

**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 November 30, 2019

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 No. 001-09195

KB HOME

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

95-3666267

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

10990 Wilshire Boulevard, Los Angeles, California 90024

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (310) 231-4000

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 (par value \$1.00 per share)	KBH	New York Stock Exchange
Rights to Purchase Series A Participating Cumulative Preferred Stock		New York Stock Exchange

Securities Registered Pursuant to Section 12(g) of the Act: None

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

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

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large accelerated filer Accelerated filer

Non-accelerated filer Smaller reporting company

Emerging growth company

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

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

The aggregate market value of the voting common stock held by non-affiliates of the registrant on May 31, 2019 was \$2,414,644,120, including 7,859,975 shares held by the registrant's grantor stock ownership trust and excluding 24,264,256 shares held in treasury.

There were 89,606,551 shares of the registrant's common stock, par value \$1.00 per share, outstanding on December 31, 2019. The registrant's grantor stock ownership trust held an additional 7,630,582 shares of the registrant's common stock on that date.

Documents Incorporated by Reference

Portions of the registrant's definitive Proxy Statement for the 2020 Annual Meeting of Stockholders (incorporated into Part III).

KB HOME
FORM 10-K
FOR THE YEAR ENDED NOVEMBER 30, 2019
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PART I

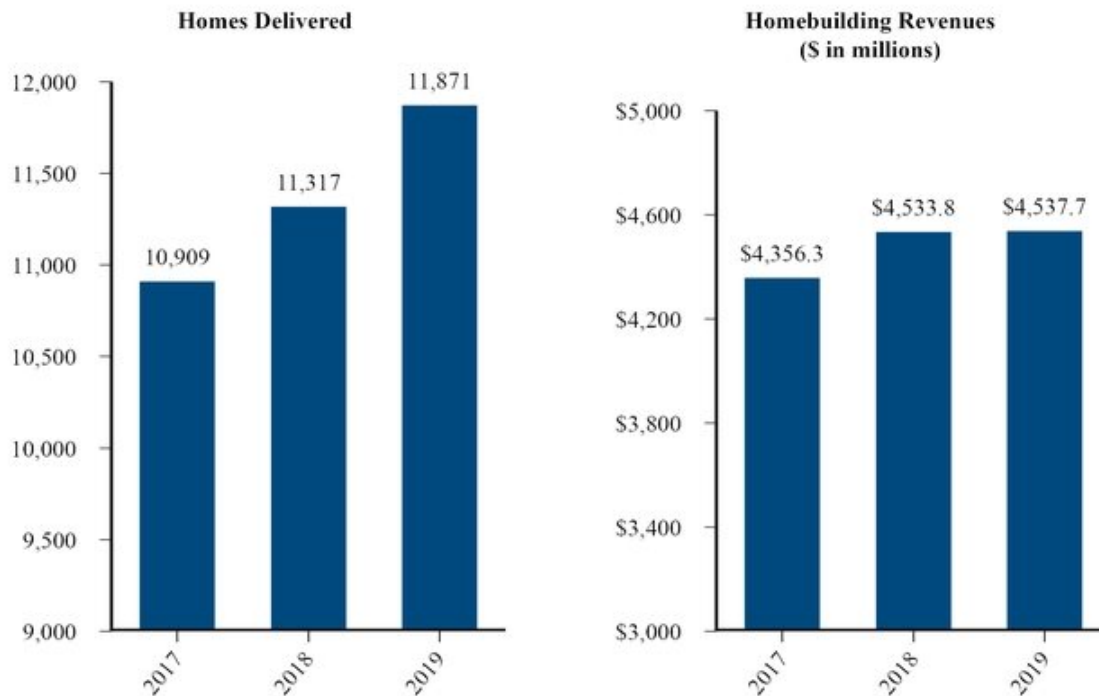
Item 1. BUSINESS

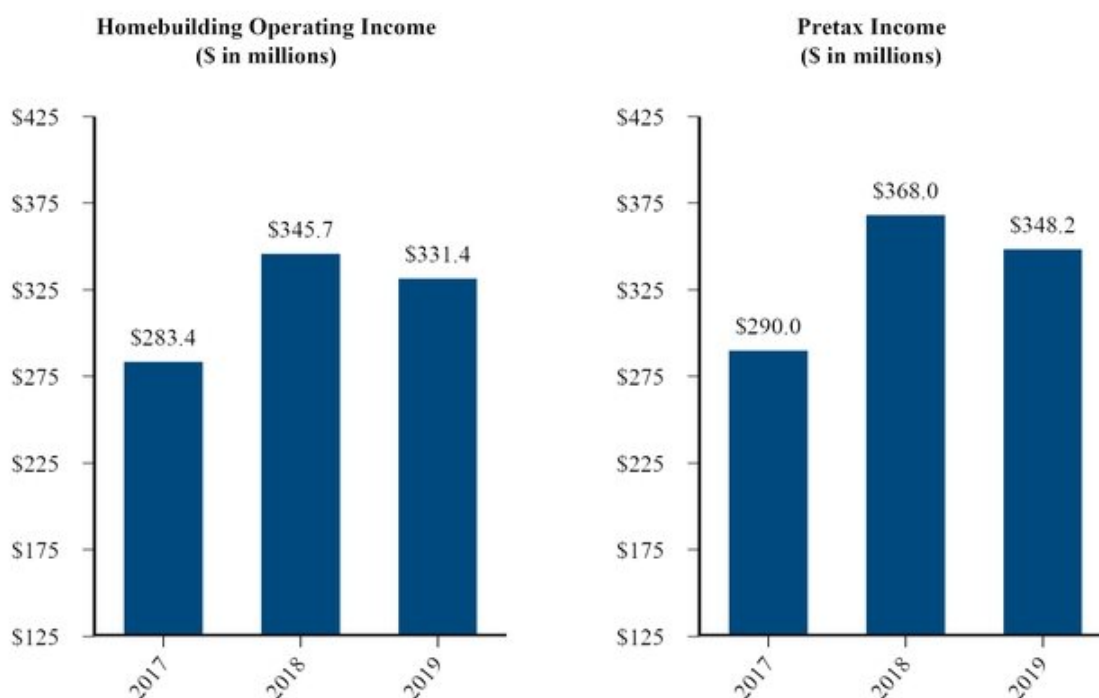
General

KB Home is one of the largest and most recognized homebuilding companies in the U.S. We have been building homes for over 60 years, with more than 600,000 homes delivered since our founding in 1957. We build a variety of new homes designed primarily for first-time and first move-up, as well as second move-up and active adult homebuyers, including attached and detached single-family residential homes, townhomes and condominiums. We offer homes in development communities, at urban in-fill locations and as part of mixed-use projects. Our homebuilding operations represent the majority of our business, accounting for 99.7% of our total revenues in 2019. Our financial services operations, which accounted for the remaining .3% of our total revenues in 2019, offer various insurance products to our homebuyers in the markets where we build homes and provide title services in certain of those markets. Our financial services operations also provide mortgage banking services, including residential consumer mortgage loan (“mortgage loan”) originations, to our homebuyers indirectly through KBHS Home Loans, LLC (“KBHS”), an unconsolidated joint venture we formed with Stearns Ventures, LLC (“Stearns”).

Unless the context indicates otherwise, the terms “we,” “our” and “us” used in this report refer to KB Home, a Delaware corporation, and its predecessors and subsidiaries. We also use the following terms in our business with the corresponding meanings: “home” is a single-family residence, whether it is a single-family home or other type of residential property; “homes delivered” are homes for which the sale has closed and title has passed to a customer; “community” is a single development in which new homes are constructed as part of an integrated plan; and “community count” is the number of communities we have open for sales with at least five homes/lots left to sell.

The following charts present homes delivered, homebuilding revenues, homebuilding operating income and pretax income for the years ended November 30, 2017, 2018 and 2019:





Markets

Reflecting the geographic reach of our homebuilding business, we have ongoing operations in the eight states and 42 major markets presented below. We also operate in various submarkets within these major markets. We may refer to these markets and submarkets collectively as our “served markets.” For reporting purposes, we organize our homebuilding operations into four segments — West Coast, Southwest, Central and Southeast.

Segment	States	Major Market(s)
West Coast	California	Contra Costa County, Elk Grove, Fresno, Los Angeles, Hollister, Madera, Modesto, Oakland, Orange County, Riverside, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Rosa-Petaluma, Stockton, Vallejo, Ventura and Yuba City
	Washington	Olympia and Seattle
Southwest	Arizona	Phoenix and Tucson
	Nevada	Las Vegas
Central	Colorado	Denver and Loveland
	Texas	Austin, Dallas, Fort Worth, Houston and San Antonio
Southeast	Florida	Daytona Beach, Fort Myers, Jacksonville, Lakeland, Melbourne, Orlando, Sarasota and Tampa
	North Carolina	Raleigh

Segment Operating Information. The following table presents certain operating information for our homebuilding reporting segments for the years ended November 30, 2019, 2018 and 2017 (dollars in millions, except average selling price):

	Years Ended November 30,		
	2019	2018	2017
West Coast:			
Homes delivered	3,214	3,152	3,387
Percentage of total homes delivered	27%	28%	31%
Average selling price	\$ 592,300	\$ 661,500	\$ 644,900
Homebuilding revenues (a)	\$ 1,912.2	\$ 2,085.3	\$ 2,186.4
Southwest:			
Homes delivered	2,346	2,301	1,837
Percentage of total homes delivered	20%	20%	17%
Average selling price	\$ 322,000	\$ 307,300	\$ 290,200
Homebuilding revenues (a)	\$ 764.8	\$ 707.1	\$ 533.1
Central:			
Homes delivered	4,291	4,113	4,136
Percentage of total homes delivered	36%	36%	38%
Average selling price	\$ 293,500	\$ 297,400	\$ 284,800
Homebuilding revenues (a)	\$ 1,267.9	\$ 1,239.3	\$ 1,188.8
Southeast:			
Homes delivered	2,020	1,751	1,549
Percentage of total homes delivered	17%	16%	14%
Average selling price	\$ 293,200	\$ 286,600	\$ 284,100
Homebuilding revenues (a)	\$ 592.8	\$ 502.1	\$ 448.0
Total:			
Homes delivered	11,871	11,317	10,909
Average selling price	\$ 380,000	\$ 399,200	\$ 397,400
Homebuilding revenues (a)	\$ 4,537.7	\$ 4,533.8	\$ 4,356.3

(a) Homebuilding revenues include revenues from housing and, if applicable, land sales.

Additional financial and operational information related to our homebuilding reporting segments, including revenues, operating income (loss), pretax income (loss), inventories and assets, is provided below in Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations and in Note 2 – Segment Information in the Notes to Consolidated Financial Statements in this report.

Business Strategy

Our core business strategy, which we have evolved from KB2020 to KB Edge™, is to expand our scale primarily within our current geographic footprint to achieve a top-five position in each of our served markets (based on homes delivered). KB Edge is a systematic, fact-based and process-driven approach to homebuilding that is grounded in gaining a detailed understanding of consumers’ location and product preferences and product price-to-value perceptions. In our business, we use the term “product” to mean and encompass a home’s floor plan design and interior/exterior style, amenities, functions and features.

KB Edge consists of the following key principles with respect to customers, land, products and operations:

- **Customers.** With our customer-centered, Built-to-Order™ homebuying process, we provide each of our homebuyers with a highly personalized experience where they can make a wide range of structural and design choices for their future new home. Our community teams of sales representatives, design consultants and other personnel partner closely with each homebuyer through each major step in the design, construction and closing of their KB home. We believe this highly interactive, “customer-first” experience that puts our homebuyers firmly in control of designing a home with the particular features and amenities they want based on how they live and what they value, at an affordable price, promotes customer

satisfaction and gives us a meaningful and distinct competitive advantage over other homebuilders and resale and rental homes.

- Land. We seek to manage our working capital and reduce our operating risks by primarily acquiring entitled land parcels within attractive submarkets as identified by our market research activities. We typically focus on metropolitan areas with favorable long-term economic and population growth prospects that we believe have the potential to sustain a minimum of 800 homes delivered per year, and target land parcels that meet our investment return standards. Identified consumer preferences and home sales activity largely direct where our land acquisition teams search for available land. We focus on investments that provide a one- to two-year supply of land or lots per product line, per community, and individual assets that are generally between 50 to 200 lots in size. Our primary focus continues to be our existing geographic footprint, encompassing markets we identified for their long-term economic and demographic growth potential. We leverage the relationships we have with land owners, developers and brokers to find and acquire land parcels, and use our experience in working with municipalities to efficiently obtain development approvals.
- Products. We offer our customers a base product with a standardized set of functions and features that is generally priced to be affordable for the local area's median household income level. As noted above, with our Built-to-Order approach, our customers have the opportunity to select their lot location within a community, floor plan, elevation and structural options, and to personalize their homes with numerous interior design options and upgrades in our design studios. Our design studios, generally centrally located within our served markets, are a key component of our Built-to-Order process, and the mix of design options and upgrades they offer are primarily based on the preferences identified by our market survey and purchase frequency data. We utilize a centralized internal architectural group that designs homes to meet or exceed customers' price-to-value expectations while being as efficient as possible to construct. To enhance the simplicity and efficiency of our products and processes, our architectural group has developed a core series of high-frequency, flexible floor plans and elevations that we can offer across many of our served markets. Our standardized plans allow us to more effectively shift with local demand and developable land attributes, help us to better understand the cost to build our products and enable us to compare and implement best practices across divisions and communities. We also incorporate energy-efficient features into our product designs to help lower our homebuyers' total cost of homeownership and reduce our homes' impact on the environment, as further discussed below.
- Operations. In addition to differentiating us from other high-production homebuilders, our Built-to-Order process helps drive low-cost production. We generally commence construction of a home only after we have a signed purchase contract with a homebuyer and have obtained preliminary credit approval or other evidence of the homebuyer's financial ability to purchase the home, and seek to build a backlog of sold homes. By maintaining a substantial backlog, along with centralized scheduling and standardized reporting processes, we have established a disciplined and scalable operational platform that helps us sustain an even-flow production of pre-sold homes. This reduces our inventory risk, promotes construction efficiencies and enhances our relationships with independent subcontractors and other business partners, and provides us with greater visibility and predictability on future deliveries as we grow.

There may be market-driven circumstances where we believe it is necessary or appropriate to temporarily deviate from certain of the above principles. These deviations may include starting construction on a small number of homes in a community before corresponding purchase contracts are signed with homebuyers to more quickly meet customer delivery expectations and generate revenues; or acquiring land parcels in peripheral neighborhoods of a core metropolitan area that otherwise fit our growth strategy and meet our investment return standards. In addition, other circumstances could arise in the future that may lead us to make specific short-term shifts from these principles.

Returns-Focused Growth Plan. In 2016, we implemented a Returns-Focused Growth Plan designed to generate higher revenues and improve our homebuilding operating income margin, return on invested capital, return on equity and leverage ratio, and to achieve certain related financial targets by the end of our 2019 fiscal year, principally through executing on our core business strategy, as discussed above, and improving our asset efficiency.

The 2019 financial targets under our Returns-Focused Growth Plan were as follows:

- Housing revenues greater than \$5.0 billion.
- Homebuilding operating income margin, excluding inventory-related charges, of 8.0% to 9.0%.
- Return on invested capital in excess of 10.0%.
- Return on equity of 10.0% to 15.0%.

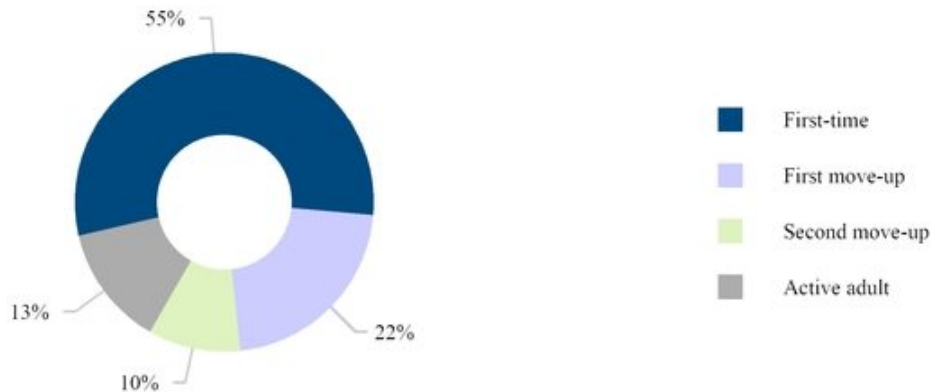
- Net debt to capital ratio of 40% to 50%, which we lowered in 2018 to a net debt to capital ratio of 35% to 45%, and further tightened in 2019 to a debt to capital ratio of 35% to 45%.

As further discussed below under Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations in this report, we achieved most of our Returns-Focused Growth Plan objectives, and intend to continue to follow its primary tenets in 2020 and beyond. This includes working to improve our asset efficiency by, among other things, calibrating home sales rates and selling prices at each of our communities to enhance profitability; further controlling our direct construction costs within our communities; accelerating inventory turns; structuring land acquisitions to minimize upfront costs, as further discussed below under “Community Development and Land Inventory Management”; reactivating communities that have been held for future development; and deploying excess cash flow from operations to help fuel additional revenue growth and/or reduce debt. The anticipated associated revenue and pretax income growth from this strategic approach should help drive the utilization of our deferred tax assets, which totaled \$364.5 million at November 30, 2019, and allow us to realize substantial tax cash savings through 2020 that can be productively deployed in our business and/or to enhance our capital structure.

Promotional Marketing Strategy. To emphasize the distinct combination of innovative design, personalization, affordability and partnership we offer to our homebuyers and our focus on providing the highest possible degree of customer satisfaction, we have, since 2018, centered our external brand identity and messaging around the concept of Built on Relationships®. Built on Relationships also encapsulates the importance of other key relationships – with suppliers, trade contractors, land sellers and municipalities – to the success of our business.

Our intense customer focus drives, among other things, how and where we acquire land for our new home communities; the design and selection of our products; our investments in, and choice of suppliers of, advanced materials, systems, equipment and technologies intended to enhance the performance and resource efficiency of our homes; and our community development and home construction methods and processes, as described in this report. In addition, we aim to present our homebuyers with a simple path to owning their unique new home with the assistance of our community team members who partner closely with homebuyers through each major step in the design, construction and closing of their home. We believe our approach sets us apart from most other homebuilders and from resale homes, and is particularly well suited for the current as well as future generations of first-time buyers – historically our core customer demographic.

Homebuyer Profile. We focus on bracketing within a range around the median household income in a submarket in order to position our product and pricing to be attainable for the largest demand segments of that submarket. Across our portfolio, we offer an array of products, from smaller, higher density homes, with average selling prices typically suited for first-time homebuyers, to larger homes in premium locations with additional amenities, with higher average selling prices that generally attract a first or second move-up homebuyer. We also offer a variety of single-story floorplans that typically appeal to an active adult homebuyer age 55 and over, as well as multi-story floorplans that attract a wide range of homebuyers. For more than a decade, approximately 75% of our annual deliveries have been to first-time and first move-up homebuyers; in 2019, it was 77% of our deliveries, as shown in the following chart:



To help elevate the KB Home brand in the marketplace, particularly for the growing number of millennial homebuyers, our promotional marketing efforts increasingly involve digital marketing, including interactive Internet-based applications, social media outlets and other evolving communication technologies.

Customer Service. Our on-site construction supervisors perform regular pre-closing quality checks and our sales representatives maintain regular contact with our homebuyers during the home construction process in an effort to ensure our homes meet our

standards and our homebuyers' expectations. We also have employees who are responsible for responding to homebuyers' post-closing needs, including warranty claims. Information about our limited warranty program is provided in Note 16 – Commitments and Contingencies in the Notes to Consolidated Financial Statements in this report.

Operational Structure. We operate our homebuilding business through divisions with experienced management teams who have in-depth local knowledge of their particular served markets, which helps us acquire land in preferred locations; develop communities with products that meet local demand; and understand local regulatory environments. Our division management teams exercise considerable autonomy in identifying land acquisition opportunities; developing land and communities; implementing product, marketing and sales strategies; and controlling costs. To help maintain consistent execution within the organization, our division management teams and other employees are continuously trained on KB Edge principles and are evaluated, in part, based on their achievement of relevant operational objectives.

Our corporate management and support personnel develop and oversee the implementation of company-wide strategic initiatives, our overall operational policies and internal control standards, and perform various centralized functions, including architecture; purchasing and national contracts; treasury and cash management; land acquisition approval; risk and litigation management; accounting and financial reporting; internal audit and compliance activities; information technology systems; marketing; and investor and media relations.

Community Development and Land Inventory Management

Developable land for the production of homes is a core resource for our business. Based on our current strategic plans, we seek to own or control land sufficient to meet our forecasted production goals for the next three to five years. In 2020, we intend to continue to invest in and develop land positions within attractive submarkets and selectively acquire or control additional land that meets our investment return standards. However, we may periodically sell certain land interests or monetize land previously held for future development.

Our community development process generally consists of four phases: land acquisition, land development into finished lots for a community (if necessary), home construction and delivery of completed homes to homebuyers. Historically, our community development process has typically ranged from six to 18 months in our West Coast homebuilding reporting segment, with a somewhat shorter duration in our other homebuilding reporting segments. The development process in our West Coast homebuilding reporting segment is typically longer than in our other segments due to the municipal and regulatory requirements that are generally more stringent in California. Our community development process varies based on, among other things, the extent and speed of required government approvals and utility service activations, the overall size of a particular community, the scope of necessary site preparation activities, the type of product(s) that will be offered, weather conditions, time of year, promotional marketing results, the availability of construction resources, consumer demand, local and general economic and housing market conditions, and other factors.

Although they vary significantly in size and complexity, our single-family residential home communities typically consist of 50 to 200 lots per product line, with lots ranging in size from 2,000 to 9,000 square feet. In our communities, we typically offer three to 15 home design choices. We also generally build one to three model homes at each community so that prospective homebuyers can preview the various products available. Depending on the community, we may offer premium lots containing more square footage, better views and/or location benefits. Some of our communities consist of multiple-story structures that encompass several attached condominium-style units.

Land Acquisition and Land Development. We continuously evaluate land acquisition opportunities against our investment return standards, while also balancing competing needs for financial strength, liquidity and land inventory for future growth. When we acquire land, we generally focus on parcels with lots that are entitled for residential construction and are either physically developed to start home construction (referred to as “finished lots”) or partially finished. However, depending on market conditions and available opportunities, we may acquire undeveloped and/or unentitled land. We may also invest in land that requires us to repurpose and re-entitle the property for residential use, such as in-fill developments. We expect that the overall balance of undeveloped, unentitled, entitled, partially finished and finished lots in our inventory will vary over time, and in implementing our strategic growth initiatives, we may acquire a greater proportion of undeveloped or unentitled land in the future if and as the availability of reasonably priced land with finished or partially finished lots diminishes.

We generally structure our land acquisition and land development activities to minimize, or defer the timing of, expenditures in order to reduce both the market risks associated with holding land and our working capital and financial commitments, including interest and other carrying costs. We typically use contracts that, in exchange for a small initial option payment or earnest money deposit, give us an option or similar right to acquire land at a future date, usually at a pre-determined price and pending our satisfaction with the feasibility of developing and selling homes on the land and/or an underlying land seller's completion of certain obligations, such as securing entitlements, developing infrastructure or finishing lots. We refer to land subject to such option or

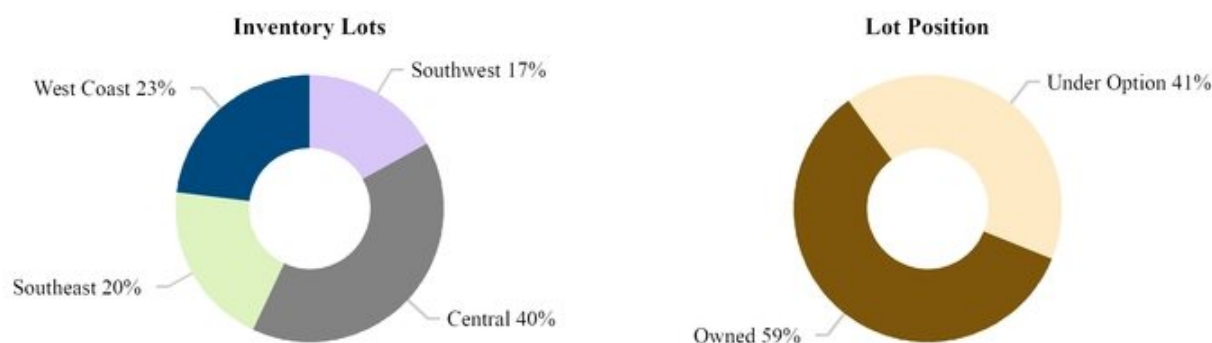
similar contractual rights as being “controlled.” Our decision to exercise a particular land option or similar right is based on the results of our due diligence and continued market viability analysis after entering into such a contract. Information related to our land option contracts and other similar contracts is provided in Note 7 – Inventory Impairments and Land Option Contract Abandonments and Note 8 – Variable Interest Entities in the Notes to Consolidated Financial Statements in this report.

The following table presents the number of inventory lots we owned, in various stages of development, or controlled under land option contracts or other similar contracts by homebuilding reporting segment as of November 30, 2019 and 2018:

	Homes Completed or Under Construction and Land Under Development		Land Held for Future Development or Sale		Land Under Option (a)		Total Land Owned or Under Option	
	2019	2018	2019	2018	2019	2018	2019	2018
West Coast	8,586	8,671	918	1,291	3,338	2,718	12,842	12,680
Southwest	6,841	7,730	384	435	2,801	1,650	10,026	9,815
Central	14,712	14,821	84	105	8,141	7,311	22,937	22,237
Southeast	4,991	4,377	1,523	2,052	3,379	2,466	9,893	8,895
Total	35,130	35,599	2,909	3,883	17,659	14,145	55,698	53,627

(a) Land under option as of November 30, 2019 and 2018 excludes 9,212 and 11,185 lots, respectively, under contract where the associated deposits were refundable at our discretion.

The following charts present the percentage of inventory lots we owned or had under land option contracts or other similar contracts by homebuilding reporting segment and the percentage of total lots we owned and had under option, including 9,212 lots under contract where the associated deposits were refundable at our discretion, as of November 30, 2019:



Home Construction and Deliveries. Following the acquisition of land and, if necessary, the development of the land into finished lots, we typically begin constructing model homes and marketing homes for sale. To minimize the costs and risks of unsold homes in production, we generally commence construction of a home only after we have a signed purchase contract with a homebuyer and have obtained preliminary credit approval or other evidence of the homebuyer’s financial ability to purchase the home. Other than model homes, our inventories typically do not consist of completed unsold homes. However, cancellations of home purchase contracts prior to the delivery of the underlying homes, the construction of attached products with some unsold units, or specific marketing or other strategic considerations will result in our having unsold completed or partially completed homes in our inventory. Our construction cycle time from home sale to delivery is typically five to six months.

We act as the general contractor for the majority of our communities, and engage outside general contractors in all other instances. We, or the outside general contractors we engage, contract with a variety of independent subcontractors, who are typically locally based, to perform all land development and home construction work through their own employees or subcontractors. We do not self-perform any land development or home construction work. These independent subcontractors also supply some of the building materials required for such production activities. Our contracts with these independent subcontractors require that they comply with all laws applicable to their work, including wage and safety laws, meet performance standards, and follow local building codes and permits.

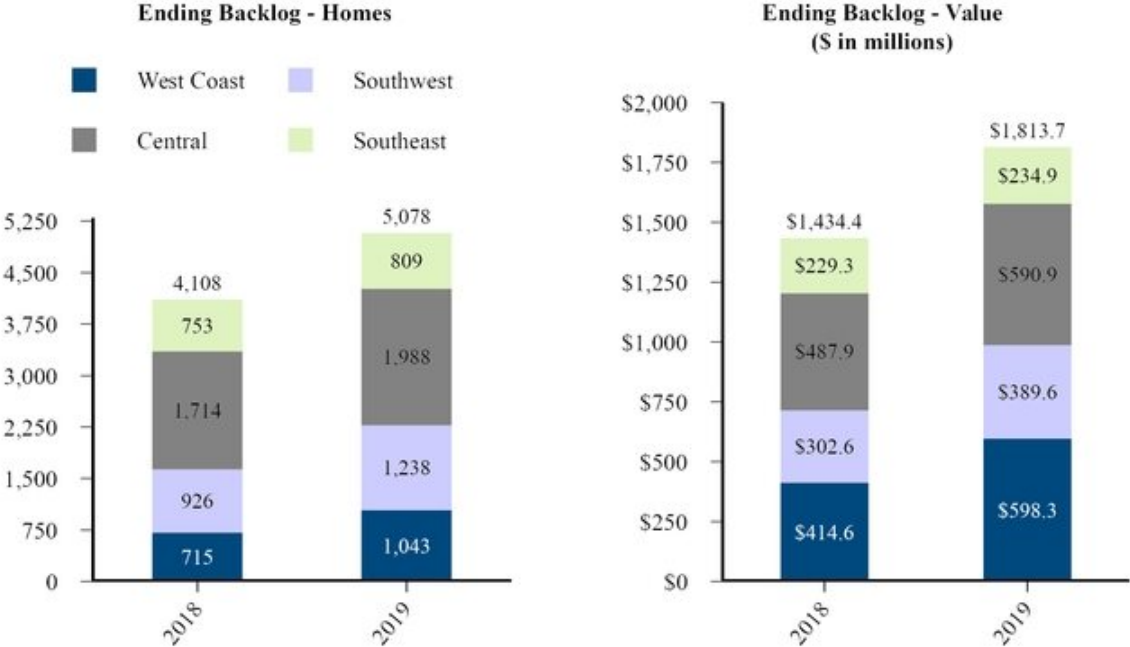
Raw Materials. Outside of land, the principal raw materials used in our production process are concrete and forest products. Other primary materials used in home construction include drywall, and plumbing and electrical items. We source all of our

building materials from third parties. We attempt to enhance the efficiency of our operations by using, where practical, standardized materials that are commercially available on competitive terms from a variety of outside sources. In addition, we have national and regional purchasing programs for certain building materials, appliances, fixtures and other items that allow us to benefit from large-quantity purchase discounts and, where available, participate in outside manufacturer or supplier rebate programs. When possible, we arrange for bulk purchases of these products at favorable prices from such manufacturers and suppliers.

Backlog

Our “backlog” consists of homes that are under a purchase contract but have not yet been delivered to a homebuyer. Ending backlog represents the number of homes in backlog from the previous period plus the number of net orders (new orders for homes less cancellations) generated during the current period minus the number of homes delivered during the current period. Our backlog at any given time will be affected by cancellations, homes delivered and our community count. Backlog value represents potential future housing revenues from homes in backlog. Our cancellation rates and the factors affecting such rates are further discussed below in both Item 1A – Risk Factors and Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations in this report.

The following charts present our ending backlog (number of homes and value) by homebuilding reporting segment as of November 30, 2018 and 2019:



Employees

At December 31, 2019 and 2018, we had approximately 2,140 and 2,005 full-time employees, respectively. None of our employees are represented by a collective bargaining agreement.

Competition, Seasonality, Delivery Mix and Other Factors

Competition. The homebuilding industry and housing market are highly competitive with respect to selling homes; contracting for construction services, such as carpentry, roofing, electrical and plumbing; and acquiring attractive developable land, though the intensity of competition can vary and fluctuate between and within individual markets and submarkets. We compete for homebuyers, construction resources and desirable land against numerous homebuilders, ranging from regional and national firms to small local enterprises. As to homebuyers, we primarily compete with other homebuilders on the basis of selling price, community location and amenities, availability of financing options, home designs, reputation, home construction cycle time, and the design options and upgrades that can be included in a home. In some cases, this competition occurs within larger residential development

projects containing separate sections other homebuilders design, plan and develop. We also compete for homebuyers against housing alternatives to new homes, including resale homes, apartments, single-family rentals and other rental housing.

In markets experiencing heavy construction activity, including areas recovering from earthquakes, wildfires, hurricanes or other natural disasters, there can be severe craft and skilled trade shortages that limit independent subcontractors' ability to supply construction services to us, which in turn tends to drive up our costs and/or extend our production schedules. Elevated construction activity, and reallocations of staff for public safety priorities after natural disasters or otherwise, has also contributed to measurable increases in the amount of time needed to obtain governmental approvals or utility service activations and, combined with tariffs recently imposed or increased by the U.S. and other governments, the cost of certain raw building materials, such as steel, Canadian lumber, drywall and concrete, input commodities or finished products. Since 2013, we also have seen higher prices for desirable land amid heightened competition with homebuilders and other developers and investors (both domestic and international), particularly in the land-constrained areas where we operate. We expect these upward cost trends to continue in 2020, if and as housing market activity grows and there is greater competition for these resources.

Seasonality. Our performance is affected by seasonal demand trends for housing. Traditionally, there has been more consumer demand for home purchases and we tend to generate more net orders in the spring and early summer months (corresponding to most of our second quarter and part of our third quarter) than at other times of the year. This "selling season" demand results in our delivering more homes and generating higher revenues from late summer through the fall months (corresponding to part of our third quarter and all of our fourth quarter), as illustrated in the following table:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Net Orders				
2019	21%	32%	26%	21%
2018	25%	32%	25%	18%
2017	24%	31%	24%	21%
Homes Delivered				
2019	18%	23%	26%	33%
2018	20%	24%	26%	30%
2017	20%	24%	25%	31%
Housing Revenues				
2019	18%	23%	25%	34%
2018	19%	24%	27%	30%
2017	19%	23%	26%	32%

Delivery Mix and Other Factors. In addition to the overall volume of homes we sell and deliver, our results in a given period are significantly affected by the geographic mix of markets and submarkets in which we operate; the number and characteristics of the communities we have open for sales in those markets and submarkets; and the products we sell from those communities during the period. While there are some similarities, there are differences within and between our served markets in terms of the quantity, size and nature of the communities we operate and the products we offer to consumers. These differences reflect, among other things, local homebuyer preferences; household demographics (e.g., large families or working professionals; income levels); geographic context (e.g., urban or suburban; availability of reasonably priced finished lots; development constraints; residential density); and the shifts that can occur in these factors over time. These factors in each of our served markets will affect the costs we incur and the time it takes to locate, acquire rights to and develop land, open communities for sales, and market and build homes; the size of our homes; our selling prices (including the contribution from homebuyers' purchases of design options and upgrades); the pace at which we sell and deliver homes and close out communities; and our housing gross profits and housing gross profit margins. Therefore, our results in any given period will fluctuate compared to other periods based on the proportion of homes delivered from areas with higher or lower selling prices and on the corresponding land and overhead costs incurred to generate those deliveries, as well as from our overall community count.

Financing

Our operations have historically been funded by internally generated cash flows, public equity and debt issuances, land option contracts and other similar contracts, land seller financing, and performance bonds and letters of credit. We also have the ability to borrow funds under our unsecured revolving credit facility with various banks (“Credit Facility”). Depending on market conditions and available opportunities, we may obtain project financing, or secure external financing with community or other inventory assets that we own or control. By “project financing,” we mean loans that are specifically obtained for, or secured by, particular communities or other inventory assets. We may also arrange or engage in bank loan, project debt or other financial transactions and/or expand the capacity of the Credit Facility or our unsecured letter of credit facility with certain financial institutions (“LOC Facility”) or enter into additional such facilities.

Environmental Compliance Matters and Sustainability

As part of our due diligence process for land acquisitions, we often use third-party environmental consultants to investigate potential environmental risks, and we require disclosures, representations and warranties from land sellers regarding environmental risks. We may acquire property that requires us to incur environmental clean-up costs after conducting appropriate due diligence. In such instances, we take steps prior to our acquisition of the land to gain reasonable assurance as to the precise scope of work required and the costs associated with removal, site restoration and/or monitoring. To the extent contamination or other environmental issues have occurred in the past, we will attempt to recover restoration costs from third parties, such as the generators of hazardous waste, land sellers or others in the prior chain of title and/or their insurers. Based on these practices, we anticipate that it is unlikely that environmental clean-up costs will have a material effect on our consolidated financial statements. However, despite these efforts, there can be no assurance that we will avoid material liabilities relating to the existence or removal of toxic wastes, site restoration, monitoring or other environmental matters affecting properties currently or previously owned or controlled by us, and no estimate of any potential liabilities can be made. We have not been notified by any governmental agency of any claim that any of the properties owned or formerly owned by us are identified by the U.S. Environmental Protection Agency (or similar state or local agency) as being a “Superfund” (or similar state or local) clean-up site requiring remediation, which could have a material effect on our future consolidated financial statements. Costs associated with the use of environmental consultants are not material to our consolidated financial statements.

We have made a dedicated effort to further differentiate ourselves from other homebuilders and resale homes through our ongoing commitment to become a leading national company in environmental sustainability. We continually seek out and utilize innovative technologies and systems to further improve the energy and water efficiency of our homes, as well as engage in campaigns and other educational efforts, sometimes together with other companies, organizations and groups, to increase consumer awareness of the importance and impact of sustainability in selecting a home and the products within a home. Under our commitment to sustainability, we, among other things:

- build energy- and water-efficient new homes. Overall, we have built approximately 137,000 ENERGY STAR® certified homes, a milestone that exceeds any other homebuilder;
- developed a KB Home Energy Performance Guide®, or EPG®, that informs our homebuyers of the relative energy efficiency and the related estimated monthly energy costs of each of our homes as designed, compared to typical new and existing homes;
- include in our product offerings advanced home automation technologies, components (e.g., smart appliances) and systems that can increase convenience for our homebuyers; and
- unveiled in 2019 the KB Home ProjeKt: Where Tomorrow Lives™, a collaboratively designed sustainable concept home that showcased, during the Consumer Electronics Show in Las Vegas, Nevada, a vision for the future of the American home.

For several years, we have been recognized by the U.S. Environmental Protection Agency for our sustainability achievements, and have earned awards under all of the agency’s programs aimed at homebuilders: ENERGY STAR, which sets energy efficiency standards; WaterSense®, which establishes water efficiency standards; and Indoor airPLUS®, which focuses on indoor air quality. In 2019, we received the ENERGY STAR Partner of the Year — Sustained Excellence Award for the ninth consecutive year, and the WaterSense Sustained Excellence Award for water efficiency for the fifth consecutive year.

More information about our sustainability commitment can be found in our annual sustainability reports, which we have published on our website since 2008. We intend to continue to research, evaluate and utilize new or improved products and construction and business practices consistent with our commitment and believe our sustainability initiatives can help put us in a better position, compared to resale homes and homebuilders with less-developed programs, to comply with evolving local, state

and federal rules and regulations intended to protect natural resources and to address climate change and similar environmental concerns.

Access to Our Information

Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, beneficial ownership reports on Forms 3, 4 and 5 and proxy statements, as well as all amendments to those reports are available free of charge through our investor relations website at investor.kbhome.com, as soon as reasonably practicable after such reports are electronically filed with, or furnished to, the Securities and Exchange Commission (“SEC”). They can also be found at the SEC’s website at www.sec.gov. We will also provide these reports in electronic or paper format free of charge upon request made to our investor relations department at investorrelations@kbhome.com or at our principal executive offices. We intend for our investor relations website to be the primary location where investors and the general public can obtain announcements regarding, and can learn more about, our financial and operational performance, business plans and prospects, our board of directors, our senior executive management team, and our corporate governance policies, including our articles of incorporation, by-laws, corporate governance principles, board committee charters, and ethics policy. We may from time to time choose to disclose or post important information about our business on or through our investor relations website, and/or through other electronic channels, including social media outlets, such as Facebook® (Facebook.com/KBHome) and Twitter® (Twitter.com/KBHome), and other evolving communication technologies. The content available on or through our primary website at www.kbhome.com, our investor relations website, including our sustainability reports, or social media outlets and other evolving communication technologies is not incorporated by reference in this report or in any other filing we make with the SEC, and our references to such content are intended to be inactive textual or oral references only.

Item 1A. RISK FACTORS

Although we have operated through a number of varying economic cycles, there are several risks that could affect our ability to conduct our business, which we discuss below. If any of these risks materialize, they could, among other things, (a) materially and adversely impact our results of operations and consolidated financial statements; and (b) cause our results to differ materially from the forward-looking and other statements we make in our SEC filings; in our news releases and other public reports and communications, including those we post on or make available through our websites or other electronic channels; or orally through our personnel and representatives. These risks, and other factors outside of our control, could also create or increase volatility in our common stock’s market price.

The risk factors described below are not our only salient risks. Political events, war, terrorism, civil unrest, weather or other natural/environmental disasters, and other risks that are currently unknown or seen as immaterial, could also have a material adverse impact on our business, consolidated financial statements and/or common stock’s market price.

Demand Risks. The following could negatively affect consumer demand for our products, thereby unfavorably impacting our net orders, homes delivered, average selling prices, revenues and/or profitability:

- Soft or negative economic or housing market conditions. Adverse conditions in our served markets or nationally could be caused or worsened by factors outside of our control, including, for example, U.S. trade disputes with other countries or a federal government shutdown, and financial markets’ reactions thereto.
- Reduced employment levels and job and wage growth. Recent strong employment and wage growth trends may weaken or reverse in 2020. If they do, our core first-time and first move-up homebuyer segments could be particularly affected, impacting us more severely than homebuilders that target a different buyer demographic.
- Lower population growth, household formations or other unfavorable demographic changes. These may be driven by, among other things, birth rate changes, economic factors or U.S. immigration policies.
- Diminished consumer confidence, whether generally or as to purchasing a home. Consumers may be reluctant to purchase a home compared to housing alternatives (such as renting apartments or homes, or remaining in their existing home) due to location or lifestyle preferences, affordability perceptions (particularly in markets experiencing rapid home price appreciation), employment instability or otherwise.
- Tightened availability or affordability of mortgage loans and homeowner insurance coverage. Most of our buyers need a mortgage loan to purchase their home. Their ability to obtain a mortgage loan is largely subject to prevailing interest rates, lenders’ credit standards and appraisals, and the availability of government-supported programs, such as those from the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association (also known as Fannie Mae) and the Federal Home Loan Mortgage Corporation (also known as Freddie Mac). If mortgage interest

rates increase, credit standards are tightened, appraisals for our homes are lowered, or mortgage loan programs are curtailed, potential buyers of our homes may not be able to obtain necessary mortgage financing.

Insurance companies are increasingly drawing back from issuing, or are measurably raising premiums for, homeowner insurance policies in areas that have experienced, or are thought to be at risk of experiencing, significant wildfires, hurricanes, flooding or other natural disasters. If potential homebuyers are unable to obtain affordable homeowner insurance coverage, they may decide not to pursue purchasing a home or may cancel a home purchase contract with us.

- Poor lender performance. We depend on third-party lenders, including our KBHS partner Stearns, to provide mortgage loans to our homebuyers, unlike homebuilders with a wholly-owned mortgage lender. These lenders may be unable or unwilling to complete, timely or at all, the loan originations they start for our homebuyers. Poorly performing lenders can significantly delay home closings, disrupting our production schedules and delivery forecasts, or cause home purchase contract cancellations. While KBHS was not materially affected by Stearns' parent company's successfully completed bankruptcy process in 2019 (as discussed in Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations in this report), if KBHS performs poorly and our customers use another lender, the income from and value of our KBHS equity interest would decline.
- Adverse tax law changes. If federal or state laws are changed to eliminate or reduce the income tax benefits associated with homeownership, such as personal tax deductions for mortgage loan interest costs and real estate taxes, the after-tax cost of homeownership could measurably increase and diminish consumer interest in buying a home, as could increases in personal income tax rates.
- Competition. We face significant competition for customers from other homebuilders, sellers of resale homes and other housing industry participants, including rental-housing operators. This competitive environment may, among other things, cause us to lower our home selling prices or offer incentives to attract or retain buyers.
- Seasonality. As discussed in Item 1 – Business in this report, we historically have experienced fluctuations in our quarterly operating results with measurably more homes delivered and revenues generated in our third and fourth fiscal quarters. However, this pattern may not continue in the future at all or to the same degree as in the past.

Supply Risks. The following could negatively affect our ability to increase our owned and controlled lot inventory, community count, operational scale and market share, and to grow our business, if at all:

- Lack of available land. Securing sufficient developable land that meets our investment return standards is critical for us to meet our strategic goals and profitably expand our business' scale. Land availability depends on several factors, including geographical/topographical/governmental constraints, sellers' business relationships and reputation within the residential real estate community, and competition from other parties, some of which can bid more for land. We expect to continue to face fierce competition for desirable land in our served markets in 2020, pressuring its availability and increasing its cost.
- Insufficient financial resources. Our business needs considerable cash to, among other things, acquire and develop land, build homes and provide customer service. We expect to meet our needs with existing cash, future operational cash flow, our Credit Facility and LOC Facility, or outside sources, including project financing. However, outside financing may be unavailable, costly and/or considerably dilute stockholders. For instance:
 - Tight capital or financial market conditions may hinder our ability to obtain external financing, or use or expand our Credit Facility and LOC Facility, on favorable terms or at all. Also, if a rating agency downgrades our credit rating or outlook, external financing may be difficult and costly for us to obtain.
 - Noncompliance with our Credit Facility and senior notes' covenants (see Note 14 – Notes Payable in the Notes to Consolidated Financial Statements in this report) may restrict our ability to borrow; accelerate repayment of our debt, which may not be feasible for us; or cause our lenders to impose significant fees or cease lending to us.
 - As described in Note 14 – Notes Payable in the Notes to Consolidated Financial Statements in this report, if a change of control or fundamental change occurs before our senior notes mature, we may need to offer to purchase certain of them. This may require us to refinance or restructure our debt, which we may be unable to do at all or on favorable terms.
 - Our high debt and debt-to-capital levels could require us to dedicate substantial cash flow to debt service; inhibit our ability to respond to business changes or adjust our debt maturity schedule; curb execution on our current strategies; and/or make us more vulnerable in a downturn than our less-leveraged competitors. Our next senior note

maturity is our \$450.0 million in aggregate principal amount of 7.00% senior notes due December 15, 2021 (“7.00% Senior Notes due 2021”).

- Decreased land inventory value. Our land inventory’s value depends on market conditions, including our estimates of applicable future demand and revenue generation. If conditions deteriorate during the typically significant amount of time between our acquiring ownership/control of land and delivering homes on that land; if we cannot sell land held for sale at its estimated fair value; or if we make strategic changes, we may need to record inventory-related charges. We may also record charges if we decide to sell land at a loss or activate or sell land held for future development.

In addition, our business could be negatively affected if our home sales, homes delivered or backlog-to-homes delivered conversion rate falls; if often-volatile building materials prices or subcontractor rates increase, which has been the trend over the past few years; or if our community openings are delayed due to, among other things, prolonged development, our strategic adjustments, or protracted government approvals or utility service activations from staff or resource cuts or reallocations for public safety priorities (e.g., earthquakes, wildfires, hurricanes or other natural disasters).

- Trade disputes and defective materials. The federal government has imposed new or increased import tariffs, and other countries have implemented retaliatory measures, raising the cost and reducing the supply of several home construction items. In addition, shortages or rising prices of building materials may ensue from manufacturing defects, resulting in recalls of materials. If such disputes continue or recalls occur, our costs and supply chain disruptions could increase further.
- Poor subcontractor availability and performance. Independent subcontractors perform essentially all of our land development and home construction work. Though we supervise such activities at our community sites, we have no control over our subcontractors’ availability or work methods. If qualified subcontractors are not available (due to general shortages in a tight labor market, competition from other builders or otherwise), or do not timely perform, we may incur production delays and other inefficiencies, or higher costs for substitute services. Also, if our subcontractors’ work or materials quality does not meet our standards, we could face more home warranty and construction defect claims, and they or their insurers may not be able to cover the associated repair costs.
- Responsibility for duties owed to subcontractors’ employees. Governmental agencies have at times sought to hold contractors like us responsible for subcontractors’ employment-related obligations to their workforces. For instance, under California law, regulators or others could assert that we are responsible for wages and benefits that our subcontractors fail to pay to their employees, or, in certain circumstances, it could be alleged that employees of our subcontractors should be deemed to be our employees. Further efforts to impose such external labor-related obligations on us could create substantial exposure for us in situations beyond our control.

Strategy Risks. Our strategies, and any related initiatives or actions, and any changes thereto, may not be successful in achieving our goals or generate any growth, earnings or returns. We may not achieve positive operational or financial results, or results equal to or better than we did in any prior period or in comparison to other homebuilders. Among other strategic risks, our business is presently concentrated in California, Florida, Nevada and Texas. Poor conditions in any of those markets could have a measurable negative impact on our results, and the impact could be larger for us than for other less-concentrated homebuilders. At the same time, we may not be successful in generating positive results from our recent expansion into the Seattle, Washington market, or if we choose to enter into any other new markets, based on our relative inexperience with the local homebuilding and economic environment and the need to make a significant investment to achieve effective scale and profitable returns, which we may not be able to accomplish.

Adverse conditions in California would have particular significance to our business. We generate the highest proportion of our revenues from and make significant inventory investments in our California operations. However, we may be constrained or delayed in entitling land and selling and delivering homes in California, and incur higher development or construction costs, from water conservation or wildfire protection measures (including precautionary and event-induced electricity blackouts, temporary or extended local or regional evacuations, development moratoriums in high-risk areas, and community resiliency design requirements) that are intended to address severe drought and climatic conditions that have arisen in recent years. In addition, as large-scale wildfires and flooding due to such conditions in California, as well as hurricanes, heavy rains and other climate change-driven natural disasters in other of our served markets, become more frequent and intense, we may experience greater disruption to our land development and homebuilding activities, delaying orders and home deliveries, among other impacts.

Also, California’s highly regulated and litigious business environment has made the state an increasingly challenging and uncertain place for us to operate. This includes the implementing regulations under the state’s Global Warming Solutions Act of 2006 (AB32) intended to lower greenhouse gas emissions. For instance, we will incur higher construction costs because of a state law requirement that effectively requires that all new homes permitted to build in 2020 and beyond have solar power systems, and we may be unable to offset (through customer leases) or cover such costs through selling price increases due to competition and

consumer affordability concerns. In addition, California and certain of its local governments are considering or have implemented restrictions on or disincentives with respect to the creation or size of new suburban and exurban residential communities generally in favor of higher-density, urban developments that can be attractive to some buyers, but in many cases are on smaller parcels with higher building costs and more complicated entitlement requirements and may be subject to greater local opposition and/or additional site remediation work. State and local municipalities have also considered banning natural gas use in new homes, among other possible steps as part of their approaches to reduce greenhouse gases. Depending on their scope, these efforts could significantly increase our land acquisition and development costs and, along with increasing competition from other homebuilders and investors for available developable land, limit our California operations' growth, while making new homes less affordable to potential buyers in the state. Partially offsetting these trends, California's governor and certain legislators have taken positions to promote new housing construction, including the adoption of the Housing Crisis Act of 2019 (SB 330) intended to expedite the approval process for housing development in order to address the housing shortage in California.

Warranty Risks. Our homebuilding business is subject to warranty and construction defect claims. Though we have insurance coverage to partially reduce our exposure, it is limited and costly, in part due to a shrinking provider market, and we have high self-insured retentions that are expected to increase. We self-insure some of our risk through a wholly-owned insurance subsidiary.

Due to our dependence on independent subcontractors to perform our homebuilding activities and inherent uncertainties, including obtaining recoveries from responsible subcontractors and/or their or our insurers, our recorded warranty and other liabilities may be inadequate to address future claims, which, among other things, could require us to record charges to increase such liabilities. We may also record charges to reflect our then-current claims experience, including the actual costs incurred. Home warranty and other construction defect issues may also generate negative publicity, including on social media and the Internet, that detracts from our reputation and efforts to sell homes.

Deferred Tax Asset Recovery and Tax Position Risks. At November 30, 2019, we had deferred tax assets of \$383.7 million, net of a \$19.2 million valuation allowance. Realizing our deferred tax assets depends on our generating sufficient future taxable income, which may not occur. Also, our deferred tax assets' value can increase or decrease with: (a) changes in the federal corporate income tax rate; in 2018, we recorded a \$112.5 million non-cash charge to our provision for income taxes primarily due to the federal corporate rate being reduced from 35% to 21% under the 2017 Tax Cuts and Jobs Act ("TCJA"); (b) our undergoing a "change of ownership" under federal tax rules, which would significantly reduce and possibly eliminate their value; and (c) adjustments in statutory or taxing authority treatment of such assets. We have filed our tax returns based on certain positions we believe are appropriate, and we may owe additional taxes if taxing authorities disagree with those positions.

Human Capital Risks. Our directors, officers and employees are important resources. If we cannot attract, retain and develop talent at reasonable pay and benefits levels, which is becoming increasingly challenging in the current tight labor market, or, alternatively, if we need to implement personnel or compensation reductions, our performance, profitability and ability to achieve our strategic goals could be significantly impaired. In addition, in many of our served markets, we need to have personnel with certain professional licenses, including building contractor and real estate brokerage licenses. Our home selling and construction activities may be severely disrupted or delayed if we do not have sufficient licensed individuals in our workforce.

Information Technology and Information Security Risks. We use information technology ("IT") resources to carry out important operational activities and maintain our business records. Third parties maintain many of our IT resources, including disaster recovery and business continuity services, under agreements with security and service level standards.

Our systems have faced a variety of phishing, denial-of-service and other attacks. We have administrative, physical and technical controls and processes in place to address cybersecurity risks and help protect our IT resources, including employee training and third-party assessments. We also rely on our service providers, Stearns and other mortgage lenders with whom we share some personal identifying and confidential information to secure our information and the homebuyer information they collect from us. Our IT security costs, including cybersecurity insurance, are significant and will likely rise in tandem with the sophistication and frequency of system attacks.

However, our, Stearns' and our service providers' measures may be inadequate and possibly have operational or security vulnerabilities that could go undetected for some period of time. If our IT resources are compromised by an intentional attack, natural or man-made disaster, electricity blackout, IT failure or systems misconfiguration, service provider error, mis-managed user access protocols, personnel action, or otherwise, we may be severely limited in conducting our business and achieving our strategic goals for an extended period, experience internal control failures or lose access to operational assets or funds. A substantial disruption, or security breach suffered by Stearns/KBHS or a service provider, could damage our reputation and result in the loss of customers or revenues, in sensitive personal information being publicly disclosed or misused and/or legal proceedings against us. We may incur significant expenses to resolve such issues.

We have invested significant resources over the past few years to develop and implement a new custom enterprise resource planning system designed to improve the efficiency of our internal operational and administrative activities. There are inherent

risks in undertaking this type of broad-based IT project and we have experienced complications and delays during the implementation process. We expect these will continue as we progress and expand the scope of the system in 2020 and that we will incur appreciable additional costs in doing so. In addition, the testing and use of the new system during this rollout could increase our exposure to the security risks and consequences discussed in the foregoing paragraph.

Legal and Compliance Risks. We are subject to substantial legal and regulatory requirements as to land development (including governmental permits, taxes and fees), the homebuilding process, worksite health and safety and environmental protection (from the effects of climate change or otherwise), which can delay our operational activities, raise our costs and/or prohibit or restrict homebuilding in some areas. For example, certain of our Texas operations are subject to rules mandating enhanced flood management practices stemming from recent large hurricanes and rainstorms. These requirements often provide broad discretion to government authorities, and they could be interpreted or revised in ways unfavorable to us. The costs to comply, or associated with any noncompliance, are, or can be, significant.

Under environmental laws, we may be responsible for removing or remediating hazardous or toxic substances even where we were not aware of their presence or for land we previously owned. The actual or potential presence of those substances on or near our properties may prevent us from performing land development or selling homes. Also, we have been, and we may in the future be, involved in federal, state and local air and water quality agency investigations or proceedings for potential noncompliance with their rules, including rules governing discharges of materials into the air and waterways; stormwater discharges from community sites; and wetlands and listed species habitat protection, and we could incur penalties and/or be restricted from developing or building at certain community locations during or as a result of such agencies' investigations or findings.

Additionally, we are involved in legal, arbitral or regulatory proceedings or investigations incidental to our business, the outcome or settlement of which could result in material claims, losses, monetary damage awards, penalties, or other direct or indirect payments recorded against our earnings, or injunctions, consent decrees or other voluntary or involuntary restrictions or adjustments to our business operations or practices. Any adverse results could be beyond our expectations, insurance coverages and/or accruals at particular points in time. Unfavorable outcomes, as well as unfavorable investor, analyst or news reports related to our industry, company, personnel or operations, may also generate negative publicity, including on social media and the Internet, damaging our reputation and resulting in the loss of customers or revenues.

To reduce the risks and expected significant costs of defending intra-corporate proceedings in multiple venues and to help ensure that such matters are considered within a well-established body of law, our By-laws provide that, subject to certain exceptions, Delaware state courts are the exclusive forum for specified internal corporate affairs actions. This may limit a stockholder's ability to bring a claim in their favored forum. At the same time, if a court were to allow for an alternative forum, or we waive the provision's application, for a particular matter, we may incur additional costs associated with resolving an otherwise relevant action in another jurisdiction(s).

The European Union and state governments, notably California and Nevada, have recently enacted or enhanced data privacy regulations, and other governments are considering establishing similar or stronger protections. These regulations impose certain obligations for securing, and potentially removing, specified personal information in our systems, and for apprising individuals of the information we have collected about them. We have incurred costs in an effort to comply with these requirements, and our costs may increase significantly if new requirements are enacted and based on how individuals exercise their rights. However, any noncompliance could result in our incurring substantial penalties and reputational damage.

KBHS' operations are heavily regulated. If Stearns, which oversees KBHS' operations, or KBHS is found to have violated regulations, or mortgage investors demand KBHS repurchase mortgage loans it has sold to them, or cover their losses, for claimed contract breaches, KBHS could face significant liabilities, which, if they exceed its reserves, could result in our recognizing losses on our KBHS equity interest.

Our financial results may be materially affected by the adoption of new or amended financial accounting standards, including those relating to revenue recognition and lease accounting, and regulatory or outside auditor guidance or interpretations.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 2. PROPERTIES

None.

Item 3. LEGAL PROCEEDINGS

Our legal proceedings are discussed in Note 17 – Legal Matters in the Notes to Consolidated Financial Statements in this report.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

Information about our Executive Officers

The following table presents certain information regarding our executive officers as of December 31, 2019:

Name	Age	Present Position	Year Assumed Present Position	Years at KB Home	Other Positions and Other Business Experience within the Last Five Years	From – To
Jeffrey T. Mezger	64	Chairman, President and Chief Executive Officer (a)	2016	26	President and Chief Executive Officer (a)	2006-2016
Jeff J. Kaminski	58	Executive Vice President and Chief Financial Officer	2010	9		
Matthew W. Mandino	55	Executive Vice President and Chief Operating Officer	2018	8	Regional President, Southwest Division President, Colorado	2016-2018 2011-2016
Albert Z. Praw	71	Executive Vice President, Real Estate and Business Development	2011	23		
Brian J. Woram	59	Executive Vice President and General Counsel	2010	9		

(a) Mr. Mezger has served as a director since 2006. He was elected Chairman of our board of directors in August 2016.

There is no family relationship between any of our executive officers or between any of our executive officers and any of our directors.

PART II**Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

Our common stock is traded on the New York Stock Exchange under the ticker symbol "KBH." As of December 31, 2019, there were 552 holders of record of our common stock.

Information regarding the shares of our common stock that may be issued under our equity compensation plans is provided below in Item 12 – Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters in this report.

The following table summarizes our purchases of our own equity securities during the three months ended November 30, 2019:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet be Purchased Under the Plans or Programs
September 1-30	—	\$ —	—	2,193,947
October 1-31	—	—	—	2,193,947
November 1-30	107,800	36.58	—	2,193,947
Total	107,800	\$ 36.58	—	

In May 2018, our board of directors authorized us to repurchase a total of up to 4,000,000 shares of our outstanding common

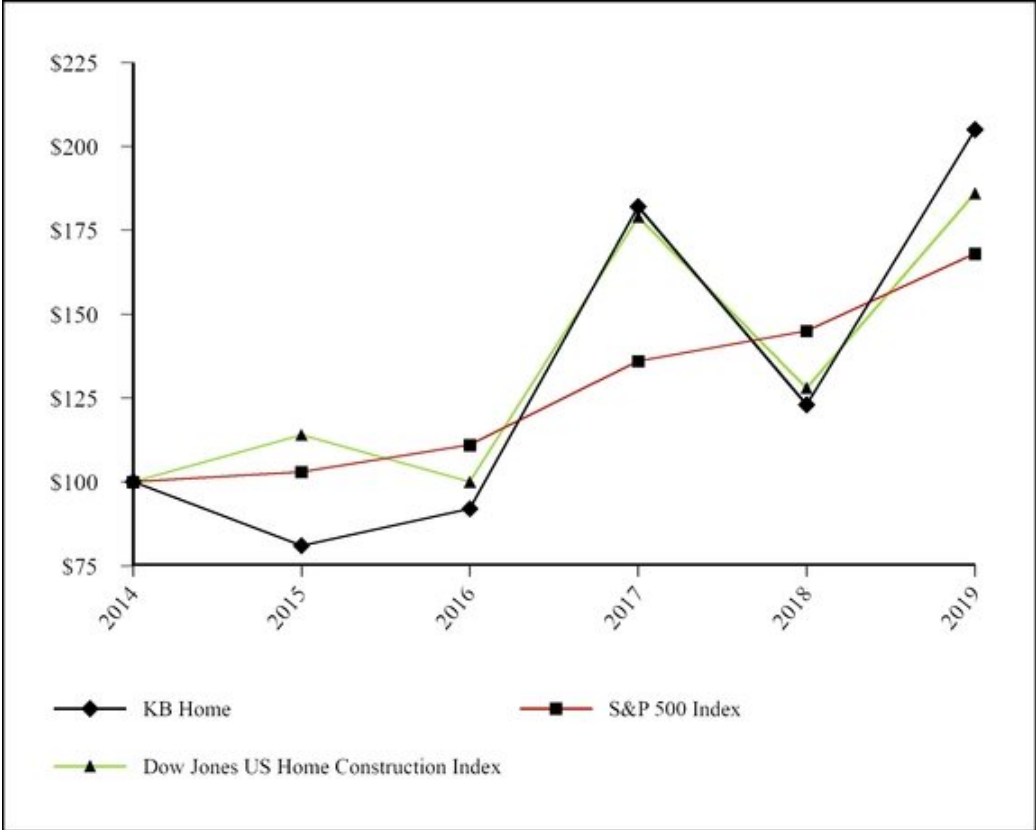
stock. This authorization reaffirmed and incorporated the then-current balance of 1,627,000 shares that remained under a prior board-approved share repurchase program. In 2018, we repurchased 1,806,053 shares of our common stock pursuant to this authorization, at a total cost of \$35.0 million. As of November 30, 2019, we had 2,193,947 shares authorized for repurchase.

The shares purchased during the three months ended November 30, 2019 were previously issued shares delivered to us by employees to satisfy withholding taxes on the vesting of restricted stock awards. These transactions are not considered repurchases under the board of directors’ authorization.

Stock Performance Graph

The following graph compares the five-year cumulative total return of KB Home common stock, the S&P 500 Index and the Dow Jones US Home Construction Index for the periods ended November 30:

**Comparison of Five-Year Cumulative Total Return
Among KB Home, S&P 500 Index and
Dow Jones US Home Construction Index**



	2014	2015	2016	2017	2018	2019
KB Home	\$ 100	\$ 81	\$ 92	\$ 182	\$ 123	\$ 205
S&P 500 Index	100	103	111	136	145	168
Dow Jones US Home Construction Index	100	114	100	179	128	186

The above graph is based on the KB Home common stock and index prices calculated as of the last trading day before December 1 of the year-end periods presented. The closing price of KB Home common stock on the New York Stock Exchange was \$34.58 per share on November 30, 2019 and \$21.11 per share on November 30, 2018. The performance of our common stock as presented above reflects past performance only and is not indicative of future performance. Total return assumes \$100 invested at market close on November 30, 2014 in KB Home common stock, the S&P 500 Index and the Dow Jones US Home Construction Index, including reinvestment of dividends.

Item 6. SELECTED FINANCIAL DATA

The data in this table should be read in conjunction with Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations and Item 8 – Financial Statements and Supplementary Data in this report.

KB HOME
SELECTED FINANCIAL DATA
(Dollars In Thousands, Except Per Share Amounts and Average Selling Price)

	Years Ended November 30,				
	2019	2018	2017	2016	2015
Statement of Operations Data:					
Revenues:					
Homebuilding	\$ 4,537,658	\$ 4,533,795	\$ 4,356,265	\$ 3,582,943	\$ 3,020,987
Financial services	15,089	13,207	12,264	11,703	11,043
Total	\$ 4,552,747	\$ 4,547,002	\$ 4,368,529	\$ 3,594,646	\$ 3,032,030
Operating income:					
Homebuilding	\$ 331,380	\$ 345,721	\$ 283,403	\$ 152,401	\$ 138,621
Financial services	10,756	9,363	8,834	7,886	7,332
Total	\$ 342,136	\$ 355,084	\$ 292,237	\$ 160,287	\$ 145,953
Pretax income	\$ 348,175	\$ 367,965	\$ 289,995	\$ 149,315	\$ 127,043
Net income (a)	268,775	170,365	180,595	105,615	84,643
Earnings per share:					
Basic	\$ 3.04	\$ 1.93	\$ 2.09	\$ 1.23	\$.92
Diluted	2.85	1.71	1.85	1.12	.85
Cash dividends declared per share	.23	.10	.10	.10	.10
Balance Sheet Data:					
Assets:					
Homebuilding	\$ 4,977,086	\$ 5,061,191	\$ 5,029,158	\$ 5,121,125	\$ 5,072,877
Financial services	38,396	12,380	12,357	10,499	14,028
Total	\$ 5,015,482	\$ 5,073,571	\$ 5,041,515	\$ 5,131,624	\$ 5,086,905
Notes payable	\$ 1,748,747	\$ 2,060,263	\$ 2,324,845	\$ 2,640,149	\$ 2,601,754
Stockholders’ equity	2,383,122	2,087,500	1,926,311	1,723,145	1,690,834
Stockholders’ equity per share	26.60	24.01	22.13	20.25	18.32
Homebuilding Data:					
Homes delivered	11,871	11,317	10,909	9,829	8,196
Average selling price	\$ 380,000	\$ 399,200	\$ 397,400	\$ 363,800	\$ 354,800
Net orders	12,841	11,014	10,900	10,283	9,253
Ending backlog — homes	5,078	4,108	4,411	4,420	3,966
Average community count	250	223	233	238	244

(a) Net income for the year ended November 30, 2018 included a non-cash charge of \$112.5 million to income tax expense for TCJA-related impacts.

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

Our discussion and analysis below is focused on our 2019 and 2018 financial results, including comparisons of our year-over-year performance between these years. Discussion and analysis of our 2017 fiscal year specifically, as well as the year-over-year comparison of our 2018 financial performance to 2017, are located in Part II, Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended November 30, 2018, filed with the SEC on January 24, 2019, which is available on our investor relations website at investor.kbhome.com and the SEC's website at www.sec.gov.

RESULTS OF OPERATIONS

Overview. Revenues are generated from our homebuilding and financial services operations. The following table presents a summary of our consolidated results of operations (dollars in thousands, except per share amounts):

	Years Ended November 30,			Variance	
	2019	2018	2017	2019 vs 2018	2018 vs 2017
Revenues:					
Homebuilding	\$ 4,537,658	\$ 4,533,795	\$ 4,356,265	— %	4 %
Financial services	15,089	13,207	12,264	14	8
Total	\$ 4,552,747	\$ 4,547,002	\$ 4,368,529	— %	4 %
Pretax income:					
Homebuilding	\$ 325,189	\$ 351,301	\$ 276,927	(7)%	27 %
Financial services	22,986	16,664	13,068	38	28
Total	348,175	367,965	289,995	(5)	27
Income tax expense	(79,400)	(197,600)	(109,400)	60	(81)
Net income	\$ 268,775	\$ 170,365	\$ 180,595	58 %	(6)%
Earnings per share:					
Basic	\$ 3.04	\$ 1.93	\$ 2.09	58 %	(8)%
Diluted	\$ 2.85	\$ 1.71	\$ 1.85	67 %	(8)%

Housing market conditions were generally healthy in 2019, with strong employment levels, relatively high consumer confidence and a limited supply of homes available for sale. During the year, we continued to execute on our long-standing, customer-centric operating strategy and our Returns-Focused Growth Plan.

Within our homebuilding operations, housing revenues of \$4.51 billion for 2019 were in line with the prior year, as a 5% increase in homes delivered was offset by a 5% decrease in the overall average selling price of those homes. Homebuilding operating income for 2019 decreased 4% year over year to \$331.4 million, and, as a percentage of homebuilding revenues, declined 30 basis points to 7.3%. Our housing gross profits for 2019 grew 5% from 2018 mainly due to an 80 basis point increase in our housing gross profit margin to 18.3%.

The increase in our housing gross profit margin for 2019 primarily reflected lower amortization of previously capitalized interest, accounting changes from our adoption of Accounting Standards Codification Topic 606, "Revenue from Contracts with Customers" ("ASC 606"), effective December 1, 2018, and a decrease in inventory-related charges. This was partly offset by higher construction and land costs, the impact of fewer homes delivered from certain communities in our West Coast homebuilding reporting segment with relatively high average selling prices and housing gross profit margins as compared to the previous year, and an increase in sales incentives as a result of pricing pressure on our net orders in the 2018 fourth quarter and 2019 first quarter due to weaker market conditions during those periods. Our selling, general and administrative expenses as a percentage of housing revenues increased 120 basis points from the prior year to 11.0%, primarily reflecting our adoption of ASC 606 and higher marketing expenses to support new community openings. Further information regarding the accounting impacts from our adoption of ASC

606 is provided in Note 1 – Summary of Significant Accounting Policies in the Notes to Consolidated Financial Statements in this report.

Our net income and diluted earnings per share for 2019 were up 58% and 67%, respectively, year over year, and included a \$6.8 million loss on the early extinguishment of debt. In 2018, our net income and diluted earnings per share included a non-cash charge of \$112.5 million for TCJA-related impacts.

Progress on Returns-Focused Growth Plan Targets. We initiated our three-year Returns-Focused Growth Plan in 2016 and, based on the business environment and our outlook at that time, established robust financial targets for 2019. The following table presents these targets and our actual results for the years ended November 30, 2019 and 2016 (dollars in thousands):

Returns-Focused Growth Plan Financial Metrics	2019 Targets	Years Ended November 30,	
		2019	2016
Housing revenues	> \$5.0 billion	\$ 4,510,814	\$ 3,575,548
Homebuilding operating income margin, excluding inventory-related charges	8% to 9%	7.7%	5.7%
Return on invested capital (a)	> 10%	9.5%	5.2%
Return on equity (a)	10.0% to 15.0%	12.2%	6.3%
Debt to capital ratio (b)	35.0% to 45.0%	42.3%	60.5%

(a) The calculation of return on invested capital is described below under “Non-GAAP Financial Measures.” Return on equity is calculated as net income for the most recent 12-month period divided by average stockholders’ equity for the trailing five quarters.

(b) Our original 2019 target was a net debt to capital ratio in the range of 40% to 50%, which we lowered to a range of 35% to 45% during 2018. In the 2019 second quarter, we further tightened our financial target to a debt to capital ratio in the range of 35% to 45%.

We made significant progress toward achieving our Returns-Focused Growth Plan targets through the variable economic and industry conditions during the three-year period from 2016 to 2019, with all metrics showing measurable improvement over that span. In addition to substantially increasing our scale, with a 26% rise in housing revenues from 2016 to 2019, we generated significant cash flow, fueling our ability to invest \$5.03 billion in land and land development, repay nearly \$850.0 million of senior notes, and return cash to our stockholders in the form of dividends and share repurchases during the same period.

While we achieved our return on equity and debt to capital ratio targets for 2019, our housing revenues were below the target, largely due to our backlog at the beginning of the year (“beginning backlog”) being down 7% from the previous year, reflecting lower net sales in the latter part of 2018 stemming from restrained buyer demand that primarily resulted from affordability concerns driven by price appreciation trends and rising mortgage interest rates preceding and during that period. Also impacting our 2019 revenues were a lower proportion of homes delivered from our West Coast homebuilding reporting segment and a decline in this segment’s average selling price that stemmed from a mix shift toward lower-priced inland California markets and coastal communities at more affordable price points. This housing revenue result led to homebuilding operating income margin, excluding inventory-related charges, and return on invested capital results that were slightly below their respective 2019 targets.

We plan to continue to follow the primary tenets of our Returns-Focused Growth Plan in 2020 and believe we are well positioned to make further improvements as discussed below under “Outlook.”

Net Orders, Backlog and Community Count. The following table presents information concerning our net orders, cancellation rate, ending backlog, and community count for the years ended November 30, 2019 and 2018 (dollars in thousands):

	Years Ended November 30,	
	2019	2018
Net orders	12,841	11,014
Net order value (a)	\$ 4,890,153	\$ 4,291,481
Cancellation rate (b)	19%	22%
Ending backlog — homes	5,078	4,108
Ending backlog — value	\$ 1,813,707	\$ 1,434,368
Ending community count	251	240
Average community count	250	223

- (a) Net order value represents the potential future housing revenues associated with net orders generated during a period, as well as homebuyer selections of lot and product premiums and design studio options and upgrades for homes in backlog during the same period.
- (b) Cancellation rate represents the total number of contracts for new homes cancelled during a period divided by the total (gross) orders for new homes generated during the same period.

Net Orders. In 2019, net orders from our homebuilding operations increased 17% from 2018, reflecting 12% growth in our overall average community count and a 5% increase in monthly net orders per community to 4.3. The year-over-year growth in our average community count is discussed below under “Community Count.” The value of our 2019 net orders rose 14% from 2018 as a result of the growth in net orders partly offset by a 2% decrease in the overall average selling price of those orders. The year-over-year increase in net orders and overall net order value reflected improvements in all four of our homebuilding reporting segments, with net order value increases ranging from 9% in our Southeast segment to 23% in our Southwest segment. In our West Coast segment, our largest segment based on housing revenues, net order value rose 10% due to a 19% increase in net orders stemming from the segment’s higher average community count, partly offset by a 7% decrease in the average selling price of those orders due to a shift in product and geographic mix toward our lower-priced inland California markets and coastal communities at more affordable price points.

Backlog. The number of homes in our backlog at November 30, 2019 increased 24% from the previous year. The potential future housing revenues in our backlog at November 30, 2019 grew 26% year over year, reflecting the higher number of homes in our backlog and a 2% increase in the average selling price of those homes. The increases in the number of homes in backlog and our backlog value reflected growth in each of our four homebuilding reporting segments. Substantially all of the homes in our backlog at November 30, 2019 are expected to be delivered during the year ending November 30, 2020.

Community Count. Our average community count for 2019 grew 12% from the previous year, with increases in all four of our homebuilding reporting segments, ranging from 1% in our Central segment to 24% in our West Coast segment. Our ending community count for 2019 rose 5% from the prior year. The year-over-year increases in both our average and ending community counts reflect the investments in land and land development we have made over the past several quarters.

We invested \$1.62 billion in land and land development in 2019 to support home delivery and revenue growth in 2020 and beyond. In 2018, such investments totaled \$1.89 billion. Approximately 39% of our total investment in 2019 related to land acquisitions, compared to approximately 50% in 2018.

HOMEBUILDING

The following table presents a summary of certain financial and operational data for our homebuilding operations (dollars in thousands, except average selling price):

	Years Ended November 30,		
	2019	2018	2017
Revenues:			
Housing	\$ 4,510,814	\$ 4,517,244	\$ 4,335,205
Land	26,844	16,551	21,060
Total	4,537,658	4,533,795	4,356,265
Costs and expenses:			
Construction and land costs			
Housing	(3,683,174)	(3,728,917)	(3,627,732)
Land	(25,754)	(15,003)	(18,736)
Total	(3,708,928)	(3,743,920)	(3,646,468)
Selling, general and administrative expenses			
Total	(497,350)	(444,154)	(426,394)
	(4,206,278)	(4,188,074)	(4,072,862)
Operating income	\$ 331,380	\$ 345,721	\$ 283,403
Homes delivered	11,871	11,317	10,909
Average selling price	\$ 380,000	\$ 399,200	\$ 397,400
Housing gross profit margin as a percentage of housing revenues	18.3%	17.5%	16.3%
Housing gross profit margin excluding inventory-related charges as a percentage of housing revenues	18.7%	18.1%	16.9%
Adjusted housing gross profit margin as a percentage of housing revenues	22.2%	22.5%	21.8%
Selling, general and administrative expense as a percentage of housing revenues	11.0%	9.8%	9.8%
Operating income as a percentage of homebuilding revenues	7.3%	7.6%	6.5%

The following tables present homes delivered, net orders, cancellation rates as a percentage of gross orders, net order value, average community count, and ending backlog (number of homes and value) by homebuilding reporting segment (dollars in thousands):

Segment	Years Ended November 30,					
	Homes Delivered		Net Orders		Cancellation Rates	
	2019	2018	2019	2018	2019	2018
West Coast	3,214	3,152	3,542	2,985	19%	20%
Southwest	2,346	2,301	2,658	2,139	13	17
Central	4,291	4,113	4,565	4,045	21	27
Southeast	2,020	1,751	2,076	1,845	23	21
Total	11,871	11,317	12,841	11,014	19%	22%

Years Ended November 30,						
Segment	Net Order Value			Average Community Count		
	2019	2018	Variance	2019	2018	Variance
West Coast	\$ 2,087,293	\$ 1,893,597	10%	67	54	24%
Southwest	842,335	682,172	23	41	34	21
Central	1,362,580	1,169,397	17	92	91	1
Southeast	597,945	546,315	9	50	44	14
Total	\$ 4,890,153	\$ 4,291,481	14%	250	223	12%

November 30,						
Segment	Backlog – Homes			Backlog – Value		
	2019	2018	Variance	2019	2018	Variance
West Coast	1,043	715	46%	\$ 598,299	\$ 414,564	44%
Southwest	1,238	926	34	389,597	302,614	29
Central	1,988	1,714	16	590,936	487,921	21
Southeast	809	753	7	234,875	229,269	2
Total	5,078	4,108	24%	\$ 1,813,707	\$ 1,434,368	26%

Revenues. Homebuilding revenues of \$4.54 billion in 2019 were essentially flat with 2018, reflecting housing revenues that were even with the previous year and an increase in land sale revenues.

Housing revenues in 2019 were on par with the previous year, as a 5% increase in homes delivered was offset by a 5% decrease in the overall average selling price of those homes. The year-over-year increase in homes delivered in 2019 reflected a 17% rise in our net orders during the year as our beginning backlog was down 7%, reflecting lower net sales in the latter part of 2018 stemming from restrained buyer demand that primarily resulted from affordability concerns driven by price appreciation trends and rising mortgage interest rates preceding and during that period. The overall average selling price of our homes delivered decreased in 2019 as compared to 2018, mainly due to a 10% decline in our West Coast homebuilding reporting segment that resulted from fewer homes delivered from certain communities with relatively high average selling prices, and a community mix shift toward lower-priced inland California markets and coastal communities at more affordable price points.

Land sale revenues for 2019 increased 62% from 2018. Generally, land sale revenues fluctuate with our decisions to maintain or decrease our land ownership position in certain markets based upon the volume of our holdings, our business strategy, the strength and number of developers and other land buyers in particular markets at given points in time, the availability of opportunities to sell land at acceptable prices and prevailing market conditions.

Operating Income. Our homebuilding operating income decreased 4% in 2019, as compared to the previous year, due to an increase in housing gross profits that was more than offset by an increase in selling, general and administrative expenses. Our homebuilding operating income included total inventory-related charges of \$17.3 million in 2019 and \$29.0 million in 2018, as discussed in Note 7 – Inventory Impairments and Land Option Contract Abandonments in the Notes to Consolidated Financial Statements in this report. Excluding inventory-related charges, our homebuilding operating income as a percentage of homebuilding revenues was 7.7% in 2019 and 8.3% in 2018.

In 2019, housing gross profits rose by \$39.3 million, or 5%, to \$827.6 million from \$788.3 million in 2018. The year-over-year increase in 2019 reflected the higher volume of homes delivered and an increase in the housing gross profit margin. Housing gross profits for 2019 and 2018 included the respective inventory-related charges described above.

Our housing gross profit margin for 2019 increased 80 basis points from the previous year, primarily due to the favorable impacts of lower amortization of previously capitalized interest as a percentage of housing revenues (approximately 90 basis points), our adoption of ASC 606 (approximately 70 basis points), and a decrease in inventory-related charges (approximately 20 basis points). These items were partly offset by higher construction and land costs (approximately 70 basis points), an increase in sales incentives as a result of pricing pressure on our net orders in the 2018 fourth quarter and 2019 first quarter due to weaker market conditions during those periods (approximately 20 basis points), and higher fixed community-level expenses supporting community count growth (approximately 10 basis points). Our housing gross profit margin for 2019 was also negatively impacted in part by fewer homes delivered from certain West Coast homebuilding reporting segment communities with relatively high average selling prices and housing gross profit margins as compared to the previous year.

Excluding the amortization of previously capitalized interest associated with housing operations of \$156.1 million and \$197.9 million in 2019 and 2018, respectively, and the above-mentioned inventory-related charges in the applicable periods, our adjusted housing gross profit margin decreased 30 basis points to 22.2% in 2019 from 22.5% in 2018. The calculation of adjusted housing gross profit margin, which we believe provides a clearer measure of the performance of our business, is described below under “Non-GAAP Financial Measures.”

Selling, general and administrative expenses rose 12% in 2019 from the prior year, primarily due to our adoption of ASC 606 and increased marketing expenses to support new community openings. As a percentage of housing revenues, our selling, general and administrative expenses rose 120 basis points in 2019 as compared to 2018.

Interest Income. Interest income, which is generated from short-term investments, totaled \$2.2 million in 2019 and \$3.5 million in 2018. Generally, increases and decreases in interest income are attributable to changes in the interest-bearing average balances of short-term investments and fluctuations in interest rates.

Interest Expense. Interest expense results principally from our borrowings to finance land acquisitions, land development, home construction and other operating and capital needs. All interest incurred during 2019 and 2018 was capitalized as the average amount of our inventory qualifying for interest capitalization was higher than our average debt level for the period. As a result, we had no interest expense for 2019 or 2018.

Interest incurred declined 4% to \$143.4 million in 2019, from \$149.7 million in 2018, due to our lower average debt level, partly offset by a higher average interest rate. The lower average debt level in 2019 primarily reflected the repayment of certain senior notes during the year. The amount of interest incurred generally fluctuates based on the average amount of debt outstanding for the period and/or the interest rate on that debt.

Interest amortized to construction and land costs associated with housing operations totaled \$156.1 million in 2019 and \$197.9 million in 2018. The year-over-year decrease in interest amortized in 2019 mainly reflected the reduction in our interest incurred and the growth in our active inventory, which enabled us to allocate the lower level of interest over a larger population of owned lots. As a percentage of housing revenues, the amortization of previously capitalized interest associated with housing operations was 3.5% for 2019 and 4.4% for 2018. Interest amortized to construction and land costs in 2019 and 2018 included \$.7 million and \$4.8 million, respectively, of amortization of previously capitalized interest related to land sales that occurred during those years.

Equity in Income (Loss) of Unconsolidated Joint Ventures. Our equity in loss of unconsolidated joint ventures totaled \$1.5 million in 2019, compared to equity in income of unconsolidated joint ventures of \$2.1 million in 2018. Further information regarding our investments in unconsolidated joint ventures is provided in Note 9 – Investments in Unconsolidated Joint Ventures in the Notes to Consolidated Financial Statements in this report.

Loss on Early Extinguishment of Debt. Our \$6.8 million loss on early extinguishment of debt in 2019 was associated with our optional redemption of \$350.0 million in aggregate principal amount of our 8.00% senior notes due 2020 (“8.00% Senior Notes due 2020”) prior to their maturity date.

Non-GAAP Financial Measures

This report contains information about our adjusted housing gross profit margin, adjusted income tax expense, adjusted net income, adjusted diluted earnings per share, adjusted effective tax rate, return on invested capital, and ratio of net debt to capital, none of which are calculated in accordance with generally accepted accounting principles (“GAAP”). We believe these non-GAAP financial measures are relevant and useful to investors in understanding our operations and the leverage employed in our operations, and may be helpful in comparing us with other companies in the homebuilding industry to the extent they provide similar information. However, because they are not calculated in accordance with GAAP, these non-GAAP financial measures may not be completely comparable to other companies in the homebuilding industry and, thus, should not be considered in isolation or as an alternative to operating performance and/or financial measures prescribed by GAAP. Rather, these non-GAAP financial measures should be used to supplement their respective most directly comparable GAAP financial measures in order to provide a greater understanding of the factors and trends affecting our operations.

Adjusted Housing Gross Profit Margin. The following table reconciles our housing gross profit margin calculated in accordance with GAAP to the non-GAAP financial measure of our adjusted housing gross profit margin (dollars in thousands):

	Years Ended November 30,		
	2019	2018	2017
Housing revenues	\$ 4,510,814	\$ 4,517,244	\$ 4,335,205
Housing construction and land costs	(3,683,174)	(3,728,917)	(3,627,732)
Housing gross profits	827,640	788,327	707,473
Add: Inventory-related charges (a)	17,291	28,994	25,232
Housing gross profits excluding inventory-related charges	844,931	817,321	732,705
Add: Amortization of previously capitalized interest (b)	156,114	197,936	210,538
Adjusted housing gross profits	\$ 1,001,045	\$ 1,015,257	\$ 943,243
Housing gross profit margin as a percentage of housing revenues	18.3%	17.5%	16.3%
Housing gross profit margin excluding inventory-related charges as a percentage of housing revenues	18.7%	18.1%	16.9%
Adjusted housing gross profit margin as a percentage of housing revenues	22.2%	22.5%	21.8%

(a) Represents inventory impairment and land option contract abandonment charges associated with housing operations.

(b) Represents the amortization of previously capitalized interest associated with housing operations.

Adjusted housing gross profit margin is a non-GAAP financial measure, which we calculate by dividing housing revenues less housing construction and land costs excluding (1) housing inventory impairment and land option contract abandonment charges (as applicable) recorded during a given period and (2) amortization of previously capitalized interest associated with housing operations, by housing revenues. The most directly comparable GAAP financial measure is housing gross profit margin. We believe adjusted housing gross profit margin is a relevant and useful financial measure to investors in evaluating our performance as it measures the gross profits we generated specifically on the homes delivered during a given period. This non-GAAP financial measure isolates the impact that the housing inventory impairment and land option contract abandonment charges, and the amortization of previously capitalized interest associated with housing operations, have on housing gross profit margins, and allows investors to make comparisons with our competitors that adjust housing gross profit margins in a similar manner. We also believe investors will find adjusted housing gross profit margin relevant and useful because it represents a profitability measure that may be compared to a prior period without regard to variability of housing inventory impairment and land option contract abandonment charges, and amortization of previously capitalized interest associated with housing operations. This financial measure assists us in making strategic decisions regarding community location and product mix, product pricing and construction pace.

Adjusted Income Tax Expense, Adjusted Net Income, Adjusted Diluted Earnings Per Share and Adjusted Effective Tax Rate. The following table reconciles our income tax expense, net income, diluted earnings per share and effective tax rate calculated in accordance with GAAP to the non-GAAP financial measures of adjusted income tax expense, adjusted net income, adjusted diluted earnings per share and adjusted effective tax rate, respectively (in thousands, except per share amounts):

	Years ended November 30,				
	2019		2018		2017
	As Reported	As Reported	TCJA Adjustment	As Adjusted	As Reported
Total pretax income	\$ 348,175	\$ 367,965	\$ —	\$ 367,965	\$ 289,995
Income tax expense (a)	(79,400)	(197,600)	112,500	(85,100)	(109,400)
Net income	\$ 268,775	\$ 170,365	\$ 112,500	\$ 282,865	\$ 180,595
Diluted earnings per share	\$ 2.85	\$ 1.71		\$ 2.82	\$ 1.85
Weighted average shares outstanding — diluted	93,838	101,059		101,059	98,316
Effective tax rate (a)	22.8%	53.7%		23.1%	37.7%

- (a) For the year ended November 30, 2019, income tax expense and the related effective tax rate reflected the favorable impacts of \$5.3 million of excess tax benefits related to stock-based compensation, a \$4.4 million deferred tax asset valuation allowance reversal and \$4.3 million of federal energy tax credits we earned from building energy-efficient homes, partly offset by a \$1.9 million non-cash charge due to the re-measurement of deferred tax assets based on a reduction in certain state income tax rates. For the year ended November 30, 2018, income tax expense and adjusted income tax expense, as well as the related effective tax rate and adjusted effective tax rate, included the favorable impacts of the reduction in the federal corporate income tax rate from 35% to 21%, effective January 1, 2018, \$10.7 million of federal energy tax credits we earned from building energy-efficient homes, a \$2.1 million net benefit from a reduction in our deferred tax asset valuation allowance, and \$1.0 million of excess tax benefits from stock-based compensation as a result of our adoption of Accounting Standards Update No. 2016-09, “Compensation — Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting” (“ASU 2016-09”), effective December 1, 2017.

Our adjusted income tax expense, adjusted net income, adjusted diluted earnings per share and adjusted effective tax rate are non-GAAP financial measures, which we calculate by excluding a non-cash charge of \$112.5 million recorded in 2018 from our reported income tax expense, net income, diluted earnings per share and effective tax rate, respectively. This charge was primarily due to our accounting re-measurement of our deferred tax assets based on the above-noted reduction in the federal corporate income tax rate under the TCJA. The most directly comparable GAAP financial measures are our income tax expense, net income, diluted earnings per share and effective tax rate. We believe that these non-GAAP measures are meaningful to investors as they allow for an evaluation of our operating results without the impact of the TCJA-related charge.

Return on Invested Capital. The following table sets forth our calculation of return on invested capital as used under our Returns-Focused Growth Plan, together with a reconciliation of net operating profit after tax to net income, the most comparable GAAP measure (dollars in thousands):

	<u>Years Ended November 30,</u>	
	<u>2019</u>	<u>2016</u>
Net income	\$ 268,775	\$ 105,615
Adjustments:		
Interest (income) expense, net	(2,158)	5,371
Loss on early extinguishment of debt	6,800	—
Amortization of previously capitalized interest (a)	156,803	161,285
Income tax impact (b)	(36,800)	(48,800)
Net operating profit after tax	<u>\$ 393,420</u>	<u>\$ 223,471</u>
Average notes payable	\$ 1,945,458	\$ 2,627,689
Average stockholders' equity	2,211,312	1,669,731
Average invested capital	<u>\$ 4,156,770</u>	<u>\$ 4,297,420</u>
Return on invested capital	<u>9.5%</u>	<u>5.2%</u>

(a) Represents the amortization of previously capitalized interest associated with homebuilding operations.

(b) Represents the total adjustments to net income multiplied by our effective tax rate, which was 22.8% for 2019 and 29.3% for 2016.

We define return on invested capital as net operating profit after tax, a non-GAAP financial measure, for the most recent 12-month period divided by average invested capital (average notes payable and stockholders' equity for the trailing five quarters). In addition to its use in measuring our performance under our Returns-Focused Growth Plan against the corresponding three-year objective, we believe return on invested capital is a relevant and useful financial measure to investors in understanding how effectively we deploy our capital.

Ratio of Net Debt to Capital. The following table reconciles our ratio of debt to capital calculated in accordance with GAAP to the non-GAAP financial measure of our ratio of net debt to capital (dollars in thousands):

	November 30,	
	2019	2018
Notes payable	\$ 1,748,747	\$ 2,060,263
Stockholders' equity	2,383,122	2,087,500
Total capital	<u>\$ 4,131,869</u>	<u>\$ 4,147,763</u>
Ratio of debt to capital	<u>42.3%</u>	<u>49.7%</u>
Notes payable	\$ 1,748,747	\$ 2,060,263
Less: Cash and cash equivalents	(453,814)	(574,359)
Net debt	1,294,933	1,485,904
Stockholders' equity	2,383,122	2,087,500
Total capital	<u>\$ 3,678,055</u>	<u>\$ 3,573,404</u>
Ratio of net debt to capital	<u>35.2%</u>	<u>41.6%</u>

The ratio of net debt to capital is a non-GAAP financial measure, which we calculate by dividing notes payable, net of homebuilding cash and cash equivalents, by capital (notes payable, net of homebuilding cash and cash equivalents, plus stockholders' equity). The most directly comparable GAAP financial measure is the ratio of debt to capital. We believe the ratio of net debt to capital is a relevant and useful financial measure to investors in understanding the degree of leverage employed in our operations.

HOMEBUILDING REPORTING SEGMENTS

Below is a discussion of the financial results of each of our homebuilding reporting segments. Further information regarding these segments, including their pretax income (loss), is included in Note 2 – Segment Information in the Notes to Consolidated Financial Statements in this report. The difference between each homebuilding reporting segment's operating income (loss) and pretax income (loss) is generally due to the equity in income (loss) of unconsolidated joint ventures, which is also presented in Note 2 – Segment Information in the Notes to Consolidated Financial Statements in this report, and/or interest income and expense.

West Coast. The following table presents financial information related to our West Coast homebuilding reporting segment for the years indicated (dollars in thousands, except average selling price):

	Years Ended November 30,			Variance	
	2019	2018	2017	2019 vs 2018	2018 vs 2017
Revenues	\$ 1,912,146	\$ 2,085,328	\$ 2,186,411	(8) %	(5) %
Construction and land costs	(1,591,896)	(1,720,776)	(1,835,504)	7	6
Selling, general and administrative expenses	(141,324)	(123,254)	(131,182)	(15)	6
Operating income	<u>\$ 178,926</u>	<u>\$ 241,298</u>	<u>\$ 219,725</u>	<u>(26) %</u>	<u>10 %</u>
Homes delivered	3,214	3,152	3,387	2 %	(7) %
Average selling price	\$ 592,300	\$ 661,500	\$ 644,900	(10) %	3 %
Housing gross profit margin	16.8%	17.5%	16.0%	(70)bps	150bps

This segment's revenues in 2019 and 2018 were generated from both housing operations and land sales. Housing revenues of \$1.90 billion in 2019 decreased 9% from \$2.09 billion in 2018, reflecting a lower average selling price of homes delivered, partly offset by an increase in the number of homes delivered. The decrease in the average selling price of homes delivered in 2019 reflected a product and geographic mix shift, particularly the impact from fewer deliveries from certain communities with relatively high average selling prices, and a greater number of homes delivered from lower-priced inland California markets and coastal communities at more affordable price points. The growth in the number of homes delivered mainly reflected a 19% rise in net orders during the year as this segment's beginning backlog was down 19% compared to the year-earlier period, which reflected an 11% year-over-year reduction in the average community count in 2018 and softer market conditions that impacted net orders in the 2018 latter half.

This segment's operating income in 2019 declined from the previous year, mainly reflecting lower housing gross profits and higher selling, general and administrative expenses. The decrease in housing gross profits reflected declines in both housing revenues and the housing gross profit margin. The decrease in the housing gross profit margin was primarily due to an increase in construction and land costs as a percentage of housing revenues as a result of a mix shift, with a lower proportion of homes delivered from communities with relatively high average selling prices and housing gross profit margins; reduced operating leverage on fixed costs due to lower housing revenues; and an increase in sales incentives. These cost increases were partly offset by lower amortization of previously capitalized interest, accounting changes resulting from our adoption of ASC 606, and a decrease in inventory-related charges. Inventory-related charges impacting the housing gross profit margin totaled \$15.6 million in 2019, compared to \$20.4 million in 2018. Selling, general and administrative expenses as a percentage of housing revenues for 2019 rose from the previous year, primarily as a result of our adoption of ASC 606, higher marketing expenses to support new community openings and reduced operating leverage on fixed costs due to lower housing revenues.

Southwest. The following table presents financial information related to our Southwest homebuilding reporting segment for the years indicated (dollars in thousands, except average selling price):

	Years Ended November 30,			Variance	
	2019	2018	2017	2019 vs 2018	2018 vs 2017
Revenues	\$ 764,816	\$ 707,075	\$ 533,052	8 %	33 %
Construction and land costs	(585,880)	(568,194)	(445,451)	(3)	(28)
Selling, general and administrative expenses	(67,223)	(50,897)	(42,329)	(32)	(20)
Operating income	\$ 111,713	\$ 87,984	\$ 45,272	27 %	94 %
Homes delivered	2,346	2,301	1,837	2 %	25 %
Average selling price	\$ 322,000	\$ 307,300	\$ 290,200	5 %	6 %
Housing gross profit margin	23.8%	19.6%	16.4%	420bps	320bps

In 2019, this segment's revenues were generated from both housing operations and land sales, with housing revenues totaling \$755.4 million. In 2018, this segment's revenues were generated solely from housing operations. Housing revenues increased 7% in 2019 as compared to the corresponding previous year, reflecting growth in the number of homes delivered and a higher average selling price of those homes. In 2019, the year-over-year increase in the number of homes delivered was attributable to our Nevada operations. The higher average selling price was mainly due to a product and geographic mix shift of homes delivered and generally favorable market conditions.

This segment's operating income increased \$23.7 million from 2018 due to higher housing gross profits, partly offset by higher selling, general and administrative expenses. The year-over-year increase in housing gross profits reflected growth in housing revenues and an increase in the housing gross profit margin. The improvement in the housing gross profit margin was largely due to a greater proportion of homes delivered from newer, higher-margin communities, lower amortization of previously capitalized interest, and accounting changes resulting from our adoption of ASC 606. Selling, general and administrative expenses as a percentage of housing revenues for 2019 increased from 2018, mainly as a result of our adoption of ASC 606, as well as legal recoveries and a favorable legal settlement in 2018.

Central. The following table presents financial information related to our Central homebuilding reporting segment for the years indicated (dollars in thousands, except average selling price):

	Years Ended November 30,			Variance	
	2019	2018	2017	2019 vs 2018	2018 vs 2017
Revenues	\$ 1,267,892	\$ 1,239,305	\$ 1,188,839	2 %	4 %
Construction and land costs	(1,015,415)	(1,010,674)	(963,202)	—	(5)
Selling, general and administrative expenses	(126,176)	(111,028)	(109,385)	(14)	(2)
Operating income	\$ 126,301	\$ 117,603	\$ 116,252	7 %	1 %
Homes delivered	4,291	4,113	4,136	4 %	(1) %
Average selling price	\$ 293,500	\$ 297,400	\$ 284,800	(1) %	4 %
Housing gross profit margin	19.9%	18.6%	19.2%	130bps	(60)bps

In 2019 and 2018, revenues for this segment were generated from both housing operations and land sales. Housing revenues in 2019 increased 3% to \$1.26 billion from \$1.22 billion in 2018 due to an increase in the number of homes delivered, which was partially offset by a slight decrease in the average selling price of those homes. In 2019, the growth in the number of homes delivered was attributable to our Texas operations. The decrease in the average selling price reflected a shift in product and geographic mix, with fewer homes delivered from our Colorado operations, which typically have higher-priced communities relative to our Texas operations. Land sale revenues were \$8.3 million in 2019, compared to \$16.1 million in 2018.

In 2019, this segment's operating income increased \$8.7 million from 2018, mainly due to an increase in housing gross profits that was partly offset by an increase in selling, general and administrative expenses. Housing gross profits increased mainly due to improvement in the housing gross profit margin. The housing gross profit margin rose from the previous year primarily due to lower amortization of previously capitalized interest, and accounting changes resulting from our adoption of ASC 606. Selling, general and administrative expenses as a percentage of housing revenues for 2019 increased from the prior year, primarily due to our adoption of ASC 606 and higher marketing expenses.

Southeast. The following table presents financial information related to our Southeast homebuilding reporting segment for the years indicated (dollars in thousands, except average selling price):

	Years Ended November 30,			Variance	
	2019	2018	2017	2019 vs 2018	2018 vs 2017
Revenues	\$ 592,804	\$ 502,087	\$ 447,963	18 %	12 %
Construction and land costs	(508,351)	(437,522)	(396,026)	(16)	(10)
Selling, general and administrative expenses	(65,902)	(56,940)	(52,378)	(16)	(9)
Operating income (loss)	\$ 18,551	\$ 7,625	\$ (441)	143 %	(a)
Homes delivered	2,020	1,751	1,549	15 %	13 %
Average selling price	\$ 293,200	\$ 286,600	\$ 284,100	2 %	1 %
Housing gross profit margin	14.3%	12.9%	11.7%	140bps	120bps

(a) Percentage not meaningful

This segment's revenues in 2019 and 2018 were generated from both housing operations and land sales. Housing revenues in 2019 increased 18% to \$592.3 million from \$501.9 million in 2018. The year-over-year growth in housing revenues in 2019 reflected increases in both the number of homes delivered and the average selling price of those homes. In 2019, the increase in the number of homes delivered mainly reflected a larger beginning backlog, which was up 14% compared to the year-earlier period, and an increase in homes delivered from newer communities. The year-over-year increase in the average selling price in 2019 was mainly due to a greater proportion of homes delivered from higher-priced communities.

This segment's operating income in 2019 rose \$10.9 million from 2018 due to an increase in housing gross profits, partly offset by an increase in selling, general and administrative expenses. The year-over-year growth in housing gross profits reflected

increases in both the number of homes delivered and the housing gross profit margin. The housing gross profit margin improved primarily due to accounting changes resulting from our adoption of ASC 606, lower amortization of previously capitalized interest, and lower inventory-related charges. These improvements were partly offset by an increase in construction and land costs as a percentage of housing revenues as a result of homes delivered from lots we acquired in 2018 from a regional homebuilder in Florida. In 2019, inventory-related charges impacting the housing gross profit margin totaled \$5.5 million, compared to \$5.6 million in 2018. Selling, general and administrative expenses as a percentage of housing revenues for 2019 decreased from the previous year, primarily due to a decrease in legal accruals, partly offset by our adoption of ASC 606.

FINANCIAL SERVICES REPORTING SEGMENT

The following table presents a summary of selected financial and operational data for our financial services reporting segment (dollars in thousands):

	Years Ended November 30,		
	2019	2018	2017
Revenues	\$ 15,089	\$ 13,207	\$ 12,264
Expenses	(4,333)	(3,844)	(3,430)
Equity in income of unconsolidated joint ventures	12,230	7,301	4,234
Pretax income	\$ 22,986	\$ 16,664	\$ 13,068
Total originations (a):			
Loans	7,436	5,659	2,485
Principal	\$ 2,190,823	\$ 1,578,037	\$ 688,763
Percentage of homebuyers using KBHS	70%	56%	25%
Average FICO score	719	718	719
Loans sold (a):			
Loans sold to Stearns/Nationstar	6,224	5,028	1,872
Principal	\$ 1,827,917	\$ 1,419,140	\$ 514,307
Loans sold to other third parties	772	490	196
Principal	\$ 202,349	\$ 120,815	\$ 51,425
Mortgage loan origination mix (a):			
Conventional/non-conventional loans	58%	56%	52%
FHA loans	26%	27%	31%
Other government loans	16%	17%	17%
Loan type (a):			
Fixed	98%	99%	99%
ARM	2%	1%	1%

(a) Loan originations and sales occurred within KBHS.

Revenues. Our financial services reporting segment generates revenues primarily from insurance commissions and title services. The year-over-year growth in our financial services revenues for 2019 reflected increases in both insurance commissions and title services revenues. In 2019, we also expanded our title services business to Arizona, Colorado and Nevada.

Expenses. General and administrative expenses increased in 2019, as compared to 2018, reflecting the growth in our financial services revenues.

Equity in Income of Unconsolidated Joint Ventures. The equity in income of unconsolidated joint ventures rose on a year-over-year basis in 2019 primarily due to a substantial increase in the percentage of our homebuyers using KBHS.

On July 9, 2019, the parent company of Stearns, our partner in KBHS, filed a voluntary bankruptcy petition in the United States Bankruptcy Court, Southern District of New York, with Stearns included as a debtor in the case. KBHS was not included

in the filing. On October 24, 2019, the court confirmed Stearns' parent company's plan of reorganization under which, among other things, one of its largest owners took full control of the reorganized company and invested significant new equity capital in the business. The confirmed plan of reorganization became effective on November 5, 2019. During the pendency of the bankruptcy proceedings, KBHS provided mortgage banking services to our homebuyers consistent with its pre-filing performance and there was no consolidated financial statement impact. With the plan of reorganization now effective, we believe KBHS will be financially and operationally able to continue to provide such mortgage banking services in the ordinary course.

INCOME TAXES

Income Tax Expense. Our income tax expense and effective income tax rate were as follows (dollars in thousands):

	Years Ended November 30,		
	2019	2018	2017
Income tax expense	\$ 79,400	\$ 197,600	\$ 109,400
Effective income tax rate	22.8%	53.7%	37.7%

Our income tax expense and effective tax rate for 2019 reflected the favorable impacts of \$5.3 million of excess tax benefits related to stock-based compensation, a \$4.4 million deferred tax asset valuation allowance reversal and \$4.3 million of federal energy tax credits, partly offset by a \$1.9 million non-cash charge due to the re-measurement of deferred tax assets based on a reduction in certain state income tax rates.

Our income tax expense and effective tax rate for 2018 included a non-cash charge of \$112.5 million for TCJA-related impacts; the favorable effect of the reduction in the federal corporate income tax rate under the TCJA; the favorable net impact of federal energy tax credits of \$10.7 million that we earned from building energy-efficient homes; a \$2.1 million net tax benefit from a reduction in our state deferred tax asset valuation allowance; and excess tax benefits related to stock-based compensation of \$1.0 million. The TCJA required us to use a blended federal tax rate for our 2018 fiscal year by applying a prorated percentage of days before and after the January 1, 2018 effective date. As a result, our 2018 federal statutory tax rate was approximately 22%.

The federal energy tax credits for the year ended November 30, 2018 resulted from legislation enacted on February 9, 2018, which, among other things, extended the availability of a business tax credit for building new energy-efficient homes through December 31, 2017. Prior to this legislation, the tax credit expired on December 31, 2016. In December 2019, federal legislation was enacted, which among other things, extended the availability of the credit through December 31, 2020. This extension is expected to benefit our income tax provision in future periods.

Excluding the above-mentioned charge of \$112.5 million for TCJA-related impacts, our adjusted income tax expense and adjusted effective tax rate for 2018 were \$85.1 million and 23.1%, respectively. The calculations of adjusted income tax expense and adjusted effective tax rate are described above under "Non-GAAP Financial Measures."

Under current accounting standards, we expect volatility in our income tax expense in future periods, the magnitude of which will depend on, among other factors, the price of our common stock and the timing and volume of stock-based compensation award activity, such as employee exercises of stock options and the vesting of restricted stock awards and performance-based restricted stock units (each, a "PSU").

For each of the years ended November 30, 2019 and 2018, the amount of income taxes we paid was substantially less than our income tax expense primarily due to the utilization of our deferred tax assets to reduce taxable income. We anticipate this will continue for the next several years due to the sizable deferred tax assets remaining as of November 30, 2019.

Further information regarding our income taxes is provided in Note 13 – Income Taxes in the Notes to Consolidated Financial Statements in this report.

LIQUIDITY AND CAPITAL RESOURCES

Overview. We have funded our homebuilding and financial services activities over the last several years with:

- internally generated cash flows;
- public issuances of debt securities;
- borrowings under the Credit Facility;
- land option contracts and other similar contracts and seller notes;
- public issuances of our common stock; and
- letters of credit and performance bonds.

We also have the ability to borrow funds under the Credit Facility. We manage our use of cash in the operation of our business to support the execution of our primary strategic goals. Over the past several years, we have primarily used cash for:

- land acquisitions and land development;
- home construction;
- operating expenses;
- principal and interest payments on notes payable; and
- repayments of borrowings under the Credit Facility.

Our investments in land and land development totaled \$1.62 billion in 2019 and \$1.89 billion in 2018. Approximately 39% of our total investments in 2019 related to land acquisitions, compared to approximately 50% in 2018. While we made strategic investments in land and land development in each of our homebuilding reporting segments in each of these years, approximately 53% in 2019 and 56% in 2018 were made in our West Coast homebuilding reporting segment. In 2018, we significantly expanded our existing Jacksonville, Florida operations by acquiring approximately 2,100 owned or controlled lots from a regional homebuilder, and entered the attractive Seattle, Washington market. Our investments in land and land development in the future will depend significantly on market conditions and available opportunities that meet our investment return standards to support home delivery and revenue growth in 2020 and beyond.

The following table presents the number of lots we owned or controlled under land option contracts and other similar contracts and the carrying value of inventory by homebuilding reporting segment (dollars in thousands):

Segment	November 30, 2019		November 30, 2018		Variance	
	Lots	\$	Lots	\$	Lots	\$
West Coast	12,842	\$ 1,795,088	12,680	\$ 1,727,993	162	\$ 67,095
Southwest	10,026	629,811	9,815	598,374	211	31,437
Central	22,937	889,179	22,237	865,184	700	23,995
Southeast	9,893	390,524	8,895	391,288	998	(764)
Total	55,698	\$ 3,704,602	53,627	\$ 3,582,839	2,071	\$ 121,763

The number and carrying value of lots we owned or controlled under land option contracts and other similar contracts at November 30, 2019 increased from November 30, 2018, primarily due to our investments in land and land development during 2019 and an increase in the number of homes completed or under construction. The number of lots in inventory as of November 30, 2019 and 2018 excludes 9,212 and 11,185 lots, respectively, under contract where the associated deposits were refundable at our discretion. Including these lots, our land under contract as a percentage of total lots was 41% at November 30, 2019 and 39% at November 30, 2018. Generally, this percentage fluctuates with our decisions to control (or abandon) lots under land option contracts and other similar contracts or to purchase (or sell owned) lots based on available opportunities and our investment return standards.

Liquidity. The table below summarizes our total cash and cash equivalents, and total liquidity (in thousands):

	November 30,	
	2019	2018
Total cash and cash equivalents	\$ 453,814	\$ 574,359
Credit Facility commitment	800,000	500,000
Borrowings outstanding under the Credit Facility	—	—
Letters of credit outstanding under the Credit Facility	(18,884)	(28,010)
Credit Facility availability	781,116	471,990
Total liquidity	\$ 1,234,930	\$ 1,046,349

Our cash and cash equivalents at November 30, 2019 and 2018 were invested in interest-bearing bank deposit accounts.

Capital Resources. Our notes payable consisted of the following (in thousands):

	November 30,		
	2019	2018	Variance
Mortgages and land contracts due to land sellers and other loans	\$ 7,889	\$ 40,038	\$ (32,149)
Senior notes	1,740,858	1,790,437	(49,579)
Convertible senior notes	—	229,788	(229,788)
Total	<u>\$ 1,748,747</u>	<u>\$ 2,060,263</u>	<u>\$ (311,516)</u>

The change in our notes payable balance at November 30, 2019 compared to November 30, 2018 primarily reflected our financing activities in 2019 that are described in Note 14 – Notes Payable in the Notes to Consolidated Financial Statements in this report.

Our financial leverage, as measured by the ratio of debt to capital, was 42.3% at November 30, 2019, compared to 49.7% at November 30, 2018. Our ratio of net debt to capital (a calculation that is described above under “Non-GAAP Financial Measures”) at November 30, 2019 improved to 35.2%, compared to 41.6% at November 30, 2018.

LOC Facility. On February 13, 2019, we entered into a new LOC Facility. Under the LOC Facility, which expires on February 13, 2022, we may issue up to \$50.0 million of letters of credit. We maintain the LOC Facility to obtain letters of credit from time to time in the ordinary course of operating our business. As of November 30, 2019, we had \$15.8 million of letters of credit outstanding under the LOC Facility. We previously had a cash-collateralized letter of credit facility, which we terminated in 2019. We had no letters of credit outstanding under the cash-collateralized letter of credit facility at November 30, 2018.

Unsecured Revolving Credit Facility. On October 7, 2019, we entered into an amendment to the Credit Facility that increased its borrowing capacity from \$500.0 million to \$800.0 million and extended its maturity from July 27, 2021 to October 7, 2023. The amount of the Credit Facility available for cash borrowings and the issuance of letters of credit depends on the total cash borrowings and letters of credit outstanding under the Credit Facility and the maximum available amount under the terms of the Credit Facility. As of November 30, 2019, we had no cash borrowings and \$18.9 million of letters of credit outstanding under the Credit Facility. The Credit Facility is further described in Note 14 – Notes Payable in the Notes to Consolidated Financial Statements in this report.

Under the terms of the Credit Facility, we are required, among other things, to maintain compliance with various covenants, including financial covenants regarding our consolidated tangible net worth, consolidated leverage ratio (“Leverage Ratio”), and either a consolidated interest coverage ratio (“Interest Coverage Ratio”) or minimum liquidity level, each as defined therein. Our compliance with these financial covenants is measured by calculations and metrics that are specifically defined or described by the terms of the Credit Facility and can differ in certain respects from comparable GAAP or other commonly used terms. The financial covenant requirements under the Credit Facility, as amended, are set forth below:

- **Consolidated Tangible Net Worth** – We must maintain a consolidated tangible net worth at the end of any fiscal quarter greater than or equal to the sum of (a) \$1.54 billion, plus (b) an amount equal to 50% of the aggregate of the cumulative consolidated net income for each fiscal quarter commencing after May 31, 2019 and ending as of the last day of such fiscal quarter (though there is no reduction if there is a consolidated net loss in any fiscal quarter), plus (c) an amount equal to 50% of the cumulative net proceeds we receive from the issuance of our capital stock after May 31, 2019.
- **Leverage Ratio** – We must also maintain a Leverage Ratio of less than or equal to .65 at the end of each fiscal quarter. The Leverage Ratio is calculated as the ratio of our consolidated total indebtedness to the sum of consolidated total indebtedness and consolidated tangible net worth, all as defined under the Credit Facility.
- **Interest Coverage Ratio or Liquidity** – We are also required to maintain either (a) an Interest Coverage Ratio of greater than or equal to 1.50 at the end of each fiscal quarter; or (b) a minimum level of liquidity, but not both. The Interest Coverage Ratio is the ratio of our consolidated adjusted EBITDA to consolidated interest incurred, each as defined under the Credit Facility, in each case for the previous 12 months. Our minimum liquidity is required to be greater than or equal to consolidated interest incurred, as defined under the Credit Facility, for the four most recently ended fiscal quarters in the aggregate.

In addition, under the Credit Facility, our investments in joint ventures and non-guarantor subsidiaries (which are shown, respectively, in Note 9 – Investments in Unconsolidated Joint Ventures and in Note 23 – Supplemental Guarantor Information in the Notes to Consolidated Financial Statements in this report) as of the end of each fiscal quarter cannot exceed the sum of (a) \$104.8 million and (b) 20% of consolidated tangible net worth. Further, the Credit Facility does not permit our borrowing base

indebtedness, which is the aggregate principal amount of our outstanding indebtedness for borrowed money and non-collateralized financial letters of credit, to be greater than our borrowing base (a measure relating to our inventory and unrestricted cash assets).

The covenants and other requirements under the Credit Facility represent the most restrictive provisions that we are subject to with respect to our notes payable. The following table summarizes the financial covenants and other requirements under the Credit Facility, and our actual levels or ratios (as applicable) with respect to those covenants and other requirements, in each case as of November 30, 2019:

Financial Covenants and Other Requirements	Covenant Requirement		Actual
Consolidated tangible net worth	≥	\$ 1.64 billion	\$ 2.38 billion
Leverage Ratio	≤	.650	.424
Interest Coverage Ratio (a)	≥	1.500	3.946
Minimum liquidity (a)	≥	\$ 140.7 million	\$ 453.8 million
Investments in joint ventures and non-guarantor subsidiaries	≤	\$ 581.4 million	\$ 172.8 million
Borrowing base in excess of borrowing base indebtedness (as defined)		n/a	\$ 1.31 billion

(a) Under the terms of the Credit Facility, we are required to maintain either a minimum Interest Coverage Ratio or a minimum level of liquidity, but not both. As of November 30, 2019, we met both the Interest Coverage Ratio and the minimum liquidity requirements.

The indenture governing our senior notes does not contain any financial covenants. Subject to specified exceptions, the indenture contains certain restrictive covenants that, among other things, limit our ability to incur secured indebtedness, or engage in sale-leaseback transactions involving property or assets above a certain specified value. In addition, our senior notes contain certain limitations related to mergers, consolidations, and sales of assets.

Our obligations to pay principal, premium, if any, and interest under our senior notes and borrowings, if any, under the Credit Facility are guaranteed on a joint and several basis by certain of our subsidiaries (“Guarantor Subsidiaries”). The guarantees are full and unconditional and the Guarantor Subsidiaries are 100% owned by us. We may also cause other subsidiaries of ours to become Guarantor Subsidiaries if we believe it to be in our or the relevant subsidiary’s best interests. Condensed consolidating financial information for our subsidiaries considered to be Guarantor Subsidiaries is provided in Note 23 – Supplemental Guarantor Information in the Notes to Consolidated Financial Statements in this report.

As of the date of this report, we were in compliance with the applicable terms of all our covenants and other requirements under the Credit Facility, the senior notes, the indenture, and the mortgages and land contracts due to land sellers and other loans. Unless there is a default under the Credit Facility, there are no agreements that restrict our payment of dividends.

Depending on available terms, we finance certain land acquisitions with purchase-money financing from land sellers or with other forms of financing from third parties. At November 30, 2019, we had outstanding mortgages and land contracts due to land sellers and other loans payable in connection with such financing of \$7.9 million, secured primarily by the underlying property, which had an aggregate carrying value of \$29.2 million.

Credit Ratings. Our credit ratings are periodically reviewed by rating agencies. In July 2019, Moody’s Investor Service upgraded our corporate rating to Ba3 from B1, and changed the rating outlook to stable from positive. In January 2020, Standard and Poor’s Financial Services upgraded our credit rating to BB- from BB-, and changed the rating outlook to stable from positive.

Consolidated Cash Flows. The following table presents a summary of net cash provided by (used in) our operating, investing and financing activities (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Net cash provided by (used in):			
Operating activities	\$ 251,042	\$ 221,512	\$ 513,219
Investing activities	(40,944)	(20,107)	(15,744)
Financing activities	(330,359)	(347,147)	(369,614)
Net increase (decrease) in cash and cash equivalents	\$ (120,261)	\$ (145,742)	\$ 127,861

Operating Activities. Operating activities provided net cash of \$251.0 million in 2019 and \$221.5 million in 2018. Generally, our net operating cash flows fluctuate primarily based on changes in our inventories and our profitability.

Net cash provided by operating activities in 2019 mainly reflected net income of \$268.8 million and a net decrease in receivables of \$44.4 million, partly offset by a net increase in inventories of \$165.3 million and a net decrease in accounts payable, accrued expenses and other liabilities of \$40.6 million. Net cash provided by operating activities in 2018 primarily reflected net income of \$170.4 million adjusted for various non-cash items, including a net decrease of \$191.8 million in our deferred tax assets, and a net increase in accounts payable, accrued expenses and other liabilities of \$126.7 million, partly offset by a net increase in inventories of \$270.1 million and a net increase in receivables of \$49.8 million.

Investing Activities. Investing activities used net cash of \$40.9 million in 2019 and \$20.1 million in 2018. Our uses of cash in 2019 included \$40.5 million for net purchases of property and equipment and \$11.3 million for contributions to unconsolidated joint ventures. These uses of cash were partially offset by \$5.8 million of proceeds from the sale of a building and a \$5.0 million return of investments in unconsolidated joint ventures. In 2019, our net purchases of property and equipment increased from the previous year, primarily reflecting our adoption of ASC 606, as discussed in Note 1 – Summary of Significant Accounting Policies in the Notes to Consolidated Financial Statements in this report. In 2018, the net cash used in investing activities included \$22.7 million for contributions to unconsolidated joint ventures and \$7.4 million for net purchases of property and equipment. These uses of cash were partially offset by a \$9.9 million return of investments in unconsolidated joint ventures.

Financing Activities. Financing activities used net cash of \$330.4 million in 2019 and \$347.1 million in 2018. In 2019, net cash was used for our total repayment of \$980.0 million in aggregate principal amount of our 8.00% Senior Notes due 2020, 1.375% convertible senior notes due 2019 (“1.375% Convertible Senior Notes due 2019”) and 4.75% senior notes due 2019 (“4.75% Senior Notes due 2019”), payments on mortgages and land contracts due to land sellers and other loans of \$41.1 million, dividend payments on our common stock of \$20.4 million, and tax payments associated with stock-based compensation awards of \$7.3 million. The cash used was partially offset by cash provided by our public offering of \$300.0 million in aggregate principal amount of 4.80% senior notes due 2029 (“4.80% Senior Notes due 2029”), concurrent public offerings of \$300.0 million in aggregate principal amount of 6.875% senior notes due 2027 (“6.875% Senior Notes due 2027”) and an additional \$100.0 million in aggregate principal amount of our existing series of 7.625% senior notes due 2023 (“7.625% Senior Notes due 2023”), and \$30.5 million of issuances of common stock under employee stock plans.

In 2018, net cash was used for the repayment of \$300.0 million in aggregate principal amount of our 7 1/4% senior notes due 2018 (“7 1/4% Senior Notes due 2018”), repurchases of shares of our common stock at a total cost of \$35.0 million, payments on mortgages and land contracts due to land sellers and other loans of \$14.8 million, dividend payments on our common stock of \$8.9 million and tax payments associated with stock-based compensation awards of \$8.5 million. The cash used was partly offset by \$20.0 million of issuances of common stock under employee stock plans.

Our board of directors declared quarterly cash dividends of \$.025 per share of common stock in both the 2019 first and second quarters. In the 2019 third quarter, our board of directors approved an increase in the quarterly cash dividend on our common stock to \$.090 per share, and declared quarterly cash dividends at the new rate in the 2019 third and fourth quarters. Our board of directors declared four quarterly cash dividends of \$.025 per share of common stock in 2018. Cash dividends declared and paid during the years ended November 30, 2019 and 2018 totaled \$.23 and \$.10 per share of common stock, respectively. The declaration and payment of future cash dividends on our common stock, whether at current levels or at all, are at the discretion of our board of directors, and depend upon, among other things, our expected future earnings, cash flows, capital requirements, access to external financing, debt structure and any adjustments thereto, operational and financial investment strategy and general financial condition, as well as general business conditions.

Shelf Registration Statement. We have an automatically effective universal shelf registration statement that was filed with the SEC on July 14, 2017 (“2017 Shelf Registration”). Issuances of securities under our 2017 Shelf Registration require the filing of a prospectus supplement identifying the amount and terms of the securities to be issued. Our ability to issue securities is subject to market conditions and other factors impacting our borrowing capacity.

Share Repurchase Program. In May 2018, our board of directors authorized us to repurchase a total of up to 4,000,000 shares of our outstanding common stock. This authorization reaffirmed and incorporated the then-current balance of 1,627,000 shares that remained under a prior board-approved share repurchase program. In 2018, we repurchased 1,806,053 shares of our common stock pursuant to this authorization, at a total cost of \$35.0 million. We did not repurchase any of our common stock under this authorization in 2019. The amount and timing of shares purchased under the remaining share repurchase authorization are subject to market and business conditions and other factors, and purchases may be made from time to time and at any time through open market or privately negotiated transactions. The remaining share repurchase authorization will continue in effect until fully used or earlier terminated or suspended by our board of directors.

Unrelated to the common stock repurchase program, as further discussed in Note 18 – Stockholders’ Equity in the Notes to Consolidated Financial Statements in this report, our board of directors authorized in 2014 the repurchase of no more than 680,000 shares of our outstanding common stock solely as necessary for director compensation elections with respect to settling outstanding stock appreciation rights awards (“Director Plan SARs”) granted under our Non-Employee Directors Compensation Plan (“Director Plan”). As of November 30, 2019, we have not repurchased any shares pursuant to the board of directors authorization.

We believe we have adequate capital resources and sufficient access to the credit and capital markets and external financing sources to satisfy our current and reasonably anticipated long-term requirements for funds to acquire assets and land, to use and/or develop acquired assets and land, to construct homes, to finance our financial services operations and to meet other needs in the ordinary course of our business. In addition to acquiring and/or developing land that meets our investment return standards, in 2020, we may use or redeploy our cash resources or cash borrowings under the Credit Facility to support other business purposes that are aligned with our primary strategic growth goals. We may also arrange or engage in capital markets, bank loan, project debt or other financial transactions. These transactions may include repurchases from time to time of our outstanding common stock. They may also include repurchases from time to time of our outstanding senior notes or other debt through redemptions, tender offers, exchange offers, private exchanges, open market or private purchases or other means, as well as potential new issuances of equity or senior or convertible senior notes or other debt through public offerings, private placements or other arrangements to raise or access additional capital to support our current land and land development investment targets, to complete strategic transactions and for other business purposes and/or to effect repurchases or redemptions of our outstanding senior notes or other debt. The amounts involved in these transactions, if any, may be material. As necessary or desirable, we may adjust or amend the terms of and/or expand the capacity of the Credit Facility or the LOC Facility, or enter into additional letter of credit facilities, or other similar facility arrangements, in each case with the same or other financial institutions, or allow any such facilities to mature or expire. Our ability to engage in such transactions, however, may be constrained by economic, capital, credit and/or financial market conditions, investor interest and/or our current leverage ratios, and we can provide no assurance of the success or costs of any such transactions.

OFF-BALANCE SHEET ARRANGEMENTS

Unconsolidated Joint Ventures. As discussed in Note 9 – Investments in Unconsolidated Joint Ventures in the Notes to Consolidated Financial Statements in this report, we have investments in unconsolidated joint ventures in various markets where our homebuilding operations are located. At November 30, 2019 and 2018, one of our unconsolidated joint ventures had outstanding secured debt totaling \$40.7 million and \$18.0 million, respectively, under a construction loan agreement with a third-party lender to finance its land development activities. The outstanding debt is secured by the underlying property and related project assets and is non-recourse to us. While the secured debt is scheduled to mature in February 2020, the loan agreement provides for two-12 month extensions beyond this date. We anticipate executing the first extension in the 2020 first quarter. None of our other unconsolidated joint ventures had outstanding debt at November 30, 2019 or 2018. While we and our partner in the unconsolidated joint venture that has the outstanding construction loan agreement at November 30, 2019 provide certain guarantees and indemnities to the lender, we do not have a guaranty or any other obligation to repay or to support the value of the collateral underlying the outstanding secured debt. We do not believe that our existing exposure under our guaranty and indemnity obligations related to the outstanding secured debt is material to our consolidated financial statements.

Land Option Contracts and Other Similar Contracts. As discussed in Note 8 – Variable Interest Entities in the Notes to Consolidated Financial Statements in this report, in the ordinary course of our business, we enter into land option contracts and other similar contracts with third parties and unconsolidated entities to acquire rights to land for the construction of homes. Our land option contracts and other similar contracts generally do not contain provisions requiring our specific performance. Our decision to exercise a particular land option contract or other similar contract depends on the results of our due diligence reviews and ongoing market and project feasibility analysis that we conduct after entering into such a contract. In some cases, our decision to exercise a land option contract or other similar contract may be conditioned on the land seller obtaining necessary entitlements, such as zoning rights and environmental and development approvals, and/or physically developing the underlying land by a pre-determined date. We typically have the ability not to exercise our rights to the underlying land for any reason and forfeit our deposits without further penalty or obligation to the sellers. If we were to acquire all of the land we had under land option contracts and other similar contracts at November 30, 2019, we estimate the remaining purchase price to be paid would be as follows: 2020 – \$912.1 million; 2021 – \$204.4 million; 2022 – \$83.1 million; 2023 – \$25.3 million; 2024 – \$42.9 million; and thereafter – \$80.5 million.

CONTRACTUAL OBLIGATIONS AND COMMERCIAL COMMITMENTS

The following table presents our future cash requirements under contractual obligations as of November 30, 2019 (in millions):

	Payments due by Period				
	Total	2020	2021-2022	2023-2024	Thereafter
Contractual obligations:					
Long-term debt	\$ 1,757.9	\$ 7.9	\$ 800.0	\$ 350.0	\$ 600.0
Interest	553.0	121.5	224.5	83.4	123.6
Operating lease obligations	37.2	9.7	13.6	8.1	5.8
Inventory-related obligations (a)	29.1	5.3	8.9	1.5	13.4
Total	\$ 2,377.2	\$ 144.4	\$ 1,047.0	\$ 443.0	\$ 742.8

(a) Represents liabilities for inventory not owned associated with financing arrangements as discussed in Note 8 – Variable Interest Entities in the Notes to Consolidated Financial Statements in this report, as well as liabilities for fixed or determinable amounts associated with tax increment financing entity (“TIFE”) assessments. As homes are delivered, the obligation to pay the remaining TIFE assessments associated with each underlying lot is transferred to the homebuyer. As such, these assessment obligations will be paid by us only to the extent we do not deliver homes on applicable lots before the related TIFE obligations mature.

As discussed in Note 16 – Commitments and Contingencies in the Notes to Consolidated Financial Statements in this report, we had \$793.9 million of performance bonds and \$34.7 million of letters of credit outstanding at November 30, 2019. At November 30, 2018, we had \$689.3 million of performance bonds and \$28.0 million of letters of credit outstanding.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The accompanying consolidated financial statements were prepared in conformity with GAAP. The preparation of these financial statements requires the use of estimates, judgments and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the periods presented. Actual results could differ from those estimates and assumptions. See Note 1 – Summary of Significant Accounting Policies in the Notes to Consolidated Financial Statements in this report for a discussion of our significant accounting policies. The following are accounting policies that we believe are critical because of the significance of the activity to which they relate or because they require the use of significant estimates, judgments and/or other assumptions in their application.

Homebuilding Revenue Recognition. We recognize homebuilding revenue in accordance with ASC 606 by applying the following steps in determining the timing and amount of revenue to recognize: (1) identify the contract(s) with a 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, if applicable; and (5) recognize revenue when (or as) we satisfy a performance obligation.

Our home sale transactions are made pursuant to contracts under which we typically have a single performance obligation to deliver a completed home to the homebuyer when closing conditions are met. Revenues from home sales are recognized when we have satisfied the performance obligation within the sales contract, which is generally when title to and possession of the home and the risks and rewards of ownership are transferred to the homebuyer on the closing date. Little to no estimation is involved in recognizing such revenues.

Land sale transactions are made pursuant to contracts under which we typically have a performance obligation(s) to deliver specified land parcels to the buyer when closing conditions are met. We evaluate each land sale contract to determine our performance obligation(s) under the contract, including whether we have a distinct promise to perform post-closing land development work that is material within the context of the contract, and use objective criteria to determine our completion of the applicable performance obligation(s), whether at a point in time or over time. Revenues from land sales are recognized when we have satisfied the performance obligation(s) within the sales contract, which is generally when title to and possession of the land and the risks and rewards of ownership are transferred to the land buyer on the closing date. In instances where we have a distinct and material performance obligation(s) within the context of a land sale contract to perform land development work after the closing date, a portion of the transaction price under the contract is allocated to such performance obligation(s) and is recognized as revenue over time based upon our estimated progress toward the satisfaction of the performance obligation(s). We generally measure our progress based on our costs incurred relative to the total costs expected to satisfy the performance obligation(s). Certain land sale contracts may require management judgment in determining the appropriate revenue recognition, but the impact of such transactions is generally immaterial.

Inventories and Cost of Sales. Housing and land inventories are stated at cost, unless the carrying value is determined not to be recoverable, in which case the affected inventories are written down to fair value or fair value less associated costs to sell. Fair value is determined based on estimated future net cash flows discounted for inherent risks associated with the real estate assets,

or other valuation techniques. Due to uncertainties in the estimation process and other factors beyond our control, it is possible that actual results could differ from those estimated. Other than model homes, our inventories typically do not consist of completed unsold homes. However, as discussed above in Item 1 – Business, we have unsold completed or partially completed homes in our inventory.

We rely on certain estimates to determine our construction and land costs and resulting housing gross profit margins associated with revenues recognized. Construction and land costs are comprised of direct and allocated costs, including estimated future costs for the limited warranty we provide on our homes, and certain amenities within a community. Land acquisition, land development and other common costs are generally allocated on a relative fair value basis to the homes or lots within the applicable community or land parcel. Land acquisition and land development costs include related interest and real estate taxes.

In determining a portion of the construction and land costs recognized for each period, we rely on project budgets that are based on a variety of assumptions, including future construction schedules and costs to be incurred. It is possible that actual results could differ from budgeted amounts for various reasons, including construction delays, construction resource shortages, increases in costs that have not yet been committed, changes in governmental requirements, unforeseen environmental hazards or other unanticipated issues encountered during construction and other factors beyond our control. While the actual results for a particular construction project are accurately reported over time, variances between the budgeted and actual costs of a project could result in the understatement or overstatement of construction and land costs and homebuilding gross profits in a particular reporting period. To reduce the potential for such distortion, we have set forth procedures that collectively comprise a critical accounting policy. These procedures, which we have applied on a consistent basis, include assessing, updating and revising project budgets on a monthly basis, obtaining commitments to the extent possible from independent subcontractors and vendors for future costs to be incurred, reviewing the adequacy of warranty accruals and historical warranty claims experience, and utilizing the most current information available to estimate construction and land costs to be charged to expense. Variances to the budgeted costs after an estimate has been charged to expense that are related to project costs are generally allocated on a relative fair value basis to the remaining homes to be delivered within the community or land parcel, while such variances related to direct construction costs are generally expensed as incurred. The variances between budgeted and actual costs have historically not been material to our consolidated financial statements. We believe that our policies provide for reasonably dependable estimates to be used in the calculation and reporting of construction and land costs.

Inventory Impairments and Land Option Contract Abandonments. Each community or land parcel in our owned inventory is assessed to determine if indicators of potential impairment exist. Impairment indicators are assessed separately for each community or land parcel on a quarterly basis and include, but are not limited to, the following: significant decreases in net orders, average selling prices, volume of homes delivered, gross profit margins on homes delivered or projected gross profit margins on homes in backlog or future deliveries; significant increases in budgeted land development and home construction costs or cancellation rates; or projected losses on expected future land sales. If indicators of potential impairment exist for a community or land parcel, the identified asset is evaluated for recoverability.

The following table presents information regarding inventory impairment and land option contract abandonment charges included in construction and land costs in our consolidated statements of operations (dollars in thousands):

	Years Ended November 30,		
	2019	2018	2017
Inventory impairments:			
Number of communities or land parcels evaluated for recoverability (a)	40	57	51
Carrying value of communities or land parcels evaluated for recoverability (a)	\$ 326,255	\$ 356,100	\$ 456,875
Number of communities or land parcels written down to fair value	8	13	10
Pre-impairment carrying value of communities or land parcels written down to fair value	\$ 41,160	\$ 70,156	\$ 58,962
Inventory impairment charges	(14,031)	(26,104)	(20,605)
Post-impairment fair value	\$ 27,129	\$ 44,052	\$ 38,357
Land option contract abandonments charges	\$ 3,260	\$ 2,890	\$ 4,627

(a) As impairment indicators are assessed on a quarterly basis, some of the communities or land parcels evaluated during the years ended November 30, 2019, 2018 and 2017 were evaluated in more than one quarterly period. Communities or land parcels evaluated for recoverability in more than one quarterly period are counted only once for each applicable year. In 2019,

2018 and 2017, the inventory impairment charges reflected our decisions to make changes in our operational strategies aimed at more quickly monetizing our investment in certain communities by accelerating the overall pace for selling, building and delivering homes therein, including communities on land previously held for future development.

When an indicator of potential impairment is identified for a community or land parcel, we test the asset for recoverability by comparing the carrying value of the asset to the undiscounted future net cash flows expected to be generated by the asset. The undiscounted future net cash flows are impacted by then-current conditions and trends in the market in which the asset is located as well as factors known to us at the time the cash flows are calculated. These factors may include recent trends in our orders, backlog, cancellation rates and volume of homes delivered, as well as our expectations related to the following: product offerings; market supply and demand, including estimated average selling prices and related price appreciation; and land development, home construction and overhead costs to be incurred and related cost inflation.

As further described in Note 7 – Inventory Impairments and Land Option Contract Abandonments in the Notes to Consolidated Financial Statements in this report, given the inherent challenges and uncertainties in forecasting future results, our inventory assessments at the time they are made take into consideration whether a community or land parcel is active, meaning whether it is open for sales and/or undergoing development, or whether it is being held for future development or held for sale.

We record an inventory impairment charge on a community or land parcel that is active or held for future development when indicators of potential impairment exist and the carrying value of the real estate asset is greater than the undiscounted future net cash flows the asset is expected to generate. These real estate assets are written down to fair value, which is primarily determined based on the estimated future net cash flows discounted for inherent risk associated with each such asset, or other valuation techniques. Inputs used in our calculation of estimated discounted future net cash flows are specific to each affected real estate asset and are based on our expectations for each such asset as of the applicable measurement date, including, among others, expectations related to average selling prices and volume of homes delivered. The discount rates used in our estimated discounted cash flows ranged from 17% in 2019, 17% - 19% in 2018, and 17% - 18% during 2017. The discount rates we used were impacted by one or more of the following at the time the calculation was made: the risk-free rate of return; expected risk premium based on estimated land development, home construction and delivery timelines; market risk from potential future price erosion; cost uncertainty due to land development or home construction cost increases; and other risks specific to the asset or conditions in the market in which the asset is located.

We record an inventory impairment charge on land held for sale when the carrying value of the real estate asset is greater than its fair value. These real estate assets are written down to fair value, less associated costs to sell. The fair value of such real estate assets is generally based on bona fide letters of intent from outside parties, executed sales contracts, broker quotes or similar information.

As of November 30, 2019, the aggregate carrying value of our inventory that had been impacted by inventory impairment charges was \$115.6 million, representing 19 communities and various other land parcels. As of November 30, 2018, the aggregate carrying value of our inventory that had been impacted by inventory impairment charges was \$156.1 million, representing 22 communities and various other land parcels.

Our inventory controlled under land option contracts and other similar contracts is assessed to determine whether it continues to meet our investment return standards. Assessments are made separately for each optioned land parcel on a quarterly basis and are affected by the following factors relative to the market in which the asset is located, among others: current and/or anticipated net orders, average selling prices and volume of homes delivered; estimated land development and home construction costs; and projected profitability on expected future housing or land sales. When a decision is made not to exercise certain land option contracts and other similar contracts due to market conditions and/or changes in our marketing strategy, we write off the related inventory costs, including non-refundable deposits and unrecoverable pre-acquisition costs.

The estimated remaining life of each community or land parcel in our inventory depends on various factors, such as the total number of lots remaining; the expected timeline to acquire and entitle land and develop lots to build homes; the anticipated future net order and cancellation rates; and the expected timeline to build and deliver homes sold. While it is difficult to determine a precise timeframe for any particular inventory asset, based on current market conditions and expected delivery timelines, we estimate our inventory assets' remaining operating lives to range generally from one year to in excess of 10 years and expect to realize, on an overall basis, the majority of our inventory balance as of November 30, 2019 within five years. The following table presents as of November 30, 2019 and 2018, respectively, the estimated timeframe of delivery for the last home in an applicable community or land parcel and the corresponding percentage of total inventories such categories represent within our inventory balance (dollars in millions):

	0-2 years		3-5 years		6-10 years		Greater than 10 years		Total
	\$	%	\$	%	\$	%	\$	%	
2019	\$ 1,918.1	52%	\$ 1,555.3	42%	\$ 210.7	5%	\$ 20.5	1%	\$ 3,704.6
2018	1,968.7	55	1,304.4	36	271.0	8	38.7	1	3,582.8

The inventory balances in the 0-2 years and 3-5 years categories were located throughout all of our homebuilding reporting segments, though mostly in our West Coast and Central segments. These categories collectively represented 94% of our total inventories as of November 30, 2019, compared to 91% as of November 30, 2018. The inventory balances in the 6-10 years and greater than 10 years categories were primarily located in our West Coast, Southwest and Central segments, and together totaled \$231.2 million at November 30, 2019, compared to \$309.7 million at November 30, 2018. The year-over-year decrease was primarily related to our decisions to accelerate the overall timing for selling, building and delivering homes through community reactivations, and generally favorable market conditions. The inventories in the 6-10 years and greater than 10 years categories were generally comprised of land held for future development and active, multi-phase communities with large remaining land positions.

Due to the judgment and assumptions applied in our inventory impairment and land option contract abandonment assessment processes, and in our estimations of the remaining operating lives of our inventory assets and the realization of our inventory balances, particularly as to land held for future development, it is possible that actual results could differ substantially from those estimated.

Deterioration in the supply and demand factors in the overall housing market or in an individual market or submarket, or changes to our operational or selling strategy at certain communities may lead to additional inventory impairment charges, future charges associated with land sales or the abandonment of land option contracts or other similar contracts related to certain assets. Due to the nature or location of the projects, land held for future development that we activate as part of our strategic growth initiatives or to accelerate sales and/or our return on investment, or that we otherwise monetize to help improve our asset efficiency, may have a somewhat greater likelihood of being impaired than other of our active inventory.

We believe that the carrying value of our inventory balance as of November 30, 2019 is recoverable. Our considerations in making this determination include the factors and trends incorporated into our impairment analyses, and as applicable, the prevailing regulatory environment, competition from other homebuilders, inventory levels and sales activity of resale homes, and the local economic conditions where an asset is located. In addition, we consider the financial and operational status and expectations of our inventories as well as unique attributes of each community or land parcel that could be viewed as indicators for potential future impairments. However, if conditions in the overall housing market or in a specific market or submarket worsen in the future beyond our current expectations, if future changes in our business strategy significantly affect any key assumptions used in our projections of future cash flows, or if there are material changes in any of the other items we consider in assessing recoverability, we may recognize charges in future periods for inventory impairments or land option contract abandonments, or both, related to our current inventory assets. Any such charges could be material to our consolidated financial statements.

Warranty Costs. We provide a limited warranty on all of our homes. The specific terms and conditions of our limited warranty program vary depending upon the markets in which we do business. We estimate the costs that may be incurred under each limited warranty and record a liability in the amount of such costs at the time the revenue associated with the sale of each home is recognized. In assessing our overall warranty liability at a reporting date, we evaluate the costs for warranty-related items on a combined basis for all of our previously delivered homes that are under our limited warranty program.

Our primary assumption in estimating the amounts we accrue for warranty costs is that historical claims experience is a strong indicator of future claims experience. Factors that affect our warranty liability include the number of homes delivered, historical and anticipated rates of warranty claims, and cost per claim. We periodically assess the adequacy of our accrued warranty liability, which is included in accrued expenses and other liabilities in our consolidated balance sheets, and adjust the amount as necessary based on our assessment. Our assessment includes the review of our actual warranty costs incurred to identify trends and changes in our warranty claims experience, and considers our home construction quality and customer service initiatives and outside events. Our warranty liability is presented on a gross basis for all years without consideration of recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any. Estimates of recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any, are recorded as receivables when such recoveries are considered probable.

While we believe the warranty liability currently reflected in our consolidated balance sheets to be adequate, unanticipated changes or developments in the legal environment, local weather, land or environmental conditions, quality of materials or methods used in the construction of homes or customer service practices and/or our warranty claims experience could have a significant impact on our actual warranty costs in future periods and such amounts could differ significantly from our current estimates. A

10% change in the historical warranty rates used to estimate our warranty accrual would not result in a material change in our accrual.

Self-Insurance. We maintain, and require the majority of our independent subcontractors to maintain, general liability insurance (including construction defect and bodily injury coverage) and workers' compensation insurance. These insurance policies protect us against a portion of our risk of loss from claims related to our homebuilding activities, subject to certain self-insured retentions, deductibles and other coverage limits. We self-insure a portion of our overall risk through the use of a captive insurance subsidiary. In Arizona, California, Colorado and Nevada, our subcontractors' general liability insurance primarily takes the form of a wrap-up policy under a program where eligible independent subcontractors are enrolled as insureds on each community. Enrolled subcontractors contribute toward the cost of the insurance and agree to pay a contractual amount in the future if there is a claim related to their work.

We record liabilities based on the estimated costs required to cover reported claims, claims incurred but not yet reported, and claim adjustment expenses. These estimated costs are based on an actuarial analysis of our historical claims and expense data, as well as industry data. Our self-insurance liabilities are presented on a gross basis without consideration of insurance recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any.

The amount of our self-insurance liability is based on an analysis performed by a third-party actuary that uses our historical claim and expense data, as well as industry data to estimate these overall costs. These estimates are subject to uncertainty due to a variety of factors, the most significant being the long period of time between the delivery of a home to a homebuyer and when a structural warranty or construction defect claim may be made, and the ultimate resolution of any such construction defect claim. Though state regulations vary, construction defect claims are reported and resolved over a long period of time, which can extend for 10 years or more. As a result, the majority of the estimated self-insurance liability based on the actuarial analysis relates to claims incurred but not yet reported. Therefore, adjustments related to individual existing claims generally do not significantly impact the overall estimated liability. Adjustments to our liabilities related to homes delivered in prior years are recorded in the period in which a change in our estimate occurs.

The projection of losses related to these liabilities requires the use of actuarial assumptions. Key assumptions used in developing these estimates include claim frequencies, severities and resolution patterns, which can occur over an extended period of time. These estimates are subject to variability due to the length of time between the delivery of a home to a homebuyer and when a construction defect claim is made, and the ultimate resolution of such claim; uncertainties regarding such claims relative to our markets and the types of product we build; and legal or regulatory actions and/or interpretations, among other factors. Due to the degree of judgment involved and the potential for variability in these underlying assumptions, our actual future costs could differ from those estimated. In addition, changes in the frequency and severity of reported claims and the estimates to resolve claims can impact the trends and assumptions used in the actuarial analysis, which could be material to our consolidated financial statements. A 10% increase in the claim frequency and the average cost per claim used to estimate the self-insurance liability would result in increases of approximately \$28.5 million in our liability and approximately \$17.1 million in our receivable as of November 30, 2019, and additional expense of approximately \$11.4 million for 2019. A 10% decrease in the claim frequency and the average cost per claim used to estimate the self-insurance liability would result in decreases of approximately \$25.9 million in our liability and approximately \$8.4 million in our receivable as of November 30, 2019, and a reduction to expense of approximately \$17.5 million for 2019.

Estimates of insurance recoveries and amounts we have paid on behalf of other parties, if any, are recorded as receivables when such recoveries are considered probable. These estimated recoveries are principally based on actuarially determined amounts and depend on various factors, including, among other things, the above-described claim cost estimates, our insurance policy coverage limits for the applicable policy year(s), historical third-party recovery rates, insurance industry practices, the regulatory environment, and legal precedent, and are subject to a high degree of variability from year to year. Because of the inherent uncertainty and variability in these assumptions, our actual insurance recoveries could differ significantly from amounts currently estimated.

Legal Matters Accruals. We record contingent liabilities resulting from claims against us when a loss is assessed to be probable and the amount of the loss is reasonably estimable. Assessing the probability of losses and estimating probable losses requires analysis of multiple factors, including in some cases judgments about the potential actions of third-party claimants, regulatory agencies, mediators, arbitrators, responsible third parties and/or courts, as the case may be. Recorded contingent liabilities are based on the most recent information available and actual losses in any future period are inherently uncertain. If future adjustments to estimated probable future losses or actual losses exceed our recorded liability for such claims, we would record additional charges during the period in which the actual loss or change in estimate occurred. In addition to contingent liabilities recorded for probable losses, we disclose contingent liabilities when there is a reasonable possibility the ultimate loss will materially exceed the recorded liability. While we cannot predict the outcome of pending legal matters with certainty, we do not believe any currently

identified claim or proceeding, either individually or in aggregate, will have a material impact on our results of operations, financial position or cash flows.

Stock-Based Compensation. We measure and recognize compensation expense associated with our grants of equity-based awards at an amount equal to the fair value of such share-based payments over their applicable vesting period. We have provided compensation benefits to certain of our employees in the form of stock options, restricted stock and PSUs, and to our non-employee directors in the form of unrestricted shares of common stock, deferred common stock awards and Director Plan SARs. Determining the fair value of share-based awards requires judgment to identify the appropriate valuation model and develop the assumptions to be used in the calculation, including the expected term of the stock options or Director Plan SARs, expected stock-price volatility and dividend yield. We estimate the fair value of stock options and Director Plan SARs granted using the Black-Scholes option-pricing model with assumptions based primarily on historical data. The expected volatility factor is based on a combination of the historical volatility of our common stock and the implied volatility of publicly traded options on our common stock. We believe this blended approach balances the forward-looking nature of implied volatility with the relative stability over time of historical volatility to arrive at a reasonable estimate of expected volatility. Additionally, judgment is required in estimating the percentage of share-based awards that are expected to vest, and in the case of PSUs, the level of performance that will be achieved and the number of shares that will be earned. If actual results differ significantly from these estimates, stock-based compensation expense could be higher and have a material impact on our consolidated financial statements.

Income Taxes. As discussed in Note 13 – Income Taxes in the Notes to the Consolidated Financial Statements in this report, we evaluate our deferred tax assets quarterly to determine if adjustments to our valuation allowance are required based on the consideration of all available positive and negative evidence using a “more likely than not” standard with respect to whether deferred tax assets will be realized. This evaluation considers, among other factors, our historical operating results, our expectation of future profitability, the duration of the applicable statutory carryforward periods, and conditions in the housing market and the broader economy. The ultimate realization of our deferred tax assets depends primarily on our ability to generate future taxable income during the periods in which the related deferred tax assets become deductible. The value of our deferred tax assets in our consolidated balance sheets depends on applicable income tax rates. We base our estimate of deferred tax assets and liabilities on current tax laws and rates. In certain cases, we also base this estimate on business plan forecasts and other expectations about future outcomes. Changes in positive and negative evidence, including differences between our future operating results and estimates, could result in the establishment of an additional valuation allowance against our deferred tax assets. Accounting for deferred taxes is based upon estimates of future results. Judgment is required in determining the future tax consequences of events that have been recognized in our consolidated financial statements and/or tax returns. Differences between the anticipated and actual outcomes of these future results could have a material impact on our consolidated financial statements. Also, changes in existing federal and state tax laws and corporate income tax rates could affect future tax results and the realization of deferred tax assets over time.

We recognize accrued interest and penalties related to unrecognized tax benefits in our consolidated financial statements as a component of the provision for income taxes. Our liability for unrecognized tax benefits, combined with accrued interest and penalties, is reflected as a component of accrued expenses and other liabilities in our consolidated balance sheets. Judgment is required in evaluating uncertain tax positions. We evaluate our uncertain tax positions quarterly based on various factors, including changes in facts or circumstances, tax laws or the status of audits by tax authorities. Changes in the recognition or measurement of uncertain tax positions could have a material impact on our consolidated financial statements in the period in which we make the change.

RECENT ACCOUNTING PRONOUNCEMENTS

Recent accounting pronouncements are discussed in Note 1 – Summary of Significant Accounting Policies in the Notes to Consolidated Financial Statements in this report.

OUTLOOK

We believe long-term housing market fundamentals remain positive, including robust employment, a generally favorable economic environment and a relatively constrained supply of homes available for sale. We believe our highly customer-centric, personalized approach to homebuilding and operational capabilities will enable us to effectively adapt to evolving buyer preferences and needs and, together with an expected year-over-year increase in community count, help drive our business in 2020, subject to market conditions, as discussed below.

Our present 2020 outlook is as follows:

2020 First Quarter –

- We expect to generate housing revenues in the range of \$910 million to \$970 million, an increase from \$798.2 million in 2019, and anticipate our average selling price to be approximately \$375,000, representing a slight increase compared to the year-earlier period.
- We expect our homebuilding operating income margin to be in the range of 4.9% to 5.3%, assuming no inventory-related charges, up from 4.3% for the year-earlier quarter.
 - We expect our housing gross profit margin to be in the range of 17.8% to 18.2%, assuming no inventory-related charges, compared to 17.6% for the corresponding 2019 quarter.
 - We expect our selling, general and administrative expenses as a percentage of housing revenues to be in the range of 12.7% to 13.1%, an improvement from the 2019 first quarter ratio of 13.4%.
- We expect the effective tax rate will be approximately 20%, including an expected favorable impact from federal energy tax credits for building energy-efficient homes. The effective tax rate for the prior year quarter was 13%.
- We expect our average community count to be up in the mid-single digit range from the 2019 first quarter.
- We expect our net order growth to increase between 15% to 25% compared to the year-earlier period.

2020 Full Year –

- We expect our housing revenues to be in the range of \$4.90 billion to \$5.30 billion, an increase from \$4.51 billion in 2019, and anticipate our average selling price to be in the range of \$380,000 to \$400,000, an increase of up to 5% from 2019.
- We expect our homebuilding operating income margin to be in the range of 7.9% to 8.5%, assuming no inventory-related charges, compared to 7.7% for 2019.
 - We expect our housing gross profit margin to be in the range of 18.7% to 19.3%, assuming no inventory-related charges, compared to 18.7% for 2019.
 - We expect our selling, general and administrative expenses as a percentage of housing revenues to be in the range of 10.5% to 11.1%, compared to 11.0% in the prior year.
- We expect the effective tax rate will be approximately 23%, including an expected favorable impact from federal energy tax credits. The effective tax rate for 2019 was 23%.
- We expect our average community count to be up in the low- to mid-single digit range from 2019.
- We expect our return on equity to improve by more than 100 basis points from 12.2% for 2019.
- We expect our debt to capital ratio to be below 40%, compared to 42.3% in 2019.

We believe we are well positioned for 2020 due to, among other things, our planned new home community openings, investments in land and land development and current positive economic and demographic trends, to varying degrees, in many of our served markets. However, our industry continues to experience labor constraints and volatile raw material prices, exacerbated by U.S. trade policies, including tariffs and duties imposed on homebuilding materials and products. If these issues continue for an extended period, or worsen in 2020, our business and ability to generate positive growth would be negatively impacted.

As such, our future performance and the strategies we implement (and adjust or refine as necessary or appropriate) will depend significantly on prevailing economic and capital, credit and financial market conditions and on a fairly stable and constructive political and regulatory environment (particularly in regards to housing and mortgage loan financing policies), among other factors.

FORWARD-LOOKING STATEMENTS

Investors are cautioned that certain statements contained in this report, as well as some statements by us in periodic press releases and other public disclosures and some oral statements by us to securities analysts, stockholders and others during presentations, are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 (the “Act”). Statements that are predictive in nature, that depend upon or refer to future events or conditions, or that include words such as “expect,” “anticipate,” “intend,” “plan,” “believe,” “estimate,” “hope,” and similar expressions constitute forward-looking statements. In addition, any statements that we may make or provide concerning future financial or operating performance (including without limitation future revenues, community count, homes delivered, net orders, selling prices, sales pace per new community, expenses, expense ratios, housing gross profits, housing gross profit margins, earnings or earnings per share, or growth or growth rates), future market conditions, future interest rates, and other economic conditions, ongoing business strategies or prospects, future dividends and changes in dividend levels, the value of our backlog (including amounts that we expect to realize upon delivery of homes included in our backlog and the timing of those deliveries), the value of our net orders, potential future asset acquisitions and the impact of completed acquisitions, future share issuances or repurchases, future debt issuances, repurchases or redemptions and other possible future actions are also forward-looking statements as defined by the Act. Forward-looking statements are based on our current expectations and projections about future events and are subject to risks, uncertainties, and assumptions about our operations, economic and market factors, and the homebuilding industry, among other things. These statements are not guarantees of future performance, and we have no specific policy or intention to update these statements. In addition, forward-looking and other statements in this report and in other public or oral disclosures that express or contain opinions, views or assumptions about market or economic conditions; the success, performance, effectiveness and/or relative positioning of our strategies, initiatives or operational activities; and other matters, may be based in whole or in part on general observations of our management, limited or anecdotal evidence and/or business or industry experience without in-depth or any particular empirical investigation, inquiry or analysis.

Actual events and results may differ materially from those expressed or forecasted in forward-looking statements due to a number of factors. The most important risk factors that could cause our actual performance and future events and actions to differ materially from such forward-looking statements include, but are not limited to, the following:

- general economic, employment and business conditions;
- population growth, household formations and demographic trends;
- conditions in the capital, credit and financial markets;
- our ability to access external financing sources and raise capital through the issuance of common stock, debt or other securities, and/or project financing, on favorable terms;
- the execution of any share repurchases pursuant to our board of directors’ authorization;
- material and trade costs and availability;
- changes in interest rates;
- our debt level, including our ratio of debt to capital, and our ability to adjust our debt level and maturity schedule;
- our compliance with the terms of the Credit Facility;
- volatility in the market price of our common stock;
- weak or declining consumer confidence, either generally or specifically with respect to purchasing homes;
- competition from other sellers of new and resale homes;
- weather events, significant natural disasters and other climate and environmental factors;
- any failure of lawmakers to agree on a budget or appropriation legislation to fund the federal government’s operations, and financial markets’ and businesses’ reactions to that failure;
- government actions, policies, programs and regulations directed at or affecting the housing market (including the tax benefits associated with purchasing and owning a home, and the standards, fees and size limits applicable to the purchase or insuring of mortgage loans by government-sponsored enterprises and government agencies), the homebuilding industry, or construction activities;

- changes in existing tax laws or enacted corporate income tax rates, including those resulting from regulatory guidance and interpretations issued with respect thereto;
- changes in U.S. trade policies, including the imposition of tariffs and duties on homebuilding materials and products, and related trade disputes with and retaliatory measures taken by other countries;
- the adoption of new or amended financial accounting standards, including revenue recognition (ASC 606) and lease accounting standards, and the guidance and/or interpretations with respect thereto;
- the availability and cost of land in desirable areas and our ability to timely develop acquired land parcels and open new home communities;
- our warranty claims experience with respect to homes previously delivered and actual warranty costs incurred;
- costs and/or charges arising from regulatory compliance requirements or from legal, arbitral or regulatory proceedings, investigations, claims or settlements, including unfavorable outcomes in any such matters resulting in actual or potential monetary damage awards, penalties, fines or other direct or indirect payments, or injunctions, consent decrees or other voluntary or involuntary restrictions or adjustments to our business operations or practices that are beyond our current expectations and/or accruals;
- our ability to use/realize the net deferred tax assets we have generated;
- our ability to successfully implement our current and planned strategies and initiatives related to our product, geographic and market positioning, gaining share and scale in our served markets and in entering into new markets;
- our operational and investment concentration in markets in California;
- consumer interest in our new home communities and products, particularly from first-time homebuyers and higher-income consumers;
- our ability to generate orders and convert our backlog of orders to home deliveries and revenues, particularly in key markets in California;
- our ability to successfully implement our Returns-Focused Growth Plan and other business strategies and achieve any associated financial and operational targets and objectives;
- income tax expense volatility associated with stock-based compensation;
- the ability of our homebuyers to obtain residential mortgage loans and mortgage banking services;
- the performance of mortgage lenders to our homebuyers;
- the performance of KBHS;
- information technology failures and data security breaches; and
- other events outside of our control.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We enter into debt obligations primarily to support general corporate purposes, including the operations of our subsidiaries. We are subject to interest rate risk on our senior notes. For fixed rate debt, changes in interest rates generally affect the fair value of the debt instrument, but not our earnings or cash flows. We generally have no obligation to prepay our debt before 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 until we are required or elect to refinance or repurchase such debt. Under our current policies, we do not use interest rate derivative instruments to manage our exposure to changes in interest rates.

The following tables present principal cash flows by scheduled maturity, weighted average effective interest rates and the estimated fair value of our long-term fixed rate debt obligations as of November 30, 2019 and 2018 (dollars in thousands):

	As of November 30, 2019 and for the Years Ending November 30,							Fair Value at November 30, 2019
	2020	2021	2022	2023	2024	Thereafter	Total	
Long-term debt								
Fixed Rate	\$ —	\$ —	\$ 800,000	\$ 350,000	\$ —	\$ 600,000	\$ 1,750,000	\$ 1,921,563
Weighted Average Effective Interest Rate	—%	—%	7.4%	7.5%	—%	6.0%	7.0%	

	As of November 30, 2018 and for the Years Ending November 30,						Fair Value at November 30, 2018	
	2019	2020	2021	2022	2023	Thereafter		Total
Long-term debt								
Fixed Rate	\$ 630,000	\$ 350,000	\$ —	\$ 800,000	\$ 250,000	\$ —	\$ 2,030,000	\$ 2,082,863
Weighted Average Effective Interest Rate	3.9%	8.5%	—%	7.4%	7.8%	—%	6.6%	

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

**KB HOME
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Separate combined financial statements of our unconsolidated joint venture activities have been omitted because, if considered in the aggregate, they would not constitute a significant subsidiary as defined by Rule 3-09 of Regulation S-X.

KB HOME
CONSOLIDATED STATEMENTS OF OPERATIONS
(In Thousands, Except Per Share Amounts)

	Years Ended November 30,		
	2019	2018	2017
Total revenues	\$ 4,552,747	\$ 4,547,002	\$ 4,368,529
Homebuilding:			
Revenues	\$ 4,537,658	\$ 4,533,795	\$ 4,356,265
Construction and land costs	(3,708,928)	(3,743,920)	(3,646,468)
Selling, general and administrative expenses	(497,350)	(444,154)	(426,394)
Operating income	331,380	345,721	283,403
Interest income	2,158	3,514	1,240
Interest expense	—	—	(622)
Equity in income (loss) of unconsolidated joint ventures	(1,549)	2,066	(1,409)
Loss on early extinguishment of debt	(6,800)	—	(5,685)
Homebuilding pretax income	325,189	351,301	276,927
Financial services:			
Revenues	15,089	13,207	12,264
Expenses	(4,333)	(3,844)	(3,430)
Equity in income of unconsolidated joint ventures	12,230	7,301	4,234
Financial services pretax income	22,986	16,664	13,068
Total pretax income	348,175	367,965	289,995
Income tax expense	(79,400)	(197,600)	(109,400)
Net income	\$ 268,775	\$ 170,365	\$ 180,595
Earnings per share:			
Basic	\$ 3.04	\$ 1.93	\$ 2.09
Diluted	\$ 2.85	\$ 1.71	\$ 1.85
Weighted average shares outstanding:			
Basic	87,996	87,773	85,842
Diluted	93,838	101,059	98,316

See accompanying notes.

KB HOME
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In Thousands)

	Years Ended November 30,		
	2019	2018	2017
Net income	\$ 268,775	\$ 170,365	\$ 180,595
Other comprehensive income (loss):			
Postretirement benefit plan adjustments:			
Net actuarial gain (loss) arising during the period	(10,268)	8,216	(3,143)
Amortization of net actuarial loss	218	336	142
Amortization of prior service cost	1,556	1,556	1,556
Settlement loss	356	—	—
Other comprehensive income (loss) before tax	(8,138)	10,108	(1,445)
Income tax benefit (expense) related to items of other comprehensive income (loss)	2,197	(2,749)	578
Other comprehensive income (loss), net of tax	(5,941)	7,359	(867)
Comprehensive income	\$ 262,834	\$ 177,724	\$ 179,728

See accompanying notes.

KB HOME
CONSOLIDATED BALANCE SHEETS
(In Thousands, Except Shares)

	November 30,	
	2019	2018
Assets		
Homebuilding:		
Cash and cash equivalents	\$ 453,814	\$ 574,359
Receivables	249,055	292,830
Inventories	3,704,602	3,582,839
Investments in unconsolidated joint ventures	57,038	61,960
Property and equipment, net	65,043	24,283
Deferred tax assets, net	364,493	441,820
Other assets	83,041	83,100
	<u>4,977,086</u>	<u>5,061,191</u>
Financial services	38,396	12,380
Total assets	<u>\$ 5,015,482</u>	<u>\$ 5,073,571</u>
Liabilities and stockholders' equity		
Homebuilding:		
Accounts payable	\$ 262,772	\$ 258,045
Accrued expenses and other liabilities	618,783	666,268
Notes payable	1,748,747	2,060,263
	<u>2,630,302</u>	<u>2,984,576</u>
Financial services	2,058	1,495
Stockholders' equity:		
Preferred stock — \$1.00 par value; 10,000,000 shares authorized; none issued	—	—
Common stock — \$1.00 par value; 290,000,000 shares authorized at November 30, 2019 and 2018; 121,592,978 and 119,195,914 shares issued at November 30, 2019 and 2018, respectively	121,593	119,196
Paid-in capital	793,954	753,570
Retained earnings	2,157,183	1,897,168
Accumulated other comprehensive loss	(15,506)	(9,565)
Grantor stock ownership trust, at cost: 7,630,582 and 8,157,235 shares at November 30, 2019 and 2018, respectively	(82,758)	(88,472)
Treasury stock, at cost: 24,355,845 and 24,113,487 shares at November 30, 2019 and 2018, respectively	(591,344)	(584,397)
Total stockholders' equity	<u>2,383,122</u>	<u>2,087,500</u>
Total liabilities and stockholders' equity	<u>\$ 5,015,482</u>	<u>\$ 5,073,571</u>

See accompanying notes.

KB HOME
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In Thousands)

Years Ended November 30, 2019, 2018 and 2017

	Number of Shares			Common Stock	Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Grantor Stock Ownership Trust	Treasury Stock	Total Stockholders' Equity
	Common Stock	Grantor Stock Ownership Trust	Treasury Stock							
Balance at November 30, 2016	116,224	(9,432)	(21,720)	\$ 116,224	\$ 696,938	\$ 1,563,742	\$ (16,057)	\$ (102,300)	\$ (535,402)	\$ 1,723,145
Net income	—	—	—	—	—	180,595	—	—	—	180,595
Other comprehensive loss, net of tax	—	—	—	—	—	—	(867)	—	—	(867)
Dividends on common stock	—	—	—	—	—	(8,642)	—	—	—	(8,642)
Employee stock options/other	1,652	—	—	1,652	22,468	—	—	—	—	24,120
Stock awards	70	534	28	70	(6,556)	—	—	5,791	695	—
Stock-based compensation	—	—	—	—	14,633	—	—	—	—	14,633
Tax payments associated with stock-based compensation awards	—	—	(329)	—	—	—	—	—	(6,673)	(6,673)
Balance at November 30, 2017	117,946	(8,898)	(22,021)	117,946	727,483	1,735,695	(16,924)	(96,509)	(541,380)	1,926,311
Net income	—	—	—	—	—	170,365	—	—	—	170,365
Other comprehensive income, net of tax	—	—	—	—	—	—	7,359	—	—	7,359
Dividends on common stock	—	—	—	—	—	(8,892)	—	—	—	(8,892)
Employee stock options/other	1,196	—	—	1,196	18,815	—	—	—	—	20,011
Stock awards	54	741	48	54	(8,589)	—	—	8,037	498	—
Stock-based compensation	—	—	—	—	15,861	—	—	—	—	15,861
Stock repurchases	—	—	(1,806)	—	—	—	—	—	(35,039)	(35,039)
Tax payments associated with stock-based compensation awards	—	—	(334)	—	—	—	—	—	(8,476)	(8,476)
Balance at November 30, 2018	119,196	(8,157)	(24,113)	119,196	753,570	1,897,168	(9,565)	(88,472)	(584,397)	2,087,500
Cumulative effect of adoption of ASC 606	—	—	—	—	—	11,610	—	—	—	11,610
Net income	—	—	—	—	—	268,775	—	—	—	268,775
Other comprehensive loss, net of tax	—	—	—	—	—	—	(5,941)	—	—	(5,941)
Dividends on common stock	—	—	—	—	—	(20,370)	—	—	—	(20,370)
Employee stock options/other	2,341	—	—	2,341	28,183	—	—	—	—	30,524
Stock awards	56	526	27	56	(6,111)	—	—	5,714	341	—
Stock-based compensation	—	—	—	—	18,312	—	—	—	—	18,312
Tax payments associated with stock-based compensation awards	—	—	(270)	—	—	—	—	—	(7,288)	(7,288)
Balance at November 30, 2019	121,593	(7,631)	(24,356)	\$ 121,593	\$ 793,954	\$ 2,157,183	\$ (15,506)	\$ (82,758)	\$ (591,344)	\$ 2,383,122

See accompanying notes.

KB HOME
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	Years Ended November 30,		
	2019	2018	2017
Cash flows from operating activities:			
Net income	\$ 268,775	\$ 170,365	\$ 180,595
Adjustments to reconcile net income to net cash provided by operating activities:			
Equity in income of unconsolidated joint ventures	(10,681)	(9,367)	(2,825)
Distributions of earnings from unconsolidated joint ventures	6,450	9,047	—
Amortization of discounts, premiums and issuance costs	4,426	6,232	6,573
Depreciation and amortization	27,158	2,530	2,791
Deferred income taxes	73,303	191,817	105,348
Loss on early extinguishment of debt	6,800	—	5,685
Excess tax benefits from stock-based compensation	—	—	(958)
Stock-based compensation	18,312	15,861	14,633
Inventory impairments and land option contract abandonments	17,291	28,994	25,232
Changes in assets and liabilities:			
Receivables	44,428	(49,778)	(12,508)
Inventories	(165,347)	(270,126)	126,085
Accounts payable, accrued expenses and other liabilities	(40,583)	126,710	66,594
Other, net	710	(773)	(4,026)
Net cash provided by operating activities	<u>251,042</u>	<u>221,512</u>	<u>513,219</u>
Cash flows from investing activities:			
Contributions to unconsolidated joint ventures	(11,290)	(22,671)	(18,694)
Return of investments in unconsolidated joint ventures	5,001	9,934	11,035
Proceeds from sale of building	5,804	—	—
Purchases of property and equipment, net	(40,459)	(7,370)	(8,085)
Net cash used in investing activities	<u>(40,944)</u>	<u>(20,107)</u>	<u>(15,744)</u>
Cash flows from financing activities:			
Proceeds from issuance of debt	705,250	—	—
Repayment of senior notes	(986,231)	(300,000)	(270,326)
Payment of issuance costs	(11,128)	—	(1,711)
Borrowings under revolving credit facility	610,000	70,000	—
Repayments under revolving credit facility	(610,000)	(70,000)	—
Payments on mortgages and land contracts due to land sellers and other loans	(41,116)	(14,751)	(106,382)
Issuance of common stock under employee stock plans	30,524	20,011	23,162
Excess tax benefits from stock-based compensation	—	—	958
Stock repurchases	—	(35,039)	—
Tax payments associated with stock-based compensation awards	(7,288)	(8,476)	(6,673)
Payments of cash dividends	(20,370)	(8,892)	(8,642)
Net cash used in financing activities	<u>(330,359)</u>	<u>(347,147)</u>	<u>(369,614)</u>
Net increase (decrease) in cash and cash equivalents	(120,261)	(145,742)	127,861
Cash and cash equivalents at beginning of year	575,119	720,861	593,000
Cash and cash equivalents at end of year	<u>\$ 454,858</u>	<u>\$ 575,119</u>	<u>\$ 720,861</u>

See accompanying notes.

KB HOME
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Summary of Significant Accounting Policies

Operations. KB Home is a builder of attached and detached single-family residential homes, townhomes and condominiums. As of November 30, 2019, we conducted ongoing operations in Arizona, California, Colorado, Florida, Nevada, North Carolina, Texas and Washington. We also offer various insurance products to our homebuyers in the same markets where we build homes, and provide title services in the majority of our markets located within our Southwest, Central and Southeast homebuilding reporting segments. Since June 2017, we have been providing mortgage banking services, including mortgage loan originations, to our homebuyers indirectly through KBHS, an unconsolidated joint venture we formed with Stearns.

Basis of Presentation. Our consolidated financial statements have been prepared in accordance with GAAP and include our accounts and those of the consolidated subsidiaries in which we have a controlling financial interest. All intercompany balances and transactions have been eliminated in consolidation. Investments in unconsolidated joint ventures in which we have less than a controlling financial interest are accounted for using the equity method.

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

Cash and Cash Equivalents. We consider all highly liquid short-term investments purchased with an original maturity of three months or less to be cash equivalents. Our cash equivalents totaled \$302.5 million at November 30, 2019 and \$385.2 million at November 30, 2018. At November 30, 2019 and 2018, the majority of our cash and cash equivalents was invested in interest-bearing bank deposit accounts.

Receivables. Receivables are evaluated for collectibility at least quarterly, and allowances for potential losses are established or maintained on applicable receivables when collection is considered doubtful, taking into account historical experience, prevailing economic conditions and other relevant information.

Property and Equipment and Depreciation. Property and equipment are recorded at cost and are depreciated using the straight-line method over their estimated useful lives as follows: computer software and equipment – two to five years; model furnishings and sales office improvements – two to three years; office furniture and equipment – three to ten years; and leasehold improvements – life of the lease. Repair and maintenance costs are expensed as incurred. Depreciation expense totaled \$27.2 million in 2019, \$2.5 million in 2018 and \$2.8 million in 2017.

Homebuilding Operations. We recognize homebuilding revenue in accordance with ASC 606 by applying the following steps in determining the timing and amount of revenue to recognize: (1) identify the contract(s) with a 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, if applicable; and (5) recognize revenue when (or as) we satisfy a performance obligation.

Our home sale transactions are made pursuant to contracts under which we typically have a single performance obligation to deliver a completed home to the homebuyer when closing conditions are met. Revenues from home sales are recognized when we have satisfied the performance obligation within the sales contract, which is generally when title to and possession of the home and the risks and rewards of ownership are transferred to the homebuyer on the closing date. Under our home sale contracts, we typically receive an initial cash deposit from the homebuyer at the time the sales contract is executed and receive the remaining consideration to which we are entitled, through a third-party escrow agent, at closing. Customer deposits related to sold but undelivered homes totaled \$22.4 million and \$19.5 million at November 30, 2019 and November 30, 2018, respectively, and are included in accrued expenses and other liabilities.

Concurrent with the recognition of revenues in our consolidated statements of operations, sales incentives in the form of price concessions on the selling price of a home are recorded as a reduction of revenues. The costs of sales incentives in the form of free or discounted products or services provided to homebuyers, including option upgrades and closing cost allowances, are reflected as construction and land costs because such incentives are identified in our home sale contracts with homebuyers as an intrinsic part of our single performance obligation to deliver and transfer title to their home for the transaction price stated in the contracts. Sales incentives that we may provide in the form of closing cost allowances are immaterial to the related revenues. Cash proceeds from home sale closings held by third-party escrow agents for our benefit, typically for less than five days, are considered deposits in-transit and classified as cash.

Land sale transactions are made pursuant to contracts under which we typically have a performance obligation(s) to deliver specified land parcels to the buyer when closing conditions are met. We evaluate each land sale contract to determine our

performance obligation(s) under the contract, including whether we have a distinct promise to perform post-closing land development work that is material within the context of the contract, and use objective criteria to determine our completion of the applicable performance obligation(s), whether at a point in time or over time. Revenues from land sales are recognized when we have satisfied the performance obligation(s) within the sales contract, which is generally when title to and possession of the land and the risks and rewards of ownership are transferred to the land buyer on the closing date. Under our land sale contracts, we typically receive an initial cash deposit from the buyer at the time the contract is executed and receive the remaining consideration to which we are entitled, through a third-party escrow agent, at closing. In the limited circumstances where we provide financing to the land buyer, we determine that collectibility of the receivable is reasonably assured before we recognize revenue.

In instances where we have a distinct and material performance obligation(s) within the context of a land sale contract to perform land development work after the closing date, a portion of the transaction price under the contract is allocated to such performance obligation(s) and is recognized as revenue over time based upon our estimated progress toward the satisfaction of the performance obligation(s). We generally measure our progress based on our costs incurred relative to the total costs expected to satisfy the performance obligation(s). While the payment terms for such a performance obligation(s) vary, we generally receive the final payment when we have completed our land development work to the specifications detailed in the applicable land sale contract and it has been accepted by the land buyer.

Homebuilding revenues include forfeited deposits, which occur when home sale or land sale contracts that include a nonrefundable deposit are cancelled. Revenues from forfeited deposits are immaterial.

Within our homebuilding operations, substantially all of our contracts with customers and the related performance obligations have an original expected duration of one year or less.

Construction and land costs are comprised of direct and allocated costs, including estimated future costs for the limited warranty we provide on our homes, and certain amenities within a community. Land acquisition, land development and other common costs are generally allocated on a relative fair value basis to the homes or lots within the applicable community or land parcel. Land acquisition and land development costs include related interest and real estate taxes.

Inventories. Housing and land inventories are stated at cost, unless the carrying value is determined not to be recoverable, in which case the affected inventories are written down to fair value or fair value less associated costs to sell. Real estate assets, such as our housing and land inventories, are tested for recoverability whenever events or changes in circumstances indicate that their carrying value may not be recoverable. Recoverability is measured by comparing the carrying value of an asset to the undiscounted future net cash flows expected to be generated by the asset. These impairment evaluations are significantly impacted by estimates for the amounts and timing of future revenues, costs and expenses, and other factors. If the carrying value of a real estate asset is determined not to be recoverable, the impairment charge to be recognized is measured by the amount by which the carrying value of the affected asset exceeds its estimated fair value. For land held for sale, if the fair value less associated costs to sell exceeds the asset's carrying value, no impairment charge is recognized.

Capitalized Interest. Interest is capitalized to inventories while the related communities or land parcels are being actively developed and until homes are completed or the land is available for immediate sale. Capitalized interest is amortized to construction and land costs as the related inventories are delivered to homebuyers or land buyers (as applicable). For land held for future development or sale, applicable interest is expensed as incurred.

Fair Value Measurements. Fair value measurements are used for inventories on a nonrecurring basis when events and circumstances indicate that their carrying value is not recoverable. For these real estate assets, fair value is determined based on the estimated future net cash flows discounted for inherent risk associated with each such asset, or other valuation techniques.

Our financial instruments consist of cash and cash equivalents, senior notes, convertible senior notes, and mortgages and land contracts due to land sellers and other loans. Fair value measurements of financial instruments are determined by various market data and other valuation techniques as appropriate. When available, we use quoted market prices in active markets to determine fair value.

Financial Services Operations. Our financial services reporting segment generates revenues primarily from insurance commissions and title services. Revenues from title services are recognized when policies are issued, which generally occurs at the time each applicable home sale is closed. We receive commissions from various third-party insurance carriers for arranging for the carriers to provide homeowner and other insurance policies for our homebuyers that elect to obtain such coverage. In addition, each time a homebuyer renews their insurance policy with the insurance carrier, we receive a renewal commission. Revenues from insurance commissions are recognized when the insurance carrier issues an initial insurance policy to our homebuyer, which generally occurs at the time each applicable home sale is closed. As our performance obligations for policy renewal commissions are satisfied upon issuance of the initial insurance policy, insurance commissions for renewals are considered variable consideration under ASC 606. Accordingly, we estimate the probable future renewal commissions when an initial policy is issued

and record a corresponding contract asset and insurance commission revenues. We estimate the amount of variable consideration based on historical renewal trends and constrain the estimate such that it is probable that a significant reversal of cumulative recognized revenue will not occur. We also consider the likelihood and magnitude of a potential future reversal of revenue and update our assessment at the end of each reporting period. The contract assets for estimated future renewal commissions are included in other assets within our financial services reporting segment and totaled \$20.6 million at November 30, 2019. Contract assets totaling \$19.7 million were recognized on December 1, 2018 in connection with the adoption of ASC 606.

Warranty Costs. We provide a limited warranty on all of our homes. We estimate the costs that may be incurred under each limited warranty and record a liability in the amount of such costs at the time the revenue associated with the sale of each home is recognized. Our primary assumption in estimating the amounts we accrue for warranty costs is that historical claims experience is a strong indicator of future claims experience. Factors that affect our warranty liability include the number of homes delivered, historical and anticipated rates of warranty claims, and cost per claim. We periodically assess the adequacy of our accrued warranty liability and adjust the amount as necessary based on our assessment. Our warranty liability is presented on a gross basis for all years without consideration of recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any. Estimates of recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any, are recorded as receivables when such recoveries are considered probable.

Self-Insurance. We self-insure a portion of our overall risk through the use of a captive insurance subsidiary. We record liabilities based on the estimated costs required to cover reported claims, claims incurred but not yet reported, and claim adjustment expenses. These estimated costs are based on an actuarial analysis of our historical claims and expense data, as well as industry data. Our self-insurance liability is presented on a gross basis for all years without consideration of insurance recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any. Estimates of insurance recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any, are recorded as receivables when such recoveries are considered probable.

Community Sales Office and Other Marketing- and Model Home-Related Costs. Community sales office and other marketing- and model home-related costs are either recorded as inventories, capitalized as property and equipment, or expensed to selling, general and administrative expenses as incurred. Costs related to the construction of a model home, inclusive of upgrades that will be sold as part of the home, are recorded as inventories and recognized as construction and land costs when the model home is delivered to a homebuyer. Costs to furnish and ready a model home or on-site community sales facility that will not be sold as part of the model home, such as model furnishings, community sales office and model complex grounds, sales office construction and sales office furniture and equipment, are capitalized as property and equipment under “model furnishings and sales office improvements.” Model furnishings and sales office improvements are depreciated to selling, general and administrative expenses over their estimated useful lives. Other costs related to the marketing of a community, removing the on-site community sales facility and readying a completed (model) home for sale are expensed to selling, general and administrative expenses as incurred.

Advertising Costs. We expense advertising costs as incurred. We incurred advertising costs of \$43.6 million in 2019, \$37.3 million in 2018 and \$34.4 million in 2017.

Legal Fees. Legal fees associated with litigation and similar proceedings that are not expected to provide a benefit in future periods are generally expensed as incurred. Legal fees associated with land acquisition and development and other activities that are expected to provide a benefit in future periods are capitalized to inventories in our consolidated balance sheets as incurred. We expensed legal fees of \$16.7 million in 2019, \$12.4 million in 2018 and \$14.0 million in 2017.

Stock-Based Compensation. We measure and recognize compensation expense associated with our grant of equity-based awards at an amount equal to the fair value of share-based payments granted under compensation arrangements over the vesting period. We estimate the fair value of stock options and Director Plan SARs granted using the Black-Scholes option-pricing model with assumptions based primarily on historical data.

Income Taxes. The provision for, or benefit from, income taxes is calculated using the asset and liability method, under which deferred tax assets and liabilities are recorded based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. Deferred tax assets are evaluated on a quarterly basis to determine if adjustments to the valuation allowance are required. This evaluation is based on the consideration of all available positive and negative evidence using a “more likely than not” standard with respect to whether deferred tax assets will be realized. The ultimate realization of our deferred tax assets depends primarily on our ability to generate future taxable income during the periods in which the related deferred tax assets become deductible. The value of our deferred tax assets in our consolidated balance sheets depends on applicable income tax rates.

Accumulated Other Comprehensive Loss. The accumulated balances of other comprehensive loss in the consolidated balance sheets as of November 30, 2019 and 2018 were comprised solely of adjustments recorded directly to accumulated other

comprehensive loss related to our benefit plan obligations. Such adjustments are made annually as of November 30, when our benefit plan obligations are remeasured.

Earnings Per Share. We compute earnings per share using the two-class method, which is an allocation of earnings between the holders of common stock and a company's participating security holders. Our outstanding nonvested shares of restricted stock contain non-forfeitable rights to dividends and, therefore, are considered participating securities for purposes of computing earnings per share pursuant to the two-class method. We had no other participating securities at November 30, 2019, 2018 or 2017.

Adoption of New Accounting Pronouncements. In March 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-09, which simplified several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of excess tax benefits on the statement of cash flows, treatment of forfeitures, and statutory withholding requirements. We adopted this guidance effective December 1, 2017. ASU 2016-09 requires excess tax benefits and deficiencies from stock-based compensation awards to be recognized prospectively in our consolidated statements of operations as a component of income tax expense, whereas these items were previously recorded in paid-in capital in our consolidated balance sheets. This guidance also requires excess tax benefits to be classified within operating activities in the consolidated statements of cash flows. We previously recognized excess tax benefits as a cash inflow from financing activities and a corresponding cash outflow from operating activities. In connection with the adoption of this guidance, we elected to continue to estimate forfeitures in calculating our stock-based compensation expense, rather than account for forfeitures as they occur. The impact of recognizing excess tax benefits and deficiencies in our consolidated statements of operations resulted in reductions in our income tax expense of \$5.3 million for 2019 and \$1.0 million for 2018. The remaining aspects of adopting this guidance did not have a material impact on our consolidated financial statements.

In May 2014, the FASB issued Accounting Standards Update No. 2014-09, "Revenue from Contracts with Customers (Topic 606)" ("ASU 2014-09"), which supersedes the revenue guidance in Accounting Standards Codification Topic 605, "Revenue Recognition," and most industry-specific revenue and cost guidance in the accounting standards codification, including some cost guidance related to construction-type and production-type contracts. ASU 2014-09 and its related amendments collectively resulted in ASC 606. The core principle of ASC 606 is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

On December 1, 2018, we adopted ASC 606, using the modified retrospective method applied to contracts that were not completed as of the adoption date. Results for reporting periods beginning December 1, 2018 and after are presented under ASC 606, while results for prior reporting periods have not been adjusted and continue to be presented under the accounting guidance in effect for those periods. We recorded the following cumulative effect adjustment to increase beginning retained earnings as of December 1, 2018 (in thousands):

Balance Sheet	Balance at November 30, 2018	Adjustments due to ASC 606	Balance at December 1, 2018
Assets			
Homebuilding:			
Inventories	\$ 3,582,839	\$ (35,288)	\$ 3,547,551
Property and equipment, net	24,283	31,194	55,477
Deferred tax assets, net	441,820	(4,024)	437,796
Financial services	12,380	19,728	32,108
Stockholders' equity:			
Retained earnings	1,897,168	11,610	1,908,778

Within our homebuilding operations, ASC 606 impacted the classification and timing of recognition in our consolidated financial statements of certain community sales office and other marketing- and model home-related costs, which we previously capitalized to inventories and amortized through construction and land costs with each home delivered in a community. With our adoption of ASC 606, these costs are capitalized to property and equipment and depreciated to selling, general and administrative expenses, or expensed to selling, general and administrative expenses as incurred. Upon adopting ASC 606, we reclassified these community sales office and other marketing- and model home-related costs and related accumulated amortization from inventories to either property and equipment, net or retained earnings in our consolidated balance sheet. As a result of the change in the classification of certain community sales office and other marketing- and model home-related costs from inventories to property and equipment, net, these costs are presented as a cash outflow from investing activities in our consolidated statements of cash flows under ASC 606. Previously, such costs were classified as a cash outflow from operating activities. Forfeited deposits related

to cancelled home sale and land sale contracts, which were previously reflected as other income within selling, general and administrative expenses, are included in homebuilding revenues under ASC 606.

Within our financial services operations, ASC 606 impacted the timing of recognition in our consolidated financial statements of insurance commissions for insurance policy renewals. We previously recognized such insurance commissions as revenue when policies were renewed. With our adoption of ASC 606, insurance commissions for future policy renewals are estimated and recognized as revenue when the insurance carrier issues an initial insurance policy to our homebuyer, which generally occurs at the time each applicable home sale is closed. Upon adopting ASC 606, we recognized contract assets for the estimated future renewal commissions related to existing insurance policies as of December 1, 2018.

There were no significant changes to our business processes or internal control over financial reporting as a result of adopting ASC 606.

The impacts of adopting ASC 606 on our consolidated statements of operations for the year ended November 30, 2019 and consolidated balance sheet as of November 30, 2019 were as follows (in thousands, except per share amounts):

Statement of Operations	Year ended November 30, 2019		
	As Reported	Amounts without the Adoption of ASC 606	Effect of Change Higher/(Lower)
Homebuilding:			
Revenues	\$ 4,537,658	\$ 4,534,716	\$ 2,942
Construction and land costs	(3,708,928)	(3,740,337)	(31,409)
Selling, general and administrative expenses	(497,350)	(464,105)	33,245
Operating income	331,380	330,274	1,106
Financial services:			
Revenues	15,089	14,211	878
Total pretax income	348,175	346,191	1,984
Income tax expense	(79,400)	(78,900)	500
Net income	268,775	267,291	1,484
Diluted earnings per share	2.85	2.85	—

Balance Sheet	As of November 30, 2019		
	As Reported	Amounts without the Adoption of ASC 606	Effect of Change Higher/(Lower)
Assets			
Homebuilding:			
Inventories	\$ 3,704,602	\$ 3,746,567	\$ (41,965)
Deferred tax assets, net	364,493	369,017	(4,524)
Property and equipment, net	65,043	26,067	38,976
Financial services	38,396	17,790	20,606
Stockholders' equity:			
Retained earnings	2,157,183	2,144,090	13,093

Disaggregation of Revenues. Our homebuilding operations accounted for 99.7% of our total revenues for the year ended November 30, 2019, with most of those revenues generated from home sale contracts with customers. Due to the nature of our revenue-generating activities, we believe the disaggregation of revenues as reported in our consolidated statement of operations, and as disclosed by homebuilding reporting segment in Note 2 – Segment Information and for our financial services reporting segment in Note 3 – Financial Services, fairly depicts how the nature, amount, timing and uncertainty of cash flows are affected by economic factors.

Recent Accounting Pronouncements Not Yet Adopted. In February 2016, the FASB issued Accounting Standards Update No. 2016-02, “Leases (Topic 842)” (“ASU 2016-02”). ASU 2016-02 will require lessees to recognize on the balance sheet the assets and liabilities for the rights and obligations created by leases. Under this guidance, a lessee will be required to recognize assets and liabilities for leases with lease terms of more than 12 months. Lessor accounting remains substantially similar to previous lease accounting guidance. In addition, disclosures of leasing activities are to be expanded to include qualitative along with specific quantitative information. ASU 2016-02 is effective for us beginning December 1, 2019. We will adopt ASU 2016-02 and its related amendments (collectively, “ASC 842”) beginning December 1, 2019 using the modified retrospective method. Results for reporting periods beginning December 1, 2019 and after will be presented under ASC 842, while results for prior reporting periods will not be adjusted and will continue to be presented under the accounting guidance in effect for those periods. Upon adoption, we expect to record lease right-of-use assets and lease liabilities of approximately \$31.0 million on our consolidated balance sheet for leases with terms of more than 12 months, which are primarily real estate leases for office space and design studios, as well as certain equipment leases. In addition, we plan to record a cumulative effect adjustment to increase beginning retained earnings as of December 1, 2019 by approximately \$1.5 million, net of tax, to recognize a previously deferred gain on our sale and leaseback of an office building in 2019. We do not expect the adoption of ASC 842 to have a material impact on our consolidated statements of operations or cash flows.

In June 2016, the FASB issued Accounting Standards Update No. 2016-13, “Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments” (“ASU 2016-13”), which changes the impairment model for most financial assets and certain other instruments from an incurred loss approach to a new expected credit loss methodology. ASU 2016-13 is effective for us beginning December 1, 2020 (with early adoption permitted). We are currently evaluating the potential impact of adopting this guidance on our consolidated financial statements.

In February 2018, the FASB issued Accounting Standards Update No. 2018-02, “Income Statement — Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income” (“ASU 2018-02”), which allows a reclassification from accumulated other comprehensive income (loss) to retained earnings for stranded tax effects resulting from the TCJA, and requires certain disclosures about stranded tax effects. ASU 2018-02 is effective for us beginning December 1, 2019, and shall be applied either in the period of adoption or retrospectively to each period (or periods) in which the effect of the change in the corporate income tax rate in the TCJA is recognized. We do not expect the adoption of ASU 2018-02 to have a material impact on our consolidated financial statements.

Reclassifications. Certain amounts in our consolidated financial statements of prior years have been reclassified to conform to the current period presentation.

Note 2. Segment Information

An operating segment is defined as a component of an enterprise for which separate financial information is available and for which segment results are evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. We have identified each of our homebuilding divisions as an operating segment. Our homebuilding operating segments have been aggregated into four homebuilding reporting segments based primarily on similarities in economic and geographic characteristics, product types, regulatory environments, methods used to sell and construct homes and land acquisition characteristics. We also have one financial services reporting segment. Management evaluates segment performance primarily based on segment pretax results.

As of November 30, 2019, our homebuilding reporting segments conducted ongoing operations in the following states:

West Coast: California and Washington
Southwest: Arizona and Nevada
Central: Colorado and Texas
Southeast: Florida and North Carolina

Our homebuilding reporting segments are engaged in the acquisition and development of land primarily for residential purposes and offer a wide variety of homes that are designed to appeal to first-time, first move-up and active adult homebuyers. Our homebuilding operations generate most of their revenues from the delivery of completed homes to homebuyers. They also earn revenues from the sale of land. In 2018, we expanded into the Seattle, Washington market.

Our financial services reporting segment offers property and casualty insurance and, in certain instances, earthquake, flood and personal property insurance to our homebuyers in the same markets as our homebuilding reporting segments, and provides title services in the majority of our markets located within our Southwest, Central and Southeast homebuilding reporting segments. In 2019, we also expanded our title services business to include Arizona, Colorado and Nevada. Our financial services segment earns revenues primarily from insurance commissions and from the provision of title services.

In 2016, we and Stearns formed KBHS, an unconsolidated mortgage banking joint venture, to offer mortgage banking services, including mortgage loan originations, to our homebuyers. We and Stearns each have a 50.0% ownership interest, with Stearns providing management oversight of KBHS' operations. KBHS was operational in all of our served markets as of June 2017. Our homebuyers may select any lender of their choice to obtain mortgage financing for the purchase of their home. The financial services reporting segment is separately reported in our consolidated financial statements.

Corporate and other is a non-operating segment that develops and oversees the implementation of company-wide strategic initiatives and provides support to our reporting segments by centralizing certain administrative functions. Corporate management is responsible for, among other things, evaluating and selecting the geographic markets in which we operate, consistent with our overall business strategy; allocating capital resources to markets for land acquisition and development activities; making major personnel decisions related to employee compensation and benefits; and monitoring the financial and operational performance of our divisions. Corporate and other includes general and administrative expenses related to operating our corporate headquarters. A portion of the expenses incurred by Corporate and other is allocated to our homebuilding reporting segments.

Our reporting segments follow the same accounting policies used for our consolidated financial statements as described in Note 1 – Summary of Significant Accounting Policies. The results of each reporting segment are not necessarily indicative of the results that would have occurred had the segment been an independent, stand-alone entity during the periods presented, nor are they indicative of the results to be expected in future periods.

The following tables present financial information relating to our homebuilding reporting segments (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Revenues:			
West Coast	\$ 1,912,146	\$ 2,085,328	\$ 2,186,411
Southwest	764,816	707,075	533,052
Central	1,267,892	1,239,305	1,188,839
Southeast	592,804	502,087	447,963
Total	<u>\$ 4,537,658</u>	<u>\$ 4,533,795</u>	<u>\$ 4,356,265</u>
Pretax income (loss):			
West Coast	\$ 178,078	\$ 240,337	\$ 217,649
Southwest	111,016	91,017	45,540
Central	126,304	117,609	116,098
Southeast	18,550	7,624	(509)
Corporate and other	(108,759)	(105,286)	(101,851)
Total	<u>\$ 325,189</u>	<u>\$ 351,301</u>	<u>\$ 276,927</u>
Equity in income (loss) of unconsolidated joint ventures:			
West Coast	\$ (851)	\$ (966)	\$ (1,770)
Southwest	(697)	3,033	362
Central	—	—	—
Southeast	(1)	(1)	(1)
Total	<u>\$ (1,549)</u>	<u>\$ 2,066</u>	<u>\$ (1,409)</u>
Inventory impairment and land option contract abandonment charges:			
West Coast	\$ 15,567	\$ 20,381	\$ 16,707
Southwest	408	432	3,445
Central	848	2,558	846
Southeast	468	5,623	4,234
Total	<u>\$ 17,291</u>	<u>\$ 28,994</u>	<u>\$ 25,232</u>

	November 30,	
	2019	2018
Inventories:		
West Coast	\$ 1,795,088	\$ 1,727,993
Southwest	629,811	598,374
Central	889,179	865,184
Southeast	390,524	391,288
Total	<u>\$ 3,704,602</u>	<u>\$ 3,582,839</u>
Investments in unconsolidated joint ventures:		
West Coast	\$ 51,740	\$ 56,128
Southwest	2,792	3,327
Central	—	—
Southeast	2,506	2,505
Total	<u>\$ 57,038</u>	<u>\$ 61,960</u>
Assets:		
West Coast	\$ 1,925,192	\$ 1,880,516
Southwest	674,310	631,509
Central	1,035,563	1,017,490
Southeast	441,451	463,224
Corporate and other	900,570	1,068,452
Total	<u>\$ 4,977,086</u>	<u>\$ 5,061,191</u>

Note 3. Financial Services

The following tables present financial information relating to our financial services reporting segment (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Revenues			
Insurance commissions	\$ 8,662	\$ 7,535	\$ 6,991
Title services	6,421	5,672	5,268
Interest income	6	—	5
Total	<u>15,089</u>	<u>13,207</u>	<u>12,264</u>
Expenses			
General and administrative	(4,333)	(3,844)	(3,430)
Operating income	10,756	9,363	8,834
Equity in income of unconsolidated joint ventures	12,230	7,301	4,234
Pretax income	<u>\$ 22,986</u>	<u>\$ 16,664</u>	<u>\$ 13,068</u>

	November 30,	
	2019	2018
Assets		
Cash and cash equivalents	\$ 1,044	\$ 760
Receivables	2,232	2,885
Investments in unconsolidated joint ventures	14,374	8,594
Other assets (a)	20,746	141
Total assets	\$ 38,396	\$ 12,380
Liabilities		
Accounts payable and accrued expenses	\$ 2,058	\$ 1,495
Total liabilities	\$ 2,058	\$ 1,495

(a) Other assets at November 30, 2019 included \$20.6 million of contract assets for estimated future renewal commissions due to our adoption of ASC 606 effective December 1, 2018, as described in Note 1 – Summary of Significant Accounting Policies.

On July 9, 2019, the parent company of Stearns, our partner in KBHS, filed a voluntary bankruptcy petition in the United States Bankruptcy Court, Southern District of New York, with Stearns included as a debtor in the case. KBHS was not included in the filing. On October 24, 2019, the court confirmed Stearns' parent company's plan of reorganization under which, among other things, one of its largest owners took full control of the reorganized company and invested significant new equity capital in the business. The confirmed plan of reorganization became effective on November 5, 2019. During the pendency of the bankruptcy proceedings, KBHS provided mortgage banking services to our homebuyers consistent with its pre-filing performance and there was no consolidated financial statement impact.

Note 4. Earnings Per Share

Basic and diluted earnings per share were calculated as follows (in thousands, except per share amounts):

	Years Ended November 30,		
	2019	2018	2017
Numerator:			
Net income	\$ 268,775	\$ 170,365	\$ 180,595
Less: Distributed earnings allocated to nonvested restricted stock	(123)	(51)	(56)
Less: Undistributed earnings allocated to nonvested restricted stock	(1,505)	(927)	(1,121)
Numerator for basic earnings per share	267,147	169,387	179,418
Effect of dilutive securities:			
Interest expense and amortization of debt issuance costs associated with convertible senior notes, net of taxes	541	3,190	2,654
Add: Undistributed earnings allocated to nonvested restricted stock	1,505	927	1,121
Less: Undistributed earnings reallocated to nonvested restricted stock	(1,412)	(805)	(979)
Numerator for diluted earnings per share	\$ 267,781	\$ 172,699	\$ 182,214

	Years Ended November 30,		
	2019	2018	2017
Denominator:			
Weighted average shares outstanding — basic	87,996	87,773	85,842
Effect of dilutive securities:			
Share-based payments	4,415	4,884	4,072
Convertible senior notes	1,427	8,402	8,402
Weighted average shares outstanding — diluted	93,838	101,059	98,316
Basic earnings per share	\$ 3.04	\$ 1.93	\$ 2.09
Diluted earnings per share	\$ 2.85	\$ 1.71	\$ 1.85

The diluted earnings per share calculations for the years ended November 30, 2019, 2018 and 2017 included the dilutive effect of our 1.375% Convertible Senior Notes due 2019 based on the number of days they were outstanding during each period. We repaid these notes at their February 1, 2019 maturity. In 2019, outstanding stock options to purchase a nominal amount of common stock were excluded from the diluted earnings per share calculation because the effect of their inclusion would be antidilutive. In 2018 and 2017, outstanding stock options to purchase .8 million and 1.6 million shares of common stock, respectively, were excluded from the diluted earnings per share calculations because the effect of their inclusion in each case would be antidilutive. Contingently issuable shares associated with outstanding PSUs were not included in the basic earnings per share calculations for the periods presented, as the applicable vesting conditions had not been satisfied.

Note 5. Receivables

Receivables consisted of the following (in thousands):

	November 30,	
	2019	2018
Due from utility companies, improvement districts and municipalities (a)	\$ 128,047	\$ 113,434
Recoveries related to self-insurance and other legal claims	80,729	138,261
Refundable deposits and bonds	10,925	14,115
Other	37,846	38,525
Subtotal	257,547	304,335
Allowance for doubtful accounts	(8,492)	(11,505)
Total	\$ 249,055	\$ 292,830

- (a) These receivables typically relate to infrastructure improvements we make with respect to our communities. We are generally reimbursed for the cost of such improvements when they are accepted by the utility company, improvement district or municipality, or after certain events occur, depending on the terms of the applicable agreements. These events may include, but are not limited to, the connection of utilities or the issuance of bonds by the respective improvement districts or municipalities.

Note 6. Inventories

Inventories consisted of the following (in thousands):

	November 30,	
	2019	2018
Homes completed or under construction	\$ 1,340,412	\$ 1,125,152
Land under development	2,213,713	2,219,936
Land held for future development or sale (a)	150,477	237,751
Total	<u>\$ 3,704,602</u>	<u>\$ 3,582,839</u>

(a) Land held for sale totaled \$19.3 million at November 30, 2019 and \$9.8 million at November 30, 2018.

Homes completed or under construction is comprised of costs associated with homes completed or in various stages of construction and includes direct construction and related land acquisition and land development costs. Land under development primarily consists of land acquisition and land development costs. Land development costs also include capitalized interest and real estate taxes. When home construction begins, the associated land acquisition and land development costs are included in homes completed or under construction.

Land held for future development principally reflects land acquisition and land development costs related to land where development activity has been suspended or has not yet begun but is expected to occur in the future. These assets held for future development are located in various submarkets where conditions do not presently support further investment or development, or are subject to a building permit moratorium or regulatory restrictions, or are portions of larger land parcels that we plan to build out over several years and/or that have not yet been entitled. We may also suspend development activity if we believe it will result in greater returns and/or maximize the economic performance of a particular community by delaying improvements for a period of time to, for instance, allow earlier phases of a long-term, multi-phase community or a neighboring community to generate or extend sales momentum, or for market conditions to improve. In some instances, we may activate or resume development activity for such inventory to accelerate sales and/or our return on investment. We activated assets previously held for future development in certain markets in 2019, 2018 and 2017 as part of our Returns-Focused Growth Plan.

Land is generally considered held for sale when management commits to a plan to sell the land; the land is available for immediate sale in its present condition; an active program to locate a buyer and other actions required to complete the plan to sell have been initiated; the sale of the land is expected to be completed within one year; the land is being actively marketed for sale at a price that is reasonable in relation to its current fair value; and it is unlikely that the plan to sell will be withdrawn or that significant changes to the plan will be made. Interest and real estate taxes are not capitalized on land held for future development or sale.

During 2019 and 2018, we changed our strategy related to certain land parcels located in improving housing markets where we determined the incremental investment in development to be justified and decided to build and sell homes on these parcels. Such land parcels were classified as either land under development or land held for future development (in the case of later phases of a long-term, multi-phase community) as of November 30, 2019 and 2018. Land held for sale as of November 30, 2019 and 2018 consisted of land parcels that either have been contracted to sell or that we are continuing to actively market and/or intend to sell within one year.

Our interest costs were as follows (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Capitalized interest at beginning of year	\$ 209,129	\$ 262,191	\$ 306,723
Interest incurred	143,412	149,698	171,486
Interest expensed	—	—	(622)
Interest amortized to construction and land costs (a)	(156,803)	(202,760)	(215,396)
Capitalized interest at end of year (b)	<u>\$ 195,738</u>	<u>\$ 209,129</u>	<u>\$ 262,191</u>

(a) Interest amortized to construction and land costs for the years ended November 30, 2019, 2018 and 2017 included \$0.7 million, \$4.8 million and \$4.9 million, respectively, related to land sales during the periods.

- (b) Capitalized interest amounts reflect the gross amount of capitalized interest, as inventory impairment charges recognized, if any, are not generally allocated to specific components of inventory.

Note 7. Inventory Impairments and Land Option Contract Abandonments

Each community or land parcel in our owned inventory is assessed to determine if indicators of potential impairment exist. Impairment indicators are assessed separately for each community or land parcel on a quarterly basis and include, but are not limited to, the following: significant decreases in net orders, average selling prices, volume of homes delivered, gross profit margins on homes delivered or projected gross profit margins on homes in backlog or future deliveries; significant increases in budgeted land development and home construction costs or cancellation rates; or projected losses on expected future land sales. If indicators of potential impairment exist for a community or land parcel, the identified asset is evaluated for recoverability. We evaluated 40, 57 and 51 communities or land parcels for recoverability during the years ended November 30, 2019, 2018 and 2017, respectively. The carrying value of those communities or land parcels evaluated during the years ended November 30, 2019, 2018 and 2017 was \$326.3 million, \$356.1 million and \$456.9 million, respectively. The communities or land parcels evaluated during 2019, 2018 and 2017 included certain communities or land parcels previously held for future development that were reactivated as part of our efforts to improve our asset efficiency under our Returns-Focused Growth Plan. As impairment indicators are assessed on a quarterly basis, some of the communities or land parcels evaluated during these years were evaluated in more than one quarterly period. Communities or land parcels evaluated for recoverability in more than one quarterly period are counted only once for each applicable year. In some cases, we have recognized inventory impairment charges for particular communities or land parcels in multiple years. Inventory impairment charges are included in construction and land costs in our consolidated statements of operations.

When an indicator of potential impairment is identified for a community or land parcel, we test the asset for recoverability by comparing the carrying value of the asset to the undiscounted future net cash flows expected to be generated by the asset. The undiscounted future net cash flows are impacted by then-current conditions and trends in the market in which the asset is located as well as factors known to us at the time the cash flows are calculated. These factors may include recent trends in our orders, backlog, cancellation rates and volume of homes delivered, as well as our expectations related to the following: product offerings; market supply and demand, including estimated average selling prices and related price appreciation; and land development, home construction and overhead costs to be incurred and related cost inflation. With respect to the years ended November 30, 2019 and 2018, these expectations reflected our experience that, notwithstanding fluctuations in our company-wide net orders, backlog levels, homes delivered and housing gross profit margin during those periods, on a year-over-year basis, conditions in the markets where assessed assets were located were generally stable or improved, with no significant deterioration identified or projected, as to revenue and cost drivers that would prevent or otherwise impact recoverability. Based on this experience, and taking into account the generally healthy conditions in many of our served markets for new home sales, our inventory assessments as of November 30, 2019 considered an expected steady overall sales pace and average selling price performance for 2020 and beyond relative to the pace and performance in recent quarters. Our inventory is assessed for potential impairment on a quarterly basis, and the assumptions used are reviewed and adjusted, as necessary, to reflect the market conditions and trends and our expectations at the time each assessment is performed.

Given the inherent challenges and uncertainties in forecasting future results, our inventory assessments at the time they are made take into consideration whether a community or land parcel is active, meaning whether it is open for sales and/or undergoing development, or whether it is being held for future development or held for sale. Due to the short-term nature of active communities and land held for sale, as compared to land held for future development, our inventory assessments generally assume the continuation of then-current market conditions, subject to identifying information suggesting significant sustained changes in such conditions. Our assessments of active communities, at the time made, generally anticipate net orders, average selling prices, volume of homes delivered and costs for land development and home construction to continue at or near then-current levels through the particular asset's estimated remaining life. Inventory assessments for our land held for future development consider then-current market conditions as well as subjective forecasts regarding the timing and costs of land development and home construction and related cost inflation; the product(s) to be offered; and the net orders, volume of homes delivered, and selling prices and related price appreciation of the offered product(s) when an associated community is anticipated to open for sales. We evaluate various factors to develop these forecasts, including the availability of and demand for homes and finished lots within the relevant marketplace; historical, current and expected future sales trends for the marketplace; and third-party data, if available. The estimates, expectations and assumptions used in each of our inventory assessments are specific to each community or land parcel based on what we believe are reasonable forecasts for their particular performance, and may vary among communities or land parcels and may vary over time.

We record an inventory impairment charge on a community or land parcel that is active or held for future development when indicators of potential impairment exist and the carrying value of the real estate asset is greater than the undiscounted future net cash flows the asset is expected to generate. These real estate assets are written down to fair value, which is primarily determined

based on the estimated future net cash flows discounted for inherent risk associated with each such asset, or other valuation techniques. Inputs used in our calculation of estimated discounted future net cash flows are specific to each affected real estate asset and are based on our expectations for each such asset as of the applicable measurement date, including, among others, expectations related to average selling prices and volume of homes delivered. The discount rates we used were impacted by one or more of the following at the time the calculation was made: the risk-free rate of return; expected risk premium based on estimated land development, home construction and delivery timelines; market risk from potential future price erosion; cost uncertainty due to land development or home construction cost increases; and other risks specific to the asset or conditions in the market in which the asset is located.

We record an inventory impairment charge on land held for sale when the carrying value of a land parcel is greater than its fair value. These real estate assets are written down to fair value, less associated costs to sell. The estimated fair values of such assets are generally based on bona fide letters of intent from outside parties, executed sales contracts, broker quotes or similar information.

The following table summarizes ranges for significant quantitative unobservable inputs we utilized in our fair value measurements with respect to impaired communities, other than land held for sale, written down to fair value during the years presented:

Unobservable Input (a)	Years Ended November 30,		
	2019	2018	2017
Average selling price	\$315,000 - \$1,045,400	\$291,300 - \$774,100	\$207,100 - \$1,576,500
Deliveries per month	1 - 4	2 - 6	1 - 4
Discount rate	17%	17% - 19%	17% - 18%

(a) The ranges of inputs used in each period primarily reflect differences between the housing markets where each impacted community is located, rather than fluctuations in prevailing market conditions.

Based on the results of our evaluations, we recognized inventory impairment charges of \$14.0 million in 2019 related to eight communities with a post-impairment fair value of \$27.1 million. In 2018, we recognized inventory impairment charges of \$26.1 million related to 13 communities with a post-impairment fair value of \$44.1 million. In 2017, we recognized inventory impairment charges of \$20.6 million related to 10 communities with a post-impairment fair value of \$38.4 million. The impairment charges in 2019, 2018 and 2017 reflected our decisions to make changes in our operational strategies aimed at more quickly monetizing our investment in certain communities by accelerating the overall pace for selling, building and delivering homes therein, including communities on land previously held for future development. If we change our strategy or if there are changes in market conditions for any given asset, it is possible that we may recognize additional inventory impairment charges.

As of November 30, 2019, the aggregate carrying value of our inventory that had been impacted by inventory impairment charges was \$115.6 million, representing 19 communities and various other land parcels. As of November 30, 2018, the aggregate carrying value of our inventory that had been impacted by inventory impairment charges was \$156.1 million, representing 22 communities and various other land parcels.

Our inventory controlled under land option contracts and other similar contracts is assessed to determine whether it continues to meet our investment return standards. Assessments are made separately for each optioned land parcel on a quarterly basis and are affected by the following factors relative to the market in which the asset is located, among others: current and/or anticipated net orders, average selling prices and volume of homes delivered; estimated land development and home construction costs; and projected profitability on expected future housing or land sales. When a decision is made not to exercise certain land option contracts and other similar contracts due to market conditions and/or changes in our marketing strategy, we write off the related inventory costs, including non-refundable deposits and unrecoverable pre-acquisition costs. Based on the results of our assessments, we recognized land option contract abandonment charges of \$3.3 million in 2019, \$2.9 million in 2018 and \$4.6 million in 2017. Land option contract abandonment charges are included in construction and land costs in our consolidated statements of operations.

The estimated remaining life of each community or land parcel in our inventory depends on various factors, such as the total number of lots remaining; the expected timeline to acquire and entitle land and develop lots to build homes; the anticipated future net order and cancellation rates; and the expected timeline to build and deliver homes sold. While it is difficult to determine a precise timeframe for any particular inventory asset, based on current market conditions and expected delivery timelines, we estimate our inventory assets' remaining operating lives to range generally from one year to in excess of ten years, and expect to realize, on an overall basis, the majority of our inventory balance as of November 30, 2019 within five years.

Due to the judgment and assumptions applied in our inventory impairment and land option contract abandonment assessment processes, and in our estimations of the remaining operating lives of our inventory assets and the realization of our inventory balances, particularly as to land held for future development, it is possible that actual results could differ substantially from those estimated.

Note 8. Variable Interest Entities

Unconsolidated Joint Ventures. We participate in joint ventures from time to time that conduct land acquisition, land development and/or other homebuilding activities in various markets where our homebuilding operations are located. Our investments in these joint ventures may create a variable interest in a VIE, depending on the contractual terms of the arrangement. We analyze our joint ventures under the variable interest model to determine whether they are VIEs and, if so, whether we are the primary beneficiary. Based on our analyses, we determined that one of our joint ventures at November 30, 2019 and 2018 was a VIE, but we were not the primary beneficiary of the VIE. Therefore, all of our joint ventures at November 30, 2019 and 2018 were unconsolidated and accounted for under the equity method because we did not have a controlling financial interest.

Land Option Contracts and Other Similar Contracts. In the ordinary course of our business, we enter into land option contracts and other similar contracts with third parties and unconsolidated entities to acquire rights to land for the construction of homes. The use of these contracts generally allows us to reduce the market risks associated with direct land ownership and development, and reduce our capital and financial commitments, including interest and other carrying costs. Under these contracts, we typically make a specified option payment or earnest money deposit in consideration for the right to purchase land in the future, usually at a predetermined price.

We analyze each of our land option contracts and other similar contracts under the variable interest model to determine whether the land seller is a VIE and, if so, whether we are the primary beneficiary. Although we do not have legal title to the underlying land, we are required to consolidate a VIE if we are the primary beneficiary. In determining whether we are the primary beneficiary, we consider, among other things, whether we have the power to direct the activities of the VIE that most significantly impact the VIE's economic performance. Such activities would include, among other things, determining or limiting the scope or purpose of the VIE, selling or transferring property owned or controlled by the VIE, or arranging financing for the VIE. As a result of our analyses, we determined that as of November 30, 2019 and 2018, we were not the primary beneficiary of any VIEs from which we have acquired rights to land under land option contracts and other similar contracts. We perform ongoing reassessments of whether we are the primary beneficiary of a VIE.

The following table presents a summary of our interests in land option contracts and other similar contracts (in thousands):

	November 30, 2019		November 30, 2018	
	Cash Deposits	Aggregate Purchase Price	Cash Deposits	Aggregate Purchase Price
Unconsolidated VIEs	\$ 34,595	\$ 823,427	\$ 26,542	\$ 784,334
Other land option contracts and other similar contracts	40,591	600,092	27,288	586,904
Total	\$ 75,186	\$ 1,423,519	\$ 53,830	\$ 1,371,238

In addition to the cash deposits presented in the table above, our exposure to loss related to our land option contracts and other similar contracts with third parties and unconsolidated entities consisted of pre-acquisition costs of \$32.8 million at November 30, 2019 and \$46.9 million at November 30, 2018. These pre-acquisition costs and cash deposits were included in inventories in our consolidated balance sheets.

For land option contracts and other similar contracts where the land seller entity is not required to be consolidated under the variable interest model, we consider whether such contracts should be accounted for as financing arrangements. Land option contracts and other similar contracts that may be considered financing arrangements include those we enter into with third-party land financiers or developers in conjunction with such third parties acquiring a specific land parcel(s) on our behalf, at our direction, and those with other landowners where we or our designee make improvements to the optioned land parcel(s) during the applicable option period. For these land option contracts and other similar contracts, we record the remaining purchase price of the associated land parcel(s) in inventories in our consolidated balance sheets with a corresponding financing obligation if we determine that we are effectively compelled to exercise the option to purchase the land parcel(s). In making this determination with respect to a land option contract, we consider the non-refundable deposit(s) we have made and any non-reimbursable expenditures we have incurred for land improvement activities or other items up to the assessment date; additional costs associated with abandoning the contract; and our commitments, if any, to incur non-reimbursable costs associated with the contract. As a result of our evaluations of land option contracts and other similar contracts for financing arrangements, we recorded inventories in our consolidated balance sheets,

with a corresponding increase to accrued expenses and other liabilities, of \$12.2 million at November 30, 2019 and \$21.8 million at November 30, 2018.

Note 9. Investments in Unconsolidated Joint Ventures

We have investments in unconsolidated joint ventures that conduct land acquisition, land development and/or other homebuilding activities in various markets where our homebuilding operations are located. We and our unconsolidated joint venture partners make initial and/or ongoing capital contributions to these unconsolidated joint ventures, typically on a pro rata basis, according to our respective equity interests. The obligations to make capital contributions are governed by each such unconsolidated joint venture’s respective operating agreement and related governing documents. Our partners in these unconsolidated joint ventures are unrelated homebuilders, and/or land developers and other real estate entities, or commercial enterprises. These investments are designed primarily to reduce market and development risks and to increase the number of lots we own or control. In some instances, participating in unconsolidated joint ventures has enabled us to acquire and develop land that we might not otherwise have had access to due to a project’s size, financing needs, duration of development or other circumstances. While we consider our participation in unconsolidated joint ventures as potentially beneficial to our homebuilding activities, we do not view such participation as essential.

For distributions we receive from these unconsolidated joint ventures, we have elected to use the cumulative earnings approach for our consolidated statements of cash flows. Under the cumulative earnings approach, distributions up to the amount of cumulative equity in earnings recognized are treated as returns on investment within operating cash flows and those in excess of that amount are treated as returns of investment within investing cash flows.

We typically have obtained rights to acquire portions of the land held by the unconsolidated joint ventures in which we currently participate. When an unconsolidated joint venture sells land to our homebuilding operations, we defer recognition of our share of such unconsolidated joint venture’s earnings (losses) until we recognize revenues on the corresponding home sale, which is generally when title to and possession of the home and the risks and rewards of ownership are transferred to the homebuyer on the closing date. At that time, we account for the earnings (losses) as a reduction (increase) to the cost of purchasing the land from the unconsolidated joint venture. We defer recognition of our share of such unconsolidated joint venture losses only to the extent profits are to be generated from the sale of the home to a homebuyer.

We share in the earnings (losses) of these unconsolidated joint ventures generally in accordance with our respective equity interests. In some instances, we recognize earnings (losses) related to our investment in an unconsolidated joint venture that differ from our equity interest in the unconsolidated joint venture. This typically arises from our deferral of the unconsolidated joint venture’s earnings (losses) from land sales to us, or other items.

The following table presents combined condensed information from the statements of operations of our unconsolidated joint ventures (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Revenues	\$ 23,676	\$ 59,418	\$ 47,431
Construction and land costs	(23,659)	(46,288)	(47,459)
Other expenses, net	(2,644)	(2,674)	(4,749)
Income (loss)	\$ (2,627)	\$ 10,456	\$ (4,777)

For the years ended November 30, 2019, 2018 and 2017, combined revenues and construction and land costs were generated primarily from land sales. The higher combined revenues and income for 2018 as compared to 2019 and 2017, mainly reflected the sale of land by an unconsolidated joint venture in Arizona, and contingent consideration (profit participation revenues) earned by an unconsolidated joint venture in California.

The following table presents combined condensed balance sheet information for our unconsolidated joint ventures (in thousands):

	November 30,	
	2019	2018
Assets		
Cash	\$ 23,965	\$ 18,567
Receivables	12	9
Inventories	139,536	131,074
Other assets	780	521
Total assets	\$ 164,293	\$ 150,171
Liabilities and equity		
Accounts payable and other liabilities	\$ 13,282	\$ 11,374
Notes payable (a)	40,672	17,956
Equity	110,339	120,841
Total liabilities and equity	\$ 164,293	\$ 150,171

- (a) As of November 30, 2019 and 2018, we had investments in five and six unconsolidated joint ventures, respectively, one of which had a construction loan agreement with a third-party lender to finance its land development activities. The outstanding debt is secured by the corresponding underlying property and related project assets and is non-recourse to us. All of the outstanding secured debt at November 30, 2019 is scheduled to mature in February 2020. However, the loan agreement provides for two-12 month extensions beyond this date. None of our other unconsolidated joint ventures had outstanding debt at November 30, 2019 or 2018.

We and our partner in the unconsolidated joint venture that has the above-noted outstanding construction loan agreement at November 30, 2019 provide certain guarantees and indemnities to the lender, including a guaranty to complete the construction of improvements for the project; a guaranty against losses the lender suffers due to certain bad acts or failures to act by the unconsolidated joint venture or its partners; and an indemnity of the lender from environmental issues. In each instance, our actual responsibility under the foregoing guaranty and indemnity obligations is limited to our pro rata interest in the unconsolidated joint venture. We do not have a guaranty or any other obligation to repay or to support the value of the collateral underlying the outstanding secured debt. However, various financial and non-financial covenants apply with respect to the outstanding secured debt and the related guaranty and indemnity obligations, and a failure to comply with such covenants could result in a default and cause the lender to seek to enforce such guaranty and indemnity obligations, if and as may be applicable. As of the date of this report, we were in compliance with the applicable terms of our relevant covenants with respect to the construction loan agreement. We do not believe that our existing exposure under our guaranty and indemnity obligations related to the outstanding secured debt is material to our consolidated financial statements.

Note 10. Property and Equipment, Net

Property and equipment, net consisted of the following (in thousands):

	November 30,	
	2019	2018
Computer software and equipment	\$ 27,091	\$ 20,940
Model furnishings and sales office improvements (a)	82,117	—
Leasehold improvements, office furniture and equipment (b)	16,173	23,491
Subtotal	125,381	44,431
Less accumulated depreciation (a)	(60,338)	(20,148)
Total	\$ 65,043	\$ 24,283

- (a) The balance at November 30, 2019 reflects a change in the classification of certain community sales office and other marketing- and model home-related costs and related accumulated amortization from inventories to property and equipment, net due to our adoption of ASC 606 effective December 1, 2018, as described in Note 1 – Summary of Significant Accounting Policies.
- (b) In January 2019, we completed the sale and leaseback of our office building in San Antonio, Texas. The sale generated net cash proceeds of \$5.8 million and a gain of \$2.2 million, which is being recognized on a straight-line basis over a 10-year lease term until our adoption of ASC 842, when the remaining gain will be recognized as a transition adjustment to beginning retained earnings, as described in Note 1 – Summary of Significant Accounting Policies.

Note 11. Other Assets

Other assets consisted of the following (in thousands):

	November 30,	
	2019	2018
Cash surrender value and benefit receivable from corporate-owned life insurance contracts	\$ 73,849	\$ 73,721
Prepaid expenses	5,944	7,647
Debt issuance costs associated with unsecured revolving credit facility, net	3,248	1,732
Total	<u>\$ 83,041</u>	<u>\$ 83,100</u>

Note 12. Accrued Expenses and Other Liabilities

Accrued expenses and other liabilities consisted of the following (in thousands):

	November 30,	
	2019	2018
Self-insurance and other legal liabilities	\$ 229,483	\$ 283,651
Employee compensation and related benefits	163,646	148,549
Warranty liability	88,839	82,490
Accrued interest payable	32,507	31,180
Inventory-related obligations (a)	26,264	40,892
Customer deposits	22,382	19,491
Real estate and business taxes	14,872	16,639
Other	40,790	43,376
Total	<u>\$ 618,783</u>	<u>\$ 666,268</u>

- (a) Represents liabilities for financing arrangements discussed in Note 8 – Variable Interest Entities, as well as liabilities for fixed or determinable amounts associated with TIFE assessments. As homes are delivered, our obligation to pay the remaining TIFE assessments associated with each underlying lot is transferred to the homebuyer. As such, these assessment obligations will be paid by us only to the extent we do not deliver homes on applicable lots before the related TIFE obligations mature.

Note 13. Income Taxes

Income Tax Expense. The components of the income tax expense in our consolidated statements of operations are as follows (in thousands):

	Federal	State	Total
2019			
Current	\$ (200)	\$ (3,700)	\$ (3,900)
Deferred	(53,800)	(21,700)	(75,500)
Income tax expense	<u>\$ (54,000)</u>	<u>\$ (25,400)</u>	<u>\$ (79,400)</u>

	Federal	State	Total
2018			
Current	\$ (3,600)	\$ (4,800)	\$ (8,400)
Deferred	(170,700)	(18,500)	(189,200)
Income tax expense	<u>\$ (174,300)</u>	<u>\$ (23,300)</u>	<u>\$ (197,600)</u>
2017			
Current	\$ (2,800)	\$ (3,000)	\$ (5,800)
Deferred	(86,300)	(17,300)	(103,600)
Income tax expense	<u>\$ (89,100)</u>	<u>\$ (20,300)</u>	<u>\$ (109,400)</u>

Our effective tax rates were 22.8% for 2019, 53.7% for 2018 and 37.7% for 2017.

In 2019, our income tax expense and effective tax rate reflected the favorable impacts of \$5.3 million of excess tax benefits related to stock-based compensation, a \$4.4 million deferred tax asset valuation allowance reversal and \$4.3 million of federal energy tax credits we earned from building energy-efficient homes, partly offset by a \$1.9 million non-cash charge due to the re-measurement of deferred tax assets based on a reduction in certain state income tax rates.

Our income tax expense and effective tax rate for 2018 included a charge of \$112.5 million for TCJA-related impacts, as described below; the favorable effect of the reduction in the federal corporate income tax rate under the TCJA; the favorable net impact of federal energy tax credits of \$10.7 million that we earned from building energy-efficient homes; a \$2.1 million net tax benefit from a reduction in our deferred tax asset valuation allowance; and excess tax benefits of \$1.0 million related to stock-based compensation. The TCJA required us to use a blended federal tax rate for our 2018 fiscal year by applying a prorated percentage of days before and after the January 1, 2018 effective date. As a result, our 2018 annual federal statutory tax rate was reduced to approximately 22%.

The federal energy tax credits for the years ended November 30, 2019 and 2018 resulted from legislation enacted on February 9, 2018, which among other things, extended the availability of a business tax credit for building new energy-efficient homes through December 31, 2017. Prior to this legislation, the tax credit expired on December 31, 2016. In December 2019, federal legislation was enacted, which among other things, extended the availability of a business tax credit for building new energy-efficient homes through December 31, 2020. This extension is expected to benefit our income tax provision in future periods.

In 2017, our income tax expense and effective tax rates reflected the favorable net impact of \$4.9 million of federal energy tax credits we earned from building energy-efficient homes through December 31, 2016.

TCJA. The TCJA, enacted in December 2017, among other things: (a) reduced the federal corporate income tax rate from 35% to 21%, effective January 1, 2018; (b) eliminated the federal corporate alternative minimum tax (“AMT”) and changed how existing AMT credits can be realized; and (c) eliminated several business deductions and credits, including deductions for certain executive compensation in excess of \$1 million. In 2018, based on our analysis of the TCJA’s income tax effects, we recorded a total non-cash charge of \$112.5 million to income tax expense, comprised of a provisional estimate of \$111.2 million recorded in the 2018 first quarter and an additional \$1.3 million charge in the 2018 fourth quarter. The following TCJA-related impacts were reflected in our consolidated financial statements for the year ended November 30, 2018:

- We recorded a non-cash charge of \$106.7 million in income tax expense due to the accounting re-measurement of our deferred tax assets based on the lower federal corporate income tax rate under the TCJA.
- As we may claim a refund of 50% of our remaining AMT credits annually through 2021 to the extent the credits exceed regular income tax for any such year, and receive a full refund of any remaining credits in 2022, we estimated our refund of AMT credit carryforwards will total approximately \$50.0 million. As the refund was subject to a sequestration reduction rate of approximately 6.6%, we established a federal deferred tax valuation allowance of \$3.3 million for 2018. Our accounting policy regarding the balance sheet presentation of the AMT credits is to maintain the balance in deferred tax assets until a tax return is filed claiming a refund of a portion of the credit, at which time such amount will be presented in receivables.
- We recorded a non-cash charge of \$2.5 million in income tax expense for disallowed executive compensation due to the TCJA’s eliminating the deductibility of certain performance-based compensation. The TCJA also modified who is a covered employee with respect to the deduction limitation, and provided a transition rule that would preserve the

deductibility of certain 2018 performance-based compensation payable under written binding contracts in place prior to November 2, 2017 that had not been modified in any material respect.

Deferred Tax Assets, Net. Deferred income taxes result from temporary differences in the financial and tax basis of assets and liabilities. Significant components of our deferred tax liabilities and assets are as follows (in thousands):

	November 30,	
	2019	2018
Deferred tax liabilities:		
Capitalized expenses	\$ 43,818	\$ 51,660
State taxes	26,290	31,246
Other	4,132	225
Total	<u>74,240</u>	<u>83,131</u>
Deferred tax assets:		
Tax credits	180,737	231,100
Net operating losses (“NOLs”) from 2006 through 2019	95,562	121,432
Employee benefits	53,294	45,802
Inventory impairment and land option contract abandonment charges	48,862	67,416
Warranty, legal and other accruals	40,954	43,213
Capitalized expenses	25,116	27,894
Partnerships and joint ventures	9,990	6,368
Depreciation and amortization	479	1,869
Other	2,939	3,457
Total	<u>457,933</u>	<u>548,551</u>
Valuation allowance	(19,200)	(23,600)
Total	<u>438,733</u>	<u>524,951</u>
Deferred tax assets, net	<u>\$ 364,493</u>	<u>\$ 441,820</u>

Reconciliation of Expected Income Tax Expense. The income tax expense computed at the statutory U.S. federal income tax rate and the income tax expense provided in our consolidated statements of operations differ as follows (dollars in thousands):

	Years Ended November 30,					
	2019		2018		2017	
	\$	%	\$	%	\$	%
Income tax expense computed at statutory rate	\$ (73,117)	(21.0)%	\$ (81,689)	(22.2)%	\$ (101,499)	(35.0)%
Tax credits	6,595	1.9	14,177	3.9	6,227	2.2
Valuation allowance for deferred tax assets	4,400	1.3	2,000	.5	1,200	.4
Depreciation and amortization	4,276	1.2	1,223	.3	362	.1
NOL reconciliation	3,111	.9	—	—	(2,210)	(.8)
State taxes, net of federal income tax benefit	(20,927)	(6.0)	(20,155)	(5.5)	(14,450)	(4.9)
Non-deductible compensation	(4,653)	(1.3)	—	—	—	—
TCJA adjustment	—	—	(112,458)	(30.5)	—	—
Other, net	915	.2	(698)	(.2)	970	.3
Income tax expense	<u>\$ (79,400)</u>	<u>(22.8)%</u>	<u>\$ (197,600)</u>	<u>(53.7)%</u>	<u>\$ (109,400)</u>	<u>(37.7)%</u>

Deferred Tax Asset Valuation Allowance. We evaluate our deferred tax assets quarterly to determine if adjustments to our valuation allowance are required based on the consideration of all available positive and negative evidence using a “more likely than not” standard with respect to whether deferred tax assets will be realized. Our evaluation considers, among other factors, our historical operating results, our expectation of future profitability, the duration of the applicable statutory carryforward periods, and conditions in the housing market and the broader economy. In our evaluation, we give more significant weight to evidence that is objective in nature as compared to subjective evidence. Also, more significant weight is given to evidence that directly relates to our then-current financial performance as compared to indirect or less current evidence. The ultimate realization of our deferred tax assets depends primarily on our ability to generate future taxable income during the periods in which the related deferred tax assets become deductible. The value of our deferred tax assets depends on applicable income tax rates.

Our deferred tax assets of \$383.7 million at November 30, 2019 and \$465.4 million at November 30, 2018 were partially offset in each year by valuation allowances of \$19.2 million and \$23.6 million, respectively. The deferred tax asset valuation allowances at November 30, 2019 and 2018 were primarily related to certain state NOLs that had not met the “more likely than not” realization standard at those dates. As of November 30, 2019, we would need to generate approximately \$1.30 billion of pretax income in future periods before 2039 to realize our deferred tax assets. Based on the evaluation of our deferred tax assets as of November 30, 2019, we determined that most of our deferred tax assets would be realized. The decrease in the valuation allowance during 2019 primarily reflected our reversal of the above-mentioned \$4.4 million deferred tax asset valuation allowance, partly due to the Internal Revenue Service’s announcement in January 2019 that refundable AMT credits will not be subject to sequestration for taxable years beginning after December 31, 2017. As noted above, in 2018, we established a federal deferred tax asset valuation allowance of \$3.3 million due to the sequestration of refundable AMT credits, which was offset by a reduction of \$3.3 million in our state deferred tax asset valuation allowance primarily to account for state NOLs that met the “more likely than not” standard or had expired. In 2018, the net tax benefit related to the reduction in the state deferred tax asset valuation allowance was \$2.1 million. In 2017, we reduced our valuation allowance by \$1.2 million primarily to account for state NOLs that met the “more likely than not” realization standard.

We will continue to evaluate both the positive and negative evidence on a quarterly basis in determining the need for a valuation allowance with respect to our deferred tax assets. The accounting for deferred tax assets is based upon estimates of future results. Changes in positive and negative evidence, including differences between estimated and actual results, could result in changes in the valuation of our deferred tax assets that could have a material impact on our consolidated financial statements. Changes in existing federal and state tax laws and corporate income tax rates could also affect actual tax results and the realization of deferred tax assets over time.

The majority of the tax benefits associated with our NOLs can be carried forward for 20 years and applied to offset future taxable income. Depending on their applicable statutory period, the state NOL carryforwards of \$95.5 million, if not utilized, will begin to expire between 2020 and 2039. State NOL carryforwards of \$1.2 million expired in 2018.

In addition, \$77.4 million of our tax credits, if not utilized, will begin to expire in 2027 through 2039.

Unrecognized Tax Benefits. Gross unrecognized tax benefits are the differences between a tax position taken or expected to be taken in a tax return, and the benefit recognized for accounting purposes. A reconciliation of the beginning and ending balances of gross unrecognized tax benefits, excluding interest and penalties, is as follows (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Balance at beginning of year	\$ —	\$ 56	\$ 56
Reductions due to lapse of statute of limitations	—	(56)	—
Balance at end of year	\$ —	\$ —	\$ 56

We recognize accrued interest and penalties related to unrecognized tax benefits in our consolidated financial statements as a component of the provision for income taxes. As of November 30, 2019 and 2018, we had no gross unrecognized tax benefits. As of November 30, 2017, our gross unrecognized tax benefits (including interest and penalties) totaled \$.1 million. Our liabilities for unrecognized tax benefits at November 30, 2017 are included in accrued expenses and other liabilities in our consolidated balance sheets.

As of November 30, 2019 and 2018, there were no tax positions for which the ultimate deductibility is highly certain but the timing of such deductibility is uncertain. Our total accrued interest and penalties related to unrecognized income tax benefits was zero at both November 30, 2019 and 2018. Because of the impact of deferred tax accounting, other than interest and penalties, the disallowance of the shorter deductibility period would not affect our annual effective tax rate, but would accelerate the payment

of cash to a tax authority to an earlier period. The fiscal years ending 2016 and later remain open to federal examinations, while 2015 and later remain open to state examinations.

The benefits of our deferred tax assets, including our NOLs, built-in losses and tax credits would be reduced or potentially eliminated if we experienced an “ownership change” under Section 382. Based on our analysis performed as of November 30, 2019, we do not believe that we have experienced an ownership change as defined by Section 382, and, therefore, the NOLs, built-in losses and tax credits we have generated should not be subject to a Section 382 limitation as of this reporting date.

Note 14. Notes Payable

Notes payable consisted of the following (in thousands):

	November 30,	
	2019	2018
Mortgages and land contracts due to land sellers and other loans (at interest rates of 7% at November 30, 2019 and 2018)	\$ 7,889	\$ 40,038
1.375% Convertible senior notes due February 1, 2019	—	229,788
4.75% Senior notes due May 15, 2019	—	399,483
8.00% Senior notes due March 15, 2020	—	347,790
7.00% Senior notes due December 15, 2021	448,164	447,359
7.50% Senior notes due September 15, 2022	348,267	347,731
7.625% Senior notes due May 15, 2023	351,748	248,074
6.875% Senior notes due June 15, 2027	296,379	—
4.80% Senior notes due November 15, 2029	296,300	—
Total	\$ 1,748,747	\$ 2,060,263

The carrying amounts of our senior notes listed above are net of debt issuance costs, premiums and discounts, which totaled \$9.1 million at November 30, 2019 and \$9.8 million at November 30, 2018.

Unsecured Revolving Credit Facility. On October 7, 2019, we entered into an amendment to the Credit Facility that increased the borrowing capacity from \$500.0 million to \$800.0 million and extended the maturity from July 27, 2021 to October 7, 2023. The Credit Facility, as amended, contains an uncommitted accordion feature under which its aggregate principal amount of available loans can be increased to a maximum of \$1.00 billion under certain conditions, including obtaining additional bank commitments. The Credit Facility also contains a sublimit of \$250.0 million for the issuance of letters of credit. Interest on amounts borrowed under the Credit Facility is payable at least quarterly in arrears at a rate based on either a Eurodollar or a base rate, plus a spread that depends on our Leverage Ratio, as defined under the Credit Facility. The Credit Facility also requires the payment of a commitment fee at a per annum rate ranging from .20% to .35% of the unused commitment, based on our Leverage Ratio. Under the terms of the Credit Facility, we are required, among other things, to maintain compliance with various covenants, including financial covenants relating to our consolidated tangible net worth, Leverage Ratio, and either an Interest Coverage Ratio or a minimum level of liquidity, each as defined therein. The amount of the Credit Facility available for cash borrowings or the issuance of letters of credit depends on the total cash borrowings and letters of credit outstanding under the Credit Facility and the maximum available amount under the terms of the Credit Facility. As of November 30, 2019, we had no cash borrowings and \$18.9 million of letters of credit outstanding under the Credit Facility. Therefore, as of November 30, 2019, we had \$781.1 million available for cash borrowings under the Credit Facility, with up to \$231.1 million of that amount available for the issuance of letters of credit.

LOC Facility. On February 13, 2019, we entered into an LOC Facility, which expires on February 13, 2022. Under the LOC Facility, we may issue up to \$50.0 million of letters of credit. We maintain the LOC Facility to obtain letters of credit from time to time in the ordinary course of operating our business. As of November 30, 2019, we had \$15.8 million of letters of credit outstanding under the LOC Facility. We previously had a cash-collateralized letter of credit facility, which we terminated in 2019. We had no letters of credit outstanding under the cash-collateralized letter of credit facility at November 30, 2018.

Mortgages and Land Contracts Due to Land Sellers and Other Loans. As of November 30, 2019, inventories having a carrying value of \$29.2 million were pledged to collateralize mortgages and land contracts due to land sellers and other loans.

Shelf Registration. We have the 2017 Shelf Registration filed with the SEC. Issuances of securities under our 2017 Shelf Registration require the filing of a prospectus supplement identifying the amount and terms of the securities to be issued. Our ability to issue securities is subject to market conditions and other factors impacting our borrowing capacity.

Senior Notes. All of the senior notes outstanding at November 30, 2019 and 2018 represent senior unsecured obligations and rank equally in right of payment with all of our existing and future indebtedness. All of our outstanding senior notes were issued in underwritten public offerings.

The key terms of each of our senior notes outstanding as of November 30, 2019 were as follows (dollars in thousands):

Notes Payable	Principal	Issuance Date	Maturity Date	Redeemable Prior to Maturity	Effective Interest Rate
7.00% Senior notes	\$ 450,000	October 29, 2013	December 15, 2021	Yes (a)	7.2%
7.50% Senior notes	350,000	July 31, 2012	September 15, 2022	Yes (b)	7.7
7.625% Senior notes	350,000	February 17, 2015/February 20, 2019	May 15, 2023	Yes (a)	7.5
6.875% Senior notes	300,000	February 20, 2019	June 15, 2027	Yes (a)	7.1
4.80% Senior notes	300,000	November 4, 2019	November 15, 2029	Yes (a)	5.0

- (a) At our option, these notes may be redeemed, in whole at any time or from time to time in part, at a redemption price equal to the greater of (i) 100% of the principal amount of the notes being redeemed and (ii) the sum of the present values of the remaining scheduled payments of principal and interest on the notes being redeemed (exclusive of interest accrued to the applicable redemption date), discounted to the redemption date at a defined rate, plus, in each case, accrued and unpaid interest on the notes being redeemed to, but excluding, the applicable redemption date, except that three months prior to the stated maturity dates for the 7.00% Senior Notes due 2021 and until their respective maturity, and six months prior to the stated maturity date for the 7.625% Senior Notes due 2023, 6.875% Senior Notes due 2027 and 4.80% Senior Notes due 2029 and until their maturity, the redemption price will be equal to 100% of the principal amount of the notes being redeemed, plus, in each case, accrued and unpaid interest on the notes being redeemed to, but excluding, the applicable redemption date.
- (b) At our option, these notes may be redeemed, in whole at any time or from time to time in part, at a redemption price equal to the greater of (i) 100% of the principal amount of the notes being redeemed and (ii) the sum of the present values of the remaining scheduled payments of principal and interest on the notes being redeemed (exclusive of interest accrued to the applicable redemption date), discounted to the redemption date at a defined rate, plus, in each case, accrued and unpaid interest on the notes being redeemed to the applicable redemption date.

If a change in control occurs as defined in the instruments governing our senior notes, we would be required to offer to purchase all of our outstanding senior notes at 101% of their principal amount, together with all accrued and unpaid interest, if any.

On February 1, 2019, we repaid the entire \$230.0 million in aggregate principal amount of our 1.375% Convertible Senior Notes due 2019 at their maturity.

On February 20, 2019, we completed concurrent public offerings of \$300.0 million in aggregate principal amount of 6.875% Senior Notes due 2027 at 100.000% of their aggregate principal amount, and an additional \$100.0 million in aggregate principal amount of our existing series of 7.625% Senior Notes due 2023 at 105.250% of their aggregate principal amount plus accrued interest from November 15, 2018 (the last date on which interest was paid on the existing 2023 senior notes) to the date of delivery. Net proceeds from these offerings totaled \$400.0 million, after deducting the underwriting discount and our expenses relating to the offerings.

On March 8, 2019, we applied the net proceeds from the concurrent public offerings toward the optional redemption of the entire \$400.0 million in aggregate principal amount of our 4.75% Senior Notes due 2019 before their May 15, 2019 maturity date.

On November 4, 2019, we completed a public offering of \$300.0 million in aggregate principal amount of 4.80% Senior Notes due 2029 at 100.000% of their aggregate principal amount. Net proceeds from this offering totaled \$296.3 million, after deducting the underwriting discount and our expenses relating to the offering.

On November 22, 2019, at our option, we redeemed the entire \$350.0 million in aggregate principal amount of our 8.00% Senior Notes due 2020 before their March 15, 2020 maturity date. We used the net proceeds from the 4.80% Senior Notes due 2029 and internally generated cash to fund this redemption. We paid \$356.2 million to redeem the notes and recorded a charge of \$6.8 million for the early extinguishment of debt.

On June 15, 2018, we repaid the entire \$300.0 million in aggregate principal amount of our 7 1/4% Senior Notes due 2018 at their maturity using internally generated cash.

The indenture governing our senior notes does not contain any financial covenants. Subject to specified exceptions, the indenture contains certain restrictive covenants that, among other things, limit our ability to incur secured indebtedness, or engage in sale-leaseback transactions involving property or assets above a certain specified value. In addition, our senior notes contain certain limitations related to mergers, consolidations, and sales of assets.

As of the date of this report, we were in compliance with the applicable terms of all our covenants and other requirements under the Credit Facility, the senior notes, the indenture, and the mortgages and land contracts due to land sellers and other loans. Our ability to access the Credit Facility for cash borrowings and letters of credit and our ability to secure future debt financing depend, in part, on our ability to remain in such compliance. Unless there is a default under the Credit Facility, there are no agreements that restrict our payment of dividends.

Principal payments on senior notes, mortgages and land contracts due to land sellers and other loans are due during each year ending November 30 as follows: 2020 — \$7.9 million; 2021 — \$0; 2022 — \$800.0 million; 2023 — \$350.0 million; 2024 — \$0; and thereafter — \$600.0 million.

Note 15. Fair Value Disclosures

Fair value measurements of assets and liabilities are categorized based on the following hierarchy:

Level 1 Fair value determined based on quoted prices in active markets for identical assets or liabilities.

Level 2 Fair value determined using significant observable inputs, such as quoted prices for similar assets or liabilities or quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability, or inputs that are derived principally from or corroborated by observable market data, by correlation or other means.

Level 3 Fair value determined using significant unobservable inputs, such as pricing models, discounted cash flows, or similar techniques.

Fair value measurements are used for inventories on a nonrecurring basis when events and circumstances indicate that their carrying value is not recoverable. The following table presents the fair value hierarchy and our assets measured at fair value on a nonrecurring basis (in thousands):

Description	Fair Value Hierarchy	November 30, 2019			November 30, 2018		
		Pre-Impairment Value	Inventory Impairment Charges	Fair Value (a)	Pre-Impairment Value	Inventory Impairment Charges	Fair Value (a)
Inventories (a)	Level 3	\$ 41,160	\$ (14,031)	\$ 27,129	\$ 70,156	\$ (26,104)	\$ 44,052

(a) Amounts represent the aggregate fair value for real estate assets impacted by inventory impairment charges during the applicable period, as of the date that the fair value measurements were made. The carrying value for these real estate assets may have subsequently increased or decreased from the fair value reflected due to activity that has occurred since the measurement date.

The fair values for inventories that were determined using Level 3 inputs were based on the estimated future net cash flows discounted for inherent risk associated with each underlying asset.

The following table presents the fair value hierarchy, carrying values and estimated fair values of our financial instruments, except those for which the carrying values approximate fair values (in thousands):

Description	Fair Value Hierarchy	November 30,			
		2019		2018	
		Carrying Value (a)	Estimated Fair Value	Carrying Value (a)	Estimated Fair Value
Financial Liabilities:					
Senior notes	Level 2	\$ 1,740,858	\$ 1,921,563	\$ 1,790,437	\$ 1,853,438
Convertible senior notes	Level 2	—	—	229,788	229,425

(a) The carrying values for the senior notes and convertible senior notes, as presented, include unamortized debt issuance costs. Debt issuance costs are not factored into the estimated fair values of these notes.

The fair values of our senior notes and convertible senior notes are generally estimated based on quoted market prices for these instruments. The carrying values reported for cash and cash equivalents, and mortgages and land contracts due to land sellers and other loans approximate fair values. The carrying value of corporate-owned life insurance is based on the cash surrender value of the policies and, accordingly, approximates fair value.

Note 16. Commitments and Contingencies

Commitments and contingencies include typical obligations of homebuilders for the completion of contracts and those incurred in the ordinary course of business.

Warranty. We provide a limited warranty on all of our homes. The specific terms and conditions of our limited warranty program vary depending upon the markets in which we do business. We generally provide a structural warranty of 10 years, a warranty on electrical, heating, cooling, plumbing and certain other building systems each varying from two to five years based on geographic market and state law, and a warranty of one year for other components of the home. Our limited warranty program is ordinarily how we respond to and account for homeowners' requests to local division offices seeking repairs of certain conditions or defects, including claims where we could have liability under applicable state statutes or tort law for a defective condition in or damages to a home. Our warranty liability covers our costs of repairs associated with homeowner claims made under our limited warranty program. These claims are generally made directly by a homeowner and involve their individual home.

We estimate the costs that may be incurred under each limited warranty and record a liability in the amount of such costs at the time the revenue associated with the sale of each home is recognized. Our primary assumption in estimating the amounts we accrue for warranty costs is that historical claims experience is a strong indicator of future claims experience. Factors that affect our warranty liability include the number of homes delivered, historical and anticipated rates of warranty claims, and cost per claim. We periodically assess the adequacy of our accrued warranty liability, which is included in accrued expenses and other liabilities in our consolidated balance sheets, and adjust the amount as necessary based on our assessment. Our assessment includes the review of our actual warranty costs incurred to identify trends and changes in our warranty claims experience, and considers our home construction quality and customer service initiatives and outside events. While we believe the warranty liability currently reflected in our consolidated balance sheets to be adequate, unanticipated changes or developments in the legal environment, local weather, land or environmental conditions, quality of materials or methods used in the construction of homes or customer service practices and/or our warranty claims experience could have a significant impact on our actual warranty costs in future periods and such amounts could differ significantly from our current estimates.

The changes in our warranty liability were as follows (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Balance at beginning of year	\$ 82,490	\$ 69,798	\$ 56,682
Warranties issued	35,480	37,792	38,452
Payments	(23,531)	(23,300)	(25,336)
Adjustments	(5,600)	(1,800)	—
Balance at end of year	\$ 88,839	\$ 82,490	\$ 69,798

Guarantees. In the normal course of our business, we issue certain representations, warranties and guarantees related to our home sales and land sales. Based on historical experience, we do not believe any potential liability with respect to these representations, warranties or guarantees would be material to our consolidated financial statements.

Self-Insurance. We maintain, and require the majority of our independent subcontractors to maintain, general liability insurance (including construction defect and bodily injury coverage) and workers' compensation insurance. These insurance policies protect us against a portion of our risk of loss from claims related to our homebuilding activities, subject to certain self-insured retentions, deductibles and other coverage limits. We also maintain certain other insurance policies. In Arizona, California, Colorado and Nevada, our subcontractors' general liability insurance primarily takes the form of a wrap-up policy under a program where eligible independent subcontractors are enrolled as insureds on each community. Enrolled subcontractors contribute toward the cost of the insurance and agree to pay a contractual amount in the future if there is a claim related to their work. To the extent provided under the wrap-up program, we absorb the enrolled subcontractors' general liability associated with the work performed on our homes within the applicable community as part of our overall general liability insurance and our self-insurance.

We self-insure a portion of our overall risk through the use of a captive insurance subsidiary, which provides coverage for our exposure to certain construction defect, bodily injury and property damage claims and related litigation or regulatory actions, up to certain limits. Our self-insurance liability generally covers the costs of settlements and/or repairs, if any, as well as our costs to defend and resolve the following types of claims:

- Construction defect: Construction defect claims, which represent the largest component of our self-insurance liability, typically originate through a legal or regulatory process rather than directly by a homeowner and involve the alleged occurrence of a condition affecting two or more homes within the same community, or they involve a common area or homeowners' association property within a community. These claims typically involve higher costs to resolve than individual homeowner warranty claims, and the rate of claims is highly variable.
- Bodily injury: Bodily injury claims typically involve individuals (other than our employees) who claim they were injured while on our property or as a result of our operations.
- Property damage: Property damage claims generally involve claims by third parties for alleged damage to real or personal property as a result of our operations. Such claims may occasionally include those made against us by owners of property located near our communities.

Our self-insurance liability at each reporting date represents the estimated costs of reported claims, claims incurred but not yet reported, and claim adjustment expenses. The amount of our self-insurance liability is based on an analysis performed by a third-party actuary that uses our historical claim and expense data, as well as industry data to estimate these overall costs. Key assumptions used in developing these estimates include claim frequencies, severities and resolution patterns, which can occur over an extended period of time. These estimates are subject to variability due to the length of time between the delivery of a home to a homebuyer and when a construction defect claim is made, and the ultimate resolution of such claim; uncertainties regarding such claims relative to our markets and the types of product we build; and legal or regulatory actions and/or interpretations, among other factors. Due to the degree of judgment involved and the potential for variability in these underlying assumptions, our actual future costs could differ from those estimated. In addition, changes in the frequency and severity of reported claims and the estimates to resolve claims can impact the trends and assumptions used in the actuarial analysis, which could be material to our consolidated financial statements. Though state regulations vary, construction defect claims are reported and resolved over a long period of time, which can extend for 10 years or more. As a result, the majority of the estimated self-insurance liability based on the actuarial analysis relates to claims incurred but not yet reported. Therefore, adjustments related to individual existing claims generally do not significantly impact the overall estimated liability. Adjustments to our liabilities related to homes delivered in prior years are recorded in the period in which a change in our estimate occurs.

Our self-insurance liability is presented on a gross basis for all years without consideration of insurance recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any. Estimated probable insurance and other recoveries of \$50.6 million and \$56.9 million are included in receivables in our consolidated balance sheets at November 30, 2019 and 2018, respectively. These self-insurance recoveries are principally based on actuarially determined amounts and depend on various factors, including, among other things, the above-described claim cost estimates, our insurance policy coverage limits for the applicable policy year(s), historical third-party recovery rates, insurance industry practices, the regulatory environment, and legal precedent, and are subject to a high degree of variability from year to year. Because of the inherent uncertainty and variability in these assumptions, our actual insurance recoveries could differ significantly from amounts currently estimated.

The changes in our self-insurance liability were as follows (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Balance at beginning of year	\$ 176,841	\$ 177,695	\$ 158,584
Self-insurance expense (a)	16,685	20,436	20,371
Payments (b)	(15,761)	(21,290)	(22,933)
Adjustments (c)	—	—	21,673
Balance at end of year	<u>\$ 177,765</u>	<u>\$ 176,841</u>	<u>\$ 177,695</u>

- (a) These expenses are included in selling, general and administrative expenses and are largely offset by contributions from independent subcontractors participating in the wrap-up policy.
- (b) Includes net changes in estimated probable insurance and other recoveries, which are recorded in receivables, to present our self-insurance liability on a gross basis.
- (c) The amount for 2017 reflected a change in estimate to increase our self-insurance liability based on an actuarially determined estimate that we believed had a higher probability of being adequate to cover future payments associated with unresolved claims, including claims incurred but not yet reported. This adjustment was included in selling, general and administrative expenses.

For most of our claims, there is no interaction between our warranty liability and self-insurance liability. Typically, if a matter is identified at its outset as either a warranty or self-insurance claim, it remains as such through its resolution. However, there can be instances of interaction between the liabilities, such as where individual homeowners in a community separately request warranty repairs to their homes to address a similar condition or issue and subsequently join together to initiate, or potentially initiate, a legal process with respect to that condition or issue and/or the repair work we have undertaken. In these instances, the claims and related repair work generally are initially covered by our warranty liability, and the costs associated with resolving the legal matter (including any additional repair work) are covered by our self-insurance liability.

The payments we make in connection with claims and related repair work, whether covered within our warranty liability and/or our self-insurance liability, may be recovered from our insurers to the extent such payments exceed the self-insured retentions or deductibles under our general liability insurance policies. Also, in certain instances, in the course of resolving a claim, we pay amounts in advance of and/or on behalf of a subcontractor(s) or their insurer(s) and believe we will be reimbursed for such payments. Estimates of all such amounts, if any, are recorded as receivables in our consolidated balance sheets when any such recovery is considered probable. In 2017, we received insurance recoveries of \$23.5 million, which exceeded the \$11.6 million of estimated probable recoveries receivable we had previously recorded. The excess recoveries were included in selling, general and administrative expenses.

Florida Chapter 558 Actions. We and certain of our subcontractors have received a growing number of claims from attorneys on behalf of individual owners of our homes and/or homeowners' associations that allege, pursuant to Chapter 558 of the Florida Statutes, various construction defects, with most relating to stucco and water-intrusion issues. The claims primarily involve homes in our Jacksonville, Orlando, and Tampa operations. Under Chapter 558, homeowners must serve written notice of a construction defect(s) and provide the served construction and/or design contractor(s) with an opportunity to respond to the noticed issue(s) before they can file a lawsuit. Although we have resolved many of these claims without litigation, and a number of others have been resolved with applicable subcontractors or their insurers covering the related costs, as of November 30, 2019, we had approximately 477 outstanding noticed claims, and some are scheduled for trial over the next few quarters and beyond. In addition, some of our subcontractors' insurers in some of these cases have informed us of their inability to continue to pay claims-related costs. At November 30, 2019, we had an accrual for our estimated probable loss for these matters and a receivable for estimated probable insurance recoveries. While it is reasonably possible that our loss could exceed the amount accrued and our recoveries could be less than the amount recorded, at this time, we are unable to estimate the total amount of the loss in excess of the accrued amount and/or associated with a shortfall in the recoveries that is reasonably possible.

Performance Bonds and Letters of Credit. We are often required to provide to various municipalities and other government agencies performance bonds and/or letters of credit to secure the completion of our projects and/or in support of obligations to build community improvements such as roads, sewers, water systems and other utilities, and to support similar development activities by certain of our unconsolidated joint ventures. At November 30, 2019, we had \$793.9 million of performance bonds and \$34.7 million of letters of credit outstanding. At November 30, 2018, we had \$689.3 million of performance bonds and \$28.0 million of letters of credit outstanding. If any such performance bonds or letters of credit are called, we would be obligated to reimburse the issuer of the performance bond or letter of credit. We do not believe that a material amount of any currently outstanding performance bonds or letters of credit will be called. Performance bonds do not have stated expiration dates. Rather,

we are released from the performance bonds as the underlying performance is completed. The expiration dates of some letters of credit issued in connection with community improvements coincide with the expected completion dates of the related projects or obligations. Most letters of credit, however, are issued with an initial term of one year and are typically extended on a year-to-year basis until the related performance obligations are completed.

Land Option Contracts and Other Similar Contracts. In the ordinary course of business, we enter into land option contracts and other similar contracts to acquire rights to land for the construction of homes. At November 30, 2019, we had total cash deposits of \$75.2 million to purchase land having an aggregate purchase price of \$1.42 billion. Our land option contracts and other similar contracts generally do not contain provisions requiring our specific performance.

Leases. We lease certain property and equipment under noncancelable operating leases. Office and equipment leases are typically for terms of three to five years and generally provide renewal options for terms up to an additional five years. In most cases, we expect that leases that expire will be renewed or replaced by other leases with similar terms. The future minimum rental payments under operating leases, which primarily consist of office leases having initial or remaining noncancelable lease terms in excess of one year, are as follows: 2020 — \$9.7 million; 2021 — \$7.5 million; 2022 — \$6.1 million; 2023 — \$4.5 million; 2024 — \$3.6 million; and thereafter — \$5.8 million.

Rental expense on our noncancelable operating leases was \$9.8 million in 2019, \$8.6 million in 2018 and \$8.1 million in 2017.

Note 17. Legal Matters

We are involved in litigation and regulatory proceedings incidental to our business that are in various procedural stages. We believe that the accruals we have recorded for probable and reasonably estimable losses with respect to these proceedings are adequate and that, as of November 30, 2019, it was not reasonably possible that an additional material loss had been incurred in an amount in excess of the estimated amounts already recognized or disclosed in our consolidated financial statements. We evaluate our accruals for litigation and regulatory proceedings at least quarterly and, as appropriate, adjust them to reflect (a) the facts and circumstances known to us at the time, including information regarding negotiations, settlements, rulings and other relevant events and developments; (b) the advice and analyses of counsel; and (c) the assumptions and judgment of management. Similar factors and considerations are used in establishing new accruals for proceedings as to which losses have become probable and reasonably estimable at the time an evaluation is made. Our accruals for litigation and regulatory proceedings are presented on a gross basis without consideration of recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any. Estimates of recoveries and amounts we have paid on behalf of and expect to recover from other parties, if any, are recorded as receivables when such recoveries are considered probable. Based on our experience, we believe that the amounts that may be claimed or alleged against us in these proceedings are not a meaningful indicator of our potential liability. The outcome of any of these proceedings, including the defense and other litigation-related costs and expenses we may incur, however, is inherently uncertain and could differ significantly from the estimate reflected in a related accrual, if made. Therefore, it is possible that the ultimate outcome of any proceeding, if in excess of a related accrual or if an accrual had not been made, could be material to our consolidated financial statements.

Note 18. Stockholders' Equity

Preferred Stock. To help protect the benefits of our NOLs and other deferred tax assets from an ownership change under Section 382, on January 22, 2009, we adopted a Rights Agreement ("Prior Rights Agreement"), and we declared a dividend distribution of one preferred share purchase right for each outstanding share of common stock that was payable to stockholders of record as of the close of business on March 5, 2009. On April 12, 2018, we entered into an Amended and Restated Rights Agreement with Computershare Inc., as rights agent, ("2018 Rights Agreement") following its approval by our stockholders at our 2018 Annual Meeting held on April 12, 2018. The 2018 Rights Agreement amended and restated the Prior Rights Agreement and extended the latest possible expiration date of the rights issued pursuant to the Prior Rights Agreement to the close of business on April 30, 2021, and made certain other related changes. Otherwise, the 2018 Rights Agreement's terms are substantively the same as those of the Prior Rights Agreement.

Subject to the terms, provisions and conditions of the 2018 Rights Agreement, if these rights become exercisable, each right would initially represent the right to purchase from us 1/100th of a share of our Series A Participating Cumulative Preferred Stock for a purchase price of \$85.00 ("Purchase Price"). If issued, each fractional share of preferred stock would generally give a stockholder approximately the same dividend, voting and liquidation rights as does one share of our common stock. However, prior to exercise, a right does not give its holder any rights as a stockholder, including without limitation any dividend, voting or liquidation rights. The rights will not be exercisable until the earlier of (a) 10 calendar days after a public announcement by us that a person or group has become an Acquiring Person (as defined under the Prior Rights Agreement) and (b) 10 business days

after the commencement of a tender or exchange offer by a person or group if upon consummation of the offer the person or group would beneficially own 4.9% or more of our outstanding common stock.

Until these rights become exercisable (“Distribution Date”), common stock certificates and/or book-entry shares will evidence the rights and may contain a notation to that effect. Any transfer of shares of our common stock prior to the Distribution Date will constitute a transfer of the associated rights. After the Distribution Date, the rights may be transferred other than in connection with the transfer of the underlying shares of our common stock. If there is an Acquiring Person on the Distribution Date or a person or group becomes an Acquiring Person after the Distribution Date, each holder of a right, other than rights that are or were beneficially owned by an Acquiring Person, which will be void, will thereafter have the right to receive upon exercise of a right and payment of the Purchase Price, that number of shares of our common stock having a market value of two times the Purchase Price. After the later of the Distribution Date and the time we publicly announce that an Acquiring Person has become such, our board of directors may exchange the rights, other than rights that are or were beneficially owned by an Acquiring Person, which will be void, in whole or in part, at an exchange ratio of one share of common stock per right, subject to adjustment.

At any time prior to the later of the Distribution Date and the time we publicly announce that an Acquiring Person becomes such, our board of directors may redeem all of the then-outstanding rights in whole, but not in part, at a price of \$.001 per right, subject to adjustment (“Redemption Price”). The redemption will be effective immediately upon the board of directors’ action, unless the action provides that such redemption will be effective at a subsequent time or upon the occurrence or nonoccurrence of one or more specified events, in which case the redemption will be effective in accordance with the provisions of the action. Immediately upon the effectiveness of the redemption of the rights, the right to exercise the rights will terminate and the only right of the holders of rights will be to receive the Redemption Price, with interest thereon. The rights issued pursuant to the 2018 Rights Agreement will expire on the earliest of (a) the close of business on April 30, 2021 (b) the time at which the rights are redeemed, (c) the time at which the rights are exchanged, (d) the time at which our board of directors determines that a related provision in our Restated Certificate of Incorporation is no longer necessary, and (e) the close of business on the first day of a taxable year of ours to which our board of directors determines that no tax benefits may be carried forward.

Common Stock. On May 14, 2018, our board of directors authorized us to repurchase a total of up to 4,000,000 shares of our outstanding common stock. This authorization reaffirmed and incorporated the then-current balance of 1,627,000 shares that remained under a prior board-approved share repurchase program. In 2018, we repurchased 1,806,053 shares of our common stock pursuant to this authorization, at a total cost of \$35.0 million. The amount and timing of shares remaining to be purchased under the the remaining share repurchase authorization are subject to market and business conditions and other factors, and purchases may be made from time to time and at any time through open market or privately negotiated transactions. The remaining share repurchase authorization will continue in effect until fully used or earlier terminated or suspended by the board of directors.

Unrelated to the share repurchase program, our board of directors authorized the repurchase of not more than 680,000 shares of our outstanding common stock, and also authorized potential future grants of up to 680,000 stock payment awards under the KB Home 2014 Equity Incentive Plan (“2014 Plan”), in each case solely as necessary for director elections in respect of outstanding Director Plan SARs. The 2014 Plan, which was amended in April 2016, is discussed in Note 20 – Employee Benefit and Stock Plans. As of November 30, 2019, we have not repurchased any shares and no stock payment awards have been granted under the 2014 Plan, as amended, pursuant to the respective board of directors’ authorizations.

Our board of directors declared quarterly cash dividends of \$.025 per share of common stock in the 2019 first and second quarters. In the 2019 third quarter, our board of directors approved an increase in the quarterly cash dividend on our common stock to \$.090 per share, and declared quarterly cash dividends at the new higher rate in the 2019 third and fourth quarters. Our board of directors declared four quarterly cash dividends of \$.025 per share of common stock in 2018 and 2017. All dividends declared during 2019, 2018 and 2017 were also paid during those years.

Treasury Stock. In addition to the shares purchased in 2018 pursuant to our share repurchase program, we acquired \$7.3 million, \$8.5 million and \$6.7 million of our common stock in 2019, 2018 and 2017, respectively. All of the common stock acquired in 2019 and 2017 and a portion of the common stock acquired in 2018 consisted of previously issued shares delivered to us by employees to satisfy their withholding tax obligations on the vesting of PSUs and restricted stock awards or of forfeitures of previous restricted stock awards. Treasury stock is recorded at cost. Differences between the cost of treasury stock and the reissuance proceeds are recorded to paid-in capital. These transactions are not considered repurchases under the 4,000,000 share repurchase program described above.

Note 19. Accumulated Other Comprehensive Loss

The following table presents the changes in the balances of each component of accumulated other comprehensive loss (in thousands):

	Total Accumulated Other Comprehensive Loss
Postretirement Benefit Plan Adjustments	
Balance at November 30, 2017	\$ (16,924)
Other comprehensive income before reclassifications	8,216
Amounts reclassified from accumulated other comprehensive loss	1,892
Income tax expense related to items of other comprehensive income	(2,749)
Other comprehensive income, net of tax	7,359
Balance at November 30, 2018	(9,565)
Other comprehensive loss before reclassifications	(10,268)
Amounts reclassified from accumulated other comprehensive loss	2,130
Income tax benefit related to items of other comprehensive loss	2,197
Other comprehensive loss, net of tax	(5,941)
Balance at November 30, 2019	\$ (15,506)

The amounts reclassified from accumulated other comprehensive loss consisted of the following (in thousands):

Details About Accumulated Other Comprehensive Loss Components	Years Ended November 30,		
	2019	2018	2017
Postretirement benefit plan adjustments			
Amortization of net actuarial loss	\$ 218	\$ 336	\$ 142
Amortization of prior service cost	1,556	1,556	1,556
Settlement loss	356	—	—
Total reclassifications (a)	\$ 2,130	\$ 1,892	\$ 1,698

(a) The accumulated other comprehensive loss components are included in the computation of net periodic benefit costs as further discussed in Note 21 – Postretirement Benefits.

The estimated prior service cost expected to be amortized from accumulated other comprehensive loss into net periodic benefit cost during 2020 is \$4 million.

Note 20. Employee Benefit and Stock Plans

Most of our employees are eligible to participate in the KB Home 401(k) Savings Plan (“401(k) Plan”) under which we partially match employee contributions. The aggregate cost of the 401(k) Plan to us was \$6.9 million in 2019, \$6.0 million in 2018 and \$6.2 million in 2017. The assets of the 401(k) Plan are held by a third-party trustee. The 401(k) Plan participants may direct the investment of their funds among one or more of the several fund options offered by the 401(k) Plan. As of November 30, 2019, 2018 and 2017, approximately 5%, 5% and 7%, respectively, of the 401(k) Plan’s net assets at each period were invested in our common stock.

Amended KB Home 2014 Plan. At our Annual Meeting of Stockholders held on April 7, 2016, our stockholders approved the Amended KB Home 2014 Equity Incentive Plan (“Amended 2014 Plan”), authorizing, among other things, the issuance for grants of stock-based awards to our employees, non-employee directors and consultants of up to 7,500,000 additional shares above the original 4,800,000 shares our stockholders approved under the plan (or an aggregate issuance of 12,300,000 shares), plus any shares that were available for grant as of April 7, 2014 under our 2010 Equity Incentive Plan (“2010 Plan”), and any shares subject to then-outstanding awards under the 2010 Plan that subsequently expire or are cancelled, forfeited, tendered or withheld to satisfy

tax withholding obligations with respect to full value awards, or settled for cash. No new awards may be made under the 2010 Plan. Therefore, the Amended 2014 Plan is our only active equity compensation plan. Under the Amended 2014 Plan, grants of stock options and other similar awards reduce the Amended 2014 Plan's share capacity on a 1-for-1 basis, and grants of restricted stock and other similar "full value" awards reduce the Amended 2014 Plan's share capacity on a 1.78-for-1 basis. In addition, subject to the Amended 2014 Plan's terms and conditions, a stock-based award may also be granted under the Amended 2014 Plan to replace an outstanding award granted under another plan of ours (subject to the terms of such other plan) with terms substantially identical to those of the award being replaced.

The Amended 2014 Plan provides that stock options and SARs may be awarded for periods of up to 10 years. The Amended 2014 Plan also enables us to grant cash bonuses and other stock-based awards.

Stock-Based Compensation. With the approval of the management development and compensation committee, consisting entirely of independent members of our board of directors, we have provided compensation benefits to certain of our employees in the form of stock options, restricted stock and PSUs. Certain stock-based compensation benefits are also provided to our non-employee directors pursuant to the Director Plan. Compensation expense related to equity-based awards is included in selling, general and administrative expenses in our consolidated statements of operations.

The following table presents our stock-based compensation expense (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Stock options	\$ 189	\$ 917	\$ 2,592
Restricted stock	6,080	4,600	4,177
PSUs	10,742	8,790	6,439
Director awards	1,301	1,554	1,425
Total	\$ 18,312	\$ 15,861	\$ 14,633

Stock Options. Stock option transactions are summarized as follows:

	Years Ended November 30,					
	2019		2018		2017	
	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price
Options outstanding at beginning of year	7,237,544	\$ 16.02	9,265,240	\$ 17.64	12,731,545	\$ 18.95
Granted	—	—	—	—	—	—
Exercised	(2,300,004)	13.27	(1,195,926)	16.73	(1,650,360)	16.01
Cancelled	(774,059)	40.43	(831,770)	33.05	(1,815,945)	28.31
Options outstanding at end of year	4,163,481	\$ 13.00	7,237,544	\$ 16.02	9,265,240	\$ 17.64
Options exercisable at end of year	4,163,481	\$ 13.00	6,948,670	\$ 16.01	8,307,632	\$ 17.86
Options available for grant at end of year	5,567,467		6,418,197		7,495,792	

There were no stock options granted in 2019, 2018 or 2017. The total intrinsic value of stock options exercised was \$37.1 million for the year ended November 30, 2019, \$11.8 million for the year ended November 30, 2018 and \$12.1 million for the year ended November 30, 2017. The aggregate intrinsic value of stock options outstanding was \$89.9 million, \$51.9 million and \$136.3 million at November 30, 2019, 2018 and 2017, respectively. The intrinsic value of stock options exercisable was \$89.9 million at November 30, 2019, \$50.5 million at November 30, 2018, and \$121.3 million at November 30, 2017. The intrinsic value of a stock option is the amount by which the market value of the underlying stock exceeds the price of the option.

Stock options outstanding and stock options exercisable at November 30, 2019 are summarized as follows:

Range of Exercise Price	Options Outstanding			Options Exercisable		
	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life
\$ 6.32 to \$11.05	953,500	\$ 6.37	1.9	953,500	\$ 6.37	
\$11.06 to \$14.62	1,250,424	13.66	3.8	1,250,424	13.66	
\$14.63 to \$15.44	853,000	14.92	5.9	853,000	14.92	
\$15.45 to \$16.22	754,057	16.21	6.9	754,057	16.21	
\$16.23 to \$45.16	352,500	17.12	3.8	352,500	17.12	
\$ 6.32 to \$45.16	4,163,481	\$ 13.00	4.3	4,163,481	\$ 13.00	4.3

At November 30, 2019, there was no unrecognized stock-based compensation expense related to stock option awards as all of these awards were fully vested.

A tax shortfall of \$3.3 million in 2017 resulting from the cancellation of stock awards was reflected in paid-in capital. In 2017, the consolidated statement of cash flows reflected \$1.0 million of excess tax benefits associated with the exercise of stock options.

Restricted Stock. From time to time, we grant restricted stock to various employees as a compensation benefit. During the restriction periods, these employees are entitled to vote and to receive cash dividends on such shares. The restrictions imposed with respect to the shares granted lapse in installments within, or in full at the end of, three years after their grant date if certain conditions are met.

Restricted stock transactions are summarized as follows:

	Years Ended November 30,					
	2019		2018		2017	
	Shares	Weighted Average per Share Grant Date Fair Value	Shares	Weighted Average per Share Grant Date Fair Value	Shares	Weighted Average per Share Grant Date Fair Value
Outstanding at beginning of year	555,457	\$ 23.19	503,926	\$ 21.69	604,619	\$ 16.24
Granted	282,523	31.67	303,030	23.05	321,835	24.49
Vested	(319,687)	34.66	(221,951)	19.79	(364,670)	16.09
Cancelled	(18,227)	22.81	(29,548)	21.76	(57,858)	15.61
Outstanding at end of year	500,066	\$ 20.66	555,457	\$ 23.19	503,926	\$ 21.69

As of November 30, 2019, we had \$12.8 million of total unrecognized compensation cost related to restricted stock awards that will be recognized over a weighted average period of approximately three years.

Performance-Based Restricted Stock Units. On October 3, 2019, we granted PSUs to certain employees. Each PSU grant corresponds to a target amount of our common stock ("Award Shares"). Each PSU entitles the recipient to receive a grant of between 0% and 200% of the recipient's Award Shares, and will vest based on our achieving, over a three-year period commencing on December 1, 2019 and ending on November 30, 2022, specified levels of (a) cumulative adjusted earnings per share; (b) average adjusted return on invested capital; and (c) revenue growth performance relative to a peer group of high-production public homebuilding companies. The grant date fair value of each such PSU was \$33.10. On October 5, 2018, we granted PSUs to certain employees with similar terms as the 2019 PSU grants, except that the applicable performance period commenced on December 1, 2018 and ends on November 30, 2021. The grant date fair value of each such PSU was \$23.05. On October 5, 2017, we granted PSUs to certain employees with similar terms as the 2019 PSU grants, except that the applicable performance period commenced on December 1, 2017 and ends on November 30, 2020. The grant date fair value of each such PSU was \$25.64.

PSU transactions are summarized as follows:

	Years Ended November 30,					
	2019		2018		2017	
	Shares	Weighted Average per Share Grant Date Fair Value	Shares	Weighted Average per Share Grant Date Fair Value	Shares	Weighted Average per Share Grant Date Fair Value
Outstanding at beginning of year	1,090,967	\$ 18.70	925,232	\$ 20.09	809,860	\$ 17.19
Granted	468,957	30.45	603,424	25.70	424,797	22.99
Vested	(297,260)	22.67	(437,689)	31.28	(278,460)	16.67
Cancelled	—	—	—	—	(30,965)	14.92
Outstanding at end of year	1,262,664	\$ 22.13	1,090,967	\$ 18.70	925,232	\$ 20.09

The number of shares of our common stock actually granted to a recipient, if any, when a PSU vests will depend on the degree of achievement of the applicable performance measures during the applicable three-year period. The shares of our common stock that were granted under the terms of PSUs that vested in 2019 included an aggregate of 119,260 additional shares above the target amount awarded to the eligible recipients based on our achieving certain levels of the three above-described metrics over the three-year period from December 1, 2015 through November 30, 2018. The shares of our common stock that were granted under the terms of PSUs that vested in 2018 included an aggregate of 194,529 additional shares above the target amount awarded to the eligible recipients based on our achieving certain levels of the three above-described metrics over the three-year period from December 1, 2014 through November 30, 2017. The shares of our common stock that were granted under the terms of PSUs that vested in 2017 included an aggregate of 125,460 additional shares above the target amount awarded to the eligible recipients based on our achieving certain levels of average return on equity performance and revenue growth performance relative to a peer group of high-production homebuilding companies over the three-year period from December 1, 2013 through November 30, 2016. The PSUs do not have dividend or voting rights during the performance period. Compensation cost for PSUs is initially estimated based on target performance achievement and adjusted as appropriate throughout the performance period. Accordingly, future compensation costs associated with outstanding PSUs may increase or decrease based on the probability and extent of achievement with respect to the applicable performance measures. At November 30, 2019, we had \$32.6 million of total unrecognized compensation cost related to unvested PSUs, which is expected to be recognized over a weighted-average period of approximately three years.

Director Awards. We have granted Director Plan SARs and deferred common stock awards to our non-employee directors pursuant to the terms of the Director Plan and elections made by each director. All of these awards were fully vested as of November 30, 2016. Director Plan SARs, which have not been granted since April 2014 as they ceased being a component of non-employee director compensation after that date, are stock settled, have terms of up to 15 years and may be exercised when a respective director leaves the board or earlier if applicable stock ownership requirements have been met. Deferred common stock awards will be paid out at the earlier of a change in control or the date a respective director leaves the board. All Director Plan SARs were granted at an exercise price equal to the closing price of our common stock on the date of grant. At November 30, 2019, 2018 and 2017, the aggregate outstanding Director Plan SARs were 224,674, 308,880 and 308,880, respectively, and the aggregate outstanding deferred common stock awards granted under the Director Plan were 519,160, 490,240 and 456,875, respectively. In addition, we have granted common stock on an unrestricted basis to our non-employee directors on the grant date pursuant to the Director Plan and elections made by each director.

Grantor Stock Ownership Trust. We have a grantor stock ownership trust (“Trust”), administered by a third-party trustee, that holds and distributes the shares of common stock acquired to support certain employee compensation and employee benefit obligations under our existing stock option plan, the 401(k) Plan and other employee benefit plans. The existence of the Trust does not impact the amount of benefits or compensation that is paid under these plans.

For financial reporting purposes, the Trust is consolidated with us, and therefore any dividend transactions between us and the Trust are eliminated. Acquired shares held by the Trust remain valued at the market price on the date of purchase and are shown as a reduction to stockholders’ equity in the consolidated balance sheets. The difference between the Trust share value and the market value on the date shares are released from the Trust is included in paid-in capital. Common stock held in the Trust is not considered outstanding in the computations of earnings per share. The Trust held 7,630,582 and 8,157,235 shares of common stock at November 30, 2019 and 2018, respectively. The trustee votes shares held by the Trust in accordance with voting directions from eligible employees, as specified in a trust agreement with the trustee.

Note 21. Postretirement Benefits

We have a supplemental non-qualified, unfunded retirement plan, the KB Home Retirement Plan (“Retirement Plan”), effective as of July 11, 2002, pursuant to which we have offered to pay supplemental pension benefits to certain designated individuals (consisting of current and former employees) in connection with their retirement. The Retirement Plan was closed to new participants in 2004. We also have an unfunded death benefit plan, the KB Home Death Benefit Only Plan (“DBO Plan”), implemented on November 1, 2001, for certain designated individuals (consisting of current and former employees). The DBO Plan was closed to new participants in 2006.

In connection with these plans and two other minor benefit programs, we have purchased cost recovery life insurance contracts on the lives of the designated individuals. The insurance contracts associated with the Retirement Plan and DBO Plan are held by a trust. The trust is the owner and beneficiary of such insurance contracts. The amount of the insurance coverage under the contracts is designed to provide sufficient funds to cover all costs of the plans if assumptions made as to employment term, mortality experience, policy earnings and other factors, as applicable, are realized. The cash surrender value of the Retirement Plan life insurance contracts was \$44.7 million at November 30, 2019 and \$44.4 million at November 30, 2018. We recognized investment gains on the cash surrender value of the Retirement Plan life insurance contracts of \$2.1 million in 2019 and \$3.9 million in 2017, and an investment loss of \$.9 million in 2018. In 2019, 2018 and 2017, we paid \$1.8 million, \$1.6 million and \$1.5 million, respectively, in benefits under the Retirement Plan to eligible former employees. The cash surrender value of the DBO Plan life insurance contracts was \$18.4 million at November 30, 2019 and \$18.2 million at November 30, 2018. We recognized investment gains on the cash surrender value of the DBO Plan life insurance contracts of \$.9 million in 2019 and \$1.5 million in 2017, and an investment loss of \$.3 million in 2018. In 2019, we paid \$1.7 million in benefits under the DBO Plan. We did not pay out any benefits under the DBO Plan in 2018 or 2017.

The net periodic benefit cost of our Retirement Plan and DBO Plan consisted of the following (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Interest cost	\$ 2,478	\$ 2,252	\$ 2,274
Amortization of prior service cost	1,556	1,556	1,556
Service cost	958	1,085	1,046
Amortization of net actuarial loss	218	336	142
Settlement loss	356	—	—
Total	\$ 5,566	\$ 5,229	\$ 5,018

The liabilities related to these plans were \$69.3 million at November 30, 2019 and \$60.8 million at November 30, 2018, and are included in accrued expenses and other liabilities in the consolidated balance sheets. For the years ended November 30, 2019 and 2018, the discount rates we used for the plans were 2.7% and 4.1%, respectively.

Benefit payments under our Retirement Plan and DBO Plan are expected to be paid during each year ending November 30 as follows: 2020 — \$2.3 million; 2021 — \$2.5 million; 2022 — \$2.6 million; 2023 — \$2.9 million; 2024 — \$3.2 million; and for the five years ended November 30, 2029 — \$20.8 million in the aggregate.

Note 22. Supplemental Disclosure to Consolidated Statements of Cash Flows

The following are supplemental disclosures to the consolidated statements of cash flows (in thousands):

	Years Ended November 30,		
	2019	2018	2017
Summary of cash and cash equivalents at the end of the year:			
Homebuilding	\$ 453,814	\$ 574,359	\$ 720,630
Financial services	1,044	760	231
Total	\$ 454,858	\$ 575,119	\$ 720,861

	Years Ended November 30,		
	2019	2018	2017
Supplemental disclosure of cash flow information:			
Interest paid, net of amounts capitalized	\$ (1,327)	\$ 8,338	\$ 7,581
Income taxes paid	4,479	11,949	4,664
Income taxes refunded	221	220	202
Supplemental disclosure of non-cash activities:			
Decrease in inventories due to adoption of ASC 606	\$ (35,288)	\$ —	\$ —
Increase in property and equipment, net due to adoption of ASC 606	31,194	—	—
Increase (decrease) in consolidated inventories not owned	(9,634)	16,098	(44,833)
Increase in inventories due to distributions of land and land development from an unconsolidated joint venture	9,662	17,637	6,650
Inventories acquired through seller financing	8,967	44,586	49,658

Note 23. Supplemental Guarantor Information

Our obligations to pay principal, premium, if any, and interest on the senior notes and borrowings, if any, under the Credit Facility are guaranteed on a joint and several basis by certain of our subsidiaries (“Guarantor Subsidiaries”). The guarantees are full and unconditional and the Guarantor Subsidiaries are 100% owned by us. Pursuant to the terms of the indenture governing the senior notes and the terms of the Credit Facility, if any of the Guarantor Subsidiaries ceases to be a “significant subsidiary” as defined by Rule 1-02 of Regulation S-X using a 5% rather than a 10% threshold (provided that the assets of our non-guarantor subsidiaries do not in the aggregate exceed 10% of an adjusted measure of our consolidated total assets), it will be automatically and unconditionally released and discharged from its guaranty of the senior notes and the Credit Facility so long as all guarantees by such Guarantor Subsidiary of any other of our or our subsidiaries’ indebtedness are terminated at or prior to the time of such release. We have determined that separate, full financial statements of the Guarantor Subsidiaries would not be material to investors and, accordingly, supplemental financial information for the Guarantor Subsidiaries is presented.

The supplemental financial information for all periods presented below reflects those subsidiaries that qualified as Guarantor Subsidiaries as of November 30, 2019.

Condensed Consolidating Statements of Operations (in thousands)

	Year Ended November 30, 2019				
	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Revenues	\$ —	\$ 4,161,511	\$ 391,236	\$ —	\$ 4,552,747
Homebuilding:					
Revenues	\$ —	\$ 4,161,511	\$ 376,147	\$ —	\$ 4,537,658
Construction and land costs	—	(3,362,386)	(346,542)	—	(3,708,928)
Selling, general and administrative expenses	(100,630)	(375,199)	(21,521)	—	(497,350)
Operating income (loss)	(100,630)	423,926	8,084	—	331,380
Interest income	1,926	23	209	—	2,158
Interest expense	(137,327)	(746)	(5,339)	143,412	—
Intercompany interest	328,361	(173,374)	(11,575)	(143,412)	—
Equity in loss of unconsolidated joint ventures	—	(1,549)	—	—	(1,549)
Loss on early extinguishment of debt	(6,800)	—	—	—	(6,800)
Homebuilding pretax income (loss)	85,530	248,280	(8,621)	—	325,189
Financial services pretax income	—	—	22,986	—	22,986
Total pretax income	85,530	248,280	14,365	—	348,175
Income tax expense	(16,300)	(58,100)	(5,000)	—	(79,400)
Equity in net income of subsidiaries	88,639	—	—	(88,639)	—
Net income	\$ 157,869	\$ 190,180	\$ 9,365	\$ (88,639)	\$ 268,775

	Year Ended November 30, 2018				
	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Revenues	\$ —	\$ 4,198,969	\$ 348,033	\$ —	\$ 4,547,002
Homebuilding:					
Revenues	\$ —	\$ 4,198,969	\$ 334,826	\$ —	\$ 4,533,795
Construction and land costs	—	(3,435,058)	(308,862)	—	(3,743,920)
Selling, general and administrative expenses	(101,152)	(311,815)	(31,187)	—	(444,154)
Operating income (loss)	(101,152)	452,096	(5,223)	—	345,721
Interest income	3,273	11	230	—	3,514
Interest expense	(141,812)	(2,624)	(5,262)	149,698	—
Intercompany interest	302,253	(142,882)	(9,673)	(149,698)	—
Equity in income of unconsolidated joint ventures	—	2,066	—	—	2,066
Homebuilding pretax income (loss)	62,562	308,667	(19,928)	—	351,301
Financial services pretax income	—	—	16,664	—	16,664
Total pretax income (loss)	62,562	308,667	(3,264)	—	367,965
Income tax expense	(62,100)	(101,200)	(34,300)	—	(197,600)
Equity in net income of subsidiaries	169,903	—	—	(169,903)	—
Net income (loss)	\$ 170,365	\$ 207,467	\$ (37,564)	\$ (169,903)	\$ 170,365

Year Ended November 30, 2017

	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Revenues	\$ —	\$ 4,034,057	\$ 334,472	\$ —	\$ 4,368,529
Homebuilding:					
Revenues	\$ —	\$ 4,034,057	\$ 322,208	\$ —	\$ 4,356,265
Construction and land costs	—	(3,342,617)	(303,851)	—	(3,646,468)
Selling, general and administrative expenses	(91,120)	(298,498)	(36,776)	—	(426,394)
Operating income (loss)	(91,120)	392,942	(18,419)	—	283,403
Interest income	1,232	8	—	—	1,240
Interest expense	(166,417)	(1,635)	(3,434)	170,864	(622)
Intercompany interest	266,784	(118,138)	22,218	(170,864)	—
Equity in loss of unconsolidated joint ventures	—	(1,407)	(2)	—	(1,409)
Loss on early extinguishment of debt	(5,685)	—	—	—	(5,685)
Homebuilding pretax income	4,794	271,770	363	—	276,927
Financial services pretax income	—	—	13,068	—	13,068
Total pretax income	4,794	271,770	13,431	—	289,995
Income tax expense	(8,800)	(100,000)	(600)	—	(109,400)
Equity in net income of subsidiaries	184,601	—	—	(184,601)	—
Net income	\$ 180,595	\$ 171,770	\$ 12,831	\$ (184,601)	\$ 180,595

Condensed Consolidating Statements of Comprehensive Income (Loss) (in thousands)

	Year Ended November 30, 2019				
	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Net income	\$ 157,869	\$ 190,180	\$ 9,365	\$ (88,639)	\$ 268,775
Other comprehensive loss:					
Postretirement benefit plan adjustments	(8,138)	—	—	—	(8,138)
Other comprehensive loss before tax	(8,138)	—	—	—	(8,138)
Income tax benefit related to items of other comprehensive loss	2,197	—	—	—	2,197
Other comprehensive loss, net of tax	(5,941)	—	—	—	(5,941)
Comprehensive income	<u>\$ 151,928</u>	<u>\$ 190,180</u>	<u>\$ 9,365</u>	<u>\$ (88,639)</u>	<u>\$ 262,834</u>

	Year Ended November 30, 2018				
	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Net income (loss)	\$ 170,365	\$ 207,467	\$ (37,564)	\$ (169,903)	\$ 170,365
Other comprehensive income:					
Postretirement benefit plan adjustments	10,108	—	—	—	10,108
Other comprehensive income before tax	10,108	—	—	—	10,108
Income tax expense related to items of other comprehensive income	(2,749)	—	—	—	(2,749)
Other comprehensive income, net of tax	7,359	—	—	—	7,359
Comprehensive income (loss)	<u>\$ 177,724</u>	<u>\$ 207,467</u>	<u>\$ (37,564)</u>	<u>\$ (169,903)</u>	<u>\$ 177,724</u>

	Year Ended November 30, 2017				
	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Net income	\$ 180,595	\$ 171,770	\$ 12,831	\$ (184,601)	\$ 180,595
Other comprehensive loss:					
Postretirement benefit plan adjustments	(1,445)	—	—	—	(1,445)
Other comprehensive loss before tax	(1,445)	—	—	—	(1,445)
Income tax benefit related to items of other comprehensive loss	578	—	—	—	578
Other comprehensive loss, net of tax	(867)	—	—	—	(867)
Comprehensive income	<u>\$ 179,728</u>	<u>\$ 171,770</u>	<u>\$ 12,831</u>	<u>\$ (184,601)</u>	<u>\$ 179,728</u>

Condensed Consolidating Balance Sheets (in thousands)

	November 30, 2019				
	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Assets					
Homebuilding:					
Cash and cash equivalents	\$ 357,966	\$ 65,434	\$ 30,414	\$ —	\$ 453,814
Receivables	1,934	181,047	66,074	—	249,055
Inventories	—	3,400,307	304,295	—	3,704,602
Investments in unconsolidated joint ventures	—	57,038	—	—	57,038
Property and equipment, net	24,250	37,539	3,254	—	65,043
Deferred tax assets, net	96,301	237,877	30,315	—	364,493
Other assets	78,686	2,666	1,689	—	83,041
	<u>559,137</u>	<u>3,981,908</u>	<u>436,041</u>	<u>—</u>	<u>4,977,086</u>
Financial services	—	—	38,396	—	38,396
Intercompany receivables	3,624,081	—	186,022	(3,810,103)	—
Investments in subsidiaries	115,753	—	—	(115,753)	—
Total assets	<u>\$ 4,298,971</u>	<u>\$ 3,981,908</u>	<u>\$ 660,459</u>	<u>\$ (3,925,856)</u>	<u>\$ 5,015,482</u>
Liabilities and stockholders' equity					
Homebuilding:					
Accounts payable, accrued expenses and other liabilities	\$ 139,137	\$ 453,929	\$ 288,489	\$ —	\$ 881,555
Notes payable	1,715,748	7,889	25,110	—	1,748,747
	<u>1,854,885</u>	<u>461,818</u>	<u>313,599</u>	<u>—</u>	<u>2,630,302</u>
Financial services	—	—	2,058	—	2,058
Intercompany payables	60,964	3,520,090	229,049	(3,810,103)	—
Stockholders' equity	2,383,122	—	115,753	(115,753)	2,383,122
Total liabilities and stockholders' equity	<u>\$ 4,298,971</u>	<u>\$ 3,981,908</u>	<u>\$ 660,459</u>	<u>\$ (3,925,856)</u>	<u>\$ 5,015,482</u>

	November 30, 2018				
	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Assets					
Homebuilding:					
Cash and cash equivalents	\$ 429,977	\$ 114,269	\$ 30,113	\$ —	\$ 574,359
Receivables	5,135	198,465	89,230	—	292,830
Inventories	—	3,314,386	268,453	—	3,582,839
Investments in unconsolidated joint ventures	—	61,960	—	—	61,960
Property and equipment, net	18,450	5,522	311	—	24,283
Deferred tax assets, net	84,564	303,669	53,587	—	441,820
Other assets	77,288	4,008	1,804	—	83,100
	<u>615,414</u>	<u>4,002,279</u>	<u>443,498</u>	<u>—</u>	<u>5,061,191</u>
Financial services	—	—	12,380	—	12,380
Intercompany receivables	3,569,422	—	158,760	(3,728,182)	—
Investments in subsidiaries	67,657	—	—	(67,657)	—
Total assets	<u>\$ 4,252,493</u>	<u>\$ 4,002,279</u>	<u>\$ 614,638</u>	<u>\$ (3,795,839)</u>	<u>\$ 5,073,571</u>
Liabilities and stockholders' equity					
Homebuilding:					
Accounts payable, accrued expenses and other liabilities	\$ 126,176	\$ 584,321	\$ 213,816	\$ —	\$ 924,313
Notes payable	1,995,115	40,038	25,110	—	2,060,263
	<u>2,121,291</u>	<u>624,359</u>	<u>238,926</u>	<u>—</u>	<u>2,984,576</u>
Financial services	—	—	1,495	—	1,495
Intercompany payables	43,702	3,377,920	306,560	(3,728,182)	—
Stockholders' equity	2,087,500	—	67,657	(67,657)	2,087,500
Total liabilities and stockholders' equity	<u>\$ 4,252,493</u>	<u>\$ 4,002,279</u>	<u>\$ 614,638</u>	<u>\$ (3,795,839)</u>	<u>\$ 5,073,571</u>

Condensed Consolidating Statements of Cash Flows (in thousands)

	Year Ended November 30, 2019				
	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Net cash provided by operating activities	\$ 118,542	\$ 32,864	\$ 99,636	\$ —	\$ 251,042
Cash flows from investing activities:					
Contributions to unconsolidated joint ventures	—	(11,290)	—	—	(11,290)
Return of investments in unconsolidated joint ventures	—	5,001	—	—	5,001
Proceeds from sale of building	—	5,804	—	—	5,804
Purchases of property and equipment, net	(6,365)	(23,618)	(10,476)	—	(40,459)
Intercompany	105,055	—	—	(105,055)	—
Net cash provided by (used in) investing activities	98,690	(24,103)	(10,476)	(105,055)	(40,944)
Cash flows from financing activities:					
Proceeds from issuance of debt	705,250	—	—	—	705,250
Repayment of senior notes	(986,231)	—	—	—	(986,231)
Payment of issuance costs	(11,128)	—	—	—	(11,128)
Borrowings under revolving credit facility	610,000	—	—	—	610,000
Repayments under revolving credit facility	(610,000)	—	—	—	(610,000)
Payments on mortgages and land contracts due to land sellers and other loans	—	(41,116)	—	—	(41,116)
Issuance of common stock under employee stock plans	30,524	—	—	—	30,524
Tax payments associated with stock-based compensation awards	(7,288)	—	—	—	(7,288)
Payments of cash dividends	(20,370)	—	—	—	(20,370)
Intercompany	—	(16,480)	(88,575)	105,055	—
Net cash used in financing activities	(289,243)	(57,596)	(88,575)	105,055	(330,359)
Net increase (decrease) in cash and cash equivalents	(72,011)	(48,835)	585	—	(120,261)
Cash and cash equivalents at beginning of year	429,977	114,269	30,873	—	575,119
Cash and cash equivalents at end of year	\$ 357,966	\$ 65,434	\$ 31,458	\$ —	\$ 454,858

Year Ended November 30, 2018

	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Net cash provided by (used in) operating activities	\$ 236,892	\$ 9,668	\$ (25,048)	\$ —	\$ 221,512
Cash flows from investing activities:					
Contributions to unconsolidated joint ventures	—	(22,672)	1	—	(22,671)
Return of investments in unconsolidated joint ventures	—	9,934	—	—	9,934
Purchases of property and equipment, net	(6,584)	(674)	(112)	—	(7,370)
Intercompany	(43,128)	—	—	43,128	—
Net cash used in investing activities	(49,712)	(13,412)	(111)	43,128	(20,107)
Cash flows from financing activities:					
Repayment of senior notes	(300,000)	—	—	—	(300,000)
Borrowings under revolving credit facility	70,000	—	—	—	70,000
Repayments under revolving credit facility	(70,000)	—	—	—	(70,000)
Payments on mortgages and land contracts due to land sellers and other loans	—	(13,831)	(920)	—	(14,751)
Issuance of common stock under employee stock plans	20,011	—	—	—	20,011
Stock repurchases	(35,039)	—	—	—	(35,039)
Tax payments associated with stock-based compensation awards	(8,476)	—	—	—	(8,476)
Payments of cash dividends	(8,892)	—	—	—	(8,892)
Intercompany	—	27,724	15,404	(43,128)	—
Net cash provided by (used in) financing activities	(332,396)	13,893	14,484	(43,128)	(347,147)
Net increase (decrease) in cash and cash equivalents	(145,216)	10,149	(10,675)	—	(145,742)
Cash and cash equivalents at beginning of year	575,193	104,120	41,548	—	720,861
Cash and cash equivalents at end of year	\$ 429,977	\$ 114,269	\$ 30,873	\$ —	\$ 575,119

Year Ended November 30, 2017

	KB Home Corporate	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Net cash provided by operating activities	\$ 70,683	\$ 366,005	\$ 76,531	\$ —	\$ 513,219
Cash flows from investing activities:					
Contributions to unconsolidated joint ventures	—	(13,569)	(5,125)	—	(18,694)
Return of investments in unconsolidated joint ventures	—	4,119	6,916	—	11,035
Purchases of property and equipment, net	(7,215)	(809)	(61)	—	(8,085)
Intercompany	311,857	—	—	(311,857)	—
Net cash provided by (used in) investing activities	304,642	(10,259)	1,730	(311,857)	(15,744)
Cash flows from financing activities:					
Repayment of senior notes	(270,326)	—	—	—	(270,326)
Payment of issuance costs	(1,711)	—	—	—	(1,711)
Payments on mortgages and land contracts due to land sellers and other loans	—	(106,382)	—	—	(106,382)
Issuance of common stock under employee stock plans	23,162	—	—	—	23,162
Excess tax benefits from stock-based compensation	958	—	—	—	958
Tax payments associated with stock-based compensation awards	(6,673)	—	—	—	(6,673)
Payments of cash dividends	(8,642)	—	—	—	(8,642)
Intercompany	—	(251,147)	(60,710)	311,857	—
Net cash used in financing activities	(263,232)	(357,529)	(60,710)	311,857	(369,614)
Net increase (decrease) in cash and cash equivalents	112,093	(1,783)	17,551	—	127,861
Cash and cash equivalents at beginning of year	463,100	105,903	23,997	—	593,000
Cash and cash equivalents at end of year	\$ 575,193	\$ 104,120	\$ 41,548	\$ —	\$ 720,861

Note 24. Quarterly Results (unaudited)

The following tables present our consolidated quarterly results for the years ended November 30, 2019 and 2018 (in thousands, except per share amounts):

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2019				
Revenues	\$ 811,483	\$ 1,021,803	\$ 1,160,786	\$ 1,558,675
Gross profits	139,604	177,019	216,029	306,834
Inventory impairment and land option contract abandonment charges	3,555	4,337	5,251	4,148
Pretax income (a)	34,511	56,761	91,936	164,967
Net income	30,011	47,461	68,136	123,167
Earnings per share:				
Basic	.34	.54	.77	1.37
Diluted	.31	.51	.73	1.31
2018				
Revenues	\$ 871,623	\$ 1,101,423	\$ 1,225,347	\$ 1,348,609
Gross profits	141,192	189,222	222,893	245,931
Inventory impairment and land option contract abandonment charges	4,985	6,526	8,414	9,069
Pretax income	46,045	78,308	114,676	128,936
Net income (loss) (b)	(71,255)	57,308	87,476	96,836
Earnings (loss) per share:				
Basic	(.82)	.65	.99	1.09
Diluted	(.82)	.57	.87	.96

(a) Pretax income for the fourth quarter included a \$6.8 million loss on the early extinguishment of debt.

(b) Net income (loss) included non-cash charges to income tax expense of \$111.2 million in the first quarter and \$1.3 million in the fourth quarter for TCJA-related impacts.

Quarterly and year-to-date computations of per share amounts are made independently. Therefore, the sum of per share amounts for the quarters may not agree with per share amounts for the year.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors of KB Home:

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of KB Home (the Company) as of November 30, 2019 and 2018, the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for each of the three years in the period ended November 30, 2019, 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 at November 30, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended November 30, 2019, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of November 30, 2019, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated January 24, 2020 expressed an unqualified opinion thereon.

Adoption of ASU No. 2014-09

As discussed in Note 1 to the consolidated financial statements, the Company changed its method of accounting for revenue recognition, and real estate inventories and cost of sales effective December 1, 2018 due to the adoption of ASU No. 2014-09, "Revenue from Contracts with Customers (Topic 606)" and its related amendments.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with 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 financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Valuation of Land Held for Future Development

Description of the Matter

As of November 30, 2019, the Company's real estate inventories were \$3.7 billion which includes land held for future development of \$131.2 million. As disclosed in Note 6 to the consolidated financial statements, land held for future development principally reflects land acquisition and land development costs related to land where development activity has been suspended or has not yet begun but is expected to occur in the future. As more fully described in Note 7 to the consolidated financial statements, the Company assesses each community or land parcel to identify indicators of potential impairment. When an indicator of potential impairment is identified, the Company evaluates the recoverability of the asset based on its projected undiscounted future cash flows. When the carrying value of the asset is greater than its projected undiscounted future cash flows, the Company estimates the fair value of the asset based on its projected discounted cash flows and records an impairment charge. Inputs used in the Company's impairment assessment for land held for future development consider then-current market conditions and expectations related to average selling prices and related price appreciation, volume of homes delivered, land development and construction costs to be incurred and related cost inflation, and discount rates reflecting the inherent risk associated with the asset.

Auditing the Company's impairment assessment for land held for future development involves a high degree of auditor judgment and increased extent of audit effort to evaluate management's estimates underlying projected future cash flows and the determination of fair values based on subjective assumptions about expected future sales activity, risk specific to the asset or conditions in the market in which the asset is located.

How We Addressed the Matter in Our Audit

We obtained an understanding, evaluated the design, and tested the operating effectiveness of controls over the Company's land held for future development impairment assessment process. For example, we tested controls over the Company's significant data and assumptions used in the Company's estimation of cash flows and fair value analysis.

To test the Company's land held for future development impairment assessment, our audit procedures included, among others, evaluating the significant data and assumptions used to project future cash flows and estimate fair values for assets with identified indicators of impairment, including comparison of such data and assumptions to the Company's accounting records and market data, and recalculation of the Company's estimates. We also involved our real estate valuation specialists to assist in evaluating the key assumptions and methodologies used in the impairment assessments for certain projects, including assumptions related to average selling prices and related price appreciation, expected future costs and related cost inflation, and discount rate assumptions used to estimate fair values.

Self-insurance Liabilities and Recoveries

Description of the Matter

At November 30, 2019, the Company's self-insurance liability was \$177.8 million and receivables for estimated probable insurance and other recoveries related to self-insurance claims totaled \$50.6 million. As disclosed in Note 16 to the consolidated financial statements, the Company's self-insurance liability for construction defects is based on an analysis prepared by a third-party actuary that uses historical claim and expense data as well as industry data to estimate the cost of all unpaid losses, including estimates related to claims incurred but not yet reported. Key assumptions used in developing these estimates include claim frequencies, severities and resolution patterns, which can occur over an extended period of time. Self-insurance recoveries are principally based on actuarially determined amounts and consider the claim cost estimates described above, applicable insurance policy coverage limits, historical recovery rates, and other factors.

Auditing the Company's self-insurance liability and related recoveries is complex and highly judgmental due to the complexity of the actuarial methods used to estimate the losses and related recoveries and degree of subjective judgment required to assess the underlying assumptions, which required us to involve our actuarial specialists. These estimates are subject to variability due to the length of time between the delivery of a home to a homebuyer and when a construction defect claim is made and ultimately resolved; uncertainties regarding such claims relative to the markets and types of products built; and legal or regulatory actions and interpretations, among other factors.

How We Addressed the Matter in Our Audit We obtained an understanding, evaluated the design, and tested the operating effectiveness of controls over the Company's self-insurance liability and recoveries estimation process including controls over the data and assumptions used in the analysis.

To test the Company's self-insurance liability and related recoveries, our audit procedures included, among others, testing the completeness and accuracy of the underlying claims and recovery data utilized by the Company's third-party actuary, testing the existence and terms of third-party insurance policies, and involving our actuarial specialist to assist in our evaluation of the methodologies and assumptions applied by management's third-party actuary. Additionally, we compared the Company's recorded self-insurance liability and related recoveries to estimated ranges which our actuarial specialist developed based on independently selected assumptions.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 1991.

Los Angeles, California
January 24, 2020

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

Item 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We have established disclosure controls and procedures to ensure that information we are required to disclose in the reports we file or submit under the Securities Exchange Act of 1934, as amended (“Exchange Act”), is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and accumulated and communicated to management, including our Chief Executive Officer (“Principal Executive Officer”) and Chief Financial Officer (“Principal Financial Officer”), as appropriate, to allow timely decisions regarding required disclosure. Under the supervision and with the participation of senior management, including our Principal Executive Officer and Principal Financial Officer, we evaluated our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. Based on this evaluation, our Principal Executive Officer and Principal Financial Officer concluded that our disclosure controls and procedures were effective as of November 30, 2019.

Internal Control Over Financial Reporting

(a) Management’s Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP. Our management recognizes that there are inherent limitations in the effectiveness of any internal control and that effective internal control over financial reporting may not prevent or detect misstatements. In addition, because of changes in conditions, the effectiveness of internal control over financial reporting may vary over time. Under the supervision and with the participation of senior management, including our Principal Executive Officer and Principal Financial Officer, we evaluated the effectiveness of our internal control over financial reporting based on the *Internal Control — Integrated Framework (2013)* established by the Committee of Sponsoring Organizations of the Treadway Commission. Based on the evaluation under that framework and applicable SEC rules, our management concluded that our internal control over financial reporting was effective as of November 30, 2019.

Ernst & Young LLP, the independent registered public accounting firm that audited our consolidated financial statements included in this annual report, has issued its report on the effectiveness of our internal control over financial reporting as of November 30, 2019, which is presented below.

(b) Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of KB Home:

Opinion on Internal Control over Financial Reporting

We have audited KB Home’s internal control over financial reporting as of November 30, 2019, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, KB Home (the Company) maintained, in all material respects, effective internal control over financial reporting as of November 30, 2019, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the 2019 consolidated financial statements of the Company and our report dated January 24, 2020 expressed an unqualified opinion thereon.

Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management’s Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be

independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

Los Angeles, California
January 24, 2020

(c) Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting during the quarter ended November 30, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. OTHER INFORMATION

None.

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information for this item for executive officers is provided above in the Executive Officers of the Registrant section in this report. Except as stated below, the other information for this item will be provided to the extent applicable in the "Corporate Governance and Board Matters," "Election of Directors," "Ownership of KB Home Securities" and "Annual Meeting, Voting and Other Information" sections in our Proxy Statement for our 2020 Annual Meeting of Stockholders ("2020 Proxy Statement") and is incorporated herein by this reference.

Ethics Policy

We have adopted an ethics policy for our directors, officers (including our principal executive officer, principal financial officer and principal accounting officer) and employees. The ethics policy is available on our investor relations website at investor.kbhome.com. Stockholders may request a free copy of the ethics policy from:

KB Home
Attention: Investor Relations
10990 Wilshire Boulevard
Los Angeles, California 90024
(310) 231-4000
investorrelations@kbhome.com

Within the time period required by the SEC and the New York Stock Exchange, we will post on our investor relations website any amendment to our ethics policy and any waiver applicable to our principal executive officer, principal financial officer or principal accounting officer, or persons performing similar functions, and our other executive officers or directors.

Corporate Governance Principles

We have adopted corporate governance principles, which are available on our investor relations website. Stockholders may request a free copy of the corporate governance principles from the address, phone number and e-mail address stated above under “Ethics Policy.”

Item 11. EXECUTIVE COMPENSATION

The information for this item will be provided in the “Corporate Governance and Board Matters” and “Compensation Discussion and Analysis” sections in our 2020 Proxy Statement and is incorporated herein by this reference.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Except as provided below, the information for this item will be provided in the “Ownership of KB Home Securities” section in our 2020 Proxy Statement and is incorporated herein by this reference.

The following table presents information as of November 30, 2019 with respect to shares of our common stock that may be issued under our existing equity compensation plans:

Equity Compensation Plan Information			
Plan category	Number of common shares to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of common shares remaining available for future issuance under equity compensation plans (excluding common shares reflected in column(a)) (c)
Equity compensation plans approved by stockholders	4,163,481	\$ 13.00	5,567,467
Equity compensation plans not approved by stockholders	—	—	—
Total	4,163,481	\$ 13.00	5,567,467

(1) Represents a prior non-employee directors compensation plan under which our non-employee directors received Director Plan SARs, which were initially granted as cash-settled instruments. As discussed in Note 18 – Stockholders’ Equity in the Notes to Consolidated Financial Statements in this report, all non-employee directors serving on our board of directors have elected to receive shares of our common stock in settlement of their Director Plan SARs under the terms of the plan. We consider this non-employee director compensation plan as having no available capacity to issue shares of our common stock.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information for this item will be provided in the “Corporate Governance and Board Matters” section in our 2020 Proxy Statement and is incorporated herein by this reference.

Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information for this item will be provided in the “Independent Auditor Fees and Services” section in our 2020 Proxy Statement and is incorporated herein by this reference.

PART IV

Item 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) 1. Financial Statements

Reference is made to the index set forth on page 47 of this Annual Report on Form 10-K.

2. Financial Statement Schedules

Financial statement schedules have been omitted because they are not applicable or the required information is provided in the consolidated financial statements or notes thereto.

3. Exhibits

Exhibit Number	Description
3.1	<u>Restated Certificate of Incorporation, as amended, filed as an exhibit to our Current Report on Form 8-K dated April 7, 2009 (File No. 001-09195), is incorporated by reference herein.</u>
3.2	<u>Amended and Restated By-Laws of KB Home, as amended, filed as an exhibit to our Current Report on Form 8-K dated July 12, 2019 (File No. 001-09195), is incorporated by reference herein.</u>
4.1	<u>Indenture relating to our Senior Notes among us, the Guarantors party thereto and Sun Trust Bank, Atlanta, dated January 28, 2004, filed as an exhibit to our Registration Statement No. 333-114761 on Form S-4, is incorporated by reference herein.</u>
4.2	<u>Fifth Supplemental Indenture, dated August 17, 2007, relating to our Senior Notes by and between us, the Guarantors named therein, and the Trustee, filed as an exhibit to our Current Report on Form 8-K dated August 22, 2007 (File No. 001-09195), is incorporated by reference herein.</u>
4.3	<u>Sixth Supplemental Indenture, dated as of January 30, 2012, relating to our Senior Notes by and between us, the Guarantors named therein, and the Trustee, filed as an exhibit to our Current Report on Form 8-K dated February 2, 2012 (File No. 001-09195), is incorporated by reference herein.</u>
4.4	<u>Seventh Supplemental Indenture, dated as of January 11, 2013, relating to our Senior Notes by and among us, the Guarantors named therein, and the Trustee, filed as an exhibit to our Current Report on Form 8-K dated January 11, 2013 (File No. 001-09195), is incorporated by reference herein.</u>
4.5	<u>Specimen of 7.50% Senior Notes due 2022, filed as an exhibit to our Current Report on Form 8-K dated July 31, 2012 (File No. 001-09195), is incorporated by reference herein.</u>
4.6	<u>Form of officers' certificates and guarantors' certificates establishing the terms of the 7.50% Senior Notes due 2022, filed as an exhibit to our Current Report on Form 8-K dated July 31, 2012 (File No. 001-09195), is incorporated by reference herein.</u>
4.7	<u>Eighth Supplemental Indenture, dated as of March 12, 2013, by and among us, the Guarantors party thereto, the Additional Guarantors named therein and U.S. Bank National Association, as Trustee, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended May 31, 2013 (File No. 001-09195), is incorporated by reference herein.</u>
4.8	<u>Specimen of 7.00% Senior Notes due 2021, filed as an exhibit to our Current Report on Form 8-K dated October 29, 2013 (File No. 001-09195), is incorporated by reference herein.</u>
4.9	<u>Form of officers' certificates and guarantors' certificates establishing the terms of the 7.00% Senior Notes due 2021, filed as an exhibit to our Current Report on Form 8-K dated October 29, 2013 (File No. 001-09195), is incorporated by reference herein.</u>
4.10	<u>Ninth Supplemental Indenture, dated as of February 28, 2014, by and among us, the Guarantors party thereto, the Additional Guarantors named therein and U.S. Bank National Association, as Trustee, filed as an exhibit to our Post-Effective Amendment No. 4 to Form S-3 Registration Statement (No. 333-176930), is incorporated by reference herein.</u>
4.11	<u>Form of 7.625% Senior Notes due 2023, filed as an exhibit to our Current Report on Form 8-K dated February 17, 2015 (File No. 001-09195), is incorporated by reference herein.</u>

Exhibit Number	Description
4.12	Form of officers' certificates and guarantors' certificates establishing the terms of the 7.625% Senior Notes due 2023, filed as an exhibit to our Current Report on Form 8-K dated February 17, 2015 (File No. 001-09195), is incorporated by reference herein.
4.13	Amended and Restated Rights Agreement, dated effective as of April 12, 2018, by and between KB Home and Computershare, Inc., as Rights Agent, filed as Exhibit 4.1 to our Amended Registration Statement on Form 8-A/A dated April 13, 2018 (File No. 001-09195), is incorporated by reference herein.
4.14	Tenth Supplemental Indenture, dated as of January 22, 2019, by and among us, the Guarantors party thereto, the Additional Guarantors named therein and U.S. Bank National Association, as Trustee, filed as an exhibit to our 2018 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.
4.15	Form of 6.875% Senior Notes due 2027, filed as an exhibit to our Current Report on Form 8-K dated February 20, 2019 (File No. 001-09195), is incorporated by reference herein.
4.16	Form of officers' certificates and guarantors' certificates establishing the form and terms of the 6.875% Senior Notes due 2027, filed as an exhibit to our Current Report on Form 8-K dated February 20, 2019 (File No. 001-09195), is incorporated by reference herein.
4.17	Form of 7.625% Senior Notes due 2023, filed as an exhibit to our Current Report on Form 8-K dated February 20, 2019 (File No. 001-09195), is incorporated by reference herein.
4.18	Form of officers' certificates and guarantors' certificates establishing the form and terms of the 7.625% Senior Notes due 2023, filed as an exhibit to our Current Report on Form 8-K dated February 20, 2019 (File No. 001-09195), is incorporated by reference herein.
4.19	Form of 4.800% Senior Notes due 2029, filed as an exhibit to our Current Report on Form 8-K dated November 4, 2019 (File No. 001-09195), is incorporated by reference herein.
4.20	Form of officers' certificates and guarantors' certificates establishing the form and terms of the 4.800% Senior Notes due 2029, filed as an exhibit to our Current Report on Form 8-K dated November 4, 2019 (File No. 001-09195), is incorporated by reference herein.
4.21†	Description of KB Home Common Stock Registered Under Section 12 of the Securities Exchange Act of 1934.
10.1	KB Home Directors' Legacy Program, as amended January 1, 1999, filed as an exhibit to our 1998 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.
10.2	Trust Agreement between Kaufman and Broad Home Corporation and Wachovia Bank, N.A. as Trustee, dated as of August 27, 1999, filed as an exhibit to our 1999 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.
10.3*	KB Home Nonqualified Deferred Compensation Plan with respect to deferrals prior to January 1, 2005, effective March 1, 2001, filed as an exhibit to our 2001 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.
10.4*	KB Home Nonqualified Deferred Compensation Plan with respect to deferrals on and after January 1, 2005, effective January 1, 2009 (File No. 001-09195), filed as an exhibit to our 2008 Annual Report on Form 10-K, is incorporated by reference herein.
10.5*	KB Home Change in Control Severance Plan, as amended and restated effective January 1, 2009, filed as an exhibit to our 2008 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.
10.6*	KB Home Death Benefit Only Plan, filed as an exhibit to our 2001 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.
10.7*	Amendment No. 1 to the KB Home Death Benefit Only Plan, effective as of January 1, 2009, filed as an exhibit to our 2008 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.
10.8*	KB Home Retirement Plan, as amended and restated effective January 1, 2009, filed as an exhibit to our 2008 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.
10.9*	Employment Agreement of Jeffrey T. Mezger, dated February 28, 2007, filed as an exhibit to our Current Report on Form 8-K dated March 6, 2007 (File No. 001-09195), is incorporated by reference herein.

Exhibit Number	Description
10.10*	<u>Amendment to the Employment Agreement of Jeffrey T. Mezger, dated December 24, 2008, filed as an exhibit to our 2008 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.</u>
10.11*	<u>Policy Regarding Stockholder Approval of Certain Severance Payments, adopted July 10, 2008, filed as an exhibit to our Current Report on Form 8-K dated July 15, 2008 (File No. 001-09195), is incorporated by reference herein.</u>
10.12*	<u>KB Home Executive Severance Plan, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended August 31, 2008 (File No. 001-09195), is incorporated by reference herein.</u>
10.13	<u>Amendment to Trust Agreement by and between KB Home and Wachovia Bank, N.A., dated August 24, 2009, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended August 31, 2009 (File No. 001-09195), is incorporated by reference herein.</u>
10.14	<u>Form of Indemnification Agreement, filed as an exhibit to our Current Report on Form 8-K dated April 2, 2010 (File No. 001-09195), is incorporated by reference herein.</u>
10.15*	<u>KB Home 2010 Equity Incentive Plan, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended February 28, 2010 (File No. 001-09195), is incorporated by reference herein.</u>
10.16*	<u>Form of Stock Option Award Agreement under the KB Home 2010 Equity Incentive Plan, filed as an exhibit to our Current Report on Form 8-K dated July 20, 2010 (File No. 001-09195), is incorporated by reference herein.</u>
10.17*	<u>Amendment to the KB Home 2010 Equity Incentive Plan, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended February 28, 2011 (File No. 001-09195), is incorporated by reference herein.</u>
10.18*	<u>Executive Severance Benefit Decisions, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended February 28, 2011 (File No. 001-09195), is incorporated by reference herein.</u>
10.19*	<u>KB Home 2010 Equity Incentive Plan Stock Option Agreement for performance stock option grant to Jeffrey T. Mezger, filed as an exhibit to our 2011 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.</u>
10.20*	<u>KB Home 2014 Equity Incentive Plan, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended February 28, 2014 (File No. 001-09195), is incorporated by reference herein.</u>
10.21*	<u>Form of Stock Option Agreement under the KB Home 2014 Equity Incentive Plan, filed as an exhibit to our Current Report on Form 8-K dated October 14, 2014 (File No. 001-09195), is incorporated by reference herein.</u>
10.22*	<u>Form of Performance Cash Award Agreement under the KB Home 2014 Equity Incentive Plan, filed as an exhibit to our Current Report on Form 8-K dated October 14, 2014 (File No. 001-09195), is incorporated by reference herein.</u>
10.23*	<u>Form of Restricted Cash Award Agreement under the KB Home 2014 Equity Incentive Plan, filed as an exhibit to our Current Report on Form 8-K dated October 14, 2014 (File No. 001-09195), is incorporated by reference herein.</u>
10.24*	<u>Amended KB Home 2014 Equity Incentive Plan, effective April 7, 2016, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended May 31, 2016 (File No. 001-09195), is incorporated by reference herein.</u>
10.25*	<u>Amended KB Home 2010 Equity Incentive Plan, as amended on April 13, 2017, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended May 31, 2017 (File No. 001-09195), is incorporated by reference herein.</u>
10.26*	<u>Form of Performance-Based Restricted Stock Unit Award Agreement under the Amended KB Home 2014 Equity Incentive Plan, filed as an exhibit to our Current Report on Form 8-K dated October 6, 2017 (File No. 001-09195), is incorporated by reference herein.</u>
10.27*	<u>Form of Restricted Stock Agreement under the Amended KB Home 2014 Equity Incentive Plan, filed as an exhibit to our 2018 Annual Report on Form 10-K (File No. 001-09195), is incorporated by reference herein.</u>
10.28	<u>Fifth Amended and Restated KB Home Non-Employee Directors Compensation Plan, effective as of July 11, 2019, filed as an exhibit to our Quarterly Report on Form 10-Q for the quarter ended August 31, 2019 (File No. 001-09195), is incorporated by reference herein.</u>

Exhibit Number	Description
10.29†	Third Amended and Restated Revolving Loan Agreement, dated as of October 7, 2019, among us, the banks party thereto, and Citibank, N.A., as Administrative Agent.
21†	Subsidiaries of the Registrant.
23†	Consent of Independent Registered Public Accounting Firm.
31.1†	Certification of Jeffrey T. Mezger, Chairman, President and Chief Executive Officer of KB Home Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2†	Certification of Jeff J. Kaminski, Executive Vice President and Chief Financial Officer of KB Home Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1†	Certification of Jeffrey T. Mezger, Chairman, President and Chief Executive Officer of KB Home Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2†	Certification of Jeff J. Kaminski, Executive Vice President and Chief Financial Officer of KB Home Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104†	Cover Page Interactive Data File (embedded within the Inline XBRL document and included in Exhibit 101).

* Management contract or compensatory plan or arrangement in which executive officers are eligible to participate.

† Document filed with this Form 10-K.

Item 16. FORM 10-K SUMMARY

None.

**DESCRIPTION OF KB HOME COMMON STOCK REGISTERED UNDER
SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934**

We are authorized to issue 290,000,000 shares of common stock, par value \$1.00 per share. In addition, we have reserved 2,900,000 shares of our Series A Participating Cumulative Preferred Stock, which we refer to as the “preferred share purchase right,” for issuance under our stockholder rights plan, as described below.

The following summarizes certain provisions of our restated certificate of incorporation and stockholder rights plan. These summaries are not complete and are subject to, and are qualified in their entirety by reference to, our restated certificate of incorporation and stockholder rights plan.

Common Stock

Voting. Holders of our common stock are entitled to one vote per share on all matters to be voted on by stockholders. Holders of common stock are not entitled to cumulate their votes in the election of directors. Generally, all matters to be voted on by stockholders must be approved by a majority of the voting power of the outstanding shares of common stock.

Preemptive Rights; Conversion. Our common stock has no preemptive rights and does not provide for redemption. Our common stock is not convertible into any other securities. All our outstanding shares of common stock are fully paid and nonassessable.

Dividends. Holders of our common stock may receive dividends and distributions from funds legally available for dividends in the discretion of our board of directors. Holders of common stock share equally in all dividends and distributions on a per share basis. If we pay dividends or other distributions in capital stock (including stock splits), only shares of common stock will be distributed with respect to common stock in an amount per share equal to the amount per share distributed with respect to the common stock.

Distributions on Liquidation. The common stock is entitled to share pro rata in any distribution upon our liquidation, dissolution or winding up, after payment or provision for our liabilities.

Reorganization, Consolidation or Merger. If we reorganize, consolidate or merge, each share of common stock will receive the same kind and amount of property.

Stockholder Rights Plan

On January 22, 2009, we adopted a Rights Agreement dated as of that date (“2009 Rights Agreement”), and we declared a dividend distribution of one preferred share purchase right for each outstanding share of common stock that was payable to stockholders of record as of the close of business on March 5, 2009. On April 12, 2018, we entered into an Amended and Restated Rights Agreement with Computershare Inc., as rights agent, (“2018 Rights Agreement”), following its approval by our stockholders at our 2018 Annual Meeting held on April 12, 2018. The 2018 Rights Agreement amended and restated the 2009 Rights Agreement and extended the latest possible expiration date of the rights issued pursuant to the 2009 Rights Agreement to the close of business on April 30, 2021, and made certain other related changes.

Subject to the terms, provisions and conditions of the 2018 Rights Agreement, if these rights become exercisable, each right would initially represent the right to purchase from us 1/100th of a share of our Series A Participating Cumulative Preferred Stock for a purchase price of \$85.00 (“Purchase Price”). If issued, each fractional share of preferred stock would generally give a stockholder approximately the same dividend, voting and liquidation rights as does one share of our common stock. However, prior to exercise, a right does not give its holder any rights as a stockholder, including without limitation any dividend, voting or liquidation rights. The rights will not be exercisable until the earlier of (i) 10 calendar days after a public announcement by us that a person or group has become an Acquiring Person (as defined under the 2018 Rights Agreement) and (ii) 10 business days after the commencement of a tender or exchange offer by a person or group if upon consummation of the offer the person or group would beneficially own 4.9% or more of our outstanding common stock.

Until these rights become exercisable (“Distribution Date”), common stock certificates and/or book-entry shares will evidence the rights and may contain a notation to that effect. Any transfer of shares of our common stock prior to the Distribution Date will constitute a transfer of the associated rights. After the Distribution Date, the rights may be transferred other than in connection with the transfer of the underlying shares of our common stock. If there is an Acquiring Person on the Distribution Date or a person or group becomes an Acquiring Person after the Distribution Date, each holder of a right, other than rights that are or were beneficially owned by an Acquiring Person, which will be void, will thereafter have the right to receive upon exercise of a right and payment of the Purchase Price, that number of shares of our common stock having a market value of two times the Purchase Price. After the later of the Distribution Date and the time we publicly announce that an Acquiring Person has become such, our board of directors may exchange the rights, other than rights that are or were beneficially owned by an Acquiring Person, which will be void, in whole or in part, at an exchange ratio of one share of common stock per right, subject to adjustment.

At any time prior to the later of the Distribution Date and the time we publicly announce that an Acquiring Person becomes such, our board of directors may redeem all of the then-outstanding rights in whole, but not in part, at a price of \$0.001 per right, subject to adjustment (“Redemption Price”). The redemption will be effective immediately upon the board of directors’ action, unless the action provides that such redemption will be effective at a subsequent time or upon the occurrence or nonoccurrence of one or more specified events, in which case the redemption will be effective in accordance with the provisions of the action. Immediately upon the effectiveness of the redemption of the rights, the right to exercise the rights will terminate and the only right of the holders of rights will be to receive the Redemption Price, with interest thereon. The rights issued pursuant to the 2018 Rights Agreement will expire on the earliest of (a) the close of business on March 5, 2021, (b) the time at which the rights are redeemed, (c) the time at which the rights are exchanged, (d) the time at which our board of directors determines that Article Ninth in our restated certificate of incorporation is no longer necessary, and (e) the close of business on the first day of a taxable year of ours to which our board of directors determines that no tax benefits may be carried forward.

Article Ninth of Our Restated Certificate of Incorporation

Article Ninth of our restated certificate of incorporation contains provisions designed to restrict direct and indirect transfers of our common stock if such transfers will affect the percentage of stock owned by any stockholder or relevant group of stockholders who are deemed to own at least 5% or more of our common stock under Section 382 of the Internal Revenue Code, including transfers where the effect would be to increase the direct or indirect ownership of our common stock by any person or relevant group from less than 5% to 5% or more, and transfers where the effect would be to increase the percentage of our common stock owned directly or indirectly by a person or relevant group owning or deemed to own 5% or more of our common stock. Subject to certain conditions, Article Ninth also prohibits any person or relevant group deemed to own 5% or more of our common stock from disposing of any shares of our common stock without the express consent of our board of directors. Any direct or indirect transfer of our common stock attempted in violation of the provisions of Article Ninth is deemed void as of the date of the prohibited transfer as to the purported transferee (or, in the case of an indirect transfer, the ownership of the direct owner of our common stock would terminate simultaneously with the attempted transfer), and the purported transferee (or, in the case of an indirect transfer, the direct owner) would not be recognized as the owner of the subject shares for any purpose, including for purposes of voting and receiving dividends or other distributions in respect of such shares of our common stock, or, in the case of options, receiving the underlying common stock in respect of the exercise of such options. In addition to a prohibited transfer being void as of the date it is attempted, upon demand, the purported transferee must transfer the subject common stock to our agent along with any dividends or other distributions paid with respect to such common stock. Our agent is required to sell such common stock in an arms’ length transaction (or series of transactions) that do not constitute a violation of Article Ninth. The net proceeds of any such sale, together with any other distributions with respect to the subject common stock received by our agent, after deduction of the agent’s costs, will be distributed first to the purported transferee in an amount, if any, up to the cost incurred by the purported transferee to acquire the subject common stock, and the balance of the proceeds, if any, will be distributed to a charitable beneficiary. If the subject common stock is sold by the purported transferee, such person will be treated as having sold such common stock on behalf of our agent and will be required to remit all proceeds to our agent, except to the extent we grant written permission to the purported

transferee to retain an amount not to exceed the amount such person otherwise would have been entitled to retain had our agent sold such common stock.

Additional Provisions of Our Restated Certificate of Incorporation

We have adopted certain defensive measures, including restricting stockholders' ability to call special meetings of stockholders, implementing our stockholder rights plan and amending our restated certificate of incorporation to provide that Section 203 of the Delaware General Corporation Law shall apply to us. In addition, our restated certificate of incorporation prohibits stockholder action by written consent.

These defensive measures could require a potential acquiror of us to pay a higher price than might otherwise be the case or to obtain the approval of a larger percentage of our stockholders than might otherwise be the case. These measures may also discourage a proxy contest or make it more difficult to complete a merger involving us, or a tender offer, open-market purchase program or other purchase of our shares, in circumstances that would give our stockholders the opportunity to realize a premium over the then-prevailing market prices for their shares.

THIRD AMENDED AND RESTATED REVOLVING LOAN AGREEMENT

Dated as of October 7, 2019

among

KB HOME,
as Borrower

THE BANKS PARTY HERETO

CITIBANK, N.A.,
as Administrative Agent

BANK OF AMERICA, N.A.,
BANK OF THE WEST,
CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
DEUTSCHE BANK SECURITIES INC.,
and
WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Syndication Agents

and

CITIBANK, N.A.,
BOFA SECURITIES, INC.
BANK OF THE WEST,
CREDIT SUISSE SECURITIES (USA), LLC,
DEUTSCHE BANK SECURITIES INC.
WELLS FARGO SECURITIES, LLC,
as Joint Lead Arrangers and Joint Bookrunners

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THIRD AMENDED AND RESTATED REVOLVING LOAN AGREEMENT

Dated as of October 7, 2019

This Third Amended and Restated Revolving Loan Agreement (as it may from time to time be supplemented, modified, amended, renewed, extended or supplanted, this "Agreement"), dated as of October 7, 2019, is entered into by and among KB HOME, a Delaware corporation ("Borrower"), each financial institution set forth on the signature pages of this Agreement or which from time to time becomes party hereto (collectively, the "Banks" and individually, a "Bank"), and Citibank, N.A., as Administrative Agent.

RECITALS

WHEREAS, the Borrower entered into that certain Second Amended and Restated Revolving Loan Agreement, dated as of July 27, 2017 (as amended, restated, supplemented or modified prior to the date hereof, the "Existing Loan Agreement"), with the Banks party thereto, and the Administrative Agent.

WHEREAS, the Borrower has requested that the Existing Loan Agreement be amended and restated in its entirety to, among other things, (a) increase the aggregate Commitment and (b) extend the Maturity Date.

WHEREAS, each Bank with an outstanding Commitment under and as defined in the Existing Loan Agreement immediately prior to the Restatement Date (as defined below) that executes and delivers a signature page to this Agreement (a "Consenting Bank") and the Administrative Agent have agreed to amend and restate the Existing Loan Agreement upon the Restatement Date on the terms and conditions set forth herein, and each Consenting Bank shall have the Pro Rata Share of the Commitment in the principal amount set forth on Schedule 1.1 hereto.

WHEREAS, on the Restatement Date, (a) the Consenting Banks and (b) certain banks and other financial institutions not party to the Existing Loan Agreement but that are parties hereto (the "New Banks"), in each case, intend to make available their respective Pro Rata Shares of the Commitment, on the terms and subject to the conditions of this Agreement.

WHEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.1 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

"Acquisition" means any transaction, or any series of related transactions, consummated after the Restatement Date, by which Borrower or any of its Subsidiaries directly or indirectly (a) acquires any ongoing business or all or substantially all of the assets of any corporation,

partnership or limited liability company, or other business entity or division thereof, whether through purchase of assets, merger or otherwise, (b) acquires (including by way of division or merger) control of securities of a corporation representing 50% or more of the ordinary voting power for the election of directors or (c) acquires (including by way of division or merger) control of a 50% or more ownership interest in any corporation, partnership, limited liability company, or other business entity.

“Additional Bank” has the meaning set forth in Section 2.7(a).

“Administrative Agent” means Citi in its capacity as administrative agent under this Agreement and the other Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account set forth on Schedule 11.6, or such other address or account as the Administrative Agent may, from time to time, notify the Borrower and the Banks.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent to the Banks.

“Advance” means an advance of a Loan made or to be made to Borrower by a Bank pursuant to Article II.

“Affiliate” means, with respect to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, “control” (including its correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise); provided that, in any event, any Person which owns directly or indirectly 10% or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation that has more than 100 record holders of such securities or 10% or more of the partnership or other ownership interests of any other Person that has more than 100 record holders of such interests will be deemed to control such corporation or other Person.

“Agent Parties” has the meaning set forth in Section 11.6(c).

“Agent-Related Persons” means the Administrative Agent, together with its Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“Agreement” has the meaning set forth in the first paragraph hereof.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to any Loan Parties or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Anti-Terrorism Laws” means Law related to terrorism financing or money laundering including the Uniting and Strengthening America by Providing Appropriate Tools Required to

Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56), The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act”, 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), the Trading With the Enemy Act (50 U.S.C. § 1 *et seq.*, as amended), any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended), the Anti-Terrorism Order, or any enabling legislation or executive order relating to any of the same.

“Anti-Terrorism Order” means Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism).

“Applicable Base Rate Spread” means the applicable per annum percentage set forth in the definition of “Applicable Rates”.

“Applicable Commitment Fee Rate” means the applicable per annum percentage set forth in the definition of “Applicable Rates”.

“Applicable Eurodollar Rate Spread” means the applicable per annum percentage set forth in the definition of “Applicable Rates”.

“Applicable Letter of Credit Fee” means the applicable per annum percentage set forth in the definition of “Applicable Rates”.

“Applicable Pricing Level” means, for any day, the Applicable Pricing Level that is determined in accordance with Borrower’s Consolidated Leverage Ratio on such date as follows:

<u>Applicable Pricing Level</u>	<u>Consolidated Leverage Ratio</u>
I	<0.375:1
II	≥0.375:1 but <0.425:1
III	≥0.425:1 but <0.475:1
IV	≥0.475:1 but <0.525:1
V	≥0.525:1

Any change in the Applicable Pricing Level resulting from a change in the Consolidated Leverage Ratio shall be effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 7.2; provided, however, that if a Compliance Certificate is not delivered on or prior to a date required by Section 7.2, and if the Compliance Certificate when delivered indicates that the Applicable Pricing Level of Borrower will increase (i.e., becomes less favorable to Borrower), the date of increase in the Applicable Pricing Level will be deemed to be the date upon which such Compliance Certificate was due under Section 7.2, not the date upon which such Compliance Certificate was delivered.

“Applicable Rates” means, as of any date of determination, the following percentages per annum, based upon the Applicable Pricing Level on that date:

Applicable Pricing Level	Applicable Base Rate Spread	Applicable Commitment Fee Rate	Applicable Eurodollar Rate Spread/Applicable Letter of Credit Fee
I	0.375%	0.20%	1.375%
II	0.50%	0.25%	1.50%
III	0.625%	0.25%	1.625%
IV	0.75%	0.30%	1.75%
V	1.00%	0.35%	2.00%

“Approved Fund” means any Fund that is administered or managed by (a) a Bank, (b) an Affiliate of a Bank or (c) an entity or an Affiliate of an entity that administers or manages a Bank.

“Arrangers” means Citi, BofA Securities, Inc., Bank of the West, Credit Suisse Securities (USA), LLC, Deutsche Bank Securities Inc., and Wells Fargo Securities, LLC, in their respective capacities as joint lead arrangers and joint bookrunners.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another.

“Assignment and Assumption” means an assignment and assumption substantially in the form of Exhibit A.

“Associate” shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date hereof.

“Attorney Costs” means and includes all reasonable fees, expenses and disbursements of any law firm or other external counsel.

“Authorizations” has the meaning set forth for that term in Section 4.1.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bank” means each financial institution whose name is set forth in the signature pages of this Agreement and each lender which may hereafter become a party to this Agreement pursuant to Section 11.8.

“Bank of America” means Bank of America, N.A. and its successors.

“Bank of America Letter of Credit Facility” means that certain Letter of Credit and Security Agreement dated as of March 16, 2010 by and between KB Home and Bank of America.

“Bank Insolvency Event” means that (i) a Bank or its Parent Company is insolvent, (ii) an event of the kind referred to in Section 9.1(j) occurs with respect to a Bank or its Parent Company (as if the references in such provisions to the Borrower or Subsidiaries referred to such Bank or Parent Company) or (iii) a Bank or its Parent Company becomes the subject of a Bail-In Action.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the one month Eurodollar Rate plus 1.00% and (c) the rate of interest in effect for such day as publicly announced from time to time by Citi as its “prime rate.” The “prime rate” is a rate set by Citi based upon various factors including Citi’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Citi shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Advance” means an Advance made by a Bank to fund its Pro Rata Share of a Base Rate Loan.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Benefit Plan” shall mean any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Borrower” means KB Home, a Delaware corporation, and its successors and permitted assigns.

“Borrower Materials” has the meaning set forth in Section 7.1.

“Borrowing Base” has the meaning set forth in Section 2.8(b).

“Borrowing Base Certificate” means a written calculation of the Borrowing Base, substantially in the form of Exhibit B signed, on behalf of Borrower by a Senior Officer of Borrower.

“Borrowing Base Indebtedness” means as of any date of determination, the aggregate principal amount of indebtedness for borrowed money, and the aggregate face amount of obligations under Financial Letters of Credit that are not Cash Collateralized or Letter of Credit Collateralized, of Borrower and Borrowing Base Subsidiaries (other than Financial Subsidiaries) that are not Subordinated Obligations and that is not Non-Recourse Indebtedness.

“Borrowing Base Subsidiary” means (a) any Guarantor Subsidiary and (b) any direct or indirect wholly-owned Domestic Subsidiary of Borrower or any Guarantor Subsidiary.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.

“Capital Lease” means, with respect to any Person, a lease of any Property by that Person as lessee that is, or should be recorded as a “capital lease” or “finance lease” on a balance sheet of that Person prepared in accordance with Generally Accepted Accounting Principles in effect as of the date of this Agreement.

“Cash” means all monetary items (including currency, coin and bank demand deposits) that are treated as cash under Generally Accepted Accounting Principles consistently applied.

“Cash Collateralize” has the meaning set forth in Section 2.5(g).

“Cash Equivalents” means, with respect to any Person, that Person’s Investments in:

(a) Government Securities due within one year of the making of the Investment;

(b) readily marketable direct obligations of any State of the United States of America or any political subdivision of any such State or any public agency or instrumentality thereof given on the date of such Investment a credit rating of at least Aa3 by Moody’s or AA- by S&P, in each case due within one year from the making of the Investment;

(c) certificates of deposit issued by, deposits in, deposits in the London interbank Eurodollar market made through, bankers’ acceptances of, and repurchase agreements covering Government Securities executed by, (i) any Bank or (ii) any bank or savings and loan association doing business in and incorporated under the Laws of the United States of America, any state thereof or the District of Columbia and having on the date of such Investment combined capital, surplus and undivided profits of at least \$500,000,000 and which carries on the date of such Investment a credit rating of P-1 or higher by Moody’s or A-1 or higher by S&P, in each case due within one year after the date of the making of the Investment;

(d) certificates of deposit issued by, bank deposits in, deposits in the London interbank Eurodollar market made through, bankers’ acceptances of, and repurchase agreements covering Government Securities executed by any branch or office located in the United States of America of a bank incorporated under the Laws of any jurisdiction outside the United States of America having on the date of such Investment combined capital, surplus and undivided profits of at least \$500,000,000 and which carries on the date of such Investment a credit rating of P-1 or higher by Moody’s or A-1 or higher by S&P, in each case due within one year after the date of the making of the Investment;

(e) readily marketable commercial paper or other debt securities of (i) any Bank that is a Bank as of the Restatement Date, (ii) corporations, commercial banks or financial institutions doing business in and incorporated under the Laws of the United States of America or any state thereof or the District of Columbia or (iii) a holding company for a bank described in clause (c) or (d) above, given on the date of such Investment a credit rating of P-1 or higher by Moody's, of A-1 or higher by S&P, or F-1 or higher by Fitch, in each case due within one year of the making of the Investment;

(f) repurchase agreements covering Government Securities executed by a broker or dealer registered under Section 15(b) of the Exchange Act, having on the date of the Investment capital of at least \$50,000,000, due within 90 days after the date of the making of the Investment; provided, that the maker of the Investment receives written confirmation of the transfer to it of record ownership of the Government Securities on the books of a "primary dealer" in such government Securities or on the books of such registered broker or dealer, as soon as practicable after the making of the Investment;

(g) "money market preferred stock" issued by a corporation incorporated under the Laws of the United States of America or any State thereof (i) given on the date of such Investment a credit rating of at least Aa3 by Moody's and AA- by S&P, in each case having an investment period not exceeding 50 days or (ii) to the extent that investors therein have the benefit of a standby letter of credit issued by a Bank or a bank described in clauses (c) or (d) above; provided, that (y) the amount of all such Investments issued by the same issuer does not exceed \$20,000,000 and (z) the aggregate amount of all such Investments does not exceed \$50,000,000;

(h) a readily redeemable "money market mutual fund" sponsored by a bank described in clause (c) or (d) hereof, or a registered broker or dealer described in clause (f) hereof, that has and maintains an investment policy limiting its investments primarily to instruments of the types described in clauses (a) through (g) hereof and given on the date of such Investment a credit rating of at least Aa3 by Moody's and AA- by S&P; and

(i) corporate notes or bonds having an original term to maturity of not more than one year issued by a corporation incorporated under the Laws of the United States of America or any state thereof, or a participation interest therein; provided, that (i) commercial paper issued by such corporation is given on the date of such Investment a credit rating of at least Aa3 by Moody's and AA- by S&P, (ii) the amount of all such Investments issued by the same issuer does not exceed \$20,000,000 and (iii) the aggregate amount of all such Investments does not exceed \$50,000,000.

"Change in Control" means, and shall be deemed to have occurred at such time as any of the following events shall occur:

(a) there shall be consummated any consolidation or merger of Borrower in which Borrower is not the continuing or surviving company, unless the holders of the Borrower's Voting Stock immediately prior to such transaction hold, immediately after such transaction, at least 50% of the Voting Stock of the surviving company or a parent company that owns all of the equity interests of such surviving company; or

(b) there is a report filed by any “person” or “group” on Schedule 13D or TO (or any successor schedule, form or report) pursuant to the Exchange Act, disclosing that such person or group (for the purposes of the definition of Change in Control only, the terms “person” and “group” are used as defined in Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision to either of the foregoing) has become the beneficial owner (as the term “beneficial owner” is defined under Rule 13d-3 or any successor rule or regulation promulgated under the Exchange Act) of 50% or more of the voting power of Borrower’s Voting Stock then outstanding; provided, however, that a person or group shall not be deemed beneficial owner of, or to own beneficially (1) any Securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or group until such tendered Securities are accepted for purchase or exchange thereunder, or (2) any Securities if such beneficial ownership (a) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations under the Exchange Act, and (b) is not also then reportable on Schedule 13D (or any successor schedule) under the Exchange Act; or

(c) a “Change in Control” (or analogous term) as defined in the Senior Notes Indenture and the Senior Notes thereupon (i) become due and payable by Borrower or its Subsidiaries or (ii) the Borrower or its Subsidiaries are required to make an offer to redeem such Senior Notes; or

(d) a “Change in Control” (or analogous term) as defined in one or more indentures or agreements governing any Subordinated Obligations occur and (i) at least \$50,000,000 of Subordinated Obligations thereupon become due and payable by Borrower or its Subsidiaries or (ii) the Borrower or its Subsidiaries must make an offer to redeem an amount equal to or greater than \$50,000,000 of Subordinated Obligations.

“Change in Control Payment Date” has the meaning set forth in Section 3.1(f).

“Change in Control Payment Notice” has the meaning set forth in Section 3.1(f).

“Change in Control Repayment” has the meaning set forth in Section 3.1(f).

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following:

(a) the adoption or taking effect of any law, rule, regulation or treaty;

(b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Agency; or

(c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Agency.

Notwithstanding the foregoing, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and all requests rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or

similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change in Status” means, with respect to any Guarantor Subsidiary, (a) such Guarantor Subsidiary ceases to be a Subsidiary of the Borrower as a result of a transaction permitted under this Agreement or (b) the designation by the Borrower that such Guarantor Subsidiary is not required to be a Guarantor Subsidiary under the definition thereof.

“Citi” means Citibank, N.A. and its successors.

“Code” means the Internal Revenue Code of 1986, as amended and as in effect from time to time.

“Commission” means the Securities and Exchange Commission and any successor commission.

“Commitment” means, subject to Sections 2.6 and 2.7, \$800,000,000. The Pro Rata Shares of the Banks, on the Restatement Date, with respect to the Commitment are set forth in Schedule 1.1.

“Compensation Period” has the meaning set forth for that term in Section 3.14.

“Compliance Certificate” means a compliance certificate in the form of Exhibit C signed, on behalf of Borrower, by a Senior Officer of Borrower.

“Connection Income Taxes” means Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Connection Taxes” means with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Consenting Bank” has the meaning set forth in the recitals hereto.

“Consolidated Adjusted EBITDA” means, for any period, Consolidated EBITDA for such period plus (a) the amount of capitalized interest that was included in cost of sales in determining Consolidated Net Income for such period (and not included in Consolidated Interest Expense and added back to Consolidated Net Income pursuant to clause (a)(ii) of Consolidated EBITDA) plus (b) all non-Cash Net Realizable Value Adjustments made during such period which are not added back to Consolidated Net Income pursuant to clause (a)(iv) of Consolidated EBITDA.

“Consolidated EBITDA” means, for any period, Consolidated Net Income for such period, (a) plus, without duplication, (i) any extraordinary loss reflected in such Consolidated

Net Income, and (ii) Consolidated Interest Expense for such period, and (iii) the aggregate amount of federal, state and foreign income taxes payable by Borrower and its Consolidated Subsidiaries for such period, and (iv) depreciation, amortization and all other non-cash expenses of Borrower and its Consolidated Subsidiaries for such period (and in the case of the foregoing items (ii), (iii) and (iv), only to the extent deducted in the determination of Consolidated Net Income for such period), (b) minus, without duplication, (i) consolidated interest income of the Borrower and its Consolidated Subsidiaries for such period, and (ii) any extraordinary gain reflected in such Consolidated Net Income, in each of the foregoing cases as determined in accordance with Generally Accepted Accounting Principles consistently applied.

“Consolidated ASC 810 Subsidiaries” means entities that would not be GAAP Subsidiaries but for the issuance of the pronouncement entitled Accounting Standards Codification Topic 810 (“ASC 810”) “Consolidations” by the Financial Accounting Standards Board.

“Consolidated Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Adjusted EBITDA for the 12 month period ending on such date to (b) Consolidated Interest Incurred for the 12 month period ending on such date.

“Consolidated Interest Expense” means for any period, the aggregate interest expense of Borrower and its Consolidated Subsidiaries on a consolidated basis determined in accordance with Generally Accepted Accounting Principles consistently applied.

“Consolidated Interest Incurred” means, for any period, the aggregate amount of Consolidated Interest Expense (but excluding (i) premiums and non-cash amounts arising as a result of prepayment or extinguishment of Indebtedness, (ii) Non-Cash Convertible Debt Interest Expenses and (iii) accretion of original issue discount on long-term debt), including any capitalized interest, less interest income of Borrower and its Consolidated Subsidiaries on a consolidated basis; provided that the Borrower may exclude interest on up to \$500,000 of Capital Leases from such calculation.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Total Indebtedness on that date to (b) the sum of (i) Consolidated Total Indebtedness and (ii) Consolidated Tangible Net Worth on that date.

“Consolidated Net Income” means, for any period, the net income of Borrower and its Consolidated Subsidiaries on a consolidated basis determined in accordance with Generally Accepted Accounting Principles consistently applied.

“Consolidated Net Tangible Assets” means the total amount of assets which would be included on a combined balance sheet of the Borrower and its Subsidiaries (other than Financial Subsidiaries) under Generally Accepted Accounting Principles (less applicable reserves and other properly deductible items) after deducting therefrom: (1) all short-term liabilities, except for liabilities payable by their terms more than one year from the date of determination (or renewable or extendible at the option of the obligor for a period ending more than one year after such date) and liabilities in respect of retiree benefits other than pensions for which the Borrower or any of its Subsidiaries is required to accrue pursuant to ASC 715; (2) investments in Financial

Subsidiaries; and (3) all goodwill, trade names, trademarks, patents, unamortized debt discount, unamortized expense incurred in the issuance of debt and other Intangible Assets.

“Consolidated Subsidiaries” means, with respect to Borrower, Borrower’s GAAP Subsidiaries (other than Borrower’s Consolidated ASC 810 Subsidiaries).

“Consolidated Tangible Net Worth” means, as of any date of determination, the Shareholders’ Equity of Borrower and its GAAP Subsidiaries on a consolidated basis on that date minus the Intangible Assets of Borrower and its GAAP Subsidiaries on a consolidated basis on that date minus any non-cash gain (or plus any non-cash loss, as applicable) resulting from any marked to market adjustments made directly to Consolidated Tangible Net Worth as a result of fluctuations in the value of foreign currency instruments owned by Borrower or any of its GAAP Subsidiaries as mandated under ASC 815.

“Consolidated Total Indebtedness” means, as of any date of determination, all Indebtedness, all Contingent Guaranty Obligations and any drawn Performance Letters of Credit (excluding drawn Performance Letters of Credit with respect to Financial Subsidiaries and Foreign Subsidiaries) not reimbursed when due and not Cash Collateralized, of Borrower and its Consolidated Subsidiaries on a consolidated basis on that date (without duplication for any guaranty by Borrower of a Consolidated Subsidiary’s Indebtedness or any guaranty by a Consolidated Subsidiary of either Borrower’s or another Consolidated Subsidiary’s Indebtedness or otherwise) minus (a) all Indebtedness and Contingent Guaranty Obligations of Financial Subsidiaries on a consolidated basis (but only to the extent that such Financial Subsidiaries are also Consolidated Subsidiaries and there is no recourse to Borrower or any other Consolidated Subsidiary) on that date minus (b) all Indebtedness and Contingent Guaranty Obligations of Foreign Subsidiaries of the Borrower on a consolidated basis (but only to the extent that such Foreign Subsidiaries of the Borrower are also Consolidated Subsidiaries and there is no recourse to Borrower or any other Consolidated Subsidiary or any of their respective Property) on that date.

“Contingent Guaranty Obligation” means, with respect to any Person, any agreement, undertaking or arrangement by which such Person guarantees, endorses (other than for collection or deposit in the ordinary course of business), contingently agrees to purchase or provide funds for the payment of, or otherwise is contingently liable upon, the Indebtedness of any other Person, or agrees to maintain the net worth or working capital or other financial condition of any other Person to enable such Person to pay Indebtedness, or otherwise assures any creditor with respect to Indebtedness of such other Person against loss with respect to payment of such Indebtedness, including, without limitation, any such agreement, undertaking or arrangement in the form of a comfort letter, operating agreement, take-or-pay contract or “put” agreement; provided that a “bad boy”, “bad acts” or completion guarantee or similar arrangement shall not constitute a Contingent Guaranty Obligation except to the extent of the principal amount then due and payable thereunder. The amount of any Contingent Guaranty Obligation of a Person shall be deemed to be (1) in the event the terms of such Contingent Guaranty Obligation provide that such Person shall be liable for a fixed portion of the principal amount of the related primary Indebtedness and such Indebtedness has a stated or determinable principal amount, an amount equal to such fixed portion, (2) in the event the principal amount of the related primary Indebtedness is not stated or determinable or the terms of such Contingent Guaranty Obligation

do not provide that such Person shall be liable for a fixed portion of such principal, an amount equal to the maximum reasonably anticipated liability which is likely to be paid by such Person in respect of such principal as determined by such Person in good faith or (3) in the event of a Contingent Guaranty Obligation arising under an LTV Maintenance Agreement, the related LTV Maintenance Exposure of such Person; provided, however, that if any Person is liable severally but not jointly and severally with one or more other obligors under any Contingent Guaranty Obligation, the amount of such Contingent Guaranty Obligation shall be the product of (x) the amount determined as set forth above and (y) the maximum percentage of the aggregate liability in respect of principal under such Contingent Guaranty Obligation with respect to which such Person is severally liable.

“Contractual Obligation” means, as to any Person, any provision of any outstanding Securities issued by that Person or of any material agreement, instrument or undertaking to which that Person is a party or by which it or any of its Property is bound, other than, in the case of Borrower and its Subsidiaries, any of the Loan Documents.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, as amended from time to time, and all other applicable liquidation, conservatorship, insolvency, reorganization, or similar debtor relief Laws from time to time in effect affecting the rights of creditors generally.

“Default” means any event that, with the giving of any notice or passage of time, or both, would be an Event of Default.

“Default Rate” has the meaning set forth for that term in Section 3.7.

“Defaulting Bank” means, at any time, a Bank that (i) has failed for two Business Days or more to comply with its obligations under this Agreement to make a Loan or make a payment to an Issuing Bank in respect of an L/C Advance or pay any other amount required to be paid by it under the Loan Documents (each a “funding obligation”), or (ii) has notified in writing the Borrower, the Administrative Agent or any Issuing Bank, or has stated publicly, that it does not intend or expect to comply with any such funding obligation, (iii) has defaulted on its funding obligations under any other loan agreement or credit agreement or other similar agreement, (iv) for three or more Business Days after written request of the Administrative Agent or the Borrower, fails to provide a written certification that it will comply with its prospective funding obligations hereunder (provided that such Bank will cease to be a Defaulting Bank pursuant to this clause (iv) upon the Administrative Agent’s and the Borrower’s receipt of such written confirmation), or (v) as to which a Bank Insolvency Event has occurred and is continuing with respect to such Bank; provided that neither the reallocation of funding obligations provided for in Section 10.13 as a result of a Bank being a Defaulting Bank nor the performance by Non-Defaulting Banks of such reallocated funding obligations shall by themselves cause the relevant Defaulting Bank to become a Non-Defaulting Bank; provided further that in each case, a Defaulting Bank will not mean a Bank whose applicable funding obligations are reasonably likely to be promptly met or satisfied by an administrative agency of competent jurisdiction or a successor-in interest with respect to such funding obligations. Any determination by the Administrative Agent that a Bank is a Defaulting Bank under any of clauses (i) through (v) above will be conclusive and binding absent manifest error, and such Bank will be deemed to

be a Defaulting Bank upon notification of such determination by the Administrative Agent to the Borrower, the Issuing Banks, and the Banks.

“Designated Deposit Account” means a demand deposit account from time to time designated by Borrower by written notification to the Administrative Agent.

“Developed Lots” means subdivision lots located in the United States that are wholly-owned by Borrower or its Borrowing Base Subsidiaries, unencumbered by any Lien or Liens (other than Permitted Encumbrances), and that are subject to a recorded plat or subdivision map, in substantial compliance with all applicable Laws and available for the construction thereon of foundations for Units.

“Distribution” means, with respect to any shares of capital stock or any warrant or right to acquire shares of capital stock or any other equity security issued by a Person, (a) the retirement, redemption, purchase, or other acquisition for value (other than for capital stock of the same type of such Person) by such Person of any such security, (b) the declaration or payment by such Person of any dividend in Cash or in Property (other than in capital stock of the same type of such Person) on or with respect to any such security, and (c) any Investment by such Person in any holder of 5% or more of the capital stock (or other equity securities) of such Person, if a purpose of such Investment is to avoid the characterization of the transaction between such Person and such holder as a Distribution under clause (a) or (b) above. In addition, to the extent any loan or advance by Borrower to one of its Subsidiaries is deemed to be an “Investment” for purposes of this Agreement, then any principal payment made by such Subsidiary in respect of such loan or advance shall be considered a Distribution for purposes of Section 6.12.

“Dollars” means the national currency of the United States of America.

“Domestic Lending Office” means, with respect to each Bank, its office, branch or affiliate identified on the signature pages hereof as its Domestic Lending Office or such other office, branch or affiliate as such Bank may hereafter designate as its Domestic Lending Office by notice to the Borrower and the Administrative Agent.

“Domestic Subsidiary” means, with respect to any Person and as of any date of determination, a Subsidiary of such Person (a) that is organized under the Laws of the United States of America or any state thereof, so long as substantially all of the assets of such Subsidiary do not consist of capital stock of one or more Foreign Subsidiaries, and (b) the majority of the assets of which (as reflected on a balance sheet of such Subsidiary prepared in accordance with Generally Accepted Accounting Principles consistently applied) is located in the United States of America.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means: (a) a Bank; (b) an Affiliate of a Bank; and (c) a financial institution that has, or is a wholly-owned subsidiary of a parent company that has, (i) an unsecured long-term debt rating of not less than BBB+ from S&P or Baa1 from Moody’s (or BBB+ from S&P and Baa1 from Moody’s if both agencies issue ratings of its unsecured long-term debt) and (ii) if its unsecured short-term debt is rated, an unsecured short-term debt rating of not less than A2 from S&P or P2 from Moody’s (or A2 from S&P and P2 from Moody’s if both agencies issue ratings of its unsecured short-term debt); provided that notwithstanding the foregoing, “Eligible Assignee” shall not include (i) the Borrower or any of the Borrower’s Affiliates or Subsidiaries, or (ii) any Defaulting Bank or Potential Defaulting Bank or any of their respective subsidiaries, or any Person who, upon becoming a Bank hereunder, would constitute any of the foregoing Persons described in this clause (ii).

“ERISA” means, at any date, the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations thereunder, all as the same shall be in effect at such date.

“ERISA Affiliate” means, with respect to the Borrower, any other Person (or any trade or business, whether or not incorporated) that is under common control with the Borrower within the meaning of Section 414 of the Code.

“ERISA Event” means: (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a “substantial employer” (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal (within the meanings of Sections 4203 and 4205 of ERISA) by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in “reorganization” (within the meaning of Section 4241 of ERISA), “insolvency” (within the meaning of Section 4245 of ERISA), or “endangered or critical status” (within the meaning of Section 305 of ERISA); (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; (g) a determination that any Pension Plan is, or is expected to be in “at-risk” status (as defined in Section 303(i)(4)(A) of ERISA or Section 430(i)(4)(A) of the Code); (h) the failure by the Borrower or any ERISA Affiliate to meet the funding requirements of Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA with respect to any Pension Plan, whether or not waived, or the failure to make by its due date a required installment under Section 430(j) of the Code or Section 303(j) of

ERISA with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (i) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; or (j) the imposition of a Lien upon the assets of the Borrower or any ERISA Affiliate pursuant to the Code or ERISA with respect to any Pension Plan.

“Escrow Receivables” means, as of any date of determination, the amounts due to Borrower or any Borrowing Base Subsidiary and held at an escrow or title company following the sale and conveyance of title of a Model Home or Unit to a buyer (including an escrow or title company that is a Subsidiary of the Borrower) to the extent that such amounts are free and clear of all Liens and Rights of Others and are not subject to any restriction pursuant to any Contractual Obligations.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar Advance” means an Advance made by a Bank to fund its Pro Rata Share of a Eurodollar Rate Loan.

“Eurodollar Base Rate” has the meaning set forth in the definition of Eurodollar Rate.

“Eurodollar Rate” means for any Interest Period with respect to any Eurodollar Rate Loan, a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\text{Eurodollar Rate} = \frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

Where, “Eurodollar Base Rate” means, for such Interest Period, the rate per annum equal to the London interbank offered rate administered by ICE Benchmark Administration Limited (“LIBOR”), as published by Bloomberg (or other commercially available source providing quotations of LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, 2 Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on the Eurodollar Rate.

“Eurodollar Reserve Percentage” means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to 5 decimal places) in effect on such day, whether or not applicable to any Bank, under regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”). The Eurodollar Rate for each outstanding Eurodollar Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

“Event of Default” has the meaning provided in Section 9.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient made by or on account of any obligation of the Borrower hereunder,

(a) taxes imposed on or measured by net income (however denominated), franchise taxes and branch profits taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Bank, its applicable Lending Office located in the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are Connection Taxes;

(b) in the case of a Bank (other than an assignee pursuant to a request by the Borrower under Section 11.27) (i) United States federal withholding (including backup withholding) Taxes imposed on amounts payable to or for the account of such Bank at the time such Bank becomes a party hereto (or designates a new Lending Office) or (ii) is attributable to such Bank’s failure or inability (other than as a result of a Change in Law) to comply with Section 3.10(e), except, in each case, to the extent that such Bank (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax; and

(c) any United States federal withholding Taxes imposed under FATCA.

“Existing Letters of Credit” means any Letter of Credit issued pursuant to the Existing Loan Agreement or designated as Letters of Credit pursuant to the terms thereof.

“Existing Loan Agreement” has the meaning set forth in the recitals hereto.

“Exposure” means for any Bank, as of any date of determination, the product obtained by multiplying that Bank’s then effective Pro Rata Share by the then effective Commitment.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Citi on such day on such transactions as determined by the Administrative Agent and (c) in no event shall the Federal Funds Rate be less than 0.0% per annum.

“Financial Letter of Credit” means any letter of credit issued by an issuer for the account of the Borrower or a Subsidiary that represents an irrevocable obligation on the part of the issuer:

- (a) to repay money borrowed by or advanced to the Borrower or a Subsidiary; or
- (b) to make payment on account of any indebtedness undertaken by the Borrower or a Subsidiary,

in each case with respect to the foregoing clauses (a) and (b), in the event that the Borrower or Subsidiary fails to fulfill its financial obligations to the beneficiary.

“Financial Subsidiary” means (a) any Subsidiary of Borrower that is organized and operates solely to issue (i) collateralized mortgage obligations or (ii) other similar asset-backed obligations, (b) any other Subsidiary of Borrower that (i) is engaged primarily in the business of origination, marketing, and servicing of residential mortgage loans, the sale of servicing rights, or the financing of long term residential mortgage loans, (ii) holds not less than 95% of its total assets in the form of Cash, Cash Equivalents, notes and mortgages receivable, Cash held by a trustee for the benefit of such Subsidiary or other financial instruments, and (iii) is the subject of an Officer’s Certificate of Borrower delivered to the Administrative Agent stating that such Subsidiary is a Financial Subsidiary within the meaning hereof, and (c) any other Subsidiary of Borrower that (i) is or has been engaged primarily in the business of providing insurance (including, without limitation, any captive insurance Subsidiary of Borrower), escrow or title services, or any similar or related financial services, and (ii) is the subject of an Officer’s Certificate of Borrower delivered to the Administrative Agent stating that such Subsidiary is a Financial Subsidiary within the meaning hereof; provided that, in no event shall Home Community Mortgage, LLC (or any successor thereto) be a Financial Subsidiary. As of the Restatement Date, the Financial Subsidiaries are Endeavour Venture Partners LLC, Escoba Insurance Company, HomeSafe Company, HomeSafe Escrow Company, KB HOME Insurance Agency Inc., KB HOME Insurance Agency of Texas Holdings, Inc., KB HOME Mortgage Company, KB HOME Mortgage Ventures LLC, KB HOME Title Services Inc., San Antonio Title Co., and Westview Company.

“Fiscal Quarter” means each of the fiscal quarters of Borrower ending on each February 28 (or 29, if a leap year), May 31, August 31 and November 30.

“Fiscal Year” means each of the fiscal years of Borrower ending on each November 30.

“Fitch” means Fitch Ratings, or any successor thereto.

“Foreign Bank” means any Bank that is organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means, with respect to any Person, a Subsidiary of that Person which is not a Domestic Subsidiary and which is a controlled foreign corporation as defined in Section 957 of the Code.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP Subsidiaries” means, with respect to Borrower, all entities whose financial statements are consolidated with the consolidated financial statements of Borrower under Generally Accepted Accounting Principles.

“GAAP Value” means, with respect to any property or asset, the book value for such property or asset determined in accordance with Generally Accepted Accounting Principles consistently applied.

“Generally Accepted Accounting Principles” (or “GAAP”) means generally accepted accounting principles in the United States as in effect from time to time, unless otherwise specified herein; provided, that any change in GAAP after the Restatement Date shall not cause any lease that was not or would not have been a Capital Lease prior to such change to be deemed a Capital Lease. The term “consistently applied,” as used in connection therewith, means that the accounting principles applied to financial statements of a Person as of any date or for any period are consistent in all material respects (subject to Section 1.2) to those applied to financial statements of that Person as of recent prior dates and for recent prior periods.

“Government Securities” means (a) readily marketable direct full faith and credit obligations of the United States of America or obligations unconditionally guaranteed by the full faith and credit of the United States of America and (b) obligations of an agency or instrumentality of, or corporation owned, controlled or sponsored by, the United States of America that are generally considered in the securities industry to be implicit obligations of the United States of America.

“Governmental Agency” means (a) any federal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, (c) any court or administrative tribunal, or (d) any arbitration tribunal or other non-governmental authority to whose jurisdiction a Person has consented, in each case whether of the United States of America or any other nation.

“Guarantor Subsidiary” means (a) any direct or indirect wholly owned Domestic Subsidiary of Borrower which is a Consolidated Subsidiary and a Significant Subsidiary, other than any Financial Subsidiary and (b) any other Domestic Subsidiary of Borrower, other than any Financial Subsidiary, that is designated in writing by Borrower as required hereby or at its option as a Guarantor Subsidiary; provided that the assets of all direct or indirect wholly owned Domestic Subsidiaries of Borrower that are not Guarantor Subsidiaries shall not in the aggregate exceed 10% of the Consolidated Net Tangible Assets of the Borrower and its Consolidated Subsidiaries (excluding the assets of Financial Subsidiaries), in each case measured as of the end of the previous Fiscal Year.

“Hazardous Materials” means substances defined as “hazardous substances” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980,

42 U.S.C. § 9601 et seq., or as “hazardous”, “toxic” or “pollutant” substances or as “solid waste” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., or as “friable asbestos” pursuant to the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. or any other applicable Hazardous Materials Law, in each case as such Laws are amended from time to time.

“Hazardous Materials Laws” means all Laws governing the treatment, transportation or disposal of Hazardous Materials applicable to any real Property of Borrower or its Subsidiaries.

“Homes Under Construction” means, collectively, as of any date of determination, Sold Homes, Speculative Units and Model Homes that are unencumbered by any Lien or Liens (other than Permitted Encumbrances).

“Increasing Bank” has the meaning set forth in Section 2.7(a).

“Indebtedness” means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money, (b) that portion of the obligations of such Person under Capital Leases that should properly be recorded as a liability on a balance sheet of that Person prepared in accordance with Generally Accepted Accounting Principles as in effect on the date of this Agreement, (c) any obligation of such Person that is evidenced by a promissory note or other instrument representing an extension of credit to such Person, whether or not for borrowed money, (d) any obligation of such Person for the deferred purchase price of Property or services (other than trade or other accounts payable incurred in the ordinary course of business and obligations under Profit and Participation Agreements), (e) any obligation of the types referred to in clauses (a) through (d) above that is secured by a Lien (other than Permitted Encumbrances) on assets of such Person, whether or not that Person has assumed such obligation or whether or not such obligation is non-recourse to the credit of such Person, but only to the extent of the fair market value of the assets so subject to the Lien if such obligation is non-recourse, (f) obligations of such Person arising under acceptance facilities or under facilities for the discount of accounts receivable of such Person, (g) any obligation of such Person under Financial Letters of Credit issued for the account of such Person to the extent not Cash Collateralized, and (h) net obligations of such Person under any Swap Contract. Notwithstanding the foregoing, none of the items described in the foregoing clauses (a) – (h) between or among the Borrower and/or any of its Consolidated Subsidiaries shall constitute Indebtedness for purposes of Sections 6.10, Section 6.11 or the definitions used therein.

“Indemnified Liabilities” has the meaning set forth in Section 11.10.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning set forth in Section 11.10.

“Information” has the meaning set forth in Section 11.12.

“Intangible Assets” means assets that are considered intangible assets under Generally Accepted Accounting Principles consistently applied, including (a) customer lists, goodwill,

computer software, unamortized deferred charges, unamortized debt discount, capitalized research and development costs and other intangible assets and (b) any write-up in book value of any asset subsequent to its acquisition.

“Interest Period” means, as to each Eurodollar Rate Loan, a period of 1 week or 1, 2, 3 or 6 months, as designated by Borrower; provided that (a) the first day of each Interest Period must be a Business Day, (b) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day, unless such Business Day falls in the next calendar month, in which case the Interest Period shall end on the next preceding Business Day, and (c) no Interest Period may extend beyond the Maturity Date.

“Investment” means, with respect to any Person, any investment by that Person, whether by means of purchase or other acquisition of capital stock or other Securities of any other Person or by means of loan, advance, capital contribution, or other debt or equity participation or interest in any other Person, including any partnership or joint venture interest in any other Person; provided that an Investment of a Person shall not include any trade or account receivable arising in the ordinary course of the business of such Person, whether or not evidenced by a note or other writing. The amount of any Investment shall be the amount actually invested, less any return of capital, without adjustment for subsequent increases or decreases in the market value of such Investment.

“Investment Grade Credit Rating” means, as of any date of determination, that at least 2 Rating Agencies have as of that date issued credit ratings for Borrower’s non-credit-enhanced long-term senior unsecured debt of (a) at least BBB- in the case of S&P, (b) at least Baa3 in the case of Moody’s, and (c) at least BBB in the case of Fitch.

“IRS” means the United States Internal Revenue Service.

“ISP98” has the meaning set forth in Section 2.5(h).

“Issuing Bank” means any Bank in its capacity as an issuer of Letters of Credit hereunder up to its Issuing Bank’s L/C Limit. As of the Restatement Date, the Issuing Banks are set forth on Schedule 1.1.

“Issuing Bank’s L/C Limit” means, with respect to any Bank which is also an Issuing Bank at any time, an amount equal to the product of such Bank’s Pro Rata Share of the Commitment multiplied by the L/C Limit. As of the Restatement Date, each Issuing Bank’s L/C Limit is set forth on Schedule 1.1.

“Joint Venture” means any Person, other than a Subsidiary, (a) in which Borrower or any Subsidiary of Borrower holds an equity Investment which entitles Borrower or such Subsidiary to more than 10% of (i) the ordinary voting power for the election of the board of directors or other governing body of such Person or (ii) the partnership, membership or other ownership interest in such Person, and (b) which has at least one holder of its equity interests that is not an Affiliate of Borrower or any Subsidiary of Borrower. Notwithstanding the foregoing, for the purposes of Section 6.16, the term “Joint Venture” will not include any equity Investment in any Person if the dollar amount of that investment is less than \$1,000,000, computed in accordance

with Generally Accepted Accounting Principles consistently applied, but only to the extent that the aggregate dollar amount of such equity Investments is less than \$25,000,000.

“L/C Advance” means, with respect to each Bank, such Bank’s funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share.

“L/C Borrowing” means an extension of credit resulting from a drawing under a Letter of Credit which has not been reimbursed on the date required or refinanced as a Loan.

“L/C Limit” means \$250,000,000.

“Land Held for Future Development” means, as of any date of determination, Land Parcels where development activity has been suspended or has not yet begun, but is expected to occur in the future.

“Land Held for Sale” means, as of any date of determination, Land Parcels that are designated by Borrower as to be sold to any Person that is not an Affiliate of the Borrower.

“Land Parcels” means parcels of land located in the United States wholly-owned by Borrower or any Borrowing Base Subsidiary that are unencumbered by any Lien or Liens (other than Permitted Encumbrances).

“Land Under Development” means, as of any date of determination, Lots Under Development and Developed Lots excluding lots included in the Homes Under Construction and Land Held for Future Development categories.

“Laws” means, collectively, all foreign, federal, state and local statutes, treaties, codes, ordinances, rules, regulations and controlling precedents of any Governmental Agency.

“Lending Office” means, as to any Bank, the office or offices of such Bank described as such in such Bank’s Administrative Questionnaire, or such other office or offices as a Bank may from time to time notify the Borrower and the Administrative Agent.

“Letter of Credit” means any of the standby letters of credit issued by an Issuing Bank under the Commitment pursuant to Section 2.5, either as originally issued or as the same may be supplemented, modified, amended, renewed, extended or supplanted. A Letter of Credit shall be a Financial Letter of Credit or a Performance Letter of Credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form, from time to time, that is in use by an Issuing Bank.

“Letter of Credit Collateralize” has the meaning set forth in Section 2.5(g).

“Letter of Credit Usage” means, as of any date of determination, the aggregate undrawn face amount of outstanding Letters of Credit plus the aggregate amount of all Unreimbursed Amounts, including all L/C Borrowings.

“LIBOR Successor Rate” has the meaning set forth for that term in Section 3.9.

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines in consultation with the Borrower).

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, lien or charge of any kind, whether voluntarily incurred or arising by operation of Law or otherwise, affecting any Property, including any conditional sale or other title retention agreement, any lease in the nature of a security interest, or the authorized filing of any financing statement (other than a precautionary financing statement with respect to a lease that is not in the nature of a security interest) under the Uniform Commercial Code or comparable Law of any jurisdiction with respect to any Property.

“Liquidity” means at any time, the result of (i) all Unrestricted Cash held by the Borrower and the Borrowing Base Subsidiaries minus (ii) Total Outstandings (excluding undrawn Letters of Credit).

“Loans” means the aggregate of the Advances made at any one time by the Banks pursuant to Article II.

“Loan Documents” means, collectively, this Agreement, the Notes, the Letters of Credit, Letter of Credit Applications, the Subsidiary Guaranty, any Loan Notice, any Request for Letter of Credit, any Compliance Certificate, any Borrowing Base Certificate and any other instruments, documents or agreements of any type or nature hereafter executed and delivered by Borrower or any of its Subsidiaries or Affiliates to the Administrative Agent or any other Bank pursuant to this Agreement, in each case either as originally executed or as the same may from time to time be supplemented, modified, amended, restated, extended or supplanted.

“Loan Notice” means a notice of (a) a request for a Loan, (b) a conversion of Loans from one Type to the other or (c) a continuation of Eurodollar Rate Loans and, if in writing, shall be substantially in the form of Exhibit D.

“Loan Parties” means, collectively, the Borrower and each Guarantor Subsidiary.

“Lots Under Development” means, as of any date of determination, Land Parcels that are being developed into Developed Lots.

“LTV Maintenance Agreement” means a guaranty or other agreement entered into by the Borrower or any of its Consolidated Subsidiaries, for the benefit of the holder of any secured Indebtedness of a Person that is not the Borrower or any of its Consolidated Subsidiaries, to maintain a specified loan-to-value ratio with respect to real Property that secures such Indebtedness.

“LTV Maintenance Exposure” means, with respect to any LTV Maintenance Agreement, the amount equal to (a) the amount of the Indebtedness with respect to which the LTV Maintenance Agreement is delivered exceeds (b) the product of (i) the book value of the real Property securing such Indebtedness (or such lesser value as is provided in or determined under the agreements governing such Indebtedness) and (ii) a percentage equal to the loan-to-value ratio (stated as a fraction) that the Borrower or any of its Consolidated Subsidiaries agrees to maintain under the applicable LTV Maintenance Agreement; provided that if the Borrower or one of its Consolidated Subsidiaries is liable severally but not jointly and severally with one or more other obligors under the LTV Maintenance Agreement, the amount of the Contingent Guaranty Obligation in respect of such LTV Maintenance Agreement for the Borrower or such Consolidated Subsidiary shall be the product of (x) the amount determined as set forth above and (y) the maximum percentage of the aggregate liability under such LTV Maintenance Agreement with respect to which the Borrower or such Consolidated Subsidiary is severally liable; provided further, that if the LTV Maintenance Exposure with respect to a LTV Maintenance Agreement is less than zero, the LTV Maintenance Exposure for that LTV Maintenance Agreement shall be deemed to be zero.

“Material Adverse Effect” means any one or more events, developments or circumstances which, individually or when aggregated with any other circumstances or events, has had or would reasonably be expected to have a material adverse effect on (i) the business, property, financial condition or results of operations of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of the Borrower to perform its payment or other material obligations under the Loan Documents or (iii) the validity or enforceability of any of the Loan Documents or the rights or remedies of the Administrative Agent and the Banks thereunder.

“Material Amount of Assets” means, as of any date of determination, more than 10% of the consolidated total assets of Borrower and its Subsidiaries as of such date (other than assets of, or Investments in, Financial Subsidiaries or Borrower’s Consolidated ASC 810 Subsidiaries).

“Maturity Date” means October 7, 2023.

“Model Homes” means housing Units which have been completed, furnished and landscaped and are used in the marketing efforts with respect to a residential home community.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any “employee benefit plan” (as defined in Section 3(3) of ERISA) of a type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions.

“Net Realizable Value Adjustment” means the adjustment required pursuant to Generally Accepted Accounting Principles consistently applied (including ASC 360 issued by the Financial Accounting Standards Board) to reflect a decrease in the book value of assets below their historical costs.

“New Bank” has the meaning set forth in the recitals hereto.

“Non-Consenting Bank” has the meaning set forth in Section 11.2.

“Non-Defaulting Bank” means, at any time, a Bank that is not a Defaulting Bank or a Potential Defaulting Bank.

“Non-Recourse Indebtedness” means Indebtedness incurred in connection with the purchase or improvement of Property (and any amendment, extension or refinancing of such Indebtedness) (a) that is secured solely by the Property purchased or improved, personal property related thereto, the equity interests in the borrower (but not the Borrower hereunder) of such Indebtedness (if such Property constitutes all or substantially all of the assets of such borrower) and/or its subsidiaries and/or proceeds of any of the foregoing and (b) the sole legal recourse for collection of principal and interest on such Indebtedness is against such collateral and/or such borrower and/or its subsidiaries; provided that any direct or indirect obligations or liabilities of any Person for indemnities, covenants (including, without limitation, performance, completion or similar guarantees or covenants) or for breach of any warranty, representation or covenant, in each case including indemnities for and liabilities arising from fraud, misrepresentation, misapplication or non-payment of rents, profits, deposits, insurance and condemnation proceeds and other sums actually received by the applicable borrower from secured assets, environmental claims, waste, mechanics’ liens, failure to pay taxes or insurance, breach of separateness covenants, bankruptcy and insolvency events or any other circumstances customarily excluded from exculpation provisions and/or included in separate indemnification or guaranty agreements in non-recourse financings of real estate will in each case not cause any Indebtedness described in (a) and (b) above, whether in whole or in any part, to be classified as other than “Non-Recourse Indebtedness”.

“Note” means each promissory note made by Borrower to a Bank evidencing the Advances under that Bank’s Pro Rata Share of the Commitment, substantially in the form of Exhibit E, either as originally executed or as the same may from time to time be supplemented, modified, amended, renewed, extended or supplanted.

“Obligations” means all present and future obligations of every kind or nature of Borrower or any Loan Party at any time and from time to time owed to the Administrative Agent or the Banks or any one or more of them under any one or more of the Loan Documents, whether due or to become due, matured or unmatured, liquidated or unliquidated, or contingent or noncontingent, including obligations of performance as well as obligations of payment, and including interest that accrues to the extent permitted by applicable Law after the commencement of any proceeding under any Debtor Relief Law by or against Borrower.

“OFAC” means the U.S. Treasury Department’s Office of Foreign Assets Control.

“Officer’s Certificate” means, when used with reference to any Person, a certificate signed by a Senior Officer of such Person.

“Opinions of Counsel” means the favorable written legal opinions of (a) Munger, Tolles & Olson LLP, special counsel to Borrower, (b) William A. (Tony) Richelieu, Vice President of Borrower, (c) DLA Piper (US), Arizona counsel to KB HOME Phoenix Inc. and KB HOME Tucson Inc., (d) Parsons Behle & Latimer, Nevada counsel to KB HOME Las Vegas Inc., KB HOME Nevada Inc. and KB HOME Reno Inc., (e) Clark Hill Strasburger, Texas counsel to KB HOME Lone Star Inc. and KBSA, Inc., and (f) Fox Rothschild LLP, Colorado counsel to KB

Home Colorado Inc., substantially in the form of Exhibits F-1, F-2, F-3, F-4, F-5 and F-6, respectively, together with copies of all factual certificates and legal opinions upon which such counsel has relied.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, except, in each case, any such taxes that are Connection Taxes imposed with respect to an assignment, other than an assignment made pursuant to Section 11.27, or sale of a participation.

“Outstanding Amount” means:

(a) with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans, as the case may be, occurring on such date; and

(b) with respect to any Letter of Credit Usage on any date, the amount of such Letter of Credit Usage on such date, after giving effect to the issuance, extension, expiry, renewal or increase of any Letter of Credits occurring on such date and any other changes in the aggregate amount of the Letter of Credit Usage as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“PATRIOT Act” has the meaning set forth in Section 11.26.

“Parent Company” means, with respect to a Bank, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Bank, or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Bank.

“Participant” has the meaning set forth in Section 11.8(d).

“Party” means any Person other than the Banks or the Administrative Agent which now or hereafter is a party to any of the Loan Documents.

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto established under ERISA.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, which is subject to Title IV of ERISA, Section 302 of ERISA or Section 412 of the Code, and which is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute.

“Performance Letter of Credit” means any letter of credit issued by an issuer for the account of the Borrower or a Subsidiary that is not a Financial Letter of Credit.

“Permitted Encumbrances” means:

- (a) inchoate Liens incident to construction or maintenance of real property; or Liens incident to construction or maintenance of real property now or hereafter filed of record for which adequate reserves have been set aside if required by, and in accordance with, Generally Accepted Accounting Principles and which are being contested in good faith by appropriate proceedings and have not proceeded to judgment, provided that, by reason of nonpayment of the obligations secured by such Liens, no material property is subject to a material risk of loss or forfeiture;
- (b) Liens for taxes and assessments on real property which are not yet past due; or Liens for taxes and assessments on real property for which adequate reserves have been set aside if required by, and in accordance with, Generally Accepted Accounting Principles and are being contested in good faith by appropriate proceedings and have not proceeded to judgment, provided that, by reason of nonpayment of the obligations secured by such Liens, no material property is subject to a material risk of loss or forfeiture;
- (c) minor defects and irregularities in title to any real property which in the aggregate do not materially impair the fair market value or use of the real property for the purposes for which it is or may reasonably be expected to be held;
- (d) easements, exceptions, reservations, or other agreements for the purpose of pipelines, conduits, cables, wire communication lines, power lines and substations, streets, trails, walkways, drainage, irrigation, water, utilities, and sewerage purposes, dikes, canals, ditches, the removal of oil, gas, coal, or other minerals, and other like purposes affecting real property, facilities, or equipment which in the aggregate do not materially burden or impair the fair market value or use of such property for the purposes for which it is or may reasonably be expected to be held;
- (e) easements, exceptions, reservations, or other agreements for the purpose of facilitating the joint or common use of property affecting real property which in the aggregate do not materially burden or impair the fair market value or use of such property for the purposes for which it is or may reasonably be expected to be held;
- (f) rights reserved to or vested in any Governmental Agency to control or regulate the use of any real property;
- (g) any obligations or duties affecting any real property to any Governmental Agency with respect to any right, power, franchise, grant, license, or permit;
- (h) present or future zoning laws and ordinances or other laws and ordinances restricting the occupancy, use, or enjoyment of real property;
- (i) statutory Liens, including warehouseman’s liens, other than those described in clauses (a) or (b) above and any Lien imposed pursuant to the Code or ERISA with respect to any Pension Plan, arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested in good faith, provided that, if delinquent,

adequate reserves have been set aside with respect thereto and, by reason of nonpayment, no material property is subject to a material risk of loss or forfeiture;

(j) covenants, conditions, and restrictions affecting the use of real property which in the aggregate do not materially impair the fair market value or use of the real property for the purposes for which it is or may reasonably be expected to be held;

(k) rights of tenants under leases and rental agreements covering real property entered into in the ordinary course of business of the Person owning such real property;

(l) Liens consisting of pledges or deposits to secure obligations under workers' compensation laws or similar legislation, including Liens of judgments thereunder which are not currently dischargeable;

(m) Liens consisting of pledges or deposits of property to secure performance in connection with leases (other than Capital Leases) made in the ordinary course of business to which the Borrower or a Subsidiary is a party as lessee, provided the aggregate value of all such pledges and deposits in connection with any such lease does not at any time exceed 25% of the annual fixed rentals payable under such lease;

(n) Liens consisting of deposits of property to secure statutory obligations of the Borrower or a Subsidiary of Borrower in the ordinary course of its business; and

(o) Liens consisting of deposits of property to secure (or in lieu of) surety, appeal or customs bonds in proceedings to which Borrower or a Subsidiary of Borrower is a party in the ordinary course of its business.

"Permitted Right of Others" means a Right of Others consisting of (a) an interest (other than a legal or equitable co-ownership interest, an option or right to acquire a legal or equitable co-ownership interest and any interest of a ground lessor under a ground lease), that does not materially impair the value or use of property for the purposes for which it is or may reasonably be expected to be held, (b) an option or right to acquire a Lien that would be a Permitted Encumbrance or (c) the reversionary interest of a landlord under a lease of Property.

"Person" means an individual, trustee, corporation, general partnership, limited partnership, limited liability company, joint stock company, trust, estate, unincorporated organization, union, tribe, business association or Governmental Agency, or other entity.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established, maintained or contributed to by the Borrower or any of its Subsidiaries or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate, or as applicable, with respect to which the Borrower or any of its Subsidiaries or any ERISA Affiliate may have any liability (whether actual or contingent).

"Platform" has the meaning set forth in Section 7.1.

"Potential Defaulting Bank" means, at any time, any Bank (i) with respect to which an event of the kind referred to in the definition of "Bank Insolvency Event" has occurred and is

continuing in respect of any financial institution affiliate of such Bank, (ii) that has notified, or whose Parent Company or a financial institution affiliate thereof has notified, the Administrative Agent, the Borrower or any Issuing Bank in writing, or has stated publicly, that it does not intend to comply with its funding obligations under any other loan agreement or credit agreement or other similar agreement, or (iii) that has, or whose Parent Company has, a non-investment grade rating from Moody's or S&P or another nationally recognized rating agency. Any determination by the Administrative Agent that a Bank is a Potential Defaulting Bank under any of clauses (i) through (iii) above will be conclusive and binding absent manifest error, and such Bank will be deemed a Potential Defaulting Bank upon notification of such determination by the Administrative Agent to the Borrower, the Issuing Banks and the Banks.

“Pro Rata Share” of a Bank, as it pertains to the Commitment, means the applicable percentage set forth opposite the name of that Bank on Schedule 1.1 to this Agreement, as such Schedule 1.1 may change from time to time in accordance with the terms of this Agreement or in accordance with any effective Assignment and Assumption.

“Profit and Participation Agreement” means an agreement with respect to which the purchaser of any Property agrees to pay the seller of such Property a profit participation, price participation, or premium participation in such Property.

“Projections” means the financial projections of Borrower delivered to the Administrative Agent on August 26, 2019.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“PTE” shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning set forth in Section 7.1.

“Qualified Issuer” means a commercial bank, savings bank, savings and loan association or similar financial institution which, (a) has total assets of \$5,000,000,000 or more, (b) is “well capitalized” within the meaning of such term under the Federal Depository Institutions Control Act, (c) is engaged in the business of lending money and extending credit under credit facilities substantially similar to those extended under this Agreement and (d) is operationally and procedurally able to meet the obligations of a Bank hereunder to the same degree as a commercial bank

“Quarterly Payment Date” means each March 31, June 30, September 30 and December 31 occurring after the Restatement Date.

“Rating Agencies” means S&P, Moody's and Fitch.

“Recipient” means (a) the Administrative Agent, (b) any Bank and (c) any Issuing Bank, as applicable.

“Register” has the meaning set forth in Section 11.8(c).

“Regulation D” means Regulation D, as at any time amended, of the Board of Governors of the Federal Reserve System or any other regulation in substance substituted therefor.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Request for Letter of Credit” means a written request for the issuance of a Letter of Credit signed by a Responsible Official of Borrower, in a form reasonably designated from time to time by the Administrative Agent.

“Required Banks” means, as of any date of determination, Banks having an aggregate Pro Rata Share of more than 50% of the Commitment or, if the commitment of each Bank to make Advances and the obligation of the Issuing Banks to issue Letters of Credit have been terminated or suspended, Banks holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Bank’s risk participation and funded participation in Letter of Credit Usage being deemed “held” by such Bank for purposes of this definition); provided that the Pro Rata Share of the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Bank shall be excluded for purposes of making a determination of Required Banks.

“Requirement of Law” means, as to any Person, any Law or any judgment, award, decree, writ or determination of, or any consent or similar agreement with, a Governmental Agency, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Responsible Official” means (a) when used with reference to a Person other than an individual, any corporate officer of such Person, general partner of such Person, corporate officer of a corporate general partner of such Person, or corporate officer of a corporate general partner of a partnership that is a general partner of such Person, or any other responsible official thereof duly acting on behalf thereof, and (b) when used with reference to a Person who is an individual, such Person. Any document or certificate hereunder that is signed or executed by a Responsible Official of a Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of that Person.

“Restatement Date” means the date of this Agreement.

“Right of Others” means, with respect to any Property in which a Person has an interest, (a) any legal or equitable claim or other interest (other than a Lien) in or with respect to that Property held by any other Person, and (b) any option or right held by any other Person to acquire any such claim or other interest (including a Lien).

“S&P” means Standard & Poor’s, a division of S&P Global Inc., and any successor thereto.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any publicly available Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“Scheduled Unavailability Date” has the meaning set forth for that term in Section 3.9.

“Securities” means any capital stock, share, voting trust certificate, bonds, debentures, notes or other evidences of indebtedness, limited partnership interests, or any warrant, option or other right to purchase or acquire any of the foregoing.

“Senior Notes” means the notes issued under the Senior Notes Indenture.

“Senior Notes Indenture” means that certain Indenture, by and between the Borrower, the guarantors party thereto and U.S. Bank National Association (successor in interest to SunTrust Bank), as trustee, dated as of January 28, 2004, as supplemented by that certain First Supplemental Indenture dated as of January 28, 2004, that certain Second Supplemental Indenture dated as of June 30, 2004, that certain Third Supplemental Indenture dated as of May 1, 2006, that certain Fourth Supplemental Indenture dated as of November 9, 2006, that certain Fifth Supplemental Indenture dated as of August 17, 2007, that certain Sixth Supplemental Indenture dated as of January 30, 2012, certain Seventh Supplemental Indenture dated as of January 11, 2013, that certain Eighth Supplemental Indenture dated as of March 12, 2013, that certain Ninth Supplemental Indenture dated as of February 28, 2014, and that certain Tenth Supplemental Indenture dated as of January 22, 2019.

“Senior Officer” means the (a) chief executive officer, (b) chief operating officer, (c) chief financial officer, (d) chief accounting officer, or (e) treasurer, in each case whatever the title nomenclature may be, of the Person designated.

“Shareholders’ Equity” means, as of any date of determination, shareholders’ equity as of that date determined in accordance with Generally Accepted Accounting Principles consistently applied; provided that there shall be excluded from Shareholders’ Equity any amount attributable to capital stock that is, directly or indirectly, required to be redeemed or repurchased by the issuer thereof prior to the date which is one year after the Maturity Date or upon the occurrence of specified events or at the election of the holder thereof.

“Significant Subsidiary” means, as of the Restatement Date and as of any other date of determination, any Subsidiary of Borrower (other than a Joint Venture) which is a “significant subsidiary” as defined in Rule 1-02 of Regulation S-X under the Exchange Act using 5% rather

than 10% in all cases and excluding the effect of Financial Subsidiaries; provided that no Financial Subsidiary shall be a Significant Subsidiary.

“Sold Homes” means Developed Lots having fully or partially constructed Units thereon (including, at a minimum, a completed foundation for any such Unit) that are subject to bona fide contracts for the sale of such Units to a third party.

“Solvent” means, as to any Person, that such Person (a) owns Property whose fair saleable value is greater than the amount required to pay all of such Person’s indebtedness and other obligations (including contingent debts), (b) is able to pay all of its indebtedness and other obligations as such indebtedness and other obligations mature and (c) has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage.

“Speculative Units” means Developed Lots having fully or partially constructed Units thereon (including, at a minimum, a completed foundation for any such Unit) that are not subject to bona fide contracts for the sale of such Units to a third party, excluding Developed Lots containing Units used as Model Homes.

“Subordinated Obligations” means, collectively, all obligations of Borrower or any of its Consolidated Subsidiaries that (a) do not provide for any scheduled redemption on or before 30 days after the Maturity Date, (b) are expressly subordinated to the Obligations under the Loan Documents by a written instrument containing subordination and related provisions (including interest payment blockage, standstill and related provisions) reasonably acceptable to the Administrative Agent or the Required Banks, (c) are subject to financial covenants which are reasonably acceptable to the Administrative Agent or the Required Banks and (d) are subject to other covenants (other than the covenant to pay interest) and events of default which are reasonably acceptable to the Administrative Agent or the Required Banks.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, or other business entity whether now existing or hereafter organized or acquired: (a) in the case of a corporation or limited liability company, of which securities having a majority of the ordinary voting power for the election of the board of directors (other than securities having such power only by reason of the happening of a contingency) are at the time owned by such Person or one or more Subsidiaries of such Person; or (b) in the case of a partnership or other business entity, in which such Person or a Subsidiary of such Person is a general partner.

“Subsidiary Guaranty” means the guaranty of the Indebtedness of Borrower under this Agreement executed by each Guarantor Subsidiary of Borrower substantially in the form of Exhibit G, either as originally executed or as the same may from time to time be supplemented, modified, amended, renewed, extended or supplanted.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index

transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Syndication Agents” means Bank of America, N.A., Bank of the West, Credit Suisse AG, Cayman Islands Branch, Deutsche Bank Securities Inc., and Wells Fargo Bank, National Association, in their respective capacities as syndication agents.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Agency, including any interest, additions to tax or penalties applicable thereto.

“to the best knowledge of” means, when modifying a representation, warranty or other statement of any Person, that such representation, warranty or statement is a representation, warranty or statement that (a) the Person making it has no actual knowledge of the inaccuracy of the matters therein stated and (b) assuming the exercise by the Person making it of reasonable due diligence under the circumstances (in accordance with the standard of what a reasonable Person would have done under similar circumstances), the Person making it would have no actual knowledge of the inaccuracy of the matters therein stated. Where the Person making the representation, warranty or statement is not a natural Person, the aforesaid actual or constructive knowledge shall be that of any Senior Officer of that Person.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all Letter of Credit Usage.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“Unit” means a residential housing unit available for sale, or subject to a contract for the sale of such Unit, located in the United States.

“Unreimbursed Amount” has the meaning set forth in Section 2.5(c)(i).

“Unrestricted Cash” means, as of any date of determination, the Cash and Cash Equivalents of Borrower and its Borrowing Base Subsidiaries to the extent that such Cash and Cash Equivalents are free and clear of all Liens and Rights of Others and are not subject to any restriction pursuant to any Contractual Obligations.

“Voting Stock” means, with respect to any Person, the capital stock of such Person having general voting power under ordinary circumstances to elect at least a majority of the

board of directors, managers or trustees of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2 Accounting Terms.

All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, Generally Accepted Accounting Principles consistently applied, except as otherwise specifically prescribed herein. In the event that Generally Accepted Accounting Principles change during the term of this Agreement such that the financial covenants contained in Sections 6.9, 6.10, 6.11, 6.16 or 6.17 would then be calculated in a different manner or with different components or would render the same not meaningful criteria for evaluating Borrower’s financial condition, (a) Borrower and the Banks agree to amend this Agreement in such respects as are necessary to conform those covenants as criteria for evaluating Borrower’s financial condition to substantially the same criteria as were effective prior to such change in Generally Accepted Accounting Principles and (b) until so amended, (i) such financial covenants shall continue to be computed in accordance with Generally Accepted Accounting Principles prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Banks financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such financial covenants made before and after giving effect to such change in Generally Accepted Accounting Principles.

1.3 Rounding.

Any financial ratios required to be maintained by Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed in this Agreement and rounding the result up or down to the nearest number (with a round-up if there is no nearest number) to the number of places by which such ratio is expressed in this Agreement.

1.4 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) Any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on

such amendments, supplements or modifications set forth herein or in any other Loan Document).

(c) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(d) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(e) Any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

(f) The term “including” is by way of example and not limitation.

(g) The term “or” is not exclusive.

(h) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(i) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(j) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.5 Exhibits and Schedules.

All Exhibits and Schedules to this Agreement, either as originally existing or as the same may from time to time be supplemented, modified, or amended, are incorporated herein by reference. A matter disclosed on any Schedule shall be deemed disclosed on all Schedules.

1.6 References to “Borrower and its Subsidiaries”.

Any reference herein to “Borrower and its Subsidiaries” or the like shall refer solely to Borrower during such times, if any, as Borrower shall have no Subsidiaries.

1.7 Time of Day.

Unless otherwise specified, all references herein to times of day shall be references to Eastern standard time.

1.8 Letter of Credit Amounts.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time (after taking into account amounts drawn prior to such time that are not subject to reinstatement); provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.9 Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its capital stock at such time.

ARTICLE II LOANS AND LETTERS OF CREDIT

2.1 Loans-General.

(a) Subject to the terms and conditions set forth in this Agreement (including Section 8.2), at any time and from time to time from the Restatement Date through the Business Day immediately preceding the Maturity Date, each Bank shall, pro rata according to that Bank's Pro Rata Share of the Commitment then in effect, make Advances to Borrower under the Commitment in such amounts as Borrower may request; provided that after giving effect to each such Advance, the Total Outstandings shall not exceed the Commitment then in effect. Subject to the limitations set forth herein, Borrower may borrow, repay and reborrow under this Section 2.1(a) without premium or penalty. In no event shall the Banks be obligated to make Loans to the Borrower at any time if, after giving effect to such Loans, the provisions of Section 6.17 would be violated.

(b) On the Restatement Date, any and all Commitments, Loans, participations in Existing Letters of Credit and other Obligations outstanding under the Existing Loan Agreement shall remain outstanding under, and shall continue as Commitments, Loans, participations in such Existing Letters of Credit and other Obligations made pursuant to, this Agreement, as amended and extended hereby. Each of the Consenting Banks shall assign or transfer to any New Bank, and each New Bank shall purchase from any such Consenting Bank, such interests in the Loans and participation interests in the Existing Letters of Credit outstanding on the Restatement Date as shall be necessary in order that, after giving effect to all such assignments or transfers and purchases, such Loans and participation interests in Existing Letters of Credit will be held by each Bank with a Pro Rata Share of the Commitment hereunder

ratably in accordance with its respective Pro Rata Share. Such assignments or transfers and purchases shall be made pursuant to such procedures as may be designated by the Administrative Agent and shall not be required to be effectuated in accordance with Section 11.8.

(c) Subject to the next sentence and to Section 2.5(c), each Loan shall be made pursuant to Borrower's irrevocable Loan Notice to the Administrative Agent, which shall specify the requested (i) date of such Loan, (ii) Type of Loan, (iii) amount of such Loan and (iv) in the case of a Eurodollar Rate Loan, Interest Period for such Loan. Any Loan Notice delivered under this Agreement may be delivered by mail, email, telecopier, telephone, or as otherwise acceptable to the Administrative Agent; provided, that each telephonic Loan Notice given by the Borrower pursuant to this Section 2.1(c) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Official of the Borrower.

(d) Promptly following receipt of a Loan Notice, the Administrative Agent shall notify each Bank by telephone, telecopier or telex of the date and Type of the Loan, the applicable Interest Period in the case of a Eurodollar Rate Loan, and that Bank's Pro Rata Share of the Loan. Not later than 1:00 p.m. New York time, on the date specified for any Loan, each Bank shall make its Pro Rata Share of the Loan in immediately available funds available to the Administrative Agent at the Administrative Agent's Office. Upon fulfillment of the applicable conditions set forth in Article VIII, all Advances shall be credited in immediately available funds to the Designated Deposit Account.

(e) The principal amount of each Loan shall be an integral multiple of \$1,000,000 and shall be in an amount not less than (i) \$1,000,000 if such Loan is a Base Rate Loan and (ii) \$5,000,000 if such Loan is a Eurodollar Rate Loan.

(f) A Loan Notice shall be irrevocable upon the Administrative Agent's first notification thereof. The obligation of each Bank to make any Advance is several, and not joint or joint and several, and is not conditioned upon the performance by any other Bank of its obligation to make Advances. The failure by any Bank to perform its obligation to make any Advance will not increase the obligation of any other Bank to make Advances.

(g) Borrower may redesignate a Base Rate Loan as a Eurodollar Rate Loan, or a Eurodollar Rate Loan as a Base Rate Loan or a Eurodollar Rate Loan with a new Interest Period, by delivering a Loan Notice to the Administrative Agent, within the time periods and pursuant to the conditions set forth in Section 2.1(c), 2.2 or 2.3, as applicable, and elsewhere in this Agreement. If no Loan Notice has been made prior to the last day of the Interest Period for an outstanding Eurodollar Rate Loan within the requisite notice periods set forth in Section 2.3, then Borrower shall be deemed to have requested that such Eurodollar Rate Loan be redesignated as a Base Rate Loan.

(h) The Advances made by each Bank under this Section 2.1 shall be evidenced by that Bank's Note to the extent requested by such Bank.

2.2 Base Rate Loans.

Each request by Borrower for a Base Rate Loan shall be made pursuant to a Loan Notice received by the Administrative Agent, at the Administrative Agent's Office, not later than 12:00 p.m. New York time, on the Business Day on which the requested Base Rate Loan is to be made. The Administrative Agent shall notify each Bank of a request for a Base Rate Loan as soon as practicable after receipt of the same. All Loans shall constitute Base Rate Loans unless properly designated as Eurodollar Rate Loans pursuant to Section 2.3.

2.3 Eurodollar Rate Loans.

(a) Each request by Borrower for a Eurodollar Rate Loan shall be made pursuant to a Loan Notice received by the Administrative Agent, at the Administrative Agent's Office, not later than 12:00 p.m. New York time, at least 3 Business Days before the first day of the applicable Interest Period, provided that such advance notice period may be reduced by the Administrative Agent in its discretion with respect to any Eurodollar Rate Loan made on the Restatement Date. The Administrative Agent shall notify each Bank of a request for a Eurodollar Rate Loan as soon as practicable after receipt of the same.

(b) At or about 1:00 p.m., New York time, 2 Business Days before the first day of the applicable Interest Period, the Administrative Agent shall determine the applicable Eurodollar Rate (which determination shall be conclusive in the absence of manifest error) and promptly shall give notice of the same to Borrower and the Banks by telephone, telecopier or, in the case of Banks, telex.

(c) No more than 10 Eurodollar Rate Loans may be outstanding at any particular time.

2.4 [Intentionally Omitted].

2.5 Letters of Credit.

(a) Letter of Credit Commitment. Subject to the terms and conditions of this Agreement (including Section 8.3), Borrower may request from time to time during the period from the Restatement Date through the day 5 days prior to the Maturity Date that an Issuing Bank, in reliance upon the agreements of the other Banks set forth in this Section 2.5, issue Letters of Credit for the account of Borrower in an aggregate amount not exceeding the Issuing Bank's L/C Limit, and such Issuing Bank shall issue for the account of Borrower one or more Letters of Credit and amend Letters of Credit previously issued by it in accordance with Section 2.5(b), provided that (i) Borrower shall not request that the Issuing Bank issue any Letter of Credit if, after giving effect to such issuance, the Total Outstandings exceeds the Commitment, (ii) Borrower shall not request that an Issuing Bank issue any Letter of Credit if, after giving effect to such issuance, Borrower would not be in compliance with Section 6.17, and (iii) Borrower shall not request that the Issuing Bank issue any Letter of Credit if, after giving effect to such issuance, the Letter of Credit Usage would exceed the L/C Limit or any limit established by Law after the Restatement Date on the Issuing Bank's ability to issue the requested Letter of Credit at any time. Notwithstanding the foregoing, an Issuing Bank shall not issue any Letter of Credit if, (A) on or prior to the Business Day immediately preceding the

issuance thereof any Bank has notified the Issuing Bank or the Administrative Agent in writing that the conditions set forth in Section 8.3 have not been satisfied with respect to the issuance of such Letter of Credit, (B) the expiry date of such requested Letter of Credit would occur after the earlier of (x) the date that is 364 days after the Maturity Date and (y) one year from the date of such issuance, unless agreed by the applicable Issuing Bank, or (C) after issuing such Letter of Credit the provisions of Section 6.17 would be violated; provided that (I) the Borrower shall Cash Collateralize and/or Letter of Credit Collateralize in accordance with Section 2.5(g) each Letter of Credit with an expiry date on or after the date which is 5 days prior to the Maturity Date to the extent of the Letter of Credit Usage with respect to such Letters of Credit (1) on the date that is 90 days prior to the Maturity Date (or if such date is not a Business Day, on the next succeeding Business Day) or (2) at the time of issuance of any such Letter of Credit that Borrower requests an Issuing Bank to issue in accordance with this Section 2.5(a) if the date of issuance is after the date that is 90 days prior to the Maturity Date, and each Issuing Bank agrees that any participations in such Letters of Credit by the Banks pursuant to this Section 2.5 shall terminate on the Maturity Date, and (II) nothing in the foregoing clause (B)(y) shall prevent any Letter of Credit with a one-year tenor from providing for the renewal thereof for additional one-year periods, subject to the foregoing clause (B)(x). No Issuing Bank shall be obligated to issue any Letter of Credit if, (x) any order, judgment or decree of any Governmental Agency or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Agency with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Restatement Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Restatement Date and which such Issuing Bank in good faith deems material to it, (y) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to the customers of such Issuing Bank generally, or (z) a default of any Bank's obligations to fund under Section 2.5(c) exists or any Bank is at such time a Defaulting Bank hereunder, unless such Issuing Bank has entered into satisfactory arrangements with the Borrower or such Bank to eliminate the Issuing Bank's risk with respect to such Bank. Each Bank from time to time party hereto agrees to act as an Issuing Bank hereunder. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Restatement Date shall be subject to and governed by the terms and conditions hereof.

(b) Procedures for Issuance and Amendment of Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable Issuing Bank (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Official of the Borrower. Such Letter of Credit Application must be received by the applicable Issuing Bank and the Administrative Agent not later than 1:00 p.m., New York time, at least 3 Business Days (or such later date and time as the applicable Issuing Bank may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit,

such Letter of Credit Application shall specify in form and detail satisfactory to such Issuing Bank: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Issuing Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Issuing Bank (w) the Letter of Credit to be amended; (x) the proposed date of amendment thereof (which shall be a Business Day); (y) the nature of the proposed amendment; and (z) such other matters as the Issuing Bank may require.

(ii) Promptly after receipt of any Letter of Credit Application, the Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the Issuing Bank will provide the Administrative Agent with a copy thereof. Upon receipt by the Issuing Bank of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, the Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the Issuing Bank's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Bank shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Bank's Pro Rata Share times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Issuing Bank will also (x) deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment and (y) notify the Borrower and the Administrative Agent of any return, surrender or cancellation of any Letter of Credit.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the Issuing Bank shall promptly notify the Borrower and the Administrative Agent thereof and of the date the Issuing Bank proposes to pay such drawing. The Borrower shall reimburse the Issuing Bank through the Administrative Agent in an amount equal to the amount of any payment by the Issuing Bank under a Letter of Credit, which reimbursement shall be made, (x) if the Issuing Bank notifies the Borrower and the Administrative Agent of such payment before 2:00 p.m. New York time on the Business Day immediately preceding the date of such payment (the date of such payment being, the "Honor Date"), then on the Honor Date, or (y) if the Issuing Bank notifies the Borrower and the Administrative Agent after 2:00 p.m. New York time on the Business Day immediately preceding the Honor Date or any

Business Day thereafter, then on the Business Day immediately following such notice (with any notice received on or after 2:00 p.m. New York time on any day deemed to be received before 2:00 p.m. New York time on the next Business Day). If the Borrower fails to so reimburse the Issuing Bank by such date, the Administrative Agent shall promptly notify each Bank of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Bank’s Pro Rata Share thereof. In such event, the Borrower shall be deemed to have requested a Base Rate Loan in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.1(e) for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Commitment and the conditions set forth in Section 8.2 (other than the delivery of a Loan Notice). Any notice given by the Issuing Bank or the Administrative Agent pursuant to this Section 2.5(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Bank (including the Bank acting as Issuing Bank) shall upon any notice pursuant to Section 2.5(c)(i) make funds available to the Administrative Agent for the account of the Issuing Bank at the Administrative Agent’s Office in an amount equal to its Pro Rata Share of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent (provided that the Administrative Agent gives notice on or prior to 11:00 a.m. on such Business Day), whereupon, subject to the provisions of Section 2.5(c)(iii), each Bank that so makes funds available shall be deemed to have made an Advance to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Issuing Bank.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Base Rate Loan because the conditions set forth in Section 8.2 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the Issuing Bank an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Bank’s payment to the Administrative Agent for the account of the Issuing Bank pursuant to Section 2.5(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Bank in satisfaction of its participation obligation under this Section 2.5.

(iv) Until each Bank funds its Advance or L/C Advance pursuant to this Section 2.5(c) to reimburse the Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Bank’s Pro Rata Share of such amount shall be solely for the account of the Issuing Bank.

(v) Each Bank’s obligation to make Advances or L/C Advances to reimburse the Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this Section 2.5(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Bank may have against the Issuing Bank, the Borrower or any other

Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Bank's obligation to make Advances pursuant to this Section 2.5(c) is subject to the conditions set forth in Section 8.2 (other than delivery by the Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the Issuing Bank for the amount of any payment made by the Issuing Bank under any Letter of Credit, together with interest as provided herein.

(vi) If any Bank fails to make available to the Administrative Agent for the account of the Issuing Bank any amount required to be paid by such Bank pursuant to the foregoing provisions of this Section 2.5(c) by the time specified in Section 2.5(c)(ii), the Issuing Bank shall be entitled to recover from such Bank (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Issuing Bank at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Issuing Bank submitted to any Bank (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the Issuing Bank has made a payment under any Letter of Credit and has received from any Bank such Bank's L/C Advance in respect of such payment in accordance with Section 2.5(c), if the Administrative Agent receives for the account of the Issuing Bank any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of cash collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Bank its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Bank's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the Issuing Bank pursuant to Section 2.5(c)(i) is required to be returned under any of the circumstances described in Section 11.24 (including pursuant to any settlement entered into by the Issuing Bank in its discretion), each Bank shall pay to the Administrative Agent for the account of the Issuing Bank its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Bank, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the Issuing Bank for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances (except as otherwise provided in clauses (ii) through (v) below), including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction, except for payment with respect to a Letter of Credit when such payment violates the terms of ISP98;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect (so long as payment under such Letter of Credit would otherwise be permitted under the terms of ISP98) or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit (except if such payment violates the terms of ISP98); or any payment made by the Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower (except for payment by an Issuing Bank (or any other applicable “issuer” within the meaning of ISP98) with respect to a Letter of Credit that violates the terms of ISP98).

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower’s instructions or other irregularity, the Borrower will promptly notify the Issuing Bank. The Borrower shall be conclusively deemed to have waived any such claim against the Issuing Bank and its correspondents unless such notice is given as aforesaid.

(f) Role of Issuing Bank. Each Bank and the Borrower agree that, in paying any drawing under a Letter of Credit, the Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Bank, any Agent-Related Person nor any of the respective correspondents, participants or assignees of the Issuing Bank shall be liable to any Bank for (i) any action taken or omitted in

connection herewith at the request or with the approval of the Banks or the Required Banks, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined in a final, non-appealable judgment of a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of any Issuing Bank, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of any Issuing Bank, shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.5(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an Issuing Bank (and any other applicable "issuer" within the meaning of ISP98), and an Issuing Bank (or such issuer) may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such Issuing Bank's (or such issuer's) willful misconduct or gross negligence, in each case as determined in a final, non-appealable judgment of a court of competent jurisdiction, or such Issuing Bank's (or such issuer's) failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit or for payment with respect to a Letter of Credit by an Issuing Bank (or such issuer) when such payment violates the terms of ISP98. In furtherance and not in limitation of the foregoing, an Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash or Letter of Credit Collateral. (i) If and to the extent required by Section 2.5(a) with respect to any Letter of Credit and (ii) otherwise upon the request of the Administrative Agent, (A) if an Issuing Bank has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (B) if, as of the date 5 days prior to the Maturity Date or acceleration pursuant to Section 9.2(a)(ii), any Letter of Credit may for any reason remain outstanding and partially or wholly undrawn or (C) if any amount remains available to be drawn under any Letter of Credit by reason of the operation of Section 3.14 of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance), the Borrower shall immediately Cash Collateralize or Letter of Credit Collateralize the then outstanding amount of the Letter of Credit Usage, excluding any portion of such amount that is already Cash Collateralized by operation of another provision of this Agreement (in an amount equal to 101% of such outstanding amount determined as of the date of such L/C Borrowing or the Maturity Date, as the case may be). For purposes hereof, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Banks and the Banks, as collateral for the then outstanding amount of the Letter of Credit Usage, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and the applicable Issuing Banks (which

documents are hereby consented to by the Banks). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the Issuing Banks and the Banks, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash collateral shall be maintained in a blocked, non-interest bearing deposit account at Citi. For purposes hereof, "Letter of Credit Collateralize" means to deliver to the Administrative Agent, for the benefit of the Issuing Banks and the Banks, as collateral for the then outstanding amount of the Letter of Credit Usage, one or more irrevocable standby letters of credit (other than a Letter of Credit) in the aggregate amount equal to 101% of the then outstanding amount of the Letter of Credit Usage (less the amount, if any, of the then outstanding amount of the Letter of Credit Usage being Cash Collateralized) issued by one or more financial institutions that each is a Qualified Issuer in form and substance satisfactory to the Administrative Agent and the applicable Issuing Banks (which documents are hereby consented to by the Banks). Derivatives of such term have corresponding meanings. The Borrower hereby agrees that the Administrative Agent may immediately apply cash collateral or draw upon any irrevocable standby letters of credit delivered pursuant to this Section 2.5(g) in order to reimburse the Issuing Banks for any drawings under any Letters of Credit.

(h) Applicability of ISP98. The rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) ("ISP98") shall apply to each Letter of Credit, except as provided in Section 2.5(l) below.

(i) Conflict with Letter of Credit Application. In the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(j) Letter of Credit Fees.

(i) Borrower shall pay to the Administrative Agent for the account of the Banks a letter of credit fee payable to the Banks in accordance with their Pro Rata Shares with respect to each Letter of Credit issued or renewed equal to the sum of (A) the Applicable Letter of Credit Fee times the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit) minus (B) any amounts due and payable under clause (ii) below. Such letter of credit fee shall accrue and be computed on a quarterly basis in arrears, and shall be due and payable within three Business Days after each Quarterly Payment Date (commencing with the first such date to occur after the issuance of such Letter of Credit and including each such date thereafter occurring prior to the Maturity Date) and on the Maturity Date; provided that no letter of credit fees shall accrue with respect to any Defaulting Bank's Pro Rata Share with respect to each Letter of Credit to the extent not reallocated pursuant to Section 10.13.

(ii) Borrower shall pay directly to the applicable Issuing Bank for its own account a fronting fee with respect to each Letter of Credit issued or renewed by such Issuing Bank equal to 0.15% per annum times the daily maximum amount which is available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit). Such fronting fee shall accrue and be

computed on a quarterly basis in arrears, and shall be due and payable within three Business Days after each Quarterly Payment Date (commencing with the first such date to occur after the issuance of such Letter of Credit and including each such date thereafter occurring prior to the earlier of (x) the expiry date of such Letter of Credit or (y) the Maturity Date) and on the earlier of (x) the expiry date of such Letter of Credit or (y) the Maturity Date.

(iii) Borrower shall pay directly to the applicable Issuing Bank for its own account the customary issuance, presentation, amendment, and other processing fees, and other standard costs and charges, of such Issuing Bank relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Designation of Additional Issuing Banks. Borrower may, with the consent of the Administrative Agent (and the consent of any Bank requested to be an Issuing Bank), designate any Bank hereunder as an Issuing Bank. Each Issuing Bank shall, no later than the 3rd Business Day following the last day of each month, provide to the Administrative Agent a report in form and substance reasonably satisfactory to the Administrative Agent, showing the date of issuance or amendment of each Letter of Credit, the account party, the original face amount (if any), the expiration date, and the reference number of any Letter of Credit issued or amended during such month. Upon request of any Bank, the Administrative Agent shall forward copies of such reports to such Bank.

(l) Designation of Additional Letters of Credit.

(i) Subject to the limitations set forth in this Section, the Borrower may, at any time and from time to time, by written notice to the Administrative Agent designate letters of credit under the Bank of America Letter of Credit Facility as Letters of Credit hereunder and such designated letters of credit shall be deemed Letters of Credit and Bank of America shall be Issuing Bank for all purposes under this Agreement.

(ii) Designation of Letters of Credit under clause (i) above shall be subject to the following conditions at the time of any such designation:

(A) Bank of America shall be a Bank hereunder;

(B) after giving effect to such designation the Total Outstandings shall not exceed the Commitment;
and

(C) after giving pro forma effect to such designation the Borrower shall be in compliance with Section 6.17.

(D) each of the conditions set forth in Section 8.3 shall be satisfied.

2.6 Reduction of Commitment.

Borrower shall have the right, at any time and from time to time, without penalty or charge, upon at least 5 Business Days prior written notice voluntarily to reduce or terminate permanently and irrevocably, in aggregate principal amounts in an integral multiple of \$1,000,000 but not less than \$5,000,000 (unless all of the unused Commitment is being terminated), all or a portion of the unused Commitment. Borrower shall pay to the Administrative Agent (for the account of each Bank, pro rata according to that Bank's Pro Rata Share) on the date of such termination all unpaid commitment fees which have accrued to such date in respect of the terminated portion of the Commitment.

2.7 Optional Increase to Commitment.

(a) Subject to the limitations set forth in this Section, the Administrative Agent may, at any time and from time to time at the request of Borrower, increase the Commitment by (i) admitting any Person that immediately prior to such admission was not a Bank as additional Banks hereunder (each an "Additional Bank"), or (ii) increasing the Exposure of any Bank (each an "Increasing Bank"), subject to the following conditions:

(i) each Additional Bank is an Eligible Assignee;

(ii) Borrower executes (A) a new Note payable to the order of an Additional Bank, or (B) a replacement Note payable to the order of an Increasing Bank if such Increasing Bank previously received a Note;

(iii) each Additional Bank executes and delivers to the Administrative Agent an instrument of joinder to this Agreement which is in form and substance acceptable to the Administrative Agent;

(iv) after giving effect to the admission of any Additional Bank or the increase in the Exposure of any Increasing Bank, the Commitment does not exceed \$1,000,000,000 less the aggregate amount of reductions, if any, of the Commitment made pursuant to Sections 2.6;

(v) each increase in the Commitment shall be in the amount of \$10,000,000 or a greater integral multiple of \$1,000,000;

(vi) no admission of any Additional Bank shall increase the Exposure of any existing Bank without the written consent of such Bank;

(vii) no Bank shall be an Increasing Bank without the written consent of such Bank;

(viii) no Default or Event of Default exists or would result from such increased Commitments (provided that for the purposes of this condition, compliance with Sections 6.10 and 6.11 shall be determined in accordance with clauses (x) and (xi) below);

(ix) Borrower satisfies Section 6.10 on a pro forma basis after giving effect to such increased Commitments (which shall be deemed fully drawn for purposes of complying with Section 6.10);

(x) Borrower satisfies Section 6.11(b) (without giving effect to Section 6.11(a) thereof);

(xi) the Administrative Agent shall have received from Borrower such documents as it may reasonably request in connection with such increase, including:

(A) a certificate signed by a Senior Officer of the Borrower (x) certifying and attaching the resolutions adopted by Borrower approving or consenting to such increase and (y) certifying that (1) the representations and warranties contained in Article IV and the other Loan Documents are true and correct on and as of the date of the increase, except to the extent that such representations and warranties specifically refer to an earlier date, and (2) no Default or Event of Default exists as of the date of the increase or will result from the increase; and

(B) a written consent to the increase and reaffirmation of its obligations under the Loan Documents executed by each Guarantor Subsidiary; and

(xii) Any such increase shall be effective, if at all, as of the date determined by the Administrative Agent and the Borrower. The Administrative Agent shall promptly notify the Banks of the effective date of such increase.

(b) Except as set forth in Section 2.7(a), no consent of the Banks shall be required for an increase in the amount of the Commitment pursuant to this Section 2.7.

(c) After the admission of any Additional Bank or the increase in the Exposure of any Increasing Bank, the Administrative Agent shall promptly provide to each Bank and to Borrower a new Schedule 1.1 to this Agreement.

(d) Concurrently with the effectiveness of any increase to the Commitment under this Section, (i) the participation interest of each Bank in each outstanding Letter of Credit shall be adjusted, and (ii) each Additional Bank and each Increasing Bank shall make additional Advances available to the Administrative Agent (the proceeds of which shall be paid to the other Banks for assignment of Loans or used in part to refinance expiring Eurodollar Rate Loans) in the amount required to result in the aggregate outstanding Advances of each Bank being equal to its Pro Rata Share of the Commitment, as so increased.

(e) The Borrower confirms its obligation pursuant to Section 3.6(f) to repay any breakage fees resulting from the prepayment of any Eurodollar Rate Loans resulting from Borrower's request to increase the Commitment under this Section 2.7.

(f) This Section shall supersede any provisions in Section 11.2 or 11.8 to the contrary.

2.8 Borrowing Base.

(a) Reporting of Borrowing Base. Concurrently with the delivery of the financial statements described in Section 7.1(a) and (b), the Borrower shall provide the Administrative Agent with a Borrowing Base Certificate in a form satisfactory to the Administrative Agent showing the Borrower's calculations of the components of the Borrowing Base as of the end of the last Fiscal Quarter and such data supporting such calculations per Exhibit B or in another form as the Administrative Agent may reasonably require; provided that Borrower shall have no obligation to provide a Borrowing Base Certificate to the Administrative Agent at any time at which Borrower holds an Investment Grade Credit Rating. Any change in the Borrowing Base shall be effective upon receipt of a Borrowing Base Certificate.

(b) Amount of Borrowing Base. As used in this Agreement, the term "Borrowing Base" means a Dollar amount equal to the sum of the following, as of any date of determination, and with respect to Borrower and the Borrowing Base Subsidiaries:

- (i) Escrow Receivables. 100% of the aggregate GAAP Value of Escrow Receivables; plus
- (ii) Homes Under Construction. 90% of the aggregate GAAP Value of Homes Under Construction; plus
- (iii) Land Under Development. 65% of the aggregate GAAP Value of Land Under Development; plus
- (iv) Land Held For Future Development. 50% of the aggregate GAAP Value of Land Held for Future Development and Land Held for Sale; plus
- (v) Unrestricted Cash. 100% of Unrestricted Cash in excess of \$15,000,000;

provided, however, that the aggregate of the amounts set forth in clause (iv) shall be less than 40% of the Borrowing Base; provided further, that the value of any unentitled land or land under option shall not be included in the Borrowing Base.

ARTICLE 3 PAYMENTS AND FEES

3.1 Principal and Interest.

(a) Interest shall be payable on the outstanding daily unpaid principal amount of each Advance from the date of such Advance until payment in full and shall accrue and be payable at the rates set forth herein, to the extent permitted by applicable Laws, before and after default, before and after maturity, before and after any judgment, and before and after the commencement of any proceeding under any Debtor Relief Law, with interest on overdue interest to bear interest at the Default Rate.

(b) Interest accrued on each Base Rate Loan shall be due and payable in arrears within three Business Days after each Quarterly Payment Date. Except as otherwise provided in Section 3.7, the unpaid principal amount of any Base Rate Loan shall bear interest at a fluctuating rate per annum equal to the sum of the Base Rate plus the Applicable Base Rate Spread.

(c) Interest accrued on each Eurodollar Rate Loan shall be due and payable in arrears on the last day of the Interest Period applicable to such Eurodollar Rate Loan; provided, in the case of each Interest Period of longer than three months, accrued interest shall also be due and payable each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period. Except as otherwise provided in Section 3.7, the unpaid principal amount of any Eurodollar Rate Loan shall bear interest at a rate per annum equal to the sum of the Eurodollar Rate for that Eurodollar Rate Loan plus the Applicable Eurodollar Rate Spread.

(d) If not sooner paid, the Loans shall be payable as follows:

(i) the Loans shall be payable within one Business Day in Cash to the extent that the Total Outstandings exceeds at any time the Commitment as then in effect, but only to the extent of such excess, and excluding any portion of such excess represented by outstanding Letters of Credit which are Cash Collateralized pursuant to Section 2.5(g) or any other provision of this Agreement; and

(ii) the Loans shall in any event be immediately payable in Cash on the Maturity Date.

(e) Loans may, at any time and from time to time, voluntarily be prepaid at the election of Borrower in whole or in part without premium or penalty; provided that: (i) any partial prepayment shall be in integral multiples of \$1,000,000, (ii) any partial prepayment shall be in an amount not less than \$1,000,000 on a Base Rate Loan, and not less than \$5,000,000 on a Eurodollar Rate Loan, (iii) the Administrative Agent must have received written notice of any prepayment at least 3 Business Days before the date of prepayment in the case of a Eurodollar Rate Loan and by 1:00 p.m., New York time, on the date of prepayment in the case of a Base Rate Loan, (iv) each prepayment of principal, except for partial prepayments on Base Rate Loans, shall be accompanied by prepayment of interest accrued to the date of payment on the amount of principal paid and (v) in the case of any prepayment of any Eurodollar Rate Loan, Borrower shall promptly upon demand reimburse each Bank for any loss or cost directly or indirectly resulting from the prepayment, determined as set forth in Section 3.6.

(f) Change in Control.

(i) If a Change in Control shall have occurred, at the option of the Required Banks, Borrower shall repay in Cash the Loans, together with interest thereon and all other amounts due in connection with the Loans and this Agreement, and deliver to the Administrative Agent an amount equal to the Letter of Credit Usage then outstanding, to be held as cash collateral as provided in Section 9.2(c) (the "Change in Control Repayment"), on the date that is no more than 27 Business Days after the

occurrence of the Change in Control (the “Change in Control Payment Date”), subject to receipt by Borrower of a Change in Control Payment Notice as set forth in Section 3.1(f)(iii). Subject to receipt of a Change in Control Payment Notice (as hereinafter defined), on the Change in Control Payment Date, the Commitment shall automatically terminate.

(ii) Within 15 Business Days after the occurrence of a Change in Control, Borrower shall provide written notice of the Change in Control to the Administrative Agent and each Bank. The notice shall state:

(A) the events causing a Change in Control and the date of such Change in Control;

(B) the date by which the Change in Control Payment Notice (as defined in Section 3.1(f)(iii)) must be given; and

(C) the Change in Control Payment Date.

(iii) At the direction of the Required Banks, the Administrative Agent shall, on behalf of the Banks, exercise the rights specified in Section 3.1(f)(i) by delivery of a written notice (a “Change in Control Payment Notice”) to Borrower at any time prior to or on the Change in Control Payment Date, stating that the Loans shall be prepaid and cash collateral shall be provided for the Letter of Credit Usage on the Change in Control Payment Date. Subject to receipt of a Change in Control Payment Notice, on the Change in Control Payment Date, Borrower shall make the Change in Control Repayment to the Administrative Agent for the benefit of the Banks, and the Commitment shall terminate.

3.2 Commitment Fee.

From the Restatement Date until the Maturity Date, Borrower shall pay to the Administrative Agent, for the account of each Bank, pro rata according to that Bank’s Pro Rata Share of the Commitment, a commitment fee equal to the Applicable Commitment Fee Rate in effect from time to time for the applicable period times the average daily amount by which the Commitment exceeds the aggregate outstanding principal of the Loans plus the Letter of Credit Usage; provided that no commitment fee shall accrue with respect to any Defaulting Bank’s Pro Rata Share of the Commitment to the extent not reallocated pursuant to Section 10.13. This commitment fee shall accrue daily, and shall be payable in arrears with respect to each calendar quarter within three Business Days after the Quarterly Payment Date falling at the end of such calendar quarter (commencing with the first such date to occur after the Restatement Date and including each such date thereafter occurring prior to the Maturity Date) and on the Maturity Date. The Administrative Agent shall calculate the commitment fee and shall notify Borrower in writing of such amounts prior to each Quarterly Payment Date.

3.3 Other Fees.

Borrower shall pay to Citi and the Banks, as applicable, such other fees in such amounts and at such times as heretofore set forth in letter agreements to which Borrower is a party.

3.4 [Intentionally Omitted].

3.5 [Intentionally Omitted].

3.6 Eurodollar Fees and Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Bank (except any reserve requirement reflected in the Eurodollar Rate) or an Issuing Bank;

(ii) subject any Recipient to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Recipient in respect thereof (except for Indemnified Taxes, Taxes described in clauses (b) and (c) of the definition of Excluded Taxes, and Connection Income Taxes); or

(iii) impose on any Bank or an Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Rate Loans made by such Bank or any Letter of Credit or participation therein;

and the result of any of the foregoing would be to increase the cost to such Bank of making or maintaining any Eurodollar Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Bank or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Bank or such Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of such Bank or such Issuing Bank, the Borrower will pay to such Bank or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Bank or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital or Liquidity Requirements. If any Bank or an Issuing Bank determines that any Change in Law affecting such Bank or such Issuing Bank or any Lending Office of such Bank or such Bank's or such Issuing Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Bank's or such Issuing Bank's capital or on the capital of such Bank's or such Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Bank or the Loans made by, or participations in Letters of Credit held by, such Bank, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Bank or such Issuing Bank or such Bank's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Bank's or such Issuing Bank's policies and the policies of such Bank's or such Issuing Bank's holding company with respect to capital

adequacy), then from time to time the Borrower will pay to such Bank or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Bank or such Issuing Bank or such Bank's or such Issuing Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Bank or an Issuing Bank setting forth the amount or amounts necessary to compensate such Bank or such Issuing Bank or its holding company, as the case may be, as specified in Section 3.6(a) or Section 3.6(b) and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Bank or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Bank or an Issuing Bank to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Bank's or such Issuing Bank's right to demand such compensation, provided that the Borrower shall not be required to compensate a Bank or an Issuing Bank pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than 6 months prior to the date that such Bank or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Bank's or such Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 6-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) If, with respect to any proposed Eurodollar Rate Loan:

(i) the Administrative Agent reasonably determines that, by reason of circumstances affecting the London interbank Eurodollar market generally that are beyond the reasonable control of the Banks, deposits in dollars (in the applicable amounts) are not being offered to each of the Banks in the London interbank Eurodollar market for the applicable Interest Period; or

(ii) the Required Banks advise the Administrative Agent that the Eurodollar Rate as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Banks of making the applicable Eurodollar Advances; then the Administrative Agent forthwith shall give notice thereof to Borrower and the Banks, whereupon until the Administrative Agent notifies Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of the Banks to make any future Eurodollar Advances shall be suspended. If at the time of such notice there is then pending a Loan Notice that specifies a Eurodollar Rate Loan, such Loan Notice shall be deemed to specify a Base Rate Loan.

(f) Compensation for Losses. Upon demand of any Bank (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Bank for and hold such Bank harmless from any loss, cost or expense incurred by it as a result of:

(i) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(ii) any failure by the Borrower (for a reason other than the failure of any Bank to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(iii) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.27;

including any loss, cost or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Bank in connection with the foregoing. For purposes of calculating amounts payable by the Borrower to the Banks under this Section 3.6, each Bank shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Base Rate used in determining the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank Eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.7 Late Payments/Default Interest.

If any installment of principal or interest or any other amount payable to the Banks under any Loan Document is not paid when due, it shall thereafter bear interest at a fluctuating interest rate per annum at all times (whether before or after judgment) equal to the sum of the Base Rate plus the Applicable Base Rate Spread plus 2% (the “Default Rate”), provided however that, subject to the following sentence, principal, interest or other amounts due with respect to Eurodollar Rate Loans shall bear interest at a fluctuating rate per annum at all times equal to the sum of the Eurodollar Rate plus the Applicable Eurodollar Rate Spread plus 2%; in each case, to the extent permitted by applicable Law, until paid in full (whether before or after judgment). Upon and during the continuance of any Event of Default under Section 9.1(j), the Obligations shall bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate, to the extent permitted by applicable Law, until no Event of Default exists (whether before or after judgment).

3.8 Computation of Interest and Fees; Holidays.

(a) All computations of interest for Base Rate Loans when the Base Rate is determined by Citi’s “prime rate” shall be calculated on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of interest and fees hereunder shall be calculated on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day and excluding the last day), which results in greater interest than

if a year of 365 days were used. Any Loan that is repaid on the same day on which it is made shall bear interest for one day.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

3.9 Alternate Rate of Interest.

Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if prior to the commencement of the Interest Period for any Eurodollar Rate Loan, the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders notify the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that:

(a) adequate and reasonable means do not exist for ascertaining the Eurodollar Base Rate for such Interest Period, including, without limitation, because LIBOR is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(b) the supervisor for the administrator of LIBOR or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBOR shall no longer be made available, or used for determining the interest rate of loans (such specific date, the “Scheduled Unavailability Date”),

then, after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) that has been broadly accepted by the syndicated loan market in the United States in lieu of LIBOR (any such proposed rate, a “LIBOR Successor Rate”), together with any proposed LIBOR Successor Rate Conforming Changes and, notwithstanding anything to the contrary in Section 11.2, any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent notice that such Required Lenders do not accept such amendment; provided that, if the LIBOR Successor Rate as so determined would be less than zero, the LIBOR Successor Rate will be deemed to be zero for the purposes of this Agreement.

If no LIBOR Successor Rate has been determined by the Borrower and the Administrative Agent acting in good faith and the circumstances under clause (a) above exist, the obligation of the Lenders to make or maintain any Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods). Upon receipt of such notice, the Borrower may revoke any pending request for a Eurodollar Rate Loan, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loan or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a borrowing of a Base Rate Loan in the amount specified therein.

3.10 Payment Free of Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Taxes, except as required by applicable Law. If the Borrower shall be required (as determined in the good faith discretion of the applicable withholding agent) by applicable Law to deduct and withhold any Tax from any such payment, then

(i) the sum payable shall be increased as necessary so that after making all required deductions of Indemnified Taxes (including deductions and withholdings applicable to additional sums payable under this Section) the Recipient receives an amount equal to the sum it would have received had no such deductions been made,

(ii) the Borrower or Administrative Agent, as applicable, shall make such deductions, and

(iii) the Borrower or Administrative Agent, as applicable, shall timely pay the full amount deducted to the relevant Governmental Agency in accordance with applicable Law.

(b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay any Other Taxes to the relevant Governmental Agency in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for its payment in accordance with applicable Law of any Other Taxes.

(c) Indemnification by the Borrower. Without duplication of Section 3.10(a), the Borrower shall indemnify each Recipient within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Agency. A certificate as to the amount of such payment or liability, together with reasonable supporting documentation, if any, delivered to the Borrower by a Bank (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Bank, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Agency, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Agency evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Banks. Any Bank that is entitled to an exemption from or reduction of withholding Tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the

Administrative Agent), prior to the date on which such Bank becomes a Bank under this Agreement, and at the time or times prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Bank, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Bank is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.10(e)(1)(i)-(iii) and Section 3.10(e)(2) below) shall not be required if in the Bank's reasonable judgment such completion, execution or submission would subject such Bank to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Bank. Without limiting the generality of the foregoing,

(1) any Foreign Bank shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Bank becomes a Bank under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Bank is legally entitled to do so), whichever of the following is applicable:

- (i) duly executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party,
- (ii) duly executed originals of IRS Form W-8ECI,
- (iii) in the case of a Foreign Bank claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Bank is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) duly executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E,
- (iv) duly executed originals of IRS Form W-8IMY, and
- (v) any other form or certificate prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower to determine the withholding or deduction required to be made; and

(2) if a payment made to a Bank under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Bank were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or

1472(b) of the Code, as applicable), such Bank shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Bank has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (2), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(3) each Bank that is a “United States person” within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Bank becomes a Bank under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) duly completed originals of IRS Form W-9 (or any successor form) certifying that such Bank is exempt from U.S. backup withholding tax.

Each Bank agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made by the Borrower under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of such Recipient, and without interest (other than any interest paid by the relevant Governmental Agency with respect to such refund), provided that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower pursuant to this Section 3.10(f) (plus any penalties, interest or other charges imposed by the relevant Governmental Agency) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Agency. Notwithstanding anything to the contrary in this Section 3.10(f), in no event will the Recipient be required to pay any amount to the Borrower pursuant to this Section 3.10(f) the payment of which would place the Recipient in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 3.10(f) shall not be construed to require the Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) For purposes of determining withholding Taxes imposed under FATCA, the Borrower and the Administrative Agent shall treat (and the Banks hereby authorize the Administrative Agent to treat) the Loans as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

3.11 Funding Sources.

Nothing in this Agreement shall be deemed to obligate any Bank to obtain the funds for its share of any Loan in any particular place or manner or to constitute a representation by any Bank that it has obtained or will obtain the funds for its share of any Loan in any particular place or manner.

3.12 Failure to Charge or Making of Payment Not Subsequent Waiver.

Any decision by any Bank not to require payment of any fee or costs, or to reduce the amount of the payment required for any fee or costs, or to calculate any fee or any cost in any particular manner, shall not limit or be deemed a waiver of any Bank's right to require full payment of any fee or costs, or to calculate any fee or any costs in any other manner. Any decision by Borrower to pay any fee or costs shall not limit or be deemed a waiver of any right of Borrower to protest or dispute the payment amount of such fee or costs.

3.13 Time and Place of Payments; Evidence of Payments; Application of Payments.

All payments to be made by the Borrower shall be made without conditions or deduction for any counterclaim, defense, recoupment or setoff. The amount of each payment hereunder, under the Notes or under any Loan Document shall be made to the Administrative Agent at the Administrative Agent's Office, for the account of each of the Banks or the Administrative Agent, as the case may be, in lawful money of the United States of America without deduction, offset or counterclaim and in immediately available funds on the day of payment (which must be a Business Day). All payments of principal received after 1:00 p.m., New York time, on any Business Day, shall be deemed received on the next succeeding Business Day for purposes of calculating interest thereon. The amount of all payments received by the Administrative Agent for the account of a Bank shall be promptly paid by the Administrative Agent to that Bank in immediately available funds. Each Bank shall keep a record of Advances made by it and payments of principal with respect to each Note, and such record shall be presumptive evidence of the principal amount owing under such Note; provided that failure to keep such record shall in no way affect the Obligations of Borrower. Prior to the Maturity Date or an acceleration of the maturity of the Loans, payments under the Loan Documents shall be applied first to amounts owing under the Loan Documents other than the principal amount of and accrued interest on the Loans and Borrower's obligations with respect to Letter of Credit Usage, second to accrued interest on the Loans, third, to the principal amount of the Loans and fourth to Borrower's Obligations with respect to Letter of Credit Usage then due and owing. Following the Maturity Date or an acceleration of the maturity of the Loans, payments and recoveries under the Loan Documents shall be applied in a manner designated in Section 9.2(e). All payments with respect to principal and interest shall be applied ratably in accordance with the Pro Rata Shares.

3.14 Administrative Agent's Right to Assume Payments Will be Made.

Unless the Borrower or any Bank has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Bank, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Bank, as the case may be, has timely made such

payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

(a) if the Borrower failed to make such payment, each Bank shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Bank in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Bank to the date such amount is repaid to the Administrative Agent in immediately available funds at the Federal Funds Rate from time to time in effect; and

(b) if any Bank failed to make such payment, such Bank shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the “Compensation Period”) at a rate per annum equal to the Federal Funds Rate from time to time in effect. If such Bank pays such amount to the Administrative Agent, then such amount shall constitute such Bank’s Advance included in the applicable Loan. If such Bank does not pay such amount forthwith upon the Administrative Agent’s demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Advance. Nothing herein shall be deemed to relieve any Bank from its obligation to fulfill its Pro Rata Share of the Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Bank as a result of any default by such Bank hereunder.

A notice of the Administrative Agent to any Bank or the Borrower with respect to any amount owing under this Section 3.14 shall be conclusive, absent manifest error.

3.15 Survivability.

All of Borrower’s obligations under Sections 3.6 and 3.10 hereof shall survive termination of the Commitments and repayment of all other Obligations hereunder.

3.16 Bank Calculation Certificate.

Any request for compensation pursuant to Section 3.6 shall be accompanied by a statement of an officer of the Bank requesting such compensation and describing the methodology used by such Bank in calculating the amount of such compensation, which methodology (i) may consist of any reasonable averaging and attribution methods and (ii) in the case of Section 3.6(b) hereof shall be consistent with the methodology used by such Bank in making similar calculations in respect of loans or commitments to other borrowers.

3.17 Designation of a Different Lending Office.

If any Bank requests compensation under Sections 3.6(a) through 3.6(e), or the Borrower is required to pay any additional amount to any Bank or any Governmental Agency for the

account of any Bank pursuant to Section 3.10, then such Bank shall use reasonable efforts to designate a different Lending Office for funding or booking its Advances hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Bank, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 3.6(a) through 3.6(e) or Section 3.10, as the case may be, in the future, and (ii) in each case, would not subject such Bank to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Bank. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Bank in connection with any such designation or assignment.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to the Banks that:

4.1 Existence and Qualification; Power; Compliance with Law.

Borrower is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, and its certificate of incorporation does not provide for the termination of its existence. Borrower is duly qualified or registered to transact business as a foreign corporation in the State of California, and in each other jurisdiction in which the conduct of its business or the ownership of its properties makes such qualification or registration necessary, except where the failure so to qualify or register would not constitute a Material Adverse Effect. Borrower has all requisite corporate power and authority to conduct its business, to own and lease its Properties and to execute, deliver and perform all of its obligations under the Loan Documents. All outstanding shares of capital stock of Borrower are duly authorized, validly issued, fully paid, non-assessable, and were issued in compliance with all applicable state and federal securities Laws, except where the failure to so comply would not constitute a Material Adverse Effect. Borrower is in compliance with all Laws and other legal requirements applicable to its business the violation of which would have a Material Adverse Effect, and has obtained all authorizations, consents, approvals, orders, licenses and permits (collectively, "Authorizations") from, and has accomplished all filings, registrations and qualifications with, or obtained exemptions from any of the foregoing from, any Governmental Agency that are necessary for the transaction of its business, except where the failure so to obtain Authorizations, or to comply with, file, register, qualify or obtain exemptions would not constitute a Material Adverse Effect.

4.2 Authority; Compliance with Other Instruments and Government Regulations.

The execution, delivery, and performance by Borrower, and by each Guarantor Subsidiary of Borrower, of the Loan Documents to which it is a Party, have been duly authorized by all necessary corporate or partnership action, and do not:

(a) require any consent or approval not heretofore obtained of any stockholder, partner, security holder, or creditor of such Party;

(b) violate or conflict with any provision of such Party's charter, certificate or articles of incorporation, bylaws, certificate or articles of organization, operating agreement, partnership agreement or other organizational or governing documents of such Party;

(c) result in or require the creation or imposition of any Lien (except to the extent that any Lien is created under this Agreement) or Right of Others upon or with respect to any Property now owned or leased or hereafter acquired by such Party;

(d) constitute a "transfer of an interest" or an "obligation incurred" that is avoidable by a trustee under Section 548 of the Bankruptcy Code of 1978, as amended, or constitute a "fraudulent transfer" or "fraudulent obligation" within the meaning of the Uniform Fraudulent Transfer Act as enacted in any jurisdiction or any analogous Law;

(e) violate any Requirement of Law applicable to such Party; or

(f) result in a breach of or constitute a default under, or cause or permit the acceleration of any obligation owed under, any indenture or loan or credit agreement or any other Contractual Obligation to which such Party or any of its Property is bound or affected with respect to any obligation or obligations aggregating \$50,000,000 or more;

and neither Borrower nor any Guarantor Subsidiary of Borrower is in violation of, or default under, any Requirement of Law or Contractual Obligation, or any indenture, loan or credit agreement described in Section 4.2(f) in any respect that would constitute a Material Adverse Effect.

4.3 No Governmental Approvals Required.

Except such as have heretofore been obtained, no authorization, consent, approval, order, license or permit from, or filing, registration, or qualification with, or exemption from any of the foregoing from, any Governmental Agency is or will be required to authorize or permit the execution, delivery and performance by Borrower or any Guarantor Subsidiary of Borrower of the Loan Documents to which it is a Party.

4.4 Subsidiaries.

(a) Schedule 4.4 correctly sets forth the names, the form of legal entity, the jurisdictions of organization of all Subsidiaries of Borrower as of the Restatement Date and the identification by Borrower of each Consolidated Subsidiary, Significant Subsidiary, Guarantor Subsidiary, Foreign Subsidiary and Financial Subsidiary of the Borrower, in each case as of the Restatement Date. As of the Restatement Date, unless otherwise indicated in Schedule 4.4, all of the outstanding shares of capital stock, or all of the units of equity interest, as the case may be, of each Subsidiary indicated thereon are owned of record and beneficially by Borrower or one of such Subsidiaries, and all such shares or equity interests so owned were issued in compliance with all state and federal securities Laws and are duly authorized, validly issued, fully paid and non-assessable (other than with respect to required capital contributions to any joint venture in accordance with customary terms and provisions of the related joint venture agreement), except where the failure to so comply would not constitute a Material Adverse Effect, and are free and

clear of all Liens and Rights of Others, except for Permitted Encumbrances and Permitted Rights of Others.

(b) Each Guarantor Subsidiary is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, is duly qualified to do business as a foreign organization and is in good standing as such in each jurisdiction in which the conduct of its business or the ownership or leasing of its Properties makes such qualification necessary (except where the failure to be so duly qualified and in good standing does not constitute a Material Adverse Effect) and has all requisite power and authority to conduct its business, to own and lease its Properties and to execute, deliver and perform the Loan Documents to which it is a Party.

(c) Each Guarantor Subsidiary is in substantial compliance with all Laws and other requirements applicable to its business and has obtained all Authorizations from, and each such Significant Subsidiary has accomplished all filings, registrations, and qualifications with, or obtained exemptions from any of the foregoing from, any Governmental Agency that are necessary for the transaction of its business, except where the failure so to obtain Authorizations, or to comply with, file, register, qualify or obtain exemptions does not constitute a Material Adverse Effect.

4.5 Financial Statements.

Borrower has furnished to each Bank the following financial statements: (a) the audited consolidated financial statements of Borrower and its GAAP Subsidiaries as of November 30, 2018 and for the Fiscal Year then ended; and (b) the unaudited consolidated financial statements of Borrower and its GAAP Subsidiaries as of May 31, 2019 and for the Fiscal Quarter then ended and for the portion of the Fiscal Year ended with such Fiscal Quarter. The audited financial statements described in clause (a) are in accordance with the books and records of Borrower and its GAAP Subsidiaries, were prepared in accordance with Generally Accepted Accounting Principles consistently applied and fairly present in accordance with Generally Accepted Accounting Principles consistently applied the consolidated financial condition and results of operations of Borrower and its GAAP Subsidiaries as at the date and for the period covered thereby. The unaudited financial statements described in clause (b), are in accordance with the books and records of Borrower and its GAAP Subsidiaries, were prepared in accordance with Generally Accepted Accounting Principles consistently applied and fairly present in accordance with Generally Accepted Accounting Principles consistently applied the consolidated financial condition and results of operation of Borrower and its GAAP Subsidiaries as at the date and for the period covered thereby, subject to customary year-end audit adjustments and the absence of footnotes.

4.6 No Material Adverse Change.

Since the date of the financial statements most recently delivered (or required to be delivered) under Section 4.5(b) or Section 7.1, as applicable, there has been no material adverse change in the financial condition of the Borrower or its Subsidiaries, taken as a whole.

4.7 Title to Assets.

(a) Borrower and its Consolidated Subsidiaries have good and valid title to all of the assets reflected in the financial statements most recently delivered pursuant to Section 4.5(b) or Section 7.1, as applicable, as owned by them or any of them (other than assets disposed of in the ordinary course of business or as permitted hereunder), free and clear of all Liens and Rights of Others other than (i) those reflected or disclosed in the notes to the financial statements described in Section 4.5, (ii) Liens or Rights of Others not required under Generally Accepted Accounting Principles consistently applied to be so reflected or disclosed, (iii) Liens permitted pursuant to Section 6.7 and Rights of Others to acquire such Liens, (iv) Permitted Rights of Others, and (v) such existing Liens or Rights of Others as are described on Schedule 4.7 hereto.

(b) The Borrower and its Borrowing Base Subsidiaries have good record and marketable title in fee simple to all Developed Lots, Lots Under Development, Land Held for Development, and Model Homes and Units being constructed on Developed Lots included in the Borrowing Base (as set forth in the Borrowing Base Certificate delivered by Borrower to the Administrative Agent pursuant to Section 8.1(a)(viii)), except for defects in title that do not interfere in any material respect with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

4.8 Intangible Assets.

Borrower and its Guarantor Subsidiaries own, or possess the right to use, all trademarks, trade names, copyrights, patents, patent rights, licenses and other intangible assets that are necessary in the conduct of their businesses as operated, and no such intangible asset, to the best knowledge of Borrower, conflicts with the valid trademark, trade name, copyright, patent, patent right or intangible asset of any other Person to the extent that such conflict would constitute a Material Adverse Effect.

4.9 Anti-Terrorism Laws; Sanctions; Anti-Corruption Laws.

(a) No Loan Party, no Subsidiary of any Loan Party and, to the actual knowledge of the Senior Officers of each Loan Party, none of the respective officers, directors, employees, brokers or agents of such Loan Party or such Subsidiary has violated or is in violation of Anti-Terrorism Laws. Neither the execution and delivery of the Loan Documents by the Borrower or any Loan Party, nor any Advance, any Letter of Credit or the use of the proceeds of any Advance or any Letter of Credit, directly by any Loan Party, or, to the actual knowledge of a Senior Officer of any Loan Party, indirectly, will violate any Anti-Terrorism Laws, Anti-Corruption Laws or applicable Sanctions.

(b) No Loan Party, no Subsidiary of any Loan Party, and, to the actual knowledge of the Senior Officers of each Loan Party, none of the respective officers, directors, employees, brokers or agents of such Loan Party or such Subsidiary, is or will become a blocked person described in Section 1 of the Anti-Terrorism Order or a Sanctioned Person.

(c) Except as otherwise authorized by OFAC, no Loan Party, no Subsidiary of any Loan Party, and, to the actual knowledge of the Senior Officers of each Loan Party, none of

the respective officers, directors, employees, brokers or agents of such Loan Party or such Subsidiary, (i) engages or will engage in any dealings or transactions, or in making or receiving any contribution of funds, goods or services, (A) to, for the benefit of or with any blocked person described in Section 1 of the Anti-Terrorism Order or any Sanctioned Person or (B) in any Sanctioned Country, in each case in violation of any Anti-Terrorism Laws or applicable Sanctions, (ii) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) The Borrower has implemented and maintains in effect policies and procedures designed to promote compliance by the Loan Parties, their respective Subsidiaries and their respective directors, officers, employees, brokers and agents with laws generally, including Anti-Corruption Laws and applicable Sanctions, and the Loan Parties, their respective Subsidiaries and, to the actual knowledge of the Senior Officers of each Loan Party, the directors, officers, employees, brokers and agents of such Loan Party and its Subsidiaries, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

4.10 Governmental Regulation.

Neither Borrower nor any of the Guarantor Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940.

4.11 Litigation.

There are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened against or affecting Borrower or any of its Subsidiaries or any Property of any of them before any Governmental Agency which would constitute a Material Adverse Effect. To the best knowledge of the Borrower, there are no investigations by any Governmental Agency pending or threatened against or affecting Borrower or any of its Subsidiaries or any Property of any of them which would constitute a Material Adverse Effect.

4.12 Binding Obligations.

Each of the Loan Documents to which Borrower or any Guarantor Subsidiary of Borrower is a Party has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Borrower or the Guarantor Subsidiary, as the case may be, enforceable against Borrower or the Guarantor Subsidiary, as the case may be, in accordance with its terms, except as enforcement may be limited by Debtor Relief Laws or by equitable principles relating to the granting of specific performance or other equitable remedies as a matter of judicial discretion.

4.13 No Default.

No event has occurred and is continuing that is a Default or an Event of Default.

4.14 Pension Plans.

As of the date of this Agreement, all contributions required to be made under any Pension Plan or Multiemployer Plan by Borrower or any ERISA Affiliate have been timely made.

4.15 Tax Liability.

Borrower and its Consolidated Subsidiaries have filed all tax returns which are required to be filed, and have paid, or made provision for the payment of, all taxes which have become due pursuant to said returns or pursuant to any assessment received by Borrower or any Consolidated Subsidiary, except (a) such taxes, if any, as are being contested in good faith by appropriate proceedings (and with respect to which Borrower or its Consolidated Subsidiary has established adequate reserves for the payment of the same to the extent required by, and in accordance with, Generally Accepted Accounting Principles), and (b) such taxes the failure of which to pay will not constitute a Material Adverse Effect.

4.16 Regulation U.

Neither the Borrower nor any of its Subsidiaries is engaged (or will engage), principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), or extending credit for the purpose of purchasing or carrying margin stock.

4.17 Environmental Matters.

To the best knowledge of Borrower, Borrower and its Consolidated Subsidiaries are in substantial compliance with all applicable Laws relating to environmental protection where the failure to comply would constitute a Material Adverse Effect. To the best knowledge of Borrower, neither Borrower nor any of its Consolidated Subsidiaries has received any notice from any Governmental Agency respecting the alleged violation by Borrower or any Consolidated Subsidiary of such Laws which would constitute a Material Adverse Effect and which has not been or is not being corrected.

4.18 Disclosure.

The information provided by Borrower to the Banks in connection with this Agreement or any Loan, taken as a whole, has not contained any untrue statement of a material fact and has not omitted a material fact necessary to make the statements contained therein, taken as a whole, not misleading under the totality of the circumstances existing at the date such information was provided and in the context in which it was provided.

4.19 Projections.

As of the Restatement Date, the assumptions upon which the Projections are based are reasonable and consistent with each other assumption and with all facts known to Borrower and that the Projections are reasonably based on those assumptions. Nothing in this Section 4.19 shall be construed as a representation or warranty as of any date other than the Restatement Date or that the Projections will in fact be achieved by Borrower.

4.20 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. Neither the Borrower nor any ERISA Affiliate sponsors, or has sponsored within the past 10 years, a Pension Plan, or is a participant, or has participated within the past 10 years, in a Multiemployer Plan.

(b) There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Agency, with respect to any Plan that would be reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect. No ERISA Event has occurred or is reasonably expected to occur.

4.21 Solvency.

The Borrower and each Guarantor Subsidiary is and will be, after giving effect to the making of the Loans and issuance of the Letters of Credit, Solvent.

4.22 Absence of Restrictions.

No Guarantor Subsidiary is subject to any agreement or contract which prohibits it from making distributions to the Borrower or any other wholly-owned Subsidiary of the Borrower.

4.23 Tax Shelter Regulations.

The Borrower does not intend to treat the Loans or Letters of Credit as being a “reportable transaction” (within the meaning of Treasury Regulation Section 1.6011-4). In the event the Borrower determines to take any action inconsistent with such intention, it will promptly notify the Administrative Agent thereof. Accordingly, if the Borrower so notifies the Administrative Agent, the Borrower acknowledges that one or more of the Banks may treat its Loans or Letters of Credit as part of a transaction that is subject to Treasury Regulation Section 301.6112-1, and such Bank or Banks, as applicable, will maintain the lists and other records required by such Treasury Regulation.

ARTICLE V. AFFIRMATIVE COVENANTS (OTHER THAN INFORMATION AND REPORTING REQUIREMENTS)

As long as any Loan remains unpaid, or any other Obligation remains unpaid, or any portion of the Commitment or any Letter of Credit remains outstanding, Borrower shall, and shall cause each of its Consolidated Subsidiaries to, unless the Administrative Agent (with the approval of the Required Banks) otherwise consents in writing:

5.1 Payment of Taxes and Other Potential Liens.

Pay and discharge promptly, all taxes, assessments, and governmental charges or levies imposed upon Borrower or any of its Consolidated Subsidiaries, upon their respective Property or any part thereof, upon their respective income or profits or any part thereof, except (i) any tax, assessment, charge, or levy that is not yet past due, or is being contested in good faith by appropriate proceedings, as long as Borrower or its Consolidated Subsidiary has established and maintains adequate reserves for the payment of the same to the extent required by, and in accordance with, Generally Accepted Accounting Principles and by reason of such nonpayment no material Property of Borrower or its Significant Subsidiaries is subject to a risk of loss or forfeiture, and (ii) any tax, assessment, charge or levy the failure of which to pay would not constitute a Material Adverse Effect.

5.2 Preservation of Existence.

Preserve and maintain their respective existence, licenses, rights, franchises, and privileges in the jurisdiction of their formation and all authorizations, consents, approvals, orders, licenses, permits, or exemptions from, or registrations with, any Governmental Agency that are necessary for the transaction of their respective business, and qualify and remain qualified to transact business in each jurisdiction in which such qualification is necessary in view of their respective business or the ownership or leasing of their respective Properties; provided that (a) the failure to preserve and maintain any particular right, franchise, privilege, authorization, consent, approval, order, license, permit, exemption, or registration, or to qualify or remain qualified in any jurisdiction, that does not constitute a Material Adverse Effect will not constitute a violation of this covenant, and (b) nothing in this Section 5.2 shall prevent any consolidation or merger or disposition of assets permitted by Section 6.3 or shall prevent the termination of the business or existence (corporate or otherwise) of any Subsidiary of Borrower which in the reasonable judgment of the management of Borrower is no longer necessary or desirable.

5.3 Maintenance of Properties.

Maintain, preserve and protect all of their respective real Properties in good order and condition, subject to wear and tear in the ordinary course of business and damage caused by the natural elements, and not permit any waste of their respective real Properties, except that the failure to so maintain, preserve or protect any particular real Property, or the permitting of waste on any particular real Property, where such failure or waste with respect to all real Properties of Borrower and its Subsidiaries, in the aggregate, would not constitute a Material Adverse Effect.

5.4 Maintenance of Insurance.

Maintain insurance with responsible insurance companies in such amounts and against such risks as in Borrower's reasonable business judgment is adequate in light of Borrower's and its Consolidated Subsidiaries' size, business, assets and location of operations.

5.5 Compliance with Laws.

Comply with all Requirements of Laws noncompliance with which would constitute a Material Adverse Effect, except that Borrower and its Consolidated Subsidiaries need not comply with a Requirement of Law then being contested by any of them in good faith by appropriate procedures, so long as such contest (or a bond or surety posted in connection therewith) operates as a stay of enforcement of any material penalty that would otherwise apply as a result of such failure to comply. Without limiting the foregoing, neither the Borrower nor any Loan Party will permit itself nor any of its Subsidiaries to (a) become a Sanctioned Person or (b) engage in any dealings or transactions or be otherwise associated with any person who is a Sanctioned Person.

5.6 Inspection Rights.

At any time during regular business hours and as often as reasonably requested (and, in any event, upon 24 hours' prior notice), permit any Bank or any appropriately designated employee, agent or representative thereof at the expense of such Bank (unless a Default or an Event of Default has occurred and is continuing) to examine, audit and make copies and abstracts from the records and books of account of, and to visit and inspect the Properties of Borrower and its Consolidated Subsidiaries, and to discuss the affairs, finances and accounts of Borrower and such Subsidiaries with any of their officers or employees; provided that none of the foregoing unreasonably interferes with the normal business operations of Borrower or any of such Subsidiaries and that the Banks shall engage in any such inspections on a cooperative basis, if there has been no Default or Event of Default.

5.7 Keeping of Records and Books of Account.

Keep adequate records and books of account fairly reflecting all financial transactions in conformity with Generally Accepted Accounting Principles applied on a consistent basis (except for changes concurred with by Borrower's independent certified public accountants) and all applicable requirements of any Governmental Agency having jurisdiction over Borrower or any of its Consolidated Subsidiaries.

5.8 Use of Proceeds.

Use the proceeds of all Loans and Letters of Credit solely for working capital, Acquisitions permitted hereunder and other general corporate purposes of Borrower and its Subsidiaries and not in contravention of any Law or of any Loan Document (including, without limitation, not using the proceeds of any Loans or Letters of Credit, directly or, to the actual knowledge of the Senior Officers of any Loan Party, indirectly, in any manner which would result in any violation of Anti-Terrorism Laws, Anti-Corruption Laws or applicable Sanctions).

5.9 Subsidiary Guaranty.

Cause each of its Guarantor Subsidiaries hereafter formed, acquired or qualifying as a Guarantor Subsidiary to (a) execute and deliver to the Administrative Agent, promptly following such formation, acquisition or qualification, a joinder of the Subsidiary Guaranty or such other document as the Administrative Agent shall deem appropriate, and (b) deliver to the

Administrative Agent documents of the types referred to in clause (v) of Section 8.1(a) and, if requested by the Administrative Agent, favorable opinions of counsel to such Guarantor Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), all in form, content and scope reasonably satisfactory to the Administrative Agent.

ARTICLE VI
NEGATIVE COVENANTS

As long as any Loan remains unpaid, or any other Obligation remains unpaid, or any portion of the Commitment or any Letter of Credit remains outstanding, Borrower shall not, and shall not permit any of its Consolidated Subsidiaries to, unless the Administrative Agent (with the approval of the Required Banks) otherwise consents in writing:

6.1 Payment or Prepayment of Subordinated Obligations and Certain Other Obligations.

(a) Make any payment with respect to any Subordinated Obligation in violation of the provisions in the instruments governing such Subordinated Obligation; or

(b) At all times the Consolidated Interest Coverage Ratio is greater than or equal to 2:00 to 1:00, if a Default or Event of Default then exists or would result therefrom, (i) make an optional or unscheduled payment or prepayment of any principal (including an optional or unscheduled sinking fund payment), interest or any other amount with respect to any Subordinated Obligation, or (ii) make a purchase or redemption of any Subordinated Obligation; or

(c) At all times the Consolidated Interest Coverage Ratio is less than 2:00 to 1:00, (i) make an optional or unscheduled payment or prepayment of any principal (including an optional or unscheduled sinking fund payment), interest or any other amount with respect to any Subordinated Obligation, or (ii) make a purchase or redemption of any Subordinated Obligation; provided, however, that the restrictions set forth in this clause (c) shall not apply if all of the following conditions are met:

(i) Unrestricted Cash (calculated on a pro forma basis after giving effect to such payment, prepayment, purchase or redemption) equals or exceeds the Commitment;

(ii) Total Outstandings (excluding the aggregate undrawn face amount of outstanding Letters of Credit) are zero; and

(iii) no Default or Event of Default then exists or would result therefrom.

6.2 [Intentionally Omitted].

6.3 Merger and Sale of Assets.

Merge or consolidate with or into any Person, sell a Material Amount of Assets or liquidate or dissolve Borrower or any Consolidated Subsidiary, except, subject to Section 6.6:

(a) a merger of Borrower into a wholly-owned Subsidiary of Borrower that has nominal assets and liabilities, the primary purpose of which is to effect the reincorporation of Borrower in another state of the United States;

(b) merger, consolidation or liquidation of a Subsidiary of Borrower into Borrower (with Borrower as the surviving corporation) or into any other Subsidiary of Borrower, provided that (i) the reduction in the proportionate share of Borrower and its Subsidiaries in the total assets of such resulting Subsidiary (after intercompany eliminations) does not constitute a Material Amount of Assets and (ii) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(c) mergers, consolidations, liquidations, or sales of all or substantially all of the assets of a Subsidiary; provided that (i) any such transaction does not involve a transfer by Borrower or its Consolidated Subsidiaries of a Material Amount of Assets and (ii) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(d) a merger or consolidation of Borrower with another Person if (i) no Change in Control results therefrom, (ii) Borrower does not transfer a Material Amount of Assets measured before the effectiveness of the merger or consolidation to one or more Persons in giving effect to such merger or consolidation, (iii) Borrower is the surviving Person and (iv) immediately after giving effect to such merger, no Default or Event of Default shall have occurred and be continuing;

(e) the sale of inventory in the ordinary course of business; or

(f) any sale of assets among the Loan Parties and their Subsidiaries which is in the ordinary course of business or is otherwise in compliance with all other provisions of this Agreement.

6.4 Investments and Acquisitions.

Make any Acquisition, or enter into an agreement to make any Acquisition, or make or suffer to exist any Investment, other than:

(a) Investments in Cash or Cash Equivalents;

(b) advances to officers, directors and employees of Borrower or its Subsidiaries for travel, entertainment, housing expenses, relocation, equity compensation plans, or otherwise in connection with their employment or the business of Borrower or any of its Subsidiaries;

(c) Investments of Borrower in any of its wholly-owned Subsidiaries and Investments of any Subsidiary of Borrower in Borrower or any of Borrower's wholly-owned Subsidiaries;

(d) Acquisitions of or Investments in Persons engaged primarily in the same businesses as Borrower and its Subsidiaries, or in a business reasonably related to such businesses, including electronic commerce and similar activities related to real estate;

(e) Acquisitions of or Investments in the Borrower's own capital stock permitted by Section 6.12;

(f) Acquisitions of or Investments in Persons engaged primarily in businesses other than those permitted by Sections 6.4(d), provided that the aggregate cost of all such Acquisitions and Investments made in any fiscal year does not exceed \$75,000,000;

(g) Investments in Subsidiaries in existence on the Restatement Date or as otherwise disclosed on Schedule 6.4;

(h) Investments received in connection with the settlement of a bona fide dispute with another Person;

(i) Investments consisting of readily marketable securities actively traded on a public exchange, provided that (i) the aggregate amount of any such Investments at any one time does not exceed \$100,000,000; and

(j) Investments consisting of the extension of credit to suppliers in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof, provided that the aggregate amount of any such Investments at any one time does not exceed \$50,000,000;

but in all events, subject to the restrictions of Section 6.16.

6.5 [Intentionally Omitted].

6.6 Change in Business.

Engage in any business other than the businesses as now conducted by Borrower or its Subsidiaries, and any business reasonably related to such businesses, other than: businesses in which Borrower and its Subsidiaries have invested to the extent permitted pursuant to Section 6.4(f).

6.7 Liens and Negative Pledges.

Create, incur, assume, or suffer to exist, any Lien of any nature upon or with respect to any of their respective Properties, whether now owned or hereafter acquired, or enter or suffer to exist any Contractual Obligation wherein Borrower or any of its Consolidated Subsidiaries agrees not to grant any Lien on any of their Properties, except:

- (a) Liens and Contractual Obligations existing on the Restatement Date and described in Schedule 4.7, provided that the obligations secured by such Liens are not increased and that no such Lien extends to any Property of Borrower or any Consolidated Subsidiary other than the Property subject to such Lien on the Restatement Date;
- (b) Liens on Property of any Financial Subsidiary or Foreign Subsidiary securing Indebtedness of that Financial Subsidiary or Foreign Subsidiary, or Contractual Obligations of any Financial Subsidiary or Foreign Subsidiary restricting the grant of any Lien on the Property of such Financial Subsidiary or Foreign Subsidiary;
- (c) Liens on Property securing Indebtedness of Borrower or any of its Subsidiaries, or Contractual Obligations restricting the grant of any Lien on Property where such Property secures Indebtedness incurred for the purposes of acquiring and/or developing such Property;
- (d) Liens or Contractual Obligations that may exist from time to time under the Loan Documents;
- (e) Liens or Contractual Obligations consisting of a Capital Lease covering personal Property entered into in the ordinary course of business;
- (f) Permitted Encumbrances;
- (g) attachment, judgment and other similar Liens arising in connection with court proceedings, judgments and orders which do not constitute an Event of Default under Section 9.1(i);
- (h) Liens on any asset of any Person, or Contractual Obligations of such Person restricting the grant of any Lien on such asset of such Person, in each case existing at the time such Person becomes a Subsidiary and not created in contemplation of such event;
- (i) Liens on any asset of any Person, or Contractual Obligations of such Person restricting the grant of any Lien on such asset of such Person, in each case existing at the time such Person is merged or consolidated with or into Borrower or any of its Subsidiaries and not created in contemplation of such event;
- (j) Liens on any asset, or Contractual Obligations restricting the grant of any Lien on such asset, in each case existing prior to the acquisition thereof by Borrower or any of its Subsidiaries and not created in contemplation of such acquisition;
- (k) Liens arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by any Lien permitted by any of the foregoing clauses of this Section, provided that such Indebtedness is not increased and is not secured by additional assets;
- (l) Liens arising in the ordinary course of business which (i) do not secure Indebtedness, (ii) do not secure any obligation in an amount exceeding \$10,000,000 individually, or \$50,000,000 in the aggregate, and (iii) do not in the aggregate materially detract from the

value of the assets covered by such Liens or materially impair the use thereof in the operation of Borrower's business;

(m) (i) any Contractual Obligations restricting the grant of any Lien and (ii) any Contractual Obligations contained in Section 1008 of the Senior Notes Indenture as in effect on the Restatement Date; provided that in the case of clause (i) only, as of any date of determination, such Contractual Obligations do not (x) prohibit first priority, perfected Liens on Properties of the Borrower and the Guarantor Subsidiaries in favor of the Administrative Agent and the Banks to secure the Obligations then outstanding and determinable (other than unasserted or contingent indemnification or reimbursement Obligations) as of such date, or (y) require that holders of any indebtedness receive Liens ranking senior or pari passu to Liens granted on collateral in favor of the Administrative Agent and the Banks to secure the Obligations then outstanding and determinable (other than unasserted or contingent indemnification or reimbursement Obligations) as of such date;

(n) assessment district or similar Liens in connection with municipal financings;

(o) a Contractual Obligation wherein Borrower or any of its Subsidiaries agrees to grant any Lien on any of their Properties, if such Contractual Obligation provides for the grant of a Lien on a pari passu basis in favor of the Administrative Agent for the benefit of the Banks with respect to the Obligations and in favor of the holders of such other Indebtedness (other than Subordinated Obligations), if any, as the Borrower designates (and Borrower shall, as soon as reasonably possible, provide to the Banks a copy of any such Contractual Obligation);

(p) Liens on Property of a Joint Venture permitted under Section 6.4;

(q) Liens on Property of Borrower or any of its Subsidiaries that secure Non-Recourse Indebtedness, or Contractual Obligations related to such Non-Recourse Indebtedness restricting the grant of any Lien on such Property; and

(r) Liens on Property that secure any obligation of the Borrower or any of its Subsidiaries under any Profit and Participation Agreement, or any Contractual Obligations under any Profit and Participation Agreements which restrict the granting of any Lien on any Property subject to such Profit and Participation Agreements.

For purposes of compliance with this Section: (x) in the event that any Lien or Contractual Obligation meets the criteria set forth in more than one of clauses (a) through (r) of this Section, Borrower, in its sole discretion, may classify or reclassify such Lien or Contractual Obligation in any manner that complies with this Section and such Lien or Contractual Obligation shall be treated as having been permitted pursuant to only one of the clauses of this Section; and (y) any Indebtedness secured by a Lien may be divided and classified among more than one of the clauses of this Section.

6.8 Transactions with Affiliates.

Enter into any transaction of any kind with any Affiliate of Borrower other than (a) a transaction that results in Subordinated Obligations, (b) a transaction between or among

Borrower and/or its Consolidated Subsidiaries, (c) a transaction that has been authorized by the board of directors or a committee established by the board of directors of Borrower with the favorable vote of a majority of the directors who have no financial or other interest in the transaction or by the vote of a majority of the outstanding shares of capital stock of Borrower, (d) a transaction entered into on terms and under conditions not less favorable to Borrower or any of its Subsidiaries than could be obtained from a Person that is not an Affiliate of Borrower, (e) salary, bonus, equity compensation and other compensation arrangements and indemnification arrangements with directors or officers consistent with past practice or current market practice, or (f) transactions permitted by clauses (b), (c) and (g) of Section 6.4.

6.9 Consolidated Tangible Net Worth.

Permit Consolidated Tangible Net Worth to be, at the end of any Fiscal Quarter, less than an amount equal to (a) \$1,536,647,000, plus (b) an amount equal to 50% of aggregate of the cumulative Consolidated Net Income for each Fiscal Quarter commencing after May 31, 2019 and ending as of the last day of such Fiscal Quarter (provided that there shall be no reduction hereunder in the event of a consolidated net loss in any such Fiscal Quarter), plus (c) an amount equal to 50% of the cumulative net proceeds received by Borrower from the issuance of its capital stock after May 31, 2019.

6.10 Consolidated Leverage Ratio.

Permit the Consolidated Leverage Ratio to be, at the end of any Fiscal Quarter, greater than 0.65 to 1.00.

6.11 Consolidated Interest Coverage Ratio or Minimum Liquidity.

Permit both of the following to occur with respect to any Fiscal Quarter:

(a) Liquidity to be less than Consolidated Interest Incurred for the four most recently ended Fiscal Quarters in the aggregate; and

(b) the Consolidated Interest Coverage Ratio to be, at the end of any Fiscal Quarter, less than 1.50 to 1.00.

6.12 Distributions.

(a) Make any Distribution if a Default or an Event of Default then exists or if an Event of Default or Default would result therefrom; or

(b) At all times the Consolidated Interest Coverage Ratio is less than 2:00 to 1:00, (i) retire, redeem, purchase or otherwise acquire for value (other than for capital stock of the same type of the Borrower or any of its Consolidated Subsidiaries) any shares of capital stock or any warrant or right to acquire shares of capital stock or any other equity security issued by the Borrower or any of its Consolidated Subsidiaries; or (ii) make any Investment in any holder of 5% or more of the capital stock (or other equity securities) of the Borrower or any of its Consolidated Subsidiaries, if a purpose of such Investment is to avoid the restrictions set forth in

subclause (i) above; provided, however, that the restrictions set forth in this Section 6.12(b) shall not apply if all of the following conditions are met:

(i) Unrestricted Cash (calculated on a pro forma basis after giving effect to such retirement, redemption, purchase, acquisition or Investment) equals or exceeds the Commitment;

(ii) Total Outstandings (excluding the aggregate undrawn face amount of outstanding Letters of Credit) are zero; and

(iii) no Default or Event of Default then exists or would result therefrom.

(c) Notwithstanding the foregoing provisions of this Section 6.12, Section 6.12 does not prohibit:

(i) retirements, redemptions, purchases, or other acquisitions for value of capital stock, warrants or rights to acquire shares of capital stock or other equity securities (x) from or with employees, officers or directors or former employees, officer or directors (or their estates or beneficiaries under their estates) of Borrower and its Subsidiaries in connection with Borrower's equity incentive plans or other benefit plans or upon death, disability, retirement, severance or termination or pursuant to any agreement under which the capital stock or other securities were issued or any employment agreement, (y) in connection with cashless exercises of options, warrants or other rights to acquire capital stock or other equity securities, or (z) in lieu of fractional shares;

(ii) the purchase of call options or call spreads by Borrower or its Subsidiaries in connection with any convertible securities offering of Subordinated Obligations by Borrower, together with the repurchase of shares of capital stock or settlement for cash (in whole or in part) as may be required by the terms of such options or spreads;

(iii) a Distribution made (x) to Borrower or to a Guarantor Subsidiary by any of their respective Subsidiaries or (y) to a wholly-owned Subsidiary of Borrower by any Subsidiary that is not a Loan Party;

(iv) the payment of any Distribution within 60 days after the date of declaration thereof so long as such Distribution was permitted by the provisions of this Agreement at the time of its declaration; or

(v) the making of cash payments in connection with any conversion of convertible securities of the Borrower.

6.13 Amendments.

Amend, waive or terminate any provision in any instrument or agreement governing Subordinated Obligations unless such amendment, waiver or termination would not be materially adverse to the interests of the Banks under this Agreement.

6.14 [Intentionally Omitted].

6.15 [Intentionally Omitted].

6.16 Investment in Subsidiaries and Joint Ventures.

Permit, as of the last day of any Fiscal Quarter, Borrower's equity interest, computed in accordance with Generally Accepted Accounting Principles consistently applied, in all Subsidiaries of Borrower (other than Guarantor Subsidiaries), Financial Subsidiaries, Foreign Subsidiaries, all Joint Ventures and all other entities with financial statements not consolidated with those of Borrower under Generally Accepted Accounting Principles consistently applied to exceed an amount equal to the sum of (a) \$104,811,000 plus (b) an amount equal to 20% of Consolidated Tangible Net Worth as of the last day of such Fiscal Quarter.

6.17 Borrowing Base Indebtedness Not to Exceed Borrowing Base.

Permit Borrowing Base Indebtedness at any time to exceed the Borrowing Base (as set forth in the then most recent Borrowing Base Certificate delivered hereunder by Borrower to the Administrative Agent) if Borrower does not hold an Investment Grade Credit Rating at such time.

6.18 [Intentionally Omitted].

6.19 Regulation U.

Permit, any Loan hereunder to be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

6.20 Fiscal Year.

Change its fiscal year-end to a date other than November 30.

ARTICLE VII
INFORMATION AND REPORTING REQUIREMENTS

7.1 Financial and Business Information of Borrower and Its Subsidiaries.

As long as any Loan remains unpaid or any other Obligation remains unpaid, or any portion of the Commitment or any Letter of Credit remains outstanding, Borrower shall, unless the Administrative Agent (with the approval of the Required Banks) otherwise consents in

writing, deliver to the Administrative Agent and each of the Banks (except as otherwise provided below) at its own expense:

(a) As soon as reasonably possible, and in any event within 50 days after the close of each Fiscal Quarter of Borrower (other than the fourth Fiscal Quarter), (i) the consolidated and consolidating balance sheet of Borrower and its GAAP Subsidiaries as of the end of such Fiscal Quarter, setting forth in comparative form the corresponding figures for the corresponding Fiscal Quarter of the preceding Fiscal Year, if available, and (ii) the consolidated and consolidating statements of profit and loss and the consolidated statements of cash flows of Borrower and its GAAP Subsidiaries for such Fiscal Quarter and for the portion of the Fiscal Year ended with such Fiscal Quarter, setting forth in comparative form the corresponding periods of the preceding Fiscal Year. Such consolidated and consolidating balance sheets and statements shall be prepared in reasonable detail in accordance with Generally Accepted Accounting Principles consistently applied (other than those which require footnote disclosure of certain matters), and shall be certified by the principal financial officer of Borrower, subject to normal year-end accruals and audit adjustments;

(b) As soon as reasonably possible, and in any event within 90 days after the close of each Fiscal Year of Borrower, (i) the consolidated and consolidating (in accordance with past practices of Borrower) balance sheets of Borrower and its GAAP Subsidiaries as of the end of such Fiscal Year, setting forth in comparative form the corresponding figures at the end of the preceding Fiscal Year and (ii) the consolidated and consolidating (in accordance with past practices of Borrower) statements of profit and loss and the consolidated statements of cash flows of Borrower and its GAAP Subsidiaries for such Fiscal Year, setting forth in comparative form the corresponding figures for the previous Fiscal Year. Such consolidated and consolidating balance sheet and statements shall be prepared in reasonable detail in accordance with Generally Accepted Accounting Principles consistently applied. Such consolidated balance sheet and statements shall be accompanied by a report and opinion of Ernst & Young LLP or other independent certified public accountants of recognized national standing selected by Borrower, which report and opinion shall state that the examination of such consolidated financial statements by such accountants was made in accordance with generally accepted auditing standards and that such consolidated financial statements fairly present the financial condition, results of operations and of cash flows of Borrower and its GAAP Subsidiaries subject to no exceptions as to scope of audit and subject to no other exceptions or qualifications (other than changes in accounting principles in which the auditors concur) unless such other exceptions or qualifications are approved by the Required Banks in their reasonable discretion. Such accountants' report and opinion shall be accompanied by a certificate stating that, in conducting the audit examination of books and records necessary for the certification of such financial statements, such accountants have obtained no knowledge of any Default or Event of Default hereunder or, if in the opinion of such accountants, any such Default or Event of Default shall exist, stating the nature and status of such event, and setting forth the applicable calculations under Sections 6.9, 6.10, 6.11, 6.16 and 6.17 as of the date of the balance sheet. Such consolidating balance sheet and statements shall be certified by a Senior Officer of Borrower;

(c) Promptly after the receipt thereof by Borrower, copies of any audit or management reports submitted to it by independent accountants in connection with any audit or

interim audit submitted to the board of directors of Borrower or any of its Consolidated Subsidiaries;

(d) Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to its stockholders, and copies of all annual, regular and periodic reports that Borrower may file or be required to file with the Commission; provided, any of the foregoing reports, statements or communications filed with or furnished to the Commission by the Borrower (and which are available online) shall be deemed to have been delivered by the Borrower under this Section 7.1;

(e) Promptly upon a Senior Officer of Borrower becoming aware, and in any event within 10 Business Days after becoming aware, of the occurrence of any (i) ERISA Event or (ii) “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) in connection with any Pension Plan or any trust created thereunder, in each case, a written notice specifying the nature thereof, what action Borrower and any of its Subsidiaries or any ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or threatened to be taken by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(f) Promptly upon a Senior Officer of Borrower becoming aware, and in any event within 5 Business Days after becoming aware, of the existence of a Default or an Event of Default, a written notice specifying the nature and period of existence thereof and what action Borrower is taking or proposes to take with respect thereto;

(g) Promptly upon a Senior Officer of Borrower becoming aware, and in any event within 5 Business Days after becoming aware, that the holder of any evidence of Indebtedness (in a principal amount in excess of \$50,000,000) of Borrower or any of its Consolidated Subsidiaries has given notice or taken any other action with respect to a default or event of default, a written notice specifying the notice given or action taken by such holder and the nature of such default or event of default and what action Borrower or its Consolidated Subsidiary is taking or proposes to take with respect thereto;

(h) Promptly upon a Senior Officer of Borrower becoming aware, and in any event within 5 Business Days after becoming aware, of the existence of any pending or threatened litigation or any investigation by any Governmental Agency that could reasonably be expected to constitute a Material Adverse Effect (provided, that no failure of a Senior Officer to provide notice of any such event shall be the sole basis for any Default or Event of Default hereunder);

(i) [Intentionally Omitted];

(j) As soon as reasonably possible, and in any event prior to the date that is 90 days after the commencement of each Fiscal Year, deliver to the Administrative Agent the business plan of Borrower and its Consolidated Subsidiaries for that Fiscal Year, together with projections (in substantially the same format as the Projections) covering the next 2 Fiscal Years; and

(k) Such other data and information as from time to time may be reasonably requested by any of the Banks.

The Borrower hereby acknowledges that (i) the Administrative Agent will make available to the Banks and the Issuing Banks materials or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on DebtDomain or another similar electronic system (the "Platform") and (ii) certain of the Banks may be "public-side" Banks (i.e., Banks that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities:

(i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof;

(ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Syndication Agents, the Issuing Banks and the Banks to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.12);

(iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and

(iv) the Administrative Agent, the Arrangers and the Syndication Agents shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

7.2 Compliance Certificate.

Concurrently with the delivery of the financial statements described in Section 7.1(a) and (b), Borrower shall deliver to the Administrative Agent and the Banks, at Borrower's sole expense, a Compliance Certificate dated as of the last day of the Fiscal Quarter or Fiscal Year, as the case may be:

(a) setting forth computations showing, in detail reasonably satisfactory to the Administrative Agent, whether Borrower and its Consolidated Subsidiaries were in compliance with their obligations to the Banks pursuant to Sections 6.9, 6.10, 6.11 and 6.16;

(b) certifying a sales report by geographical region, in the form attached to the Compliance Certificate, setting forth the number of homes or other units sold and delivered during such period and in backlog at the end of such period;

(c) certifying an inventory report for such period in the form attached to the Compliance Certificate, summarizing such inventory by type and geographical region;

(d) reporting any change, as of the last day of such Fiscal Quarter, in the listing of Subsidiaries set forth in Schedule 4.4 (as the same may have been revised by previous Compliance Certificates), including changes in Guarantor Subsidiaries;

(e) either

(i) stating that to the best knowledge of the certifying officer as of the date of such certificate there is no Default or Event of Default, or

(ii) if there is a Default or Event of Default as of the date of such certificate, specifying all such Defaults or Events of Default and their nature and status; and

(f) stating, to the best knowledge of the certifying officer, whether any event or circumstance constituting a Material Adverse Effect (other than a Material Adverse Effect which is not particular to the Borrower and which is generally known) has occurred since the date of the most recent Compliance Certificate delivered under this Section and, if so, describing such Material Adverse Effect in reasonable detail. No failure of the certifying officer to describe the existence of an event or circumstance constituting a Material Adverse Effect shall be the sole basis for any Default or Event of Default hereunder.

ARTICLE VIII CONDITIONS

8.1 Initial Advances, Etc.

The effectiveness of this Agreement, the obligation of each Bank with a Pro Rata Share of the Commitment hereunder to continue any and all Commitments, Loans, participations in Existing Letters of Credit and other Obligations hereunder, and the obligation of each New Bank to make its initial Advances hereunder and of the Issuing Banks to issue Letters of Credit hereunder are subject to the following conditions precedent, each of which shall be satisfied prior to the making of the initial Advances (unless all of the Banks, in their sole and absolute discretion, shall agree otherwise):

(a) The Administrative Agent shall have received all of the following, each dated as of the Restatement Date (unless otherwise specified or unless the Administrative Agent otherwise agrees) and all in form and substance satisfactory to the Administrative Agent and each of the Banks:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Banks and Borrower;

(ii) a Note executed by Borrower in favor of each Bank requesting a Note, each in a principal amount equal to that Bank's Pro Rata Share of the Commitment, promptly following the Restatement Date (provided that, in the case of any Consenting Bank, such Consenting Bank has delivered to Borrower the Note issued in its favor and delivered pursuant to the Existing Loan Agreement (if any) for cancellation);

(iii) the Subsidiary Guaranty executed by each Subsidiary which is a Guarantor Subsidiary as of the Restatement Date;

(iv) [intentionally omitted];

(v) with respect to Borrower and each Subsidiary which is a Guarantor Subsidiary as of the Restatement Date, such documentation as the Administrative Agent may reasonably require to establish the due organization, valid existence and good standing of Borrower and each such Subsidiary, its qualification to engage in business in each jurisdiction in which it is required to be so qualified, its authority to execute, deliver and perform any Loan Documents to which it is a Party, and the identity, authority and capacity of each Responsible Official thereof authorized to act on its behalf, including certified copies of articles of incorporation and amendments thereto, bylaws and amendments thereto, certificates of good standing or qualification to engage in business, tax clearance certificates, certificates of corporate resolutions, incumbency certificates, and the like;

(vi) the Opinions of Counsel;

(vii) an Officer's Certificate of Borrower affirming, to the best knowledge of the certifying Senior Officer, that the conditions set forth in Sections 8.1(c) and 8.1(d) have been satisfied;

(viii) a Borrowing Base Certificate calculated as of the last day of the Fiscal Quarter ending on May 31, 2019, showing the Borrower to be in compliance with Section 6.17 after giving effect to any Loans made and Letters of Credit issued on the Restatement Date;

(ix) the financial statements described in Section 4.5;

(x) a Compliance Certificate calculated as of the last day of the Fiscal Quarter ending on May 31, 2019; and

(xi) such other assurances, certificates, documents, consents or opinions relevant hereto as the Administrative Agent may reasonably require.

(b) All fees then payable under the letter agreements referred to in Section 3.3 shall have been paid and all other amounts and expenses owed hereunder and under the Existing Loan Agreement shall have been paid.

(c) The representations and warranties of Borrower contained in Article IV shall be true and correct in all material respects on and as of the Restatement Date.

(d) Borrower and its Consolidated Subsidiaries and any other Parties shall be in compliance with all the terms and provisions of the Loan Documents, and at and after giving effect to the initial Advance, no Default or Event of Default shall have occurred and be continuing.

(e) The Administrative Agent shall have received all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation, the PATRIOT Act, that has been requested prior to the Restatement Date.

8.2 Any Advance.

The obligations of the Banks to make any Advance are subject to the following conditions precedent:

(a) the Administrative Agent shall have received a Loan Notice;

(b) the representations and warranties contained in Article IV (other than the representations and warranties contained in Sections 4.4(a), 4.18 and 4.19 and, if the Borrower holds an Investment Grade Credit Rating at such time, Section 4.7(b)) shall be true and correct in all material respects on and as of the date of the Loan as though made on and as of that date (except that the financial statements referred to in Section 4.5(a) shall be deemed to refer to the most recent statements furnished pursuant to Section 7.1(b) and the financial statements referred to in Section 4.5(b) shall be deemed to refer to the most recent statements furnished pursuant to Section 7.1(a), and the Borrowing Base Certificate referred to in Section 4.7(b) shall be deemed to refer to the most recent Borrowing Base Certificate delivered pursuant to Section 2.8); it being understood and agreed that any representation or warranty that is qualified as to materiality or “Material Adverse Effect” shall be true and correct in all respects;

(c) the Administrative Agent shall have received such other information relating to any matters which are the subject of Section 8.2(b) or the compliance by Borrower with this Agreement as may reasonably be requested by the Administrative Agent on behalf of a Bank; and

(d) at and after giving effect to such Advance, no Default or Event of Default shall have occurred and be continuing.

Each Loan Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in this Section have been satisfied on and as of the date of the Loan requested thereby.

8.3 Any Letter of Credit.

The obligations of an Issuing Bank to issue, renew or increase any Letter of Credit are subject to the following conditions precedent:

(a) the Administrative Agent and the Issuing Bank shall have received a Request for Letter of Credit;

(b) the representations and warranties contained in Article IV (other than the representations and warranties contained in Sections 4.4(a), 4.18 and 4.19 and, if the Borrower holds an Investment Grade Credit Rating at such time, Section 4.7(b)) shall be true and correct in all material respects on and as of the date of the issuance of the Letter of Credit as though made on and as of that date (except that the financial statements referred to in Section 4.5(a) shall be deemed to refer to the most recent statements furnished pursuant to Section 7.1(b) and the financial statements referred to in Section 4.5(b) shall be deemed to refer to the most recent statements furnished pursuant to Section 7.1(a), and the Borrowing Base Certificate referred to in Section 4.7(b) shall be deemed to refer to the most recent Borrowing Base Certificate delivered pursuant to Section 2.8); it being understood and agreed that any representation or warranty that is qualified as to materiality or “Material Adverse Effect” shall be true and correct in all respects;

(c) the Administrative Agent shall have received such other information relating to any matters which are the subject of Section 8.3(b) or the compliance by Borrower with this Agreement as may reasonably be requested by the Administrative Agent on behalf of a Bank; and

(d) at and after giving effect to the issuance, renewal or increase of such Letter of Credit, no Default or Event of Default shall have occurred and be continuing.

Each Request for Letter of Credit submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in this Section have been satisfied on and as of the date of the issuance of the Letter of Credit requested thereby.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES UPON EVENTS OF DEFAULT

9.1 Events of Default.

There will be a default hereunder if any one or more of the following events (“Events of Default”) occurs and is continuing, whatever the reason therefor:

(a) failure to pay any installment of principal on any Loan on the date, or any payment in respect of a Letter of Credit pursuant to Section 2.5, when due; or

(b) failure to pay any installment of interest on any of the Loans, or to pay any fee or other amounts due the Administrative Agent or any Bank hereunder, within 5 Business Days after the date when due; or

(c) any failure to comply with Sections 6.1, 6.3, 6.4, 6.7, 6.9, 6.10, 6.11, 6.12, 6.13, 6.16, 6.17, 6.19 or 7.1(f); or

(d) any failure to comply with Sections 2.8(a), 5.8, 5.9 or 6.8 that remains unremedied for a period of 15 calendar days after notice by the Administrative Agent of such Default or 20 calendar days after a Senior Officer becomes aware of such Default, whichever occurs first; or

(e) Borrower or any other Party fails to perform or observe any other term, covenant, or agreement contained in any Loan Document on its part to be performed or observed within 30 calendar days after notice by the Administrative Agent of such Default; or

(f) any representation or warranty in any Loan Document or in any certificate, agreement, instrument, or other document made or deemed made or delivered pursuant to or in connection with any Loan Document proves to have been incorrect when made in any respect material to the ability of Borrower to duly and punctually perform all of the Obligations; or

(g) Borrower or any of its Significant Subsidiaries which is also a Consolidated Subsidiary (i) fails to pay the principal, or any principal installment, of any present or future Indebtedness (other than Non-Recourse Indebtedness), or any guaranty of present or future Indebtedness (other than Non-Recourse Indebtedness) on its part to be paid, when due (or within any stated grace period), whether at the stated maturity, upon acceleration, by reason of required prepayment or otherwise in excess of \$50,000,000 in the aggregate or (ii) fails to perform or observe any other material term, covenant, or agreement on its part to be performed or observed, or suffers to exist any condition, in connection with any present or future Indebtedness (other than Non-Recourse Indebtedness), or any guaranty of present or future Indebtedness (other than Non-Recourse Indebtedness), in excess of \$50,000,000 in the aggregate, if as a result of such failure or such condition any holder or holders thereof (or an agent or trustee on its or their behalf) has the right to declare it due before the date on which it otherwise would become due or has the right to cause a demand such that such Indebtedness be repurchased, prepaid, defeased or redeemed; or

(h) (x) any written guarantee of the indebtedness and liabilities of Borrower to the Administrative Agent and the Banks or any one or more of them arising under the Loan Documents is asserted to be invalid or unenforceable by any Loan Party (other than following the release of any such guarantee contemplated by Section 10.11 or following the termination of such guarantee in accordance with its terms), or (y) any Loan Document, at any time after its execution and delivery and for any reason other than the agreement of all the Banks, satisfaction in full of all the Obligations or in accordance with its terms, ceases to be in full force and effect or is declared by a court of competent jurisdiction to be null and void, invalid, or unenforceable in any respect which is, in the reasonable opinion of the Required Banks, materially adverse to the interest of the Banks; or

(i) a final judgment (or judgments) against Borrower or any of its Significant Subsidiaries which is also a Consolidated Subsidiary is entered for the payment of money in excess of \$50,000,000 in the aggregate over the amount of any insurance proceeds reasonably expected to be received and remains unsatisfied, unpaid, undischarged or unbonded without procurement of a stay of execution within 30 calendar days after the date of entry of judgment, or in any event at least 5 calendar days prior to the sale of any assets pursuant thereto; or

(j) Borrower or any Significant Subsidiary of Borrower which is also a Consolidated Subsidiary institutes or consents to any proceeding under a Debtor Relief Law relating to it or to all or any part of its Property, or fails generally, or admits in writing its inability, to pay its debts as they mature, or makes a general assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian,

conservator, liquidator, rehabilitator, or similar officer for it or for all or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer is appointed without the application or consent of that Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any part of its Property is instituted without the consent of that Person, and continues undismissed or unstayed for 60 calendar days; or

(k) the occurrence of one or more ERISA Events if the aggregate liability of Borrower and its ERISA Affiliates under ERISA as a result thereof could result in a Material Adverse Effect; or

(l) any determination is made by a court of competent jurisdiction that payment of principal or interest or both is due to the holder of any Subordinated Obligations which would not be permitted by Section 6.1 or that any Subordinated Obligation is not subordinated in accordance with its terms to the Obligations.

9.2 Remedies Upon Event of Default.

Without limiting any other rights or remedies of the Administrative Agent or the Banks provided for elsewhere in this Agreement or the Loan Documents, or by applicable Law or in equity, or otherwise:

(a) Upon the occurrence of any Event of Default, and so long as any such Event of Default shall be continuing (other than an Event of Default described in Section 9.1(j) with respect to Borrower or a Guarantor Subsidiary):

(i) all commitments to make Advances or issue Letters of Credit, and all other obligations of the Administrative Agent, any Issuing Bank or the Banks with respect to Advances and Letters of Credit shall be suspended without notice to or demand upon Borrower, which are expressly waived by Borrower, except that the Required Banks (or greater number, if so required) may waive the Event of Default or, without waiving, determine, upon terms and conditions satisfactory to the Required Banks (or greater number, if so required), to reinstate the Commitment and make further Advances or issue Letters of Credit, which waiver or determination shall apply equally to, and shall be binding upon, all the Banks; and

(ii) the Required Banks may request the Administrative Agent to, and the Administrative Agent thereupon shall:

(A) declare the unpaid principal of all Obligations due to the Banks hereunder and under the Notes, an amount equal to the Letter of Credit Usage, all interest accrued and unpaid thereon, and all other amounts payable to the Banks under the Loan Documents to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without protest, presentment, notice of dishonor, demand, or further notice of any kind, all of which are expressly waived by Borrower; provided that the Administrative Agent shall notify Borrower (by telecopy and, if practicable, by telephone) substantially concurrently with any such

acceleration (but the failure of Borrower to receive such notice shall not affect such acceleration); provided further, that all commitments to make Advances or issue Letters of Credit, and all other obligations of the Administrative Agent, any Issuing Bank or the Banks with respect to Advances and Letters of Credit under the Loan Documents shall terminate concurrently with such acceleration;

(B) require that Borrower Cash Collateralize or Letter of Credit Collateralize all outstanding Letters of Credit at 103% of the face amount thereof (excluding any portion of such amount that is already Cash Collateralized by operation of another provision of this Agreement); and

(C) apply cash collateral or make drawings under irrevocable standby letters of credit delivered pursuant to Section 2.5(g).

(b) Upon the occurrence of any Event of Default described in Section 9.1(j) with respect to Borrower or a Guarantor Subsidiary:

(i) all commitments to make Advances or issue Letters of Credit, and all other obligations of the Administrative Agent, any Issuing Bank or the Banks with respect to Advances and Letters of Credit under the Loan Documents shall terminate without notice to or demand upon Borrower, which are expressly waived by Borrower; and

(ii) (A) the unpaid principal of all Obligations due to the Banks hereunder and under the Notes, an amount equal to the Letter of Credit Usage and all interest accrued and unpaid on such Obligations, and all other amounts payable under the Loan Documents shall be forthwith due and payable, without protest, presentment, notice of dishonor, demand, or further notice of any kind, all of which are expressly waived by Borrower; and (B) the Administrative Agent may apply cash collateral or make drawings under irrevocable standby letters of credit delivered pursuant to Section 2.5(g).

(c) So long as any Letter of Credit shall remain outstanding, any amounts received by the Administrative Agent in respect of the Letter of Credit Usage pursuant to Section 9.2(a)(ii) or 9.2(b)(ii) may be held as cash collateral for the obligation of Borrower to reimburse the Issuing Banks in event of any drawing under any Letter of Credit (and Borrower hereby grants to the Administrative Agent for the benefit of the Issuing Banks and the Banks a security interest in such cash collateral). In the event any Letter of Credit in respect of which Borrower has deposited cash collateral with the Administrative Agent is canceled or expires, the cash collateral shall be applied first to the reimbursement of the Issuing Banks (or all of the Banks, as the case may be) for any drawings thereunder, second to the payment of any outstanding Obligations of Borrower hereunder or under any other Loan Document, and third to the Person entitled to such amount.

(d) Upon the occurrence of an Event of Default, the Banks and the Administrative Agent, or any of them, may proceed to protect, exercise, and enforce their rights and remedies under the Loan Documents against Borrower or any other Party and such other

rights and remedies as are provided by Law or equity, without notice to or demand upon Borrower (which are expressly waived by Borrower) except to the extent required by applicable Laws. The order and manner in which the rights and remedies of the Banks under the Loan Documents and otherwise are exercised shall be determined by the Required Banks.

(e) All payments received by the Administrative Agent and the Banks, or any of them, after the acceleration of the maturity of the Loans or after the Maturity Date shall be applied first to the costs and expenses (including Attorney Costs) of the Administrative Agent, acting as Administrative Agent, and of the Banks and thereafter paid pro rata to the Banks in the same proportion that the aggregate of the unpaid principal amount owing on the Obligations of Borrower to each Bank, plus accrued and unpaid interest thereon, bears to the aggregate of the unpaid principal amount owing on all the Obligations, plus accrued and unpaid interest thereon. Regardless of how each Bank may treat the payments for the purpose of its own accounting, for the purpose of computing Borrower's Obligations, the payments shall be applied first, to the costs and expenses of the Administrative Agent, acting as Administrative Agent, and the Banks as set forth above, second, to the payment of accrued and unpaid fees hereunder and interest on all Obligations to the Banks, to and including the date of such application (ratably according to the accrued and unpaid interest on the Loans), third, to the ratable payment of the unpaid principal of all Obligations to the Banks, and fourth, to the payment of all other amounts then owing to the Administrative Agent or the Banks under the Loan Documents. Subject to Section 9.2(a)(i), no application of the payments will cure any Event of Default or prevent acceleration, or continued acceleration, of amounts payable under the Loan Documents or prevent the exercise, or continued exercise, of rights or remedies of the Banks hereunder or under applicable Law unless all amounts then due (whether by acceleration or otherwise) have been paid in full.

ARTICLE X THE ADMINISTRATIVE AGENT

10.1 Appointment and Authorization.

(a) Each Bank hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Bank or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) An Issuing Bank shall act on behalf of the Banks with respect to any Letters of Credit issued by it and the documents associated therewith, and such Issuing Bank shall have all of the benefits and immunities (i) provided to the Administrative Agent in this Article X with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term “Administrative Agent” as used in this Article X and in the definition of “Agent-Related Person” included such Issuing Bank with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such Issuing Bank.

10.2 Delegation of Duties.

The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

10.3 Liability of Administrative Agent.

No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein, as determined in a final, non-appealable judgment of a court of competent jurisdiction, and with respect to the Borrower, except as set forth in Sections 2.5(e) and 2.5(f) and for any failure to comply with Section 11.12), or (b) be responsible in any manner to any Bank or participant for any recital, statement, representation or warranty made by any Party or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Bank or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Party or any Affiliate thereof. No Agent-Related Person shall be under any obligation to take any action that, in its opinion or the opinion of its counsel, may expose any Agent-Related Person to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt, any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Bank in violation of any Debtor Relief Law.

10.4 Reliance by Administrative Agent.

(a) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Party), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Banks as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Banks against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Banks (or such greater number of Banks as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Banks.

(b) For purposes of determining compliance with the conditions specified in Section 8.1, each Bank that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Bank unless the Administrative Agent shall have received notice from such Bank prior to the proposed Restatement Date specifying its objection thereto.

10.5 Notice of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Banks, unless the Administrative Agent shall have received written notice from a Bank or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” The Administrative Agent will promptly notify the Banks of its receipt of any such notice. The Administrative Agent shall take such action with respect to such Default or Event of Default as may be directed by the Required Banks in accordance with Article IX; provided, however, that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Banks.

10.6 Credit Decision; Disclosure of Information by Administrative Agent.

Each Bank acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by the Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any

Bank as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Bank represents to the Administrative Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Bank also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Parties. Except for notices, reports and other documents expressly required to be furnished to the Banks by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

10.7 Indemnification of Administrative Agent.

Whether or not the transactions contemplated hereby are consummated, the Banks shall, ratably in accordance with their respective Pro Rata Shares, indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Party and without limiting the obligation of any Party to do so), and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided, however, that no Bank shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Banks (or greater number, if so required) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, each Bank shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section shall survive termination of the Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

10.8 Administrative Agent in its Individual Capacity.

The Administrative Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind

of banking, trust, financial advisory, underwriting or other business with each of the Loan Parties and their respective Affiliates as though the Administrative Agent were not the Administrative Agent or an Issuing Bank hereunder and without notice to or consent of the Banks. The Banks acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding any Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Party or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to its Loans, the Administrative Agent shall have the same rights and powers under this Agreement as any other Bank and may exercise such rights and powers as though it were not the Administrative Agent or an Issuing Bank, and the terms “Bank” and “Banks” include the Administrative Agent in its individual capacity.

10.9 Successor Administrative Agent.

The Administrative Agent may resign as Administrative Agent upon 30 days’ notice to the Banks. If the Administrative Agent resigns under this Agreement, the Required Banks shall appoint from among the Banks a successor administrative agent for the Banks, which successor administrative agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed 15 days prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Banks and the Borrower, a successor administrative agent from among the Banks. Upon the acceptance of its appointment as successor administrative agent hereunder, the Person acting as such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term “Administrative Agent” shall mean such successor administrative agent and the retiring Administrative Agent’s appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the provisions of this Article X and Sections 11.3 and 11.10 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent’s notice of resignation, the retiring Administrative Agent’s resignation shall nevertheless thereupon become effective and the Banks shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Banks appoint a successor agent as provided for above.

10.10 Administrative Agent May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Party, the Administrative Agent (irrespective of whether the principal of any Loan or other Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid

and to file such other documents as may be necessary or advisable in order to have the claims of the Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Banks and the Administrative Agent under Sections 2.5, 3.2 and 11.3) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 3.2, 3.3 and 11.3.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Bank or to authorize the Administrative Agent to vote in respect of the claim of any Bank in any such proceeding.

10.11 Guaranty Matters.

Each Bank acknowledges and irrevocably consents to the release and discharge of any Guarantor Subsidiary from its obligations under the Subsidiary Guaranty by the Administrative Agent, without any further consent or authorization by the Banks, as a result of a Change in Status of a Guarantor Subsidiary. The Borrower may notify the Administrative Agent of any Change in Status of a Guarantor Subsidiary by delivering an Officer's Certificate, which shall include a reasonably detailed description of such Change in Status and a certification that no Default or Event of Default exists or would result from the release of such Guarantor Subsidiary from its obligations under the Subsidiary Guaranty. Such Officer's Certificate shall be delivered no later than simultaneously with the delivery of a Compliance Certificate pursuant to Section 7.2 with respect to the fiscal quarter during which such Change in Status occurs. Upon acceptance of such Officer's Certificate by the Administrative Agent, such Guarantor Subsidiary will be released and discharged from its obligations under the Subsidiary Guaranty, automatically, without any further action by the Administrative Agent or any Bank, and the Subsidiary that is subject to such Change in Status shall no longer be a Guarantor Subsidiary. Upon request by the Administrative Agent at any time, the Required Banks will confirm in writing the Administrative Agent's authority to take any steps to effect the release of any Guarantor Subsidiary from its obligations under the Subsidiary Guaranty pursuant to this Section 10.11.

10.12 Other Agents; Arrangers and Managers.

None of the Banks or other Persons identified on the facing page or signature pages of this Agreement as a “syndication agent,” “documentation agent,” “senior managing agent,” “managing agent,” “co-agent,” “joint book manager,” “sole book manager,” “lead manager,” “joint lead arranger”, “sole lead arranger,” “arranger” or “co-arranger” shall have any right, power, obligation, liability, responsibility or duty under this Agreement or any of the other Loan Documents other than, in the case of such Banks, those applicable to all Banks as such. Without limiting the foregoing, none of the Banks or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Bank. Each Bank acknowledges that it has not relied, and will not rely, on any of the Banks or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

10.13 Defaulting Banks.

(a) If for any reason any Bank becomes a Defaulting Bank, then in addition to the rights and remedies that may be available to the Administrative Agent and the Banks at law or in equity, the Defaulting Bank’s right to participate in the Loan and the Agreement will be suspended during the pendency of the Defaulting Bank’s uncured default, and (without limiting the foregoing) the Administrative Agent may (or at the direction of the Required Banks, shall) withhold from the Defaulting Bank any interest payments, fees, principal payments or other sums otherwise payable to such Defaulting Bank under the Loan Documents until such default of such Defaulting Bank has been cured. Each Non-Defaulting Bank will have the right, but not the obligation, in its sole discretion, to acquire at par a proportionate share (based on the ratio of its Pro Rata Share of the Commitment to the aggregate amount of the Pro Rata Shares of the Commitments of all of the Non-Defaulting Banks that elect to acquire a share of the Defaulting Bank’s Pro Rata Share of the Commitment) of the Defaulting Bank’s Pro Rata Share of the Commitment, including its proportionate share in the outstanding principal balance of the Loans. The Defaulting Bank will pay and protect, defend and indemnify the Administrative Agent and each of the other Banks and Issuing Banks against, and hold the Administrative Agent, and each of the other Banks and Issuing Banks harmless from, all claims, actions, proceedings, liabilities, damages, losses, and expenses (including Attorney Costs, and interest at the Base Rate plus 2.0% per annum for the funds advanced by the Administrative Agent or any Banks on account of the Defaulting Bank) they may sustain or incur by reason of or in consequence of the Defaulting Bank’s failure or refusal to perform its obligations under the Loan Documents. The Administrative Agent may set off against payments due to the Defaulting Bank for the claims of the Administrative Agent and the other Banks against the Defaulting Bank. The exercise of these remedies will not reduce, diminish or liquidate the Defaulting Bank’s Pro Rata Share of the Commitment (except to the extent that part or all of such Pro Rata Share of the Commitment is acquired by the other Banks as specified above) or its obligations to share losses and reimbursement for costs, liabilities and expenses under this Agreement. This indemnification will survive the payment and satisfaction of all of the Borrower’s obligations and liabilities to the Banks and the Issuing Banks. The foregoing provisions of this Section 10.13 are solely for the benefit of the Administrative Agent and the Banks, and may not be enforced or relied upon by the Borrower;

(b) If a Bank becomes, and during the period it remains, a Defaulting Bank, the following provisions shall apply:

(i) any L/C Advance of such Defaulting Bank not funded by such Defaulting Bank will, upon notice by the Administrative Agent, and subject in any event to the limitation in the first proviso below, automatically be reallocated (effective on the day such Bank becomes a Defaulting Bank) among the Non-Defaulting Banks pro rata in accordance with their respective Commitments; provided that (a) the sum of the Exposure of each Non-Defaulting Bank may not in any event exceed the Non-Defaulting Bank's Pro Rata Share of the Commitment as in effect at the time of such reallocation, (b) subject to Section 11.30, such reallocation will not constitute a waiver or release of any claim the Borrower, the Administrative Agent, any Issuing Bank or any other Bank may have against such Defaulting Bank, and (c) neither such reallocation nor any payment by a Non-Defaulting Bank as a result thereof will cause such Defaulting Bank to be a Non-Defaulting Bank;

(ii) to the extent that any portion (the "unreallocated portion") of the Defaulting Bank's L/C Advance cannot be so reallocated, whether by reason of the first proviso in clause (i) above or otherwise, the Borrower will, not later than 1 Business Day after demand by the Administrative Agent, (a) Cash Collateralize the obligations of the Borrower to the Issuing Bank in respect of the unallocated portion of such L/C Advance, as the case may be, in an amount at least equal to 101% of the aggregate amount of the unreallocated portion of such L/C Advance (excluding any portion of such amount that is already Cash Collateralized by operation of another provision of this Agreement), or (b) make other arrangements satisfactory to the Administrative Agent and the Issuing Bank in their sole discretion to protect them against the risk of non-payment by such Defaulting Bank; and

(iii) any amount paid by the Borrower for the account of a Defaulting Bank under this Agreement (whether on account of principal, interest, fees, indemnity payments or other amounts) will not be paid or distributed to such Defaulting Bank, but shall instead be retained by the Administrative Agent in a segregated non-interest bearing escrow account until such Defaulting Bank is no longer a Defaulting Bank or the termination of the Commitments and payment in full of all obligations of the Borrower hereunder and will be applied by the Administrative Agent, to the fullest extent permitted by law, to the making of payments from time to time in the following order of priority: First to the payment of any amounts owing by such Defaulting Bank to the Administrative Agent under this Agreement, second to the payment of any amounts owing by such Defaulting Bank to the Issuing Bank (pro rata as to the respective amounts owing to each of them) under this Agreement, third to the payment of post-default interest and then current interest due and payable to the Non-Defaulting Banks hereunder, ratably among them in accordance with the amounts of such interest then due and payable to them, fourth to the payment of fees then due and payable to the Non-Defaulting Banks hereunder, ratably among them in accordance with the amounts of such fees then due and payable to them, fifth to pay principal and unreimbursed L/C Borrowings then due and payable to the Non-Defaulting Banks hereunder ratably in accordance with the amounts thereof then due and payable to them, sixth to the ratable payment of other amounts then

due and payable to the Non-Defaulting Banks, seventh after the termination of the Commitments and payment in full of all obligations of the Borrower hereunder, to pay amounts owing under this Agreement to such Defaulting Bank or as a court of competent jurisdiction may otherwise direct, and eighth the remainder to the Person entitled thereto.

10.14 No Obligations of Borrower.

Nothing contained in this Article X shall be deemed to impose upon Borrower any obligation in respect of the due and punctual performance by the Administrative Agent of its obligations to the Banks under any provision of this Agreement, and Borrower shall have no liability to the Administrative Agent or any of the Banks in respect of any failure by the Administrative Agent or any Bank to perform any of its obligations to the Administrative Agent or the Banks under this Agreement. Without limiting the generality of the foregoing, where any provision of this Agreement relating to the payment of any amounts due and owing under the Loan Documents provides that such payments shall be made by Borrower to the Administrative Agent for the account of the Banks, Borrower's obligations to the Banks in respect of such payments shall be deemed to be satisfied upon the making of such payments to the Administrative Agent in the manner provided by this Agreement.

ARTICLE XI MISCELLANEOUS

11.1 Cumulative Remedies; No Waiver.

The rights, powers, and remedies of the Administrative Agent or any Bank provided herein or in any Note or other Loan Document are cumulative and not exclusive of any right, power, or remedy provided by law or equity. No failure or delay on the part of the Administrative Agent or any Bank in exercising any right, power, or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power, or remedy preclude any other or further exercise of any other right, power, or remedy. The terms and conditions of Sections 8.1, 8.2, and 8.3 hereof are inserted for the sole benefit of the Banks and the Administrative Agent may (with the approval of the Required Banks) waive them in whole or in part with or without terms or conditions in respect of any Loan, without prejudicing the Banks' rights to assert them in whole or in part in respect of any other Loans.

11.2 Amendments; Consents.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrower or any other Party therefrom, may in any event be effective unless in writing signed by the Required Banks and Borrower, and then only in the specific instance and for the specific purpose given; and without the approval in writing of all of the affected Banks, no amendment, waiver or consent may be effective:

(a) to amend or modify the principal of, or the amount of principal or principal prepayments payable on any Obligation, to increase the Exposure of any Bank without the consent of that Bank, to decrease the rate of any interest or fee payable to any Bank without the consent of that Bank, or to reduce or waive any interest or other amount payable to any Bank without the consent of that Bank;

(b) to postpone any date fixed for any payment of principal of, prepayment of principal of, or any installment of interest on, any Obligation owing to a Bank or any installment of any fee owing to a Bank, or to extend the term of the Commitment without the consent of that Bank;

(c) to amend or modify the provisions of the definitions in Section 1.1 of “Required Banks” or of Sections 11.2, 11.9, 11.10, or 11.11, or any provision providing for the ratable or pro rata treatment of the Banks without the consent of each Bank;

(d) release any Guarantor Subsidiary from liability under the Subsidiary Guaranty (except as provided in Section 10.11); or

(e) to amend or modify any provision of this Agreement or the Loan Documents that expressly requires the consent or approval of all the Banks without the consent of each Bank.

Any amendment, waiver or consent pursuant to this Section 11.2 shall apply equally to, and shall be binding upon, all the Banks and the Administrative Agent. Any amendment, waiver or consent pursuant to this Section 11.2 that permits the sale or other transfer of the capital stock of (or all or substantially all of the assets of) a Guarantor Subsidiary shall automatically release the Guarantor Subsidiary effective concurrently with such sale or other transfer.

In addition, no amendment, modification, termination or waiver of any provision (i) of Section 2.5 shall be effective without the written concurrence of Administrative Agent and, with respect to the purchase of participations in Letters of Credit, without the written concurrence of applicable Issuing Banks that have issued an outstanding Letter of Credit or has not been reimbursed for a payment under a Letter of Credit, (ii) of Article X or of any other provision of this Agreement which, by its terms, expressly requires the approval or concurrence of Administrative Agent shall be effective without the written concurrence of Administrative Agent.

If any Bank does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Bank and that has been approved by the Required Banks, Borrower may replace such non-consenting Bank (each a “Non-Consenting Bank”) in accordance with Section 11.27; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by Borrower to be made pursuant to this paragraph).

Anything herein to the contrary notwithstanding, during such period as a Bank is a Defaulting Bank, to the fullest extent permitted by applicable Law, such Bank will not be entitled to vote in respect of amendments and waivers hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Bank hereunder will not be taken into account in determining whether the Required Banks or all of the Banks, as required, have approved any such amendment or waiver (and the definition of “Required Banks” will automatically be deemed modified accordingly for the duration of such period); provided, that any such amendment or waiver that would increase the Exposure or extend the term of the Commitment of such Defaulting Bank, postpone the date fixed for the payment of principal or interest owing to

such Defaulting Bank hereunder, reduce the principal amount of any Obligation owing to such Defaulting Bank, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Bank or of any fee payable to such Defaulting Bank hereunder, or alter the terms of this proviso, will require the consent of such Defaulting Bank.

11.3 Costs, Expenses and Taxes.

Borrower shall pay within 30 days after demand (which demand shall be accompanied by an invoice in reasonable detail) the reasonable actual out-of-pocket costs and expenses of the Administrative Agent and its Affiliates in connection with (a) the negotiation, preparation, execution, delivery, arrangement, syndication and closing of the Loan Documents and (b) any amendment, waiver or modification of the Loan Documents. Borrower shall pay within 30 days after demand the reasonable actual out-of-pocket costs and expenses of the Administrative Agent and each of the Banks and Issuing Banks in connection with the enforcement of any Loan Documents following the occurrence of a Default or an Event of Default, including in connection with any refinancing, restructuring, reorganization (including a bankruptcy reorganization, if such payment is approved by the bankruptcy court or any similar proceeding). The costs and expenses referred to in the first sentence above (for which Borrower shall be liable solely with respect to costs and expenses of the Administrative Agent and its Affiliates) and the second sentence above (which shall apply to costs and expenses of the Administrative Agent, the Banks and the Issuing Banks) shall include filing fees, recording fees, title insurance fees, appraisal fees, search fees, and other out-of-pocket expenses and Attorney Costs of the Administrative Agent, its Affiliates or any of the Banks or Issuing Banks, as the case may be, or independent public accountants and other outside experts retained by the Administrative Agent (provided that Borrower shall not be liable under this Section 11.3 for (i) fees and expenses of more than one firm of independent public accountants, or more than one expert with respect to a specific subject matter, at any one time, or (ii) the fees and expenses of more than one firm of outside legal counsel retained to represent the Administrative Agent, the Banks and the Issuing Banks, but if any of such parties does not consent to such joint representation, Borrower shall be liable for the fees and expenses of not more than one firm of outside legal counsel retained to represent the Administrative Agent and also for not more than one additional firm of outside legal counsel retained to otherwise represent one or more of the Banks and Issuing Banks). Nothing herein shall obligate Borrower to pay any costs and expenses in connection with an assignment of or participation in a Bank's Pro Rata Share of a Commitment. Borrower shall pay any and all documentary and transfer taxes, assessments or charges made by any Governmental Agency and all reasonable actual costs, expenses, fees, and charges of Persons (other than the Administrative Agent, the Arrangers, the Syndication Agents, the Banks or the Issuing Banks) payable or determined to be payable in connection with the execution, delivery, filing or recording of this Agreement, any other Loan Document, or any other instrument or writing to be delivered hereunder or thereunder, and shall reimburse, hold harmless, and indemnify the Administrative Agent, its Affiliates, each Bank, each Issuing Bank and each Participant from and against any and all loss, liability, or legal or other expense with respect to or resulting from any delay in paying or failure to pay any such tax, cost, expense, fee, or charge or that any of them may suffer or incur by reason of the failure of Borrower to perform any of its Obligations. Any amount payable to the Administrative Agent, its Affiliates, any Bank, any Issuing Bank or any Participant under this Section 11.3 shall bear interest from the date which is 30 days after

Borrower's receipt of demand (together with reasonable supporting documentation) for payment at the rate then in effect for Base Rate Loans.

11.4 Nature of Banks' Obligations.

Nothing contained in this Agreement or any other Loan Document and no action taken by the Administrative Agent or the Banks or any of them pursuant hereto or thereto may, or may be deemed to, make the Banks a partnership, an association, a joint venture, or other entity, either among themselves or with Borrower. The obligations of the Banks hereunder to make Advances and to fund participations in Letters of Credit are several and not joint or joint and several. The failure of any Bank to make any Advance or to fund any such participation on any date required hereunder shall not relieve any other Bank of its corresponding obligation to do so on such date, and no Bank shall be responsible for the failure of any other Bank to so make its Advance or purchase its participation.

11.5 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Bank, regardless of any investigation made by the Administrative Agent or any Bank or on their behalf and notwithstanding that the Administrative Agent or any Bank may have had notice or knowledge of any Default at the time of the making of any Advance or the issuance of any Letter of Credit, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.6 Notices and Other Communications; Facsimile Copies.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 11.6(b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.6; and

(ii) if to any other Bank, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (x) actual receipt by the relevant party hereto and (y) (A) if sent by hand or overnight courier service, when signed for by or on behalf of the relevant party hereto, (B) if mailed by certified or registered mail, 4 Business Days after deposit in the mails, postage prepaid or (C) if sent by telecopier, when sent (except that, if not given during normal business hours for the

recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 11.6(b) below, shall be effective as provided in Section 11.6(b).

(b) Electronic Communications. Notices and other communications to the Banks and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Bank or the Issuing Banks pursuant to Article II if such Bank or such Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes,

(i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and

(ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Bank, any Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Bank,

any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent and the Issuing Banks may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Bank may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the Issuing Banks. In addition, each Bank agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record:

(i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and

(ii) accurate wire instructions for such Bank.

(e) Reliance by Administrative Agent, Issuing Banks and Banks. The Administrative Agent, the Issuing Banks and the Banks shall be entitled to rely and act upon any notices (including telephonic Loan Notices) purportedly given by or on behalf of the Borrower even if

(i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or

(ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof.

The Borrower shall indemnify each Agent-Related Person, each Issuing Bank and each Bank from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.7 Execution in Counterparts; Facsimile Delivery.

This Agreement and any other Loan Document to which Borrower is a Party may be executed in any number of counterparts and any party hereto or thereto may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Agreement or any other Loan Document, as the case may be, taken together will be deemed to be but one and the same instrument. Such counterparts may be sent by telecopy, with the original counterparts to follow by mail or courier. The execution of this Agreement or any other Loan Document by any party hereto or thereto will not become effective until executed counterparts hereof or thereof (or other evidence of execution satisfactory to the Administrative Agent and Borrower) have been delivered to the Administrative Agent and Borrower. The parties hereto agree and acknowledge that delivery of any signature by facsimile shall constitute execution by such signatory.

11.8 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Bank and no Bank may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 11.8(b), (ii) by way of participation in accordance with the provisions of Section 11.8(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.8(f) or (iv) in accordance with Section 11.27 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 11.8(d) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Bank may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 11.8(b), participations in Letters of Credit) at the time owing to it); provided that (i) except in the case of an assignment of the entire remaining amount of the assigning Bank's Commitment and the Loans at the time owing to it or in the case of an assignment to a Bank or an Affiliate of a Bank, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Bank subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 and shall be an integral multiple of \$1,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met; (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Bank's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned; (iii) any assignment to an Eligible Assignee other than a Bank or an Affiliate of a Bank shall be subject to the prior written consent of the Administrative Agent, not to be unreasonably withheld or delayed; (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (treating multiple, simultaneous assignments by or to two or more Approved Funds as a single assignment) (except that no such processing and recordation fee shall be payable (i) in connection with any assignment to or from Citi or any of its Affiliates or (ii) in the case of an assignee which is already a Bank or is an Affiliate or Approved Fund of a Bank, (iii) for any assignment which the Administrative Agent, in its sole discretion elects to waive such processing and recordation fee), and the Eligible Assignee, if it shall not be a Bank, shall deliver to the Administrative Agent an Administrative Questionnaire; and (v) any

assignment to an Eligible Assignee other than a Bank or an Affiliate or Approved Fund of a Bank shall be subject to the prior written consent of the Borrower (such consent not to be unreasonably withheld or delayed), but such consent of Borrower shall not be required if a Default or an Event of Default has then occurred and is continuing; provided that the Borrower shall be deemed to have consented to any such Eligible Assignee unless it shall have objected thereto within 10 Business Days following written request for such consent. Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.8(c), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Bank under this Agreement, and the assigning Bank thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Bank's rights and obligations under this Agreement, such Bank shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.6, 3.10, 11.3, 11.6(e) and 11.10 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower shall execute and deliver a Note to the assignee Bank. Any assignment or transfer by a Bank of rights or obligations under this Agreement that does not comply with this Section 11.8(b) shall be treated for purposes of this Agreement as a sale by such Bank of a participation in such rights and obligations in accordance with Section 11.8(d). Any costs and expenses incurred in connection with an assignment hereunder (including a processing and recordation fee set forth in Schedule 11.8) shall be paid by the Eligible Assignee (except as otherwise provided in Section 11.27).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Banks, and the Commitments of, and principal amounts of the Loans and other Obligations owing to, each Bank pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Banks shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Bank hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Bank, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Bank may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Bank's rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans (including such Bank's participations in Letters of Credit) owing to it); provided that (i) such Bank's obligations under this Agreement otherwise shall remain unchanged, (ii) such Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Banks shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Bank sells such a participation shall provide that such Bank shall retain the sole right to enforce this Agreement and to approve any amendment, modification or

waiver of any provision of this Agreement; provided further, that such agreement or instrument may provide that such Bank will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Sections 11.2(a), 11.2(b) or 11.2(d) that directly affects such Participant; provided further, that any Bank selling a participation shall endeavor promptly to give Borrower notice following any such sale, but the failure to give such notice will not give rise to any liability on the part of such Bank or otherwise affect the validity of any such sale. Subject to clause (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of, and subject to the limitations of, Sections 3.6 and 3.10 to the same extent as if it were a Bank and had acquired its interest by assignment pursuant to Section 11.8(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.15 as though it were a Bank, provided such Participant agrees to be subject to Section 11.9 as though it were a Bank. Each Bank that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Commitment or the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Bank shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitment, Loans, Letters of Credit or other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Bank shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) A Participant shall not be entitled to receive any greater payment under Sections 3.6 and 3.10 than the applicable Bank would have been entitled to receive with respect to the participation sold to such Participant.

(f) Any Bank may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Bank from any of its obligations hereunder or substitute any such pledgee or assignee for such Bank as a party hereto.

(g) In connection with any assignment of rights and obligations of any Defaulting Bank hereunder, no such assignment will be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Bank, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Bank to the Administrative Agent, any Issuing Bank and

each other Bank hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with such Defaulting Bank's Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Bank hereunder becomes effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest will be deemed to be a Defaulting Bank for all purposes of this Agreement until such compliance occurs.

(h) If any Issuing Bank resigns as an Issuing Bank it shall retain all the rights and obligation of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all Obligations with respect thereto (including the right to require the Banks to make Base Rate Loans or fund risk participation in Unreimbursed Amounts pursuant to Section 2.5).

11.9 Sharing of Setoffs.

Each Bank severally agrees that if it, through the exercise of the right of setoff, banker's lien, or counterclaim against Borrower or otherwise, receives payment of the Obligations due it hereunder and under the Notes that is ratably more than that to which it is entitled hereunder pursuant to Section 3.13 or 9.2(e), then: (a) the Bank exercising the right of setoff, banker's lien, or counterclaim or otherwise receiving such payment shall purchase, and shall be deemed to have simultaneously purchased, from the other Bank a participation in the Obligations held by the other Bank and shall pay to the other Bank a purchase price in an amount so that the share of the Obligations held by each Bank after the exercise of the right of setoff, banker's lien, or counterclaim or receipt of payment shall be in the same proportion that existed prior to the exercise of the right of setoff, banker's lien, or counterclaim or receipt of payment, and (b) such other adjustments and purchases of participations shall be made from time to time as shall be equitable to ensure that all of the Banks share any payment obtained in respect of the Obligations ratably in accordance with the provisions of Section 3.13 and 9.2(e), provided that, if all or any portion of a disproportionate payment obtained as a result of the exercise of the right of setoff, banker's lien, counterclaim or otherwise is thereafter recovered from the purchasing Bank by Borrower or any Person claiming through or succeeding to the rights of Borrower, the purchase of a participation shall be rescinded and the purchase price thereof shall be restored to the extent of the recovery, but without interest. Each Bank that purchases a participation in the Obligations pursuant to this Section shall from and after the purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Bank were the original owner of the Obligations purchased. Borrower expressly consents to the foregoing arrangements and agrees that, to the extent permitted by Law, any Bank holding a participation in an Obligation so purchased may exercise any and all rights of setoff, banker's lien or counterclaim with respect to the participation as fully as if the Bank were the original owner of the Obligation purchased. Notwithstanding anything in this Section 11.9 to the contrary, in the event that any Defaulting Bank exercises any right of setoff, (i) all amounts so set off will be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 10.13(b)(iii) and, pending such payment, will be segregated by such Defaulting Bank from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, the Banks and any other Person entitled to such

amounts pursuant to Section 10.13(b)(iii) and (y) the Defaulting Bank will provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Bank as to which it exercised such right of setoff.

11.10 Indemnification by the Borrower.

The Borrower shall indemnify and hold harmless each Agent-Related Person, each Arranger, each Syndication Agent, each Bank, each Issuing Bank and their respective Affiliates, directors, officers, employees, counsel, agents and attorneys-in-fact (collectively the “Indemnitees”) from and against any and all liabilities, obligations, losses, damages (including punitive and exemplary damages), penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit) or (c) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the “Indemnified Liabilities”); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or, other than with respect to any Agent-Related Person acting in its capacity as such, material breach of the Loan Documents by such Indemnitee. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through DebtDomain or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee have any liability for any indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Restatement Date). All amounts due under this Section 11.10 shall be payable within 10 Business Days after demand therefor. The agreements in this Section 11.10 shall survive the resignation of the Administrative Agent, the replacement of any Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations. Notwithstanding the foregoing, indemnification for Indemnified Taxes and Other Taxes shall be governed by, and be subject to the qualifications and requirements set forth in, Section 3.10.

11.11 Nonliability of Banks.

The relationship between Borrower and the Banks is, and shall at all times remain, solely that of borrower and lenders, and the Banks and the Administrative Agent neither undertake nor assume any responsibility or duty to Borrower to review, inspect, supervise, pass judgment upon,

or inform Borrower of any matter in connection with any phase of Borrower's business, operations, or condition, financial or otherwise. Borrower shall rely entirely upon its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment, or information supplied to Borrower by any Bank, the Administrative Agent, any Arranger or any Syndication Agent in connection with any such matter is for the protection of the Banks, the Administrative Agent, the Arrangers and the Syndication Agents, and neither Borrower nor any third party is entitled to rely thereon.

11.12 Confidentiality.

Each of the Administrative Agent, each Bank and each Issuing Bank agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed

(a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors, consultants, service providers, and representatives only for the purposes of administration or enforcement of this Agreement and for internal compliance, audit and risk management purposes in connection with this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential),

(b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners),

(c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process,

(d) to any other party hereto,

(e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder,

(f) subject to an agreement containing a standard of confidentiality substantially the same as that in this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations,

(g) with the consent of the Borrower or

(h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Bank, any Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

In addition, the Administrative Agent, each Arranger, each Syndication Agent and each Bank may disclose information about this Agreement to market data collectors to the extent such information is customarily provided in order to obtain league of table credit.

For purposes of this Section 11.12, “Information” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Arranger, any Syndication Agent, any Bank or an Issuing Bank on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Each of the Administrative Agent, each Bank and each Issuing Bank acknowledges that (x) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (y) it has developed compliance procedures regarding the use of material non-public information and (z) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws. Notwithstanding the foregoing, the provisions set forth in this Section 11.12 shall expire and shall be of no further effect after the first anniversary of the earlier of (a) the Maturity Date and (b) the date on which no Loan remains unpaid, or any other Obligation remains unpaid, or any portion of the Commitment or any Letter of Credit remains outstanding.

11.13 No Third Parties Benefited.

This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of Borrower, the Administrative Agent and the Banks in connection with the Commitment, and is made for the sole benefit of Borrower, the Administrative Agent and the Banks, and the Administrative Agent’s and the Banks’ successors and assigns. Except as provided in Sections 11.8 and 11.10, no other Person shall have any rights of any nature hereunder or by reason hereof.

11.14 Other Dealings.

Any Bank may, without liability to account to the other Banks, accept deposits from, lend money or provide credit facilities to and generally engage in any kind of banking or other business with Borrower and its Subsidiaries.

11.15 Right of Setoff — Deposit Accounts.

Upon the occurrence of an Event of Default and the acceleration of maturity of the principal indebtedness pursuant to Section 9.2, Borrower hereby specifically authorizes each Bank in which Borrower maintains a deposit account (whether a general or special deposit account, other than trust accounts) or a certificate of deposit to setoff any Obligations owed to the Banks against such deposit account or certificate of deposit without prior notice to Borrower (which notice is hereby waived) whether or not such deposit account or certificate of deposit has

then matured. Nothing in this Section shall limit or restrict the exercise by a Bank of any right to setoff or banker's lien under applicable Law, subject to the approval of the Required Banks.

11.16 Further Assurances.

Borrower shall, at its expense and without expense to the Banks or the Administrative Agent, do, execute, and deliver such further acts and documents as any Bank or the Administrative Agent from time to time reasonably requires for the assuring and confirming unto the Banks or the Administrative Agent the rights hereby created or intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of any Loan Document; provided that this Section 11.16 is not intended to create any affirmative obligation on the part of Borrower to provide additional collateral security, additional guarantors or other credit enhancement with respect to the Obligations.

11.17 Integration.

This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and supersedes all prior agreements, written or oral (including the mandate letter and the summary of terms relating to this Agreement), on the subject matter hereof except as provided in Section 3.3 hereof or otherwise expressly provided herein to the contrary. The Loan Documents were drafted with the joint participation of Borrower and the Banks and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

11.18 Governing Law.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, BOROUGH OF MANHATTAN, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST

EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.19 Severability of Provisions.

Any provision in any Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

11.20 Headings.

Article and section headings in this Agreement and the other Loan Documents are included for convenience of reference only and are not part of this Agreement or the other Loan Documents for any other purpose.

11.21 Conflict in Loan Documents.

To the extent there is any actual irreconcilable conflict between the provisions of this Agreement and any other Loan Document, the provisions of this Agreement shall prevail.

11.22 Waiver of Right to Trial by Jury.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND

THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.23 Purported Oral Amendments.

BORROWER EXPRESSLY ACKNOWLEDGES THAT THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY ONLY BE AMENDED OR MODIFIED, OR THE PROVISIONS HEREOF OR THEREOF WAIVED OR SUPPLEMENTED, BY AN INSTRUMENT IN WRITING THAT COMPLIES WITH SECTION 11.2. BORROWER AGREES THAT IT WILL NOT RELY ON ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR ORAL OR WRITTEN STATEMENTS BY ANY REPRESENTATIVE OF ANY AGENT OR ANY BANK THAT DOES NOT COMPLY WITH SECTION 11.2 TO EFFECT AN AMENDMENT, MODIFICATION, WAIVER OR SUPPLEMENT TO THE AGREEMENT OR THE OTHER LOAN DOCUMENTS.

11.24 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Bank, or the Administrative Agent or any Bank exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Bank severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

11.25 Hazardous Materials Indemnity.

Without limiting any other indemnity provided for in the Loan Documents, Borrower agrees to indemnify the Indemnitees from any claim, liability, loss, cost or expense (including Attorney Costs) directly or indirectly arising out of the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of any Hazardous Materials if such Hazardous Materials are on, under, about or relate to Borrower's Property or operations, so long as such claim, liability, loss, cost or expense arises out of or relates to a Commitment, the use of proceeds of any Loans, any transaction contemplated pursuant to this Agreement, or any relationship or alleged relationship of any Indemnitee to Borrower related to this Agreement.

11.26 USA PATRIOT Act Notice.

Each Bank that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Bank) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "PATRIOT Act"), it is required to obtain, verify and record information that

identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Bank or the Administrative Agent, as applicable, to identify the Borrower in accordance with the PATRIOT Act. The Borrower hereby agrees to provide any such information that is reasonably requested by any Bank or the Administrative Agent.

11.27 Replacement of Banks.

If (a) any Bank requests compensation under Sections 3.6(a) through 3.6(e), (b) the Borrower is required to pay any additional amount pursuant to Section 3.10, (c) any Bank is a Defaulting Bank, (d) any Non-Consenting Bank or (e) any other circumstance exists hereunder that gives the Borrower the right to replace a Bank as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Bank and the Administrative Agent, require such Bank to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.8), and such Bank shall assign within 5 Business Days after the date of such notice, all of its interests, rights and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Bank, if a Bank accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 11.8(b);

(b) such Bank shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.6(f) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and including all amounts due to such Bank under Sections 3.10, 11.3, 11.6(e) and 11.10, but subject to the provisions of clause (c) below);

(c) in the case of any such assignment resulting from a claim for compensation under Sections 3.6(a) through 3.6(e) or payments required to be made pursuant to Section 3.10, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Bank shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Bank or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

11.28 No Fiduciary Relationship.

The Borrower hereby acknowledges that none of the Administrative Agent, the Banks or their Affiliates has any fiduciary relationship with or duty to the Borrower or any of its Affiliates arising out of or in connection with the Loan Documents, and the relationship between the Administrative Agent, the Banks or any of their Affiliates, on the one hand, and the Borrower or

its Affiliates, on the other hand, in connection with the Loan Documents is solely that of debtor and creditor.

11.29 Effect of Amendment and Restatement; Affirmation of Existing Loan Documents.

Upon the effectiveness of this Agreement pursuant to Section 8.1 hereof: (a) the terms and conditions of the Existing Loan Agreement shall be amended and restated in their entirety as set forth herein, any and all references to the Existing Loan Agreement in any Loan Document shall, from and after the Restatement Date and without further action of the parties, be deemed a reference to this Agreement, and any and all references to the Loan Documents (as defined in the Existing Loan Agreement) in any Loan Document shall be deemed a reference to the Loan Documents; (b) the Obligations incurred and outstanding as of the Restatement Date (after giving effect to any payments made on the Restatement Date) under the Existing Loan Agreement and the other Loan Documents (as defined therein) continue to be outstanding and shall not be deemed to be paid, released, discharged or otherwise satisfied by the execution of this Agreement and the other Loan Documents on the Restatement Date, this Agreement shall not constitute a refinancing, substitution or novation of such Obligations or any of the other rights, duties and obligations of the parties thereto, and the term "Obligations" as such term is used in the Loan Documents means the Obligations as amended and restated under this Agreement; (c) all indemnification obligations of the Loan Parties under the Existing Loan Agreement and any other Loan Documents (as defined therein) relating to the Existing Loan Agreement and any other Loan Documents (as defined therein) that by their terms are to survive the termination thereof shall survive the execution and delivery of this Agreement and shall continue in full force and effect for the benefit of each Bank party thereto, the Administrative Agent, and any other Person indemnified under the Existing Loan Agreement or any other Loan Document (as defined therein) at any time prior to the Restatement Date pursuant to and for so long as such provisions so provide; and (d) the execution, delivery and effectiveness of this Agreement and the other Loan Documents on the Restatement Date shall not operate as a waiver of any right, power or remedy of the Banks or the Administrative Agent under the Existing Loan Agreement and any other Loan Documents (as defined therein), nor constitute a waiver of any covenant, agreement or obligation under the Existing Loan Agreement or any other Loan Documents (as defined therein).

11.30 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution, and (b) the effects of any Bail-in Action on any such liability, including, if applicable, (i) a reduction in full or in part or cancellation of any such liability, (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or

other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document, or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

11.31 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each of the Arrangers, the Syndication Agents and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA, for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of ERISA Section 406 and Code Section 4975 such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such person became a Lender party hereto, to, and (y) acknowledges, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and each of the Arrangers, Syndication Agent and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party that none of the Administrative Agent, Arrangers or Syndication Agent nor any of their respective Affiliates (A) is or will be a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent, Arrangers or Syndication Agent under this Agreement, any Loan Document or any documents related to hereto or thereto), or (B) is undertaking to provide investment advice to such Lender in connection with the transactions contemplated hereby.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

KB HOME, a Delaware Corporation

By: /s/ Jeff J. Kaminski

Name: Jeff J. Kaminski

Title: Executive Vice President and Chief Financial Officer

[Signature Page – Third Amended and Restated Revolving Loan Agreement]

CITIBANK, N.A., as Administrative Agent, a Bank and an Issuing Bank

By: /s/ Michael Vondriska
Name: Michael Vondriska
Title: Vice President

[Signature Page – Third Amended and Restated Revolving Loan Agreement]

BANK OF AMERICA, N.A.,
as a Bank and an Issuing Bank

By: /s/ Thomas W. Nowak
Name: Thomas W. Nowak
Title: Vice President

[Signature Page – Third Amended and Restated Revolving Loan Agreement]

BANK OF THE WEST,
as a Bank and an Issuing Bank

By: /s/ Annette Connell
Name: Annette Connell
Title: Vice President

[Signature Page – Third Amended and Restated Revolving Loan Agreement]

BMO HARRIS BANK, N.A.,
as a Bank and an Issuing Bank

By: /s/ Paul Pirok
Name: Paul Pirok
Title: Director

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CIBC Bank USA,
as a Bank and an Issuing Bank

By: /s/ Michael Olson
Name: Michael Olson
Title: Managing Director

[Signature Page – Third Amended and Restated Revolving Loan Agreement]

CREDIT SUISSE AG,
Cayman Islands Branch
as a Bank and an Issuing Bank

By: /s/ William O' Daly
Name: William O'Daly
Title: Authorized Signatory

By: /s/ Andrew Griffin
Name: Andrew Griffin
Title: Authorized Signatory

[Signature Page – Third Amended and Restated Revolving Loan Agreement]

DEUTCHE BANK AG NEW YORK BRANCH,
as a Bank and an Issuing Bank

By: /s/ Yumi Okabe
Name: Yumi Okabe
Title: Vice President

By: /s/ Alicia Schug
Name: Alicia Schug
Title: Vice President

[Signature Page – Third Amended and Restated Revolving Loan Agreement]

FIFTH THIRD BANK,
as a Bank and an Issuing Bank

By: /s/ Beverly J. Matter

Name: Beverly J. Matter

Title: SVP - National Commercial Real Estate - Homebuilder Banking

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MUFG UNION BANK, N.A.,
as a Bank and an Issuing Bank

By: /s/ Richard Katzberg
Name: Richard Katzberg
Title: Managing Director

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REGIONS BANK,
as a Bank and an Issuing Bank

By: /s/ Randall S. Reid
Name: Randall S. Reid
Title: Senior Vice President

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TEXAS CAPITAL BANK, N.A.,
as a Bank and an Issuing Bank

By: /s/ Danielle E. Poole
Name: Danielle E. Poole
Title: Vice President

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WELLS FARGO BANK, NATIONAL ASSOCIATION,
as a Bank and an Issuing Bank

By: /s/ Bret Sumner
Name: Bret Sumner
Title: Vice President

[Signature Page – Third Amended and Restated Revolving Loan Agreement]

ZIONS BANCORPORATION, N.A. DBA CALIFORNIA BANK & TRUST,
as a Bank and an Issuing Bank

By: /s/ Marisa Drury
Name: Marisa Drury
Title: Senior Vice President

[Signature Page – Third Amended and Restated Revolving Loan Agreement]

KB HOME AND CONSOLIDATED SUBSIDIARIES
SUBSIDIARIES OF THE REGISTRANT

The following subsidiaries* of KB Home were included in the November 30, 2019 consolidated financial statements:

Name of Company/Jurisdiction of Incorporation or Formation	Percentage of Voting Securities Owned by the Registrant or a Subsidiary of the Registrant
<i>Arizona</i>	
KB HOME Phoenix Inc.	100
KB HOME Sales - Phoenix Inc.	100
KB HOME Sales - Tucson Inc.	100
KB HOME Tucson Inc.	100
<i>California</i>	
KB HOME Central Valley Inc.	100
KB HOME Coastal Inc.	100
KB HOME Greater Los Angeles Inc.	100
KB HOME Insurance Agency Inc.	100
KB HOME Sacramento Inc.	100
KB HOME South Bay Inc.	100
<i>Colorado</i>	
KB HOME Colorado Inc.	100
<i>Delaware</i>	
KB HOME California LLC	100
KB HOME Florida LLC	100
KB HOME Fort Myers LLC	100
KB HOME Inspirada LLC	100
KB HOME Jacksonville LLC	100
KB HOME North Bay LLC	100
KB HOME Orlando LLC	100
KB HOME Tampa LLC	100
KB HOME Treasure Coast LLC	100
KBHPNW LLC	100
KBHPNW Sales LLC	100
KB Urban Inc.	100
<i>Florida</i>	
KB HOME Title Services Inc.	100
<i>Illinois</i>	
KB HOME Mortgage Company	100
<i>Nevada</i>	
KB HOME Las Vegas Inc.	100
KB HOME Reno Inc.	100
<i>Texas</i>	
KB HOME Lone Star Inc.	100
KBSA, Inc.	100

* Certain subsidiaries have been omitted from this list. These subsidiaries, when considered in the aggregate as a single subsidiary, do not constitute a significant subsidiary as defined in Rule 1-02(w) of Regulation S-X.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-3 No. 333-219293) of KB Home,
- (2) Registration Statement (Form S-8 No. 333-129273) pertaining to the KB Home 1988 Employee Stock Plan, the KB Home 1998 Stock Incentive Plan, the KB Home Performance-Based Incentive Plan for Senior Management, the KB Home Non-Employee Directors Stock Plan, the KB Home 401(k) Savings Plan, the KB Home 1999 Incentive Plan, the KB Home 2001 Stock Incentive Plan, certain stock grants and the resale of certain shares by officers of KB Home,
- (3) Registration Statement (Form S-8 No. 333-168179) pertaining to the KB Home 401(k) Savings Plan,
- (4) Registration Statements (Form S-8 No. 333-168181 and Form S-8 No. 333-175601) pertaining to the KB Home 2010 Equity Incentive Plan,
- (5) Registration Statement (Form S-8 No. 333-197521) pertaining to the KB Home 2014 Equity Incentive Plan, the Third Amended and Restated KB Home Non-Employee Directors Compensation Plan, and the KB Home 401(k) Savings Plan, and
- (6) Registration Statement (Form S-8 No. 333-212521) pertaining to the Amended KB Home 2014 Equity Incentive Plan and the KB Home 401(k) Savings Plan;

of our reports dated January 24, 2020 with respect to the consolidated financial statements of KB Home, and the effectiveness of internal control over financial reporting of KB Home, included in this Annual Report (Form 10-K) of KB Home for the year ended November 30, 2019.

/s/ Ernst & Young LLP

Los Angeles, California
January 24, 2020

CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jeffrey T. Mezger, certify that:

1. I have reviewed this annual report on Form 10-K of KB Home;
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, including its consolidated subsidiaries, is made known to us by others within those entities, 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 most recent 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 January 24, 2020

/s/ JEFFREY T. MEZGER

Jeffrey T. Mezger
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jeff J. Kaminski, certify that:

1. I have reviewed this annual report on Form 10-K of KB Home;
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, including its consolidated subsidiaries, is made known to us by others within those entities, 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 most recent 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 January 24, 2020

/s/ JEFF J. KAMINSKI

Jeff J. Kaminski
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of KB Home (the “Company”) on Form 10-K for the period ended November 30, 2019 (the “Report”), I, Jeffrey T. Mezger, Chairman, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated January 24, 2020

/s/ JEFFREY T. MEZGER
Jeffrey T. Mezger
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of KB Home (the "Company") on Form 10-K for the period ended November 30, 2019 (the "Report"), I, Jeff J. Kaminski, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated January 24, 2020

/s/ JEFF J. KAMINSKI
Jeff J. Kaminski
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)