPP**

On April 11, 2020, the Company entered into a term note with Timberland Bank, with a principal amount of \$0.6 million pursuant to the Paycheck Protection Program ("PPP Loan") under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The PPP Loan was evidenced by a promissory note ("PPP Term Note"). The PPP Term Note incurred interest at a fixed annual rate of 1.00%, with the first six months of interest deferred. Beginning in November 2020, 18 equal monthly payments of principal and interest were due with the final payment due in April 2022. The PPP Term Note could have been accelerated upon the occurrence of an event of default.

The PPP Term Note was unsecured and guaranteed by the United States Small Business Administration. The Company applied for forgiveness of the PPP Term Note, with the amount eligible for forgiveness equal to the sum of payroll costs, covered rent and mortgage obligations, and covered utility payments incurred by the Company during the applicable period beginning upon receipt of PPP Term Note funds, calculated in accordance with the terms of the CARES Act.

On February 1, 2021 and November 9, 2020, the SBA forgave \$0.01 million and \$0.6 million, respectively, on the PPP Loan.

As of December 31, 2021 and December 31, 2020, the balance of the PPP Loan was \$0 and \$0.02 million, respectively.

## **12. DEFINED CONTRIBUTION PLAN**

Effective January 1, 2016, the Company established a 401(k) plan for qualifying employees; employee contributions are voluntary. Company contributions to the plan for the years ended December 31, 2021 and 2020 were \$0.1 million and \$0.1 million, respectively.

## **13. COMMITMENTS AND CONTINGENCIES**

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

On June 15, 2020, the Company entered into a purchase and sale agreement to acquire property for the construction of 33 town homes located in East Bremerton, Washington for \$2.0 million. Closing is expected to take place on or before June 30, 2022.

On September 17, 2020, the Company entered into a purchase and sale agreement for the acquisition of 9.6 acres of land in Port Orchard, Washington for \$1.5 million. Closing occurred on January 14, 2022.

On December 2, 2021, the Company entered into a purchase and sale agreement for the acquisition of 438 acres in Blaine, Washington for \$14.0 million. Closing is expected to take place on or before June 22, 2022.

On December 15, 2021, the Company entered into a purchase and sale agreement for the acquisition of 66 town home units located in Poulsbo, Washington for \$2.9 million. Closing is expected to take place on or before April 14, 2022.

On December 22, 2021, the Company entered into a purchase and sale agreement to acquire property for the construction of 500 units located in Hudson, Florida for \$7.4 million. The contract was cancelled on February 14, 2022 and the earnest money was returned to the Company.

#### 14. RELATED PARTY TRANSACTIONS

##### Notes Payable

The Company entered into construction loans with Sound Equity, LLC of which Robb Kenyon, a former director and minority shareholder, is a partner. These loans were originated between April 2019 and June 2021; all of the loans have a one-year maturity with interest rates ranging between 7.99% and 12.00%. For the years ended December 31, 2021 and 2020, the Company incurred loan origination fees of \$0.6 million and \$0.4 million, respectively. These fees are recorded as debt discount and amortized over the life of the loan. The amortization is capitalized to real estate. As of December 31, 2021, and December 31, 2020, there were \$0.2 million and \$0.2 million of remaining debt discounts, respectively. During the years ended December 31, 2021 and 2020 the Company incurred prepaid interest of \$1.4 million and \$0.7 million, respectively. This interest is recorded as debt prepaid interest and amortized over the life of the loan. The interest is capitalized to real estate. As of December 31, 2021, and December 31, 2020 there were \$0.9 million and \$0.5 million of remaining prepaid interest reserves, respectively. As of December 31, 2021, and December 31, 2020 the outstanding loan balances were \$14.5 million and \$6.4 million, respectively.

The Company entered into a construction loan with Curb Funding, LLC of which Robb Kenyon a former director and minority shareholder, is 100% owner. The loan originated on August 13, 2020. The loan had a 1-year maturity with an interest rate of 12%. For the years ended December 31, 2021 and December 31, 2020, the Company incurred loan fees of \$0 and \$0.004 million, respectively. These fees are recorded as debt discount and amortized over the life of the loan. The amortization is capitalized to real estate. As of December 31, 2021, and December 31, 2020, there were \$0 and \$0.001 million of remaining debt discounts, respectively. As of December 31, 2021, and December 31, 2020, the outstanding loan balances were \$0, and \$0.1 million, respectively. The Company incurred interest expense of \$0 and \$0.003 million for the years ended December 31, 2021 and 2020, respectively.

Robb Kenyon resigned as a director of the Company on July 8, 2021, at which point the above loans ceased to be related party transactions.

On April 19, 2019, the Company entered into a construction loan with Olympic Views, LLC of which the Company's Chief Executive Officer and President previously owned a 50% interest. He currently has no ownership interest in this LLC. The loan amount was \$0.4 million with an interest rate of 12% and a maturity date of April 19, 2020. The loan was collateralized by a deed of trust on the land. The amounts outstanding were \$0 and \$0 as of December 31, 2021 and December 31, 2020, respectively. The interest expense was \$0 and \$0.02 million for the years ended December 31, 2021 and 2020 and was capitalized as part of Real Estate. In May 2020, the Company entered into an agreement with Olympic Views, LLC to convert this debt and accrued interest of \$0.1 million to common stock at the Initial Public Offering price of \$6.00. This conversion was effected on August 28, 2020 simultaneous with the Initial Public Offering. This transaction resulted in 82,826 shares of common stock being issued to Olympic Views, LLC.

##### Due to Related Party

The Company utilizes a quarry to process waste materials from the completion of raw land into sellable/buildable lots. The quarry is located on land owned by SGRE, LLC which is 100% owned by the Company's Chief Executive Officer and President. The materials produced by the quarry and sold by the Company to others are subject to a 25% commission payable to SGRE, LLC. On December 31, 2021 and December 31, 2020, the commission payable was \$0.01 million and \$0, respectively. The commission expense for the years ended December 31, 2021 and 2020, was \$0.1 million and \$0.1 million, respectively.

Richard Schmidtke, a Company director, provided accounting services in 2021 and 2020 to the Company. On December 31, 2021 and December 31, 2020, the fees payable to Mr. Schmidtke were \$0 and \$0.001 million, respectively. The accounting expense incurred by the Company for Mr. Schmidtke's services for the years ended December 31, 2021 and 2020 was \$0.001 million and \$0.05 million, respectively.

##### Land Purchase from a Related Party

On September 2, 2020, the Company purchased 99 undeveloped lots for \$3.4 million from Olympic Views, LLC. The Company's Chief Executive Officer and President owned a 50% interest in this LLC at the date of purchase. He currently has no ownership interest in this LLC.

## 15. LEASES

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

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

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

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

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

The components of lease expense were as follows:

	Year Ended December 31, 2021	Year Ended December 31, 2020
Finance leases:		
Depreciation of assets	\$ 152,700	\$ 88,000
Interest on lease liabilities	43,400	38,000
Operating lease expense	550,400	328,300
Total net lease cost	<u>\$ 746,500</u>	<u>\$ 454,300</u>

Supplemental balance sheet information related to leases was as follows:

	December 31, 2021	December 31, 2020
Operating leases:		
Operating lease ROU assets	\$ 3,429,700	\$ 873,800
Total ROU Liabilities	<u>\$ 3,484,400</u>	<u>\$ 841,700</u>
Finance leases:		
Property and equipment, at cost	\$ 1,365,500	\$ 1,411,100
Less: Accumulated depreciation	293,100	140,400
Property and equipment, net	<u>\$ 1,072,400</u>	<u>\$ 1,270,700</u>
Total Finance lease liabilities	<u>\$ 543,400</u>	<u>\$ 999,400</u>

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

	Year Ended December 31, 2021	Year Ended December 31, 2020
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ (301,100)	\$ (273,800)
Financing cash flows from finance leases	(356,900)	(564,400)
Assets obtained in exchange for lease liabilities:		
Operating leases	\$ 2,943,800	\$ —
Finance leases	—	1,043,100
Weighted average remaining lease term (in years):		
Operating leases	8.6	3.2
Finance leases	2.7	3.1
Weighted average discount rate:		
Operating leases	4.7 %	9.9 %
Finance leases	4.8 %	5.2 %

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

	Operating Leases	Finance Leases	Total
2022	\$ 611,700	\$ 268,900	\$ 880,600
2023	542,000	238,600	780,600
2024	433,300	74,900	508,200
2025	328,900	—	328,900
2026	338,800	—	338,800
Thereafter	1,952,600	—	1,952,600
Total lease payments	\$ 4,207,300	\$ 582,400	\$ 4,789,700
Less amount of discount/interest	(722,900)	(39,000)	(761,900)
	<u>\$ 3,484,400</u>	<u>\$ 543,400</u>	<u>\$ 4,027,800</u>

## 16. INCOME TAX

The components of net deferred tax assets and liabilities at December 31, 2021 and 2020 are set forth below:

	December 31, 2021	December 31, 2020
Deferred tax assets:		
Federal NOL Carryforward	\$ 1,926,000	\$ 1,794,200
UNICAP	598,400	193,000
Lease Liability	736,400	176,700
Stock Based compensation	54,900	9,200
Investments	7,000	57,100
Total assets	<u>\$ 3,322,700</u>	<u>\$ 2,230,200</u>

Deferred tax liabilities:			
Property and equipment	\$	1,948,900	\$ 1,705,400
Right of use assets		724,800	183,500
Total liabilities	\$	2,673,700	\$ 1,888,900
Subtotal deferred tax assets		649,000	341,300
Valuation Allowance		—	(341,300)
Net deferred tax assets	\$	649,000	\$ —

In accordance with GAAP, management assesses whether it is more-likely-than-not that some portion or all of the deferred tax assets will not be realized, and if a valuation allowance is warranted. On December 31, 2021, management determined that it was more-likely-than-not that the Company's deferred tax assets would be realized. Accordingly, on December 31, 2021, no valuation allowance was recorded against the Company's federal net deferred tax assets. At December 31, 2020, management determined that it was more-likely-than-not that a valuation amount should be applied against the Company's net deferred tax assets. The change in valuation allowance in the current year was a decrease of \$0.3 million.

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

The components of income tax expense and the effective tax rates for the years ended December 31, 2021 and 2020 are as follows:

	Year Ended December 31, 2021	Year Ended December 31, 2020
Current:		
Federal	\$ 2,394,500	\$ —
State	21,400	—
Total Current	2,415,900	—
Deferred:		
Federal	(649,000)	(224,500)
State	—	—
Total Deferred	(649,000)	(224,500)
Valuation Allowance	—	341,300
Total Income Tax Expense	\$ 1,766,900	\$ 116,800

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

	2021	2020
US Federal statutory rate	21.0 %	21.0 %
Change in Federal Valuation Allowance	(3.1)%	(9.4)%
Tax Credits	(2.6)%	— %
Incentive Stock Options	0.5 %	— %
Adjustment of Deferred Tax	0.2 %	(16.3)%
State Taxes	0.2 %	— %
Change in Tax Rate	0.1 %	— %
PPP Loan forgiveness	— %	3.2 %
Non-controlling Interest	— %	(1.3)%

Other	0.1 %	(0.4)%
Effective Tax Rate	16.4 %	(3.2)%

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

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

## 17. STOCKHOLDERS' EQUITY

### Common Stock

The Company is authorized to issue 50,000,000 shares of common stock, at no par value per share. At December 31, 2021, the Company has 13,155,342 shares of common stock issued and outstanding.

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

### Preferred Stock

At December 31, 2021, the Company is authorized to issue 10,000,000 shares of preferred stock, at no par value per share. As of December 31, 2021, the Company has 4,016,955 shares of Series A Cumulative Convertible Preferred Stock ("Series A Preferred Shares") issued and outstanding. The holders of the Series A Preferred Shares are entitled to receive dividends at a rate of 8% per annum payable monthly in arrears starting June 30, 2021 and are entitled to a liquidation preference equal to \$25.00 per share plus all accrued and unpaid dividends. Beginning on June 9, 2024, the Company may, at its option, redeem the Series A Preferred Shares, in whole or in part, by paying \$25.00 per share, plus any accrued and unpaid dividends to but not including the date of redemption. To the extent declared by the Board of Directors, dividends will be payable not later than 20 days after the end of each calendar month. Dividends on the Series A Preferred Shares will accumulate whether or not the Company has earnings, whether or not there are funds legally available for the payment of such dividends, and whether or not such dividends are declared by the Board of Directors.

*Conversion at Option of Holder.* Each of these Series A Preferred Shares, together with accrued but unpaid dividends, is convertible into common stock at an initial conversion price of \$4.50 per share of common stock, which initially equals 5.556 shares of common stock at any time at the option of the holder.

### Dividends

*Preferred Stock.* The holders of the Series A Preferred Shares are entitled to receive dividends at a rate of 8% per annum payable monthly in arrears. The Company has accrued dividends of \$0.7 million as of December 31, 2021 which were paid to the shareholders on January 11, 2022.

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

### Public Offering and Conversion of Debt

The registration statement for the Company's initial public offering (the "Initial Public Offering") became effective on August 28, 2020. On September 1, 2020, the Company closed on the Initial Public Offering of 2,031,705 shares of its common stock at the public offering price of \$6.00 per share, which included 265,005 shares of common stock sold upon full exercise of the underwriters' option to purchase additional shares of common stock for gross proceeds of \$12.2 million. The net proceeds from the Initial Public Offering after deducting the underwriting discount and the underwriters' fees and expenses were \$10.8 million.

In addition, upon closing of the Initial Public Offering, the Company issued to the underwriters warrants to purchase an aggregate of 88,335 shares of common stock exercisable at a per share price of \$7.50 for a term of four years beginning on August 28, 2020. The fair value of these warrants is \$0.2 million.

Also, upon closing of the Initial Public Offering, the Company issued to Olympic Views, LLC ("Olympic"), 82,826 shares of its common stock as a result of the conversion of debt owed to Olympic in the amount of \$0.4 million and accrued interest of \$0.1 million at the public offering price of \$6.00 per share.

#### 2021 Common Stock Offering

On January 15 and 20, 2021, the Company closed on an offering (the "Follow-On Offering") of 9,200,000 shares of common stock at the public offering price of \$3.00 per share, which includes 1,200,000 shares of common stock sold upon full exercise of the underwriters' option to purchase additional shares of common stock for gross proceeds of \$27.6 million. The net proceeds after deducting stock issuance costs were \$25.1 million.

In addition, upon closing of the Follow-On Offering, the Company issued to the underwriters, warrants to purchase an aggregate of 400,000 shares of common stock exercisable at a per share price of \$3.75 for a term of five years beginning on January 12, 2021 which vest on July 12, 2021. The fair value of these warrants is \$0.5 million.

#### Preferred Stock Offerings

On June 11, 2021, the Company closed an offering (the "Preferred Stock Offering") for 1,200,000 Series A Preferred Shares and warrants to purchase 4,140,000 shares of common stock at an exercise price of \$5.00 per share, which included 540,000 warrants pursuant to the underwriter's partial exercise of their over-allotment option, for gross proceeds of \$30.0 million. On June 30, 2021, the underwriters made another partial exercise of their over-allotment option and purchased an additional 60,555 Series A Preferred Shares for additional gross proceeds of \$1.4 million. The net proceeds from the Preferred Stock Offering after deducting stock issuance costs was \$28.7 million.

In addition, upon closing of the Preferred Stock Offering, the Company issued to the underwriters two warrants, including (i) warrants to purchase 12,000 Series A Preferred Shares; and (ii) warrants to purchase 36,000 shares of common stock at an exercise price of \$5.00 per share.

The warrants issued to investors in the Preferred Stock Offering have an exercise price of \$5.00 per share with a life of five years from the date of issue. The fair value of the warrants was \$3.7 million, which was valued using the Black Scholes Model.

On October 7, 2021, the Company closed an offering (the "Follow-On Preferred Stock Offering") for 2,400,000 Series A Preferred Shares and warrants to purchase 13,800,000 shares of common stock at an exercise price of \$2.97 per share, which included 1,800,000 warrants pursuant to the underwriter's partial exercise of their over-allotment option, for gross proceeds of \$36.0 million. On October 7, 2021, the underwriters made another partial exercise of their over-allotment option and purchased an additional 360,000 Series A Preferred Shares for additional gross proceeds of \$5.4 million. The net proceeds from the Follow-On Preferred Stock Offering after deducting stock issuance costs was \$37.9 million.

The warrants issued to investors in the Follow-On Preferred Stock Offering have an exercise price of \$2.97 per share with a life of five years from the date of issue. The fair value of the warrants was \$6.0 million, which was valued using the Black Scholes Model.

#### Repurchase of Equity Securities

On November 3, 2021, the Board of Directors approved a stock repurchase program authorizing the repurchase of up to \$5.0 million worth of shares of common stock beginning November 22, 2021. The amount of the repurchase program represented approximately 17% of the outstanding shares of the Company's common stock valued at the closing price on November 3, 2021. During the year ended December 31, 2021, the Company repurchased 1,806,752 shares of common stock under this repurchase program at an average price of \$2.77 per share for a total of approximately \$5.0 million.

#### **(A) Options**

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



	Options	Weighted Average Exercise Price
Outstanding – December 31, 2019	264,426	\$ 0.41
Exercisable – December 31, 2019	117,218	\$ 0.42
Granted	213,784	\$ 4.79
Exercised	—	\$ —
Forfeited/Cancelled	(36,038)	\$ 0.40
Outstanding – December 31, 2020	442,172	\$ 2.53
Exercisable – December 31, 2020	219,085	\$ 1.31
Granted	240,000	\$ 3.23
Exercised	(45,046)	\$ 0.40
Forfeited/Cancelled	(173,875)	\$ 3.27
Outstanding – December 31, 2021	463,251	\$ 2.82
Exercisable – December 31, 2021	343,724	\$ 2.77

Options Outstanding				Options Exercisable	
Exercise Price	Number Outstanding	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$0.40 - \$6.50	463,251	6.23	\$ 2.82	343,724	\$ 2.77

During the year ended December 31, 2021, the Company issued 240,000 options to employees. The options have an exercise price between \$2.76 and \$3.41 per share, a term of 10 years, and vest over two or three years. The options have an aggregated fair value of approximately \$0.3 million that was calculated using the Black-Scholes option-pricing model based on the assumptions discussed above in Note 1 under Stock-Based Compensation.

During the year ended December 31, 2021, the Company had 45,046 options exercised by a former employee. These shares were exercised at \$0.40 per share for a total of \$0.02 million.

The Company recognized share-based compensation net of forfeitures related to options of \$0.3 million and \$0.1 million for the years ended December 31, 2021 and 2020, respectively.

On December 31, 2021, unrecognized share-based compensation was \$0.1 million.

The intrinsic value for outstanding and exercisable options as of December 31, 2021 was \$0.4 million and \$0.3 million and as of December 31, 2020 was \$1.0 million and \$0.7 million, respectively.

#### (B) Warrants

The following is a summary of the Company's Common Stock Warrant activity:

	Warrants	Weighted Average Exercise Price
Outstanding – December 31, 2019	22,524	\$ 0.40
Exercisable – December 31, 2019	22,524	\$ 0.40
Granted	88,335	\$ 7.5
Exercised	—	\$ —
Forfeited/Cancelled	—	\$ —
Outstanding – December 31, 2020	110,859	\$ 6.06
Exercisable – December 31, 2020	22,524	\$ 0.40
Granted	18,376,000	\$ 3.45
Exercised	—	\$ —
Forfeited/Cancelled	—	\$ —
Outstanding – December 31, 2021	18,486,859	\$ 3.46
Exercisable – December 31, 2021	18,486,859	\$ 3.46

Exercise Price	Warrants Outstanding			Warrants Exercisable	
	Number Outstanding	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$0.40 - \$7.50	18,486,859	4.68	\$ 3.46	18,486,859	\$ 3.46

During the year ended December 31, 2021, the Company issued 18,376,000 warrants in connection with the preferred stock offerings. The warrants have an exercise price between \$2.97 and \$5.00 per share, a term of 5 years, and vest over 0 to 6 months. The fair value of these warrants is \$9.9 million as of December 31, 2021. The value was calculated using the Black-Scholes option-pricing model based on the assumptions discussed above in Note 1 under Stock-Based Compensation.

The intrinsic value for outstanding and exercisable warrants as of December 31, 2021 and 2020 was \$0.1 million and \$0.1 million, respectively.

The following is a summary of the Company's Preferred Stock Warrant activity:

	Warrants	Weighted Average Exercise Price
<b>Outstanding – December 31, 2019</b>	—	\$ —
<b>Exercisable – December 31, 2019</b>	—	\$ —
Granted	—	\$ —
Exercised	—	\$ —
Forfeited/Cancelled	—	\$ —
<b>Outstanding – December 31, 2020</b>	—	\$ —
<b>Exercisable – December 31, 2020</b>	—	\$ —
Granted	12,000	\$ 24.97
Exercised	—	\$ —
Forfeited/Cancelled	—	\$ —
<b>Outstanding – December 31, 2021</b>	12,000	\$ 24.97
<b>Exercisable – December 31, 2021</b>	12,000	\$ 24.97

Exercise Price	Warrants Outstanding			Exercise Price	Warrants Exercisable	
	Number Outstanding	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price		Number Exercisable	Weighted Average Exercise Price
\$ 24.97	12,000	4.44	\$ 24.97		12,000	\$ 24.97

During the year ended December 31, 2021, the Company issued 12,000 preferred warrants in connection with preferred stock offering. The preferred warrants have an exercise price of \$24.97, a term of 5 years, and vest over approximately 6 months. The fair value of these warrants is \$0.1 million as of December 31, 2021. The value was calculated using the Black-Scholes option-pricing model based on the assumptions discussed above in Note 1 under Stock-Based Compensation.

The intrinsic value for outstanding and exercisable preferred warrants as of December 31, 2021 and 2020 was \$0.

#### (C) Restricted Stock Plan

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

	Restricted Stock	Weighted Average Exercise Price
<b>Non Vested Balance - December 31, 2019</b>	—	\$ —
Granted	34,000	\$ 4.53
Vested	8,500	\$ 4.53
Forfeited/Cancelled	—	\$ —
<b>Non Vested Balance - December 31, 2020</b>	25,500	\$ 4.53
Granted	180,000	\$ 2.58
Vested	60,500	\$ 3.71
Forfeited/Cancelled	—	\$ —
<b>Non Vested Balance - December 31, 2021</b>	145,000	\$ 2.45

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

equal installments quarterly, unless otherwise determined by the Compensation Committee. The Company recognized \$0.2 million and \$0.04 million of share-based compensation during the years ended December 31, 2021 and 2020, respectively. On December 31, 2021, there was \$0.5 million of unrecognized compensation related to non-vested restricted stock.

## 18. SEGMENTS

The Company's business is organized into four material reportable segments which aggregate 99% of revenue:

- 1) Homes
- 2) Developed lots
- 3) Entitled land
- 4) Fee build

The reporting segments follow the same accounting policies used in the preparation of the Company's consolidated financial statements. The following represents selected information for the Company's reportable segments for the years ended December 31, 2021 and 2020. Immaterial construction materials revenues and costs are included in the homes segment.

	Year Ended December 31, 2021	Year Ended December 31, 2020
<b>Revenue by segment</b>		
Homes	\$ 17,654,600	\$ 37,276,400
Developed lots	26,825,500	12,538,000
Entitled land	20,625,000	—
Fee Build	6,802,900	—
Other	444,700	582,600
	<u>\$ 72,352,700</u>	<u>\$ 50,397,000</u>
<b>Cost of goods sold by segment</b>		
Homes	\$ 15,168,500	\$ 35,140,000
Developed lots	15,885,300	13,253,800
Entitled land	11,689,100	—
Fee Build	5,991,300	—
Other	1,685,200	—
	<u>\$ 50,419,400</u>	<u>\$ 48,393,800</u>
<b>Gross profit (loss) by segment</b>		
Homes	\$ 2,486,100	\$ 2,136,400
Developed lots	10,940,200	(715,800)
Entitled land	8,935,900	—
Fee Build	811,600	—
Other	(1,240,500)	582,600
	<u>\$ 21,933,300</u>	<u>\$ 2,003,200</u>

## 19. UNCOMPLETED CONTRACTS

Costs, estimated earnings and billings on uncompleted contracts are summarized as follows at December 31, 2021 and December 31, 2020:

	December 31, 2021	December 31, 2020
Costs incurred on uncompleted contracts	\$ 5,991,300	\$ —
Estimated earnings	811,600	—
Costs and estimated earnings on uncompleted contracts	6,802,900	—
Billings to date	4,635,700	—
Costs and estimated earnings in excess of billings on uncompleted contracts	2,167,200	—
Billings in excess of costs and estimated earnings on uncompleted contracts	—	—
	<u>\$ 2,167,200</u>	<u>\$ —</u>

The contract asset of \$2.2 million consists of estimated earnings of \$0.8 million and costs in excess of billings of \$1.4 million. The uncollected billings as of December 31, 2021 were \$1.0 million.

## 20. SUBSEQUENT EVENTS

On January 12, 2022, the board of directors of the Company declared a monthly cash dividend on the Company's 8.0% Series A Cumulative Convertible Preferred Stock of \$0.167 per share. The cash dividend was paid on February 20, 2022 to stockholders of record on January 30, 2022.

On January 26, 2022, the board of directors of the Company declared a monthly cash dividend on the Company's 8.0% Series A Cumulative Convertible Preferred Stock of \$0.167 per share. The cash dividend was paid on March 20, 2022 to stockholders of record on February 28, 2022.

On January 26, 2022, the Company entered into a preliminary commitment with Marquee Funding Group for a \$15.7 million construction loan for a 75 unit Wyndstone apartment complex located in Yelm, Washington. The Company closed on this commitment on March 21, 2022.

On February 14, 2022, the Company entered into a preliminary commitment with Washington Federal Bank for a \$29.7 million construction loan for a 177 unit Tanglewilde apartment complex located in Lacey, Washington.

On February 25, 2022, the Company entered into a purchase and sale agreement to sell land in Blaine, Washington for \$4.5 million. Closing is expected to take place on or before March 30, 2022.

On March 3, 2022, the Company entered into a purchase and sale agreement to purchase land in Tacoma, Washington for \$6.7 million. Closing is expected to take place on or before August 15, 2022.

On March 7, 2022, the Company entered into a senior secured revolving credit facility with BankUnited for \$25.0 million. The unpaid principal bears interest at a fluctuating rate of interest per annum equal to the daily simple secured overnight financing rate (SOFR) plus the applicable margin of 4.75%.

On March 14, 2022, the board of directors of the Company declared a monthly cash dividend on the Company's 8.0% Series A Cumulative Convertible Preferred Stock of \$0.167 per share. The cash dividend is payable on April 20, 2022 to stockholders of record on March 31, 2022.

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

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

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

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

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

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

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

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

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

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

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

Not applicable.

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

Not applicable.

## PART III

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

#### Directors and Executive Officers

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

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

Name	Age	Position with the Company
Sterling Griffin	60	Chief Executive Officer, President, and Chairman of our Board of Directors
Jeffrey B. Habersetzer	32	Chief Operating Officer, General Counsel, and Corporate Secretary
Lance Brown	40	Chief Financial Officer
Richard Schmidtke	60	Director
Larry Swets	47	Independent Director
Dennis Wong	52	Independent Director
Wally Walker	67	Independent Director
Karen Bryant	54	Independent Director
Chris Corr	60	Independent Director

#### Biographical Information

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

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

**Jeff Habersetzer.** Jeff Habersetzer is our Chief Operating Officer while serving as our General Counsel and Corporate Secretary. Mr. Habersetzer has vast legal experience forming and managing corporations, constructing a multitude of business contracts, participating in litigation and disputes, and representing lenders in real estate closings and debt agreements, among other legal experiences. Mr. Habersetzer has served as General Counsel since 2019, playing an integral role in four successful capital raises for our company, as well as quarterly and annual SEC reports, amongst other SEC filings. Prior to joining our company, Mr. Habersetzer owned a legal practice specializing in business contracts, real estate, and corporate governance and served as a financial underwriter in the acquisitions department of a student-housing real estate owner/operator. Born and raised in the greater Tacoma, WA area, Mr. Habersetzer maintains a strong commitment to volunteer work, as evidenced by his service on the King County Bar Association Public Policy Committee, his time as a volunteer attorney at the Seattle Neighborhood Legal Clinic, and as a Board Member and Secretary at the Northwest Children's Foundation. Mr. Habersetzer holds a Bachelor's degree from the University of Washington, and both a law degree and a Master's in Business Administration from Seattle University, graduating Cum Laude in both programs simultaneously.

**Lance Brown.** Mr. Brown serves as our Chief Financial Officer. Prior to joining our company, Mr. Brown was Vice President and Chief Accounting Officer at Select Interior Concepts (NASDAQ: SIC), where he was responsible for Finance, Accounting, SEC Reporting, and Tax. During his time at SIC, Mr. Brown developed the public company accounting and reporting infrastructure; was extensively involved in the diligence and integration for multiple completed acquisitions; assisted with the sale, divestiture, and de-integration of SIC's largest business unit to a major competitor; and

provided significant support for the sale and going private transaction of SIC. Mr. Brown started his career in public accounting at PricewaterhouseCoopers. He holds a Bachelor of Business Administration degree from the University of Georgia and a Master of Accountancy from Auburn University. Mr. Brown is a Certified Public Accountant.

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

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

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

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

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



**Walter ("Wally") Walker.** Wally Walker has been an Independent Director on our board of directors since October 2020. Mr. Walker served as a Vice President in Goldman, Sachs & Co.'s Private Client Services group from 1987 through 1994. In April 1994, Mr. Walker formed Walker Capital, Inc., a San Francisco based money management firm. In September 1994, Mr. Walker became President and General Manager of the Seattle SuperSonics and the Seattle Storm, and in addition to being an owner, served as Chief Executive Officer and President of the teams until their sale in 2006. In his seven years as General Manager, the Sonics had the third best winning percentage (65.1%) in the NBA and won the Western Conference Championship in 1996. During his entire tenure as an executive, the Sonics had the fifth best winning percentage in the NBA and won four of the six division titles in Seattle Sonics' 41 year history. The Seattle Storm won the WNBA Championship in 2004. In 1998, he was voted runner-up by his peers, for NBA Executive of the Year. In late 2007, he formed Hana Road Capital LLC, where he remains as its owner and Chief Investment Officer. Mr. Walker graduated from the University of Virginia in 1976 as an Academic All-American with a BA in psychology. He was the first ever Virginia player to win the Everett Case Award, for being MVP of the ACC tournament. His number 41 has been retired by the University of Virginia. In 2001 he was named as one of six recipients of the NCAA Silver Anniversary Scholar-Athlete Award. He received his Masters of Business Administration from Stanford University Graduate School of Business in 1987. He was conferred as a Chartered Financial Analyst in 1992. He served on the Board of Visitors, at the University of Virginia from 1997 – 2001. In addition to his investment and management experience, Mr. Walker was drafted in the first round (5th overall) by the Portland Trailblazers in 1976 and was a member of the Portland Trailblazers 1977 Championship team. After the 1977 season, Mr. Walker was traded to the Seattle SuperSonics, where he was a member of the SuperSonics 1979 Championship team. In 1982, Mr. Walker was traded to the Houston Rockets. He retired from professional basketball in 1985. He received the George W. Kirchner Award for contributions to Lancaster County sports in 1986. In 1993, he was inducted into the Pennsylvania State Sports Hall of Fame and was named the greatest player of the 20th Century from Lancaster County, Pa. He was a member of the USA's gold winning World University Games team in 1973, played in Russia. Since 2005, Mr. Walker has been a member of the Advisory Council of Stone Arch Capital, a Minneapolis based private equity firm. Mr. Walker also serves as an independent trustee at Smead Capital Management, a Seattle based mutual fund. In 2018, he joined the Governing Council of the Miller Center of Public Affairs, at The University of Virginia.

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

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

#### **Family Relationships**

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

## Involvement in Certain Legal Proceedings

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

## Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires that our officers, directors, and persons who own more than 10% of our common stock file reports of ownership and changes in ownership with the SEC. Based solely on our review of the SEC's EDGAR database, copies of such forms received by us, or written representations from certain reporting persons, we believe that during the fiscal year ended December 31, 2021, the following delinquencies have occurred:

Name and Affiliation	No. of Late Reports	No. of Transactions Not Filed on a Timely Basis	Known Failures to File
Sterling Griffin, Chief Executive Officer and President	2	3	None
Jeffrey B. Habersetzer, Chief Operating Officer	2	3	None
Richard Schmidtke, Director	2	3	None
Larry Swets, Director	2	3	None
Dennis Wong, Director	2	3	None
Wally Walker, Director	2	3	None
Karen Bryant, Director	2	1	None
Chris Corr, Director	1	1	None
Lynda Meadows, former Chief Financial Officer*	2	1	None
Robb Kenyon, former Director **	1	2	None

\*Lynda Meadows resigned as Chief Financial Officer on August 24, 2021.

\*\*Robb Kenyon resigned as a director on July 8, 2021.

## Code of Ethics

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

## Board Diversity

Pursuant to Nasdaq's Board Diversity Rule 5605(f), which was approved by the SEC on August 6, 2021, we have taken steps to meet the diversity objective as set out in this rule within the applicable transition period. We identified candidates for our board of directors who meet the board diversity requirement and have appointed one female independent director to our Board of Directors. The following is our Board Diversity Matrix as of March 21, 2022:

Board Diversity Matrix		
Total Number of Directors	7	
Part I: Gender Identity	Female	Male
Directors	1	6
Number of Directors who Identify in Any of the Categories Below:		
Asian (other than South Asian)	0	1
White	1	5
LGBTQ+	1	

#### Audit Committee and Audit Committee Financial Expert

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

## ITEM 11. EXECUTIVE COMPENSATION

### Executive Compensation

#### Summary Compensation Table

The following is a summary of the elements of our compensation arrangements paid to our executive officers for fiscal years 2021 and 2020.

Name and Principal Position	Year	Salary (\$)	Stock Awards (\$)	Option Awards (\$)	All Other Compensation (\$)	Total (\$)
Sterling Griffin Chief Executive Officer and President	2021	442,750	31,200 <sup>(1)</sup>	—	164,690 <sup>(2)</sup>	638,640
	2020	420,000	22,650 <sup>(3)</sup>	35,154 <sup>(4)</sup>	60,539 <sup>(5)</sup>	538,343
Jeffrey Habersetzer, Chief Operating Officer	2021	199,250	—	133,787 <sup>(6)</sup>	19,892 <sup>(7)</sup>	352,929
	2020	123,854	—	51,644 <sup>(8)</sup>	3,209 <sup>(9)</sup>	178,707
Lance Brown, Chief Financial Officer	2021	43,616 <sup>(10)</sup>	216,000 <sup>(11)</sup>	—	17,942 <sup>(12)</sup>	277,558
Lynda Meadows Former Chief Financial Officer	2021	141,192 <sup>(13)</sup>	—	133,787 <sup>(14)</sup>	53,054 <sup>(15)</sup>	328,033
	2020	56,167 <sup>(16)</sup>	—	81,044 <sup>(17)</sup>	—	137,211
Tim O'Sullivan Interim Chief Financial Officer	2021	143,023 <sup>(18)</sup>	—	—	14,312 <sup>(19)</sup>	157,335

(1) On August 12, 2021, in his capacity as a member of our board, Mr. Griffin was granted 10,000 RSUs pursuant to our 2020 Restricted Stock Plan, whereby equal installments of 2,500 RSUs vest on the last day of each calendar quarter, beginning on September 30, 2021. The grant date fair value of the RSU Award was \$3.12.

(2) Consists of commuting expense of \$7,507, 401K matching of \$11,600, \$25,883 of health insurance paid by us, \$15,000 in director compensation, as well as \$104,700 of commissions earned by SGRE, LLC, which is 100% owned by Mr. Griffin.

(3) On December 3, 2020, in his capacity as a member of our board, Mr. Griffin was granted 5,000 RSUs pursuant to our 2020 Restricted Stock Plan, whereby equal installments of 1,250 RSUs vest on the last day of each calendar quarter, beginning on December 31, 2020. The grant date fair value of the RSU Award was \$4.53.

- (4) On October 13, 2020, in his capacity as a member of our board, Mr. Griffin was granted 20,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 5,000 stock options vest on the last day of each calendar quarter, beginning on December 31, 2020. The exercise price of the stock options is \$5.15.
- (5) Consists of credit card cash back of \$26,647, \$21,070 of health insurance paid by us, car payments of \$7,818, and cell phone expenses of \$5,004.
- (6) On June 28, 2021, Mr. Habersetzer was granted 100,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 4,166 stock options vest on the last day of each calendar month, beginning on June 28, 2021. The exercise price of the stock options is \$3.25.
- (7) Consists of car allowance of \$5,500, 401K matching of \$8,190, and \$6,202 of health insurance payments.
- (8) On September 1, 2020, in his capacity as secretary, Mr. Habersetzer was granted 20,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 1,666 stock options vest on the last day of each calendar month, beginning on September 30, 2020. The exercise price of the stock options is \$6.50.
- (9) Consists of health insurance payments of \$3,209.
- (10) Mr. Brown was hired on November 1, 2021. This amount reflects the pro-rated portion of Mr. Brown's annual salary.
- (11) On November 8, 2021, Mr. Brown was granted 100,000 RSUs pursuant to his employment agreement, whereby 33,333 shares are vested on November 8, 2022, and the remaining 66,666 shares will vest on a quarterly basis in eight equal installments, beginning on February 8, 2023. The grant date fair value of the RSU was \$2.16.
- (12) Consists of commuting expense of \$13,509, and \$4,433 of health insurance paid by us.
- (13) Ms. Meadows resigned on August 24, 2021.
- (14) On June 28, 2021, Ms. Meadows was granted 100,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 4,166 stock options vest on the last day of each calendar month, beginning on June 28, 2021. The exercise price of the stock options is \$3.25. These options were forfeited following her resignation on August 24, 2021.
- (15) Consists of consulting fees of \$41,195, 401K matching of \$5,648, and \$6,211 of health insurance payments.
- (16) Ms. Meadows was hired on September 21, 2020. This amount reflects the pro-rated portion of Ms. Meadows annual salary.
- (17) On September 21, 2020, Ms. Meadows was granted 40,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 1,667 stock options vest on the last day of each calendar month, beginning on September 30, 2020. The exercise price of the stock options is \$5.00. These options were forfeited following her resignation on August 24, 2021.
- (18) Mr. O'Sullivan was acting as interim Chief Financial Officer, effective August 24, 2021 until we appointed Mr. Brown as Chief Financial Officer on November 1, 2021. This amount represents the annual salary paid to Mr. O'Sullivan. Mr. O'Sullivan resigned on February 24, 2022.
- (19) Consists of 401K matching of \$5,721, and \$8,591 of health insurance payments for the full year.

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

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

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

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

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

## Outstanding Equity Awards at Year End

The following table sets forth information regarding outstanding stock options held by our executive officers as of December 31, 2021:

Name and Principal Position	Grant Date	Number of Securities Underlying Options	Vesting Commencement Date	Exercise Price per share	Expiration Date
Sterling Griffin, Chief Executive Officer and President	12/31/2018	67,568	1/1/2019 <sup>(1)</sup>	\$ 0.44	12/31/2023
	10/13/2020	20,000	12/31/2020 <sup>(2)</sup>	\$ 5.15	10/13/2030
Jeffrey Habersetzer, Chief Operating Officer	12/19/2019	9,010	12/19/2019 <sup>(3)</sup>	\$ 0.40	12/19/2029
	9/1/2020	20,000	9/1/2020 <sup>(4)</sup>	\$ 6.50	9/1/2030
	6/28/2021	100,000	6/28/2021 <sup>(5)</sup>	\$ 3.25	6/28/2031
Tim O'Sullivan Interim Chief Financial Officer	8/12/2019	16,217	9/1/2022 <sup>(6)</sup>	\$ 0.40	8/11/2029

(1) Effective January 1, 2019, Mr. Griffin was entitled to 67,568 stock options pursuant to the 2018 Equity Incentive Plan. One hundred percent of the shares subject to this option vested immediately upon granting of the option. The exercise price of the stock options is \$0.44.

(2) On October 24, 2020, in his capacity as a member of our board, Mr. Griffin was granted 20,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 5,000 stock options vest on the last day of each calendar quarter, beginning on December 31, 2020. The exercise price of the stock options is \$5.15.

(3) Mr. Habersetzer was granted 9,010 stock options pursuant to our 2018 Equity Incentive Plan. One thirty-sixth of the shares subject to this option vest each month, subject to Mr. Habersetzer continuing to be an employee. The exercise price of the stock options is \$0.40.

(4) On September 1, 2020, Mr. Habersetzer was granted 20,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 1,666 stock options vest on the last day of each calendar month, beginning on September 30, 2020. The exercise price of the stock options is \$6.50.

(5) On June 28, 2021, Mr. Habersetzer was granted 100,000 stock options pursuant to our 2018 Equity Incentive Plan, whereby equal installments of 4,166 stock options vest on the last day of each calendar month, beginning on June 28, 2021. The exercise price of the stock options is \$3.25.

(6) Mr. O'Sullivan was granted 16,217 stock options pursuant to our 2018 Equity Incentive Plan, whereby one thirty-sixth of the shares vest each month, beginning September 1, 2019. The exercise price of the stock options is \$0.40.

The following table sets forth information regarding RSUs held by our executive officers as of December 31, 2021:

Name and Principal Position	Grant Date	Number of RSUs Granted	Fair Value of Stock Award	Vesting Commencement Date	Number of Unvested RSUs	Fair Value of Unvested RSUs
Sterling Griffin, Chief Executive Officer and President	12/3/2020	5,000	\$ 22,650	12/31/2020 <sup>(1)</sup>	—	\$ —
	8/12/2021	10,000	\$ 31,200	9/30/2021 <sup>(2)</sup>	5,000	\$ 15,600
Lance Brown, Chief Financial Officer	11/08/2021	100,000	\$ 216,000	11/08/2022 <sup>(3)</sup>	100,000	\$ 216,000

(1) On December 3, 2020, in his capacity as a member of our board, Mr. Griffin was granted 5,000 RSUs pursuant to our 2020 Restricted Stock Plan, whereby equal installments of 1,250 RSUs vest on the last day of each calendar quarter, beginning on December 31, 2020. The grant date fair value of the RSU Award was \$4.53.

(2) On August 12, 2021, in his capacity as a member of our board, Mr. Griffin was granted 10,000 RSUs pursuant to our 2020 Restricted Stock Plan, whereby equal installments of 2,500 RSUs vest on the last day of each calendar quarter, beginning on September 30, 2021. The grant date fair value of the RSU Award was \$3.12.

(3) On November 8, 2021, Mr. Brown was granted 100,000 RSUs pursuant to his employment agreement, whereby 33,333 shares are vested on November 8, 2022 and the remaining 66,666 shares will vest on a quarterly basis in eight equal installments, beginning on February 8, 2023. The grant date fair value of the RSU was \$2.16.

#### **Other Elements of Compensation**

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

*Health/Welfare Plans.* We have a health care, dental, and vision plan available to all employees, including our executives, who become eligible after 60 days of employment.

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

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

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

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

We have an employment agreement with Sterling Griffin as our Chief Executive Officer and President, effective January 1, 2019. This employment agreement is for a term of ten years with automatic one-year renewals unless either party gives notice of termination at least 30 days prior to the expiration of its initial term or any renewal term. Mr. Griffin is entitled to an annual salary of \$420,000, discretionary bonuses in the discretion of the board of directors, 67,568 options pursuant to the 2018 Equity Incentive Plan, an automobile allowance in the discretion of the board, and participation in all benefit plans, such as paid vacation and health insurance. In the event of our termination of Mr. Griffin without cause, Mr. Griffin is entitled to 26 weeks of his then salary as severance. On June 11, 2021, Mr. Griffin's salary was increased to \$462,000.

In addition to the 2021 compensation listed above, Mr. Griffin received a cash bonus of \$217,140 from 2021 performance on January 18, 2022, and he was granted 28,200 common shares pursuant to the Company's Restricted Stock Plan on January 10, 2022.

##### ***Offer Letter with Jeff Habersetzer***

On December 18, 2019, Mr. Habersetzer was offered employment with a starting salary of \$112,500, with a retention bonus of \$12,500 following a successful one-year performance review. Mr. Habersetzer was issued 20,000 options pursuant to the 2018 Equity Incentive Plan, as well as participation in all benefit plans including paid vacation, health insurance, and our 401k program. Mr. Habersetzer's salary was increased to \$140,000 on June 15, 2020, and \$160,000 on March 22, 2021. On June 28, 2021, the Board of Directors approved new compensation terms for Mr. Habersetzer, in connection with his promotion to Chief Operating Officer. The new terms include an annual base salary increase to \$225,000, effective July 1, 2021.

On February 7, 2022, Mr. Habersetzer's salary was increased to \$280,000, and was awarded a cash bonus of \$105,750 from 2021 performance on January 18, 2022. He was also granted 28,200 shares of common stock pursuant to the Company's Restricted Stock Plan on January 10, 2022.

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

On November 1, 2021, the Company entered into an employment agreement with Lance Brown to serve the Company as Chief Financial Officer, reporting to our Chief Executive Officer. The employment agreement is for a term of three years, and will automatically renew for additional one year periods unless either party provides the other party with notice of non-renewal at least 90 days before any such anniversary. In accordance with the terms of the employment agreement, Mr. Brown is paid an annual salary of \$280,000 and has the opportunity to earn an annual target bonus of 50% of his base salary with the actual payout determined based on the achievement of annual individual and Company performance objectives established by the Compensation Committee of the BOD. In addition, Mr. Brown received a one-time sign on bonus of \$75,000, which was paid on January 14, 2022 and was granted 100,000 shares of common stock pursuant to the Company's Restricted Stock Plan, 33,333 shares of which will vest on November 8, 2022, and thereafter, the remaining 66,666 shares will vest on a quarterly basis in eight equal installments, whereby all shares shall be vested by November 8, 2024. Mr. Brown may participate in all benefit plans, such as paid vacation, health insurance, and our 401k program. In the event of our termination of Mr. Brown without cause, Mr. Brown is entitled to 100% of his annual base salary plus 100%

of his target annual bonus as severance. Additionally, all outstanding restricted stock units and other previously granted awards that would have vested within 12 months of the date of termination shall become fully vested.

On January 14, 2022, Mr. Brown was awarded a cash bonus of \$21,633 from 2021 performance and was granted 4,700 shares of common stock pursuant to the Company's Restricted Stock Plan on January 10, 2022.

#### ***Offer Letter with Lynda Meadows***

On June 7, 2020, Lynda Meadows entered into an employment offer letter with us that provided for Ms. Meadows' employment as Chief Financial Officer, reporting to our Chief Executive Officer. In accordance with the terms of the offer letter, Ms. Meadows was paid an annual salary of \$200,000 and her annual target bonus was 60% of her annual base salary, based on objectives to be determined by the parties. In addition, Ms. Meadows was granted options to purchase 40,000 shares of our common stock pursuant to our 2018 Equity Incentive Plan. Ms. Meadows participated in all benefit plans, such as paid vacation, health insurance, and our 401k program. Mr. Meadows's salary was increased to \$220,000 on June 15, 2020. On June 28, 2021, the Board of Directors approved new compensation terms for Ms. Meadows, the Company's Chief Financial Officer. The new terms included an annual base salary increase to \$250,000, effective July 1, 2021.

#### ***Offer Letter with Tim O'Sullivan***

Tim O'Sullivan was appointed as Chief Financial Officer on an interim basis on August 24, 2021 until Mr. Brown was appointed. In accordance with the terms of the offer letter, Mr. O'Sullivan was paid an annual salary \$180,000 until the company appointed his permanent replacement.

#### **Director Compensation**

The following table sets forth information regarding the compensation earned for service on our board of directors in 2021. We reimburse all directors for their reasonable out of pocket expenses incurred in connection with the performance of their duties as directors, including without limitation, travel expenses in connection with their attendance in-person at board and committee meetings.

Director Name	Cash	Fair Value of Restricted Stock Award(1)	Total
Sterling Griffin	\$ 15,000	\$ 31,200	\$ 46,200
Richard Schmidtke	\$ 15,000	\$ 31,200	\$ 46,200
Larry Swets	\$ 25,000	\$ 31,200	\$ 56,200
Dennis Wong	\$ 140,000	\$ 31,200	\$ 171,200
Wally Walker	\$ 25,000	\$ 31,200	\$ 56,200
Karen Bryant	\$ 15,000	\$ 31,200	\$ 46,200
Chris Corr	\$ 10,000	\$ 31,200	\$ 41,200

(1) On August 12, 2021, each of our Directors was granted 10,000 RSUs pursuant to our 2020 Restricted Stock Plan, whereby equal installments of 2,500 RSUs vest on the last day of each calendar quarter, beginning on September 30, 2021. The grant date fair value of the RSU Award was \$3.12.

We anticipate providing cash and issuing stock options under our 2018 Equity Incentive Plan and/or Restricted Stock under our 2020 Restricted Stock Plan to current and new directors in the future to compensate them for their service.

#### **2018 Equity Incentive Plan**

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

Authorized shares. A total of 675,676 shares of our common stock has been reserved for issuance pursuant to the exercise of options issued from the 2018 Equity Incentive Plan.

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

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

**Options Granted.** As of December 31, 2021 pursuant to our 2018 Equity Incentive Plan, we have issued 508,297 options to purchase shares of our common stock to our employees, officers, and directors.

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

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

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

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

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

#### **2020 Restricted Stock Plan**

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

**Stock Subject to the Plan.** The aggregate number of shares of common stock that may be subject to Awards granted under the 2020 Restricted Stock Plan is 700,000 shares of common stock. If any shares of common stock are forfeited, retained by us as payment of tax withholding obligations with respect to an Award, or surrendered to us to satisfy tax withholding obligations, such shares will be added back to the shares available for Awards. The 2020 Restricted Stock Plan contains certain adjustment provisions relating to stock dividends, stock splits, and the like.

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

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



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

#### *Stock Awards*

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

#### *Performance Awards*

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

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

#### *Performance-Based Awards*

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

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

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

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

#### **Section 409A of the Code**

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

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

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

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

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

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

**Outstanding Awards.** As of December 31, 2021, there were 214,000 Awards issued under the 2020 Restricted Stock Plan.

#### **Rule 10b5-1 Sales Plan**

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

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

The following table sets forth the beneficial ownership of our common stock as of March 21, 2022 by:

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

The percentage ownership information is based on 13,206,165 shares of our common stock outstanding.

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

Name and Address of Beneficial Owner <sup>(9)</sup>	Amount and Nature of Beneficial Ownership	
	Number of Shares of Common Stock	Percentage of Class
<b>Directors and Named Executive Officers:</b>		
Sterling Griffin, Chief Executive Officer, President, Director	2,795,657 <sup>(1)</sup>	21.0 %
Jeff Habersetzer, Chief Operating Officer	100,575 <sup>(2)</sup>	*
Lance Brown, Chief Financial Officer	27,003	*
Richard Schmidtke, Director	168,374 <sup>(3)</sup>	1.3 %
Larry Swets, Director	117,950 <sup>(4)</sup>	*
Dennis Wong, Director	148,166 <sup>(5)</sup>	1.1 %
Wally Walker, Director	83,200 <sup>(6)</sup>	*
Karen Bryant, Director	7,500 <sup>(7)</sup>	*
Chris Corr, Director	17,460 <sup>(8)</sup>	*
All directors and executive officers as a group (nine persons)	3,465,885	25.7 %

\*Less than 1.0%

(1) Includes options to purchase 87,568 shares of common stock and 2,500 restricted stock units.

(2) Includes options to purchase 68,925 shares of common stock.

(3) Includes options to purchase 20,000 shares of our common stock and 2,500 restricted stock units.

(4) Includes options to purchase 53,784 shares of our common stock and 2,500 restricted stock units.

(5) Includes options to purchase 20,000 shares of our common stock and 2,500 restricted stock units.

(6) Includes options to purchase 20,000 shares of our common stock and 2,500 restricted stock units.

(7) Includes 2,500 restricted stock units.

(8) Includes 2,500 restricted stock units.

(9) Unless otherwise indicated, the address of each beneficial owner is 11505 Burnham Drive, Suite 301, Gig Harbor, Washington 98332.

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

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

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

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

our transactions with our directors and officers and with firms that employ our directors, as well as any other related person transactions.

### **Director Independence**

We ceased to be a "controlled company" under the Nasdaq rules on August 28, 2020. We are taking advantage of the phase-in transition periods specified in the Nasdaq rules.

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

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

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

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

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

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

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

These rules require that our Audit Committee be composed of at least three members. We are taking advantage of the phase-in allowances, whereby as of the date of our initial public offering, we were required to have at least one independent director on our Audit Committee; 90 days following the initial public offering, a majority of the Audit Committee members

must be independent directors; and the Audit Committee is required to be fully comprised of independent directors on the one year anniversary of our initial public offering (August 28, 2021). After the phase-in period, the Audit Committee must be composed exclusively of "independent directors" who are "financially literate" as defined under the Nasdaq listing standards. The Nasdaq listing standards define "financially literate" as being able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement. In addition, we are required to certify to Nasdaq that the Committee has, and will continue to have, at least one member who has past employment experience in finance or accounting, requisite professional certification in accounting, or other comparable experience or background that results in the individual's financial sophistication.

As of the fiscal year ended December 31, 2021, our Audit Committee is composed of Larry Swets, Dennis Wong, and Wally Walker. Our board of directors has affirmatively determined that all of the members of the Audit Committee meet the definition of "independent director" for purposes of serving on an Audit Committee under Rule 10A-3 and Nasdaq rules.

We have established a written charter for our Audit Committee, in which we set forth the duties of the Audit Committee to, among other matters, oversee (i) our financial reporting, auditing, and internal control activities; (ii) the integrity and audits of our financial statements; (iii) our compliance with legal and regulatory requirements; (iv) the qualifications and independence of our independent auditors; (v) the performance of our internal audit function and independent auditors; and (vi) our overall risk exposure and management. Duties of the Audit Committee include:

- annually review and assess the adequacy of the Audit Committee charter and the performance of the Audit Committee;
- be responsible for the appointment, retention, and termination of our independent auditors and determine the compensation of our independent auditors;
- review with the independent auditors the plans and results of the audit engagement;
- evaluate the qualifications, performance, and independence of our independent auditors;
- have sole authority to approve in advance all audit and non-audit services by our independent auditors, the scope and terms thereof, and the fees therefor;
- review the adequacy of our internal accounting controls; and
- meet at least quarterly with our executive officers, internal audit staff, and our independent auditors in separate executive sessions.

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

Nasdaq's Compensation and Nominating Committee phase-in requirements as set forth in Listing Rule 5615(c)(3) require that our Compensation Committee and Nominating and Corporate Governance Committee be composed (i) of a majority of independent directors during the phase-in period and (ii) solely of independent directors following the phase-in period. At this time, our Nominating Committee and Compensation Committee is comprised of a majority of independent directors. The members of each of our Nominating and Corporate Governance Committee and Compensation Committee are Larry Swets, Wally Walker, and Chris Corr. We have also established charters for each of our Nominating Committee and Compensation Committee.

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

Rosenberg Rich Baker Berman & Co. (RRBB) an independent registered public accounting firm, audited the financial statements and performed quarterly reviews of the company for 2021 and has been selected to do so for 2022.

##### **Audit Fees**

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

	For the Fiscal Year Ended	
	2021	2020
<b>Audit Fees</b>	\$ 138,000 <sup>(1)</sup>	\$ 140,688
<b>Audit Related Fees</b>	103,345 <sup>(2)</sup>	—
<b>Tax Fees</b>	—	—
<b>All Other Fees</b>	—	—
<b>Total</b>	<u>\$ 241,345</u>	<u>\$ 140,688</u>

(1) Audit fees for 2021 and 2020 include fees for professional services rendered by RRBB for the audit of our consolidated financial statements included in our Annual Report on Form 10-K, and review of our condensed consolidated financial statements included in our Quarterly Reports on Form 10-Q.

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

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

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

## PART IV

### ITEM 15. EXHIBITS

Exhibit No.	Description	Form	Exhibit	Filing Date	Filed Herewith
3.1	<a href="#">Certificate of Conversion and Articles of Incorporation of the Registrant filed with the Washington Secretary of State on October 1, 2018</a>	S-1	3.1	3/31/2020	
3.2	<a href="#">Amended and Restated Articles of Incorporation of the Registrant filed with the Washington Secretary of State on December 7, 2018</a>	S-1	3.2	3/31/2020	
3.3	<a href="#">Amended and Restated Articles of Incorporation of the Registrant filed with the Washington Secretary of State on August 1, 2019</a>	S-1	3.3	3/31/2020	
3.4	<a href="#">2nd Amended and Restated Bylaws of the Registrant, dated January 15, 2020</a>	S-1	3.4	3/31/2020	
3.5	<a href="#">Amended Articles of Incorporation of the Registrant filed with the Washington Secretary of State on April 16, 2020</a>	S-1	3.5	4/28/2020	
4.1	<a href="#">2018 Incentive and Non-Statutory Stock Option Plan, dated November 19, 2018</a>	S-1	4.1	3/31/2020	
4.2	<a href="#">2020 Restricted Stock Plan, dated October 13, 2020</a>	10-Q	10.1	11/16/2020	
4.3	<a href="#">Certificate of Designation of 8.0% Series A Cumulative Convertible Preferred Stock, filed with the Washington Secretary of State on June 8, 2021</a>	8-K	3.1	6/10/2021	
4.4	<a href="#">Warrant Agency Agreement between the Registrant and Mountain Share Transfer, Inc., dated June 11, 2021</a>	8-K	4.1	6/14/2021	
4.5	<a href="#">Certificate of Amendment of Certificate of Designation of 8.0% Series A Cumulative Convertible Preferred Stock, filed with the Washington Secretary of State on August 13, 2021</a>	S-1	3.7	9/10/2021	
4.6	<a href="#">Warrant Agency Agreement between the Registrant and Mountain Share Transfer, Inc., dated October 7, 2021</a>	8-K	4.1	10/08/2021	
10.1	<a href="#">Service Agreement between the Registrant and Hanover International, Inc., dated May 1, 2018 and Addendum to Service Agreement between the Registrant and Hanover International, Inc., dated November 29, 2018</a>	S-1	10.1	3/31/2020	
10.2	<a href="#">Independent Contractor Agreement between the Registrant and Richard Schmidtke dated, August 21, 2018 and Addendum to Independent Contractor's Agreement between the Registrant and Richard Schmidtke, dated September 30, 2018</a>	S-1	10.2	3/31/2020	
10.3	<a href="#">Director Agreement between the Registrant and Richard Schmidtke, dated October 17, 2018</a>	S-1	10.4	3/31/2020	
10.4	<a href="#">Executive Employment Agreement between the Registrant and Sterling Griffin, effective January 1, 2019</a>	S-1	10.7	3/31/2020	
10.5	<a href="#">Independent Director Agreement with Larry Swets, dated March 22, 2020</a>	S-1	10.11	3/31/2020	
10.6	<a href="#">SoundEquity, Inc. Loan Package, dated November 13, 2019</a>	S-1	10.12	4/28/2020	
10.7	<a href="#">Indemnification Agreement between the Registrant and Larry Swets, dated June 1, 2020</a>	S-1	10.17	6/19/2020	
10.8	<a href="#">Agreement of Sale of Future Receivables between the Registrant and Libertas Funding, LLC, dated August 12, 2020</a>	S-1	10.17	1/7/2021	

10.9	<a href="#">Offer of Employment to Jeff Habersetzer from the Registrant dated December 18, 2019</a>	S-1	10.24	1/7/2021	
10.10	<a href="#">Lease Agreement between Burnham Partners LLC and the Registrant dated February 18, 2021</a>	10-K	10.22	3/31/2021	
10.11	<a href="#">SoundEquity, Inc. Loan Package, dated October 4-5, 2021</a>	10-K	10.25	3/31/2021	
10.12	<a href="#">Promissory Note between the Registrant and Sound Capital Loans, LLC, dated January 22, 2021</a>	10-K	10.26	3/31/2021	
10.13	<a href="#">Lease Agreement between University Street Properties I, LLC and the Registrant dated July 27, 2021</a>		10.13		X
10.14	<a href="#">Offer of Employment to Lance Brown from the Registrant dated November 1, 2021.</a>		10.14		X
31.1	<a href="#">Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>		31.1		X
31.2	<a href="#">Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>		31.2		X
32.1	<a href="#">Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>		32.1		X
101. INS	XBRL Instance Document				
101. SCH	XBRL Taxonomy Extension Schema Document				
101. CAL	XBRL Taxonomy Extension Calculation Linkbase Document				
101. DEF	XBRL Taxonomy Extension definition Linkbase Document				
101. LAB	XBRL Taxonomy Extension Label Linkbase Document				
101. PRE	XBRL Taxonomy Extension Presentation Linkbase Document				
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)				

#### ITEM 16. FORM 10-K SUMMARY

Not applicable.



## SIGNATURES

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

### HARBOR CUSTOM DEVELOPMENT, INC.

Date: March 22, 2022	By	<u>/s/ Sterling Griffin</u> Sterling Griffin Chief Executive Officer and President (Principal Executive Officer)
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Date: March 22, 2022	By	<u>/s/ Lance Brown</u> Lance Brown Chief Financial Officer (Principal Financial and Accounting Officer)
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Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated

Signature	Title	Date
<u>/s/ Sterling Griffin</u> Sterling Griffin	President, Chief Executive Officer, Chairman of the Board, and Director (Principal Executive Officer)	March 22, 2022
<u>/s/ Lance Brown</u> Lance Brown	Chief Financial Officer (Principal Financial and Accounting Officer)	March 22, 2022
<u>/s/ Richard Schmidtke</u> Richard Schmidtke	Director	March 22, 2022
<u>/s/ Larry Swets</u> Larry Swets	Director	March 22, 2022
<u>/s/ Dennis Wong</u> Dennis Wong	Director	March 22, 2022
<u>/s/ Wally Walker</u> Wally Walker	Director	March 23, 2022
<u>/s/ Karen Bryant</u> Karen Bryant	Director	March 23, 2022
<u>/s/ Chris Corr</u> Chris Corr	Director	March 22, 2022

**OFFICE LEASE**

**UNIVERSITY STREET PROPERTIES I, LLC, LANDLORD**

**HARBOR CUSTOM DEVELOPMENT, INC., TENANT**

## OFFICE LEASE

THIS OFFICE LEASE, dated as of \_\_\_\_\_, 2021, is made by and between UNIVERSITY STREET PROPERTIES I, LLC, a Washington limited liability company ("Landlord"), and HARBOR CUSTOM DEVELOPMENT, INC., a Washington corporation ("Tenant").

1. Basic Lease Terms. This Section sets forth certain basic terms of this Lease for reference purposes. This Section is to be read in conjunction with the other provisions of this Lease; provided, however, to the extent of any inconsistency between this Section and the other provisions of this Lease, this Section shall control.

- 1.1 Building: 1201 Pacific, located at 1201 Pacific Avenue, Tacoma, Washington
- 1.2 Premises: A total of approximately 9,960 rentable square feet located on the twelfth (12<sup>th</sup>) floor of the Building and commonly known as Suite 1200 ("Premises"), which are depicted on Exhibit A attached hereto.
- 1.3 Commencement Date: The date that is one hundred thirty-four (134) days after the Delivery Date, or the date Tenant commences beneficial occupancy of the Premises, whichever occurs first. As used herein, the "Delivery Date" means the date that Landlord delivers the Premises to Tenant with the Landlord Work (defined on Exhibit C) completed. It is anticipated that the Delivery Date will occur on \_\_\_\_\_, 2021 ("Anticipated Delivery Date").
- 1.4 Expiration Date: The date that is one hundred twenty-six (126) Lease Months after the Commencement Date, subject to extension in accordance with Exhibit D.
- 1.5 Extension Option(s): Tenant shall have one (1) option to extend the Term for five (5) years, subject to and in accordance with Exhibit D attached hereto.

1.6 Base Rent:	<u>Period</u>	<u>\$/RSF/ Year</u>	<u>Monthly Base Rent</u>
	Lease Months 01-12*:	\$30.00	\$24,900.00
	Lease Months 13-24:	\$30.90	\$25,647.00
	Lease Months 25-36:	\$31.83	\$26,418.90
	Lease Months 37-48:	\$32.78	\$27,207.40
	Lease Months 49-60:	\$33.76	\$28,020.80
	Lease Months 61-72:	\$34.77	\$28,859.10
	Lease Months 73-84:	\$35.81	\$29,722.30
	Lease Months 85-96:	\$36.88	\$30,610.40
	Lease Months 97-108:	\$37.99	\$31,531.70
	Lease Months 109-120:	\$39.13	\$32,477.90
	Lease Months 121-126:	\$40.30	\$33,449.00

\*Subject to abatement as provided in Section 5.4 below.

- 1.7 Tenant's Share: 3.33% subject to Section 8.1.8.

- 1.8 Base Year: Calendar year 2022.
- 1.9 Prepaid Rent: Simultaneously with the execution and delivery of this Lease, Tenant shall pay to Landlord as prepaid Base Rent, the amount of \$24,900.00, which shall be applied by Landlord as Base Rent for the first full calendar month of the Term following the Rent Abatement Period.
- 1.10 Security Deposit: \$597,600 (subject to reductions as set forth on Exhibit E), in the form of a letter of credit, and not a cash security deposit, as further described on Exhibit E attached hereto.
- 1.11 Permitted Use: General office use, subject to Section 7.
- 1.12 Parking: Tenant shall have the right to purchase from Landlord up to ten (10) unreserved parking permits for the license of unreserved parking stalls (one per permit) in the Building garage ("Garage") at Landlord's then prevailing market rates, subject to and in accordance with Section 22.
- 1.13 Guarantor: None.
- 1.14 Landlord Notice Address: University Street Properties I, LLC  
c/o Unico Properties LLC  
Attn: University Street Properties I, LLC, Property Manager  
1201 Pacific Avenue, Suite 150  
Tacoma, Washington 98402
- With a copy to:
- University Street Properties I, LLC  
c/o Unico Properties LLC  
Attn: University Street Properties I, LLC, Asset Manager  
1215 Fourth Avenue, Suite 600  
Seattle, WA 98161
- 1.15 Tenant Notice Address:   
  
Attn:
- 1.16 Landlord's Broker: Kidder Mathews
- 1.17 Tenant's Broker: Kidder Mathews

#### Riders/Exhibits

<b>Exhibit A</b>	<b>Depiction of Premises</b>
<b>Exhibit B</b>	<b>Legal Description of Property</b>
<b>Exhibit C</b>	<b>Work Letter</b>
<b>Exhibit D</b>	<b>Extension Option</b>
<b>Exhibit E</b>	<b>Letter of Credit Terms and Conditions</b>
<b>Exhibit F</b>	<b>Rules</b>

2. Premises. Landlord leases to Tenant and Tenant leases from Landlord the Premises depicted on Exhibit A. The Premises are a part of the Building located on the real property described on Exhibit B ("Property").
3. Term.
  - 3.1 Commence. The term of this Lease ("Term") shall commence on the Commencement Date set forth in Section 1, subject to Section 4.
  - 3.2 Expire. The Term shall expire on the Expiration Date set forth in Section 1, unless sooner terminated or extended as provided in this Lease (including specifically Exhibit D).
  - 3.3 General. For purposes of this Lease, the term "Lease Year" shall mean each consecutive period of twelve (12) Lease Months during the Term. The term "Lease Month" shall mean each calendar month during the Term, provided that if the Commencement Date shall be other than the first day of a calendar month, then the first (1st) Lease Month shall commence on the Commencement Date and end on the last day of the calendar month immediately following the calendar month in which the Commencement Date occurs, with Base Rent for such initial partial calendar month prorated in accordance with Section 8.2 below.
  - 3.4. Tenant Early Termination Right. Tenant shall have the one-time right to terminate and cancel this Lease effective as of the last day of Lease Month 89 (the "Early Termination Date"), provided that (i) Landlord receives written notice (the "Early Termination Notice") from Tenant on or before the date that is twelve (12) months prior to the Early Termination Date stating that Tenant is electing to terminate this Lease pursuant to the terms and conditions of this Section 3.4, and (ii) within five (5) business days after Tenant's receipt of the Early Termination Payment Notice (defined below) from Landlord, Tenant pays to Landlord an amount equal to the sum of (a) all Rent that would otherwise have been payable by Tenant during the 3-month period following the Early Termination Date PLUS (b) the unamortized portions of (1) the Space Planning Allowance and Tenant Improvement Allowance (each as defined on Exhibit C), (2) all Abated Rent (defined below), and (3) all leasing commissions paid by Landlord in connection with this Lease (with items (1) through (3) being amortized in each case with substantially equal payments over the period commencing immediately after the Rent Abatement Period (defined below) and continuing through the end of the initial Term, with interest at a per annum rate equal to the *Wall Street Journal* "prime" rate in effect at the time of the Early Termination Payment Notice (or, if such rate is no longer published, then at a comparable prime rate of interest selected by Landlord in its reasonable discretion) plus two percent (2%)) (collectively, the "Early Termination Fee"), as consideration for and as a condition precedent to such early termination. Landlord shall deliver to Tenant written notice ("Early Termination Payment Notice") of the amount of the Early Termination Fee promptly after Landlord's receipt of the Early Termination Notice from Tenant. Any delay in sending the Early Termination Payment Notice will not affect Landlord's right to receive the Early Termination Fee. Provided that Tenant terminates this Lease in accordance with the terms and conditions of this Section 3.4, then the Lease shall automatically terminate and be of no further force or effect as of the Early Termination Date, and Landlord and Tenant shall be relieved of their respective obligations under this Lease as of the Early Termination Date, except for those obligations set forth in this Lease which accrued prior to the Early Termination Date, including, without limitation, the payment by Tenant of all amounts owed to Landlord under this Lease up to and including the Early Termination Date. The right to terminate the Lease as provided above is personal to Harbor Custom Development, Inc. ("Original Tenant"), and no assignee, sublessee or successor of Original Tenant shall be entitled to exercise such right.
4. Preparation of Premises; Early Access; Delayed Delivery of Possession.

- 4.1 Preparation of Premises. Except for delivering the Premises to Tenant with the Landlord Work complete, Landlord is leasing the Premises in an "As Is" condition and shall have no responsibility for constructing any tenant improvements for the Premises on behalf of Tenant or for providing any tenant improvement allowance to Tenant other than the Space Planning Allowance, Tenant Improvement Allowance and Drop Ceiling and Lighting Allowance. Any improvements to or construction on the Premises shall be carried out by Tenant in strict compliance with the provisions governing Alterations set forth in Section 13. Taking possession of the Premises by Tenant shall be conclusive evidence the Premises were, on that date, in good, clean and tenantable condition and delivered in accordance with this Lease, unless otherwise specified by Tenant in writing and delivered to Landlord within ten (10) days after the Delivery Date.
- 4.2 Early Access. The period between the Delivery Date and the Commencement Date is referred to herein as the "Build-Out Period". During the Build-Out Period, the following shall apply: (i) Tenant shall coordinate its activities with Landlord and comply with Landlord's directives, (ii) all provisions of this Lease other than those relating to payment of Rent shall apply to any such pre-commencement entry (including without limitation all insurance, indemnity and freedom from lien provisions), and (iii) Tenant shall not beneficially occupy the Premises (or any part thereof) or commence business operations from the Premises (or any part thereof) during such period.
- 4.3 Landlord Delay. If Landlord for any reason cannot deliver possession of the Premises to Tenant on the Anticipated Delivery Date, (i) the Delivery Date shall be the date on which possession of the Premises is delivered to Tenant, and (ii) this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom. Promptly following the Commencement Date, the Commencement Date shall be confirmed by Landlord's written notice to Tenant setting forth the actual Commencement Date and Expiration Date.

5. Rent.

- 5.1 Rent. Beginning on the Commencement Date and throughout the Term, Tenant shall pay to Landlord the Base Rent specified in Section 1 (subject to the Rent Abatement Period in accordance with Section 5.4 below) and all Additional Rent. "Additional Rent" means Tenant's Share of Taxes and Tenant's Share of Expenses, each as set forth in Section 8, and any other amounts which Tenant is or becomes obligated to pay Landlord under this Lease or other agreement entered in connection herewith. The Base Rent and the Additional Rent are collectively referred to as "Rent." Rent shall be paid in advance, on or before the first day of each calendar month of the Term. Rent for any period during the Term that is for less than one month shall be prorated for the actual number of days in such period.
- 5.2 Manner of Payment. Rent shall be paid without prior notice, demand, set off, counterclaim, deduction or defense and, except as otherwise expressly provided in this Lease, without abatement or suspension. All Rent shall be paid to Landlord at the address for notices set forth in Section 1, in lawful money of the United States of America, or to such other person or at such other place as Landlord may from time to time designate in writing.
- 5.3 General Payment Matters. All remedies applicable to the nonpayment of Rent shall be applicable to Base Rent and to Additional Rent. Rent obligations hereunder are independent covenants. In addition to all other Landlord remedies (i) any Rent not paid by Tenant when due shall accrue interest from the due date at the Default Rate until payment is received by Landlord and (ii) in addition to such interest, Tenant shall pay Landlord a service charge of \$250.00 or 5% of the delinquent amount, whichever is greater, if any portion of Rent is not received within five (5) business days after the due date. No delay by Landlord in providing any Rent statement to Tenant shall be deemed a default by



Landlord or a waiver of Landlord's right to require payment of Tenant's obligations hereunder including those for actual or estimated taxes, expenses or capital expenditures. In no event shall a decrease in Taxes or Expenses below their respective Base Year levels ever decrease the Base Rent or give rise to a credit in favor of Tenant. Landlord may apply payments received from Tenant to any obligations of Tenant then accrued.

- 5.4 Rent Abatement Period. So long as Tenant is not in Default, Tenant shall be entitled to an abatement of Base Rent for the first six (6) full calendar months of the Term ("Rent Abatement Period"). The total amount of Base Rent abated during the Rent Abatement Period shall be calculated at the rate of \$30.00 per square foot per year ("Abated Rent"). If Tenant is in Default at any time during the Term and Landlord terminates the Lease due to such Default, the unamortized portion of the Abated Rent (amortized on a substantially equal payment basis over the period from the beginning of the seventh (7<sup>th</sup>) full calendar month of the Term through the remainder of the initial Term, with interest at a per annum rate equal to the *Wall Street Journal* "prime" rate in effect at the time of the Default (or, if such rate is no longer published, then at a comparable prime rate of interest selected by Landlord in its reasonable discretion) plus two percent (2%)) shall become due and payable upon demand by Landlord, and Tenant shall have no right or claim against Landlord for any remaining Abated Rent not yet credited or applied. Neither the payment by Tenant of the Abated Rent nor Tenant's forfeiture of any remaining Abated Rent not yet applied in the event that Tenant is in Default shall limit or affect any of Landlord's other rights pursuant to this Lease or at law or in equity. During the Rent Abatement Period, only the Abated Rent shall be abated, and all other costs and charges specified in this Lease as Additional Rent shall remain as due and payable pursuant to this Lease. Except as specifically provided in Sections 1, 5.4, 12.2, 15 and 16, there shall be no abatement of Rent in any circumstance under this Lease.

6. Letter of Credit; Security Deposit.

- 6.1 Letter of Credit. Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord a letter of credit in the amount of \$597,600 subject to and in accordance with the terms and conditions set forth on Exhibit E.
- 6.2 Replacement Security Deposit. If at the end of Lease Month 90, Tenant satisfies the requirements for the Second Letter of Credit Reduction (defined on Exhibit E), and replaces the Letter of Credit with the cash Security Deposit in accordance with Section 1.1 of Exhibit E, the terms of this Section 6.2 shall apply to the cash Security Deposit. Landlord shall have the right to use all or any part of the Security Deposit to cure any Default by Tenant under this Lease or to compensate Landlord for any damage sustained by it resulting from such Default. In the event of any such application of the Security Deposit, Tenant shall, on demand, immediately pay to Landlord the amount necessary to replenish the Security Deposit to the original amount deposited with Landlord. If Tenant is not in Default at the expiration or termination of this Lease, Landlord shall, within thirty (30) days after the expiration or earlier termination of this Lease, return the remaining Security Deposit to Tenant, less any amounts necessary to satisfy any remaining obligations of Tenant under this Lease, including without limitation Tenant's payment obligations under Section 8.3, and Tenant's obligation to return the Premises to their original condition, reasonable wear and tear excepted. In the event this Lease is terminated before the end of the Term for any reason, any Rent paid for any period after the date of such termination shall be treated as an addition to the Security Deposit. Landlord's obligations with respect to the Security Deposit are those of a debtor and not a trustee. Landlord may maintain the Security Deposit separate from Landlord's general funds or may commingle the Security Deposit with other funds of Landlord. No interest shall accrue for Tenant on the Security Deposit.

7. Use of Premises.

- 7.1 Use. Tenant shall use the Premises only for general office purposes. The Premises may not be used for any other purpose without Landlord's written consent.
- 7.2 Prohibited Uses. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein which will in any way increase the cost of or affect any fire or other insurance upon the Building or any part thereof or any of its contents, or cause cancellation of any insurance policy covering the Building or any part thereof or any of its contents.
- 7.3 No Waste or Nuisance. Tenant shall not commit or suffer to be committed any waste, damage or nuisance in or upon the Premises. Tenant shall not do or permit anything to be done in or about the Premises that will obstruct or interfere with the rights of other tenants or occupants of the Building or injure them or their property, or use or allow the Premises to be used for any unlawful purpose (including, without limitation, any use that is lawful under Washington law but unlawful under federal law). Tenant shall not, without the prior written consent of Landlord, use any apparatus, machinery or device in or about the Premises which will cause any substantial noise or vibration. Tenant shall not place any boxes, cartons or other rubbish in the corridors or other Common Areas (defined in Section 9), Building or Property. Tenant shall use due care in the use of the Premises and of the Common Areas, Building or Property, and shall not neglect or misuse water fixtures, electric lights and heating and air-conditioning apparatus.
- 7.4 Compliance with Law. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any applicable law, statute, ordinance, or governmental rule or regulation, now or hereafter in force ("Laws"). Tenant shall at its sole cost and expense promptly comply with all Laws, including without limitation the Americans with Disabilities Act.
- 7.5. Rules and Regulations: Governing Property Documents. Tenant shall comply with the Rules set forth on Exhibit F attached hereto (the "Rules") in addition to all other terms of this Lease and any other restrictive covenants and obligations created by private contracts or of public record which affect the use and operation of the Premises or Common Areas, now or hereafter in force. Landlord shall have the right, by notice to Tenant or by posting at the Building, to reasonably amend such Rules and supplement the same with other reasonable Rules relating to the Building or Property, or the promotion of safety, care, efficiency, cleanliness or good order therein. Nothing herein shall be construed to give Tenant or any other Person any claim, demand or cause of action against Landlord arising out of the violation of such Rules by any other tenant or visitor of the Building or Property, or out of the enforcement, modification or waiver of the Rules by Landlord in any particular instance.
- 7.6 Maintenance of Premises. Tenant shall maintain and repair the Premises in neat, clean, sanitary and good condition, including, without limitation, maintaining and repairing all walls, storefronts (if applicable), ceilings, doors, windows and fixtures, Premises' specific systems and equipment, and interior plumbing serving the Premises as well as any damage to the Building, Property or Premises caused by Tenant, its agents, employees or invitees. If Tenant shall fail to keep and preserve the Premises in said condition and state or repair, Landlord may, at its option (but with no obligation) put or cause the same to be put into the condition and state of repair agreed upon, and in such case Tenant, on demand, shall pay the cost thereof.
- 7.7 Certain Prohibited Uses. Notwithstanding anything in this Lease to the contrary, no drugs or other substances that are illegal under any applicable Law are permitted in the Premises, in the Building, or on the Property. Moreover, regardless whether the following uses are prohibited under applicable Laws, the following uses of the Premises are prohibited under



this Lease: the sale, distribution or display of marijuana or other recreational drugs or any paraphernalia commonly used in the use or ingestion of such drugs.

- 7.8 Personal Property Taxes. Tenant shall pay prior to delinquency all personal property taxes payable with respect to all property of Tenant located on the Premises or the Building and promptly upon request of Landlord shall provide satisfactory evidence of such payment. "Personal property taxes" under this Section 7.8 shall include all property taxes assessed against the property of Tenant, whether assessed as real or personal property.

8. Additional Rent for Operating Expenses.

- 8.1 Taxes and Expenses. Tenant shall pay Landlord "Tenant's Share of Taxes" and "Tenant's Share of Expenses" in the manner described below. All such charges shall be deemed to constitute "Additional Rent" which shall be deemed to accrue uniformly during the fiscal year in which the payment is due.

8.1.1 During each year after the Base Year set forth in Section 1, Tenant agrees to pay as Additional Rent for the Premises, Tenant's Share (as set forth in Section 1) of all increases in Taxes and Expenses incurred by Landlord in the operation of the Building and Property, over the amount of Taxes and Expenses incurred by Landlord in the operation of the Building and the Property during the Base Year. For purposes of this Lease, "Tenant's Share" shall mean the ratio between the rentable area of the Premises and the rentable area of the Building, which amount is set forth in Section 1. Tenant's Share is subject to adjustment as set forth in Section 8.1.8.

8.1.2 For each year following the Base Year, Landlord shall give Tenant a written estimate of the anticipated increases in Taxes and Expenses over the Base Year and Tenant's Share of such increases. Tenant shall pay such estimated amount to Landlord in equal monthly installments, in advance, without deduction or offset, on or before the first day of each calendar month, with the monthly installment of Base Rent payable pursuant to Section 5.1 above. After the end of each fiscal year, Landlord shall furnish to Tenant a statement showing in reasonable detail the actual increases over the Base Year in the Taxes and Expenses incurred by Landlord during the applicable fiscal year and Tenant's Share thereof. If the statement shows Tenant's Share of the actual increases exceeds the amount of Tenant's estimated payments, within thirty (30) days after receiving the statement, Tenant shall pay the amount of the deficiency to Landlord. If the statement shows Tenant has overpaid, the amount of the excess shall be credited against installments next coming due under this Section 8; provided, however upon the expiration or earlier termination of the Term, if Tenant is not then in default under this Lease, Landlord shall refund the excess to Tenant.

8.1.3 If at any time during any year of the Term (other than the Base Year) the Taxes applicable to the Building and Property change and/or any information used by Landlord to calculate the estimated Expenses changes, Tenant's estimated share of such Taxes and/or Expenses, as applicable, may be adjusted accordingly effective as of the month in which such changes become effective, by written notice from Landlord to Tenant of the amount or estimated amount of the change, the month in which effective, and Tenant's Share thereof. Tenant shall pay such increase to Landlord as a part of Tenant's monthly payments of estimated Taxes or Expenses as provided above, commencing with the month following the month in which Tenant is notified of the adjustment.

- 8.1.4 For purposes of this Lease, the term "Expenses" means all costs of and expenses paid or incurred by Landlord for maintaining, operating, repairing, replacing and administering the Building and Property, and all facilities and Systems and Equipment, including reasonable management fees and costs, management office rents or reasonably allocated management office rents, amortization of capital costs and allocations of any shared costs. The foregoing is intended to be construed as broadly as possible to include all conceivable costs incurred by Landlord. The following shall be excluded from Expenses ("Expense Exclusions"):
- (i) expenses incurred by Landlord in connection with the leasing of space to individual tenants in the Building;
  - (ii) damage and repairs attributable to fire or other casualty to the extent Landlord is compensated therefor by insurance proceeds;
  - (iii) executive salaries or salaries above the level of director;
  - (iv) Landlord's general overhead expenses not related to the Building;
  - (v) legal fees and other expenses incurred in connection with disputes between Landlord and other tenants of the Building or associated with the enforcement of the terms of any leases with other tenants or the defense of Landlord's title to or interest in the Building or any part thereof;
  - (vi) costs (including permit, license and inspection fees) incurred in improving or altering space for other tenants;
  - (vii) cost of any service provided to Tenant or other occupants of the Building for which Landlord is reimbursed;
  - (viii) ground lease rent and mortgage related costs;
  - (ix) costs actually reimbursed by insurance, warranties or other third parties;
  - (x) costs of charitable or political contributions;
  - (xi) costs of sale, refinancing of all or any part of the Building or any interest in Landlord; and
  - (xii) organizational expenses incurred in connection with the creation of the legal entity which constitutes Landlord.
- 8.1.5 For purposes of this Lease, the term "Taxes" means all real estate taxes or personal property taxes and other taxes, surcharges and assessments, unforeseen as well as foreseen, which are levied with respect to the Building and Property and any improvements, fixtures and equipment and other property of Landlord, real or personal, located in the Building or on the Property and used in connection with the operation of the Building or Property and any tax, surcharge or assessment which shall be levied in addition to or in lieu of real estate or personal property taxes. The term "Taxes" shall also include (i) any rental, excise, sales, transaction, privilege, or other tax or levy, however denominated, imposed upon or measured by the rental reserved hereunder or on Landlord's business of leasing the Premises, excepting only net income, inheritance, gift and franchise taxes, and (ii) any and all reasonable costs, expenses and reasonable attorneys' fees paid or incurred by Landlord in connection with any proceeding or action to contest in whole or in part, formally or informally, the imposition, collection or validity of any of the foregoing taxes, assessments, charges or fees.
- 8.1.6 Notwithstanding anything to the contrary contained above, Landlord shall have the right, from time to time, to equitably allocate some or all of the Expenses among different portions or occupants of the Building ("Cost Pools"), in good faith and in its reasonable discretion. The Expenses within each such Cost Pool shall be allocated and charged to the tenants within such Cost Pool reasonably, in good faith and in an equitable manner.
- 8.1.7 If the Building is not fully occupied during any fiscal year, Landlord will, in accordance with industry standard accounting and management practices, determine the amount of variable Taxes and Expenses (i.e. those items which vary according to occupancy levels) that would have been paid had the Property been fully occupied, and the amount so determined shall be deemed to have been the amount of Taxes and Expenses for such year.

- 8.1.8 If the rentable area of the Premises or Building shall change, Tenant's Share shall thereupon become the rentable area of the Premises divided by the rentable area of the Building, excluding any parking facilities. Tenant acknowledges that the "rentable area of the Premises" under this Lease includes the usable area, without deduction for columns or projections, multiplied by a load or conversion factor, to reflect a share of certain areas, which may include lobbies, corridors, mechanical, utility, janitorial, boiler and service rooms and closets, restrooms, and other public, common and service areas, all as reasonably determined by Landlord. Except as provided expressly to the contrary herein, the "rentable area of the Building" shall include all rentable area of all space leased or available for lease at the Building, which Landlord may reasonably redetermine from time to time, to reflect reconfigurations, additions or modifications to the Building.
- 8.2 Prorations. If the Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Base Rent and any other amounts payable on a monthly basis shall be prorated on a per diem basis for such partial calendar months. If the Base Rent is scheduled to increase under Section 1 other than on the first day of a calendar month, the amount for such month shall be prorated on a per diem basis to reflect the number of days of such month at the then current and increased rates, respectively. If the Term commences other than on January 1, or ends other than on December 31, Tenant's obligations to pay amounts under this Section 8 towards Taxes and Expenses for the first and final years of the Term shall be prorated on a per diem basis to reflect the portion of such fiscal years included in the Term.
- 8.3 Payments After Lease Term Ends. Tenant's obligations to pay its share of Taxes and Expenses (or any other amounts) as provided in this Lease accruing during, or relating to, the period prior to expiration or earlier termination of this Lease, shall survive such expiration or termination. Landlord may reasonably estimate all or any of such obligations within a reasonable time before, or any time after, such expiration or termination. Tenant shall pay the full amount of such estimate, and any additional amount due after the actual amounts are determined, in each case within ten (10) days after Landlord sends a statement therefor. If the actual amount is less than the amount Tenant pays as an estimate, Landlord shall refund the difference within thirty (30) days after such determination is made.
- 8.4 Landlord's Accounting Practices and Records. Unless Tenant takes exception by notice to Landlord within thirty (30) days after Landlord provides any statement to Tenant for any item of Additional Rent, such statement shall be considered final and binding on Tenant (except as to additional Expenses or Taxes not then known or omitted by error). If Tenant takes exception by notice within such time, Landlord may seek confirmation from Landlord's independent certified public accountant as to the proper amount of Taxes and Expenses determined in accordance with sound accounting practices. In such case: (i) such confirmation shall be considered final and binding on both parties (except as to additional expenses or taxes not then known or omitted by error), and (ii) Tenant shall pay Landlord for the cost of such confirmation, unless it shows that Taxes and Expenses were overstated by at least five percent (5%). Pending resolution of any such exceptions, Tenant shall pay all amounts shown on such Landlord's statement, subject to credit, refund or additional payment after any such exceptions are resolved.
9. Common Areas.
- 9.1 Use of Common Areas. Provided Tenant is not in Default under the Lease and subject to the other terms and conditions of this Lease, Tenant shall have the right to use the Common Areas on a non-exclusive basis with Landlord and other tenants in the Building

and their respective officers, employees, guests, invitees and agents. Landlord shall have the right to establish and enforce reasonable rules and regulations applicable to all tenants concerning the maintenance, management, use, and operation of the Common Areas; and to make changes to the Common Areas, including without limitation changes in the location of lobbies, driveways (if any), entrances, exits, vehicular parking spaces and parking areas (if any), pedestrian and bicycle trail areas, or the direction of the flow of traffic.

- 9.2 Definition of Common Areas. In this Lease, "Common Areas," means the portions of the Building and Property which are provided by Landlord, from time to time, for use in common by Landlord, Tenant and any other tenants of the Building, and excludes, without limitation, the Premises and the premises leased or available for lease to other tenants. Common Areas include, without limitation, the Building's common entrances, lobbies, restrooms, elevators, stairway and accessways, loading docks, ramps, drives and platforms and any passageways and serviceways thereto, and mechanical and electrical systems for the Building.
10. Landlord's Maintenance Obligations. Landlord shall maintain, in good condition, the Common Areas, the structural parts of the Building (which includes only the foundations, bearing and exterior walls, subflooring, gutters, downspouts, and the roof of the Building) and the Building Systems and Equipment; provided, in the event any such replacements, repairs or maintenance are caused by or result from Tenant's excessive or improper use or occupation thereof or which are caused by or result from the negligence or improper conduct of Tenant, its agents, employees or invitees, the cost of such repairs shall be paid solely by Tenant within ten (10) days of notice from Landlord.
11. Utilities and Services.
- 11.1 Standard Landlord Utilities and Services. Landlord shall provide Tenant the following utilities and services:
- 11.1.1 Elevator service during normal business hours of the Building and the service of at least one elevator during all other hours.
- 11.1.2 Heating and cooling to maintain a temperature condition which in Landlord's judgment provides for comfortable occupancy of the Premises under normal business operations from 7:00 a.m. to 6:00 p.m. Monday through Friday, but not Saturdays or Sundays or those legal holidays generally observed in the State of Washington, provided Tenant complies with Landlord's instructions regarding use of window coverings and thermostats and Tenant does not utilize heat generating machines or equipment which affect the temperature otherwise maintained by the air cooling system. Upon request Landlord shall make available at Tenant's expense after-hours heat or air cooling. The minimum use of after-hours heat or air cooling and the cost thereof shall be determined by Landlord and confirmed in writing to Tenant, as the same may change from time to time.
- 11.1.3 Water for drinking, lavatory, and toilet purposes.
- 11.1.4 Electricity for Building-standard overhead office lighting fixtures, and equipment and accessories customary for offices (up to 280 hours per month), where: (a) the connected electrical load of all of the same does not exceed an average of 4 watts per usable square foot of the Premises (or such lesser amount as may be available, based on the safe and lawful capacity of the electrical circuit(s) and facilities serving the Premises), (b) the electricity is at nominal 120 volts, single phase (or 110 volts, depending on available service in the Building), and (c) the systems and equipment are suitable, the safe and lawful capacity thereof is not



exceeded, and sufficient capacity remains at all times for other existing and future tenants, as determined in Landlord's reasonable discretion.

- 11.1.5 Janitorial service as customary for comparable buildings within the market, which includes vacuum cleaning of carpets and cleaning of Building-standard vinyl composition tile, but does not include other services with respect to carpets or non-standard floor coverings.
- 11.1.6 Replacement of burned out fluorescent lamps in light fixtures which are standard for the Building. Burned out lamps or other light sources in fixtures which are not standard for the Building will be replaced by Landlord at Tenant's expense.
- 11.2 Interruptions. Landlord shall use reasonable diligence to remedy an interruption in the furnishing of such services and utilities (any such interruption, a "Utility Interruption"). If, however, any governmental authority imposes regulations, controls or other restrictions upon Landlord or the Building which would require a change in the services provided by Landlord under this Lease, Landlord may comply with such regulations, controls or other restrictions, including without limitation, curtailment, rationing or restrictions on the use of electricity or any other form of energy serving the Premises. Tenant will cooperate and do such things as are reasonably necessary to enable Landlord to comply with such regulations, controls or other restrictions.
- 11.3 Non-Standard Usage. Whenever heat generating machines or equipment or lighting other than Building-standard lights are used in the Premises by Tenant which affect the temperature otherwise maintained by the air cooling system, Landlord shall have the right to install supplementary air cooling units in the Premises, and the cost thereof, including the cost of installation and the cost of operation and maintenance thereof, shall be paid by Tenant to Landlord upon billing by Landlord. Landlord may impose a reasonable charge for utilities and services, including without limitation, air cooling, electric current and water, required to be provided the Premises by reason of (a) any substantial recurrent use of the Premises at any time other than the hours of 8:00 a.m. to 6:00 p.m. Monday to Friday, (b) any use beyond what Landlord agrees to furnish as described above, (c) electricity used by equipment designated by Landlord as high power usage equipment or (d) the installation, maintenance, repair, replacement or operation of supplementary air cooling equipment, additional electrical systems or other equipment required by reason of special electrical, heating, cooling or ventilating requirements of equipment used by Tenant at the Premises. At Landlord's option, separate meters for such utilities and services may be installed for the Premises, and Tenant, upon demand therefor, shall immediately pay Landlord for the installation, maintenance, repair and replacement of such meters.
- 12. Limits on Landlord's Liability. Landlord's liability with respect to its obligations under Section 10 and 11 above ("Service Obligations") and with respect to Utility Interruptions is subject to the following limitations:
  - 12.1 Circumstances Beyond Control. Landlord does not warrant that any of the Service Obligations will be free from interruption. Landlord shall not be liable for any failure of its Service Obligations ("Service Failure") or for any Utility Interruption when such Service Failure or Utility Interruption is caused by (i) strikes, lockouts or other labor disturbance or labor dispute of any character, (ii) governmental regulation, moratorium or other governmental action, (iii) inability despite the exercise of reasonable diligence to obtain electricity, water or fuel from the providers thereof, (iv) acts of God or (v) any other cause beyond Landlord's reasonable control.
  - 12.2 No Abatement of Rent or Constructive Eviction. Tenant shall not be entitled to any abatement or reduction of Rent by reason of any Service Failure or Utility Interruption, no

eviction of Tenant shall result from any Service Failure or Utility Interruption, and Tenant shall not be relieved from the performance of any obligation in this Lease because of any Service Failure or Utility Interruption. Notwithstanding the foregoing or any other provision of this Lease to the contrary, in the event of a Service Failure or Utility Interruption, Tenant shall be entitled to an equitable abatement of Rent if: (i) the cure is within Landlord's reasonable control; (ii) the interruption was not caused by Tenant or Force Majeure; (iii) the interruption relates to essential services; (iv) the interruption exceeds five (5) consecutive days; (v) a material portion of the Premises is rendered untenantable; and (vi) Tenant ceases conducting business in the portion of the Premises that is untenantable. The abatement shall be proportional to the affected square footage within the Premises, shall commence on the sixth (6<sup>th</sup>) consecutive day after the Premises are rendered untenantable, and shall end when such Service Failure or Utility Interruption ceases.

- 12.3 No Consequential Damages. Landlord shall not be liable for any injury to or interference with Tenant's business arising from the making of any repairs, alterations, or improvements in or to any portion of the Building, the Premises, the Property, or the Common Areas, or to fixtures, appurtenances, and equipment therein (including without limitation in accordance with Section 10 or Section 20.2), or a Service Failure or Utility Interruption. Without limiting the generality of this Section 12, in no event shall Landlord have any liability for consequential damages resulting from any act or omission of Landlord related to its Service Obligations, even if Landlord has been advised of the possibility of such consequential damages.

13. Alterations and Additions by Tenant; Liens and Insolvency.

- 13.1 Alterations and Additions by Tenant. Tenant shall not make any additional improvements or alterations to the Premises ("Alterations") without first obtaining the prior written consent of Landlord. Any Alterations by Tenant shall be done at Tenant's expense, in conformity with plans and specifications approved by Landlord, by contractors approved by Landlord (provided, that Landlord may require that such Alterations be performed by Landlord's employees or contractor(s) employed by Landlord), and subject to Landlord's reasonable rules and regulations regarding such construction. In addition, prior to the commencement of such Alterations, Tenant shall provide Landlord with evidence that Tenant carries "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may reasonably require. Tenant expressly acknowledges and agrees that Tenant shall not be entitled to make any Alterations (including without limitation installation of telecommunication wires and cables) that would permanently alter or damage any of the structural elements of the Building (including wood beams, brick walls, ceilings, and/or floors). All Alterations performed shall be done lien-free in a workmanlike manner and shall become the property of Landlord. Landlord may require that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond in an amount equal to 150% of the estimated cost of the Alterations. Any Alterations so made shall remain on and be surrendered with the Premises upon expiration or earlier termination of this Lease, except that Landlord may, by written notice to Tenant prior to the end of the Term or given following any earlier termination of this Lease, elect to require Tenant to remove any or all Alterations at Tenant's sole costs and expense. Landlord shall not unreasonably withhold its consent to Tenant's proposed Alterations if the conditions of this Section 13 are satisfied.

- 13.2 Liens and Insolvency. Tenant shall keep the Premises, Building and Property free from any liens arising out of any work performed, materials ordered or obligations incurred by Tenant. Landlord shall have the right at all reasonable times to post on the Premises any notices which it deems necessary for its protection from such liens. If such liens are filed, then unless such liens are removed or bonded around to Landlord's satisfaction within 14 days of Landlord's notice to Tenant, Landlord may, without waiving its rights and remedies based on such breach by Tenant and without releasing Tenant from any of its obligations

hereunder, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord on demand, any reasonable sum paid by Landlord to remove such liens, together with interest at the Default Rate.

14. Insurance; Indemnity.

- 14.1 Tenant Waiver. Landlord shall not be liable to Tenant, and Tenant hereby waives all claims against Landlord, for injury or damage to any person or property in or about the Premises, Building, Property or Common Areas by or from any cause whatsoever, including without limitation any acts or omissions of any other tenants, licensees or invitees of the Building.
- 14.2 Indemnity. Tenant shall indemnify, defend (using legal counsel reasonably acceptable to Landlord) and save Landlord harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Landlord's personnel and overhead costs and reasonable attorneys' fees and other costs incurred in connection with claims) (collectively, "Claims"), regardless of whether such Claims involve litigation, resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property arising out of or in connection with (i) Tenant's occupation, use or improvement of the Premises, or that of its employees, agents or contractors, (ii) Tenant's breach of its obligations hereunder or (iii) any act or omission of Tenant or any subtenant, licensee, assignee or concessionaire of Tenant, or of any officer, agent, employee, guest or invitee of Tenant, or of any such entity in or about the Premises. In compliance with RCW 4.24.115 as in effect on the Effective Date of this Lease, all provisions of this Lease pursuant to which a party ("Indemnifying Party") agrees to indemnify the other party ("Indemnified Party") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises or Building, (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnified Party, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (1) the Indemnifying Party or the Indemnifying Party's agents or employees, and (2) Indemnified Party or the Indemnified Party's agents or employees, shall apply only to the extent of the negligence of Indemnifying Party or the Indemnifying Party's agents or employees; PROVIDED, HOWEVER, the limitations on indemnity set forth in this Section 14.2 shall automatically and without further act by either Landlord or Tenant be deemed amended so as to remove any of the restrictions contained in this Section if no longer required by then applicable law. **FOR THE SOLE PURPOSE OF GIVING FULL FORCE AND EFFECT TO THE INDEMNIFICATION OBLIGATIONS UNDER THIS LEASE AND NOT FOR THE BENEFIT OF ANY EMPLOYEES OF TENANT OR ANY THIRD PARTIES UNRELATED TO THE PARTIES INDEMNIFIED UNDER THIS LEASE, TENANT SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY THAT MAY BE GRANTED IT UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW.** This indemnity with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Premises. As used in any Section of this Lease establishing indemnity or release of Landlord, "Landlord" shall include Landlord, its property manager if any, and their respective managers, members, partners, officers, agents, employees and contractors, and "Tenant" shall include Tenant and any person or entity claiming through Tenant.
- 14.3 Landlord's Responsibility; Tenant's Remedies. The exculpation, release and indemnity provisions of Sections 14.1 and 14.2 shall not apply to the extent the subject claims thereunder were caused by Landlord's gross negligence or willful misconduct. In no event shall (i) Landlord be liable to Tenant for lost profits, business interruption or other consequential damages, and (ii) Tenant have the right of self-help to perform repairs or

any other obligation of Landlord, or the right to withhold or set-off Rent, or terminate this Lease, and Tenant hereby expressly waives the benefit of any Laws to the contrary.

- 14.4 Tenant's Insurance. During the term of this Lease, Tenant, at its sole cost and expense, shall continuously maintain the following types of insurance coverage: (i) "All Risk" or Causes of Loss - Special Form Property insurance, including wind and flood coverage, covering Tenant's leasehold improvements to the Premises, furniture, fixtures, equipment, inventory and other personal property located on the Premises in an amount of not less than one hundred percent (100%) insurable replacement value with no coinsurance penalty, with an Ordinance of Law endorsement, and with replacement cost coverage to protect against loss of owned or rented equipment and tools brought onto or used at the Property by Tenant, and Business Income and Extra Expense insurance covering a minimum period of twelve (12) months; (ii) workers' compensation insurance in an amount equal to at least the minimum statutory amount required in the State of Washington, and employer's liability insurance with limits not less than \$1,000,000 per employee, \$1,000,000 per incident and \$1,000,000 per policy; and (iii) commercial general liability (CGL) insurance (on a form at least as broad as the ISO CG 00 01) insuring Tenant against any liability arising out of its use, occupancy or maintenance of the Premises or Building, or the business operated by Tenant pursuant to the Lease, fire legal liability and advertising injury liability damage with a per-occurrence limit of no less than \$4,000,000 (or, in the alternative, a primary CGL policy combined with an Excess Limits (Umbrella) Policy, together in the amount of no less than \$4,000,000). The amount of any deductible or self-insured retention for the coverages described in (i) and (iii) shall not exceed Five Thousand Dollars (\$5,000.00), and any deductible or self-insurance provisions under any other insurance policies required to be maintained by Tenant shall be subject to Landlord's prior written approval, such approval not to be unreasonably withheld.

14.5 Policies.

- 14.5.1 All insurance required to be carried by Tenant hereunder shall include the following provisions: (a) shall name Landlord, Landlord's property manager, and Landlord's lender (if any) as additional insureds; (b) shall release Landlord (and its property manager and lender, if any) from any claims for damage to business or to any person or the Premises, the Building and the Property and to Tenant's fixtures, personal property, improvements and alterations in or on the Premises, caused by or resulting from risks insured against under any insurance policy carried by Tenant in force at the time of such damage; (c) shall be issued by Insurance companies authorized to do business in the State of Washington, with policyholder ratings not lower than "A-" and financial ratings not lower than "VII" in Best's Insurance Guide (latest edition in effect as of the date of this Lease and subsequently in effect as of the date of renewal of the required policies); (d) shall be issued as (and separately endorsed as) a primary and noncontributory policy as such policies apply to Landlord (except for workers compensation); and (e) shall contain an endorsement requiring at least thirty (30) days prior written notice of cancellation to Landlord and Landlord's lender (if any), before cancellation or change in coverage, scope or amount of any policy. Tenant shall deliver certificates of such policies together with evidence of payment of all current premiums to Landlord within thirty (30) days of execution of this Lease; provided, if such certificates do not on their face evidence such terms, Tenant shall also provide full copies of such endorsements or policies as necessary to evidence that all of the coverage requirements of this Section 14 have been satisfied by Tenant. Any certificate of insurance shall designate Tenant as the insured, specify the Premises location, list Landlord (and its property manager and lender, if any) as additional insureds (with the additional insured endorsement attached thereto), and list Landlord with Landlord's current address as "Certificate Holder." If certificates are supplied (rather than the policies), Tenant shall allow Landlord, at



all reasonable times, to inspect the policies of insurance required herein. Tenant shall take all necessary steps to renew all insurance at least thirty (30) days prior to such insurance expiration dates and shall provide Landlord a copy of the renewed certificate, prior to said policy's expiration date. If Tenant fails at any time to maintain the insurance required by this Lease, and fails to cure such default within five (5) business days of written notice from Landlord then, in addition to all other remedies available under this Lease and applicable law, Landlord may purchase such insurance on Tenant's behalf and the cost of such insurance shall be Additional Rent due within ten (10) days of written invoice from Landlord to Tenant.

14.5.2 It is expressly understood and agreed that the coverages required by this Section 14 represent Landlord's minimum requirements and such are not to be construed to void or limit Tenant's obligations contained in this Lease, including without limitation Tenant's indemnity obligations hereunder. Neither shall (a) the insolvency, bankruptcy or failure of any insurance company carrying Tenant, (b) the failure of any insurance company to pay claims occurring, nor (c) any exclusion from or insufficiency of coverage be held to affect, negate or waive any of Tenant's indemnity obligations under this Lease or any other provision of this Lease. Landlord reserves the right to require Tenant provide evidence of any additional insurance as it reasonably deems appropriate, as well as the right to require an increase in the amounts of insurance or the insurance coverages as Landlord may reasonably request from time to time, but not in excess of the requirements of prudent landlords or lenders for similar tenants occupying similar premises in the Puget Sound metropolitan area. Tenant's occupancy of the Premises without delivering the certificates of insurance shall not constitute a waiver of Tenant's obligations to provide the required coverages. If Tenant provides to Landlord a certificate that does not evidence the coverages required herein, or that is faulty in any respect, such shall not constitute a waiver of Tenant's obligations to provide the proper insurance.

14.6 Waiver of Subrogation. Landlord and Tenant release and relieve the other, and waive the entire right of recovery for loss or damage to property located within or constituting a part or all of the Premises, the Building or the Property to the extent that the loss or damage is actually covered (and claim amount recovered) by commercial insurance carried by either party and in force at the time of such loss or damage. This waiver applies whether or not the loss is due to the negligent acts or omissions of Landlord or Tenant, or their respective officers, directors, employees, agents, contractors, or invitees. Each of Landlord and Tenant shall have their respective property insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims, provided, however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable.

14.7 Notification of Accidents. Tenant shall promptly notify Landlord of any casualty or accident occurring in or about the Premises.

15. Destruction. If the Premises or the Building is destroyed by fire, earthquake, or other casualty to the extent that they are untenantable in whole or in part, then Landlord shall have the right but not the obligation to proceed with reasonable diligence to rebuild and restore the Premises or the Building or such part thereof. If Landlord elects not to rebuild, Landlord shall notify Tenant within 180 days after such destruction, after which this Lease shall terminate at the end of such 180-day period. If Landlord fails to notify Tenant within such period, then this Lease shall terminate as of the end of such period. During the period from destruction or damage until restoration (or termination of this Lease), Rent shall be abated in the same ratio as that portion of the Premises which Landlord determines is unfit for occupancy shall bear to the whole Premises. If damage is due to the fault or neglect of Tenant or its agents, employees, invitees,

or licensees, there shall be no abatement of Rent. Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any panels, decoration, office fixtures, paintings, floor covering, or any other improvements to the Premises installed by Tenant. If Landlord repairs or rebuilds the Premises under this Section 15, Tenant shall repair or rebuild any tenant improvements or Alterations. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, the property of Tenant, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration.

16. Condemnation. If all or part of the Premises are taken under power of eminent domain, or sold under the threat of the exercise of said power, this Lease shall terminate as to the part so taken as of the date the condemning authority takes possession. If more than 25% of the floor area of Premises is taken by condemnation, Landlord or Tenant may, by written notice to the other within ten days after notice of such taking, terminate this Lease as to the remainder of the Premises as of the date the condemning authority takes possession. If Landlord or Tenant does not so terminate, this Lease shall remain in effect as to such remainder, except that the Rent shall be reduced in the proportion that the rentable floor area taken bears to the original rentable total floor area. However, if circumstances make abatement based on floor area unreasonable, the Rent shall abate by a reasonable amount to be determined by Landlord. In the event that neither Landlord nor Tenant elects to terminate this Lease, Landlord's responsibility to restore the remainder of the Premises shall be limited to the amount of any condemnation award allocable to the Premises, as determined by Landlord. Any award for the taking of all or part of the Premises under the power of eminent domain, including payment made under threat of the exercise of such power, shall be the property of Landlord, whether made as compensation for diminution in value of the leasehold or for the taking of the fee or as severance damages. Tenant shall only be entitled to such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right for the loss of or damage to improvements to the Premises installed by Tenant, for Tenant's trade fixtures and removable personal property and for Tenant's relocation or moving expenses. Landlord shall not be liable to Tenant for the loss of the use of all or any part of the Premises taken by condemnation.

17. Assignment and Subletting. Tenant shall not assign this Lease, or sublet the Premises or any part thereof, either by operation of law or otherwise, or permit any other party to occupy all or any part of the Premises (each, a "Transfer"), without first obtaining the written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Notwithstanding the foregoing, in the event of a proposed Transfer, Landlord will not unreasonably withhold its consent thereto if (a) Tenant is not then, nor has been, in Default, (b) the proposed transferee will continuously occupy and use the Premises for the term of the Transfer, (c) the use by the proposed transferee will be the same as Tenant's use of the Premises, (d) the proposed transferee is reputable and of sound financial condition, (e) the Transfer will not directly or indirectly cause Landlord to be in breach of any contractual obligation, (f) the proposed transferee is not a government agency, and (g) the proposed transferee is not an existing tenant or subtenant of any other premises located on the Property. Tenant shall propose such assignment or sublease by written notice to Landlord, and such notice shall specify an effective date which shall be the first day of a calendar month and shall be not less than sixty (60) days after the date of such notice. This Lease shall not be assignable by operation of law. Tenant shall further provide to Landlord other information and creditworthiness materials concerning any proposed assignee or sublessee as is requested by Landlord. If Landlord consents to a Transfer, Tenant shall pay to Landlord 100% of any Transfer Premium received by Tenant. "Transfer Premium" means all Base Rent, Additional Rent, or other consideration payable by the transferee in connection with the Transfer in excess of the Base Rent and Additional Rent payable by Tenant under this Lease (on a per rentable square foot basis if less than all of the Premises is the subject of the Transfer) less the out-of-pocket expenses actually incurred by Tenant in connection with the Transfer, including brokerage commissions and tenant improvement costs. In order for these costs to be deducted, Tenant shall furnish Landlord with its calculation of all such costs together with reasonable evidence they have been paid or incurred, within thirty (30) days after the effective date of the Transfer. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's actual and reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord, within thirty (30) days after written request by Landlord, provided that such costs and expenses shall not exceed \$2,500.00 for a

Transfer so long as no material modifications to the Lease are requested. No Transfer relating to this Lease, whether with or without Landlord's consent, shall relieve Tenant from any liability under this Lease.

18. Default.

18.1 Definition of Default. The occurrence of any one or more of the following events shall constitute a material default and breach of the Lease by Tenant ("Default"):

18.1.1 vacation or abandonment of all or any portion of the Premises (failure to occupy and operate the Premises for ten (10) consecutive days while in monetary default under this Lease shall conclusively be deemed an abandonment);

18.1.2 failure by Tenant to make any payment required as and when due;

18.1.3 failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease, other than the making of any payment, where such failure shall continue after thirty (30) days' written notice from Landlord;

18.1.4 failure to cure immediately upon notice thereof any condition which is hazardous, interferes with another tenant or the operation or leasing of the Property, or may cause the imposition of a fine, penalty or other remedy on Landlord or its agents or affiliates; or

18.1.5 (a) Tenant, or any guarantor of this Lease ("Guarantor"), files for or is the subject of any reorganization or arrangement under any Law relating to bankruptcy or insolvency (unless, in the case of a petition filed against and not consented to by Tenant or such Guarantor, the same is dismissed within thirty (30) days); (b) Tenant's or any Guarantor's insolvency or failure, or admission of an inability, to pay debts as they mature, or (c) a violation by Tenant or any affiliate of Tenant under any other lease or agreement with Landlord or any affiliate of Landlord which is not cured within the time permitted for cure thereunder.

Additionally, if Tenant violates the same term or condition of this Lease on two (2) occasions during any twelve (12) month period, Landlord shall have the right to exercise all remedies for any violations of the same term or condition during the next twelve (12) months without providing further notice or an opportunity to cure.

19. Remedies in Default.

19.1 Landlord Remedies. In the event of any Default by Tenant, Landlord may, at any time without waiving or limiting any other right or remedy, do any one or more of the following: (i) re-enter and take possession of the Premises without terminating this Lease, (ii) terminate this Lease, and/or (iii) pursue any remedy allowed by law or equity.

19.2 Tenant Payment of Costs. Whether Landlord has elected to terminate this Lease or not, Tenant agrees to pay Landlord the cost of recovering possession of the Premises, the expenses of reletting, and any other costs or damages arising out of Tenant's Default, including without limitation the costs of removing persons and property from the Premises, the costs of preparing or altering the Premises for reletting, broker's commissions, and attorneys' fees.

19.3 Termination. In the event Landlord elects to terminate this Lease, Landlord shall be additionally entitled to recover from Tenant: (i) the award by a court having jurisdiction thereof of the amount by which the unpaid Rent and other charges and adjustments called for herein for the balance of the Term after the time of such award exceeds the amount of

such loss for the same period that Tenant proves could be reasonably avoided and (ii) that portion of any leasing commission and tenant improvement costs (if any) paid by Landlord applicable to the unexpired term of the Lease.

19.4 No Termination. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 19, or acceptance of Tenant's keys to or surrender of the Premises shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant. Notwithstanding any reentry or termination, the liability of Tenant for the Rent shall continue for the balance of the Term, and Tenant shall make good to Landlord any deficiency arising from reletting the Premises at a lesser rent than the Rent provided for in this Lease. Tenant shall pay such deficiency each month as the amount thereof is ascertained by Landlord.

19.5 Landlord Election to Make Tenant Advances. If Tenant shall fail to pay any sum of money owed to any party other than Landlord, for which Tenant is liable under this Lease, or if Tenant shall fail to perform any other act on its part to be performed hereunder, and such failure continues for a period of ten days after notice thereof by Landlord, Landlord may, without waiving or releasing Tenant from its obligations or waiving or releasing any rights that Landlord may have, make any such payment or perform any other act to be made or performed by Tenant. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the Default Rate, from the date of such payment by Landlord, shall be deemed Additional Rent and shall be paid to Landlord on demand.

20. Rights Reserved by Landlord.

20.1 Access to Premises. Tenant shall permit Landlord to enter the Premises at all reasonable times for the purpose of inspecting, altering, and repairing the Premises and the Building and ascertaining compliance with the provisions of this Lease by Tenant. The existence or exercise of such right of access shall not be construed as imposing any obligation on Landlord to inspect, discover or correct or repair any condition in the Premises or the Building. Landlord may also show the Premises to prospective purchasers or tenants at reasonable times, provided that Landlord shall not materially interfere with Tenant's business operation.

20.2 Changes to Property. Landlord reserves the right to do the following with respect to the Property: (i) paint and decorate, (ii) perform repairs or maintenance, and (iii) make replacements, restorations, renovations, alterations, additions and improvements, structural or otherwise, in and to the Building or Property or any part thereof, including any adjacent building, structure, facility, land, street or alley, or change the uses thereof. In connection with such matters, Landlord may among other things erect scaffolding, barricades and other structures, open ceilings, close entry ways, restrooms, elevators, stairways, corridors, parking and other areas and facilities, and take such other actions as Landlord deems appropriate. However, Landlord shall take reasonable steps to minimize any significant disruption to Tenant's business operation.

20.3 New Premises. Landlord reserves the right to substitute for the Premises other premises (herein referred to as the "new premises") in the Building, provided: (i) the new premises shall be similar to the Premises in size (with the Rent and any other rights and obligations of the parties based on the square footage of the Premises adjusted proportionately to reflect any decrease), (ii) Landlord shall provide the new premises in a condition substantially comparable to the Premises at the time of the substitution (and Tenant shall diligently cooperate in the preparation or approval of any plans or specifications for the new premises as requested by Landlord or Landlord's representatives), (iii) the parties shall execute an appropriate amendment to the Lease confirming the change within thirty (30) days after Landlord's request, and (iv) if Tenant shall already have taken possession of the Premises: (a) Landlord shall pay the direct, out of pocket, reasonable expenses of Tenant



in moving from the Premises to the new premises, and (b) Landlord shall give Tenant at least thirty (30) days' notice before making such change, and such move shall be made during evenings, weekends, or otherwise so as to incur the least inconvenience to Tenant. Tenant shall surrender and vacate the Premises on the date required in Landlord's notice of substitution, in the condition and as required under Section 23.

21. Signs. Landlord shall provide Tenant, at Landlord's sole cost, Tenant's initial Building standard signage on the lobby directory board and a Building standard suite entry placard in a manner consistent with other tenants in the Building. Any modifications to Tenant's signage on the lobby directory board or to the suite entry placard shall be at Tenant's sole cost and subject to Landlord's prior written consent. Tenant shall not place upon or install in windows or other openings or exterior sides of doors or walls of the Premises any symbols, drapes, or other materials without the written consent of Landlord. Tenant shall observe and comply with the requirements of all Laws applicable to signage.
22. Parking. During the Term, Tenant shall have the right to purchase from Landlord up to ten (10) unreserved monthly parking permits for the license of unreserved parking stalls (one per permit) in the Building Garage at Landlord's then prevailing market rates as the same may be adjusted from time to time (current rate is \$166.00 per month per space, payable in advance on the first day of each calendar month) and subject to the Rules attached hereto as Exhibit F. If Tenant does not purchase all such parking permits for the first (1<sup>st</sup>) month of the Lease Term, or Tenant initially purchases all such parking permits but thereafter fails to continuously purchase such parking permits for any subsequent month during the Lease Term, all of Tenant's rights hereunder to those parking permits not so purchased (or purchased and subsequently returned) shall forever terminate and Tenant shall have no further right to use, purchase (or re-purchase) such parking permits hereunder for the remaining Term of the Lease. Landlord shall have the right to establish, and Tenant shall cooperate with, a parking system in order to allow for use of the parking areas by all of the tenants of the Building. Such system may include designated parking stalls, parking stickers, access cards and gates or any other reasonable system.
23. Surrender of Premises; Hold-Over Tenancy.
  - 23.1 Surrender of Premises. Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Premises and all the additions and alterations thereto, and leave the Premises broom clean and in good order and condition and repair, excluding ordinary wear and tear.
  - 23.2 Removal of Personal Property. Prior to expiration or other termination of this Lease, except as otherwise specified herein or expressly permitted by Landlord in writing, Tenant shall remove, at its sole cost and expense (i) all personal property of Tenant on or about the Premises, including without limitation all Tenant's furnishings, fixtures, furniture, fittings, and equipment, (ii) all non-standard or specialty tenant improvements made to the Premises by Landlord or Tenant, (iii) all cabling, wiring and other related equipment installed by Tenant or a third party specifically for Tenant's use, and (iv) any Alterations required to be removed in accordance with Section 13.3. Tenant shall repair or reimburse Landlord for the cost of repairing any damage to the Premises resulting from such removal. All property of Tenant remaining on the Premises after reentry or termination of this Lease shall conclusively be deemed abandoned and may be removed by Landlord. The cost of removal of such property shall be reimbursed by Tenant to Landlord upon demand, including, but not limited to court costs, reasonable attorneys' fees and storage and disposal charges relating to such property, and Landlord shall further be entitled to draw upon the Deposit to cover such costs. Landlord may store such property of Tenant in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of the owner thereof, with the right to sell such stored property without notice to Tenant. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of the cost of removal and storage, if any, and third to the payment of any

other amounts that may then be due from Tenant to Landlord under this Lease, and any balance shall be paid to Tenant.

- 23.3 Delivery of Keys. Upon expiration or termination of this Lease, Tenant shall surrender all keys and access cards to the Premises and/or Building to Landlord at the place then fixed for payment of Rent and shall inform Landlord of all combination locks, safes, and vaults, if any, in the Premises.
- 23.4 Hold-Over Tenancy. If Tenant shall hold over after expiration or termination of the Term without Landlord's written consent, the Base Rent payable shall be 150% of the Base Rent payable in the last month prior to expiration or termination of the Term, and Tenant shall continue to pay Additional Rent, together with all damages sustained by Landlord on account thereof. The foregoing provisions, and Landlord's acceptance of any Rent, shall not serve as permission for Tenant to hold over, nor serve to extend the Term (although Tenant shall remain a tenant-at-sufferance bound to comply with all provisions of this Lease), and Landlord shall have all remedies for holdover as may be available to Landlord under other provisions of this Lease or applicable Laws.
24. Financial Statements. Tenant shall furnish to Landlord from time to time, within 30 days of request and in a form reasonably satisfactory to Landlord, Tenant's annual and quarterly financial statements for Tenant's immediately prior fiscal year and quarter, which financial statements shall include at a minimum a balance sheet, income statement and statement of cash flows, or the equivalent. Tenant shall accompany such statements with a certificate from its chief financial officer or an independent certified public accountant that the statements fairly present the financial condition and results of operations of Tenant as of and for the period ending on the date of such statements. Landlord shall not request financial statements under this Section more than once each calendar year unless requested in connection with a sale, transfer, financing or refinancing. Notwithstanding the foregoing, so long as the original named Tenant (i.e., Harbor Custom Development, Inc.) is the Tenant hereunder and makes available to the public (at its website) audited financial statements, Landlord agrees to accept the same in satisfaction of Tenant's obligation to provide financial statements hereunder.
25. Estoppel Certificates. Tenant shall execute, within ten business days following Landlord's request, a certificate in such reasonable form as may be required by Landlord or a prospective purchaser, mortgagee or trust deed beneficiary, or Landlord's successor after a sale or foreclosure, certifying: (i) the Commencement Date of this Lease, (ii) that the Lease is unmodified and in full force and effect (or if there have been modifications hereto, that this Lease is in full force and effect, and stating the date and nature of such modifications); (iii) that there have been no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement, (iv) the dates to which the Base Rent, Additional Rent and other charges have been paid, and (v) any other information reasonably requested by the requesting party. Such certificate may be relied upon by Landlord and/or such other requesting party. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification except to the extent represented by Landlord, that there are no uncured defaults in Landlord's performance under this Lease, and that not more than one month's Rent has been paid in advance. Tenant's failure to deliver said statement within ten business days of request shall constitute Tenant's Default.
26. Subordination. Tenant agrees that this Lease shall be subordinate to the lien of any mortgages, deeds of trust, or ground leases now or hereafter placed against the Property or Building, and to all renewals and modifications, supplements, consolidations, and extensions thereof. Notwithstanding the foregoing, Landlord reserves the right, however, to subordinate or cause to be subordinated any such mortgage, deed of trust or ground lease to this Lease. Upon a foreclosure or conveyance in lieu of foreclosure under such mortgage or deed of trust, or a termination of such ground lease, and a demand by Landlord's successor, Tenant shall attorn to and recognize such successor as Landlord under this Lease. The foregoing subordination and attornment provisions

are self-operative. Tenant shall execute and deliver within ten business days following Landlord's request any instruments confirming or further evidencing such subordination or attornment; provided, however that Tenant shall be entitled to condition its delivery of such instruments on receipt from the lender or ground lessor of what is commonly known as a "nondisturbance" agreement which is intended to protect Tenant's right to possession under this Lease for so long as Tenant complies with the terms and conditions of this Lease. All subordination, non-disturbance and attornment instruments and agreements under this Section 26 shall be substantially in such standard form and substance as the lender or ground lessor at that time typically uses with comparable tenants.

27. Quiet Enjoyment. Provided Tenant observes its obligations under this Lease, its quiet enjoyment of the Premises throughout the Term shall not be disturbed.
28. Condition of Premises. By taking possession of the Premises, Tenant accepts the Premises as being in good, sanitary order, condition and repair, and further accepts all aspects of the Premises, Building and Property in their present condition, AS IS, including latent defects, without any representations or warranties, express or implied, from Landlord.
29. Hazardous Substances.
  - 29.1 Tenant Obligations. Tenant shall not, without first obtaining Landlord's prior written approval, generate, release, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, hazardous materials, toxic substances or any pollutants or substances, defined as hazardous or toxic in applicable federal, state and local laws and regulations ("Hazardous Substances") in, on or about the Premises. In the event, and only in the event, Landlord approves in writing a Release of Hazardous Substances on the Premises, such Release shall occur safely and in compliance with all applicable federal, state, and local laws and regulations.
  - 29.2 Tenant Indemnity. Tenant shall indemnify and defend (with counsel approved by Landlord) Landlord, and hold Landlord harmless, from and against any and all claims, liabilities, losses, damages, cleanup costs, and expenses (including reasonable attorneys' fees) arising out of or in any way relating to the Release by Tenant or any of its agents, representatives, employees or invitees, or the presence of any Hazardous Substances in, on or about the Premises occurring as a result of or in connection with Tenant's use or occupancy of the Premises at any time after the Commencement Date.
  - 29.3 Landlord Inspection. Landlord shall have the right from time to time to enter the Premises, Building and Property and inspect the same for the presence of Hazardous Substances and compliance with the provisions of this Section 29 and inspect the Premises, Building and Property. Landlord may cause tests to be performed for Hazardous Substances on the Premises from time to time. Tenant shall bear the cost of the first such test in any calendar year and any other such test that occurs upon a reasonable suspicion by Landlord that there may be Hazardous Substances in the Premises in violation of Tenant's obligations under this Lease.
  - 29.4 Survival. The provisions of this Section 29 shall survive the expiration or termination of this Lease with respect to any occurrences during the Term.
30. Brokers. Each party represents and warrants to the other that, except for the broker(s) identified in Section 1, it has not had dealings with any real estate broker other, agent or salesperson with respect to this Lease that would cause the other party to have any liability for any commissions or other compensation to such broker, agent or salesperson, and that no such broker, agent or salesperson has asserted any claim or right to any such commission or other compensation. Such representing party shall defend and indemnify the other party and hold the other party harmless

from and against any and all loss, cost, liability, damage and expense (including reasonable attorneys' fees) whatsoever that may arise out of the breach of such representation and warranty.

31. Notices. All notices under this Lease shall be in writing. Notices shall be effective (i) when deposited with a nationally recognized overnight delivery service such as FedEx, (ii) when mailed by certified mail, return receipt requested, postage prepaid, or (iii) when personally delivered, in each case to the address of the receiving party set forth in Section 1. Every notice or other communication hereunder shall be deemed to have been given as of the third business day following the date of such mailing (or as of any earlier date evidenced by a receipt from such national air courier service or the United States Postal Service) or immediately if personally delivered. Notices not sent in accordance with the foregoing shall be of no force or effect until received by the foregoing parties at such addresses required herein. Either party may change its address for notices by notice to the other from time to time.

32. Definitions.

- 32.1 "Default Rate" shall mean eighteen percent (18%) per annum, or the highest rate permitted by applicable Law, whichever shall be less.
- 32.2 "Systems and Equipment" shall mean any plant, machinery, transformers, duct work, cable, wires, and other equipment, facilities, and systems designed to supply light, heat, ventilation, air conditioning and humidity, or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life/safety systems or equipment, or any elevators, escalators or other mechanical, electrical, electronic, computer or other systems or equipment for the Building, except to the extent that any of the same serves particular tenants exclusively (and "systems and equipment" without capitalization shall refer to such of the foregoing items serving particular tenants exclusively).

33. General Provisions.

- 33.1 Attorneys' Fees. In the event Landlord reasonably requires the services of any attorney in connection with any Default or violation by Tenant of the terms of this Lease or the exercise by Landlord of its remedies for any Default by Tenant under this Lease, or a request by Tenant for Landlord's waiver of any terms of this Lease or extension of time to perform or pay any obligation of Tenant under this Lease, Tenant shall promptly on demand reimburse Landlord for its reasonable attorneys' fees incurred in such instance. In the event of any litigation, arbitration or other proceeding (including proceedings in bankruptcy and probate and on appeal) brought to enforce or interpret or otherwise resolve a dispute arising under this Lease, the substantially prevailing party therein shall be entitled to the award of its reasonable attorneys' fees, witness fees, and court costs incurred therein and in preparation therefor.
- 33.2 Governing Law; Venue. This Lease shall be governed by and construed in accordance with the internal laws of the State of Washington (without reference to choice of law principles) and venue for all disputes shall be in King County, Washington.
- 33.3 Cumulative Remedies. No remedy or election under this Lease shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- 33.4 Exhibits; Addenda. Exhibits, Riders and Addenda, if any, affixed to this Lease are a part of and incorporated into this Lease.
- 33.5 Interpretation. This Lease has been submitted to the scrutiny of all parties hereto and their counsel, if desired, and shall be given a fair and reasonable interpretation in accordance



with the words hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

- 33.6 Joint Obligation. If there is more than one Tenant under this Lease, the obligations hereunder imposed upon Tenants shall be joint and several.
- 33.7 Light, Air, and View. Landlord does not guarantee the continued present status of light, air, or view in, to or from the Premises.
- 33.8 Measurements. All measurements of the Premises stated in this Lease, even if approximations, shall govern and control over any actual measurement of the Premises and reflect the inclusion of a load factor for the Building.
- 33.9 Name. Tenant shall not use the name of the Building for any purpose other than as an address of the business conducted by the Tenant in the Premises. The name of the Building may at any time be changed by Landlord.
- 33.10 Prior Agreements; Amendments. This Lease is the full, final and complete expression of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings, promises or representations, oral or otherwise, pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.
- 33.11 Recordation. Tenant shall not record this Lease or a short form memorandum of this Lease without the prior written consent of Landlord.
- 33.12 Liability. Tenant agrees to look only to the equity of Landlord in the Building and Property and not to Landlord personally with respect to any obligations or payments due or which may become due from Landlord hereunder, and no other property or assets of Landlord or any partners, officers, directors, of Landlord shall be personally liable in connection with this Lease. As used in this Lease, Landlord's agents, representatives, contractors, licensees, invitees and guests shall not be deemed to include other tenants in the Building or the officers, employees, agents, representatives, contractors, licensees, invitees, guests, customers or clients of such other tenants.
- 33.13 Severability. That any provision of this Lease is invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Lease and such other provision shall remain in full force and effect.
- 33.14 Time. Time is of the essence of this Lease and each of its provisions.
- 33.15 Waiver. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord's duly authorized representatives. The waiver by either party of any provision of this Lease shall not be deemed to be a waiver of such provision or any other provision, in any subsequent instance. The acceptance of Rent by Landlord shall not be deemed to be a waiver of any preceding Default or breach by Tenant under this Lease, whether known or unknown to Landlord, other than the failure of the Tenant to pay the particular Rent so accepted.
- 33.16 Force Majeure. Other than for Tenant's obligations under this Lease that can be performed by the payment of money (e.g., payment of Rent and maintenance of insurance), if either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease by any strike, lockout, labor dispute, inability to obtain labor

or materials or reasonable substitutes therefor, acts of God, governmental restriction, regulation or control, enemy or hostile governmental action, civil commotion, insurrection, sabotage, fire or other casualty, or any other condition beyond the reasonable control of such party, then the time to perform such obligation or satisfy such condition shall be extended by the delay caused by, such event. If either party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event.

- 33.17 Patriot Act. Tenant represents, warrants and covenants that Tenant (i) is not listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury ("OFAC") pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) ("Order") and all applicable provisions of Title III of the USA Patriot Act (Public Law No. 107-56 (October 26, 2001)); (ii) is not listed on the Denied Persons List and Entity List maintained by the United States Department of Commerce; (iii) is not listed on the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State; (iv) is not listed on any list or qualification of "Designated Nationals" as defined in the Cuban Assets Control Regulations 31 C.F.R. Part 515; (v) is not listed on any other publicly available list of terrorists, terrorist organizations or narcotics traffickers maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to the Order, the rules and regulations of OFAC, or any other applicable requirements contained in any enabling legislation or other Executive Orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively, "Orders"); (vi) is not engaged in activities prohibited in the Orders; and (vii) has not been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes or in connection with the Bank Secrecy Act (31 U.S.C. §§ 5311 et. seq.).
- 33.18 Sale. In the event of any sale of the Building or Property, or any assignment of this Lease by Landlord, Landlord shall be relieved of all liability under this Lease arising out of any act, occurrence, or omission occurring after sale or assignment; and the purchaser or assignee at such sale or assignment or any subsequent sale or assignment of Lease, the Property, or Building, shall be deemed without any further agreement to have assumed all of the obligations of the Landlord under this Lease accruing after the date of such sale or assignment.
- 33.19 Binding. Subject to the provisions of Section 17, this Lease shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.
- 33.20 Counterparts; Electronic Signatures and Notary. This Lease may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute the same agreement, whether or not all parties execute each counterpart. Signatures transmitted by email or electronic signatures affixed hereto through a nationally-recognized electronic signature service provider such as DocuSign or DocVerify shall have the same effect as delivered original ink signatures. Either party's or both parties' signatures may be notarized electronically or by remote online notary as long as such notarization is permitted by and complies with the laws by which this Lease is governed. If, following execution and delivery of this Lease through electronic means, either party subsequently determines that it needs or would like to receive a wet-ink signature, whether due to internal considerations, legal concerns, third party requirements or otherwise, within ten (10) days of such party's written request, the parties shall exchange wet ink signature pages (and acknowledgements, if applicable), but any such subsequent exchange of wet-ink signature pages shall not affect the validity or timing of the electronic signatures or

modify the dates or terms of this Lease in any way, and each party may request such an exchange only once.

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This Lease shall be effective as of the date first set forth above.

LANDLORD:

UNIVERSITY STREET PROPERTIES I, LLC,  
a Washington limited liability company

By: Unico Northwest Fund I LLC,  
a Delaware limited liability company,  
Manager

By: Unico Investment Group LLC,  
a Delaware limited liability company,  
Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LANDLORD ACKNOWLEDGMENT

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ (is/are) the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he is / she is / they are authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Unico Investment Group LLC, a Delaware limited liability company, the Manager of Unico Northwest Fund I LLC, a Delaware limited liability company, the Manager of UNIVERSITY STREET PROPERTIES I, LLC, a Washington limited liability company, the entity that signed the instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

☐ (Check if applicable) This notarial act involved the use of communication technology.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_

\_\_\_\_\_  
Name (printed or typed)  
My appointment expires: \_\_\_\_\_

TENANT:

HARBOR CUSTOM DEVELOPMENT, INC.,  
a Washington corporation

By: *Sterling Griffin*  
Name: *Sterling Griffin*  
Title: *CEO*

*Jeffrey Hobersetzer*  
*COO*

TENANT ACKNOWLEDGMENT

STATE OF *Washington* )  
 ) ss.  
COUNTY OF *Pierce* )

I certify that I know or have satisfactory evidence that *Sterling Griffin and Jeffrey Hobersetzer* is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the *CEO and COO* of HARBOR CUSTOM DEVELOPMENT, INC., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

☐ (Check if applicable) This notarial act involved the use of communication technology.

DATED this *27<sup>th</sup>* day of *July*, 2021.



*Janna J. Mitton*  
NOTARY PUBLIC in and for the State of Washington,  
residing at *Gig Harbor*  
Name (printed or typed) *Janna J. Mitton*  
My appointment expires: *11-9-21*

**EXHIBIT A**  
**DEPICTION OF PREMISES**

[ATTACH FLOOR PLAN OF PREMISES]

## **EXHIBIT B**

### **LEGAL DESCRIPTION OF PROPERTY**

The real property which is situated in the County of Pierce, State of Washington, and is legally described as follows:

#### **PARCEL A:**

LOTS 1 TO 7, INCLUSIVE, IN BLOCK 1202 OF MAP OF NEW TACOMA, WASHINGTON TERRITORY, ACCORDING TO PLAT RECORDED FEBRUARY 3, 1875 IN THE OFFICE OF THE COUNTY AUDITOR, AND LOTS 1 TO 7, INCLUSIVE, IN BLOCK 1203 OF MAP OF NEW TACOMA, WASHINGTON TERRITORY, ACCORDING TO PLAT RECORDED FEBRUARY 3, 1875 IN THE OFFICE OF THE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON;

TOGETHER WITH VACATED COURT "A" ABUTTING THEREON, AS VACATED BY ORDINANCE NO. 18442 OF THE CITY OF TACOMA, RECORDED DECEMBER 18, 1967 UNDER PIERCE COUNTY RECORDING NO. 2219544;

ALSO TOGETHER WITH THE VACATED WESTERLY 12 FEET OF "A" STREET ABUTTING UPON SAID LOTS 1 TO 7, INCLUSIVE, IN BLOCK 1202 AS VACATED BY ORDINANCE NO. 18911 OF THE CITY OF TACOMA RECORDED SEPTEMBER 15, 1969 UNDER PIERCE COUNTY RECORDING NO. 2312605.

#### **PARCEL B:**

LOTS 8 TO 12, INCLUSIVE, IN BLOCK 1202 OF MAP OF NEW TACOMA, WASHINGTON TERRITORY, ACCORDING TO PLAT RECORDED FEBRUARY 3, 1875 IN THE OFFICE OF THE COUNTY AUDITOR, AND LOTS 8 TO 12, INCLUSIVE, IN BLOCK 1203 OF MAP OF NEW TACOMA, WASHINGTON TERRITORY, ACCORDING TO PLAT RECORDED FEBRUARY 3, 1875 IN THE OFFICE OF THE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON;

TOGETHER WITH VACATED COURT "A" ABUTTING THEREON AS VACATED BY ORDINANCE NO. 18442 OF THE CITY OF TACOMA RECORDED DECEMBER 18, 1967 UNDER PIERCE COUNTY RECORDING NO. 2219544;

ALSO TOGETHER WITH THE VACATED WESTERLY 12 FEET OF "A" STREET ABUTTING UPON SAID LOTS 8 TO 12, INCLUSIVE, IN BLOCK 1202, AS VACATED BY ORDINANCE NO. 18911 OF THE CITY OF TACOMA, RECORDED SEPTEMBER 15, 1969 UNDER RECORDING NO. 2312605;

ALSO TOGETHER WITH THE VACATED EAST 3 FEET OF PACIFIC AVENUE ABUTTING LOTS 8 TO 12, INCLUSIVE, IN BLOCK 1203 AS VACATED BY ORDINANCE NO. 23899 OF THE CITY OF TACOMA RECORDED AUGUST 17, 1987 UNDER RECORDING NO. 8708170172;

ALSO TOGETHER WITH THE VACATED SUBSURFACE RIGHTS UNDER THE EAST 9.2 FEET OF PACIFIC AVENUE ABUTTING LOTS 8 TO 12, INCLUSIVE, IN BLOCK 1203 AS VACATED BY ORDINANCE NO. 23899 OF THE CITY OF TACOMA RECORDED AUGUST 17, 1987 UNDER RECORDING NO. 8708170172.

Tax Parcel Nos: 201202-001-4 and 201202-001-8.



## EXHIBIT C

### WORK LETTER

This Work Letter sets forth the terms and conditions relating to Landlord's construction of the Landlord Work (defined below) and Tenant's construction of the Tenant Improvements (defined below).

1. Landlord's Obligations. Except for completing the Landlord Work and disbursing the Space Planning Allowance, Tenant Improvement Allowance and Drop Ceiling and Lighting Allowance, Landlord shall not be obligated to make or pay for any alterations or improvements to the Premises or the Building. As used herein, "Landlord Work" means only (i) remediating all asbestos in the Premises, it being agreed that no remediation is needed in the reception area and large conference room, and (ii) removal of the hard-lid ceiling in the Premises.

2. Tenant Improvements Generally. Tenant shall be solely responsible for designing and constructing the Tenant Improvements during the Build-Out Period in accordance with this Work Letter. "Tenant Improvements" means the leasehold improvements to be constructed as a permanent part of the Premises pursuant to the Approved TI Working Drawings (defined below) in accordance with this Work Letter, including specifically the installation of a Building standard drop ceiling grid and Building standard lighting within the Premises ("Drop Ceiling and Lighting"). Upon request, Landlord shall provide Tenant with a list of Building standard materials, equipment and finishes, including specifically the Building standard requirements for the Drop Ceiling and Lighting. "Tenant Improvements" excludes furniture, trade fixtures and equipment (such as moveable furniture partitions, appliances, telephones and computers) and fine finish items such as artwork and specialty wall coverings. Tenant shall cause the Tenant Improvements to comply in all respects with the following: (a) all applicable state, federal, city or quasi-governmental laws, codes, ordinances and regulations; (b) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (c) building material manufacturer's specifications. "Substantial Completion" of the Tenant Improvements means all Tenant Improvements have been performed, other than any details of construction, mechanical adjustment or any other similar matter, the non-completion of which does not materially interfere with Tenant's use of the Premises.

3. TI Construction Drawings.

3.1. Selection of TI Architect/Final TI Space Plan. Tenant shall work with an architect/space planner approved by Landlord (the "TI Architect") to prepare a final space plan showing the layout and designation of all rooms and other partitioning in the Premises, their intended use, and equipment to be contained therein. Tenant shall supply Landlord with its final space plan for the Premises before any architectural working drawings or engineering drawings have been commenced. Landlord shall not unreasonably withhold, condition or delay its approval of the final space plan (as approved by Landlord, the "Final TI Space Plan"), subject to the last sentence of Section 3.2 below.

3.2. Final TI Working Drawings. Upon the approval of the Final TI Space Plan by Landlord and Tenant, Tenant shall promptly cause TI Architect to complete the architectural and engineering drawings for the Premises, and TI Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "Final TI Working Drawings") and shall submit the same to Landlord for Landlord's approval. Landlord shall advise Tenant within ten (10) business days after Landlord's receipt of the Final TI Working Drawings for the Premises if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall immediately revise the Final TI Working Drawings and resubmit them to Landlord. Landlord shall advise Tenant within ten (10) business days after Landlord's receipt of any revised Final TI Working Drawings for the Premises if the same is unsatisfactory or incomplete in any respect. Notwithstanding anything to the contrary in this Section 3.2, Landlord shall not unreasonably withhold, condition or delay its approval of the Final TI Working Drawings (as approved by Landlord, the "Approved TI Working Drawings"); provided, however, notwithstanding this Section 3.2 or Section 3.1 above requiring Landlord to not unreasonably withhold,



condition or delay its approval of the Final TI Space Plan or Final TI Working Drawings, to the extent that the Final TI Space Plan or Final TI Working Drawings may (i) affect the exterior appearance of the Building, (ii) adversely affect the structural portions of the Building, (iii) adversely affect the Building systems and equipment, (iv) unreasonably interfere with any other occupant's normal and customary operations, (v) fail to comply with applicable Laws, or (vi) fail to meet or exceed the base Building specifications provided to Tenant, then Landlord may grant or withhold its approval of such Final TI Space Plan and Final TI Working Drawings in its sole discretion.

3.3. TI Permit Submission. The Approved TI Working Drawings must be obtained in accordance with Section 3.2 above prior to Tenant's commencement of construction of the Tenant Improvements. After approval by Landlord of the Final TI Working Drawings, Tenant shall promptly submit the same to the appropriate municipal authorities for all applicable building permits ("TI Permits"). Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any TI Permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's sole responsibility; provided, however, that Landlord shall timely cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such TI Permit or certificate of occupancy. No changes, modifications or alterations in the Approved TI Working Drawings may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed, subject to the last sentence of Section 3.2 above.

3.4. Landlord Not Liable. Tenant and TI Architect shall verify, in the field, the dimensions and conditions of the Premises as shown on the relevant portions of the base Building plans, and Tenant and TI Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of any construction documents, including specifically the Final TI Space Plan, the Final TI Working Drawings and the Approved TI Working Drawings (collectively, the "TI Construction Drawings"), shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, code compliance or other like matters. Accordingly, notwithstanding that any TI Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the TI Construction Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the TI Construction Drawings.

#### 4. Construction of Tenant Improvements.

4.1. Tenant's Agents. Tenant shall retain a general contractor approved by Landlord to construct the Tenant Improvements ("TI Contractor"). All subcontractors used by Tenant (such subcontractors, and the TI Contractor, to be known collectively as "Tenant's Agents") must be approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Landlord shall be entitled to withhold its approval in its sole discretion with respect to any subcontractors working on any mechanical, electrical, plumbing, elevator, sewer, fire life safety or heating and air conditioning systems of the Building. If Landlord does not approve any of Tenant's proposed subcontractors, Tenant shall submit other proposed subcontractors for Landlord's written approval. Landlord shall either approve or disapprove (with specific reasons for such disapproval) Tenant's Agents within five (5) days after Landlord's receipt of Tenant's request. None of Tenant's Agents may be union employees.

4.2. Construction of Tenant Improvements by Tenant's Agents. Prior to commencing construction of the Tenant Improvements, Tenant shall prepare and submit to Landlord a budget ("TI Budget") showing the anticipated total cost of the Tenant Improvements and all furniture, fixtures, trade fixtures and equipment necessary for Tenant to open for business. Tenant shall make such revisions and updates to the TI Budget as Landlord may from time-to-time reasonably request so that the TI Budget as so revised and updated will in Landlord's reasonable determination account for all then anticipated total costs (in which case, such revised and updated TI Budget shall be the "TI Budget"). Tenant's and Tenant's Agent's construction of the Tenant Improvements shall comply with the following: (i) the Tenant

Improvements shall be constructed in strict accordance with the Approved TI Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Tenant's Improvements to TI Contractor and TI Contractor shall, within five (5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; (iii) Tenant shall abide by Landlord's rules and regulations with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Work Letter, including, without limitation, the construction of the Tenant Improvements; and (iv) noisy and/or odorous work shall be performed outside of the Building's normal business hours (Monday through Friday, 7:00 a.m. to 6:00 p.m.), unless otherwise approved by Landlord.

4.3. Indemnity; Insurance. Tenant's indemnity of Landlord as set forth in the Lease shall also apply with respect to any and all third party claims for costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them in connection with the Tenant Improvements, or in connection with Tenant's non-payment of any amount arising out of the Tenant Improvements and/or Tenant's disapproval of all or any portion of any request for payment.

All of Tenant's Agents shall carry (i) worker's compensation insurance as required by law covering all of their respective employees, (ii) Employer's Liability with minimum coverages of \$500,000 each accident; \$500,000 disease, policy limit; \$500,000 disease, per employee; (iii) Broad Form Commercial General Liability (naming Landlord and its property manager as additional insureds) with policy limits of \$1,000,000 per occurrence Combined Single Limit and \$3,000,000 aggregate (i.e., such insurance shall be broad form and shall include contractual liability, personal injury protection and completed operations coverage); (iv) Auto Liability with coverage of at least \$1,000,000; and (v) Property Insurance coverage for tools and equipment brought onto and/or used on the Property by the applicable contractor in an amount equal to the replacement costs of all such tools and equipment.

Tenant or Tenant's TI Contractor shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other insurance as Landlord may reasonably require, it being understood and agreed that the Tenant Improvements shall be insured by Tenant pursuant to this Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Agents shall carry excess liability and Products and Completed Operation Coverage insurance, each in amounts not less than \$500,000 per incident, \$1,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in this Lease.

Certificates for all insurance carried pursuant to this Section 4.3 shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the TI Contractor's equipment is moved onto the site. All such policies of insurance shall satisfy Section 14.5 of the Lease. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately direct its TI Contractor or Tenant's Agents as appropriate to repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord pursuant to this Work Letter, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for one year following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section 4.3 shall insure Landlord and Tenant, as their interests may appear, as well as TI Contractor and Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance with respect to the Landlord and that any other insurance maintained by Landlord is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under this Work Letter. Landlord may, in its reasonable discretion, require Tenant to obtain a lien and completion bond or some alternate form of security reasonably satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Tenant Improvements and naming Landlord as a co-obligee.



4.4. Inspection by Landlord. Landlord shall have the right to inspect the Tenant Improvements at all times, provided however, that Landlord's failure to inspect the Tenant Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Tenant Improvements constitute Landlord's approval of the same.

4.5. Copy of Record Set of Plans. At the conclusion of construction, (i) Tenant shall cause the TI Architect and TI Contractor (i) to update the Approved TI Working Drawings as necessary to reflect all changes made to the Approved TI Working Drawings during the course of construction, (ii) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (iii) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (iv) Tenant shall deliver to Landlord a copy of all warranties, guarantees and operating manuals and information relating to the improvements, equipment and systems in the Premises.

5. Space Planning Allowance; Landlord CM Fee; Tenant Improvement Allowance; Drop Ceiling and Lighting Allowance.

5.1. Space Planning Allowance. Provided Tenant is not in default beyond any applicable notice and cure period, Landlord will provide a one-time space planning allowance of up to \$1,992.00 (calculated as \$0.20 per rentable square foot multiplied by the 9,960 rentable square feet within the Premises) to reimburse or partially reimburse Tenant's space planning costs for the Premises ("Space Planning Allowance"). The Space Planning Allowance shall be paid to Tenant within thirty (30) days after the later of (i) Landlord's approval of the Final TI Space Plan, and (ii) Landlord's receipt of invoices substantiating Tenant's reimbursement request. Any unused portion of the Space Planning Allowance existing as of the first anniversary of the Commencement Date shall be forfeited by Tenant and revert to Landlord.

5.2. Landlord CM Fee. Tenant shall pay Landlord a construction management fee equal to five (5%) of the total cost of construction of the Tenant Improvements ("Landlord CM Fee") and shall reimburse Landlord for any out-of-pocket costs incurred by Landlord in connection with the review and approval of Tenant's construction drawings ("Landlord Reimbursement Costs").

5.3. Tenant Improvement Allowance. After deducting from the Tenant Improvement Allowance the Landlord CM Fee and any Landlord Reimbursement Costs, and subject to the terms and conditions contained herein, Tenant shall be entitled to a one-time tenant improvement allowance in the amount of up to \$597,600 (calculated as \$60.00 per rentable square foot multiplied by the 9,960 rentable square feet within the Premises) (the "Tenant Improvement Allowance") for the costs relating to the initial design and construction of Tenant Improvements. In no event shall Landlord be obligated to make disbursements pursuant to this Work Letter in a total amount which exceeds the Tenant Improvement Allowance. The Tenant Improvement Allowance shall be disbursed only after completion of the Tenant Improvements and within thirty (30) days following receipt by Landlord of (i) receipts covering all labor and materials expended and used in the Tenant Improvements; (ii) a sworn contractor's affidavit from the TI Contractor and a request to disburse from Tenant containing an approval by Tenant of the work done; and (iii) unconditional release of lien waivers executed by all parties supplying labor, materials or services with respect to the Tenant Improvements, waiving all claims for mechanics' or materialmen's liens for all work, materials or services furnished to the Premises. A disbursement shall be in the amount reflected on the receipted bills meeting the requirements above, up to the full amount of the Tenant Improvement Allowance.

5.4. Drop Ceiling and Lighting Allowance. Tenant shall be entitled to a one-time allowance in the amount of up to [\$ ] (the "Drop Ceiling and Lighting Allowance") for the costs relating to the initial design and installation of the Drop Ceiling and Lighting. In no event shall Landlord be obligated to make disbursements pursuant to this Work Letter for Tenant's installation of the Drop Ceiling and Lighting in a total amount which exceeds the Drop Ceiling and Lighting Allowance; provided, however, if the costs of the Drop Ceiling and Lighting exceed the Drop Ceiling and Lighting Allowance, Tenant may apply any available Tenant Improvement Allowance towards those excess costs. Notwithstanding the foregoing, if Landlord approves any deviations from Building standard requirements for the Drop Ceiling and Lighting, such additional costs shall be Tenant's sole responsibility and not reimbursable from the Drop Ceiling and

Lighting Allowance or the Tenant Improvement Allowance. Disbursement of the Drop Ceiling and Lighting Allowance shall occur only after Tenant's completion of installation of the Drop Ceiling and Lighting and then concurrently with Landlord's disbursement of the Tenant Improvement Allowance upon Tenant's satisfaction of the conditions set forth in Section 5.3 above.

5.5. Treatment of Unused Tenant Improvement Allowance and Drop Ceiling and Lighting Allowance. In no event shall Tenant be entitled to use the Tenant Improvement Allowance for furniture, fixtures, trade fixtures and equipment or the Drop Ceiling and Lighting Allowance for any items other than the installation of the Drop Ceiling and Lighting. Notwithstanding any provision to the contrary contained herein, to the extent any portion of the Tenant Improvement Allowance or Drop Ceiling and Lighting Allowance is unused by Tenant as of the date which is the first anniversary of the Commencement Date, then the remaining balance thereof shall revert to Landlord, and Tenant shall have no right to use such amount for any remaining improvements or alterations, nor as a Rent credit or cash allowance.

6. Representatives. Tenant's Representative shall mean Jeff Habersetzer (phone: (253) 649-0632; e-mail: jhabersetzer@harborcustomdev.com). Until further notice to Landlord, such Tenant's Representative shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter. Landlord's Representative shall mean Susan Robicheau (phone: (253) 272-7000; e-mail: SusanR@unicoprop.com).

7. Time of the Essence in This Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

8. Tenant's Lease Default. Notwithstanding any provision to the contrary contained in this Lease, if an event of default as described in the Lease has occurred at any time on or before the completion of the Premises, and such default is not cured within the applicable cure period set forth in the Lease, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to withhold payment of all or any portion of the Space Planning Allowance, Tenant Improvement Allowance and Drop Ceiling and Lighting Allowance until such time such default is cured and/or Landlord may cause TI Contractor to cease the construction of the Premises until such time such default is cured (in which case, Tenant shall be responsible for any delay in the completion of the Premises caused by such work stoppage), and (ii) all other obligations of Landlord under the terms of this Work Letter shall be forgiven until such time as such default is cured (in which case, Tenant shall be responsible for any delay in the completion of the Premises caused by such inaction by Landlord).

## EXHIBIT D

### EXTENSION OPTION

1. Option Right. Landlord hereby grants to the Original Tenant one (1) option to extend the Term of the Lease for a single period of five (5) years ("Option Term"), which option ("Extension Option") shall be exercisable only by written notice delivered by Tenant to Landlord as provided below, provided that, as of the date of delivery of such notice, Tenant is not in default under this Lease beyond the expiration of any applicable notice and cure period set forth in this Lease, and has not previously been in default under this Lease beyond the expiration of any applicable notice and cure period set forth in this Lease. Upon the proper exercise of such Extension Option, the Term shall be extended for a period of five (5) years and the parties shall be obligated under all the terms and conditions of this Lease through the Option Term, except that Base Rent during the Option Term shall be determined in accordance with Section 3 below. Notwithstanding the foregoing, at Landlord's option it shall be a condition to such extension of the Term that as of the end of the Term, Tenant is not in default under this Lease beyond the expiration of any applicable notice and cure period and has not previously been in default under this Lease beyond the expiration of any applicable notice and cure period. The Extension Option is personal to Original Tenant and may only be exercised by Original Tenant (and not any assignee, sublessee or other transferee of Original Tenant's interest in this Lease) so long as Original Tenant occupies the entire Premises.

2. Exercise of Extension Option. The Extension Option shall be exercised by Tenant, if at all, only in the following manner: Tenant shall deliver written notice of exercise to Landlord not more than fifteen (15) months and not less than twelve (12) months prior to the expiration of the Term (the "Exercise Notice").

3. Base Rent during Option Term.

3.1. The Base Rent payable by Tenant during the Option Term shall be equal to Fair Market Rent (defined below), for the Premises as of the commencement date of the Option Term. The "Fair Market Rent" shall be equal to the annual rent, including all escalations, at which tenants, as of the commencement of the Option Term are leasing non-sublease, non-renewal, non-expansion space comparable in size, location and quality to the Premises, for a term of five (5) years, in an arms' length transaction, in transactions entered into within the six (6) month period immediately preceding Landlord's delivery of the Option Rent Notice (defined below), which comparable space is located in the Building or in the Comparable Buildings (defined below) (collectively, the "Comparable Transactions"). In calculating the Fair Market Rent, no consideration shall be given to (a) the fact that Landlord is or is not required to pay a real estate brokerage commission in connection with Tenant's exercise of its right to lease the Premises during the Option Term or the fact that landlords are or are not paying real estate brokerage commissions in connection with such Comparable Transactions, and (b) any period of rental abatement, if any, granted to tenants in Comparable Transactions in connection with the design, permitting and construction of tenant improvements in such comparable spaces. The term "Comparable Buildings" shall mean other Class A office buildings located in the Tacoma metropolitan area, with a similar quality of institutional ownership, tenant mix and quality of construction, and which are of similar size, and offer similar services and amenities, as the Building. Tenant shall continue to pay all Additional Rent during the Option Term.

3.2. Landlord, no later than fifteen (15) business days after receipt of Tenant's Option Notice, shall advise Tenant in writing (the "Option Rent Notice") of Landlord's determination of Fair Market Rent. Within fifteen (15) business days after receiving Landlord's Notice, Tenant shall notify Landlord in writing ("Tenant's Notice") whether or not Tenant accepts Landlord's determination of the Fair Market Rent. If Tenant fails to give Tenant's Notice to Landlord within such fifteen (15) business day period, then the Tenant shall be deemed to have accepted the Fair Market Rent provided by Landlord. If Tenant does not accept Landlord's determination of Fair Market Rent, and Tenant has timely given Tenant's Notice, the parties (or their designated representatives) shall promptly meet and attempt to agree on the Fair Market Rent. If the parties have not agreed on the Fair Market Rent within thirty (30) days after Landlord receives Tenant's Notice, then the parties shall resolve the matter in accordance with the following terms: The last day of such thirty (30) day period (as the same may be extended by the written agreement of the parties) is referred to in this Lease as the "Appraisal



Commencement Date". Within ten (10) business days following the Appraisal Commencement Date, Landlord and Tenant shall each retain a MAI real estate appraiser who has been active over the five (5) year period ending on the Appraisal Commencement Date in the appraisal of office buildings within the submarket in which the Building is located to determine the Fair Market Rent for the Premises. Except as provided below, each party shall bear the cost of the appraisal that it commissioned. The appraisers shall meet and attempt to reach an agreement on the Fair Market Rent for the Premises (for the Option Term) within twenty (20) days of being retained. If either party fails to select its appraiser within such ten (10) day period, and the other party timely selects its appraiser, then the appraiser selected by the other party shall be the sole arbitrator for determining Fair Market Rent. If the conclusions of the two appraisers do not vary by an excess of five percent (5%), as measured as a variance from the higher of the two Fair Market Rental determinations, then the Fair Market Rental value shall be the average of the two conclusions. If the conclusions of the two appraisers vary by more than five percent (5%), as measured from the higher of the two appraisals, then the two appraisers shall jointly appoint a third appraiser within forty-five (45) days of the Appraisal Commencement Date. Such third appraiser shall then individually appraise the Premises to determine the Fair Market Rental value and provide a written opinion of value within twenty (20) days after appointment. The Fair Market Rental value shall be the determination of the first two appraisers which has the smallest difference (in absolute terms) in value from the third appraiser's fair market rental. By way of example only, if the first two appraisals are \$40.00 and \$45.00 per square foot on a triple net basis, then a third appraiser would be appointed since there is a difference of more than five percent (5%) between the appraisals. If the third appraiser determines that the Fair Market Rental value is \$42.00 per square foot on a triple net basis, the base annual rent for the Option Term will be \$40.00 per square foot on a triple net basis, since the difference between \$42.00 and \$40.00 is less than the difference between \$45.00 and \$42.00. If the difference between the third appraiser's value and each of the first two appraiser's values is equal, the third appraiser's value shall be the Fair Market Rental value. The determination made through the utilization of the third appraiser shall be binding upon each of the parties. The cost of the third appraiser, if any, shall be shared equally between the parties. If for any reason, the first two appraisers are unable to agree upon a third appraiser within forty-five (45) following the Appraisal Commencement Date, then either Landlord or Tenant may petition the presiding judge of King County Superior Court for the appointment of a third appraiser. The cost incurred in obtaining the appointment of the third appraiser will be divided equally between Landlord and Tenant. Both parties may submit any information to the appraisers for their consideration, with copies to the other party. The appraisers shall render their opinions as to Fair Market Rent in writing with counterpart copies to each party. The appraisers shall have no power to modify the provisions of this Lease.

4. Extension Amendment. If Tenant exercises its Extension Option, Landlord shall prepare a Lease amendment (the "Extension Amendment") memorializing such Option Term, including the Base Rent for such Option Term (as determined in accordance with Section 3 above). A copy of the Extension Amendment shall be sent to Tenant within a reasonable time after Landlord's receipt of Tenant's Exercise Notice, and Tenant shall have a reasonable opportunity to review and discuss the terms of the Extension Amendment with Landlord and the parties shall use their best effort to execute and exchange the Extension Amendment within 20 days after the date of Landlord's delivery, but an otherwise valid exercise of the Extension Option shall be fully effective whether or not the Extension Amendment is executed.

## EXHIBIT E

### LETTER OF CREDIT TERMS AND CONDITIONS

#### 1. General.

1.1. Concurrently with Tenant's execution of this Lease, Tenant shall deliver to Landlord, as collateral for the full performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer as a result of Tenant's failure to comply with one or more provisions of this Lease, including any damages arising hereunder following termination of this Lease, a standby, unconditional, irrevocable, transferable letter of credit (the "Letter of Credit") in the form of Schedule E-1 or such other form as Landlord may reasonably approve and containing the terms required herein, in the face amount of \$597,600 (the "Letter of Credit Amount"), naming Landlord as beneficiary, issued (or confirmed) by a financial institution acceptable to Landlord in Landlord's reasonable discretion, permitting multiple and partial draws thereon, and otherwise in form acceptable to Landlord in its reasonable discretion. Notwithstanding anything to the contrary, if at the time specified below for each Letter of Credit Reduction (defined below), Tenant (i) is not then in default under the Lease, and (ii) has not previously at any time during the Term been in monetary default under the Lease for failure to fully and timely pay all Rent due hereunder, then the required Letter of Credit Amount shall be reduced as follows (each, a "Letter of Credit Reduction"): (a) to \$298,800 at the end of Lease Month 66 ("First Letter of Credit Reduction"), and (b) to \$33,449.00 at the end of Lease Month 90 ("Second Letter of Credit Reduction"). Tenant agrees that there shall be no reduction in the Letter of Credit, pursuant to the terms and provisions of this Section 1.1 or otherwise, until Landlord notifies the issuer of the Letter of Credit, in writing, to reduce the amount of the Letter of Credit. If at the end of Lease Month 90, Tenant satisfies the requirements for the Second Letter of Credit Reduction (as confirmed by Landlord), Tenant may thereafter elect to replace the Letter of Credit with a cash security deposit in the amount of \$33,449.00 ("Security Deposit"), which Security Deposit will be governed by the terms of Section 6 of the Lease. Upon Landlord's receipt of the cash Security Deposit, and confirmation that Tenant has satisfied the requirements for the Second Letter of Credit Reduction, Landlord shall promptly return the Letter of Credit to Tenant.

1.2. Landlord hereby approves [REDACTED] as an issuer of the Letter of Credit as of the date of this Lease, subject to the Minimum Financial Requirements set forth below. Tenant shall cause the Letter of Credit to be continuously maintained in effect (whether through replacement, renewal or extension) in the Letter of Credit Amount through the date (the "Final LC Expiration Date") that is sixty (60) days after the scheduled expiration date of the Term, as it may be extended from time to time. If the Letter of Credit held by Landlord expires before the Final LC Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the issuing bank), then Tenant shall deliver a new Letter of Credit or certificate of renewal or extension to Landlord not later than thirty (30) days before the expiration date of the Letter of Credit then held by Landlord. In addition, if, at any time before the Final LC Expiration Date, the financial institution that issued (or confirmed) the Letter of Credit held by Landlord fails to meet the Minimum Financial Requirement, Tenant, within ten (10) business days after Landlord's demand, shall deliver to Landlord, in replacement of such Letter of Credit, a new Letter of Credit issued (or confirmed) by a financial institution that meets the Minimum Financial Requirement and is otherwise acceptable to Landlord in Landlord's sole discretion, whereupon Landlord shall return to Tenant the Letter of Credit that is being replaced. For purposes hereof, a financial institution shall be deemed to meet the "Minimum Financial Requirement" on a particular date if and only if, as of such date, such financial institution (i) has not been placed into receivership by the FDIC; and (ii) has a financial strength that, in Landlord's good faith judgment, is not less than that which is then generally required by Landlord and its affiliates as a condition to accepting letters of credit in support of new leases in the Tacoma, Washington area. Any new Letter of Credit or certificate of renewal or extension (a "Renewal or Replacement LC") shall comply with all of the provisions of this Exhibit E, shall be irrevocable, transferable and shall remain in effect (or be automatically renewable) through the Final LC Expiration Date upon the same terms as the Letter of Credit that is expiring or being replaced.

2. Drawings Under Letter of Credit. (i) If Tenant breaches any provision of this Lease and such breach remains uncured after the expiration of any applicable cure period, then Landlord, without limiting its



remedies, may draw upon the Letter of Credit in an amount necessary to satisfy any damages suffered by Landlord as a result of such breach; and (ii) without limiting the preceding clause (i), if less than thirty (30) days remain before the expiration date of the Letter of Credit, then Landlord, without limiting its remedies, may draw upon the Letter of Credit in its entirety. In addition, if Tenant fails to furnish a Renewal or Replacement LC complying with all of the provisions of this Exhibit E when required under this Exhibit E, Landlord, without limiting its remedies, may draw upon the Letter of Credit in its entirety; provided, however, that Landlord shall pay to Tenant any unapplied proceeds from such draw upon Tenant's provision to Landlord of a Renewal or Replacement LC complying with all of the provisions of this Exhibit E. Proceeds of the Letter of Credit obtained through a draw permitted under this Section 2 ("Permitted Proceeds") may be held by Landlord, without segregation, in accordance with this Exhibit E until applied to Landlord's damages or paid to Tenant pursuant to this Exhibit E.

3. Use of Proceeds by Landlord. The proceeds of the Letter of Credit shall constitute Landlord's sole and separate property (and not Tenant's property or the property of Tenant's bankruptcy estate) and Landlord may, immediately upon any draw (and without notice to Tenant), apply or offset the proceeds of the Letter of Credit against (i) any Rent payable by Tenant under this Lease that is not paid when due; (ii) all losses and damages that Landlord has suffered or that Landlord reasonably estimates that it may suffer as a result of Tenant's failure to comply with one or more provisions of this Lease, including any damages hereunder following termination of this Lease; (iii) any costs incurred by Landlord in connection with this Lease (including attorneys' fees); and (iv) any other amount that Landlord may spend or become obligated to spend by reason of Tenant's failure to comply with this Lease. Provided that Tenant has performed all of its obligations under this Lease, Landlord shall pay to Tenant, within forty-five (45) days after the Final LC Expiration Date, the amount of any proceeds of the Letter of Credit received by Landlord and not applied as provided above; provided, however, that if, before the expiration of such 45-day period, a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors, under the Federal Bankruptcy Code, then such payment shall not be required until either all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed, in each case pursuant to a final court order not subject to appeal or any stay pending appeal.

4. Additional Covenants of Tenant. If, for any reason, the amount of the Letter of Credit becomes less than the then required Letter of Credit Amount, Tenant shall, within ten (10) days thereafter, provide Landlord with additional letter(s) of credit in an amount equal to the deficiency (or a replacement letter of credit in the total then required Letter of Credit Amount), and any such additional (or replacement) letter of credit shall comply with all of the provisions of this Exhibit E, and if Tenant fails to comply with the foregoing, notwithstanding any contrary provision of this Lease, such failure shall constitute an incurable default by Tenant. Tenant further covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

5. Nature of Letter of Credit. Landlord and Tenant (i) acknowledge and agree that in no event shall the Letter of Credit or any renewal thereof, any substitute therefor or any proceeds thereof be deemed to be or treated as a "security deposit" under any law applicable to security deposits in the commercial context ("Security Deposit Laws"); (ii) acknowledge and agree that the Letter of Credit (including any renewal thereof, any substitute therefor or any proceeds thereof) is not intended to serve as a security deposit and shall not be subject to the Security Deposit Laws; and (ii) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. Tenant hereby waives all provisions of applicable laws, now or hereafter in effect, which (a) establish the time frame by which Landlord must refund a security deposit under a lease, and/or (b) provide that Landlord may claim from the security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums specified above in this Exhibit E and/or those sums reasonably necessary to compensate Landlord for any loss or damage caused by Tenant's breach of this Lease or the acts or omission of Tenant or any party acting by, through or under Tenant, including any damages Landlord suffers following termination of this Lease.

#### Exhibit E - 2



**SCHEDULE E-1**  
**FORM OF LETTER OF CREDIT**

Schedule E-1 - 1

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## EXHIBIT F

### RULES

1. Access to Property. On Saturdays, Sundays and Holidays, and on other days between the hours of 6:00 P.M. and 8:00 A.M. the following day, or such other hours as Landlord shall determine from time to time, access to and within the Property and/or to the passageways, lobbies, entrances, exits, loading areas, corridors, elevators or stairways and other areas in the Property may be restricted and access gained by use of a key to the outside doors of the Property, or pursuant to such security procedures Landlord may from time to time impose. Landlord shall in all cases retain the right to control and prevent access to such areas by Persons engaged in activities which are illegal or violate these Rules, or whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interests of the Property and its tenants (and Landlord shall have no liability in damages for such actions taken in good faith). No Tenant and no employee or invitee of Tenant shall enter areas reserved for the exclusive use of Landlord, its employees or invitees or other Persons. Tenant shall keep doors to corridors and lobbies closed except when persons are entering or leaving.
2. Signs. Tenant shall not paint, display, inscribe, maintain or affix any sign, placard, picture, advertisement, name, notice, lettering or direction on any part of the outside or inside of the Property, or on any part of the inside of the Premises which can be seen from the outside of the Premises without the prior consent of Landlord, and then only such name or names or matter and in such color, size, style, character and material, and with professional designers, fabricators and installers as may be first approved or designated by Landlord in writing. Landlord shall prescribe the suite number and identification sign for the Premises (which shall be prepared and installed by Landlord at Tenant's expense). Landlord reserves the right to remove at Tenant's expense all matter not so installed or approved without notice to Tenant.
3. Window and Door Treatments. Tenant shall not place anything or allow anything to be placed in the Premises near the glass of any door, partition, wall or window which may be unsightly from outside the Premises, and Tenant shall not place or permit to be placed any article of any kind on any window ledge or on the exterior walls. Blinds, shades, awnings or other forms of inside or outside window ventilators or similar devices, shall not be placed in or about the outside windows or doors in the Premises except to the extent, if any, that the design, character, shape, color, material and make thereof is first approved or designated by the Landlord. Tenant shall not install or remove any solar tint film from the windows.
4. Lighting and General Appearance of Premises. Landlord reserves the right to designate and/or approve in writing all internal lighting that may be visible from the public, common or exterior areas. The design, arrangement, style, color, character, quality and general appearance of the portion of the Premises visible from public, common and exterior areas, and contents of such portion of the Premises, including furniture, fixtures, signs, art work, wall coverings, carpet and decorations, and all changes, additions and replacements thereto shall at all times have a neat, professional, attractive, first class office appearance.
5. Property Tradename, Likeness, Trademarks. Tenant shall not in any manner use the name of the Property for any purpose, or use any tradenames or trademarks used by Landlord, any other tenant, or its affiliates, or any picture or likeness of the Property for any purpose other than that of the business address of Tenant, in any letterheads, envelopes, circulars, notices, advertisements, containers, wrapping, website or other material.
6. Deliveries and Removals. Furniture, freight and other large or heavy articles, and all other deliveries may be brought into the Property only at times and in the manner designated by Landlord, and always at the Tenant's sole responsibility and risk. Landlord may inspect items brought into the Property or Premises with respect to weight or dangerous nature or compliance with this Lease or Laws. Landlord may (but shall have no obligation to) require that all furniture, equipment, cartons and other articles removed from the Premises or the Property be listed and a removal permit therefor first be obtained from Landlord. Tenant shall not take or permit to be taken in or out of other entrances or elevators of the Property, any item normally taken, or which Landlord otherwise reasonably requires to be taken, in or out through service doors or on freight elevators. Landlord may impose reasonable charges and requirements for the use of freight elevators and

loading areas, and reserves the right to alter schedules without notice. Any hand-carts used at the Property shall have rubber wheels and sideguards, and no other material handling equipment may be brought upon the Property without Landlord's prior written approval.

7. Outside Vendors. Tenant shall not obtain for use upon the Premises ice, drinking water, vending machine, towel, janitor and other services, except from Persons designated or approved by Landlord. Any Person engaged by Tenant to provide any other services shall be subject to scheduling and direction by the manager or security personnel of the Property. Tenant's vendors and other service providers shall carry any insurance reasonably required by Landlord. Vendors must use freight elevators and service entrances.

8. Overloading Floors; Vaults. Tenant shall not overload any floor or part thereof in the Premises, or Property, including any public corridors or elevators therein bringing in or removing any large or heavy articles, and Landlord may prohibit, or direct and control the location and size of, safes and all other heavy articles and require at Tenant's expense supplementary supports of such material and dimensions as Landlord may deem necessary to properly distribute the weight.

9. Locks and Keys. Tenant shall use such standard key system designated by Landlord on all keyed doors to and within the Premises, excluding any permitted vaults or safes (but Landlord's designation shall not be deemed a representation of adequacy to prevent unlawful entry or criminal acts, and Tenant shall maintain such additional insurance as Tenant deems advisable for such events). Tenant shall not attach or permit to be attached additional locks or similar devices to any door or window, change existing locks or the mechanism thereof, or make or permit to be made any keys for any door other than those provided by Landlord. If more than two keys for one lock are desired, Landlord will provide them upon payment of Landlord's charges. In the event of loss of any keys furnished by Landlord, Tenant shall pay Landlord's reasonable charges therefor. The term "key" shall include mechanical, electronic or other keys, cards and passes. Landlord shall not be liable for the consequences of admitting by pass key or refusing to admit to the Premises the Tenant, Tenant's agent or employees or other persons claiming the right of admittance.

10. Utility Closets and Connections. Landlord reserves the right to control access to and use of, and monitor and supervise any work in or affecting, the "wire" or telephone, electrical, plumbing or other utility closets, the Systems and Equipment, and any changes, connections, new installations, and wiring work relating thereto (or Landlord may engage or designate an independent contractor to provide such services). Tenant shall obtain Landlord's prior written consent for any such access, use and work in each instance, and shall comply with such requirements as Landlord may impose, and the other provisions of Section 13. Tenant shall have no right to use any broom closets, storage closets, janitorial closets, or other such closets, rooms and areas whatsoever. Tenant shall not install in or for the Premises any equipment which requires more electric current than Landlord is required to provide under this Lease, without Landlord's prior written approval, and Tenant shall ascertain from Landlord the maximum amount of load or demand for or use of electrical current which can safely be permitted in and for the Premises, taking into account the capacity of electric wiring in the Property and the Premises and the needs of tenants of the Property, and shall not in any event connect a greater load than such safe capacity.

11. Plumbing Equipment. The toilet rooms, urinals, wash bowls, drains, sewers and other plumbing fixtures, equipment and lines shall not be misused or used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein.

12. Trash. All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in the areas, and prepared for collection in the manner and at the times and places specified by Landlord, subject to Lease provisions respecting Hazardous Materials. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord.

13. Alcohol, Drugs, Food and Smoking. Landlord reserves the right to exclude or expel from the Property any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules. Tenant shall not at any time manufacture, sell, use or give away, any spirituous, fermented, intoxicating or alcoholic liquors, or marijuana on the Premises, nor permit any of the same to occur. Tenant shall not at any time cook, sell, purchase or give away,

food in any form by or to any of Tenant's agents or employees or any other parties on the Premises, nor permit any of the same to occur (other than in microwave ovens and coffee makers properly maintained in good and safe working order and repair in lunch rooms or kitchens for employees as may be permitted or installed by Landlord, which does not violate any Laws or bother or annoy any other tenant). Tenant and its employees shall not smoke or inhale tobacco or other nicotine-based substances (including, without limitation, use of electronic cigarettes) or use marijuana on any part of the Property (including exterior areas) except those areas, if any, that are designated or approved as smoking or marijuana use areas by Landlord.

14. Use of Common Areas: No Soliciting. Tenant shall not use the Common Areas, including areas adjacent to the Premises, for any purpose other than ingress and egress, and any such use thereof shall be subject to the other provisions of this Lease, including these Rules. Without limiting the generality of the foregoing, Tenant shall not allow anything to remain in any passageway, sidewalk, court, corridor, stairway, entrance, exit, elevator, parking or shipping area, or other area outside the Premises. Tenant shall not use the Common Areas to canvass, solicit business or information from, or distribute any article or material to, other tenants or invitees of the Property. Tenant shall not make any room-to-room canvass to solicit business or information or to distribute any article or material to or from other tenants of the Property and shall not exhibit, sell or offer to sell, use, rent or exchange any products or services in or from the Premise unless ordinarily embraced within the Tenant's use of the Premises expressly permitted in the Lease.

15. Energy and Utility Conservation. Tenant shall not waste electricity, water, heat or air conditioning or other utilities or services, and agrees to cooperate fully with Landlord to assure the most effective and energy efficient operation of the Property and shall not allow the adjustment (except by Landlord's authorized Property personnel) of any controls. Tenant shall not obstruct, alter or impair the efficient operation of the Systems and Equipment, and shall not place any item so as to interfere with air flow. Tenant shall keep corridor doors closed and shall not open any windows, except that if the air circulation shall not be in operation, windows which are openable may be opened with Landlord's consent. If reasonably requested by Landlord (and as a condition to claiming any deficiency in the air-conditioning or ventilation services provided by Landlord), Tenant shall close any blinds or drapes in the Premises to prevent or minimize direct sunlight.

16. Unattended Premises. Before leaving the Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Premises and shut off all lights and water faucets in the Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes).

17. Going-Out-Of-Business Sales and Auctions. Tenant shall not use, or permit any other party to use, the Premises for any distress, fire, bankruptcy, close-out, "lost our lease" or going-out-of-business sale or auction. Tenant shall not display any signs advertising the foregoing anywhere in or about the Premises. This prohibition shall also apply to Tenant's creditors.

18. Labor Harmony. Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment, or labor and employment practices that, in Landlord's good faith judgment, may cause strikes, picketing or boycotts or disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Property.

19. Prohibited Activities. Tenant shall not: (i) use strobe or flashing lights in or on the Premises, (ii) install or operate any internal combustion engine, boiler, machinery, refrigerating, heating or air conditioning equipment in or about the Premises, (iii) use the Premises for housing, lodging or sleeping purposes or for the washing of clothes, (iv) place any radio or television antennae other than inside of the Premises, (v) operate or permit to be operated any musical or sound producing instrument or device which may be heard outside the Premises, (vi) use any source of power other than electricity, (vii) operate any electrical or other device from which may emanate electrical, electromagnetic, energy, microwave, radiation or other waves or fields which may interfere with or impair radio, television, microwave, or other broadcasting or reception from or in the Property or elsewhere, or impair or interfere with computers, faxes or telecommunication lines or equipment at the Property or elsewhere, or create a health hazard, (viii) bring or permit any bicycle or other vehicle, or dog (except in the company of a blind person or except where specifically permitted) or other animal or bird in the Property, (ix) make or permit objectionable noise, vibration or odor to emanate from the Premises, (x) do anything in or about the Premises or Property that is illegal, immoral, obscene, pornographic,

or anything that may in Landlord's good faith opinion create or maintain a nuisance, cause physical damage to the Premises or Property, interfere with the normal operation of the Systems and Equipment, impair the appearance, character or reputation of the Premises or Property, create waste to the Premises or Property, cause demonstrations, protests, loitering, bomb threats or other events that may require evacuation of the Building, (xi) advertise or engage in any activities which violate the spirit or letter of any code of ethics or licensing requirements of any professional or business organization, (xii) throw or permit to be thrown or dropped any article from any window or other opening in the Property, (xiii) use the Premises for any purpose, or permit upon the Premises or Property anything, that may be dangerous to persons or property (including firearms or other weapons (whether or not licensed or used by security guards) or any explosive or combustible articles or materials) (xiv) place vending or game machines in the Premises, except vending machines for employees, (xv) adversely affect the indoor air quality of the Premises or Property, or (xvi) do or permit anything to be done upon the Premises or Property in any way tending to disturb, bother, annoy or interfere with Landlord or any other tenant at the Property or the tenants of neighboring property, or otherwise disrupt orderly and quiet use and occupancy of the Property.

20. Transportation Management. Tenant shall comply with all present or future programs intended to manage parking, transportation or traffic in and around the Property, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

21. Parking. Subject to the terms and conditions of Section 22 of the Lease, the following Rules shall apply with respect to the Garage and any other parking garage, structure, facility or area on the Property that Landlord now or hereafter has obtained the right to use for the Property:

(i) Parking shall be available in areas designated by Landlord from time to time, and for such daily or monthly charges as Landlord may establish from time to time. Parking for Tenant and its employees and visitors shall be on a "first come, first served", unassigned basis, in common with Landlord and other tenants at the Property, and their employees and visitors, and other Persons to whom Landlord shall grant the right or who shall otherwise have the right to use the same. However, in no event shall Tenant and Tenant's employees and visitors use more spaces than the number derived by applying Tenant's Share (defined in the Lease) to the total number of unassigned spaces in the area or areas designated by Landlord from time to time to serve the Premises. In addition, Landlord reserves the right to: (x) adopt additional requirements or procedures pertaining to parking, including systems with charges favoring carpooling, and validation systems, (y) assign specific spaces, and reserve spaces for small and other size cars, disabled persons, and other tenants, customers of tenants or other parties, and (z) restrict or prohibit full size vans and other large vehicles.

(ii) Monthly fees shall be paid in advance on the first (1<sup>st</sup>) day of each month. Failure to do so will automatically cancel parking privileges, and incur a charge at the posted daily parking rate. No deductions from the monthly rate will be made for days on which the Garage is not used by Tenant or its designees. In case of any violation of these rules, Landlord may also refuse to permit the violator to park, and may remove the vehicle owned or driven by the violator from the Property without liability whatsoever, at such violator's risk and expense. Landlord reserves the right to close all or a portion of the parking areas or facilities in order to make repairs or perform maintenance services, or to alter, modify, re-stripe or renovate the same, or if required by casualty, strike, condemnation, act of God, Law or governmental requirement or guideline, termination or modification of any lease or other agreement by which Landlord obtained parking rights, or any other reason beyond Landlord's reasonable control.

(iii) Hours shall be reasonably established by Landlord or its parking operator from time to time; cars must be parked entirely within the stall lines, and only small or other qualifying cars may be parked in areas reserved for such cars; all directional signs, arrows and speed limits must be observed; spaces reserved for disabled persons must be used only by vehicles properly designated; washing, waxing, cleaning or servicing of any vehicle is prohibited; every parker is required to park and lock his own car, except to the extent that Landlord adopts a valet parking system; parking is prohibited in areas: (a) not striped or designated



for parking, (b) aisles, (c) where "no parking" signs are posted, (d) on ramps, and (e) loading areas and other specially designated areas. Delivery trucks and vehicles shall use only those areas designated therefor.

(iv) Parking stickers, key cards or any other devices or forms of identification or entry shall remain the property of Landlord. Such devices must be displayed as requested and may not be mutilated in any manner. The serial number of the parking identification device may not be obliterated. Devices are not transferable and any device in the possession of an unauthorized holder will be void. Loss or theft of parking identification, key cards or other such devices must be reported to Landlord or any Garage manager immediately. Any parking devices reported lost or stolen which are found on any unauthorized car will be confiscated and the illegal holder will be subject to prosecution. Lost or stolen devices found by Tenant or its employees must be reported to Landlord or the office of the Garage immediately.

(v) Tenant acknowledges that Landlord has or may arrange for the Garage to be operated by a reputable independent contractor, not affiliated with Landlord. In such event, Tenant acknowledges that Landlord shall have no liability for claims arising through acts or omissions of such independent contractor. Except for intentional acts or gross negligence by Landlord, Landlord shall have no liability whatsoever for any damage to property or any other items located in the Garage, nor for any personal injuries or death arising out of any matter relating to the Garage, and in all events, Tenant agrees to look first to its insurance carrier and to require that Tenant's employees look first to their respective insurance carriers for payment of any losses sustained in connection with any use of the Garage. Tenant hereby waives on behalf of its insurance carriers all rights of subrogation against Landlord or Landlord's agents.

(vi) Washing, waxing, cleaning or servicing of any vehicle by Tenant and/or his/her agents is prohibited. Parking spaces may be used only for parking automobiles.

(vii) Garage hours shall be 6 a.m. to 6 p.m. or such other hours as Landlord shall determine from time to time.

22. Fire/Life Safety Training. Tenant shall be required to designate not less than two (2) of tenant's employees as Tenant Wardens. The actual number of required employees shall be determined based on Tenant's total rentable square feet. Tenant's designated Tenant Warden's shall be required to attend Building sponsored Emergency Evacuation Training annually. This annual training shall include participation in a Building Evacuation Drill. Tenant shall inform Landlord within 30 days of occupancy the names of Tenant's designated Tenant Wardens. Tenant shall immediately inform Landlord of personnel changes as they affect the Tenant Wardens designees.

23. Green Standard.

(i) The term "Green Standard" or words of similar import shall include the U.S. EPA's Energy Star® rating, the Green Building Initiative's Green Globes TM for Continual Improvement of Existing Buildings (Green GlobesTM-CIEB), the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED), and/or a current and similar organization with equally rigorous environmentally and sustainable practices.

(ii) Expenses (defined in Section 8.1.4) shall include: (a) all costs of maintaining, managing, reporting, commissioning, and recommissioning the Building or any part thereof that was designed and/or upgraded to be sustainable and conform with one or more Green Standard rating systems, and (b) all costs of applying, reporting and commissioning the Building or any part thereof to seek certification under one or more Green Standard rating systems, provided however, the cost of such applying, reporting and commissioning of the Building or any part thereof to seek certification shall be a cost capitalized and thereafter amortized as an annual Expense under generally accepted accounting principles.

(iii) Tenant shall not use or occupy the Premises for any unlawful purpose or in any manner that will constitute waste, nuisance or unreasonable annoyance to Landlord or other tenants of the Building.

Tenant shall not use or operate the Premises in any manner that will cause the Building or any part thereof not to conform with Landlord's sustainability practices or a Green Standard certification of the Building.

(iv) This Building is or may become in the future certified under a Green Standard or operated pursuant to Landlord's sustainable building practices. Landlord's sustainability practices address whole-building operations and maintenance issues including chemical use; indoor air quality; energy efficiency; water efficiency; recycling programs; exterior maintenance programs; and systems upgrades to meet green building energy, water, Indoor Air Quality, and lighting performance standards. All construction and maintenance methods and procedures, material purchases, and disposal of waste must be in compliance with minimum standards and specifications, in addition to all applicable laws.

(v) Tenant shall use proven energy and carbon reduction measures, including energy efficient bulbs in task lighting; use of lighting controls; closing shades as needed to avoid over heating the space; turning off lights and equipment at the end of the work day; purchasing ENERGY STAR® qualified equipment, including but not limited to lighting, office equipment, commercial and residential quality kitchen equipment, vending and ice machines, and purchasing products certified by the U.S. EPA's Water Sense® program.

(vi) Tenant covenants and agrees, at its sole cost and expense: (a) to comply with all present and future laws, orders and regulations of the Federal, State, county, municipal or other governing authorities, departments, commissions, agencies and boards regarding the collection, sorting, separation, and recycling of garbage, trash, rubbish and other refuse (collectively, "trash"); (b) to comply with Landlord's recycling policy as part of Landlord's sustainability practices where it may be more stringent than applicable law; (c) to sort and separate its trash and recycling into such categories as are provided by law or Landlord's sustainability practices; (d) that each separately sorted category of trash and recycling shall be placed in separate receptacles as directed by Landlord, and; (e) that Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this section. Where possible, the Landlord shall provide a composting program and encourage the Tenant to sort and separate its trash and recycling from compost material.

(vii) Landlord shall provide and install all original bulbs and tubes for Building standard lighting fixtures within the Premises and all replacement tubes for such lighting as an annual Expense; all other bulbs, tubes and lighting fixtures for the Premises shall be provided and installed by Tenant at Tenant's cost and expense, and must comply with Landlord's sustainability practices, including any Green Standard rating system, concerning the environmental compliance of the Building or the Premises, as the same may change from time to time. All maintenance and repairs made by Tenant must comply with Landlord's sustainability practices, including any Green Standard rating system concerning the environmental compliance of the Building or the Premises, as the same may change from time to time.

(viii) Any and all tenant improvement work and/or Alterations is strongly encouraged to be performed in accordance with Landlord's sustainability practices, including any Green Standard or third-party rating system concerning the environmental compliance of the Building or the Premises, as the same may change from time to time. Tenant is further encouraged to engage a qualified third party LEED or Green Standard professional or similarly qualified professional during the design phase through implementation of any tenant improvement work and/or Alterations to review all plans, material procurement, demolition, construction and waste management procedures to ensure they are in full conformance with Landlord's sustainability practices, as aforesaid. Any and all waste and debris from the tenant improvement work and/or Alterations must meet the minimum requirements set forth by the Green Standard.

(ix) Landlord does not permit space heaters or other energy-intensive equipment unnecessary to conduct Tenant's business without written approval by Landlord. Any space conditioning equipment that is placed in the Premises for the purpose of increasing comfort to tenants shall be operated on sensors or timers that limit operation of equipment to hours of occupancy in the areas immediately adjacent to the occupying personnel.

(x) Tenant acknowledges that it is Landlord's intention that the Property be operated in a manner which is consistent with Landlord's sustainability practices. Tenant is required to comply with these practices

#### Exhibit F - 6

within its Premises.

(xi) Tenant shall dispose of, in an environmentally sustainable manner, any equipment, furnishings, or materials no longer needed by Tenant and shall recycle or re-use such items in accordance with Landlord's sustainability practices. Tenant is responsible for reporting this activity to Landlord in a format determined by Landlord.

(xii) Landlord currently provides janitorial service after 6:00 p.m. five days per week only (excluding legal holidays). Landlord reserves the right to conduct routine cleaning during normal business hours in accordance with Landlord's sustainability practices and will be done in such a way as to minimize disruption.

24. Responsibility for Compliance. Tenant shall be responsible for ensuring compliance with these Rules, as they may be amended, by Tenant's employees and as applicable, by Tenant's agents, invitees, contractors, subcontractors, and suppliers. Tenant shall cooperate with any reasonable program or requests by Landlord to monitor and enforce the Rules, including providing vehicle numbers and taking appropriate action against such of the foregoing parties who violate these provisions.





## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), dated and effective as of November 1, 2021 (the "Effective Date"), is entered into by and between Harbor Custom Development, Inc., a Washington corporation (the "Company"), and Lance Brown (the "Executive").

WHEREAS, the Company desires to employ the Executive and to enter into an agreement embodying the terms of such employment; and

WHEREAS, the Executive desires to accept employment with the Company, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein and for other good and valuable consideration, the parties agree as follows:

### 1. Employment, Duties and Agreements.

(a) The Company hereby agrees to employ the Executive as its Chief Financial Officer and the Executive hereby accepts such position and agrees to serve the Company in such capacity on a full-time basis during the employment period fixed by Section 3 hereof (the "Employment Period"). The Executive shall report to the Company's Chief Executive Officer ("CEO"). The Executive's principal place of employment shall be Alpharetta, Georgia. The Executive shall have such duties and responsibilities as are consistent with the Executive's position and as may be reasonably assigned by the CEO from time to time. During the Employment Period, the Executive shall be subject to, and shall act in accordance with, all reasonable instructions and directions of the CEO and all applicable policies and rules of the Company.

(b) During the Employment Period, excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive shall devote his full working time and efforts to the performance of his duties and responsibilities hereunder and shall endeavor to promote the business and best interests of the Company.

(c) During the Employment Period, the Executive shall not engage in any business activity other than the Company without the express prior written approval of the Company's Board of Directors (the "Board"). Notwithstanding the foregoing, during the Employment Period, it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees consistent with the Company's conflicts of interests policies and corporate governance guidelines in effect from time to time, (B) deliver lectures or fulfill speaking engagements, or (C) manage his personal investments, so long as such activities do not interfere with the performance of the Executive's responsibilities as an executive officer of the Company.

### 2. Compensation. During the Employment Period:

(a) Base Salary. As compensation for the agreements made by the Executive herein and the performance by the Executive of his obligations hereunder, during the Employment Period, the Company shall pay the Executive, pursuant to the Company's normal and customary payroll procedures, a base salary at the rate of \$280,000 per annum (the "Base Salary"). During the Employment Period, the Base Salary shall be reviewed at least annually for possible increase in the Board of Director's Compensation Committee's sole discretion. Any increase in Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. The term "Base Salary" as utilized in this Agreement shall refer to Base Salary as so adjusted pursuant to this section.

(b) Annual Bonus. In addition to the Base Salary, the Executive shall be eligible, through participation in the Company's annual bonus plan or other similar plan to the extent then in effect, to earn an annual bonus (the "Annual Bonus") in each fiscal year during the Employment Period, with a target Annual Bonus of fifty percent (50%) of Base Salary (the "Target Bonus"), with an opportunity to earn up to sixty percent (60%) of Base Salary, with the actual payout based on the achievement of annual individual and Company performance objectives established by the Compensation Committee of the Board. For calendar year 2021, Executive's Annual Bonus amount will be pro-rated based on the number of days between the Effective Date and December 31, 2021. Any

Annual Bonus shall be paid on or before March 15th of each calendar year immediately following the year in which compensation is earned in accordance with the applicable plan (except as otherwise provided herein). In addition, the Executive shall be paid a one-time sign-on bonus of \$75,000 within ninety (90) days of the Effective Date.

(c) Long Term Incentive Award. As soon as administratively practicable on or after the Effective Date, the Company shall grant to Executive 100,000 restricted stock units, each representing the right to earn a share of the common stock of the Company (the "Restricted Stock Units"). The Restricted Stock Units shall be subject to a time-based vesting schedule, the terms and conditions of which shall be set forth in restricted stock unit award agreements to be entered into by and between the Company and the Executive in the form adopted by the Board or the Compensation Committee, as applicable (the "Equity Agreements").

(d) Benefit Plans. In addition, (i) the Executive shall be eligible to participate in all other incentive plans, practices, policies and programs, and all savings and retirement plans, policies and programs, in each case that are applicable generally to senior executives of the Company; (ii) the Executive and the Executive's eligible family members shall be eligible for participation in the welfare benefit plans, practices, policies and programs (including, if applicable, medical, dental, vision, disability, employee life, group life and accidental death insurance plans and programs) maintained by the Company for its senior executives; and (iii) the Executive shall be entitled to receive prompt reimbursement for all reasonable business expenses incurred by the Executive in accordance with subsection (g) below and the policies, practices, and procedures of the Company provided to senior executives of the Company. Company agrees to reimburse Executive for any COBRA premiums incurred by Executive from the Effective Date until such time as Executive becomes eligible for the Company's medical insurance plans.

(e) PTO. The Executive shall be entitled to twenty (20) days paid personal time off (PTO) per year, and to such paid holidays as are observed by the Company from time to time, all in accordance with the Company's policies and practices that are applicable to the Company's senior executives. Unused PTO will be carried over from year to year as provided in the Company's plans and policies in effect from time to time.

(f) Insurance. The Company shall maintain (i) a directors' and officers' liability insurance policy, or an equivalent errors and omissions liability insurance policy and (ii) an employment practices liability insurance policy. Each such policy shall cover the Executive with scope, exclusions, amounts and deductibles no less favorable to the insured than those applicable to the Company's senior executive officers and directors on the Effective Date, or any more favorable as may be available to any other director or senior executive officer of the Company, while the Executive is employed with the Company and thereafter until the sixth anniversary of the Executive's Scheduled Termination Date (as defined below).

(g) Business Expenses. The Company shall reimburse the Executive for all reasonable business expenses (including related travel expenses) between Executive's home base in Alpharetta, Georgia or other Company locations as required upon the presentation of statements of such expenses in accordance with the Company's policies and procedures now in force or as such policies and procedures may be modified with respect to all senior executive officers of the Company.

3. Employment Period. The Employment Period shall commence on the Effective Date and shall terminate on the third (3<sup>rd</sup>) anniversary of the Effective Date, provided that on the third (3<sup>rd</sup>) anniversary of the Effective Date and on each anniversary thereafter, the Employment Period shall automatically be extended for additional one (1)-year periods unless either party provides the other party with notice of non-renewal at least ninety (90) days before any such anniversary (the anniversary date on which the Employment Period terminates shall be referred to herein as the "Scheduled Termination Date"). Notwithstanding the foregoing, the Executive's employment hereunder may be terminated during the Employment Period prior to the Scheduled Termination Date upon the earliest to occur of any one of the following events (at which time the Employment Period shall be terminated):

(a) Death. The Executive's employment hereunder shall terminate upon his death.

(b) Disability. The Company shall be entitled to terminate the Executive's employment hereunder for Disability. For purposes of this Agreement, "Disability" means the Executive's inability by reason of physical or mental illness to fulfill his obligations hereunder for ninety (90) consecutive days or a total of one hundred eighty (180) days in any twelve (12)-month period which, in the reasonable opinion of an independent physician selected

by the Company or its insurers and reasonably acceptable to the Executive or the Executive's legal representative, renders the Executive unable to perform the essential functions of his job, even after reasonable accommodations are made by the Company.

(c) Cause. The Company may terminate the Executive's employment hereunder for Cause. For purposes of this Agreement, the term "Cause" shall mean:

- (i) conviction by the Executive of a felony;
- (ii) acts of fraud, dishonesty or misappropriation committed by the Executive and intended to result in substantial personal enrichment at the expense of the Company;
- (iii) willful misconduct by the Executive in the performance of the Executive's duties required by this Agreement which is likely to materially damage the financial position or reputation of the Company;
- (iv) a breach of Section 7 of this Agreement.

The foregoing is an exclusive list of the acts or omissions that shall be considered Cause. Notwithstanding the foregoing, the termination of the Executive shall not be deemed to be for Cause unless and until the Board shall have provided the Executive with a Notice of Termination (as defined in Section 4 below) specifying in detail the basis for the termination of employment for Cause and the provision(s) under this Agreement on which such termination is based.

(d) Without Cause. The Company may terminate the Executive's employment hereunder during the Employment Period without Cause. For purposes of this Agreement, a notice of non-renewal given by the Company as provided in Section 3 herein shall be treated as a termination of employment by the Company without Cause.

(e) For Good Reason. The Executive may terminate his employment hereunder for Good Reason. For purposes of this Agreement, "Good Reason" shall mean: (i) a material breach of this Agreement by the Company (including the Company's withholding or failure to pay compensation when due to the Executive); (ii) a material reduction in the Executive's titles, duties, authority, or responsibilities, or the assignment to the Executive of any duties materially inconsistent with the Executive's position, authority, duties, or responsibilities without the written consent of the Executive; (iii) a reduction in the Executive's annual Base Salary or Annual Bonus opportunity, as currently in effect or as may be increased from time to time; or (iv) a requirement for the Executive to work somewhere other than his principal place of business, which is home address, or to travel more than stated in his offer letter without his written consent. With respect to the acts or omissions set forth in this subsection (e), (A) the Executive shall provide the Board with a Notice of Termination (as defined in Section 4 below) specifying in detail the basis for the termination of employment for Good Reason and the provision(s) under this Agreement on which such termination is based, (B) the Company shall have thirty (30) days to cure the matters specified in the notice delivered, and (C) if uncured, the Executive must terminate his employment with the Company within ninety (90) days after the initial existence of the circumstances constituting Good Reason in order for such termination to be considered to be for Good Reason.

(f) Voluntarily. The Executive may voluntarily terminate his employment hereunder, without Good Reason, provided that the Executive provides the Company with notice of his intent to terminate his employment at least thirty (30) days prior to the Date of Termination (as defined in Section 4 below).

#### 4. Termination Procedure.

(a) Notice of Termination. Any termination of the Executive's employment by the Company or by the Executive during the Employment Period (other than a termination on account of the death of the Executive) shall be communicated by a written "Notice of Termination" to the other party hereto in accordance with Section 8(a).

(b) Date of Termination. "Date of Termination" shall mean (i) if the Executive's employment is terminated by his death, the date of his death, (ii) if the Executive's employment is terminated pursuant to Section 3(b), on the date the Executive receives Notice of Termination from the Company, (iii) if the Executive

voluntarily terminates his employment (whether or not for Good Reason), the date specified in the notice given pursuant to Section 3(e) or 3(f) herein which shall not be less than thirty (30) days after the Notice of Termination, and (iv) if the Executive's employment is terminated for any other reason, the date on which a Notice of Termination is given or any later date (within thirty (30) days, or any alternative time period agreed upon by the parties, after the giving of such notice) set forth in such Notice of Termination.

#### 5. Termination Payments.

(a) Without Cause or for Good Reason. In the event the Employment Period terminates under this Agreement as a result of the Company terminating the Executive's employment without Cause (other than pursuant to Sections 3(a) or (b)) or the Executive terminating his employment for Good Reason:

(i) The Company shall pay to the Executive, within thirty (30) days following the Date of Termination (A) the Executive's accrued but unused vacation, unreimbursed business expenses and Base Salary through the Date of Termination (to the extent not theretofore paid) (the "Accrued Benefits"), and (B) one hundred percent (100%) of Executive's Base Salary, in each case payable in a lump sum (the "Base Severance").

(ii) The Company shall pay to the Executive, in lieu of any Annual Bonus under Section 2(b) for the fiscal year in which Executive's employment terminates, a lump sum amount equal to 100% of the Target Annual Bonus. In addition, the Company shall provide to the Executive an additional amount, each month for twelve (12) months after the Date of Termination, equal to the amount the Company would have paid for its share of the premiums for the Executive and his dependents coverage under the Company's medical plan as if the Executive's employment had not terminated.

(iii) All outstanding Restricted Stock Units and other previously granted equity awards that would have otherwise vested within twelve (12) months of the Date of Termination shall become fully vested.

(iv) To the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any vested benefits and other amounts or benefits required to be paid or provided or which the Executive is eligible to receive as of the Date of Termination under any plan, program, policy, practice, contract, or agreement of the Company and its affiliates (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

(v) If the Date of Termination under this Section 5(a) occurs within the eighteen (18)-month period following a Change in Control, in addition to the other payments provided for in this Section 5(a), the Company shall pay the Executive an amount equal to fifty percent (50%) of the Executive's Base Salary plus Target Bonus for the current fiscal year, in a lump sum cash payment, within thirty (30) days of the Date of Termination. For purposes of this Agreement, "Change in Control" shall have the meaning specified on Exhibit A attached hereto.

(vi) For the avoidance of doubt, upon termination of the Employment Period without Cause or as a result of Good Reason, the Executive shall not be entitled to any other compensation or benefits not expressly provided for in this Section 5(a), regardless of the time that would otherwise remain in the Employment Period had the Employment Period not been terminated without Cause or for Good Reason, except any benefits or compensation provided under the Equity Agreements which shall be paid in accordance with such agreements. Except as provided in this Section 5(a), any vested benefits under any tax qualified pension plans of the Company, and continuation of health insurance benefits on the terms and to the extent required by Section 4980B of the Internal Revenue Code of 1986, as amended (the "Code") and Section 601 of the Employee Retirement Income Security Act of 1974, as amended (which provisions are commonly known as "COBRA") or such other analogous legislation as may be applicable to the Executive, the Company shall have no additional obligations under this Agreement.

(vii) The payments and benefits provided under this Section 5(a) are subject to and conditioned upon (A) the Executive executing a timely and valid release of claims ("Release") in the form attached hereto as Exhibit B, or other substantially similar agreement releasing claims agreed to by the Company and the Executive, waiving all claims the Executive may have against the Company, its successors, assigns, affiliates, executives, officers and directors, (B) the Executive delivering the executed Release to the Company within twenty-one (21) days following the Date of Termination, (C) such Release and the waiver contained therein becoming effective and



not revoked. In the event that payments are made hereunder prior to the execution of the Release and the Executive does not execute the Release in the time and manner set forth herein, the Executive shall promptly pay to the Company such amounts or the value of such benefits so received.

(b) Cause or Voluntarily Other than for Good Reason. If the Executive's employment is terminated during the Employment Period by the Company for Cause or voluntarily by the Executive other than for Good Reason, the Company shall pay the Executive upon the Date of Termination the Accrued Benefits and the Other Benefits and any benefits or compensation provided under the Equity Agreements which shall be paid in accordance with such agreements. Except as provided in this Section 5(b) or with respect to any vested benefits under any tax qualified pension plans of the Company and the continuation of health insurance benefits on the terms and to the extent required by COBRA or any other analogous legislation as may be applicable to the Executive, the Company shall have no additional obligations under this Agreement.

(c) Disability or Death. If the Executive's employment is terminated during the Employment Period as a result of the Executive's death or Disability, the Company shall pay the Executive or the Executive's estate, as the case may be, within thirty (30) days following the Date of Termination, the Accrued Benefits and Other Benefits and any benefits or compensation to be paid under the Equity Agreements. Except as provided in this Section 5(c), or pursuant to the terms of the Equity Agreements, and except for any vested benefits under any tax qualified pension plans of the Company, and continuation of health insurance benefits on the terms and to the extent required by COBRA or any other analogous legislation as may be applicable to the Executive, the Company shall have no additional obligations under this Agreement.

6. Compliance with Section 409(A). This Agreement is intended to either comply with, or fall within an exemption to, the requirements of Section 409A of the Code, and shall be interpreted and construed consistently with such intent. To the maximum extent possible, the payments to the Executive pursuant to this Agreement are also intended to be exempt from Section 409A of the Code under either the separation pay exemption pursuant to Treasury regulation § 1.409A-1(b)(9)(iii) or as short-term deferrals pursuant to Treasury regulation § 1.409A-1(b)(4). In the event the terms of this Agreement would subject the Executive to taxes or penalties under Section 409A of the Code ("409A Penalties"), the Company and Executive shall cooperate diligently to amend the terms of this Agreement to avoid such 409A Penalties, to the extent possible; provided that such amendment shall not increase or reduce (in the aggregate) the amounts payable to the Executive hereunder. Any taxable reimbursement payable to the Executive pursuant to this Agreement shall be paid to the Executive no later than the last day of the calendar year following the calendar year in which the Executive incurred the reimbursable expense. Any amount of expenses eligible for taxable reimbursement, or such in-kind benefit provided, during a calendar year shall not affect the amount of such expenses eligible for reimbursement, or such in-kind benefit to be provided, during any other calendar year. The right to such reimbursement or such in-kind benefits pursuant to this Agreement shall not be subject to liquidation or exchange for any other benefit. Any right to a series of installment payments pursuant to this Agreement is to be treated as a right to a series of separate payments. If, as of the Date of Termination, the Executive is a "specified employee", then no payment or benefit that is payable on account of the Executive's "separation from service", as that term is defined for purposes of Section 409A of the Code, shall be made before the date that is six (6) months after the Executive's "separation from service" (or, if earlier, the date of the Executive's death) if and to the extent that such payment or benefit constitutes deferred compensation (or may be nonqualified deferred compensation) under Section 409A of the Code and such deferral is required to comply with the requirements of Section 409A of the Code. Any payment or benefit delayed by reason of the prior sentence shall be paid out or provided in a single lump sum at the end of such required delay period in order to catch up to the original payment schedule. For purposes of this provision, the Executive shall be considered to be a "specified employee" if, at the time of his "separation from service", the Executive is a "key employee", within the meaning of Section 416(i) of the Code, of the Company (or any person or entity with whom the Company would be considered a single employer under Section 414(b) or Section 414(c) of the Code) any stock of which is publicly traded on an established securities market or otherwise.

#### 7. Protective Covenants.

(a) General. Executive and the Company understand and agree that the purpose of the provisions of this Section 7 is to protect legitimate business interests of the Company, as more fully described below, and is not intended to impair or infringe upon Executive's right to work, earn a living, or acquire and possess property from the

fruits of his labor. Executive hereby acknowledges that Executive has received good and valuable consideration for the post-employment restrictions set forth in this Section 7 in the form of the compensation and benefits provided for herein. Executive hereby further acknowledges that the post-employment restrictions set forth in this Section 7 are reasonable and that they do not, and will not, unduly impair his ability to earn a living after the termination of this Agreement.

In addition, the parties acknowledge: (A) that Executive's services under this Agreement require unique expertise and talent in the provision of Competitive Services and that Executive will have substantial contacts with customers, suppliers, advertisers and vendors of the Company; (B) that pursuant to this Agreement, Executive will be placed in a position of trust and responsibility and he will have access to a substantial amount of Confidential Information and Trade Secrets and that the Company is placing him in such position and giving him access to such information in reliance upon his agreement to abide by the covenants set forth in this Section 7; (C) that due to Executive's unique experience and talent, the loss of Executive's services to the Company under this Agreement cannot reasonably or adequately be compensated solely by damages in an action at law; (D) that Executive is capable of competing with the Company; and (E) that Executive is capable of obtaining gainful, and desirable employment that does not violate the restrictions contained in this Agreement.

Therefore, Executive shall be subject to the restrictions set forth in this Section 7.

(b) Definitions. The following capitalized terms used in this Agreement shall have the meanings assigned to them below, which definitions shall apply to both the singular and the plural forms of such terms:

(i) "Competitive Services" means any business that sells or provides products and services that are the same as or substantially similar to or are otherwise competitive with the products or services sold or provided by the Company (including the Company's subsidiaries and affiliates). Competitive Services shall also include any products or services that the Executive has actual or constructive knowledge are planned to be sold or provided by the Company (and the Company's subsidiaries and affiliates) at any time while the Executive is employed by the Company.

(ii) "Confidential Information" means any and all data and information relating to the Company, its activities, business, or customers that (A) was disclosed to Executive or of which Executive became aware as a consequence of his employment with the Company; (B) has value to the Company; and (C) is not generally known outside of the Company. "Confidential Information" shall include, but is not limited to the following types of information regarding, related to, or concerning the Company: trade secrets (as defined by applicable law); financial plans and data; management planning information; business plans; operational methods; market studies; marketing plans or strategies; pricing information; product development techniques or plans; customer lists; customer files, data and financial information; details of customer contracts; current and anticipated customer requirements; identifying and other information pertaining to business referral sources; past, current and planned research and development; computer aided systems, software, strategies and programs; information technology ("IT") systems, IT system maps, server data, IT system security protocols, or IT user information; business acquisition plans; management organization and related information (including, without limitation, data and other information concerning the compensation and benefits paid to officers, directors, employees and management); personnel and compensation policies; new personnel acquisition plans; and other similar information. "Confidential Information" also includes combinations of information or materials which individually may be generally known outside of the Company, but for which the nature, method, or procedure for combining such information or materials is not generally known outside of the Company. In addition to data and information relating to the Company, "Confidential Information" also includes any and all data and information relating to or concerning a third party that otherwise meets the definition set forth above, that was provided or made available to the Company by such third party, and that the Company has a duty or obligation to keep confidential. This definition shall not limit any definition of "confidential information" or any equivalent term under state or federal law. "Confidential Information" shall not include information that has become generally available to the public by the act of one who has the right to disclose such information without violating any right or privilege of the Company.

(iv) "Person" means any individual or any corporation, partnership, joint venture, limited liability company, association or other entity or enterprise.

(v) "Principal or Representative" means a principal, owner, partner, shareholder, joint venturer, investor, member, trustee, director, officer, manager, employee, agent, representative or consultant.

(vi) "Protected Customer" means any Person to whom the Company has sold its products or services or actively solicited to sell its products or services, and with whom Executive has had contact on behalf of the Company during his employment with the Company or Executive learned of during Executive's employment with Company.

(vii) "Protective Covenants" means the restrictive covenants contained in Sections 7(c) through (g) hereof.

(viii) "Restricted Period" means any time during Executive's employment with the Company, as well as one (1) year from Executive's Date of Termination.

(ix) "Restricted Territory" means (A) the following states: California, Florida, Texas, and Washington and (B) any other territory where Employee is working on behalf of the Company, but for the state of his domicile assuming the Company does not conduct business in said state, during the one (1) year preceding the conduct in question (if the conduct occurs while Employee is still employed by the Company) or the Termination Date (if the conduct occurs after Employee's Termination), as applicable.

(x) "Termination" means the termination of Executive's employment with the Company, for any reason, whether with or without cause, upon the initiative of either party.

(c) Restriction on Disclosure and Use of Confidential Information. Executive agrees that Executive shall not, directly or indirectly, use any Confidential Information on Executive's own behalf or on behalf of any Person other than Company, or reveal, divulge, or disclose any Confidential Information to any Person not expressly authorized by the Company to receive such Confidential Information. Executive understands and agrees that this restriction shall continue to apply after the termination of Executive's employment for any reason, and shall remain in effect for as long as the information or materials in question retain their status as Confidential Information. Executive further agrees that he shall fully cooperate with the Company in maintaining the Confidential Information to the extent permitted by law. The parties acknowledge and agree that this Agreement is not intended to, and does not, alter either the Company's rights or Executive's obligations under any state or federal statutory or common law regarding trade secrets and unfair trade practices. Anything herein to the contrary notwithstanding, Executive shall not be restricted from: (i) disclosing information that is required to be disclosed by law, court order or other valid and appropriate legal process; provided, however, that in the event such disclosure is required by law, Executive shall provide the Company with prompt notice of such requirement so that the Company may seek an appropriate protective order prior to any such required disclosure by Executive; (ii) reporting possible violations of federal, state, or local law or regulation to any governmental agency or entity, or from making other disclosures that are protected under the whistleblower provisions of federal, state, or local law or regulation, and Executive shall not need the prior authorization of the Company to make any such reports or disclosures and shall not be required to notify the Company that Executive has made such reports or disclosures. In addition, and anything herein to the contrary notwithstanding, Executive is hereby given notice that Executive shall not be criminally or civilly liable under any federal or state trade secret law for: (iii) disclosing a trade secret (as defined by 18 U.S.C. § 1839) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, in either event solely for the purpose of reporting or investigating a suspected violation of law; or (iv) disclosing a trade secret (as defined by 18 U.S.C. § 1839) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(d) Non-Competition. Executive agrees that, during the Restricted Period, he will not, without prior written consent of the Company, directly or indirectly (i) carry on or engage in Competitive Services within the Restricted Territory on his own or on behalf of any Person or any Principal or Representative of any Person, or (ii) own, manage, operate, join, control or participate in the ownership, management, operation or control, of any business, whether in corporate, proprietorship or partnership form or otherwise where such business is engaged in the provision of Competitive Services within the Restricted Territory.



(e) Non-Solicitation of Protected Customers. Executive agrees that, during the Restricted Period, he shall not, without the prior written consent of the Company, directly or indirectly, on his own behalf or as a Principal or Representative of any Person, solicit, divert, take away, or attempt to solicit, divert, or take away a Protected Customer for the purpose of engaging in, providing, or selling Competitive Services.

(f) Non-Recruitment of Employees and Independent Contractors. Executive agrees that during the Restricted Period, he shall not, directly or indirectly, whether on his own behalf or as a Principal or Representative of any Person, hire, recruit, solicit, or induce or attempt to hire, recruit, solicit or induce any individual who is an employee (temporary or full-time or part-time) independent contractor, or consultant for the Company to leave his or his employment or engagement to provide Competitive Services.

(g) Return of Materials. Executive agrees that on or prior to the Date of Termination, he returned any and all property of the Company that was in his possession or subject to his control by virtue of his position as an executive of the Company, including, but not limited to, customer files and information, papers, drawings, notes, manuals, specifications, designs, devices, code, email, documents, diskettes, CDs, tapes, keys, access cards, credit cards, identification cards, equipment, computers, mobile devices, other electronic media, all other files and documents relating to the Company and its business (regardless of form, but specifically including all electronic files and data of the Company), together with all Confidential Information belonging to the Company or that Executive received from or through his employment with the Company. Executive will not make, distribute, or retain copies of any such information or property. To the extent that Executive has electronic files or information in his possession or control that belong to the Company or contain Confidential Information (specifically including but not limited to electronic files or information stored on personal computers, mobile devices, electronic media, or in cloud storage), on or prior to the Date of Termination, or at any other time the Company requests, Executive shall (i) provide the Company with an electronic copy of all of such files or information (in an electronic format that readily accessible by the Company); (ii) after doing so, delete all such files and information, including all copies and derivatives thereof, from all non-Company-owned computers, mobile devices, electronic media, cloud storage, and other media, devices, and equipment, such that such files and information are permanently deleted and irretrievable; and (iii) provide a written certification to the Company that the required deletions have been completed and specifying the files and information deleted and the media source from which they were deleted.

(h) Enforcement of Protective Covenants.

(i) Rights and Remedies Upon Breach. The parties specifically acknowledge and agree that the remedy at law for any breach of the Protective Covenants will be inadequate, and that in the event Executive breaches, or threatens to breach, any of the Protective Covenants, the Company shall have the right and remedy, to enjoin, preliminarily and permanently, Executive from violating or threatening to violate the Protective Covenants and to have the Protective Covenants specifically enforced by any court of competent jurisdiction or arbitrator, it being agreed that any breach or threatened breach of the Protective Covenants would cause irreparable injury to the Company and that money damages would not provide an adequate remedy to the Company. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Company at law or in equity. The parties understand and agree that if the parties become involved in legal action regarding the enforcement of the Protective Covenants, the prevailing party in such legal action shall be entitled, in addition to any other remedy, to recover from the other party its reasonable attorney fees and cost incurred in connection with such litigation. The Company's ability to enforce its rights under the Protective Covenants or applicable law against Executive shall not be impaired in any way by the existence of a claim or cause of action on the part of Executive based on, or arising out of, this Agreement or any other event or transaction.

(ii) Severability and Modification of Covenants. Executive acknowledges and agrees that, given the nature of the business of the Company and Executive's role and responsibilities, each of the Protective Covenants is reasonable and valid in time and scope and in all other respects, because of the scope of the Company's operations and Executive's activities on its behalf. Executive further acknowledges that the Protective Covenants are narrowly tailored as to time, geography, and scope of activity to be restrained, and operate to avoid unfair competition and irreparable harm to the Company. Executive acknowledges and agrees that the Protective Covenants set forth herein do not constitute a general restraint that prevent Executive from engaging in a lawful profession, nor do they operate as a general covenant against competition. The parties agree that it is their intention that the Protective Covenants be enforced in accordance with their terms to the maximum extent permitted by law.

Each of the Protective Covenants shall be considered and construed as a separate and independent covenant. Should any part or provision of any of the Protective Covenants be held invalid, void, or unenforceable, such invalidity, voidness, or unenforceability shall not render invalid, void, or unenforceable any other part or provision of this Agreement or such Protective Covenant. If any of the provisions of the Protective Covenants should ever be held by a court of competent jurisdiction to exceed the scope permitted by the applicable law, such provision or provisions shall be automatically modified to such lesser scope as such court may deem just and proper for the reasonable protection of the Company's legitimate business interests and may be enforced by the Company to that extent in the manner described above and all other provisions of this Agreement shall be valid and enforceable.

(iii) **Extension of Restrictions.** If Executive is found to have violated any of the provisions of Section 7, Executive agrees that the Restricted Period set forth therein shall be extended by a period of time equal to the period of such violation by Executive. It is the intent of this paragraph that the running of the applicable Restricted Period shall be tolled during any period of violation of Section 7 so that the Company may obtain the full and reasonable protection for which it contracted and so that Executive may not profit by any breach of such provisions.

#### 8. Miscellaneous.

(a) **Notices.** Any notice or other communication required or permitted under this Agreement shall be effective only if it is in writing and shall be deemed to be given when delivered personally or four (4) days after it is mailed by registered or certified mail, postage prepaid, return receipt requested or one (1) day after it is sent by a reputable overnight courier service and, in each case, addressed as follows (or if it is sent through any other method agreed upon by the parties), or to any new address that the company may have, if reasonably know to the Executive:

If to the Company: Harbor Custom Development, Inc.  
11505 Burnham Dr. Suite 301  
Gig Harbor, WA 98332  
Attention: Chief Executive Officer  
CC: Chief Operating Officer

If to the Executive: Lance Brown  
13840 Belleterre Drive  
Alpharetta, GA 30004

or to such other address as any party hereto may designate by notice to the others.

(b) **Arbitration.** To the fullest extent allowed by law, any controversy, claim or dispute between the Executive and the Company (and/or any of its owners, directors, officers, employees, affiliates, or agents) relating to or arising out of the Executive's employment or the cessation of that employment will be submitted to final and binding arbitration in Pierce County, Washington in accordance with the American Arbitration Association's ("AAA") National Rules for the Resolution of Employment Disputes (which may be found at <https://www.adr.org/sites/default/files/Employment%20Rules.pdf>), as the exclusive remedy for such controversy, claim or dispute. In any such arbitration, the parties may conduct discovery in accordance with the Federal Rules of Civil Procedure, except that the arbitrator shall have the authority to order and permit discovery as the arbitrator may deem necessary and appropriate in accordance with applicable state or federal discovery statutes. The arbitrator shall issue a reasoned, written decision, and shall have full authority to award all remedies which would be available in court. The arbitrators' fees and expenses and all administrative fees and expenses associated with the filing of the arbitration shall be borne by Company; provided however, that at Executive's option, Executive may voluntarily pay up to one-half the costs and fees. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Possible disputes covered by the above include (but are not limited to) unpaid wages, breach of contract, torts, violation of public policy, discrimination, harassment, or any other employment-related claims under laws including but not limited to, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and any other statutes or laws relating to an employee's relationship with her/her employer, regardless of whether such dispute is initiated by the employee or the Company. Thus, this bilateral arbitration provision applies to any and all claims that the Company may have against the Executive, including, but not limited to, claims for misappropriation of Company property, disclosure of

proprietary information or trade secrets, interference with contract, trade libel, gross negligence, or any other claim for alleged wrongful conduct or breach of the duty of loyalty by the Executive. However, nothing herein shall prevent Executive from filing and pursuing proceedings before the United States Equal Employment Opportunity Commission (although if Executive chooses to pursue a claim following the exhaustion of such administrative remedies, that claim would be subject to the provisions of this Agreement). Notwithstanding anything to the contrary contained herein, the Company and the Executive shall have their respective rights to seek and obtain temporary or preliminary injunctive relief from a court of competent jurisdiction with respect to any controversy, claim or dispute to the extent permitted by applicable law. BY AGREEING TO THIS BINDING ARBITRATION PROVISION, BOTH EXECUTIVE AND THE COMPANY GIVE UP ALL RIGHTS TO TRIAL BY JURY. This arbitration provision is to be construed as broadly as is permissible under applicable law. Executive and Company acknowledge and agree that their obligations to arbitrate under this Agreement survive the termination of this Agreement and continue after the termination of the employment relationship between Executive and Company.

(c) Intellectual Property. Executive agrees to fully and promptly disclose to the Company, without additional compensation, all ideas, inventions, discoveries, improvements, designs, processes, production methods and technological innovations, whether or not patentable, which, while employed by the Company, are made, conceived or reduced to practice by Executive, alone or with others, during or after usual working hours either on or off Executive's job, and which are related to the business of or which result from tasks assigned to Executive by the Company ("Intellectual Property"). Executive acknowledges that the Company owns all such Intellectual Property rights as works made for hire to the fullest extent permitted by law and, for the avoidance of doubt, assigns to the Company all such rights in any and all Intellectual Property now known or hereafter developed, during the course of employment. Executive agrees, at any time during or after employment, to sign all papers and do such other acts and things, at the Company's expense, as the Company deems necessary or desirable and may reasonably require of Executive to protect the Company's rights to such Intellectual Property, including applying for, obtaining and enforcing patents on such Intellectual Property in any and all countries.

(d) Non-Disparagement. To the extent permitted by law, during the period of Executive's employment with the Company and after cessation thereof for any reason, Executive agrees not to engage in any form of conduct or make any statements or representations that disparage, portray in a negative light, or otherwise impair the reputation, goodwill or commercial interests of the Company, or its officers, directors, attorneys, agents and employees. Nothing in this paragraph is intended to interfere with Executive's rights under Section 7 of the National Labor Relations Act.

(e) Entire Agreement. As of the Effective Date, this Agreement constitutes the final, complete and exclusive agreement between the Executive and the Company with respect to the subject matter hereof, except for any other equity or additional compensation that exists after the date of execution hereunder.

(f) Amendments; No Waiver. This Agreement may be amended only by an instrument in writing signed by the parties hereto, and any provision hereof may be waived only by an instrument in writing signed by the party or parties against whom or which enforcement of such waiver is sought. The failure of any party hereto at any time to require the performance by any other party hereto of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver by any party hereto of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or a waiver of the provision itself or a waiver of any other provision of this Agreement.

(g) Choice of Law; Forum Selection. This Agreement and the legal relations thus created between the parties hereto shall be governed by and construed under and in accordance with the laws of the State of Washington. Executive agrees that the exclusive forum for any action seeking temporary or preliminary injunctive relief in accordance with Section 8(b) above shall be the Superior Court of Pierce County, Washington, or the United States District Court for the Western District of Washington. With respect to any such court action, Executive hereby (i) irrevocably submits to the personal jurisdiction of such courts; (ii) consents to service of process; (iii) consents to venue; and (iv) waives any other requirement (whether imposed by statute, rule of court, or otherwise) with respect to personal jurisdiction, service of process, or venue. Executive further agrees that such courts are convenient forums for any dispute that may arise here from and that he shall raise as a defense that such courts are not convenient forums.

(h) Agreement Negotiated. The parties hereto acknowledge and agree that each party has reviewed and negotiated the terms and provisions of this Agreement and has had the opportunity to contribute to its revision. Accordingly, the rule of construction to the effect that ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement. Rather, the terms of this Agreement shall be construed fairly as to both parties hereto and not in favor or against either party.

(i) Representations. The parties hereto hereby represent that they each have the authority to enter into this Agreement, and the Executive hereby represents to the Company that the execution of, and performance of duties under, this Agreement shall not constitute a breach of or otherwise violate any other agreement to which the Executive is a party. The Executive hereby further represents to the Company that he will not utilize or disclose any confidential information obtained by the Executive in connection with any former employment with respect to his duties and responsibilities hereunder.

(j) Consultation with Counsel. The Executive acknowledges that he has had a full and complete opportunity to consult with counsel and other advisors of his own choosing concerning the terms, enforceability and implications of this Agreement, and that the Company has not made any representations or warranties to the Executive concerning the terms, enforceability or implications of this Agreement other than as reflected in this Agreement. The Company shall pay directly or reimburse the Executive for all reasonable attorneys' fees and costs incurred by the Executive in connection with the negotiation, preparation and execution of this Agreement.

(k) Binding Agreement; Assignment. This Agreement is binding on and is for the benefit of the parties hereto and their respective successors, assigns, heirs, executors, administrators and other legal representatives. Neither this Agreement nor any right or obligation hereunder may be assigned by the Executive.

(l) Successors and Assigns. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume this Agreement in the same manner and to the same extent that the Company would have been required to perform it if no such succession had taken place. As used in this Agreement, the "Company" shall mean both the Company as defined above and any such successor that assumes this Agreement, by operation of law or otherwise.

(m) Severability. Any provision of this Agreement (or portion thereof) which is deemed invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction and subject to this Section 8(k), be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering any other provisions of this Agreement invalid, illegal, or unenforceable in any other jurisdiction.

(n) Withholding. The Company may withhold from any amounts payable to the Executive hereunder all federal, state, city or other taxes that the Company may reasonably determine are required to be withheld pursuant to any applicable law or regulation (it being understood that the Executive shall be responsible for payment of all taxes in respect of the payments and benefits provided herein).

(o) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. A facsimile or PDF of a signature shall be deemed to be and have the effect of an original signature.

(p) Headings. The headings in this Agreement are inserted for convenience of reference only and shall not be a part of or control or affect the meaning of any provision hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

EXECUTIVE:

DocuSigned by:

*Lance Brown*

Lance Brown

COMPANY:

Harbor Custom Development, Inc.

DocuSigned by:

By:

*Jeff Haber*

Jeff Haber

Title: COO



**EXHIBIT A**

For purposes of this Agreement, the following terms shall have the following meanings:

(a) “**Beneficial Owner**” shall have the meaning given such term in Rule 13d-3 of the General Rules and Regulations under the 1934 Act.

(b) “**Change in Control**” means and includes the occurrence of any of one of the following events:

(i) during any consecutive 12-month period, individuals who, at the beginning of such period, constitute the Board (the “Incumbent Directors”) cease for any reason to constitute at least a majority of such Board, provided that any person becoming a director after the beginning of such 12-month period and whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors then on the Board shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to the election or removal of directors (“Election Contest”) or other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board (“Proxy Contest”), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest, shall be deemed an Incumbent Director; or

(ii) any Person becomes a Beneficial Owner, directly or indirectly, of either (A) 50% or more of the then-outstanding shares of common stock of the Company (“Company Common Stock”) or (B) securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding securities eligible to vote for the election of directors (the “Company Voting Securities”); provided, however, that for purposes of this subsection (ii), the following acquisitions of Company Common Stock or Company Voting Securities shall not constitute a Change in Control: (w) an acquisition directly from the Company, (x) an acquisition by the Company or a Subsidiary, (y) an acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary, or (z) an acquisition pursuant to a Non-Qualifying Transaction (as defined in subsection (iii) below); or

(iii) the consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company or a Subsidiary (a “Reorganization”), or the sale or other disposition of all or substantially all of the Company’s assets (a “Sale”) or the acquisition of assets or stock of another corporation or other entity (an “Acquisition”), unless immediately following such Reorganization, Sale or Acquisition: (A) all or substantially all of the individuals and entities who were the Beneficial Owners, respectively, of the outstanding Company Common Stock and outstanding Company Voting Securities immediately prior to such Reorganization, Sale or Acquisition beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Reorganization, Sale or Acquisition (including, without limitation, an entity which as a result of such transaction owns the Company or all or substantially all of the Company’s assets or stock either directly or through one or more subsidiaries, the “Surviving Entity”) in substantially the same proportions as their ownership, immediately prior to such Reorganization, Sale or Acquisition, of the outstanding Company Common Stock and the outstanding Company Voting Securities, as the case may be, and (B) no Person (other than (x) the Company or any Subsidiary, (y) the Surviving Entity or its ultimate parent entity, or (z) any employee benefit plan (or related trust) sponsored or maintained by any of the foregoing is the Beneficial Owner, directly or indirectly, of 50% or more of the total common stock or 50% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Surviving Entity, and (C) at least a majority of the members of the board of directors of the Surviving Entity were Incumbent Directors at the time of the Board’s approval of the execution of the initial agreement providing for such Reorganization, Sale or

Acquisition (any Reorganization, Sale or Acquisition which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a “Non-Qualifying Transaction”); or

(iv) approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

(c) “Person” means any individual, entity or group, within the meaning of Section 3(a)(9) of the 1934 Act and as used in Section 13(d)(3) or 14(d)(2) of the 1934 Act.

(d) “Subsidiary” means any corporation, limited liability company, partnership or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company.

(e) “1934 Act” means the Securities Exchange Act of 1934, as amended from time to time.

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EXHIBIT B

RELEASE AGREEMENT

This RELEASE AGREEMENT (this “Agreement”) is made by and between COMPANY NAME, a Delaware corporation (the “Company”), and EMPLOYEE NAME (“you” or “Executive”). You and the Company entered into an Employment Agreement dated as of November XX, 2021 (the “Employment Agreement”). You and the Company hereby agree as follows:

1) A blank copy of this Agreement was attached to the Employment Agreement as Exhibit B thereto.

2) Termination Payments. If your employment is terminated by the Company without Cause or if you resign for Good Reason (each, as defined in the Employment Agreement), then, in consideration for your execution, delivery and non-revocation of this Agreement, following the Release Date (as defined in Section 3 below), the Company will provide the termination payments and benefits (the “Termination Payments”) to you as provided in Section 5 of the Employment Agreement.

3) Release by You. In exchange for the payments and other consideration under this Agreement, to which you would not otherwise be entitled, and except as otherwise set forth in this Agreement, you hereby generally and completely release, acquit and forever discharge, and covenant not to sue, the Company, and its subsidiaries, parents, affiliates, predecessors, successors, and assigns, and each such entity’s current and former directors, managers, partners, members, officers, employees, agents, attorneys, stockholders, successors, and assigns (both individually and in their official capacities) (collectively, the “Releasees”), of and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys’ fees, damages, indemnities and obligations of every kind and nature, in law, equity, or otherwise, both known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to agreements, events, acts or conduct at any time prior to and including the execution date of this Agreement, including, but not limited to: all such claims and demands directly or indirectly arising out of or in any way connected with your employment with the Company or the termination of that employment; claims or demands related to salary, bonuses, commissions, stock, stock options, or any other ownership interests in the Company, vacation pay, fringe benefits, expense reimbursements, severance pay, or any other form of compensation; claims pursuant to any federal, state or local law, statute, or cause of action; tort law; or contract law. The claims and causes of action you are releasing and waiving in this Agreement include, but are not limited to, any and all claims and causes of action that any of the Releasees:

- (a) has violated its personnel policies, handbooks, contracts of employment, or covenants of good faith and fair dealing;
- (b) has discriminated against you on the basis of age, race, color, sex (including sexual harassment), national origin, ancestry, disability, religion, sexual orientation, marital status, parental status, source of income, entitlement to benefits, any union activities or other protected category in violation of any local, state or federal law, constitution, ordinance, or regulation;
- (c) has violated any applicable local, state or federal law, constitution, ordinance, or regulation, including, without limitation: the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, the Americans With Disabilities Act, the Family and Medical Leave Act, the Genetic Information Nondiscrimination Act, the anti-retaliation provisions of the Fair Labor Standards Act, the Employee Retirement Income Security Act, the Equal Pay Act, the Occupational Safety and Health Act, the Worker Adjustment and Retraining Notification Act, the Employee Polygraph Protection Act, the Fair Credit Reporting Act, the National Labor Relations Act, or the Uniform Services Employment and Reemployment Rights Act;
- (c) has violated any statute, public policy or common law (including, but not limited to claims for retaliatory discharge; negligent hiring, retention or supervision; defamation; intentional or negligent infliction of



emotional distress and/or mental anguish; intentional interference with contract; negligence; detrimental reliance; loss of consortium to you or any member of your family and/or promissory estoppel).

Notwithstanding the foregoing, you are not releasing (s) any right of indemnification you may have for any liabilities arising from your actions within the course and scope of your employment with the Company or within the course and scope of your role as an officer and/ or director of the Company; (t) any right to receive and to enforce the Company's obligation to pay any Termination Payments due and payable to you; (u) any vested benefits under any Company-sponsored benefit plans; (v) any rights under COBRA or similar state law; (w) any recovery to which you may be entitled pursuant to workers' compensation and unemployment insurance laws; (x) your right to challenge the validity of your release of claims under the ADEA; (y) any rights or claims under federal, state, or local law that cannot, as a matter of law, be waived by private agreement; or (z) any claims arising after the date on which Employee executes this Agreement.

You understand that nothing contained in this Release Agreement limits your ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission ("Government Agencies"). You further understand that this Release Agreement does not limit your ability to communicate or share information with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agencies. However, based on your release of claims set forth above, you understand that you are releasing all claims and causes of action that you might personally pursue or that might be pursued in your name and, to the extent permitted by applicable law, your right to recover monetary damages or obtain injunctive relief that is personal to you in connection with such claims and causes of action.

You acknowledge that you are knowingly and voluntarily waiving and releasing any rights you may have under the ADEA. You also acknowledge that (i) the consideration given to you in exchange for the waiver and release in this Agreement is in addition to anything of value to which you were already entitled, and (ii) that you have been paid for all time worked, have received all the leave, leaves of absence and leave benefits and protections for which you are eligible, and have not suffered any on-the-job injury for which you have not already filed a claim. You further acknowledge that you have been advised by this writing that: (a) your waiver and release do not apply to any rights or claims that may arise after the execution date of this Agreement; (b) you have been advised hereby that you have the right to consult with an attorney prior to executing this Agreement; (c) you have twenty-one (21) days to consider this Agreement (although you may choose to voluntarily execute this Agreement earlier); (d) you have seven (7) days following your execution of this Agreement to revoke the Agreement; and (e) this Agreement shall not be effective until the date upon which the revocation period has expired unexercised, which shall be the eighth (8<sup>th</sup>) day after this Agreement is executed by you provided the Company has also executed the Release on or before that date (the "Release Date").

4) Return of Company Property. You represent and warrant that you have fully complied with your obligations under Section 7(g) of the Employment Agreement. Receipt of the Termination Payments described in Section 2 of this Agreement is expressly conditioned upon your full compliance with such obligations.

5) Confidentiality. The provisions of this Agreement will be held in strictest confidence by you and will not be publicized or disclosed in any manner whatsoever; provided, however, that: (a) you may disclose this Agreement in confidence to your immediate family; (b) you may disclose this Agreement in confidence to your attorney, accountant, auditor, tax preparer, and financial advisor; and (c) you may disclose this Agreement insofar as such disclosure may be required by law.

6) No Admission. This Agreement does not constitute an admission by the Company of any wrongful action or violation of any federal, state, or local statute, or common law rights, including those relating to the provisions of any law or statute concerning employment actions, or of any other possible or claimed violation of law or rights.

7) Breach. The Company's obligation to provide the Termination Payments is expressly conditioned on you fully complying with your obligations under this Agreement, the Employment Agreement, and any other continuing contractual obligations you owe to the Company. In the event that you breach any such obligations, the Company shall have the right to discontinue all further Termination Payments.

8) Non-Assignment of Claims. You represent and warrant that you have not heretofore assigned or transferred any matter released by this Agreement or any part or portion thereof. You agree to indemnify and hold harmless the Company from any claims resulting from any such assignment or transfer by you, or asserted by any assignee or transferee.

11) Miscellaneous. This Agreement constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Company with regard to this subject matter, except that your obligations under Section 7 of the Employment Agreement shall remain in full force and effect in accordance with their terms. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified or amended except in a writing signed by both you and a duly authorized officer of the Company. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question will be modified by the court so as to be rendered enforceable. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of Washington as applied to contracts made and performed entirely within Georgia.

Harbor Custom Development, Inc.

EXECUTIVE:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Lance Brown



**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Sterling Griffin, certify that:

1. I have reviewed this Annual Report on Form 10-K of Harbor Custom Development, Inc. (the registrant);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, is made known to us by others, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's current fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 22, 2022

/s/ Sterling Griffin

Sterling Griffin

Chief Executive Officer and President (Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Lance Brown, certify that:

1. I have reviewed this Annual Report on Form 10-K of Harbor Custom Development, Inc. (the registrant);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, is made known to us by others, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's current fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 22, 2022

/s/ Lance Brown

Lance Brown

Chief Financial Officer (Principal Financial and Accounting Officer)

**CERTIFICATIONS PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002  
(18 U.S.C. SECTION 1350)**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), the undersigned officers of Harbor Custom Development, Inc., a Washington corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The annual report on Form 10-K for the period ended December 31, 2021 (the "Form 10-K") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 22, 2022

/s/ Sterling Griffin

Sterling Griffin

Chief Executive Officer and President  
(Principal Executive Officer)

Dated: March 22, 2022

/s/ Lance Brown

Lance Brown

Chief Financial Officer  
(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906 has been provided to Harbor Custom Development Inc. and will be retained by Harbor Custom Development, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

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